



WEB COPY



A.S.No. 351 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No. 351 of 2017
and
C.M.P.No. 13254 of 2017

P.Selvakumar (died)

2. R.Krishnan
3. Gunasundari
4. Sagunthala

(A3 and A4 are brought on record as
LRs of deceased 1st appellant viz.,
P.Selvakumar vide order of court
dated 14.02.2023 made in C.M.P.
No. 6251 of 2019)

... Appellants

Vs.

T.P.Natarajan

.. Respondent

PRAYER : Appeal Suit filed under Sec.96 r/w Order 41 Rule 1 of Civil Procedure Code, to set aside the judgment and decree dated 04.01.2017 passed by the learned III Addl. District and Sessions Judge, Gobichettipalayam, Erode District in O.S.No.188 of 2011.



A.S.No. 351 of 2017

For Appellants : Mr.V.Manohar

For Respondent : Mr.N.R.Elango for
M/s. Aruna Elango

JUDGMENT

The appellants 1 and 2 herein are the plaintiffs and they have filed a suit in O.S.No.188 of 2011 on the file of learned III Addl. District cum Sessions Judge, Gobichettipalayam for the relief of specific performance against the respondent/defendant with alternative remedy. The defendant contested the suit. On hearing both sides, the trial judge finally held that the plaintiffs are not entitled for the relief of specific performance, but granted the relief of return of advance amount. Aggrieved that, the plaintiffs preferred this first appeal.

2. For the sake of convenience, the parties are referred as per ranking in a suit. During the pendency of proceedings, the 1st plaintiff died and his legal heirs were brought on record.



A.S.No. 351 of 2017

WEB COPY

3. The case of plaintiffs is that the defendant herein is the absolute owner of property agreed to sell the same to them on 01.02.2010 for a total sum of Rs.14,00,000/-. On that date itself, the plaintiffs paid a sum of Rs.2,00,000/- as advance and it was agreed that within four months, the defendant agreed to execute the sale deed. So also, the plaintiffs are bound to get the sale deed by paying the balance sale consideration, but the defendant failed to execute the same. Therefore, expressing his readiness, the plaintiffs issued a notice on 02.03.2010, for that, the defendant gave a false reply, but soon after one Rajeswari claimed herself as a sister of defendant obtained the original agreement from them for amicable settlement. But, subsequently, she turned against the plaintiffs and not handed over the agreement. So, they have filed a suit in O.S.No. 186 of 2010 before the District Munsif Court, Sathyamangalam against the defendant and his sister Rajeswari and thereafter, she produced the original agreement. Due to that only, the plaintiffs are not in a position to file a suit in time. After receipt of original agreement, the plaintiffs filed a suit with an alternative remedy. The defendant admits that he is the owner of property and with regard to other allegations, he denied. The foremost fact is that he



A.S.No. 351 of 2017

has no sister viz., Rajeswari and further he would content that he never offered to sell the property to plaintiffs nor entered into any sale agreement with them. Further he would also content that by way of reply notice, he demanded the production of document as he want to verify the same, but for that, no steps taken on the side of plaintiffs. On the other hand, by setting up one Rajeswari, they have filed a fake suit as if original agreement was retained by her and in order to drag on the proceedings as well as to save the limitation colluding with the said Rajeswari filed the vexatious suit earlier in O.S.No. 186 of 2010. Even at the time of filing of the said suit, the plaintiffs not retained their right for a comprehensive relief. Hence, the plaintiffs are not entitled for any relief in the suit and so he prayed to dismiss the suit as no merit.

4. Before the trial court, both parties have adduced their evidence. On the side of plaintiffs, the documents in Ex.P1 to P15 were marked and P.W.1 to 3 were examined. On the side of defendant, the documents in Ex.D1 and D2 were marked and D.W.1 was examined. The trial judge framed five issues and considering the evidence on record, the trial judge held that the agreement Ex.A1 is true and valid document, but the plaintiffs



A.S.No. 351 of 2017

have not proved their readiness and willingness and accordingly, the relief of specific performance was not granted. Furthermore, the damages claimed by the defendant was also not granted, but, on the other hand, the refund of advance amount was granted in favour of plaintiffs. Aggrieved that, now the plaintiffs preferred this appeal.

5. The point for consideration in this appeal is as follows :-

(i) whether the plaintiffs are entitled for the relief of specific performance?

(ii) Whether the plaintiffs proved their readiness and willingness as a bonafide purchaser?

To avail the remedy of specific performance, plaintiffs are bound to prove their case independently. As per the case of plaintiffs, they have entered into a sale agreement with the defendant for a sale consideration of Rs.14,00,000/- and paid a sum of Rs.2,00,000/- towards advance on 01.01.2010 and fixed four months time to perform their terms by both parties, but the defendant evaded. So, he gave a notice dated 03.03.2010 for that, the reply was given demanding to produce sale agreement as he wanted to verify the same and also denied the execution of agreement.



A.S.No. 351 of 2017

Therefore, the plaintiffs approached the court for the execution of sale deed.

6. The plaintiffs were examined as P.W.1 and 2. The sale agreement was marked as Ex.A1. As per evidence, the defendant totally denied the execution of sale agreement with plaintiffs, besides he had also denied that the signature in Ex.A1 sale agreement, which is not belong to him. But, as rightly pointed out by the trial judge, the defendant has not taken any steps to disprove the signature found in Ex.A1 is not belong to him. However, the defendant produced Ex.B1 certified copy of sale deed and another document of sale deed executed to third party Ex.B2. When the defendant denied the signature in Ex.A1 agreement that it is not belong to him, he ought to have taken steps to compare document along with any contemporary document. When he has not taken any steps to prove the signature found in sale agreement, defendant's contention was rightly rejected by the trial judge.

7. Before initiating suit, the plaintiffs issued a notice and the same was replied by the defendant requesting the plaintiffs to produce the said sale agreement in order to verify the same. But, the plaintiffs not produced



A.S.No. 351 of 2017

the sale agreement executed by the defendant, on the other hand, they have filed a suit in O.S.No. 186 of 2010 before the District Munsif Court, Sathyamangalam stating that the defendant is having one sister Rajeswari, who came to him and proposed for amicable settlement. Believing that, he had handed over the said original sale agreement to the said Rajeswari, but later the matter was not settled. Hence, they have filed a suit in O.S.No.188 of 2011. But, the defendant totally denied the fact that the said Rajeswari handed over the original agreement, thereby, the suit was withdrawn. The defendant also denied the fact that he is not having sister like Rajeswari, but before the trial court, plaintiffs not taken any steps to summon the said Rajeswari to examine as a witness on their side to prove the alleged relationship. As there is no evidence on the side of plaintiffs, their contention that Rajeswari, who is sister of defendant is totally false one. In order to avoid production of original agreement, the plaintiffs set up a case along with Rajeswari, which itself shows the dishonest intention of plaintiffs to grab the property of defendant. Therefore, the suit filed by the plaintiffs in O.S.No. 186 of 2010 is vexatious one and in order to defraud the case of plaintiffs, it was filed.



A.S.No. 351 of 2017

WEB COPY

8. Moreover, the contentions of plaintiffs that they are always ready and willing to perform their part of agreement. To prove the said statement, they have relied the bank statements Ex.A9 to Ex.A10. On considering the statements, it belong to the period of 01.04.2015 to 30.09.2016 and other tax receipts Ex.A9 to A12, which would reveal that on the date of filing the suit in the year of 2011, the plaintiffs are not having sufficient amount to pay the balance amount of Rs.14,00,000/-. As per the statements, from the year of 2008-2009, he had only a sum of Rs.1,08,000/-, 2009-2010, he had a sum of Rs.1,00,000/-. Even in the year of 2010-2011, he had only a sum of Rs.80,000/-. So, all these years, after the time of issuance of notice as well as filing of suit, the plaintiffs have not possessed valid balance amount of Rs.14,00,000/- in his account. Therefore, they are not able to prove that they are always ready and willing to perform their part of agreement. From the inception of agreement, the plaintiffs bound to prove the fact that they are always ready to pay the balance amount to get the sale deed. As discussed above, from the perusal of statements, it would prove that the plaintiffs are not having sufficient amount to pay balance sale consideration.



A.S.No. 351 of 2017

WEB COPY

9. The learned counsel for plaintiffs argue that in order to perform the terms of agreement, the defendant falsely denied that he has not signed the agreement, but before going to peruse such defence taken by the plaintiffs, as per the proposition of law, the plaintiffs bound to prove their case on their own accord. As discussed above, the plaintiffs not proved that they are always ready and willing to perform their part of agreement. Furthermore, they have not approached the court with clean hands and they have failed to establish the fact that sister of defendant one Rajeswari had received the original sale agreement. At the same time, the defendant able to establish that the said Rajeswari colluded with plaintiffs filed the earlier suit in O.S.No.186 of 2010. Thus, the relationship of the said Rajeswari with the defendant has not been proved by plaintiffs. Therefore, she is total stranger to the defendant and fraudulent act of the plaintiffs is clearly implied. Furthermore, the alleged endorsement in the agreement also not proved beyond reasonable doubt as rightly observed by the trial judge. Therefore, the plaintiffs not approached the court with clean hands and not established that they were always ready and willing to perform the part of agreement. Accordingly, the issue nos.1 and 2 are answered.



A.S.No. 351 of 2017

WEB COPY

Therefore, they are not entitled for the relief of specific performance as rightly held by the trial judge, which needs no interference. Accordingly, the findings of trial judge to that effect is confirmed. In respect of alternative remedy, as the alleged advance amount of Rs.2 lakhs along with interest at the rate of 9% from the date of filing suit till the date of decree and thereafter at the rate of 6% is ordered to be refunded to the plaintiffs. Accordingly, the findings of trial judge is confirmed and this appeal is dismissed as no merit. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

14.02.2024

Index : Yes / No

Internet : Yes / No

Speaking/Non-speaking order
rpp

To

III Addl. District and Sessions Judge,
Gobichettipalayam.

10/11



WEB COPY



A.S.No. 351 of 2017

T.V.THAMILSELVI, J.

rpp

A.S.No. 351 of 2017

14.02.2024