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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :12.12.2023

PRONOUNCED ON :03.01.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.366 of 2017

1.Mohanam

2.Kuppammal

...Appellants

Vs.

1.Sampath

2.Shanmugam

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment of the learned II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District passed in A.S.No.10 of 2016 dated 27.09.2016 reversing the decree and judgment of the learned Subordinate Judge, Ranipet, Vellore District passed in O.S.No.89 of 2007, dated 17.09.2014 and to set aside the same.

For Appellants : Mr.V.Raghavachari
Senior Advocate
for M/s.N.Umapathi

For Respondents : Mr.V.Ravi for R1
R2-unserved

JUDGMENT

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The defendants 1 and 2 are the appellants. The first respondent filed a suit for specific performance and the same was dismissed by the trial Court. The First Appeal preferred by the first respondent was allowed and as a consequence, the suit was decreed. Aggrieved by the same, the appellants are before this Court.

2. According to the first respondent, he entered into suit sale agreement dated 21.10.2006 for purchase of agreement mentioned property at the rate of Rs.1,250/- per cent. The total extent of the agreement mentioned property was 2.60 acres. Thus the total sale consideration comes to Rs.3,25,000/-. The first respondent paid an advance of amount Rs.50,000/- to the appellants on the date of agreement itself. The time stipulated for completing the sale transaction was four months (expires on 20.02.2007). It was further stated by the first respondent that on 11.12.2006, he paid a further amount of Rs.70,000/- to first appellant who received it on behalf of the second appellant/second defendant and also made an endorsement in the suit sale agreement marked as Ex.A2. Further



on 14.01.2007, the first respondent paid another sum of Rs.70,000/- to first appellant who received it on behalf of other appellant and made an endorsement in the suit sale agreement marked as Ex.A3. It was claimed by the first respondent that he had been always ready and willing to pay the balance sale consideration and complete the sale transaction. However, the appellants evaded the receipt of balance sale price and execution of sale deed. Hence, the first respondent issued a registered notice to appellants through his lawyer on 31.01.2007 calling upon them to receive the balance sale consideration and execute the sale deed. The appellants came up with a false reply on 12.02.2007. Subsequently, on 14.02.2007, in order to defeat the right of the first respondent under the suit sale agreement, the appellants created a sham and nominal sale deed in favour of second respondent/third defendant who is the son-in-law of first appellant and husband of second appellant. In these circumstances, the first respondent was constrained to file a suit for specific performance.

3. The first appellant/first defendant filed a written statement and contended that he borrowed a sum of Rs.1,20,000/- from the first respondent and at the time of borrowal first respondent obtained the



signatures of the first appellant and his wife Unnamalaiammal in blank papers and the same had been utilized by the first respondent to create the suit sale agreement. It was further averred in the written statement that the appellants did not receive any advance amount in pursuance of the agreement. It was further averred that the value of the suit property was more than Rs.30,00,000/- and the first respondent had no funds at his disposal to perform his part of the contract. The first appellant also expressed his willingness to pay back the sum of Rs.1,20,000/- received by him as loan. The second appellant/second defendant filed a written statement denying her signature in the suit sale agreement. It was claimed by her that the relationship between her and her father/first appellant was strained as the latter led a way-ward life and had become addicted to drink. It was further claimed that there was no necessity for the appellants to convey the agreement mentioned property to the first respondent and averment in the plaint regarding payment of advance amount and further amount based on endorsement were also denied. The second appellant by denying the privity of contract between her and the first respondent sought for dismissal of the suit.



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4. The second respondent/third defendant filed a written statement and claimed that he was a bonafide purchaser of the suit property for value on 14.02.2007 and hence sought for dismissal of the suit.

5. Before the trial Court, the first respondent was examined as PW.1. The scribe of second endorsement dated 14.01.2007 marked as Ex.A3 was examined as PW.2. The attesor of suit sale agreement was examined as PW.3. The attesor to first endorsement dated 11.12.2006 was examined as PW.4. On behalf of the first respondent/plaintiff, six documents were marked as Exs.A1 to A6. On behalf of the first appellant, he examined himself as DW.1 and one of the attesor to suit sale agreement was examined as DW.2 and the second respondent was examined as DW.3. No documents were marked on behalf of the appellants.

6. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the execution of suit sale agreement was not proved by the first respondent and



consequently, dismissed the suit. Aggrieved by the same, the first respondent preferred an appeal in A.S.No.10 of 2016, on the file of the II Additional District Court, Vellore at Ranipet. The First Appellate Court reversed the findings of the trial Court and granted decree for specific performance by allowing the appeal. Aggrieved by the same, the defendants 1 and 2 have come up by way of this second appeal.

7. At the time of admission, this Court formulated the following substantial questions of law by order dated 09.06.2017:

(i) Whether the grant of relief of specific performance by the Appellate Court is in consonance with the principles of judicial discretion to be exercised as required under Section 20 of the Specific Relief Act?;

(ii) Has not the Appellate Court committed a grave error in granting the relief of specific performance when the terms of Ex.A1 specifically provided for the consequence and remedy in the event of non-performance of obligations on either party?;

(iii) Whether the Appellate Court is



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legally justified in decreeing the suit in the absence of any pleading or finding compensation in terms of money would not be an adequate relief for non performance of the contract as mandated under Section 14(1) (a) of the Specific Relief Act?;

(iv) Whether the judgment and decree is vitiated for want of appreciation of readiness and willingness as pleaded and proved were not in accordance with the requirements of Section 16(C) of the Specific Relief Act?.

8. The learned counsel appearing for the appellants submitted that the first respondent failed to prove very execution of suit sale agreement and hence, the First Appellate Court ought not to have granted decree for specific performance when a doubt is created by evidence of plaintiff side witnesses regarding the execution of suit sale agreement. The learned counsel further submitted that the trial Court by pointing out various contradictions in the evidence of PW.1 to PW.4, came to the conclusion that



the execution of suit sale agreement itself was doubtful and hence, the first respondent was not entitled to specific performance and the First Appellate Court overlooked the material contradictions in the evidence of PWs and consequently committed the grave error in granting discretionary relief of specific performance.

9. In support of his contention, the learned counsel appearing for the appellants relied on the following judgments:

(i) Palanisamy and others vs. A.Palaniswami and 2 others reported in **1997-2-L.W.744**;

(ii) Munusamy Vs. Nava Pillai reported in **2008-3-L.W.252**;

(iii) T.Krishnan Vs. V.Balaji reported in **CDJ 2010 MHC 2960**;

(iv) Kuttub K.Z. And others Vs. A.Selvaraj and others reported in **Manu/TN/2472/2023**.

10. Per contra, the learned counsel appearing for the first respondent submitted that the execution of suit sale agreement was duly proved by examining attestor to the agreement and endorsement found in the



agreement and the First Appellate Court, on proper appreciation of oral evidence of the attestors came to the conclusion that due execution of suit sale agreement was proved. The learned counsel further submitted that the signatures in the suit sale agreement was admitted by first appellant in his written statement and he pleaded that the suit sale agreement was executed as a security for loan transactions. In such circumstances, the burden is on the appellants to prove the same. The learned counsel further submitted that the second respondent/third defendant is only a son-in-law of first appellant and husband of second appellant and the property was sold to second respondent only to defeat the right of the first respondent under the agreement and therefore, he could not be treated as a bonafide purchaser without notice of agreement.

11. The first appellant mainly resisted the suit on the ground that the suit sale agreement was executed as a security for loan transaction. Therefore, he admitted the signatures of both the appellants in the suit sale agreement. It was his specific case that the appellants and wife of first appellant viz., Unnamalaiammal put their signature/thumb impression in blank papers and the same was utilized by the first respondent to prepare the



suit sale agreement. In order to prove execution of suit sale agreement, the attesor to agreement was examined as PW.3. The trial Court by relying on certain portion of his evidence in cross examination, out of context, came to the conclusion, his evidence was not sufficient to prove due execution of suit sale agreement. However, a close scrutiny of PW3's whole evidence would suggest, he clearly deposed about due execution of suit sale agreement. Even in cross examination, he clearly deposed that the first appellant put his signature in the first page of the agreement and in the second page of the agreement both the second appellant and Unnamalaiammal put their signatures. However, he deposed that he was not aware why second appellant and Unnamalaiammal did not sign in the first page. He also deposed that he has not seen the scribe of the document writing the agreement. He also clearly deposed that he has seen the other attestor signing the document and he counted the currency notes and paid the advance amount. Merely because he did not witness preparation of the document by scribe, it could not be said that he had not seen the execution of the agreement. When he clearly deposed that he had seen executor and other attestor signing the document, we can safely come to the conclusion that due execution of suit sale agreement has been proved by his evidence. PW.4 is an attestor to first endorsement in the suit



sale agreement whereunder the first respondent received a further sum of Rs.70,000/- and made an endorsement in the suit sale agreement on 11.12.2006. He deposed about payment of Rs.70,000/- and endorsement in the suit sale agreement marked as Ex.A2. PW.2 is the scribe of the second endorsement marked as Ex.A3 found in the suit sale agreement. He clearly deposed about payment of Rs.70,000/- to the first appellant and endorsement made by him. Therefore, the evidence of PW.2 and PW.4 are complementary to the evidence of PW.3. Though the other attester to the suit sale agreement was examined as DW.2 on behalf of the appellants and he deposed as if suit sale agreement was executed as a security for loan transaction, his evidence as if he attested a blank paper signed by appellants is not believable. In his cross examination, he simply deposed that he signed in the blank paper as he was asked to do so by first respondent. The said evidence of DW.2 as if he signed blank paper as a witness is not at all acceptable to this Court. The First Appellate Court on proper appreciation of evidence of PW.2 to PW.4 and DW.2, came to a factual conclusion that execution of suit sale agreement was duly proved and the said factual conclusion reached by the First Appellate Court is not vitiated by any perversity especially in the light of admission of appellants' signature by first appellant in his written statement. Though



second appellant denied her signature and pleaded strained relationship with first appellant she failed to enter the box and depose in favour of said averments. In such circumstances, adverse inference shall be drawn against the second appellant.

12. The trial Court also pointed out that in the first page of the sale agreement, the first appellant signed as "மோகன்" and in the second page of the sale agreement, he signed as "தா.மோகன்" with initial. The First Appellate Court pointed out that the first appellant in his proof affidavit signed as "மோகனம்" without initial and in the cross examination he signed as "தா.மோகன்" with initial. The first appellant is in the habit of signing with initial and without initial and his signature will not be alike at all times. In view of the reasons stated above, this Court concludes that the suit sale agreement has been duly proved by the first respondent.

13. Under the agreement, the sale consideration was fixed at Rs.1,250/- per cent. The total extent of agreement mentioned property was two acres and 60 cents, therefore, the total sale consideration comes to Rs.3,25,000/-. As per Ex.A1, the suit sale agreement, an advance of



Rs.50,000/- was paid on date of agreement namely 21.10.2006.

Subsequently, a sum of Rs.70,000/- was paid on 11.12.2006 on the date of first endorsement. Thereafter, a further sum of Rs.70,000/- was paid on 14.01.2007 on the date of second endorsement. As per the terms of agreement, the time fixed for performance was four months and the said period expires on 20.02.2007. Well within the said period, as on 14.01.2007, the first respondent paid a sum of Rs.1,90,000/- towards sale consideration and a legal notice was issued on 31.01.2007 calling upon the appellants to receive the balance sale consideration to complete the sale transaction within a period of two days from the date of receipt of copy of notice. The appellants having received the said notice issued a reply on 12.02.2007 stating that the suit sale agreement was executed as a security for loan transaction. Immediately after reply notice on 14.02.2007, the appellants executed a sale deed under Ex.A6 in favour of second respondent/third defendant. The second respondent is none other than the son-in-law of first appellant and husband of second appellant. The pre-suit notice calling upon the appellants to receive balance sale consideration and complete the sale transaction was issued by the first respondent on 31.01.2007 well before the expiry of the time limit prescribed under the suit sale agreement. This Court already came to the



conclusion that the agreement as well as endorsement thereon were duly proved by the first respondent. In such circumstances, the first respondent having proved his readiness and willingness to perform his part of the contract is entitled to specific performance of the suit sale agreement. The second respondent/third defendant is none other than the son-in-law of the first appellant and husband of the second appellant. The sale deed in his favour was executed immediately after receipt of pre-suit notice by the appellants. In his evidence, he clearly deposed that the first appellant and his wife were residing with him at Punalpadi Village. The above said sequence of events and the close relationship of appellants and second respondent compels this Court to come to the conclusion that the second respondent is not a bonafide purchaser without notice of suit sale agreement. It is also pertinent to note that the first appellant in his written statement claimed that the value of the suit property was Rs.30,00,000/-. However, under Ex.A6, sale deed in favour of second respondent, the agreement mentioned property was sold to him for a suit sale consideration of Rs.1,40,000/-. In these circumstances, this Court comes to the conclusion that the second respondent/third defendant is not bonafide purchaser for value.



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14. In *Palanisamy and others vs. A.Palaniswami and 2 others* reported in **1997-2-L.W.744** relied on by the learned counsel appearing for the appellant, the agreement of sale was entered into with a woman aged about 80 years. This Court in the above mentioned case law, taking into consideration the close relationship between the parties, observed that good faith of the transaction was not proved by the plaintiff and hence refused specific performance. The peculiar circumstances and close relationship between the parties which directed, this Court to refuse specific performance in the above mentioned case law, are not available in the present case. Therefore, the said case law is not applicable to the facts of the present case.

15. In *Munusamy Vs. Nava Pillai* reported in **2008-3-L.W.252**, this Court on the facts of that case, came to the conclusion that there was a serious doubt regarding the free consent of the parties in that case therefore refused suit sale agreement. In the case on hand, the signature was admitted by the first appellant who is the father of second appellant and evidence of PW.2 to PW.4 which are complementary to each other proved the execution of suit sale agreement. Therefore, the said case law is also not



applicable in the facts of the present case.

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16. In *T.Krishnan Vs. V.Balaji* reported in *CDJ 2010*

MHC 2960 cited supra by the learned counsel appearing for the appellants, this Court refused the specific performance on the ground that Courts below fastened the burden of proof wrongly on the defendant in a suit for specific performance. Further in that case, this Court came to the factual conclusion that readiness and willingness was not proved by the plaintiff therein. In the present case, as discussed above, this Court already came to the conclusion that due execution of suit sale agreement was proved by the first respondent/plaintiff along with his continuous readiness and willingness to perform his part of the contract. Therefore, the above said case law relied on by the learned counsel for the appellant will not advance his arguments.

17. In view of the discussions made earlier, all the questions of law framed at the time of admission are answered against the appellants and in favour of 1st respondent and consequently, the second appeal is dismissed.



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18. In nutshell:

- (a) The second appeal is dismissed by confirming the judgment and decree passed by the First Appellate Court;
- (b) In the facts and circumstances of the case, there shall be no order as to costs; and

03.01.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District.
2. The Subordinate Judge, Ranipet, Vellore District.



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S.SOUNTHAR, J.
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Pre-delivery order made in
S.A.No.366 of 2017

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