



S.A.No. 169 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 169 of 2024

Thaiyalnayaki

...Appellant

Vs.

Amaravathi (Died)

1.P.Ganesan

2.P.Kalaimani (Died)

3.P.Muthukaruppan

4.K.Mangaiyarkarasi

...Respondents

(R2 died, R4 is brought on record as LR of the deceased R2 vide Court order dated 15.02.2022 made in CMP/14135/2021)



S.A.No. 169 of 2027

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Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.43 of 2017 dated 05.03.2019 on the file of the Principal District Judge at Puducherry, confirming the Judgement and Decree in O.S.No.118 of 2009 dated 19.04.2017 on the file of the Additional Sub Ordinate Judge, Pondicherry.

For Appellant : Mr. V.Balaji.

J U D G M E N T

The Second Appeal has been preferred by the plaintiff / appellant whose suit for specific performance had been dismissed concurrently by both the Courts below. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.



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S.A.No. 169 of 2027

2. The plaintiff had filed the suit O.S.No.118 of 2009 on the file of the Additional Sub Court, Puducherry for specific performance against the legal heirs of the original agreement holder. It is the contention of the plaintiff that the property belonged to one Sumathi wife of Veerappan, she having having purchased the same under a sale deed dated 16.10.2000. The said Sumathi offered to sell the property to the plaintiff and an agreement of sale dated 19.02.2004 was executed between the said Sumathi and the plaintiff herein. As per terms of the agreement, the total sale consideration was fixed at a sum of Rs.3,50,000/- and an advance of Rs.2,00,000/- was paid on the date of the agreement and within a period of one year, the balance was to be paid.

3. The plaintiff's contention is that on the date of the agreement, the original sale deed under which Sumathi had purchased the property was handed over to the plaintiff. The plaintiff would submit that she has been repeatedly requesting the said Sumathi and her husband to



receive the balance sale consideration and execute the sale deed which request was not adhered to. However, as luck would have it, the said Sumathi, her husband and their only daughter had met with a motor accident and the three of them had died. Thereafter, the plaintiff had approached Sumathi's mother-in-law, the defendant herein, informing her about the agreement of sale and requesting her to execute the sale deed. The defendant who initially agreed to do so had failed to comply with the request.

4. The plaintiff would submit that a legal notice dated 22.05.2009 was issued calling upon the defendant to receive the balance sale consideration and execute the sale. Though the sole defendant had acknowledged notice, there was no reply. However, two sons of the defendant had come and met the plaintiff and her husband and requested them to wait for six months. The plaintiff had informed the said persons that it would not be possible to wait that long.

5. The plaintiff would submit that she has been ready and willing



right from the date of the agreement to proceed with the sale and since the defendants are not coming forward to execute the sale deed, she is left with no other alternative except to approach the Court for specific performance.

6. The 4th defendant had filed a written statement denying the claim of the plaintiff and he would submit that on the death of Sumathi, the 1st defendant had inherited the suit property as she is the mother of the deceased husband of the said Sumathi. The 1st defendant died on 07.01.2012 and defendants 2 to 4 were brought on record as her legal representatives.

7. The 4th defendant would submit that his brother Veerappan was a bus operator and he was in need of money. Therefore, he had money transactions with Shanmugasamy, the husband of the plaintiff. The said Shanmugasamy and Veerappan had a long standing relationship of a creditor and debtor. Thereafter, in order to secure the loan advanced by Shanmugasamy, he had got document executed in the



name of his wife, styled as an agreement of sale but the same was intended only as a security for the loan.

8. The 4th defendant would submit that neither Veerappan nor his wife had ever imagine that they would sell the property. Meanwhile, the said Veerappan had also discharged the loan and got back the original document from Shanmugasamy. There are no amounts due to the said Shanmugasamy. Therefore, the allegations contained in the plaint that the original document has gone missing is an utter falsehood. Thereafter, the said Veerappan and his wife, Sumathi and their daughter had died in an accident and taking advantage of this situation, the said Shanmugasamy is trying to make a false claim through his wife, the plaintiff herein.

9. The 4th defendant would further submit that the suit is time barred as the agreement was entered into as early as on 19.02.2004 and the suit has come to be filed in the year 2009. Even assuming that the agreement was true, the plaintiff was never ready and willing to



perform her part of the contract. Therefore, he would submit that there is no cause of action for filing the suit in question and sought for a dismissal of the suit.

10. The 4th defendant had also filed a counter claim seeking return of the original sale deed, which reads as follows:

“direct the plaintiff to return to the defendants 2 to 4 the original sale deed dated 16.10.2000 and registered in Book 1, volume 615 as Document No.1345/2000 in the office of the Sub-Registrar, Bahour, Pondicherry.”

11. The plaintiff had filed a written statement to the counter claim denying the said allegations. The plaintiff would submit that the sale agreement was duly registered and it was the defendant's husband who had taken back the document from the Sub Registrar's Office. The plaintiff would submit that the entire counter claim is based on false allegation and the defendants are not entitled to the counter claim.



12. The Trial Court had framed the issues set out here under.

“1.Whether the plaintiff is ready and willing to perform the contract dated 19.02.2004 as alleged by the plaintiff?

2.Whether the plaintiff is entitled for specific performance relief?

3.Whether the agreement dated 19.02.2004 was executed for security for the loan advanced by the deceased Sumathi?

4.Whether the defendant is entitled for directing the plaintiff to return the defendant original sale deed dated 16.10.2000?

5.What are the other reliefs the plaintiff is entitled for?”

13. The plaintiff had examined herself as P.W.1 and one Shanmugasamy and Govindasamy were examined as P.W.2 and P.W.3,



respectively. The 4th defendant had adduced evidence for and behalf of the defendants as D.W.1 and has marked Ex.B.1.

14. The learned Judge observed that the said Sumathi and her husband and daughter had died in a motor accident on 13.06.2006 and P.W.1 has stated that from the date of the agreement, she was ready and willing to proceed with the sale. The learned Judge had also observed that in her cross examination as P.W.1, the plaintiff has fairly deposed that they have not been ready with the sale. The learned Judge also observed that till the death of the said Sumathi, two years after the execution of the agreement, the plaintiff has not taken any steps to have the deed executed. The learned Judge observed that the plaintiff has failed to prove readiness and willingness. Ultimately, the suit was dismissed.

15. Challenging the same, the plaintiff has filed A.S.No.43 of 2017 on the file of the Principal District Judge, Puducherry. The learned Principal District Judge also concurred with the Judgement and



S.A.No. 169 of 2027

Decree of the Trial Court and dismissed the appeal.

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16. It is challenging this Judgement and Decree that the plaintiff / appellant is before this Court.

17. Heard the learned counsel and perused the records.

18. A perusal of the papers would show that the plaintiff has come to the Court stating that she had entered into an agreement on 19.02.2004, with one Sumathi. As per terms of the agreement, a sum of Rs.2,00,000/- had been paid against total sale consideration of Rs.3,50,000/- and the balance of Rs.1,50,000/- was payable within a period of one year from the date of agreement. Therefore, as per terms of the agreement, the sale was to be executed by 18.02.2005. The said Sumathy, the original agreement older and her family had passed away in a road accident i.e., two years and a month after the execution of the agreement of the sale. There is no evidence from the plaintiff to show that between 19.02.2004 and 16.03.2006, she had taken steps to contact



S.A.No. 169 of 2024

Sumathi and get the sale deed executed.

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19. Further, after the death of Sumathi, notice has been issued only on 22.05.2009, which is nearly 3 years after the death of the said Sumathi and her husband. From the date of the agreement, i.e., 19.02.2004, the plaintiff has not shown readiness and willingness. After the agreement was executed on 19.02.2004, the suit has been filed on 12.06.2009, which is nearly 5 years after the execution of the agreement. Therefore, it is clear that the plaintiff was not ready or willing to proceed with the agreement of sale.

20. The Courts below have rightly analysed the evidence and dismissed the suit. I see no reason to interfere with the well considered concurrent Judgement and Decree. Accordingly, the Second Appeal is dismissed. No costs.

22.03.2024

Index : Yes/No
Internet : Yes/No
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S.A.No. 169 of 2027

To

1.The Principal District Judge
Puducherry.

2.The Additional Sub Ordinate Judge,
Pondicherry.



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S.A.No. 169 of 2024

P.T. ASHA, J,

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S.A.No.169 of 2024

22.03.2024