



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.01.2024	Pronounced on: 23.02.2024
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CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.442 of 2017
and
CMP. No.10798 of 2017

R.Velusamy

...Appellant

Vs.

1. K.Kandasamy
2. Lalitha
3. Marimuthu (Died)
4. Perumayee
5. Mani
6. Ravichandran
(Respondents 4 to 6 are brought on
record as LR's of the deceased 3rd
respondent vide order dated 11.12.2023)

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 11.04.2017 made in A.S. No.24 of 2014 on the file of the Principal District Court, Namakkal reversal of the judgment and decree dated 30.04.2014 made in O.S. No.184 of 2010 on the file of the Sub Court, Tiruchengode by



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allowing this Second Appeal.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.P.C.Harikumar
for M/s.P.C. Harikumar
Associates for R1 & R2
R3-Died
R4 to R6 – AOS not filed.

JUDGMENT

In a suit for specific performance of an agreement of sale, the plaintiff succeeded before the trial Court, however, on Appeal, the suit came to be dismissed. Aggrieved by the reversal of findings by the First Appellate Court, the present Second Appeal has been filed.

2. The parties are described as per their litigative status before the trial Court.

3. The case of the plaintiff is that on 06.12.2007, an agreement of sale was entered into between the plaintiff and the defendants 1 and 2 for sale of the suit property for a total sale consideration of Rs.5,65,000/-. According to the plaintiff, on the date of the agreement, an advance of Rs.1,10,000/-



was paid, and for the balance of Rs.4,55,000/-, the parties had fixed an outer limit upto 12th February 2008. It is the further case of the plaintiff that on 03.01.2008, a further advance of Rs.55,000/- was paid and an endorsement was made on the reverse of the sale agreement. As the defendants 1 and 2 did not come forward to execute the sale deed and register the same in favour of the plaintiff, the plaintiff issued a pre-suit notice on 08.02.2008. The said notice was returned unserved. In the meantime, the defendants 1 and 2 sold the suit property to the third defendant viz., Marimuthu. The suit was instituted for the relief of specific performance of the agreement of sale dated 06.12.2007.

4. The first defendant filed a written statement denying the execution of the sale agreement. The acknowledgment of further advance of Rs.55,000/- on 03.01.2008 was also denied, moreso, the factum of said payment to the first defendant. The first defendant also denied the allegation in the plaint that the plaintiff is residing in the suit property which is the subject matter of sale agreement. According to the defendants 1 and 2, the plaintiff was not ready and willing to perform his part of the contract. The allegation of evading the pre-suit lawyer's notice was also denied.



According to the first defendant, a broker by name Marimuthu approached the first defendant to purchase the suit property and on 14.11.2007, an agreement was entered into. Subsequently, another broker brought the plaintiff to the first defendant and the first defendant had clearly informed the plaintiff that the property was already sold to Marimuthu and therefore, the same could not be sold to the plaintiff. Angered by refusal to sell the property, the plaintiff under threat and coercion, obtained signatures of the defendants in blank stamp papers and also empty papers.

5. It is the further case of the first defendant that on 10.03.2008, he has executed a sale deed in favour of the said Marimuthu, who initially approached the defendants and gave a proposal to purchase the suit property, in furtherance of which, a sale agreement was also entered into on 14.11.2007. The first defendant has stated that the plaintiff has forcibly trespassed into the suit property and occupying the same. It is further stated by the first defendant that the plaintiff, using his influence, threatened the first defendant through the Inspector of Police, Thiruchengode and on 08.02.2008, the signatures of the first defendant were obtained in blank papers. The defendants therefore, sought for dismissal of the suit.



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6. Before the trial Court, the plaintiff examined himself as P.W.1, the attestors were examined as P.W.2 and P.W.3 and Exhibits A1 to A13 were marked on the side of the plaintiff. On the side of the defendants, the first defendant himself examined as D.W.1 and marked Exhibit B1, which is the unregistered sale agreement between the first defendant and the subsequent purchaser, Marimuthu.

7. The trial Court, after analysing the oral and documentary evidence adduced by the parties held that the suit sale agreement was true and genuine and further, the plaintiff was ready and willing to perform his part of the contract. The trial Court, therefore, proceeded to decree the suit as prayed for.

8. The defendants 1 and 2 preferred an Appeal in A.S. No.24 of 2014 and the First Appellate Court, reversed the findings of the trial Court and held that the plaintiff was not entitled to the relief of specific performance based on an unregistered sale agreement and on that ground allowed the Appeal filed by the defendants 1 and 2.



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9. The said judgment and decree of the First Appellate Court is under challenge in the above Second Appeal. On 17.07.2017, the above Second Appeal has been admitted on the following three substantial questions of law:-

“ (i) Whether the First Appellate Court has committed an error of law in dismissing the suit for specific performance on the ground that the sale agreement was not registered especially when such suit is well maintainable under the proviso to Sec.49 of the Registration Act, 1908?

(ii) Whether the First Appellate Court is correct in extending the bar of the suit to be filed under Sec.53A of the Transfer of Property Act to the suit filed for the relief of specific performance particularly when Sec.17(1A) of the Registration Act, 1908 has no application to the suit for specific performance?

(iii) When the plaintiff has pleaded and proved the readiness and willingness from the date of the agreement to the date of the suit and even thereafter, has not the First Appellate Court committed an error in holding that the suit is bad for lack of pleadings?”

10. I have heard Mr.N.Manokaran, learned counsel for the appellant/plaintiff and Mr.P.C.Harikumar, learned counsel for the respondents 1 and 2. The third respondent/third defendant has chosen to remain exparte through out.



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11. The learned counsel for the appellant/plaintiff, Mr.N.Manoharan, would state that by examining P.W.2 and P.W.3, the plaintiff has proved Exhibits A1 and A2 viz., the sale agreement as well as the endorsement. He would further state that the first defendant's case in the written statement has been given a total go by during trial and further he would also state that if really the sale transaction in favour of the third defendant was a true and genuine transaction, the purchaser viz., the third defendant would not have remained silent all these years, especially when it has come out in evidence that the plaintiff is in possession of the suit property.

12. The learned counsel for the appellant also states that the plaintiff has established his readiness and willingness and he would also refer to Sections 17 and 49 of the Registration Act, 1908 to contend that in a suit for specific performance, it was not necessary or mandatory for the suit sale agreement to be registered. He would therefore challenge the findings of the First Appellate Court and pray for the Second Appeal being allowed.

13. The learned counsel for the appellant would also place reliance on



the following decisions:-

- *Aniglase Yohannan Vs. Ramlatha and others* reported in (2005) 7 SCC 534;
- *Faquir Chand and Another vs. Sudesh Kumari* reported in (2006) 12 SCC 146;
- *Biswanath Ghosh (Dead) by Legal Representatives and Others vs. Gobinda Ghosh @ Gobindha Chandra Ghosh and others* reported in (2014) 11 SCC 605;
- *T.P.Latha @ Hemalatha and others Vs. P.Sukumar* reported in 2013(1) MWN (Civil) 753;
- *Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar and others* reported in (2018) 7 SCC 639;
- *S.Kaladevi vs. V.R. Somasundaram and others* reported in (2010) 5 SCC 401
- *R.Ananda Padmanabhan (deceased) and Others Vs. R.Vadivel Gounder (Deceased) and Others* reported in (2019) SCC Online Mad 5420: (2019) 6 CTC 823;
- *Thirugnanasambandam Vs. Kannan and Ors* reported in MANU/TN/6079/2018;
- *Kasthuri Vs. R.Hemalatha* reported in 2002-1-L.W. 688;
- *Santosh Hazari Vs. Purushottam Tiwari (Deceased) by LR.s.* reported in (2001) 3 SCC 179; and
- *R.Hemalatha Vs. Kashthuri* reported in (2023) SCC Online SC 381.



14. Per contra, Mr.P.C.Harikumar, learned counsel for the respondents 1 & 2 would support the findings rendered by the First Appellate Court and contend that, the plaintiff has not proved or established the truth and genuineness of the suit sale agreement. He would also invite my attention to the evidence of P.W.2 and P.W.3, attesting witnesses and bring out the contradictions in their evidence. According to the learned counsel for the respondents 1 & 2, the plaintiff has also not proved the passing of sale consideration and further the learned counsel also contended that on payment of meager portion of the sale consideration, no prudent purchaser would part with possession and therefore, the case projected by the plaintiff that he was put in possession in part performance of the sale agreement cannot be believed. However, the learned counsel for the respondents 1 and 2, would state that the plaintiff has not approached the Court with clean hands and the First Appellate Court has rightly reversed the decree for specific performance and the same does not warrant interference under Section 100 of the Code of Civil Procedure.

15. The learned counsel for the respondents would place reliance on the following decisions:-



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- *Abdullakoya Haji and Others Vs. Rubis Tharayil and Another* reported in (2019) 17 SCC 216;
- *C.S.Venkatesh vs. A.S.C. Murthy (Dead) by Legal Representative and Others* reported in (2020) 3 SCC 280;
- *Mohinder Kaur Vs. Sant Paul Singh* reported in (2019) 9 SCC 358;
- *Surinder Kaur (Dead) through Legal Representatives Jasinderjit Singh (Dead) through Legal Representatives Vs. Bahadur Sing (Dead) through Legal Representatives* reported in (2019) 8 SCC 575;
- *Venkitalakshmi Vs. K.Raju and others* reported in (2019) 15 SCC 49;
- *Dr.Manohar Ganapathi Ravankar Vs. H.Gurunanda Raikar* reported in (2019) 5 SCC 236; and
- *Mehboob-Ur-Rehman (Dead) through Legal Representatives Vs. Ahsanul Ghani* reported in (2019) 19 SCC 415.

16. Insofar as the first substantial question of law regarding maintainability of the suit for specific performance on an unregistered sale agreement, the law is well settled. Recently, the Hon'ble Supreme Court in the case of *R.Hemalatha Vs. Kasthuri* reported in 2023, SCC Online 381, upheld the view of this Court in *Kasthuri Vs. R.Hemalatha* reported in 2023 *1 Law Weekly* 688. The Hon'ble Supreme Court has, in extenso, considered



the various relevant provisions under the Registration Act, 1908 and the effect of Tamil Nadu Amendment Act, 2012 making registration of sale agreements compulsory. The Hon'ble Supreme Court held that since the explanation to Sub Section 2 of Section 17 was limited and there being no corresponding amendment to Section 49 of the Registration Act, the proviso to Section 49 would continue to enable an unregistered document affecting immovable property and required to be registered under Section 17 of the Registration Act, to be received as evidence of a contract in a suit for Specific Performance.

17. In view of the above settled position of law, there is no need for any further debate on this issue and the first substantial question of law is answered in favour of the appellant.

18. Coming to the second substantial question of law viz., the bar of suit under Section 53(a) of the Transfer of Property Act, when the sale agreement was unregistered document is concerned, the plaint is perused. On a reading of the plaint averments and allegations, it is clear that the plaintiff was not put in possession of the suit property under the suit sale



agreement viz., Exhibit A1. It is only the case of the plaintiff that on 03.01.2008, on receiving Rs.55,000/- as further advance, the first defendant put the plaintiff in possession of the suit property. The relief prayed for in the suit is not based on part performance of the agreement of sale, but primarily, rests on the terms and conditions of Exhibit A1 sale agreement. It is not the case of the plaintiff that he has lost his rights to seek performance and that he wants to protect his possession. Only if the plaintiff had projected such a case, it can be amounting to invocation of the protection available under Section 53A of the Transfer of Property Act, 1882. Here, admittedly, the suit is laid only for specific performance of the agreement of sale. Thus, I am in agreement with the arguments advanced by the learned counsel for the appellant in this regard. The First Appellate Court has erroneously referred to Section 53A of the Transfer of Property Act and proceeded to non suit the plaintiff on the ground that the agreement is an unregistered instrument. The said findings of the First Appellate Court are clearly unsustainable in law. Hence, the second substantial question of law is also answered in favour of the appellant.

19. The next question that survives for consideration is with regard to



the plaintiff's readiness and willingness to perform his part of the agreement of sale. In this context, it is to be seen that the defendants does not admit the sale transaction. However, on perusal of the written statement, it is clear that the first defendant has admitted to execution of the sale agreement under threat and coercion. It is the further case of the defendants 1 and 2 that they have not received any money from the plaintiff and the first defendant has also admitted not only in the written statement, but also in evidence that the plaintiff continues to be in physical possession.

20. In this connection, it would be relevant to refer to the defence set up. In the written statement in Paragraph No.8 of the written statement, the first defendant has stated that defendants 1 and 2 signed in blank stamp papers and empty papers at knife point. It is the further case of the first defendant that he was threatened by the Inspector of Police, Thiruchengode, on 08.02.2008 and therefore, the first defendant absconded for three weeks. It is the further case that the alleged earlier agreement holder Marimuthu, assured to take the sale deed, in furtherance of the alleged sale agreement dated 14.11.2007 and therefore, the defendants 1 & 2 executed a sale deed in his favour on 10.03.2008, after receiving the balance sale consideration



of Rs.2,99,000/-.

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21.It is further stated by the first defendant that the said Marimuthu, assured to take possession of the suit property from the plaintiff. Strangely, the purchaser, Marimuthu has not chosen to contest the Suit or the Appeal proceedings. In fact, he has remained exparte even before this Court in the Second Appeal proceedings. If really, the third defendant was a bonafide purchaser for valid sale consideration, the conduct of the third defendant would not have been as exhibited before this Court as well as the Courts below. Assuming without admitting the averments set out by the first defendant in the written statement that the said purchaser Marimuthu told the first defendant that he would take steps to recover possession of the property from the plaintiff. It is seen that not only, the third defendant had not contested the proceedings in the present Suit or Appeal, but he has also not chosen to take any action independently to recover possession of the suit property from the plaintiff, based on the registered sale deed in his favour. Such inaction and total silence on the part of the third defendant causes serious doubt on the truth and genuineness of the sale deed in his favour. No prudent purchaser who has parted with the entire sale consideration would



take the risk of litigating with a third party for recovery of possession, absolving the vendor of his duty to hand over possession to him.

22. It is also relevant to refer to the pre-suit notice issued by the plaintiff on 08.02.2008. The said notice has been marked as Ex.A8. Admittedly, the notice was not received by defendants 1 and 2 and the returned postal covers have been marked as Exhibit A9 to A11. The said pre-suit notice has been sent to the correct address of the defendants 1 and 2, which is not disputed by the defendants. In and by the said notice, the plaintiff had informed the defendants 1 and 2 that he would be available at the Sub Registrar Office, with the balance sale consideration on 12.02.2008, for execution and registration of the sale deed in his favour. As seen from the returned postal covers, the intimation was delivered to the addressee. However, subsequently, the notice has been returned to sender with endorsement of '*no such addressee*'. The defendants 1 and 2 did not deny the fact that the address to which the said notice sent was not their correct address at that relevant point of time. Therefore, the Court may presume from the notice as well as the returned postal covers that the plaintiff has sent the legal notice to the defendants 1 and 2. It is for the defendants to establish that they did not have knowledge of the factum of the said notice



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having been issued. Curiously, it is to be seen that after the said notices were returned un-served, the defendants 1 and 2 have proceeded to dispose the suit property to third defendant within a few weeks i.e., on 10.03.2008. This coupled with the fact that a presumption can be drawn with regard to the notices having been sent to the correct address, probablises the case of the plaintiff that upon coming to know that the plaintiff seeks performance of the agreement of sale, the defendants 1 and 2 have hurriedly proceeded to sell the suit property to the third defendant.

23. As already discussed, the third defendant cannot be termed as a bonafide purchaser and he has not even chosen to appear before the trial Court and defend his case. On the contrary, the defendants 1 and 2 who claim that they have already sold the property and received the entire sale consideration, despite having no subsisting interest in the suit property, are continuing to defend the suit filed by the appellant herein till date, even upto this Second Appellate stage. This again casts a shadow of doubt on the truth and genuineness of the claims made by the defendants 1 and 2.

24. Further admittedly, the case of the defendants 1 and 2 is that the



plaintiff, by use of threat and force, got their signatures in stamp papers and empty papers and that the sale agreement was brought about. Therefore, the agreement according to defendants 1 and 2 is not true and valid agreement of sale. In this connection, the evidence of witnesses P.W.2, Rathnasababathy and P.W.3, Muthusamy assume relevance. P.W.2 is an attesting witness to the suit sale agreement, Ex.A1 dated 06.12.2007. He has stated that he was present when the agreement of sale was signed and he has also specifically stated that the advance was paid by the plaintiff on the same day. P.W.3, is the witness to the endorsement dated 03.01.2008, Ex.A2. In his cross examination, he has stated that a sum of Rs.55,000/-, was paid by the plaintiff on 03.01.2008 and he has further stated that he wrote the receipt, though not mention so in the document. He has also denied the suggestion that he has given false evidence in favour of the plaintiff.

25. The first defendant who examined himself as D.W.1 has categorically admitted in his cross examination that the plaintiff has been in physical possession of the suit property for more than 6 years. This cross examination was on 06.11.2013. Admittedly, neither the defendants 1 and



2, nor the purchaser who claims to have purchased the suit property viz., the third defendant have taken any steps whatsoever to recover possession of the suit property from the plaintiff. Further, the first defendant has also admitted that the address mentioned in the pre-suit notice is his correct address. He has also stated that his relative, one Raja has signed the sale agreement as a witness. If really the contention of the defendants that the agreement was brought about by use of force, coercion and threat was true, the best person who could have been examined by the defendants was the relative of the first defendant viz., the said Raja. However, the defendants have not taken any steps whatsoever to examine any independent witness, including the relative Raja to establish their defence and allegations of coercion, undue influence and threat exercised by the plaintiff.

26. Further, the first defendant has also admitted that the signatures found in Exhibit A1, Sale Agreement were signed by him on 06.12.2007. All this, coupled with the fact that the attesters to both Exhibits A1 and A2 have categorically spoken about the factum of advance being paid by the plaintiff, clearly goes to show that the plaintiff has been successful in establishing the truth and genuineness of the sale agreement Ex.A1. The



plaintiff has also exhibited statement of accounts. It is also seen that the plaintiff, by production of Ex.A7, bank statement has established the fact that the entire balance sale consideration was available with him. It is settled law that the plaintiff, in a suit for specific performance, is not required to jingle the coins and it would be sufficient for him to show that he was either possessed of necessary funds to make payment of sale consideration or having the capacity to raise the same.

27. The conduct of the defendants 1 and 2 also does not appear to be clean and they have managed to evade the pre-suit notice sent to their correct address and immediately, thereafter, they have executed the sale deed in favour of the third defendant, which according to them is for valuable sale consideration and further the purchaser was aware of the plaintiff. This being the position, it is clearly not believable as to how the defendants 1 and 2 who have no subsisting interest in the suit property continued to defend the purchaser who is said to be a bonafide purchaser and who himself assured the defendants that he would take possession of the suit property from the plaintiff, has also slept over for several years and all these clearly go to show that the defence set up by way of plea of



coercion, threat and undue influence is not made out, much less being true and believable.

28. The trial Court has rightly appreciated all these contentions and answered the issues framed in favour of the plaintiff. However, the First Appellate Court without discussing the aspects of readiness and willingness has, in a cryptic manner proceeded to allow the Appeal, only on the ground that the agreement was not registered and therefore, the suit for specific performance was not maintainable.

29. Insofar as the contentions of the learned counsel for the respondents that there are contradictions in the evidences of P.W.2 and P.W.3, I do not find any grave contradictions in their evidence that goes to the root of contentious issue viz., the execution of the sale agreement or the receipt or regarding the passing of advance amount from the hands of the plaintiff to the 1st defendant.

30. The several decisions on which, reliance is placed by the learned counsel for the appellant are touching Section 16(c) of the Specific Relief Act, 1963 viz., readiness and willingness and there is no quarrel with regard



to the ratio laid down by the Hon'ble Supreme Court as well as this Court in those decisions. Similarly, the decisions on which the reliance is placed by the learned counsel for the respondents also project propositions which are against the plaintiff in a suit for specific performance. It is not to be forgotten that any judgment is given on a definite set of facts. Therefore, there cannot be any straight jacket formula to apply the principles laid down by the Courts in cases before it, which were based on the facts and circumstances of the said cases. Each case would be peculiar in its own way and therefore, even though many judgments have been cited by both the plaintiff as well as learned counsel for the respondents 1 and 2 in support of their respective contentions, I do not deem it necessary to refer to any of them specifically, as in view of the elaborate discussions already made herein above.

31. The trial Court has considered all these factors and decreed the suit in favour of the plaintiff. However, the First Appellate Court only on the ground that the agreement was not registered without going to any other issue has chosen to reverse the well considered findings rendered by the trial Court. This Court sitting in Second Appeal, exercising power under



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Section 100 of the Code of Civil Procedure, is entitled to set aside the judgment and decree of the First Appellate Court. The third substantial question of law is also answered in favour of the appellant.

32. In fine, the Second Appeal is allowed and the Judgment and Decree of the First Appellate Court is set aside and Judgment and Decree of the trial Court is restored. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

23.02.2024

Index :Yes/No
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
rkp
To

1. The Principal District Court, Namakkal.
2. The Sub Court, Tiruchengode.



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P.B.BALAJI, J,

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