



S.A.Nos.745 and 746 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.01.2024

Pronounced on: 31.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A. Nos.745 & 746 of 2017

Govinda Udayar (Deceased)

- 1.Sivagangai
- 2.Visalakshi
- 3.Parvatham
- 4.Rani
- 5.Vinoth Kumar

...Appellants in both SAs

Vs.

- 1.Arichetty Udayar
- 2.Jegadevan
- 3.K.Malarkodi

...Respondents in both SAs

COMMON PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and decree dated 21.11.2014 made in A.S. Nos.98 & 48 of 2012 on the file of the Principal Subordinate Judge, Salem in reversing the Judgment and Decree dated 27.09.2011 made in O.S. No.790 of 2007 on the file of III Additional District Munsif, Salem.



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For Appellants : Mr.R.Thiagarajan

For Respondents : R1-Died

No appearance for R2 & R3

COMMON JUDGMENT

The legal heirs of the unsuccessful plaintiff in a suit for specific performance are the appellants before me by way of these Second Appeals.

2. The plaintiff, one D.Govinda Udayar originally filed the suit in O.S.No.790 of 2007 for specific performance of an agreement of sale dated 18.01.2007. The case of the plaintiff is that the defendants agreed to sell the suit property for a total sale consideration of Rs.60,000/- and on 18.01.2007, an agreement of sale was executed, on which date the plaintiff advanced a sum of Rs.20,000/-. It was agreed that the sale transaction was to be completed on or before 18.06.2007. According to the plaintiff, he was always ready and willing to perform his part of the contract and get the sale deed executed. However, the defendants were evading the same and the



plaintiff also convened a Panchayat on 15.04.2007, on which date the defendants promised to execute the sale deed in favour of the plaintiff on or before 19.04.2007. Since the defendants did not come forward to keep up their word, the plaintiff was constrained to issue a notice on 24.04.2007. On receipt of said notice, the defendants sent a reply on 11.05.2007 with false allegations. The plaintiff was therefore constrained to institute the suit seeking specific performance of the agreement of sale.

3. The 2nd defendant filed a written statement which was adopted by the 1st defendant. The defendants denied that they had entered into an agreement of sale to sell the suit property to the plaintiff. The case pleaded by the defendants was that they had only borrowed a sum of Rs.20,000/- as a hand loan and as a security for the borrowing the defendants had signed blank stamp paper and the same has been misused by the plaintiff to create the suit sale agreement. According to the defendants on 09.04.2007, the 1st defendant and his brothers entered into a partition deed and the suit property was allotted to Malarkodi, the daughter of Natesa Udayar.

4. The said Malarkodi was impleaded as 3rd defendant in the suit and



she filed a separate written statement denying the suit sale agreement and claimed right to the suit property under a registered partition deed dated 09.04.2007.

5. Before the Trial Court, the plaintiff examined himself as P.W.1 and Ganapathi, Parameswaran and Shanmugam as P.Ws.2,3 and 4. On the side of the plaintiff, Exs.A1 to A4 were marked. On the side of the defendants, the 2nd defendant was examined as D.W.1 and the 3rd defendant was examined as D.W.2. On the side of the defendants, Ex.B1 to B9 were marked.

6. The Trial Court, on considering the oral and documentary evidence adduced by the parties found that the suit sale agreement was true and genuine and that the plaintiff was ready and willing to perform his part of the contract and ultimately decreed the suit with regard to the relief of specific performance and disallowed the relief of permanent injunction which was prayed for by the plaintiff along with the relief of specific performance. Aggrieved by the said judgment and decree, two Appeals came to be filed. One Appeal in A.S.No.48 of 2012 was filed by the 3rd defendant



and A.S.No.98 of 2012 was filed by the defendants 1 and 2. Both the appeals were heard jointly by the learned Principal Sub Judge, Salem and in and by judgment and decree dated 21.11.2015, the First Appellate Court allowed both the appeals, thereby dismissing the suit for specific performance.

7. It is aggrieved by the said judgement and decree in these two appeals that the plaintiff has come forward with the present Second Appeals.

8. At the time of admission of the above Second Appeals the following substantial questions of law have been framed:

“1) Whether the learned Sub Judge is correct in law in ignoring the evidence of PW1 to PW4 regarding the execution of Ex.A1 sale agreement?

2) Whether the finding of first Appellate Court that Ex.A1 sale agreement was a created one is vitiated by non-consideration of material evidence available on record? ”



9. I have heard Mr.R.Thiagarajan, learned counsel for the appellant.

On the side of the respondents 2 and 3 there has been no appearance. I have gone through the records including the original papers. The learned counsel for the appellant would take me through the evidence of the parties, especially P.W.1 and P.W.4 and also the documents exhibited in Exs.A1,A2,A3,B1 and B9. The learned counsel for the appellant would submit that the First Appellate Court committed a grave error in disbelieving the the evidence of D.W.3 and had chosen to misread the oral evidence in piece meal and thereby came to a wrong conclusion that the suit sale agreement was not true and valid. The First Appellate Court further held that since the agreement was found to be created, the question of willingness and readiness does not arise and allowed both the appeals filed at the instance of the defendants and that the same would require interference U/s.100 of C.P.C.

10. The specific case of the plaintiff is that on 18.01.2007, the agreement of sale was executed and an advance of Rs.20,000/- have been paid and the parties have also decided to complete the transaction on or before 18.06.2007. It is further specific case of the plaintiff that he convened



a Panchayat on 15.04.2007 where the defendants promised to complete the transaction by 19.04.2007. As the said promise was not kept by the defendants, the plaintiff issued a notice in Ex.A2 on 24.04.2007, which was replied to by the defendants on 11.05.2007 in Ex.A3. Thereafter, the suit has been instituted by the plaintiff on 29.06.2007. The defendants have admitted their signature in the document. However, it is their specific case that they have borrowed only a sum of Rs.20,000/- and not entered into any agreement of sale. In such circumstances, the evidence of witnesses would assume importance. P.W.2 and P.W.3 were examined on the side of the plaintiff being the attesting witnesses to Ex.A1. P.W.4, the document writer who prepared Ex.A1 was also examined on the side of plaintiff. On a conjoint reading of evidence of P.Ws.2 to P.W.4, it is clear that defendants 1 and 2 have executed Ex.A1 sale agreement on receipt of Rs.20,000/- before the Registrar's office. In Ex.A1, photographs of the parties to the document are also affixed. The schedule to the property is also typed in page 2. The agreement consists of two pages and the first page is on Rs.20/- stamp paper and the second page is a plain paper on which the agreement continues from the first page. Below the signatures of the plaintiff and defendants 1 and 2 two witnesses have signed and P.W.4 has also signed



with the seal affixed.

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11. The evidence of P.W.2 and P.W.3 is perused carefully. The said witnesses who had signed the agreement had categorically stated that the defendants as well as the plaintiff signed the Ex.A1 only after it was prepared and the defendants did not sign on blank stamp paper/paper. That apart P.W.2 and P.W.3 have also spoken about payment of Rs.20,000/- by the plaintiff to defendants 1 and 2. P.W.4 has also given clear and cogent evidence with regard to the terms of agreement between the parties and confirmed that he had prepared Ex.A1. However, the First Appellate Court has read the evidence of P.W.3 in piecemeal and in a truncated manner and came to the conclusion that spacing in the document is unusual and therefore, there was all probability that blank papers had already been signed and the same was used to create Ex.A1 sale agreement. Unfortunately, the said finding of the First Appellate Court is purely based on surmises and conjectures and on an imaginary basis. The First Appellate Court has not read the evidence of P.W.1, the plaintiff along with evidence of P.W.2 and P.W.3, the attesting witnesses and P.W.4 together.



12. The defendants have also admitted to the execution of the document. Though it is their specific case that they signed in blank papers, importantly the defendants admitted the fact that they have received a sum of Rs.20,000/- from the plaintiff. It is their case that it was only a hand loan. However, the defendants have failed to lead any evidence oral or documentary in this regard and they have miserably failed to establish their defence that the amount of Rs.20,000/- was only a hand loan and not received as an advance for sale consideration. The evidence adduced by the plaintiff as far as the three witnesses P.W.2 to P.W.4 clearly raises a presumption that Ex.A1 was only a sale agreement. The defendants have not been able to rebut the said presumption.

13. The First Appellate Court, therefore fell in error in holding that Ex.A1-Sale agreement was not true and genuine document and the same deserves to be interfered in the Second Appeal. The next issue that was held against the plaintiff by the First Appellate Court was that in view of the partition deed in Ex.B1- the agreement of sale Ex.B1 would not bind the 3rd defendant. The Trial Court has elaborately discussed the issue and came to the conclusion that after the death of Chinnu Udayar, the suit properties



were in common possession and enjoyment of 1st defendant and his brothers and only after the sale agreement dated 18.01.2007, there was a partition under which the suit property was allotted to the 3rd defendant. Placing reliance on Sec.19 of the Specific Relief Act, 1963, the Trial Court held that the 3rd defendant was bound by the agreement of sale dated 18.01.2007 entered into by the defendants 1 and 2 in favour of the plaintiff. However, the First Appellate Court has misdirected itself and proceeded to give a finding that when the defendants 1 and 2 had been enjoying the property in a undivided manner and partition had been effected on 09.04.2007, the agreement of sale was suspicious. Unfortunately, the First Appellate Court has failed to fall back on the terms of agreement of sale in Ex.A1 which specifically states that the property agreed to be sold and purchased was only 1/3rd of the total extent of one acre and 3 cents i.e., (34 cents).

14. The finding of the First Appellate Court that the agreement of sale in Ex.A1 was a suspicious document merely because the plaintiff was a neighbour and he could not proceed to purchase undivided property is absolutely without any legal basis whatsoever. The findings of the Trial Court are fair, proper and on sound reasoning. Unfortunately, the First



Appellate Court has reversed the said well considered findings of the Trial Court and proceeded to dismiss the suit based on the appreciation of the evidence of the attesting witnesses to Ex.A1 in a truncated fashion. The evidence on record before the Court has to read as a whole and not in an isolated manner or a piece meal fashion. The First Appellate Court has clearly committed a grave error in reversing the findings of the Trial Court. The plaintiff has established the truth and genuineness of Ex.A1 sale agreement and that apart he has also proved his readiness and willingness to complete the transaction and he has taken all earnest steps in that regard by convening a Panchayat in April of the same year and also issuing a lawyer's notice before filing the suit immediately after the reply notice sent by the defendants, refuting the claim of the plaintiff. Thus, the plaintiff has clearly made out a case for grant of relief of specific performance and unfortunately the First Appellate Court has reversed the judgment and decree of the Trial Court and thereby dismissed the suit for specific performance.

15. In fine, the substantial questions of law are answered in favour of the appellant/plaintiff and the Second Appeals are allowed. It is also brought



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to my notice that on 15.11.2011, after the decree passed by the Trial Court in favour of the plaintiff, the plaintiff has also deposited the balance sale consideration into the Court. The plaintiff is therefore entitled to a sale deed as prayed for and the defendants are directed to execute the sale deed in favour of the plaintiff within 60 days from the date of receipt of a copy of this judgment, failing which the plaintiff would be entitled to get a sale deed executed and registered in his favour by executing the decree in his favour. Accordingly, the judgment and decree made in A.S. Nos.98 & 48 of 2012 on the file of the Principal Subordinate Judge, Salem is set aside and the judgment and decree dated 27.09.2011 made in O.S. No.790 of 2007 on the file of III Additional District Munsif, Salem is restored. There shall be no order as to costs.

31.01.2024

Index : Yes/No

Internet : Yes/No

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To

1. The Subordinate Judge, Salem
2. The III Additional District Munsif, Salem



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P.B.BALAJI, J,

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Pre-delivery Judgment in
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