



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2024

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No.27 of 2023
and MP No.713 of 2023

M.Palani

... Appellant

Vs

1. Rajendran
2. Perumal
3. Gnanasekaran

... Respondents

This appeal is filed under Section 96 and Order 41 of Code of Civil Procedure, to set aside the decree and Judgment passed on 28.09.2022 in O.S.No.7 of 2014 by the Hon'ble Principal District Judge, Vellore and decree the suit with costs.

For Appellant : Mr.V.Manisekaran

For Respondent : Mr.G.Veerapathiran

J U D G M E N T

Challenging the findings of the trial Court in O.S.No.7 of 2014 dated 28.09.2022, the plaintiff has preferred this appeal.



2. Before the trial Court, the plaintiff filed the suit for specific performance of contract, permanent injunction and alternative refund of advance amount against the respondents/defendants, directing the defendants to execute the sale deed in his favour as per the terms of the unregistered sale agreement dated 21.02.2012 by receiving the balance sale consideration of Rs.9,81,000/-.

3. The said suit was contested by the defendants denied the execution of sale agreement in favour of the plaintiff and also stated that the said document/sale agreement was fabricated by the plaintiff and unlawful gain and also contended that the property pertaining to the sale agreement is originally belongs to his father/Late Kannan. After his demise, his legal heirs of the defendants and two daughters are each having 1/5 share in the property. In fact, in the year 2013, through the registered sale deed 03.04.2013 the very same plaintiff purchased 52 1/2 cents of property from Rajendiran, Perumal, Gnanasekaran, Shanthi, Saraswathi (all are children of Late Kannan) and one Amirthammal who is mother of Late.Kannan. In the year 2013 only the plaintiff introduced to the defendants through a broker, Prior to that the defendants and above mentioned Shanthi, Saraswathi don't



know about the plaintiff. Therefore, the plaintiff had entered into an registered sale agreement on 21.02.2012 is absolutely false one. Further, the value of the property is several times higher than the amount mentioned in the fraudulent sale agreement. Hence, there is no need for these defendants to sell the property for the meager amount of Rs.10,26,000/- Hence, the alleged sale agreement has been created for the purpose of cheat, defraud the defendants.

4. Before the trial Court. PW1 to PW3 were examined and Ex.A1 to A6 were marked. On the side of defendants, DW1 to DW4 were examined and Ex,B1 to B7 were marked. Court Documents Ex.C1 and C2 were also marked.

5. Considering all the evidence, the trial Judge concluded that the plaintiff's agreement was not fabricated one. Further, the plaintiff had entered into the sale agreement with the defendants only and two co-sharers are not entered into the sale agreement. Further, held that within stipulated period, the plaintiff failed to prove that he was ready and willing to perform his part of the contract. Hence, the trial Court had dismissed the suit in



respect of the relief for specific performance of contract and permanent injunction and the suit decreed in respect of the alternative relief of return of advance amount.

6. Challenging the said findings, the plaintiff has preferred this appeal.

7. The learned counsel for the appellant/plaintiff submitted that the trial Judge erroneously concluded that the plaintiff was not ready and willing to perform his part of the contract. He further submitted that the trial Court failed to appreciate the aspects that the suit was filed within 3 years. Further, the plaintiff is entitled to get the relief and the same was not considered by the trial Court. He further submitted that the defendants have received a advance amount, the plaintiff able to establish that already both parties were known each other and several transaction between them. Hence, the defendant have not established that the agreement was fabricated one. Hence, he prayed for allow this appeal.

8. By way of reply, the learned counsel for the respondents/defendants submitted that the notice was issues by the plaintiff nearly 15 months after



the stipulated period, they are not able to establish that the plaintiff was ready and willingness to perform his part of the contract which was rightly appreciated by the trial Judge which needs no interference. Further, the trial Judge rightly concluded that 5 persons having share in the property and only three defendants alone participated in the agreement and remaining other legal heirs of the Late.Kannan are not participated. Further, the sale agreement relied on the entire property, it was not signed by the other two sharers. Hence, the order of refund of advance amount as such is totally valid one,. Hence, he prayed for dismissal of the appeal.

9. Considering the both submissions, with regard to execution of agreement of sale, though the defendants denied the plaintiff averments but during the trial, the signatures found in the sale agreement compared with the written statement, vakalath were sent to the Forensic Lab and as per the report of the Forensic Lab that the signatures are not tallied but the trial Court rightly concluded that the defendants failed to produce the contemporary documents relied to the signature in order to compare the sale agreement of the year 2012. Further, report given by the Forensic Department is not a conclusive proof to hold that the Signatures found in Ex.A1 does not



belong to the defendants. Further, the trial Court concluded that the sale agreement was executed between the plaintiff and the defendants marked as Ex.A1 is genuiness one which needs no inteference for the reason that the plaintiff has proved that the agreement of sale is valid one. Therefore, the findings of the trial Court Ex.A1 as such is sustainable.

10. Further, the plaintiff had entered into the sale agreement in respect of the properties for a sum of Rs.10,26,000/- on the same day, the defendants has received a sum of Rs.45,000/- as part of sale consideration amount and further agreed to receive the balance sale consideration amount of Rs.9,81,000/- within three months from the date of sale agreement and to execute the sale deed in his favour.. Further, the plaintiff approached the defendants at that time, the defendants evaded to receive the balance sale consideration and not come forward to execute the sale deed. Therefore, the plaintiff has issued a legal notice dated 28.10.2013 and the defendants 1 and 2 refused to receive the notice, but 3rd defendant received the notice and all the defendants issued the reply notice dated 11.11.2013



11. Admittedly, the sale agreement was executed on 21.02.2012 and within 3 months (i.e., on or before 21.05.2012 the balance sale consideration should have been paid. But till 28.10.2013 not notice was issued from the side of the plaintiff and there is no reason offered on the side of the plaintiff for the said inordinate delay on the part, calling upon the defendants to execute the sale deed

12. Further, it reveals that the plaintiff not expressed his readiness and willingness to perform his part of the contract and not properly explained the said delay. Thereby, the plaintiff is not entitled for the relief of specific performance and the same was rightly appreciated by the trial Judge which needs no interference. With regard to conduct of the defendants in written statement, the defendants totally denied the averments of the plaintiff but during the trial, the defendants admits that the plaintiff has purchased the property earlier.

13. As discussed above, the plaintiff failed to prove that he is ready and willing to perform his part of the contract. Therefore, the finding of the trial Court is confirmed. Further, the plaintiff has deposited a sum of



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Rs.9,81,000/- in the Court, he is entitled to withdraw the same with accrued interest. Accordingly, appeal is dismissed. Consequently, suit is dismissed.
No costs.

10.12.2024

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To

1. The Principal District Judge, Vellore
1. The Section Officer,
V.R. Section, High Court, Madras.

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