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S.A.No.458 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

S.A.No.458 of 2024
and CMP.No.13892 of 2024

Maragatha Manicakam

... Appellant

Vs.

1.P.Thavamani

2.P.Vanitha

3.P.Kalpana

4.Bagyalakshmi

5.Ramaraj

... Respondents

PRAYER:--

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree of the Subordinate Judge, Pollachi dated 01.08.2023 made in A.S.No.8 of 2014, confirming the Judgment and Decree of the learned District Munsif Court, Pollachi dated 19.12.2013 made in O.S.No.65 of 2004 and to allow the second appeal.

For Appellant : Mr.V.Anandhamurthy

For R5 (Caveator) : Mr.C.Veeraraghavan

* * * * *



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JUDGMENT

This Second Appeal is filed to set aside the Judgment and Decree of the Subordinate Judge, Pollachi dated 01.08.2023 made in A.S.No.8 of 2014, confirming the Judgment and Decree of the learned District Munsif Court, Pollachi dated 19.12.2013 made in O.S.No.65 of 2004 and to allow the second appeal.

2.The second appeal is filed against the concurrent Judgment of the Courts below in dismissing the appeal suit for specific performance.

3.The Suit property is situated in S.F.No.182/2 measuring about 2.40 acres and S.F.No.183/2 measuring about 2.98 acres of land situated in Unjavelampatti Village. The plaintiff states that the suit property belongs to one Palanisamy, who obtained the same under the partition deed dated 13.07.1982. It is the case of the plaintiff that on 25.06.1991, she entered into an agreement of sale for a sum of Rs.59,600/- for the sale of suit property, paid Rs.44,000/- as advance, possession was also delivered by Palanisamy and the sale deed was agreed to be executed on or before 26.09.1992. It is the further case of the plaintiff that on subsequent days, after receiving certain payments, the said Palanisamy extended the time for performance. The plaintiff states



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that she was ready and willing to perform her part of contract, but as Palanisamy died on 10.03.1997, she sent a telegram on 14.10.1997 and a legal notice on 16.10.1997 to the legal heirs of the deceased Palanisamy for execution of the sale deed but as the respondents failed to execute the sale deed, she filed the suit for the aforesaid relief.

4.The 1st defendant i.e., the first wife and defendants 2 and 3 are children of Palanisamy through the first defendant. The defendants 4 and 5 who are the second wife and son of the deceased Palanisamy were subsequently impleaded as defendants 4 and 5. The defendants 1 to 3 filed the written statement denying the validity of the suit sale agreement and claimed the same was forged. The defendants further stated that the said Palanisamy had no necessity to sell the suit property. The defendants denied the receipt of any amount by Palanisamy and also the endorsement made in the sale agreement. The defendants further stated that the plaintiff had already filed a suit in O.S.No.394 of 1996 before the District Munsif Court, Pollachi on the basis of the Promissory note of Palanisamy and the same was decreed on 19.09.1996. It was further stated that the plaintiff filed execution petition in E.P.No.122/2008 against Palanisamy with respect to the suit property and since there was enmity between Palanisamy and the plaintiff, the sale agreement could not have been executed by Palanisamy and hence the same was forged.



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5.The defendants 1 to 3 and the defendants 4 and 5 filed written statements and additional written statements.

6.Before the trial court, the plaintiff's husband was examined and another witness was examined as PW2. The plaintiff marked Ex.A1 to Ex.A16. The defendants examined 4 witnesses and marked Ex.B1 to Ex.B11. The trial court after framing necessary issues dismissed the suit. The trial court found that the plaintiff had failed to prove the signatures of the deceased Palanisamy, that she failed to establish the reason for extending time under Ex.A1 upto 25.10.1994 and also miserably failed to prove her possession over the suit property. The trial Court also found that the plaintiff had approached the Court with unclean hands and therefore declined the relief for specific performance. Aggrieved by the Judgment and Decree of the trial Court, the plaintiff filed an appeal in A.S.No.8 of 2014 before the Subordinate Judge, Pollachi and the Lower Appellate Court dismissed the suit confirming the Judgment of the trial court. The Lower Appellate Court held that Ex.A1 and the endorsement in Ex.A7 to Ex.A11 were not proved by the plaintiff. The Lower Appellate Court further found that the plaintiff was not in possession and enjoyment of the suit property as per Ex.A1. The Lower Appellate Court therefore dismissed the appeal. Aggrieved by the Judgment and Decree of the Lower Appellate



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Court the plaintiff has filed the above second appeal.

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7.The learned counsel for the appellant submitted that the Courts below failed to note that the burden of proving the defence of forgery was on the defendants. The learned counsel further submitted that the Courts below did not correctly evaluate the evidence regarding the extension of time in the sale agreement, moreso, when the deceased Palanisamy was suffering from serious illness. The learned counsel further submitted that the concurrent finding of the Courts below on possession was also unsustainable. The learned counsel therefore submitted that the Judgment and Decree of the Courts below deserved to be set aside.

8.I have heard the learned counsel for the appellant and perused the materials on record.

9.The parties will be referred to as per their litigative rank in the trial Court.

10.The plaintiff under Ex.A1 entered into an agreement of sale with respect to the suit property on 24.06.1991 with one Palanisamy, the original owner of the property for a sale consideration of Rs.59,600/-. The plaintiff paid an advance of Rs.42,000/-. According to the plaintiff possession was also delivered by Palanisamy



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to her. The sale deed was agreed to be executed on or before 25.06.1992 and subsequently extended by the endorsements marked as Ex.A7 to Ex.A11. According to the plaintiff, she was always ready and willing to perform her part of contract, but as the said Palanisamy died on 10.03.1997, she sent a Telegram and issued a legal notice to the legal heirs of the deceased Palanisamy calling upon them to execute the sale deed. As the defendants did not come forward to execute the sale deed she was constrained to file the suit for specific performance. The defendants denied the signature of the deceased Palanisamy in Ex.A1 as forged and further denied the receipt of any amount by Palanisamy under the sale agreement. The defendants further stated that there was no necessity for Palanisamy to enter into the sale agreement. The defendants further denied the endorsement made in Ex.A1 sale deed, extending the period of execution of sale deed. The defendants stated that there was enmity between the plaintiff and the said Palanisamy, which arose out of proceedings in O.S.No.394 of 1996 and the EP filed therein. The defendants therefore categorically pleaded that the suit agreement was a forged one.

11.The foremost submission of the learned counsel for the appellant is that the burden is on the respondents to establish that the sale agreement was a forged. In my view the said submission cannot be accepted in view of the law laid down by the



Hon'ble Supreme Court in the Judgment of Thiruvengada pillai Vs. Navaneethammal and Another reported in 2008 (4) SCC 530. The Hon'ble Supreme Court in the aforesaid Judgment held as follows:

“19.The trial Court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first appellate court reversed it by wrongly placing onus on the defendants. Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the defendants, it was for the defendants to establish that the document was forged or concocted, is not sound proposition. The first appellate court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case the plaintiff came to court alleging that the first defendant had executed an agreement of sale in his favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first defendant had executed the agreement and not on the first defendant to prove the negative.”

Hence in my view the Courts below rightly cast the burden on the plaintiff to establish the validity of the sale agreement.



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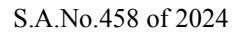
12. Under Ex.A1 the time for performance was fixed as one year and the balance sale consideration of Rs.12,600/- was agreed to be paid during the time of execution of sale deed. The plaintiff's claims that she had advanced certain sums to the deceased Palanisamy and the said Palanisamy endorsed the sums under Ex.A7 to Ex.A11 in the sale agreement. It is an admitted fact that the said Palanisamy died on 10.03.1997. It is only after the death of Palanisamy that the plaintiff sent the Telegram on 14.06.1997 and the legal notice on 16.06.1997 to the legal heirs of Palanisamy for the execution of the sale deed. Had the plaintiff sent the legal notice during the life time of Palanisamy truth would have come to light. The trial Court as well as the lower appellate court on examining the evidence of P.W.1, the husband of the plaintiff concluded that the suit sale agreement as also the endorsements in Ex.A7 to Ex.A11 were forged. The learned counsel for the appellant submitted that the reason for extending the time was the illness of the deceased Palanisamy. As rightly pointed out by the trial Court neither in the sale agreement nor in the endorsements made under Ex.A7 to Ex.A11 anything was stated about the alleged illness of Palanisamy. I find that the Courts below have given cogent reasons for their findings on facts and hence the same do not call for any inference.



13. Even on possession it is seen that the plaintiff came to Court with unclean hands. According to the plaintiff as per the said sale agreement Ex.A1, she was put in possession of the suit property by Palanisamy, whereas the documentary evidence Ex.B2 to Ex.B9 for the fasli year from 1997 to 2011 showed that the first defendant paid the kist in the name of Palanisamy for the suit property. In the absence of any contra evidence, the Courts below rightly held that the plaintiff had approached the Court with unclean hands on possession.

14. It is trite that the plaintiff has to prove her readiness and willingness to perform her part of contract right from the date of the sale agreement. In the present case, it is seen that between 25.10.1994, the date of Agreement to 10.03.1997 i.e. the date of death of Palanisamy, the plaintiff had not produced a single document or given any plausible explanation as to why she did not approach the late Palanisamy for execution of sale. The relief for specific performance is a discretionary relief and on the facts and circumstances of the case, I find that the plaintiff has not made out a case for grant of the discretionary relief in her favour.

15. The trial Court as well as the Lower Appellate Court in their elaborate Judgment gave cogent and justifiable reasons for concluding that the plaintiff was not



Section 100 of Code of Civil Procedure, this Court does not deem it fit to interfere with the concurrent findings of fact based on proper assessment of evidence. I find that no substantial question of law raises for consideration by this Court. The second appeal sans merit and hence the same is rejected at the admission stage.

16. Accordingly, this second appeal stands dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

11.07.2024

NCC : Yes /No

Index : Yes / No

Speaking Order / Non-speaking order
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To

1. The Subordinate Judge,
Pollachi.
2. The District Munsif Court,
Pollachi.
3. The Section Officer,
Vernacular Records,
High Court,
Madras.



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N.MALA, J.

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