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S.A.NO.625 OF 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 19 / 09 / 2024

JUDGMENT PRONOUNCED ON : 19 / 12 / 2024

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.625 OF 2018

A.Pazani ... Appellant / 1st Respondent/
Plaintiff

Vs.

1.R.Nagarajan
2.M.Padmanaban ... Respondents 1 & 2 / Appellants /
Defendants 1 & 2
3.Sub-Registrar,
Sub-Registrar Office,
Polur ... 3rd Respondent / 2nd Respondent /
3rd Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated August 23, 2018 passed in A.S.No.10 of 2014 by the Additional District Court, Tiruvannamalai, whereby the Judgment and Decree dated December 10, 2012 passed in O.S.No.130 of 2008 by the Subordinate Court, Arani at Tiruvannamalai District was reversed.



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For Appellant : M/s.V.Srimathi
For Respondents : Mr.T.R.Rajaraman
1 & 2 for M/s.P.Veena Suresh
For Respondent - 3: Mr.Abishek Murthy
Government Advocate

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated August 23, 2018 passed in A.S.No.10 of 2014 by the 'Additional District Court, Tiruvannamalai' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated December 10, 2012 passed in O.S.No.130 of 2008 by the 'Subordinate Court, Arani at Tiruvannamalai District' ['Trial Court' for brevity] was reversed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The Suit Property belongs to first defendant vide Sale Deed dated April 19, 2002. The second defendant is first defendant's son.



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The plaintiff and the defendants entered into Sale Agreement dated October 6, 2008, whereby the defendants agreed to sell the Suit Property to the plaintiff for a sale consideration of Rs.4,90,000/-. The plaintiff paid Rs.4,60,000/- as advance and agreed to pay the remaining amount within the period of performance, which was fixed at three months *i.e.*, on or before January 5, 2009, and upon such payment, the defendants had to execute Sale Deed in respect of Suit Property in favour of plaintiff. Defendant handed over the original of the Sale Deed dated April 19, 2002, registered Partition Release Deed dated April 22, 2003 executed by first defendant's sister, and also the possession of Suit Property to the plaintiff. While the plaintiff was ready and willing to pay the remaining balance sale consideration, the defendants were always evasive in executing Sale Deed. Moreover, the defendants are trying to sell the Suit Property to third parties. Hence the Suit for specific performance and permanent injunction.

CASE OF DEFENDANTS 1 AND 2

4. The defendants 1 and 2 filed written statement denying the plaint averments. They deny the Suit Sale Agreement as false and



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fabricated. They contend that the original Sale Deed dated April 19, 2002 and the registered Partition Release Deed dated April 22, 2003 executed by first defendant's sister were pledged with one Kasimalli Naidu, and the plaintiff has taken them under his custody from the said Kasimalli Naidu illegally without defendants' permission. Accordingly, they prayed to dismiss the Suit.

CASE OF DEFENDANT NO.3

5. The third defendant filed written statement stating that permanent injunction against statutory authorities cannot be granted and that the third defendant is an not a necessary party to the Suit. Accordingly, third defendant prayed to dismiss the Suit.

TRIAL COURT

6. At trial, the plaintiff was examined as P.W.1, two other witnesses were examined as P.W.2 and P.W.3 and Ex-A.1 to Ex-A.3 were marked on the side of the plaintiff. On the side of the defendants, the 1st defendant was examined as D.W.1 and Ex-B.1 was marked.

7. After completion of trial and hearing both sides, the Trial



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Court partly allowed the Suit.

WEB CO **FIRST APPELLATE COURT**

8. Feeling aggrieved by the Trial Court's Judgement and Decree, the defendants 1 & 2 preferred an appeal in A.S.No.10 of 2014 before the First Appellate Court. The First Appellate Court after hearing both sides and perusing the documents available on record, allowed the appeal setting aside the Judgment and Decree of the Suit dated December 10, 2012 passed in O.S.No.130 of 2008 by the Trial Court.

SECOND APPEAL

9. Feeling aggrieved by the Judgment and Decree passed by the First Appellate Court, the plaintiff has preferred this Second Appeal, which was admitted on November 27, 2018 on the following substantial questions of law:

“(1) Whether the Lower Appellate Court is right in dismissing the suit for Specific Performance on the ground that plaintiff had not proved the signature especially when the plaintiff had examined PW 2 and 3, the witness and scribe to the document and also produced the document under Exhibit A2 and A3, the original title deeds to the property?”

(2) Whether the Lower Appellate Court should not have



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appreciated that the plaintiff by production of the original title deeds, had established the existence of contract and it is upto the defendants to establish as to how the original title deeds had found itself in the hands of the plaintiff in the absence of an agreement?

(3) When the petitioner had established readiness and willingness to perform his part of contract and instituted the suit well within the time prescribed is the Appellate Court is justified in dismissing the suit?

(4) Whether the Lower Appellate Court had not erred in law in not disclosing the area of error committed by trial Court in the exercise of discretion to grant Specific Performance?"

ARGUMENTS

10. Ms.V.Srimathi, learned Counsel for the appellant / plaintiff would argue that the First Appellate Court miserably failed to consider the evidence and documents adduced by the plaintiff. The attestors of Ex-A.1 - Sale Agreement were examined as P.W.2 and P.W.3 and thereby, the plaintiff proved the execution and passing of the consideration. She would further argue that during the period of performance of contract, the plaintiff executed another Sale Agreement in favour of G.Shanmugham and one G.Deenadayalan with a view to defeat and defraud the plaintiff's claim. Hence, necessity arose for the plaintiff to file a Suit even before the period of performance fixed in the Sale



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Agreement and accordingly, the plaintiff filed the Suit on December 23, 2008. At the time of execution, the defendants handed over Ex-A.2 – original Sale Deed to the plaintiff. The defendants denied Ex-A.1 - Sale Agreement as fraudulent and forged. Hence, the burden is upon the defendants to prove the alleged fraud and alleged forgery. In this aspect, the defendants did not examine any independent witnesses or adduce any evidence to support their case. Further, according to the defendants, they handed over the original document to one Kasimalli Naidu. The defendants did not take steps to examine the said Kasimalli Naidu. There is ample evidence available on record to show that the first defendant brought the stamp paper purchased by him earlier. There is no legal bar to execute a Sale Agreement in a stamp paper purchased earlier to the transaction. Accordingly, she would pray to allow the Second Appeal.

11. Per contra, Mr.T.R.Rajaraman, learned Counsel appearing for the respondents 1 and 2 / defendants 1 and 2 would contend that Ex-A.1 – Sale Agreement was falsely created with a view to usurp the defendants' property. He would invite the attention of this Court to Ex-A.1 – Sale Agreement and contend that the Ex-A.1 - Sale Agreement is written



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on Twenty Rupees Stamp Papers and the same were purchased on August 4, 2004. No ordinary prudent man would execute a Sale Agreement in a stamp paper purchased four years prior to the transaction. The said fact itself shows that the plaintiff fraudulently created Ex-A.1 – Sale Agreement as if the defendants 1 and 2 executed a Sale Agreement in favour of the plaintiff. He would further contend that in Ex-A.1, there is no recital regarding handing over of possession of Suit Property, but in the plaint, it has been pleaded that the defendants handed over possession to the plaintiff and the plaintiff is in possession and enjoyment of the same. These pleadings would show that the real intention of the plaintiff is to grab the Suit Property of the defendants. Further, in Ex-A.1 – Sale Agreement, it has been stated that sale price is Rs.4,90,000/- and a sum of Rs.4,60,000/- was paid as advance on the date of Ex-A.1. If really Ex-A.1 – Sale Agreement is true, there is no necessity to postpone the sale for three months, after payment of major portion of the consideration. The defendants entered into a Sale Agreement with K.G.Deenadayalan and G.Shanmugham. After knowing the said fact only, with a view to give much trouble and usurp the property, Ex-A.1 has been pressed into service. Since the plaintiff's act is not *bona fide*, he is not entitled to the



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relief of specific performance which is an equitable relief. Accordingly, he would pray to dismiss the Second Appeal. In support of his contention, he would rely on the following Judgments:

(i) Judgment of the Hon'ble Supreme Court in ***Katta Sujatha Reddy and Another Vs. Siddamsetty Infra Projects (P) Ltd.***, reported in ***(2023) 1 SCC 355***

(ii) Judgment of the Hon'ble Supreme Court in ***Major Gen. Darshan Singh Vs. Brij Bhushan Chaudhary***, reported in ***(2024) 3 SCC 489***

(iii) Judgment of this Court in ***G.Anbazhagan and Another Vs. G.Manoharan***, reported in ***2013 (6) CTC 624***

DISCUSSION

12. This Court has heard the submissions made on either side and perused the materials available on record.

13. The plaintiff denied that Ex-A.1 – Suit Sale Agreement as



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a fraudulent document and the alleged passing of consideration and possession thereunder as false. Hence, the burden is upon the plaintiff to prove his case. According to the plaintiff, not just possession, but the defendants handed over to the plaintiff, Ex-A.2 - original Sale Deed dated April 19, 2002 (through which the defendants purchased the Suit Property) as well as the registered Partition Release Deed dated April 22, 2003 executed by first defendant's sister. In this regard, the defendants pleaded and deposed that they handed over the original Title Deed and the other document to one Kasimalli Naidu, from whom the plaintiff obtained the same illegally and falsely created Ex-A.1.

14. This Court has perused Ex-A.1. Ex-A.1 – Sale Agreement dated October 6, 2008 has been written on stamp papers purchased in the name of the first defendant on August 4, 2004. There is no bar to write an agreement in old stamp papers. But in the facts and circumstances of this case, it raises doubts as to if really the agreement was executed on October 6, 2008, for the reason that generally no ordinary prudent man would write a Sale Agreement in stamp papers purchased four years ago. Further, the plaintiff has stated that, at the time of execution of agreement,



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the defendants furnished the stamp papers to the Document Writer (Scribe). The Scribe of Ex-A.1 was examined as P.W.3. He deposed that the first defendant furnished the stamp papers for execution of Ex-A.1. He further deposed that he is a Licensed Document Writer and has office at the Sub Registrar's Office. If really Ex-A.1 was executed in the vicinity of the Sub Registrar's Office, there is no difficulty in registering the same. It is true that the Sale Agreement was executed prior to the commencement of Tamil Nadu Registration (Amendment) Act, 2012. Further, Sale Agreement is not a compulsorily registerable document. However, when the specific case of the plaintiff is that the Sale Agreement was written in the Document Writer's Office which is situated in the vicinity of the Sub Registrar's Office, its non-registration also creates suspicion over its genuineness.

15. The relief of specific performance is an equitable relief. It could be inferred from the cumulative conduct of the parties and cumulative reading of the evidence that some money transaction took place between the plaintiff and the defendants, for which the defendants handed over Ex-A.2 – original Sale Deed. When execution of Ex-A.1 -



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Sale Agreement is surrounded by doubts and suspicious circumstances, this Court is of the view that the plaintiff is not entitled to the relief of specific performance. The plaintiff did not ask for the alternate relief of return of advance money. Further the plaintiff did not remove the clouds surrounding Ex-A.1. It is apposite to extract Section 20 of Specific Relief Act, 1963 hereunder:

“20.Discretion as to decreeing specific performance.—

(1)The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2)The following are cases in which the court may properly exercise discretion not to decree specific performance:

—

(a)where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b)where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or



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(c)where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2.—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3)The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4)The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.”

16. In view of the above, the plaintiff is not entitled to reliefs sought for. The First Appellate Court after appreciating the facts and circumstances of the case, came to the conclusion that the plaintiff is not entitled to the relief of specific performance which is an equitable relief. This Court does not find any reason to interfere with the same. There is



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no quarrel with the case laws relied on by the learned Counsel for the respondents/defendants. The Substantial Questions of Law are answered accordingly against the appellant / plaintiff and in favour of the respondents 1 and 2 / defendants 1 and 2.

CONCLUSION

17. In the result, the Second Appeal is dismissed. In view of the facts and circumstances, no costs.

19 / 12 / 2024

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To

1.The Additional District Judge,
Thiruvannamalai.

2.The Subordinate Judge,
Arni.



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R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
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