



S.A(MD)No.882 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.882 of 2005

and

C.M.P(MD)No.5774 of 2005

N.Malathi

:Appellant/Appellant/2nd Defendant

Vs.

1.Sanjeevi Kumar

:1st Respondent/1st Respondent/Plaintiff

2.Sudharani

:2nd Respondent/2nd Respondent/1st Defendant

3.K.Subramanian

: 3rd respondent

(3rd respondent impleaded vide order dated 06.01.2017
made in M.P.(MD)No.1 of 2011.)

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.91 of 2003, dated 26.10.2004, on the file of Principal District Court, Dindigul, confirming the judgment and decree made in O.S.No.307 of 1996, dated 11.04.2003, on the file of Principal Subordinate Court, Dindigul.



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For Appellant : Mr.R.Murali
For Respondents : Mr.J.Lawrance – for R1
Mr.B.Ganesan – for R2
Mr.H.Lakshmishankar – for R3

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.91 of 2003, dated 26.10.2004, on the file of Principal District Court, Dindigul, confirming the judgment and decree made in O.S.No.307 of 1996, dated 11.04.2003, on the file of Principal Subordinate Court, Dindigul.

2. The 2nd defendant is the appellant. The first respondent filed a suit for specific performance. The suit was decreed by the trial Court granting the relief of specific performance. The appeal filed by the second defendant was also dismissed by the first appellate Court. Aggrieved by the same, the 2nd defendant has filed this Second Appeal.

3. According to the 1st respondent/plaintiff, the 2nd respondent / 1st defendant was the original owner of the suit property. There was an agreement between the plaintiff and first defendant on



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06.01.1996 for purchase of the agreement mentioned property by the plaintiff. The sale consideration was fixed as Rs.1,50,000/- and on the date of agreement itself, the advance amount of Rs.1,25,000/- was paid by the plaintiff. As per the terms of agreement, a period of 15 months was fixed for completion of sale agreement. It was asserted by the plaintiff that though he was ready and willing to perform his part of contract, the first defendant evaded completion of the sale deed. Therefore, the plaintiff issued a legal notice on 21.12.1995 calling upon the first defendant to receive the balance sale consideration and complete the sale transaction. The said notice was received by the first defendant on 27.12.1995. However, the first defendant did not come with any reply, later the plaintiff acquired knowledge that the first defendant sold the agreement mentioned property to the second defendant on 08.01.1996. It was claimed that the second defendant was not a bonafide purchaser. On these pleadings the plaintiff sought for the relief of specific performance of the sale agreement, dated 07.10.1994.

4. The first defendant filed a written statement and resisted the suit on the ground that she signed the blank stamp papers and white papers as per the request of her husband on a representation that the same



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was required for the purpose of retiring from Ambika Finance, in which, the first defendant was a partner. It was alleged by the first defendant that the blank signed papers handed over to her husband could have been utilised by the plaintiff to concoct the suit sale agreement with the help of one Soundarrajan, who acted as an agent of her husband. It was also claimed by the first defendant that the original title documents of the agreement mentioned property was also taken away by her husband. It was further submitted that the suit property was sold to the second defendant and possession was also handed over and hence, she sought dismissal of the suit.

5. The appellant /second defendant, who purchased the property from the first defendant filed a separate written statement and raised a plea of bonafide purchaser for value. She also averred that she came to understand from the first defendant that the suit sale agreement was a concocted document and sought for dismissal of the suit.

6. Before the trial Court, the plaintiff was examined as P.W.1 and two attestors to suit agreement were examined as P.W.2 and P.W.3. On behalf of the plaintiff, 7 documents were marked as Ex.A1 to Ex.A7.



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The 1st defendant was examined as D.W.1 and the husband of the second defendant was examined as D.W.2. On behalf of the defendants, 7 documents were marked as Ex.B1 to Ex.B17.

7. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the suit sale agreement was a genuine document and decreed the suit as prayed for. Aggrieved by the same, the second defendant preferred an appeal in A.S.No.91 of 2003 on the file of Principal District Court, Dindigul. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the second defendant has preferred this Second Appeal.

8. The learned counsel for the appellant submitted that though the plaintiff paid the substantial portion of the sale consideration on the date of agreement, a long time for 15 months was mentioned in the sale agreement as the time for completion of the sale transaction and the said fact creates a serious doubt with regard to the genuineness of the sale agreement. The learned counsel submitted that absolutely there is no necessity for the parties to take a longer time of 15 months to pay a small



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portion of agreed sale consideration. The learned counsel further submitted that the facts and circumstances of the case clearly establish that there was no *consensus ad idem* between the parties to treat the suit agreement as a real sale agreement. The learned counsel further submitted that Ex.B.1 to Ex.B.4 established the money transaction between the plaintiff and the first defendant's husband and the Courts below failed to take into consideration those material evidence on record. Therefore, the conclusions reached by the Courts below are vitiated.

9. The learned counsel further submitted that the appellant /second defendant is a bonafide purchaser for value and hence, the Courts below ought not to have granted the relief of specific performance against the appellant. In support of his contention, the learned counsel for the appellant relied on the judgment of this Court in Rajammal Vs. M.Senbagam reported in 2016 (6) CTC – 225.

10. The learned counsel appearing for the third respondent (purchaser from plaintiff) by taking this Court to the findings rendered by the Courts below submitted that the Courts below came to the conclusion that the suit sale agreement is a genuine transaction and the appellant is



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not a bonafide purchaser for value and the same is based on proper appreciation of evidence available on record and hence, need not be interfered with.

11. The suit sale agreement has been marked as Ex.A.1 and two attestors have been examined as P.W.2 and P.W.3. Both the attestors have clearly deposed about due execution of the suit sale agreement. Their evidence is complementary to each other. Nothing was culled out in their cross examination to discredit their evidence. The Courts below on proper appreciation of evidence of P.W.1 to 3 came to the conclusion that the suit sale agreement is a genuine document. Though the first defendant raised a defence that she signed the blank stamp papers and white papers at the request of her husband and the same could have been used by the plaintiff to concoct the sale agreement with the help of P.W.2, when pre-suit notice was issued by the plaintiff under Ex.A.5, the 1st defendant failed to reply and deny the execution of the suit sale agreement. The pre- suit notice has been marked as Ex.A.5 and the postal acknowledgement card signed by the first defendant has been marked as Ex.A.6. The postal acknowledgement Ex.A6 was shown to the first defendant when she was examined as D.W.1 and she denied her



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signature. When Ex.A.6 postal acknowledgement signed by the addressee produced before the Court, there is a presumption that the same should have been signed by the party to whom the registered letter was addressed. When the signature of the first defendant is disputed, it is for her to take necessary steps to compare the disputed signature in Ex.A. 6 with admitted signature. In the case on hand, the 1st defendant has not taken any steps to compare the signature found in Ex.A.6 with her admitted signature. The Courts below compared the signature available in Ex.A.6 with the signatures of the first defendant in the case papers and the signature found in Ex.A.6 is similar to the signature of first defendant found in other case papers. In such circumstances, the defence raised by the 1st defendant as if she signed the blank papers at the request of her husband is only an afterthought.

12. Further the original parent documents of the agreement mentioned properties have been produced as Ex.A.2 to Ex.A.4 by the plaintiff. If the suit sale agreement is not a genuine document, absolutely there was no chance for the plaintiff to produce the original title document of the first defendant. In the written statement, it was claimed by the first defendant that the original documents were taken away by her



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husband. However, D.W.2 the husband of second defendant clearly deposed that the sale transaction between the appellant (D2) and the first defendant was mediated by husband of the first defendant. In such circumstances, the plea raised by the first defendant as if her husband had taken away the original title documents and the relationship between her and husband were strained, are all not acceptable to this Court.

13. The learned counsel for the appellant also submitted that the plaintiff failed to prove his readiness and willingness to perform his part of the contract. It is seen from the records that the suit sale agreement was entered into on 07.10.1994 and the parties have agreed that the sale transaction shall be completed within 15 months. The said period expired only on 06.06.1996. Even before expiry of the time limit in the suit sale agreement, the plaintiff issued a pre-suit notice on 21.12.1995 calling upon the 1st defendant to complete the sale transaction by receiving balance sale consideration. Thereafter, the suit was filed on 13.06.1996. The Ex.A.5 pre-suit notice issued by the plaintiff well within time fixed under agreement would clearly establish the continuous readiness and willingness of the plaintiff to perform his part of the sale transaction.



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14. The learned counsel for the appellant vehemently contended that the time limit of 15 months mentioned in the suit sale agreement is too long to complete the suit transaction. When a substantiate portion of the sale consideration was already paid by the plaintiff, the need for longer time limit was very well explained by P.W.2 in his evidence. He clearly stated that at the time of agreement, the plaintiff had to go to a foreign country in connection with his business and hence, he requested for longer time of 15 months to complete the suit sale transaction. In these circumstances, merely because a longer time of 15 months is mentioned in the suit sale agreement, we cannot come to a conclusion that the agreement was not intended to be treated as a sale agreement. As mentioned earlier, the execution of suit sale agreement has been clearly proved by the evidence of both the attestors to the documents. The failure of the 1st defendant to give reply to the pre-suit notice creates a serious suspicion with regard to the defence raised in the written statement.

15. In these circumstances, I do not find anything to interfere with the findings of the Courts below. The appellant has not



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made out any substantial question of law for consideration in this second appeal.

16. Hence, the second appeal stands dismissed. No costs.

Consequently connected miscellaneous petition is closed.

25.07.2024

Index: Yes/No
Internet: Yes/No
NCC: Yes/No

RM

To

1. The Principal District Court,
Dindigul,
2. The Principal Subordinate Court,
Dindigul.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

RM

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