



S.A.(MD)No.318 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.07.2024

PRONOUNCED ON: 29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**S.A.(MD)No.318 of 2019
and
C.M.P.(MD)No.6450 of 2019**

Thayumanavar : Appellant/Appellant/
Plaintiff

Vs.

1.Manikkampillai
2.N.Gayathri : Respondents/Respondents/
Defendants

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 11.09.2018, made in A.S.No.3 of 2018, on the file of the Principal District Judge, Tiruchirappalli, partly modifying the judgment and decree dated 30.10.2017, made in O.S.No.115 of 2016, on the file of the Subordinate Court, Thuraiyur, O.S.No.522 of 2012, on the file of the Subordinate Court (Camp), Thuraiyur.



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For Appellant : Mr.K.Prabhakar

For Respondents :No Appearance

JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.3 of 2018, dated 11.09.2018, on the file of the Principal District Court, Tiruchirappalli, modifying the judgment and decree made in O.S.No.115 of 2016, on the file of the Subordinate Court, Thuraiyur.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

3. The appellant is the plaintiff. The case of the plaintiff is that the suit property was owned by the second defendant, that the second defendant had executed a power of attorney deed dated 07.06.1999 in favour of the first defendant, who was already in exclusive possession and enjoyment of the property for a very long time, that the first defendant's father Chellaperumal was a tenant in respect of the suit property and after his demise, the first defendant was in possession and enjoyment of the suit property as a tenant, that the second defendant had



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executed a power of attorney with an intention to sell the property to the first defendant for a sum of Rs.76,000/-, that the first defendant had also paid a sum of Rs.30,000/- on 07.06.1999 itself, that since the brothers of the first defendant had attempted to interfere with his possession, he was forced to file a suit in O.S.No.298 of 1999, on the file of the District Munsif Court, Thuraiyur against one Thangavel and others, that when the first defendant requested the second defendant to depose in the said suit at that time, the second defendant had demanded the first defendant to pay the remaining sale consideration and after receiving the balance sale price of Rs.46,000/-, she has given evidence in the said suit in O.S.No. 298 of 1999, that the first defendant has informed the plaintiff that the second defendant sold the property to the first defendant sans the legal formalities of executing the full-fledged sale deed, that the plaintiff believing the representation of the first defendant, agreed to purchase the suit property and entered into a sale agreement with the first defendant on 29.03.2012 fixing the total sale price at Rs.7,00,000/- and period of performance as 4 months, that the plaintiff has also paid Rs.5,00,000/- towards part of sale consideration on the date of agreement itself, that the plaintiff has always been ready and willing to perform his part of the contract, that the first defendant had issued a notice to the second



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defendant on 02.07.2012 by marking a copy to the plaintiff whereunder the first defendant had questioned the action of the second defendant in cancelling the power of attorney deed, that since the first defendant has executed a sale agreement as power of attorney of the second defendant, they are duty bound to execute the sale deed, that the plaintiff has then issued a legal notice dated 23.07.2012, but the same was of no avail and that therefore, the plaintiff with no other option has laid the above suit claiming the relief of the specific performance of the agreement of sale dated 29.03.2012 or in the alternative to refund a sum of Rs.5,00,000/- with subsequent interest from the date of plaint till the date of realization and for costs.

4. The first defendant has filed a written statement categorically admitting the case of the plaintiff.

5. The second defendant has filed written statement disputing the contentions raised by the plaintiff which was reiterated by the first defendant. The defence of the second defendant is that she has been residing at Coimbatore for several years, that since the first defendant himself had approached the second defendant representing that he was



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prepared to manage the suit properties for which the second defendant had executed a power of attorney in favour of the first defendant, that the first defendant had issued a notice dated 29.06.2012 containing false and invented allegations, for which the second defendant had sent a reply dated 14.07.2012 stating that one Baskaran – younger brother of the first defendant had been in possession and enjoyment of the suit properties, that a dispute had arisen between the said Baskaran and the first defendant in respect of the suit properties and other joint family ancestral properties, that the first defendant representing that he would take possession of the suit properties by filing a civil suit and for that purpose, the power of attorney deed came to be executed, that the second defendant came to know subsequently that the first defendant had filed the suit as if the suit was filed by the second defendant represented by her power of attorney, that the second defendant was taken to Court by the first defendant for deposing to safeguard and protect the right and interest and title of the second defendant in respect of the suit properties, that the second defendant is only a victim of fraud and deception played by the first defendant and he was only a tool in the hands of the first defendant, that the second defendant came to know that the first defendant in a fraudulent and clandestine manner had attempted to



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create bogus documents for illicit monetary gains with the help of the power of attorney deed standing in his name, that the second defendant had immediately executed a deed cancelling the general power of attorney on 18.06.2012 and on the same date, the second defendant had executed a lease deed in favour of the said Baskaran in respect of the suit properties, that the sale agreement alleged to have been entered into on 29.03.2012 is a fraudulent document brought into existence in collusion with the plaintiff and it is not a genuine transaction, that the plaintiff has no means and wherewithal to pay any amount under the impugned document and is not a bonafide person, that the alleged sale agreement was created and concocted for the purpose of filing the suit and to grab the suit properties and that the plaintiff is not entitled to get the equitable relief of specific performance.

6. The learned trial Judge, upon considering the pleadings, has framed the following issues:

(1) Whether the plaintiff is entitled for a relief of specific performance of contract as prayed for?

(2) Whether the plaintiff is entitled for alternative relief as prayed for?



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(3) What other relief?

Additional issue:

(1) Whether the deed of sale agreement dated 29.03.2012 is valid?

7. During trial, the plaintiff has examined himself as P.W.1 and exhibited 6 documents as Exs.A.1 to A.6. The first defendant has examined himself as D.W.1 and exhibited 3 documents as Exs.B.1 to B.3. The second defendant, though filed written statement, has not chosen to adduce any evidence. The learned Subordinate Judge, Thuraiyur, upon considering the evidence both oral and documentary and also hearing the arguments of both sides, has passed the judgment and decree dated 30.10.2017, dismissing the suit with regard the relief of specific performance of the sale agreement and decreed the suit directing the first defendant to refund the amount of Rs.5,00,000/- with interest at the rate of 6%p.a., from the date of suit till the date of realization and with costs.

8. Aggrieved by the said judgment and decree, the plaintiff has preferred an appeal in A.S.No.3 of 2018, on the file of the Principal District Court, Tiruchirappalli. The learned Principal District Judge, upon considering the materials available on record and on hearing the



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arguments of both sides, has passed the impugned judgment and decree, dated 11.09.2018, confirming the dismissal of the suit with regard to the relief of specific performance and modified the judgment and decree of the trial Court to the effect, by directing the second defendant to pay the advance amount of Rs.5,00,000/- with interest at the rate of 6% p.a., from the date of plaint till realization. Challenging the impugned judgment and decree, the present Second Appeal came to be filed by the plaintiff.

9. At the time of admission, the following Substantial Questions of Law came to be formulated:

(1) Whether the Courts below have erred in refusing to grant specific performance of the contract in Exhibit A.1 on the grounds that the title of the second defendant is under a cloud, when such claim of the second defendant has been negated by judgment and decree in Exhibits A.6 & A.7 decreeing her the absolute owner of the suit property?

(2) Whether the Courts below failed to follow the judicial principles under Section 20 of the Specific Relief Act, 1963 in refusing to grant the relief of specific performance more so when the conduct of the second is



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suspect and she has not approached the Court with clean hands?

(3) Whether the lower Appellate Court has travelled beyond the scope of the suit in conducting an examination of the title of the second defendant to the suit property in the absence of any issue on the point and has erred in finding in favour of the second defendant solely on the basis of averments in the written statement of second defendant when she had not participated in the trial?”

10. Heard the learned Counsel for the appellant and perused the materials available on record. Despite receipt of notice, the respondents have not turned up.

11. At the outset, it is pertinent to note that the trial Court as well as the appellate Court, after recording the findings that the suit sale agreement dated 29.03.2012 is genuine and valid and that the plaintiff has always been ready and willing to perform his part of the contract, has granted the alternative relief of refund of advance amount and thereby rejecting the relief of specific performance of the sale agreement.



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Admittedly, the defendants 1 and 2 have not preferred any appeal or cross-appeal before the first appellate Court or before this Court challenging the above said findings. Though the suit was decreed with regard to the alternative relief, the plaintiff not satisfying with the alternative relief has preferred the appeal before the first appellate Court as well as before this Court seeking the main relief of specific performance.

12. A perusal of the judgments of the Courts below would reveal that they have assigned two reasons for not granting the main relief of specific performance. The first reason assigned is that the second defendant is not the absolute owner of the entire suit properties and even according to her, she has got 1/3rd share in the entire suit properties and that therefore, the second defendant has no right to execute the power of attorney to the first defendant in respect of the entire properties.

13. The learned Counsel for the appellant would submit that the first defendant as power agent of the second defendant has filed a suit against his mother and brothers including the said Baskaran in O.S.No. 298 of 1999 to declare that the suit property there in was belonging to the



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plaintiff (second defendant) and for consequential permanent injunction restraining the defendant and their men from in any manner interfering with the peaceful possession and enjoyment of the suit properties and after the trial, the suit was decreed on 25.06.2002, that challenging the above said judgment and decree dated 25.06.2002, the defendants therein have preferred an appeal in A.S.No.7 of 2003 and the learned Subordinate Judge, Tiruchirappalli, considering the materials available on record and on hearing the arguments of both sides, has passed a judgment and decree dated 21.01.204, dismissing the appeal and thereby confirming the judgment and decree of the trial Court.

14. It is also not in dispute that the second defendant who was the plaintiff in the suit in O.S.No.298 of 1999 has been examined as P.W.2. It is evident from the certified copy of the judgment and decree made in A.S.No.7 of 2003, on the file of the Subordinate Court, Trichirappalli under Exs.A.5 and A.6 that the first appellate Court has confirmed the findings of the trial Court that the suit properties originally belonged to one Sesha Iyer and after his death, the properties came to be inherited by his only son Ramanatha Iyer and after his death, his only daughter – plaintiff has inherited the property and that since the defendants therein



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have not proved their title and possession of the suit properties, the first appellate Court has confirmed the judgment and decree passed by the trial Court, wherein the suit for declaration and permanent injunction was decreed as prayed for.

15. No doubt, the second defendant in the written statement filed in the present suit has taken a stand that after the death of her grandfather Sesha Iyer, the properties of Sesha Iyer came to be inherited by his three sons and after the death of his father Ramanatha Iyer- one of the sons of Sesha Iyer, she has got 1/3rd share in the suit properties and she is not the absolute owner of the entire properties. Except the above, the second defendant has not elaborated anything further. She has not even chosen to give the names of her two paternal uncles.

16. It is evident from the records that the second defendant has not even chosen to cross-examine the plaintiff and the first defendant and as already pointed out, she has not adduced any evidence on her side. Moreover, the second defendant has not even entered into appearance before the first appellate Court. Considering the above, though the second defendant has taken a stand that she is entitled to 1/3rd share in the



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suit properties, she has not produced any iota of evidence to substantiate the same. But on the other hand, as rightly contended by the learned Counsel for the appellant, the evidence is available through Exs.A.5 and A.6 that the second defendant is the absolute owner of the entire suit properties. Even assuming for arguments sake that the second defendant had two paternal uncles as claimed by her, since they are not parties to the present proceedings, the decree to be passed will not bind them. In view of the availability of legally admitted evidence under Exs.A.5 and A.6 that the second defendant is the absolute owner of the entire suit properties, the findings of the Courts below that the second defendant has no absolute right over the suit properties and as such, there is cloud over the second defendant's title to the suit properties can only be considered as perverse.

17. As already pointed out, the second defendant has executed a registered power of attorney in favour of the first defendant on 07.06.1999 and admittedly, the second defendant has executed a deed cancelling the power of attorney deed on 18.06.2012. It is not in dispute that the plaintiff and the first defendant have entered into a suit sale



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agreement on 29.03.2012. Considering the above, it is clearly evident that when the power of attorney was in force, the second defendant has executed the sale agreement in favour of the plaintiffs and after three months, the power of attorney came to be cancelled.

18. As rightly contended by the learned Counsel for the appellant, since the first defendant, in pursuance of the power of attorney deed dated 07.06.1999, has entered into a sale agreement dated 29.03.2012, the subsequent cancellation of power of attorney deed cannot affect the validity or the legality of the sale agreement and that therefore, the second defendant is duty bound to execute the sale deed along with the first defendant.

19. No doubt, the second defendant in her written statement has also taken a stand that the sale agreement dated 29.03.2012 is a fraudulent document, brought into existence in collusion between the plaintiff and the first defendant and is not a genuine transaction. As already pointed out, though the second defendant has raised serious allegations against the first defendant and the plaintiff, she has not produced any iota of evidence to substantiate her stand. Considering the



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Narayan reported in **2012 5 SCC 403**, wherein, the Hon'ble Apex Court has observed,

“13. We have heard the learned counsel for the parties. The learned counsel appearing on either side elaborately took us through the findings of the trial court, the first appellate court as well as the High Court in second appeal. From the materials on record and the agreement dated 18th April, 1996 and from the judgment of the trial court and the first appellate court, it is evident that no issue relating to the hardship of the respondent was framed. In a case of Specific performance, hardship is a good defence provided such defence is taken by the defendant and evidence in support of such defence is brought on record, while in this case no such defence was taken by the respondent and no evidence was brought on record in its support.

...

15. The question as to whether the grant of relief for specific performance will cause hardship to the defendant within the meaning of Clause (b) of sub-section (2) of Section 20 of the Specific Relief Act, 1963, being a question of fact, the first appellate court without framing such an issue ought not to have reversed the finding of the trial court while concurring with it on all other issues



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with regard to the appellant's entitlement to relief for specific performance of contract.”

22. In the case on hand, admittedly, the defendants have not taken a stand that granting the relief of specific performance would cause hardship to them as contemplated under Section 20 of the Specific Relief Act nor produced any evidence in that regard. As rightly contended by the learned Counsel for the appellant, the Courts below by not considering the relevant aspects in proper perspective, but by relying on the irrelevant aspects, have refused to grant the relief of specific performance and as such, the same are liable to be set aside.

23. In the case on hand, according to the plaintiff and the first defendant, the plaintiff has already paid Rs.5,00,000/- towards advance and part of the sale consideration and he has to pay the remaining amount of Rs.2,00,000/-. But considering the facts and circumstances of the case and the time consumed, this Court is of the view that the plaintiff has to be directed to pay / deposit Rs.2,00,000/- along with interest at 6% per annum from the date of the suit till the date of payment. Upon such deposit / payment, the defendants 1 and 2 are liable to execute the sale



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deed within a period of one month from the date of receipt of the amount in favour of the plaintiff. Considering the other facts and circumstances and the stand taken by the parties, this Court further decides that the appellant is entitled to get costs through out. The Substantial Questions of Law are answered accordingly.

24. In the result, the Second Appeal is allowed and the impugned judgment and decree, dated 11.09.2018, made in A.S.No.3 of 2018, on the file of the Principal District Judge, Tiruchirappalli, partly modifying the judgment and decree dated 30.10.2017, made in O.S.No.115 of 2016, on the file of the Subordinate Court, Thuraiyur are set aside. The suit is decreed granting the relief of specific performance of the sale agreement dated 29.03.2012. The plaintiff is directed to pay / deposit Rs.2,00,000/- with interest at the rate of 6% per annum from the date of the suit till the date of deposit before the trial Court within a period of one month from the date of receipt of a copy of this judgment and on such payment / deposit, the respondents/defendants are directed to execute the sale deed in favour of the plaintiff within a period of one month from the date of payment / deposit. If deposit already made, within a period of one month from the date of receipt of a copy of this judgment. Consequently, the



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connected Miscellaneous Petition is closed. The appellant is entitled to get costs through out.

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NCC : Yes:No
Index : Yes : No
Internet : Yes : No
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To

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



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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