



A.S.(MD) No.100 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N. SESHASAYEE

and

THE HONOURABLE MR.JUSTICE P.VADAMALAI

A.S.(MD) No.100 of 2015

and

M.P.(MD).No.1 of 2015 & C.M.P.(MD).Nos.1692 of 2016, 870 of 2024

1. J.Antony Robert Singh

2. B.Jayarajan

... Appellants / Defendant Nos.1 and 2

Vs.

1. S.Jesiah (Died)

... 1st Respondent / Plaintiff

2. Alice Mary

... 2nd Respondent / 3rd Defendant

3. J.Arul Mary

4. J.Darius Titus

5. Vimala Rosy Joymelan

6. J.Fedrick Varun

... Respondents

(Respondent Nos.3 to 6 are brought on record as legal heirs of the deceased 1st respondent vide Court Order dated 10.11.2022 made in C.M.P.(MD).Nos.10543, 10545 and 10546 of 2022 in A.S.(MD).No.100 of 2015)



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Prayer: Appeal filed under Section 96 of Civil Procedure Code, to set aside the Judgment and Decree dated 23.12.2014 passed in O.S.No.7 of 2009 on the file of the District Court, Kanyakumari at Nagercoil, by allowing this appeal suit and dismiss the suit for specific performance.

For Appellant : Mr.V.Meenakshisundaram

For R-1 : Died

For R-2 : Mr.R.Murugan

For R-3 to R-6 : Mrs.P.Jessi Jeeva Priya

J U D G M E N T

(Judgment of the Court was delivered by **N.SESHASAYEE, J.**)

This Appeal suit is preferred by defendant Nos.1 and 2 challenging a decree of specific performance passed in O.S.No.7 of 2009 by the District Court, Kanyakumari, Nagercoil.

2. The facts are as below:

- The suit property, five in number are agricultural lands which lie contiguously with a combined total extent of 1.87 Acres. This property originally belonged



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to the third defendant. While so, vide Ex.A2 and Ex.A3 / settlement deeds, the third defendant had settled the property in favour of her son, the first defendant / first appellant herein.

- On the strength of the said settlement deeds, the first defendant had entered into a sale agreement with the plaintiff under Ex.A.1 sale agreement dated 16.10.2008. The total sale consideration was fixed at Rs.29,96,000/- (Rupees Twenty Nine Lakhs Ninety Six Thousand only) (calculated at the rate of Rs. 16,000/- (Rupees Sixteen Thousand only) per cent). Under the said agreement, a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) was paid to the first defendant and subsequently, on 18.11.2008 and 12.12.2008, a further sum of Rs.1,00,000/- (Rupees One Lakh only) each was paid as further advance sum. The agreement has stipulated three months time for performance of a contract.
- Subsequently, on 31.12.2008, at least two weeks before the expiry of the time stipulated for performance of the mutual contractual obligations created under Ex.A.1, the plaintiff issued Ex.A.25 / suit notice. This was replied to vide Ex.A.26.
- In Ex.A.26, the first defendant has contended that Ex.A.1 merely represents a security for a loan transaction of Rs.12,00,000/- (Rupees Twelve Lakhs only) which he had borrowed on three instalments which matches the very dates on



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which the plaintiff claims to have been paid his advance amount. As the first defendant had given his indication not to perform his part of the contractual obligation, the plaintiff has laid the suit for specific performance. As already outlined, defendant No.1 is the Executant of Ex.A.1 and defendant No.3 was impleaded, since it was her title deed that fed title to the first defendant. Defendant No.2 is the father of the first defendant and he is stated to have been arrayed as a party defendant because he joined Ex.A.1 as attestor.

3. In the written statement filed by the first defendant, he reiterated his line of contention which he was taken in Ex.A.26 / reply notice. After the institution of the suit, the third defendant had cancelled Ex.A.2 and Ex.A.3 / settlement deeds that she had executed in favour of Defendant No.1, vide Ex.A.27 and Ex.A.28 / cancellation deeds.

4. In her written statement, Defendant No.3 has essentially fallen back on Ex.A.27 and Ex.A.28 and contended that the first defendant did not have the title to convey the property in favour of the plaintiff. Later, she had filed an additional written statement in which she had pleaded that the suit properties were attached in Crime No.418 of 2005, which is converted into C.C.No.183 of 2008 on the file of the learned



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Judicial Magistrate No.VII, Coimbatore and hence, the property cannot be sold.

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4.1. On the above pleadings, the trial Court framed five issues and two additional issues and posted the matter for trial. During the trial, the plaintiff examined himself as P.W.1 and also examined P.W.2, who is a broker, who facilitated the negotiation between the plaintiff and the first defendant and P.W.3 is a scribe of P.W.1. The first defendant did not enter the box and his parents, viz., defendant Nos.2 and 3 examined themselves as D.W.2 and D.W.3 respectively.

4.2. On the side of the plaintiff, they had produced Ex.A.1 to Ex.A.31 of which Ex.A.2 to Ex.A.20 are either title documents or revenue documents pertaining to suit property and Ex.A.21 to Ex.A.23 are newspaper publication made by the plaintiff and Ex.A.25 and Ex.A.26 respectively are the legal notice and the reply notice exchanged between the parties. Ex.A.27 and Ex.A.28 as already indicated, are the documents by which the third defendant had cancelled the settlement deed. For the defendants, they have produced four documents which came to be marked as Ex.B.1 to Ex.B.4.

5.1. Inasmuch as the first defendant had admitted the execution of sale deed, but only attacked its true import and intent, the burden was squarely on the first defendant to establish that Ex.A.1 was intended to be acted as a security for certain



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land transaction. However, he did not enter the box. The trial Court therefore had little difficulty in entering a finding against the first defendant. Yet another issue before the Court was whether the suit property was the absolute property of the first defendant and here, the trial Court has held it in affirmative and refused to be influenced by Ex.A.27 and Ex.A.28 which admittedly are documents which came into existence during the pendency of the suit.

5.2. The second of the additional issue is all about permissibility of granting an executant decree to the plaintiff, since the property was under attachment vide C.M.P.No.2270 of 2010 in C.C.No.183 of 2001 by the learned Judicial Magistrate No.III, Nagercoil. This issue was negated, since no material was produced to show that the learned Judicial Magistrate indeed passed an order of attachment.

It is in these circumstances, the defendant Nos.1 and 2 have preferred this appeal.

6. The points for consideration:

(i) Does Ex.A.1 represent a security for a loan transaction?

(ii) When the property is under attachment under an order of a Criminal Court, can a decree for specific performance be granted?

7. Heard the learned counsel on either side. Mr.D.Nallathambi, learned counsel



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appearing for the appellants made a valiant effort to convince this Court to show that Ex.A.1 only represented a loan transaction. But the challenge he faces is insurmountable, since the first defendant did not even choose to depose before the Court. So far as the title to the property is concerned, it cannot be denied that on the date of Ex.A.1, first defendant indeed is the owner of the suit properties. This apart in a suit for specific performance, want of title of the defendants cannot be a ground of defence, though in appropriate cases, it can be considered to ascertain whether an effective decree could be given. But those are circumstances where the Court probe the title more to avoid multiplicity of proceedings. So far as the present case is concerned, possibility of any such complication does not arise. Turning to the second question point raised, there is hardly any material to show that any Criminal Court has even attached the property. Even if there is an attachment over the property, it is for the plaintiff to sort it out. To state it differently, if the attachment is raised, the plaintiff stands to benefit. But, it does not *ipso facto* implies that a decree for specific performance should be denied merely because there is an attachment. However the executability of any such decree will depend upon the ultimate outcome which the order of attachment may lead to. There the plaintiff takes a chance.

8. To conclude, this Court hardly finds any merit in this Appeal suit and



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accordingly, it is dismissed with costs. Consequently, connected miscellaneous petitions are closed.

9. (*)The learned counsel appearing for Respondents 3 to 6/LRs of the plaintiff submits that the entire balance sale consideration has been deposited in the Court and the same is stated to have been withdrawn by the defendants.

Sd/-

Assistant Registrar(AS)

(*)Corrected as per order of this Court dated 05/07/2024 made in AS(MD)No.100 of 2015.

Sd/-

Assistant Registrar (CO)

// True Copy //

/08/2024

Sub Assistant Registrar
(CS-I , II , III, IV)

TSG

To

(*)To be substituted to the order already despatched on 04/07/2024

1. The District Judge,
Kanyakumari at Nagercoil.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.MURUGAN, Advocate (SR-22589[F] dated 26/04/2024)

<https://www.mhc.tn.gov.in/judis>



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SL(29.08.2024)/ 9P/ 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.