



S.A.No.1399 of 1999

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.1399 of 1999

S.Velu Moopanar (Died)

1. Shanmugathai
2. Chithiraivadivu
3. V. Subramanian
4. Shanthi
5. V. Kumar
6. V. Isakki Ammal

... Appellants

*(Appellants 1 to 6 are brought on record
as LR's of the deceased sole appellant vide
M.P.No.1/2006, dated 23.08.2006)*

Vs

1. A. Swaminathan (Died)
2. E. Lakshmi (Died)
3. Sundarammal
4. Panchaliammal
5. Arumugam
6. Subbulakshmi
7. Balasubramanian
8. Vijayalakshmi
9. Kaliasammal
10. Murugeswari
11. Swaminathan
12. Ramathal

... Respondents

*(Respondents 3 to 11 are brought on record as
LR's of the deceased 1st respondent vide Court
order dated 22.11.2017 made in
M.P.(MD)Nos.1 to 3/2014)*



S.A.No.1399 of 1999

*(12th respondent is brought on record as
LRs of the deceased R2 vide Court order
dated 18.04.2023 made in C.M.P.(MD)Nos.
2308 to 2310/2019)*

*(Memo USR 1552/15, Memo recorded as per
order dated 13.12.2018)*

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 29.06.1998 of the learned First Additional District Judge, Tirunelveli in A.S.No.183 of 1997 confirming the judgment and decree dated 21.08.1997 of the learned Principal Subordinate Judge, Tenkasi in O.S.No.110 of 1995.

For Appellants : Mr.G.Sridharan for
Mr.T.M.Hariharan

For Respondents : Mr.PM.Vishnuvarthanan for R3 to R11
R1, R2, R12-Died

JUDGMENT

The second defendant in the suit for specific performance is the appellant. The first respondent herein filed a suit for specific performance of sale agreement. The suit was decreed by the trial Court. The first appeal filed by the 2nd defendant was also dismissed. Aggrieved by the concurrent findings, he is before this Court.



S.A.No.1399 of 1999

2. According to the first respondent / plaintiff, the agreement mentioned property was purchased by the first defendant and her husband under a sale deed dated 06.05.1991. After the death of her husband, the first defendant was entitled to 3/4th share and the remaining 1/4th share belonged to son of her husband through his first wife. The plaintiff entered into a sale agreement with the first defendant for purchase of the suit property on 14.01.1995. Though the plaintiff was ready and willing to perform his part of the contract, the first defendant failed to bring her step son for the purpose of completing the sale transactions and therefore, taking into consideration the time fixed for performance, another agreement was entered into between the plaintiff and the first defendant on 11.02.1995. As per the terms of the agreement dated 11.02.1995, total sale consideration was fixed at Rs.85,000/- and the plaintiff paid an advance amount of Rs.10,000/-. It was agreed that the sale transaction shall be completed before 30th day of Tamil Month “Panguni” of the year 1995 [13.01.1995]. It was also agreed that the sale transaction shall be completed by the first defendant by bringing her step son also for the purpose of execution of the sale deed. It was also claimed by the plaintiff that he was ready and willing to perform his part of the contract and the first defendant unnecessarily delayed the



S.A.No.1399 of 1999

execution of the sale deed. Therefore, the plaintiff issued a telegram to the first defendant on 11.04.1995 requesting her to complete the sale transaction. Since there was no response from the first defendant, a legal notice was issued on 13.04.1995, requesting the first defendant to complete the sale transaction immediately. The first defendant after receiving the notice, came up with a reply denying the execution of the sale agreement. She also averred in her reply as if, she obtained a loan of Rs.10,000/- from the plaintiff and handed over the signed blank stamp papers to the plaintiff as a security. Along with the reply notice, the first defendant also sent a sum of Rs.10,000/- by way of demand draft to the plaintiff. The plaintiff issued a rejoinder on 03.05.1995, returning the demand draft sent by the first defendant. As the first defendant failed to complete the sale transaction as per legal notice, plaintiff filed a suit for specific performance seeking direction to the first defendant to execute a sale deed in respect of her 3/4th share in the suit property. The suit was filed on 04.05.1995.

3. The first defendant filed a written statement and denied the very execution of the suit sale agreement. It was also claimed by the first defendant that she received a sum of Rs.10,000/- as a loan on 19.02.1995



S.A.No.1399 of 1999

and handed over the original title document of the suit property to the plaintiff. It was also claimed by her that signed blank stamp papers were handed over to the plaintiff as a security. It was also contended by her that she entered into an agreement with the second defendant to sell the suit property for a sum of Rs.92,000/- on 19.02.1995. The plaintiff, after acquiring knowledge about the sale agreement entered into with the second defendant, had come by way of this vexatious suit. On these pleadings, the first defendant sought for dismissal of the suit.

4. The appellant / second defendant filed a written statement by contending that the first defendant did not inform him about the existence of the suit sale agreement. He also contended that he entered into an agreement on 19.02.1995 for purchase of the suit property for a sum of Rs.92,000/-. Thereafter on 03.05.1995, sale deed was executed by the first defendant in his favour. It was also claimed that he has been in possession and enjoyment of the property by paying the tax to the Government after purchase. The second defendant claimed that he was a *bona fide* purchaser for valuable consideration and hence, sought for dismissal of the suit.



S.A.No.1399 of 1999

5. Before the trial Court, the plaintiff was examined as P.W.1 and attesor of the suit agreement was examined as P.W.2. On behalf of the plaintiff, 16 documents were marked as Ex.A1 to Ex.A16. The first defendant was examined as D.W.1. The second defendant was examined as D.W.2 and yet another witness was examined as D.W.3. On behalf of the defendants, 3 documents were marked as Ex.B1 to Ex.B3.

6. The trial Court, on appreciation of oral and documentary evidence available on record, came to a conclusion that the suit sale agreement was a genuine document and the plaintiff was entitled to specific performance as prayed for and decreed the suit. Aggrieved by the same, the second defendant preferred an appeal in A.S.No.183 of 1997 on the file of the First Additional District Court, Tirunelveli. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the appellant is before this Court.

7. At the time of admission, this Court formulated the following substantial questions of law by an order dated 13.10.1999:

“1. Whether the suit for specific performance is maintainable in the absence of the other co-owner Kutti Easwara Thevar?”



WEB COPY



S.A.No.1399 of 1999

2. Whether in the circumstances of the case, the 1st respondent is entitled to seek specific performance of a part of the agreement and whether the suit as framed is maintainable?

3. Whether the 1st respondent is entitled to the equitable and discretionary relief of specific performance in the instant case?

4. Whether the Courts below are right in readily accepting the deposition of the 2nd respondent who has completely given a go-by to her specific case in her reply notice and the written statement and has joined hands with the 1st respondent? ”

8. The learned counsel for the appellant vehemently contended that the plaintiff suppressed the existence of first agreement dated 14.01.1995 in his pre-suit notice and hence, he has not approached the Court with clean hands and hence, he is not entitled to the equitable remedy of specific performance. The learned counsel further submitted that the vendor of the second defendant viz., first defendant filed a written statement denying the execution of the sale agreement. On the other hand, at the time of trial, she supported the case of the plaintiff. Therefore, the genuineness of the suit sale transaction is highly doubtful. The learned counsel for the appellant further submitted that suit for specific performance filed by the plaintiff without impleading the step



S.A.No.1399 of 1999

son of the first defendant, who happens to be the co-owner of the suit is not maintainable. The learned counsel further submitted that the second defendant is a *bona fide* purchaser of the suit property for valuable consideration and hence, the suit agreement is not binding on him.

9. The suit for specific performance was resisted by the first defendant by denying the very execution of the agreement. The second defendant raised a plea of *bona fide* purchaser for valuable consideration. Since the very execution of suit sale agreement is denied, it is incumbent on the plaintiff to prove the execution of the same before the Court. The suit sale agreement has been marked as Ex.A2. The plaintiff was examined as P.W.1 and one of the attessor to Ex.A2 sale agreement viz., Lakshmanan was examined as P.W.2. He clearly deposed about the due execution of the suit sale agreement by the first defendant. Nothing culled out in his cross examination so as to discredit his evidence. In fact, in the written statement, the first defendant pleaded that she signed blank stamp papers and handed over the same to the plaintiff and the said papers could have been used to create the suit sale agreement. Therefore, the signature of the first defendant in the suit sale agreement is not disputed. What is disputed is only the execution of the agreement. The execution of the agreement has been clearly proved by examining one of



S.A.No.1399 of 1999

the attesor viz., P.W.2. Both the Courts below, by taking into consideration the evidence of P.W.1 and P.W.2, rightly came to a conclusion that due execution of suit sale agreement was proved. The learned counsel for the appellant vehemently contended that the first defendant, who denied the execution of the suit sale agreement, during the course of trial, supported the case of the plaintiff and hence, her evidence is not trustworthy. Even the evidence of first defendant is excluded, the evidence of P.W.2 attesor to the document proves due execution of the suit sale agreement and therefore, the findings reached by the Courts below that execution of the suit sale agreement was proved by the plaintiff cannot be interfered with.

10. As far as the contention made by the learned counsel for the appellant that non-joinder of Kutti Easwara Thevar and step son of the first defendant is fatal to the case, agreement is only between the plaintiff and the first defendant. The above said Kutti Easwara Thevar is not a party to the agreement. In a suit for specific performance, only the parties to the agreement are necessary parties. Non-joinder of third party viz., Kutti Easwara Thevar cannot be put against the plaintiff. Further, the plaintiff prayed for a decree, directing the first defendant to execute



S.A.No.1399 of 1999

the sale deed only in respect of her 3/4th share in the suit property. In such circumstances, I hold the non-jonder of Kutti Easwara Thevar is not fatal to the suit filed by the plaintiff.

11. Though the second defendant in his written statement claimed that he was a *bona fide* purchaser of the suit property without notice of the sale agreement, the evidence available on record clearly suggests that he had knowledge about the suit sale agreement even prior to sale in his favour. Ex.P11, suit telegram was issued by the plaintiff to the 2nd defendant, mentioning the suit agreement with the first defendant. In the said telegram, he clearly mentioned about suit sale agreement and attempt of first defendant to sell the property to the second defendant and therefore, he requested the second defendant to refrain from purchasing the property. When D.W.2 was examined, he clearly admitted that the telegram sent by the plaintiff, regarding the suit sale agreement, was received by him. He further deposed that after receipt of telegram, he enquired about the same with the first defendant and it was explained by the first defendant that she received only loan from the plaintiff. During the course of his evidence, D.W.2 also admitted that at the time of execution of sale in his favour, he questioned the first defendant



S.A.No.1399 of 1999

regarding original title document and she informed that original document was available with the plaintiff and after getting the same from the plaintiff, it would be handed over to him. Therefore, from the admission of D.W.2 and Ex.A11, it is clear that the second defendant had knowledge about the suit sale agreement even prior to the sale deed in his favour. In such circumstances, the plea of *bona fide* purchaser raised by the second defendant is not at all acceptable to this Court.

12. The plaintiff issued telegram and legal notice well before expiry of time fixed under suit agreement calling upon the first defendant to complete the sale transaction. The suit was filed immediately thereafter. Hence, plaintiff proved his readiness and willingness by his own evidence and exhibits marked. The same is not seriously disputed.

13. In view of the discussion made earlier, all the questions of law framed at the time of admission are answered against the appellant and the Second Appeal stands dismissed by confirming the judgments and decree passed by the Courts below. There shall be no order as to costs.

11.07.2024

NCC : Yes / No



S.A.No.1399 of 1999

Index : Yes / No

WEB COPY vsm

To

- 1.The First Additional District Judge, Tirunelveli.
- 2.The Principal Subordinate Judge, Tenkasi
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

S.SOUNTHAR, J.

vsm

S.A.No.1399 of 1999



WEB COPY



S.A.No.1399 of 1999

11.07.2024