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SA NO. 547 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-04-2025

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THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA NO. 547 of 2023

1.S.Karuppusamy
2.K.Padma
3.K.Karuppusamy

...Appellants

Vs

M.Periyasamy

... Respondents

Prayer: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 05.09.2019 made in A.S.No.7 of 2018 on the file of the learned III Additional District Judge, Erode, Gobichettipalayam reversing the decree and judgement dated 16.09.2017 made in O.S.No.8 of 2014 on the file of the learned Subordinate Judge, Sathyamangalam.

For Appellant(s) : Mr.B.Nedunzhelian

For Respondent : Mr.MA.P.Thangavel

JUDGMENT

The appellant has filed this appeal to set aside the Judgment and decree dated 05.09.2019 made in A.S.No.7 of 2018 on the file of the learned



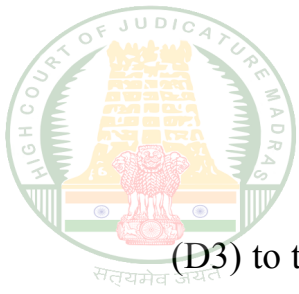
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III Additional District Judge, Erode, Gobichettipalayam reversing the decree and judgement dated 16.09.2017 made in O.S.No.8 of 2014 on the file of the learned Subordinate Judge, Sathyamangalam.

2. For a sake of convenience, the parties herein are referred to as they were ranked in the suit.

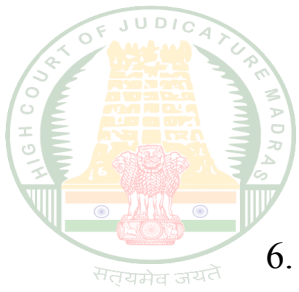
3. Challenging the reversal findings of the first appellate court, the defendants preferred this appeal. Before the trial court, the respondent herein, Periyasamy, filed O.S. No. 8 of 2014 for specific performance against the defendants, seeking a direction to execute the sale agreement, or in the alternative, to refund the advance amount. Defendants 1 and 2, the owners of the suit property, contested the suit. The third defendant, who was the Power of Attorney holder, remained ex parte.

4. Upon considering the evidence on record, the trial court concluded that the plaintiff had neither proved his case nor established that he had paid the advance amount of Rs.9,00,000/- through the Power of Attorney holder



(D3) to the original owners (D1 and D2). The alleged receipt relied upon by the plaintiff was also not proved through any witness. The trial court further found that the plaintiff had not proved his readiness and willingness to perform his part of the contract. Accordingly, the suit was dismissed. Challenging this, the plaintiff preferred Appeal A.S. No. 12 of 2018 before the III Additional District Judge, Erode, Gobichettipalayam.

5. The learned first appellate judge analyzed the evidence on record and held that the execution of the agreement was proved by the plaintiff by examining one of the attestors. The court also held that the third defendant had a lawful Power of Attorney from defendants 1 and 2 and entered into the sale agreement with the plaintiff. Consequently, while dismissing the suit against D1 and D2, the appellate court directed the third defendant to return Rs.9,00,000/- to the plaintiff, as he had remained ex parte and had not disputed the plaintiff's claim. Therefore, D3 was ordered to refund the advance amount with interest.



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6. This Court admits the Second Appeal on 08.08.2023, on following substantial questions of law.

"A. Whether the First Appellate Court was justified in decreeing the suit for specific performance when it is mandatory that under Section 16(c) of the Specific Relief Act, the respondent have to prove that they have performed their part of contract regarding the passing of sale consideration?"

B. Whether the First Appellate Court was justified in reversing the decree and judgement of the trial Court when the decree of specific performance being a discretionary relief was refused by the trial court?"

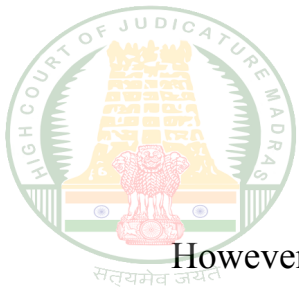
7. The learned counsel for the respondent/plaintiff argued that, as a bona fide purchaser, the plaintiff entered into the sale agreement with D3, the Power of Attorney holder of D1 and D2, when the property was offered for Rs.10,00,000/-. On 12.11.2012, the plaintiff paid Rs.9,00,000/- as advance to D3. Time was not treated as the essence of the contract, but the balance was to be paid within one year. However, the third defendant evaded execution of the sale deed.



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8. The plaintiff issued notice on 21.09.2013, but defendants 2 and 3 did not reply. Instead, D1 and D2 claimed that the Power of Attorney had been executed only for a loan transaction and had been cancelled on 20.09.2013, before issuance of the notice. The plaintiff contended that the execution of the agreement was proved through P.W.2 and that the trial court failed to appreciate the evidence, whereas the learned first appellate judge rightly found that the plaintiff was always ready and willing to perform his part and had paid the advance amount. Therefore, the counsel prayed for dismissal of the appeal as being devoid of merits.

9. Upon considering the submissions of both sides, the facts reveal that defendants 1 and 2 are the owners of the house property described in the plaint schedule, with new Door No. 45. According to the plaintiff, D3, as Power of Attorney holder of D1 and D2, offered to sell the property for Rs.10,00,000/-. On 12.11.2012, the plaintiff paid Rs.9,00,000/- as advance, with one year fixed for paying the balance to obtain the sale deed. The original title deed was allegedly handed over to him on the same date.



However, as the defendants evaded execution of the sale deed, he filed the present suit.

10. D3 remained ex parte. D1 and D2, in their written statement, denied receiving any advance amount. They claimed that they had no intention to sell the property and had only borrowed Rs.50,000/- from one Karuppusamy, who insisted on security. At his instance, they executed a Power of Attorney in favour of D3 and handed over the original document as security for the loan. They alleged that D3, without their knowledge, created a sale agreement showing receipt of Rs.9,00,000/- as advance, in collusion with the plaintiff. On 20.09.2013, they cancelled the Power of Attorney. They argued that the trial court rightly dismissed the suit against them and directed only D3 to refund Rs.9,00,000/- to the plaintiff.

11. Therefore, the defendants 1 and 2, contend that they have not received any sale consideration. When the defendants 1 and 2 denied they have not taking steps to refund, it is bound to duty of the plaintiff, he paid Rs. 9,00,000 to D3 as part of sale consideration.



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12. During cross-examination, the plaintiff stated that he was unaware whether the said sale consideration was given to D1 and D2 but later claimed that they had received it. The right person to speak about the passing of consideration was D3, but he remained ex parte. The plaintiff did not take steps to examine D3 as his witness. Furthermore, in respect of the same property, there was already an agreement dated 25.11.2010 executed by one power agent, Vadivel, in favour of his wife, Padma. If the plaintiff were truly a bona fide purchaser, he should have verified the encumbrances, but he admitted he had not done so.

13. Thus, the plaintiff failed to prove that he had paid Rs.9,00,000 to D3 as advance, or that D1 and D2 had received it.

14. On perusal of the learned first appellate judge's findings, it is noted that in the last paragraph of the judgment, the court held that the payment of consideration was proved by a receipt. However, no such receipt was produced by either party. Therefore, the finding that the advance



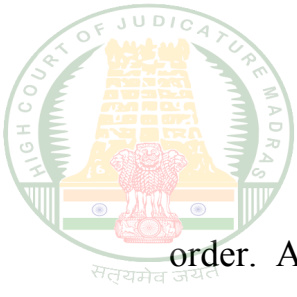
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amount was proved through a receipt is without material evidence and is erroneous and perverse.

15. Even assuming the agreement is valid, the plaintiff, as a bona fide purchaser, was bound to prove readiness and willingness to perform his part of the contract. He neither deposited the balance amount in court nor explained the delay of nearly one year.

16. The defence of D1 and D2, that they had given the original document to D3 only for loan purposes and that D3 misused the Power of Attorney in collusion with the plaintiff, appears more probable. The trial court rightly dismissed the suit against D1 and D2, but the learned first appellate judge erroneously set aside those findings.

17. The findings of the first appellate judge are set aside, and the trial court's judgment is restored. D3 is directed to refund Rs.9,00,000 to the plaintiff with interest at the rate of 6% from the date of petition till the date of realization, within three months from the date of receipt of a copy of this



order. Accordingly, Questions of Law 1 and 2 are answered in favour of the appellants.

18. This Second appeal is allowed, accordingly. There shall be no order as to costs.

15.04.2025

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

1. The III Additional District Judge, Erode, Gobichettipalayam.
2. The Subordinate Judge, Sathyamangalam.
3. The Section Officer, VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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