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S.A.No.1142 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

S.A.No.1142 of 2012

and

M.P.No.1 of 2012

Mrs.Rama ... Appellant / Plaintiff

vs.

Velu Thevar ... Respondent / Defendant

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.26 of 2006 on the file of the Additional District Judge (Fast Track Court No.2), Poonamallee dated 14.10.2011 in confirming the the judgment and decree in O.S.No.7 of 1997 dated 22.11.2005 on the file of the Subordinate Judge, Poonamallee.

For Appellant : Mrs.V.Srimathi

For Respondent : No Appearance

JUDGMENT

Aggrieved by the order of dismissal in A.S.No.26 of 2006 by judgment dated 14.10.2011 passed by the Additional District Court, Poonamallee, the plaintiff herein has preferred this second appeal.

2. Parties are indicated herein as per their litigative status and ranking before the Trial Court.



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3. According to the plaintiff the suit property belongs to the defendant. He had obtained loan for his family expenses and came forward to sell the suit property. On 16.03.1996, the defendant executed a sale agreement in favour of the plaintiff and received advance amount of Rs.2,00,000/- and it was agreed upon that the balance would be paid at the time of registration and the time was fixed as six months for effecting sale. Before expiry of six months, plaintiff called upon the defendant on several times to register sale of the suit property and also to receive the balance of sale consideration of Rs.2,50,000/-. Till 16.09.1996, the defendant did not come forward to complete the sale. She issued a legal notice on 21.09.1996 to the defendant calling upon him to execute the sale in her favour.

4. Despite the receipt of notice on 24.09.1996, the defendant neither issued any reply notice nor came forward to execute the sale deed. Reminder notice was sent on 08.10.1996 was returned with postal endorsement as 'always absent'.

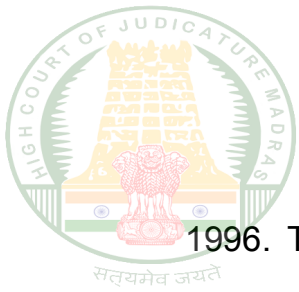
5. The further case of the plaintiff is that the defendant is not ready and willing to perform his part of the contract as per the agreement. Just by delaying the deal, he has been scheming to continue to receive the



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rents and be in possession of the schedule mentioned property in order to make unlawful gain by getting rents from the suit property. Hence, the defendant is liable to pay damages from 26.10.1996 to 26.11.1996 at Rs.4,000/- per month as damages and to pay the damages towards future damages. Hence the suit is filed for the relief of (i) specific performance of sale agreement dated 16.03.1996 executed by the defendant in favour of the plaintiff; (ii) for permanent injunction to restrain the defendant from alienating the suit property to third parties and (iii) for damages and for other consequential reliefs.

6. Per contra, in fact the defendant was in need of money for family necessity and for his business, the plaintiff was introduced to him by a broker and plaintiff assured to arrange the purchaser within a week. The defendant appealed the plaintiff to arrange for sale in respect of the suit property through the said broker. The plaintiff is a stamp vendor and also carrying on real estate business. Believed her words he executed the General Power of Attorney deed dated 16.03.1996 in Doc.No.234 of 1996, at SRO Saidapet, to do all things and alienation of suit property and handed over all the original deeds. Except the General Power of Attorney deed, no document was executed by him in favour of the plaintiff. As the plaintiff did not make arrangements to sell the suit property, he cancelled the Power of Attorney deed dated 07.05.1996 in Document No.679 of



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1996. They informed the cancellation to the plaintiff on 08.08.1996 and requested the plaintiff to hand over the original documents. Plaintiff did not return the title documents to him. On receipt of notice, he lodged a complaint against the plaintiff before the Valasaravakkam Police Station and sent a reply to the plaintiff stating that he did not execute any sale agreement in her favour and the agreement mentioned in the notice should be a fabricated one. He is not liable to pay any damages as claimed in the plaint and she is not entitled for permanent injunction.

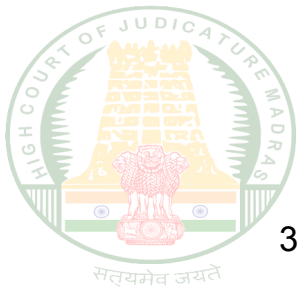
7. At trial, on the plaintiff's side plaintiff and her father have been examined and twenty eight documents have been marked. On the defendant's side, defendant alone has examined himself as DW1 and he has marked seven documents. Ex.A1 is the suit sale agreement dated 16.03.1996, in respect of the suit property. Exs.A2 and A3 are sale deeds.

8. The trial Court based on the rival pleadings framed the following issues:

1) Whether the defendant executed a sale agreement in favour of the plaintiff on 16.03.1996?

2) Whether the plaintiff is entitled for relief of specific performance

?



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3) As prayed for in the plaint, the plaintiff is entitled to the relief of permanent injunction?

4) As the defendant is in enjoyment of the suit property as the damages whether the plaintiff is entitled for Rs.4,000/- per month with 6% interest as damages for enjoying the suit property by the defendant?

5) To what other reliefs the plaintiff is entitled to ?

9. The learned counsel for the appellant would strenuously argue that as the defendant was in need of money at his instance, the defendant executed the sale agreement in her favour on 16.03.1996 on receipt of Rs.2,00,000/- out of sale consideration of Rs.4,50,000/- and the time limit was fixed as six months. As regards advance money paid, plaintiff's father PW2 Venkatakrishnan repaid loan amount of Rs.2,00,000/- to the Mahaveer Benefit fund for the loan obtained by the defendant and the connected documents have been marked by the plaintiff herein as Exs.A18, A20, A21, A22 and A27. It is her further argument that the plaintiff even before six months from the date of sale agreement, legal notice was caused to be issued on behalf of the plaintiff and she has been ready and willing to perform the part of the contract. She would further contend that the defendant did not come forward to perform his part of the



contract. Having executed the sale agreement in favour of the plaintiff and having received an amount of Rs.2,00,000/- from the plaintiff as mentioned supra, the defendant is now is not permitted to state that he has not executed the sale agreement. It is her further contention that despite oral evidence of the plaintiff and her father coupled with relevant documents, her case was dismissed by both the Courts below.

10. Despite receipt of notice, the respondent/defendant neither appeared nor represented through his counsel.

11. The following substantial questions of law arise for consideration

:

a) Whether the Courts below are right in dismissing the suit, when the plaintiff had proved the truth and validity of Ex.A1, by placing unimpeachable records in the form of Bankers pass book and production of original title deeds secured on discharge of the mortgage from Mahaveer Gautham Benefit fund?

b) Whether the Courts below are right in not exercising its due authority under Sec.73 of the Indian



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Evidence Act by comparing Ex.A1 with the admitted documents filed before it?

12. In a suit for specific performance, the basic principle of law is that the plaintiff who is the vendee must aver and prove that he has been continuously ready and willing to perform his part of the contract throughout. Therefore, the burden lies on the plaintiff to prove the fact. It is also interesting to note that it is really the evidence that has to be appreciated and it may be oral, documentary or circumstantial in nature.

13. It is relevant to refer to the observations made in ***Nirmala Anand Vs. Advent Corpn. (P) Ltd. reported in (2002) 8 SCC 146***, a Three Judge Bench of the Apex Court held as under:-

“It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree or specific performance. Whether the purchaser shall be directed to



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pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the consideration besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her along, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the consideration to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing the specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.”

14. In ***K. Prakash Vs. B.R. Sampath Kumar, reported in (2015) 1***

SCC 597, the Apex Court observed as under:-

“The principles which can be enunciated is that where the Plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent



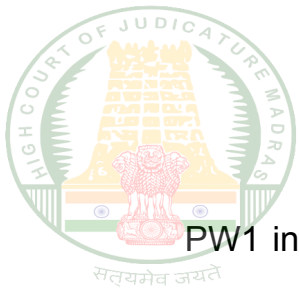
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to the grant of decree for specific performance that the Plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated u/s 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance.”

15. Suit property is Plot No.690 sq.ft., with 3 storeyed building bearing No.6, Vembuli Street, Senthamizh Nagar, Ramapuram Village, Chengai M.G.R.District. The fact that the suit property is purchased by the defendant is not in dispute. The execution of sale agreement was not admitted by the defendant. It is relevant to refer to the answers given by

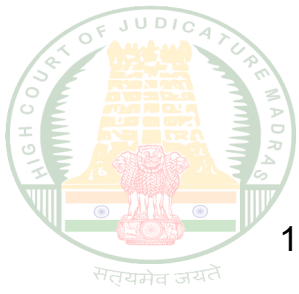


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PW1 in the dock. It appears that PW1 is a stamp vendor. No witness has attested in the sale agreement. PW1 feigned ignorance as to the date of sale agreement and place of execution. He does not even remember about the plot number, street name and extent of the suit property and breath and length details. It is the evidence of PW1 that for payment of advance, her father issued three cheques. Those details are not found in the sale agreement. On the other hand, PW1 has deposed that on the date of sale agreement, she tendered Rs.2,00,000/- to the defendant (General power of attorney).

16. The case of the plaintiff is that on the date of sale agreement, Deed of General Power of Attorney was executed by the defendant in favour of the plaintiff. This fact is admitted by the defendant. The execution of General Power of Attorney deed is not mentioned in the sale agreement. The original General Power of Attorney deed was not marked.

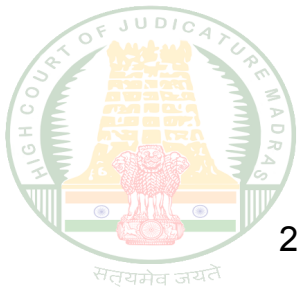
17. Further more, plaintiff's father PW2 has spoken about the repaying of loan obtained by the defendant to the tune of Rs.2,00,000/-, Rs.1,35,000/- to Mahaveer Jain Benefit Fund and to Paramasivan a sum of Rs.50,000/- and to Ravichandran a sum of Rs.10,000/-.



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18. More so, PW1 is also conscious of the fact that no witness was attested in Ex.A1 sale agreement. PW2 has admitted during his cross-examination that as found in the sale agreement, PW1 did not pay a sum of Rs.2,00,000/- in one stretch to the defendant. PW2 has also admitted that the defendant cancelled the General Power of Attorney deed executed in favour of the plaintiff before filing of the suit.

19.As per the plaint details, Ex.A1 sale agreement and Ex.A28 General Power of Attorney deed were executed on the same date on 16.03.1996. When two documents were executed at the same time, and in General Power of Attorney Deed, witnesses have attested and in Ex.A1 sale agreement no witnesses has attested and the reasons for the same is not explained by the plaintiff. More over as regards payment of advance amount of Rs.2,00,000/-, different versions have been given by PW1 and PW2 and the details given by PW1 and PW2 are neither found in the sale agreement nor in the General Power of Attorney deed. For which there is no explanation given by the plaintiff. Sale agreement is executed in favour of the plaintiff (PW1), on the other hand, PW1 has not given positive answers even for the important details which would go to show that the plaintiff has utterly failed to establish her case in accordance with law.



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20. The learned trial Judge by invoking Section 73 of the Indian Evidence Act by comparing the signatures of the defendant with Ex.A1 with the admitted signature, has held that slightly signature differs and in the result all the points are answered in favour of the defendant.

21. Based upon the answers given by the plaintiff and her father PW2 both the Courts have concurrently held that it cannot be concluded that the plaintiff has proved her case in accordance with law and chose to reject the claim of the plaintiff.

22. In fine this Court is of the considered view that the plaintiff has utterly failed to establish her case. In the result, this second appeal is liable to be dismissed in limine and thereby stands dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

27.03.2025

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Additional District Judge,
(Fast Track Court No.2),
Poonamallee.

12/14



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2. The Subordinate Judge,
Poonamallee.

3. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

ssn

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