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S.A.No.501 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 21 / 10 / 2024

JUDGMENT PRONOUNCED ON : 20 / 01 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.501 OF 2018

Palanivel

... Appellant / Appellant /
Plaintiff

Vs.

1.Balasubramanian

2.Suguna

... Respondents / Respondents /
Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated September 13, 2017 made in A.S.No.65 of 2013 on the file of the II Additional District and Sessions Judge, Chidambaram confirming the Judgment and Decree dated January 17, 2013 made in O.S.No.12 of 2009 on the file of the Subordinate Judge, Chidambaram.

For Appellant : Mr.A.Arunbabu

For Respondent-1 : Notice dispensed with
vide this Court's Order
dated November 15, 2018

For Respondent-2 : Mr.B.Singaravelu
for Mr.P.P.Shanmuga Sundaram



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J U D G M E N T

This Second Appeal is directed by the unsuccessful plaintiff assailing the Judgment and Decree dated September 13, 2017 passed in A.S.No.65 of 2013 by the 'II Additional District and Sessions Court, Chidambaram' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated January 17, 2013 passed in O.S.No.12 of 2009 by the 'Subordinate Court, Chidambaram' ['Trial Court' for brevity] was confirmed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. It is averred in the plaint that the plaintiff's father - Krishnamurthy and first defendant's father - Kuppusamy are cousins. The second defendant is the plaintiff's brother's wife. The father of first defendant left India at the age of 15 and permanently settled at Singapore and married one Mariammal there. They have one son viz., first defendant, and four daughters. All the daughters are married and settled in Singapore. In 1965, first defendant's parents came to India and purchased some of the Suit Properties in their name separately and some in the name



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of first defendant who was then minor, and left India allowing the plaintiff's father - Krishnamurthy to possess and cultivate the Suit Properties as cultivating tenant. According to the plaintiff, the Suit Properties were cultivated by his father - Krishnamurthy, as a tenant since 1965 under agreements with the first defendant's parents, who were permanent residents of Singapore and on April 27, 1982, first defendant's mother entered into a registered Lease Agreement with the plaintiff's father in respect of the Suit Properties.

3.1. While so, on February 22, 2008, the first defendant offered to sell the Suit Properties to the plaintiff for Rs.5 Lakhs and an agreement was executed on the same day and the plaintiff also paid an advance amount of Rs.10,000/-. It was mutually agreed that within a period of 69 days from the date of agreement, the plaintiff should pay the balance sale price of Rs.4,90,000/- to the first defendant and get the Sale Deed executed from him. However, the first defendant, in collusion with the plaintiff's elder brother -Panchamirtham and his wife (second defendant), executed a Sale Deed in favour of second defendant on February 29, 2008 in respect of Suit Properties. Hence, the plaintiff sent a Legal Notice on March 31, 2008 to the second defendant and received



Reply Notice after three months on June 18, 2008 with false allegations.

The second defendant has never been in actual and physical possession of the Suit Properties as absolute owner and she never carried on agricultural operations therein. The Sale Deed executed in favour of second defendant will not bind the plaintiff. Accordingly, the plaintiff filed the Suit for Specific Performance of Contract.

DEFENDANTS' CASE

4. The first defendant remained *ex-parte*.

5. The second defendant, plaintiff's sister-in-law, filed written statement denying the allegations made by the plaintiff. The second defendant denied the execution of Suit Sale Agreement on February 22, 2008 in favour of the plaintiff as well as the receipt of advance of Rs.10,000/- by first defendant. According to her, part of Item No.3 and entirety of Item Nos.5 to 13 & 16 were purchased by the first defendant's father. Item Nos.14 and 15 were purchased by first defendant's mother. Item Nos.1, 2, 4, and 17 along with the remaining part of Item No.3 were purchased by the first defendant. First defendant's father passed away leaving behind his wife, his four daughters and his son - first defendant. Hence, the first defendant is entitled to 1/6 share in those



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items of Suit Properties purchased by first defendant's father, and absolutely owns the items of Suit Properties purchased in his name. Thus, first defendant was not competent to execute Sale Deed in respect of all items of the Suit Properties. That is why, in the Suit Notice dated March 31, 2008 issued by the plaintiff, it was specifically mentioned that at the time of Suit Sale Agreement, the first defendant assured that he would obtain Power Deed from his mother and sisters. Hence, the plaintiff very well knew that first defendant is not the absolute owner of all the items of the Suit Properties. The first defendant did not execute the Suit Sale Agreement and it is a bogus and forged one. The plaintiff being the brother-in-law of second defendant, has taken away all title documents from the second defendant and filed the same into the Court as if they were handed over to him by first defendant. Further, since the first defendant made representation that he is the owner of all items of the Suit Properties and offered to sell the same to the second defendant for Rs.4,00,000/-, the second defendant paid the said sum and got the Sale Deed dated February 29, 2008 executed in her favour, and pursuantly she is in possession of the Suit Properties. Further the plaintiff's readiness and willingness to fulfil the contract as well as his wherewithal is denied.



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Accordingly, she sought to dismiss the Original Suit.

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TRIAL COURT

6. At trial, the plaintiff – Palanivel was examined as P.W.1 and five other witnesses were examined as P.W.2 to P.W.6 and Ex-A.1 to Ex-A.21 were marked on the side of the plaintiff. On the side of the defendants, the second defendant – Suguna was examined as D.W.1 and her husband was examined as D.W.2 and one Anbu was examined as D.W.3 and Ex-B.1 to Ex-B.18 were marked.

7. The Trial Court, after analyzing the oral and documentary evidence, concluded that the plaintiff failed to prove his wherewithal as well as willingness to fulfil his obligation under Ex-A.1 – Sale Agreement. Further, the revenue records do not stand in the name of the plaintiff's father and the plaintiff failed to prove that his father was a cultivating tenant throughout. Upon these findings, the Trial Court dismissed the Suit.



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FIRST APPELLATE COURT

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8. Feeling aggrieved, the plaintiff preferred an appeal before the First Appellate Court. The second defendant had filed an application in I.A.No.62 of 2014 under Order XLI Rule 27 of Code of Civil Procedure, 1908 praying to receive additional evidence before the First Appellate Court, which after hearing both sides, received the said additional document, namely, Registration Copy of Settlement Deed executed by plaintiff's father in favour of plaintiff in respect of Item Nos.1 to 11 [totally 4.40 Acre] of Suit Properties, and marked the same as Ex-B.19, by observing that the plaintiff did not file counter nor raised objection to mark the said document. Then, it went on to conclude that Ex-A.1 – Sale Agreement is true, however it cannot be enforced. For, the Suit Properties do not absolutely belong to the first defendant and hence, he cannot execute Ex-A.1 in respect of entire Suit Properties as the same is barred under Section 17 of the 'Specific Relief Act, 1963' ['S.R. Act' for short]. Further, the plaintiff failed to establish his wherewithal as well as willingness to fulfil his obligation under Ex-A.1. Accordingly, it dismissed the Appeal Suit.



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SECOND APPEAL

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9. Feeling aggrieved, the plaintiff has preferred this Second Appeal, which was admitted on August 23, 2024 on the following substantial question of law:

“Whether the Lower Appellate Court erred in invoking bar under Section 17 of the Specific Relief Act, 1963 against the purchaser under the Agreement overlooking the express mandate under the statute ?”

ARGUMENTS

10. The main contention of Mr.A.Arunbabu, learned Counsel for the appellant / plaintiff is that the bar under Section 17 of S.R. Act is applicable only against the vendor and not against the purchaser. Item Nos.1, 2, 4, and 17 along with a part of Item No.3 belong to the first defendant. Item Nos.14 and 15 were purchased by first defendant's mother. Remaining part of Item No.3 and entirety of Item Nos.5 to 13 & 16 belong to the first defendant's father, who passed away leaving behind his wife, his four daughters and his son - first defendant. Hence, the first defendant has 1/6 share in the items of Suit Properties owned by his father. Further, the first defendant agreed to obtain General Power of



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Attorney Deed from his mother as well as his sisters. In these circumstances, since the first defendant has absolute right over certain items of Suit Properties and also has the capacity to make the co-sharers to execute Sale Deed, the bar under Section 17 of S.R. Act is not applicable. The First Appellate Court erred in invoking the same.

10.1. Further, he would vehemently contend that in view of Section 12 of S.R. Act, there is no bar to enforce Ex-A.1 in respect of the items purchased in first defendant's name as well as his 1/6 share in the items left by his father.

10.2. Further, he would submit that Ex-A.1 – Sale Agreement is dated February 22, 2008 and the period for performance was fixed as 69 days therefrom *i.e.*, on or before May 1, 2008. During the currency of the said period, only with a view to defeat and defraud the rights of the plaintiff, the first defendant in collusion with plaintiff's brother and second defendant, executed Sale Deed dated February 29, 2008 in favour of second defendant. The same does not bind the plaintiff. Since the first defendant executed Sale Deed within a week from the date of Ex-A.1, while the plaintiff had a substantial time period for performance



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remaining, the defendants cannot assert that the plaintiff was not ready and willing to perform his part of Sale Agreement.

10.3. Further, he would contend that the Suit Properties are in possession and enjoyment by the plaintiff's father as a cultivating tenant. Moreover, the plaintiff is residing in Item No.17 of Suit Properties along with his father. In these circumstances, it cannot be said that possession and enjoyment of the Suit Properties were handed over to the second defendant, which would mean Ex-B.2 - Sale Deed was not acted upon. The Trial Court and the First Appellate Court failed to appreciate the evidence in the right perspective and dismissed the Suit. Accordingly, he would pray to allow the Second Appeal, set aside the Judgment and Decree of First Appellate Court as well as the Trial Court, and decree the Suit.

10.4. He would rely on the following decisions in support of his contentions:

- (i) Judgment of Hon'ble Supreme Court in *Kartar Singh -vs- Harjinder Singh*, (1990) 3 SCC 517;



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(ii) Judgment of Hon'ble Supreme Court in *A.Abdul Rashid Khan (Dead) and Ors. -vs- P.A.K.A. Shahul Hamid and Ors., MANU/SC/2734/2000;*

(iii) Judgment of Hon'ble Supreme Court in *Syscon Consultants (P) Ltd. -vs- Primella Sanitary Products (P) Ltd., (2016) 10 SCC 353;*

(iv) Judgment of Hon'ble Supreme Court in *R. Lakshmikantham -vs- Devaraji, (2019) 8 SCC 62;*

(v) Judgment of this Court in *Subbammal -vs- M.Mani, MANU/TN/7941/2019;*

(vi) Judgment of Hon'ble High Court of Kerala in *Sathy -vs- Sayed Mohammed, 1997 SCC Online Ker 406.*

11. On the other hand, Mr.B.Singaravelu for Mr.P.P.Shanmuga Sundaram, learned Counsel for the second respondent / second defendant would argue that, the Trial Court as well as the First Appellate Court concurrently held that the plaintiff was not ready and willing to perform his part of Ex-A.1 - Sale Agreement and that the



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plaintiff has no right over all the items of Suit Properties. The Suit is bad for non-joinder of necessary parties, namely four sisters and mother of first defendant. Further, he would bring notice to Ex-B.19 – Settlement Deed dated July 10, 2016 and submit that the plaintiff's father with an ulterior motive to usurp the properties, executed a Gift Settlement Deed in favour of plaintiff in respect of Item Nos.1 to 11 [totally 4.40 Acre] of Suit Properties, as if they belong to the plaintiff's father. Owing to this conduct of the plaintiff and the plaintiff's father, the plaintiff is not entitled for the equitable relief of specific performance. Further, the plaintiff has no wherewithal to purchase the Suit Properties which is evident from the fact that he failed to deposit the remaining sale consideration as per the terms of Ex-A.1, which stipulate that if the first defendant does not come forward to execute Sale Deed, the plaintiff shall file a Suit and deposit the amount before the Court and get the Sale Deed executed through Court proceedings. Furthermore, the Suit was filed about 10 months after the date of Suit Notice which points to the laches on the plaintiff's side. The First Appellate Court and the Trial Court appreciated the evidence in the right perspective and dismissed the Suit. There is no reason to interfere with the same. Accordingly, he would pray



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to dismiss the Second Appeal, and confirm the Judgment and Decree of First Appellate Court as well as Trial Court.

11.1. He would rely on the following decisions in support of his contentions:

- (i) Judgment of Hon'ble Supreme Court in *Pemmada Prabhakar -vs- Youngmen's Vysya Association*, 2015 (3) MWN (Civil) 230;
- (ii) Judgment of Hon'ble Supreme Court in *B.T.Kumar -vs- K.Subramanian*, 2024 (2) MWN (Civil) 726;
- (iii) Judgment of this Court in *A.L.Deivanathan -vs- R.Saravanan*, 2024 (4) CTC 434.

DISCUSSION:

12. This Court has heard on either side and perused the materials available on record in light of the Substantial Question of Law.

13. Item Nos.1, 2, 4, and 17 along with a part of Item No.3 belong to the first defendant. Remaining part of Item No.3 and entirety of Item Nos.5 to 13 & 16 belong to the first defendant's father, who passed



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away leaving behind his wife, his four daughters and his son - first defendant. Item Nos.14 and 15 were purchased by first defendant's mother. There is no dispute with regard to the aforesaid facts. Ex-B.3 to Ex-B.9 – Sale Deeds also prove the same. Further, first defendant's family is living abroad and the plaintiff's father was the cultivating tenant of a major portion of Suit Properties for an initial period of 3 years from April 27, 1982 is also admitted.

14. Perusal of the Adangal extracts contained in Ex-A.13 to Ex-A.20 would show that there is no entry therein to suggest that the plaintiff's father was a cultivating tenant. On the other hand, they would show that first defendant's father was in possession and enjoyment of the Suit Properties. Thus, it can only be inferred that the plaintiff's father was managing the Suit Properties on behalf of the first defendant's family beginning three years after April 27, 1982. Thus, the contention of the plaintiff that the plaintiff's father is a cultivating tenant throughout and as such, being in possession and enjoyment of the Suit Properties is belied and not acceptable.



15. The plaintiff examined P.W.3 to P.W.5, who are the witnesses to Ex-A.1 – Sale Agreement and P.W.6, who is the Scribe of Ex-A.1. From their evidence, it can be safely concluded that the plaintiff proved the execution of Ex-A.1. Both Courts have concurrently arrived at the same finding. To be noted, the first defendant has not replied to the Suit Notice nor contested the Suit, though he has received the Suit Notice as well as Court summon.

16. It is settled law that even a subsequent purchaser is entitled to take the plea of ‘readiness and willingness’. The burden is upon the plaintiff to prove that he was ready and willing to fulfil his obligation under Ex-A.1 during the currency of Ex-A.1 as well as during the Suit. As per Ex-A.1, the balance sale consideration is Rs.4,90,000/- and the plaintiff has to be ready with the said sum and call upon the first defendant to execute Sale Deed within 69 days from the date of Ex-A.1. In Ex-A.3 – Suit Notice, the plaintiff has specifically stated that he was ready and willing to perform his part of Ex-A.1, and it is the first defendant who was not ready and willing to execute Sale Deed. However, the Suit has been filed by him 10 months thereafter. The delay was not explained. Ex-A.1 recites that in a scenario where the first defendant fails



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to execute Sale Deed when the plaintiff along with the balance sale consideration in hand calls upon him to do so, the plaintiff may file a Suit against the first defendant and deposit the amount before the Court. Hence, if really the plaintiff was ready and willing, then, he would have filed a Suit and deposited the amount as per the terms of Ex-A.1. However, he has not done so, which also points to lack of plaintiff's readiness and willingness.

17. As rightly pointed out by the learned Counsel for Respondent No.2 / second defendant, the first defendant does not have right over all the items of Suit Properties. He has only 1/6 share in the items of Suit Properties owned by his father. On the date of Suit, his mother being alive, he has no right over the items of Suit Properties owned by her. However, he can execute Sale Agreement in respect of all items of Suit Properties provided he can obtain General Power of Attorney or persuade other sharers to join the execution of Sale Deed pursuant to Ex-A.1 – Sale Agreement. Hence, Section 17 of the S.R. Act, which clearly talks about a person who does not have 'any title', does not come into picture. Hence, the First Appellate Court is not justified in its finding that the Suit is hit by Section 17 of S.R. Act.



18. In a Suit for specific performance, the conduct of the parties is vital, for specific performance is an equitable relief. Perusal of Ex-B.19 would show that the plaintiff's father executed a Gift Settlement Deed in favour of plaintiff in respect of Item Nos.1 to 11 [totally 4.40 Acre] of Suit Properties, as if the plaintiff's father owns the same absolutely. This could not have been done without the consent of the plaintiff, which in the facts and circumstances would mean, it was done in collusion with the plaintiff. This highlights the intention of the plaintiff and his father to usurp the Suit Properties by defeating and defrauding the legitimate rights of the first defendant's family. By falsely executing Ex-B.19, the plaintiff and his father intended to create a cloud over the title of first defendant's family over the Suit Properties in order to bend and constrain them to sell the Suit Properties in favour of the plaintiff or his father. Probably, upon learning the same, being unable to sell the Suit Properties to third parties and left with no other alternative, the first defendant executed Ex-B.2 – Sale Deed in favour of the plaintiff's sister-in-law *i.e.*, second defendant for a price lesser than that of the market value and the price agreed under Ex-A.1. The plaintiff and his father were indeed successful in preventing the first defendant's family from selling



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the Suit Properties in favour of third parties by creating false encumbrance over it. As stated *supra*, specific performance is an equitable relief and the conduct of parties hold paramount importance. In view of the aforesaid collusive conduct of the plaintiff and his father, the plaintiff is not entitled to the equitable relief of specific performance, including the benefit under Section 12 of S.R. Act.

19. That apart, the second defendant herself has admitted in her written statement that the first defendant does not hold rights over the entirety of Suit Properties. Hence, Ex-B.2 – Sale Deed executed by first defendant in her favour is valid only in respect of the available first defendant's right over the Suit Properties. Ex-B.2 would not bind the shares of other legal heirs of first defendant's father.

20. In the facts and circumstances of this case, this Court is of the view that the plaintiff is not entitled to the relief of specific performance. The final decision of the First Appellate Court and the Trial Court are correct, though their reasoning may not stand to be correct. As stated *supra*, Section 17 of S.R. Act does not come into picture at all. There is no quarrel with the case laws relied on either side. Substantial Questions of Law are answered accordingly.



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CONCLUSION:

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21. Resultantly, the Second Appeal is dismissed. The Judgment and Decree of the Trial Court as well as the First Appellate Court are hereby confirmed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs.

20 / 01 / 2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To

- 1.The II Additional District and Sessions Judge
Chidambaram.
- 2.The Subordinate Judge
Chidambaram.



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R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.501 OF 2018

20 / 01 / 2025