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S.A.No.486 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 19 / 10 / 2024

JUDGMENT PRONOUNCED ON : 20 / 01 / 2025

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.486 OF 2020

AND

CMP NO.10459 OF 2020

Sarojini
w/o Ramachandran

... Appellant / Respondent /
Plaintiff

Versus

1.Banumathi W/o. Late Samidurai
2.Karthikeyan S/o. Late Samidurai
3.Muthukumar S/o. Late Samidurai
4.Padmanaban S/o. Late Samidurai

... Respondents/Respondent /
Nil

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated February 27, 2020 passed in A.S.No.29 of 2018 on the file of the Principal Subordinate Court, Mayiladuthurai, reversing the Judgment and Decree dated February 1, 2018 passed in O.S.No.80 of 2016 on the file of the Additional District Munsif Court, Mayiladuthurai.

For Appellant : Mr.A.Muthukumar
For Respondents : Mr.B.Jawahar



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J U D G M E N T

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This Second Appeal is directed against the Judgment and Decree dated February 27, 2020 passed in A.S.No.29 of 2018 by the 'Principal Subordinate Court, Mayiladuthurai' [henceforth 'First Appellate Court'] reversing the Judgment and Decree dated February 1, 2018 passed in O.S.No.80 of 2016 by the 'Additional District Munsif Court, Mayiladuthurai' [henceforth 'Trial Court'].

2. The respondents herein are the legal heirs / legal representatives of the deceased sole defendant - Samidurai. For the sake of convenience, hereinafter, the parties will be referred to as per their nomenclature in the Original Suit.

PLAINTIFF'S CASE

3. The Suit Property originally belonged to the sole defendant— Samidurai vide Sale Deed dated July 20, 1978. The plaintiff and the defendant entered into a Sale Agreement on June 25, 2003 in respect of Suit Property. The sale consideration was fixed as Rs.5,000/- [Rupees Five Thousand only]. On the date of Sale Agreement itself, the defendant received the entire sale consideration in cash and since then the



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plaintiff has been in possession of the Suit Property. The defendant agreed to execute a Sale Deed immediately after he obtains his original Title Deed. However, later, when the plaintiff requested the defendant to execute Sale Deed by producing the original Title Deed, the defendant delayed on one pretext or other. Hence, the plaintiff issued a legal notice on November 20, 2015 calling upon the defendant to execute Sale Deed. The defendant issued a reply notice dated November 27, 2015 containing false averments.

3.1. The plaintiff has formed a Fish Pond in a portion of the Suit Property and in the remaining portion, she is cultivating paddy crops. On December 5, 2015, the defendant with his men tried to enter into the Suit Property and cause damages to the Fish Pond and the crops. The plaintiff is entitled to the benefit under Section 53-A of the 'Transfer of Property Act, 1882' ['T.P. Act' for short]. Hence, the Suit for specific performance of contract, permanent injunction and costs.

DEFENDANT'S CASE

4. The defendant purchased the Suit Property from one Loganathan vide Sale Deed dated July 20, 1978. Then, on June 3, 1979,



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the defendant borrowed a sum of Rs.1,000/- from the plaintiff's husband-Ramachandran and executed a promissory note in his favour. On the same date, an unregistered *Bogiam* Agreement was also entered into between the defendant and plaintiff's husband, whereby the plaintiff's husband was allowed to enjoy the Suit Property in lieu of interest on the borrowed money. On June 26, 1980, the defendant repaid the promissory note debt and redeemed the Suit Property from the plaintiff's husband.

4.1. Again, the defendant borrowed a sum of Rs.2,000/- from the plaintiff's husband by mortgaging the Suit Property and the plaintiff's husband began enjoying it again as *Bogiadhar*. The plaintiff's husband is having land on three sides of the Suit Property. When defendant tendered the money to the plaintiff's husband to redeem the Suit Property, the plaintiff's husband delayed the process and filed the Original Suit through his wife. The alleged Sale Agreement dated June 25, 2003 was created fraudulently with a view to defeat and defraud the defendant's legitimate rights over the Suit Property. The plaintiff has no right over the Suit property. Hence, the Suit is liable to be dismissed.



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TRIAL COURT

5. At trial, the plaintiff's husband-Ramachandran was examined as P.W.1 and one Sivasankar Vadivel, witness to Ex-A.1, was examined as P.W.2 and Ex-A.1 to Ex-A.5 were marked on the side of the plaintiff. The defendant-Samidurai was examined as D.W.1 and one Chokkalingam, ex-Karnam, Scribe cum witness to Ex-A.1, was examined as D.W.2 and Ex-B.1 to Ex-B.6 were marked on the side of the defendant.

6. After full-fledged trial, the Trial Court concluded that the defendant executed Ex-A.1 – Sale Agreement in favour of the plaintiff after receiving the entire sale consideration; that since there is no time limit prescribed in Ex-A.1, right to sue accrues only when the defendant denies Ex-A.1. The Suit has been filed on April 12, 2016, *i.e.*, within three years from the date of denial which is November 27, 2015 and hence, it is well within the period of limitation. Accordingly, the Trial Court granted the relief of specific performance in favour of the plaintiff. Further, the Trial Court held that since the defendant is the owner of the Suit Property, injunction against the true owner cannot be granted. Accordingly, the Trial



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Court refused to grant the relief of permanent injunction. In short, the Trial

Court allowed the Suit in part and granted the relief of specific performance and dismissed the Suit for permanent injunction.

FIRST APPELLATE COURT

7. Feeling aggrieved, the defendant preferred an appeal before the First Appellate Court, which, after hearing both sides, concluded that the plaintiff filed the Suit after twelve years from the date of Ex-A.1 – Sale Agreement. Hence, there is laches on the part of the plaintiff and she was not ready to perform her part of contract. Therefore, she is not entitled to invoke Section 53-A of T.P. Act and thereby, seek injunction against the defendant. Accordingly, the First Appellate Court allowed the appeal and set aside the Judgment and Decree of the Trial Court.

SECOND APPEAL

8. Feeling aggrieved, the plaintiff has preferred the present Second Appeal under Section 100 of the Code of Civil Procedure, 1908. The Second Appeal was admitted on September 24, 2020 on the following substantial questions of law:



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- “(i) *Whether the Lower Appellate Court erred in law in holding that the plaintiff has not proved her willingness while accepting her readiness, when the entire sale consideration had been paid on the date of sale agreement itself?*
- (ii) *When the defendant has categorically admitted in his evidence that he had not objected to the plaintiff's act of converting a portion of the suit property into fish pond, whether the Lower Appellate Court erred in law in holding that the plaintiff has failed to get the sale deed executed particularly when the sale agreement does not prescribe any time limit?”*

ARGUMENTS:

9. Mr.A.Muthukumar, learned Counsel for the appellant / plaintiff would argue that the First Appellate Court miserably failed to appreciate the fact that though the defendant denied the execution of Ex-A.1 – Sale Agreement, the plaintiff proved Ex-A.1 by examining P.W.2, who is a witness to its execution. The defendant in his written statement has stated that Ex-A.1 was fraudulently created. If it is so, the burden is upon the defendant, but he miserably failed to discharge the same. Further, he would refer to the deposition of D.W.1 / defendant and submit that the defendant has categorically admitted that the plaintiff is in possession and enjoyment of the Suit Property by forming a Fish Pond in it and



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cultivating crops as well. Despite these admissions, the First Appellate Court allowed the appeal. Hence, the findings of the First Appellate Court are perverse. Further, the plaintiff was not examined as she was unwell and as per Section 120 of Indian Evidence Act, 1872, spouse is a competent person to depose on behalf of the other. Accordingly, he prayed to allow the Second Appeal, set aside the Judgment and Decree of First Appellate Court, and confirm the Judgment and Decree of the Trial Court.

10. Per contra, Mr.B.Jawahar, learned Counsel for the respondents would argue that the Suit was filed after a lapse of 16 years from the date of alleged Ex-A.1. The length of the delay would show that the plaintiff was not willing to perform her part of the contract. Further he would submit that the defendant purchased the Suit Property from the plaintiff's brother vide Ex-B.1 – Sale Deed and now the plaintiff is trying to usurp the Suit Property by creating false documents. Further, he would invite attention of this Court to the cross-examination of P.W.1 and submit that defendant borrowed money from the plaintiff vide Ex-B.2 – Promissory Note and handed over possession of the Suit Property by executing an unregistered *Bogiam* Deed. Later, the defendant discharged



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the same and redeemed possession obtaining an endorsement to that effect

in the said unregistered *Bogiam* Deed, which is marked along with the Sale Deed as Ex-B.1. The plaintiff's husband / P.W.1 in his evidence has admitted the aforesaid facts. Further, thereafter, the defendant borrowed a sum of Rs.2,000/- and for security purpose, Ex-A.1 – Sale Agreement was executed. There was no intention between the parties to execute Sale Deed or sell the Suit Property. Moreover, the Suit is barred by limitation. In view of the amended Section 53-A of T.P. Act [which commenced from September 24, 2001], the plaintiff is not entitled to invoke the same to seek permanent injunction against the defendant. Further, non-examination of the plaintiff is fatal to her case. The First Appellate Court appreciated the evidence in the right perspective and allowed the appeal and dismissed the Suit. There is no reason to interfere with the same. Accordingly, he would pray to dismiss the Second Appeal, and confirm the Judgment and Decree of First Appellate Court.

DISCUSSION:

11. This Court has heard on either side and perused the materials available on record.



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12. Ex-A.1 – Sale Agreement is dated June 25, 2003. The plaintiff claims injunction based on her possession and enjoyment of the Suit Property under Ex-A.1. The Registration and other Related Laws Amendment Act, 2001 [Central Act No.48 of 2001] amended Section 17 of the Registration Act, 1908, Section 53-A of T.P. Act and Schedule I of the Indian Stamp Act, 1899 as well. As per the said amendment, sub-section 1-A was inserted to Section 17 of the Registration Act, 1908, which made registration mandatory for any document containing contracts affecting transfer of any immovable property for consideration with possession being handed over thereunder, for the purpose of Section 53-A of T.P. Act. In short, as per the amended Section 53-A of T.P. Act, in order to invoke benefit thereunder, the Sale Agreement must have been a registered one. In this case, since Ex-A.1 is unregistered, the plaintiff is not entitled to invoke Section 53-A of T.P. Act and thereby seek injunction. The Trial Court's findings that injunction against true owner cannot be granted is a misconceived approach. The right perspective is that Ex-A.1 being an unregistered Sale Agreement, the plaintiff is not entitled to the benefit under Section 53-A of T.P. Act.



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13. Further, though the defendant denied Ex-A.1, the plaintiff proved its execution and passing of consideration thereunder by examining P.W.2, who is a witness to Ex-A.1. Moreover, during trial, the defendant in his cross-examination admitted Ex-A.1 – Sale Agreement. However, the sum and substance of the defendant's case is that Ex-A.1 is a sham and nominal document executed for the purpose of security for the loan amount. Be that as it may, no time period for performance has been prescribed under Ex-A.1. Hence, as per second part of Article 54 of the Limitation Act, 1963, the limitation clock begins to tick only upon denial of the agreement by the defendant. In this case, the defendant denied Ex-A.1 in his reply notice dated November 27, 2015. The Suit was filed on April 12, 2016, which is well within three years from November 27, 2015 *i.e.*, date of Suit. Hence, the Suit is not barred by limitation.

14. Further, the plaintiff did not take steps to get the Sale Deed registered for almost 12 years from the date of Ex-A.1. This Court fails to understand the reason to wait for such a long time when the entire sale consideration has been paid upfront. No prudent person would have waited that long after paying the full sale consideration. Hence, there is laches on the part of the plaintiff. No reason was assigned to explain the



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delay. The original Title Deed of the defendant has been marked by him as

Ex-B.1. The original Sale Agreement was with the plaintiff and marked as

Ex-A.1. Required documents have been marked in this case. There is no pleadings as to mortgage of the original Title Deed or anything. In the absence of such pleadings, this Court can only presume that all the necessary documents were available with the parties. There is no evidence available on record to show that the plaintiff was willing to perform her part of the contract during the period between the date of Ex-A.1 and date of her legal notice to the defendant *i.e.*, November 20, 2015. In the facts and circumstances of this case, the evidence available on record, the conduct of the parties, the delay and laches on the part of the plaintiff, make the case of the defendant that Ex-A.1 was executed as a security for the loan borrowed from the plaintiff's family and that Ex-A.1 was executed sham and nominally, a plausible one. Hence, in the facts and circumstances of this case, bearing in mind that the reliefs under Specific Relief Act, 1963 are equitable in nature, this Court is of the considered view that the plaintiff is not entitled to the relief of specific performance and she shall hand over possession of the Suit Property to defendant if the defendant returns the sum of Rs.5,000/-, paid to him by the plaintiff. If



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not, the defendant is entitled to recover the Suit Property as per law.

Substantial Questions of Law are answered accordingly in favour of defendant and against the plaintiff.

CONCLUSION:

15. Resultantly, the Second Appeal is dismissed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs. Connected Civil Miscellaneous petition shall be closed.

20 / 01 / 2025

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

To

1.The Principal Subordinate Judge
Principal Subordinate Court
Mayiladuthurai.

2.The Additional District Munsif
Additional District Munsif Court
Mayiladuthurai.



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R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
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