



S.A.No.803 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 01.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

S.A.No.803 of 2016
and
C.M.P.No.15165 of 2016

Manoj Jain

...Appellant

Vs.

1.B.P.Kulasekaran

2.B.K.Bhaskar

3.B.K.Ramakrishnan

4.B.K.Anand

5.Rafia Mahboob Fathima

...Respondents

Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 28.04.2015 made in A.S.No.511 of 2010 on the file of the learned XVII Additional City Civil Court, Chennai confirming the judgment and decree dated 12.08.2010 made in O.S.No.5440 of 2009 on the file of the VIII Assistant City Civil Court, Chennai.



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For Appellant : Mr.S.Arulandu
for M/s.Wilson Associates

For Respondents : Mr.K.G.Vasudevan for R2 to R4
R1 – Died.
R5 – Not ready in notice.

J U D G M E N T

This Second Appeal has been filed to set aside the judgment and decree dated 28.04.2015 made in A.S.No.511 of 2010 on the file of the learned XVII Additional City Civil Court, Chennai confirming the judgment and decree dated 12.08.2010 made in O.S.No.5440 of 2009 on the file of the VIII Assistant City Civil Court, Chennai.

2. Heard Mr.S.Arulandu, learned counsel appearing for the appellant and Mr.K.G.Vasudevan, learned counsel appearing for the respondents 2 to 4.

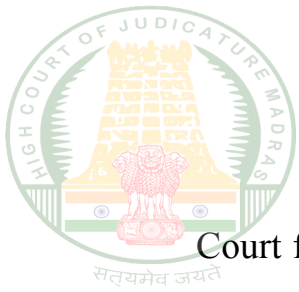
3. The learned counsel appearing for the appellant would submit that the appellant had initiated a suit seeking for a declaration that the sale deed executed by the 1st defendant in favour of the 5th defendant as null and void



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and also for a consequential permanent injunction restraining the defendants from dealing with the suit property in any manner or interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The 1st respondent is the owner of the suit schedule property and that he had entered into a sale agreement with the appellant on 14.06.2003. A sale consideration of Rs.4,00,000/- was fixed between the parties and that in total the appellant had paid the 1st respondent a sum of Rs.1,32,000/- as advance. He would submit that when this agreement of sale was in subsistence, the sale deed had been executed by the defendants 1 to 4 in favour of the 5th defendant and that the trial Court on erroneous consideration of the facts and without appreciating the materials available on record had dismissed the suit.

4. He would submit that the appellant had parted with the money to the defendants 1 to 4 and they have unjustly enriched themselves and that apart the trial Court had failed to recognize the right of the appellant who is the *bona fide* agreement holder. He would further submit that the trial Court had also erred in holding that the appellant had not paid proper Court fee while rejecting the suit. As per the sale agreement the suit had been valued and the



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Court fee had been paid. He would also submit that the first appellate Court had also fell into the same error by holding that the appellant is not entitled for the relief that had been sought for. He would raise various substantial questions of law and would pray this Court to frame the same and allow the Second Appeal.

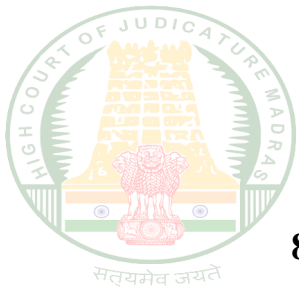
5. Countering his arguments, Mr.K.G.Vasudevan, learned counsel appearing on behalf of the respondents 2 to 4 would submit that the suit had not been disposed of only on the grounds raised by the learned counsel, but, the suit had also been dismissed as being hit by Order II Rule 2 of the Code of Civil Procedure. He would submit that the appellant herein had earlier filed a suit in O.S.No.2129 of 2004 seeking a bare injunction. Even the said suit was not prosecuted and was dismissed for default. He had not even attempted to restore the said suit. Referring to the judgment of the trial Court he would submit that the plaint filed by the appellant in the said suit also canvasses the same cause of action as raised in the present suit and therefore, the trial Court had also held that the plaintiff cannot be allowed to file this suit.



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WEB COPY 6. He would further contend that the plaintiff had handed over possession pursuant to an *exparte* decree made by this Court in C.S.No.276 of 2005. If the plaintiff was a *bona fide* agreement holder and was ready and willing to perform the said agreement in the first suit initiated by him, i.e., O.S.No.2129 of 2004, he would also have sought for the relief of specific performance of the sale agreement. He had failed to do so. He had also remained *exparte* before this Court, which on his application was set aside and even then he had not made any counter claim for specific performance. Even in the the present suit which had been filed in the year 2009, he had not sought for specific performance.

7. He would further submit that even admittedly Ex.A1 sale agreement was of the year 2003 and the appellant had even lost his right to seek for specific performance, which at the maximum could only be filed within 3 years from the date of agreement. Therefore, he would not be entitled to the relief as prayed for. Hence, he prays this Court to dismiss the appeal.



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8. I have considered the submission made by the learned counsel on either side and perused the materials available on record.

9. Even according to the plaintiff, Ex.A1 had been executed on 14.06.2003. It is not disputed that he had filed a suit in O.S.No.2129 of 2004 for a bare injunction. In the said suit, he had never sought for the relief of specific performance within the period of limitation as prescribed under the Limitation Act. He had also not filed any suit for recovery of money from the vendor of the suit schedule property, which he is entitled to under Section 53A of the Transfer of Property Act. For which the period of limitation is 12 years. Having failed to claim any of the relief as against the vendor, he had now filed the present suit to declare the sale deed executed by the vendor in favour of the 5th respondent as null and void. It is not disputed by the appellant that the vendor had perfect title. Having failed to exercise his right within the period of limitation, the appellant had approached the Court after a period of 5 years to set aside the sale deed executed in favour of the 5th defendant under Ex.A4 which is in the year 2009. Hence, this Court is of the view that the Courts below have rightly held that the suit filed by the



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petitioner is not only hit by the principles of Order II Rule 2 of the Code of Civil Procedure but also on its merits. This Court also find no merits in the substantial questions of law as framed by the appellant and also find that there is no substantial question of law to be decided in this Second Appeal.

10. In fine, the Second Appeal fails and it is accordingly **dismissed**. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

01.08.2025

dsa

Index : Yes/No

Speaking Order/Non-Speaking order

To

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1.The XVII Additional Judge,
City Civil Court, Chennai.

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2.The VIII Assistant Judge,
City Civil Court, Chennai.

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



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K.KUMARESH BABU, J.

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