



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.04.2025

Pronounced on : 22.04.2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

A.S.No.308 of 2022

G.R.Aravind

.. Petitioner

Versus

1.Dr.K.A.F.Mary
2.R.Robert Patten
3.K.V.Sagadevan
4.S.Nandhakumar
5.D.Premalatha

.. Respondents

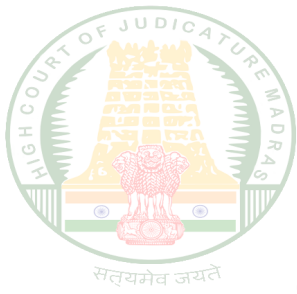
Prayer:- Appeal filed under Section 96 of CPC, to set aside the judgment and decree dated 29.04.2022 made in O.S.No.38 of 2009 on the file of the Principal District Court at Dharmapuri.

For Appellant : Mr.P.Valliappan, Senior Counsel
for M/s.P.V.Associates

For Respondent : Mr.P.L.Narayanan, Senior Counsel
for Mr.J.Bharathi Raja for R2 and R4

Mr.P.Dinesh Kumar for R5

No appearance for R1 and R3

**JUDGMENT**

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Challenging the decree and judgment dismissing the suit for specific performance and permanent injunction, the present appeal has been filed by the unsuccessful plaintiff.

2. For the sake of convenience, parties are referred to as per their own ranking in the Trial Court.

3. Brief background of the case is as follows:

3.a. Originally, the suit property belongs to the Trust named Simons Trust by virtue of sale deed dated 02.12.1985. Since 1997, in the ground floor of the suit property, the plaintiff was carrying on business as a tenant relating to the household articles under the name of Kamadhenu Agencies. Similarly, in the first floor, the plaintiff was carrying on business in the name of Kamadhenu Distributors. The plaintiff had paid the rents to the first defendant, who is the Trustee of the Simons Trust. While things stood thus, the first respondent executed Receipt (Undertaking Letter)/Ex.P2 dated 28.11.2007 for sale of suit properties in favour of the plaintiff at Rs.3,000/- sq.ft., and received a sum of Rs.5 lakhs as advance. Thereafter on 26.12.2007, Ex.P1/Sale agreement was executed by the first respondent in



favour of the plaintiff after receipt of Rs.1 lakh as further advance and it was

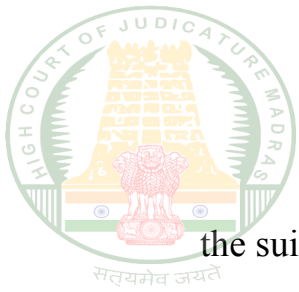
agreed between the parties that sale shall be completed within six months from the date of the sale agreement. Subsequently, on 28.09.2008, the plaintiff had issued two cheques for a sum of Rs.4 lakhs and an endorsement was made in the sale agreement in this regard. In total, the plaintiff had paid a sum of Rs.10 lakhs as per the sale agreement. On instructions of the plaintiff, the defendants 1 and 2 executed a sale deed in favour of the 5th defendant with respect to the second item of the suit property. The plaintiff was ready and willing to perform his part of contract and contacted the defendants 1 and 2 to execute the sale deed in favour of him. Despite several requests, the defendants 1 and 2 avoided to execute the sale deed and when the plaintiff, in person, went to the house of the first defendant, wherein, the third defendant tore the original sale agreement. Hence, the plaintiff issued a legal notice to the to the first defendant on 02.07.2009, however, no reply was given by the first defendant. On 27.08.2009, the defendants 3 and 4 claiming to be the owners of the item 1 of the suit property threatened and damaged the shop of the plaintiff, hence, the plaintiff filed the suit for specific performance and permanent injunction.

3.b. It is the case of the defendants 1 and 2 in their written statements



the first defendant has got no right to sell the Trust property and the Trust property belong solely to the second defendant. There is no tenancy relationship between the plaintiff and the second defendant. Second Item of the suit property was sold to the fifth defendant by the second defendant on 28.01.2009. Due to the dilapidated condition of the building, the second defendant sought the plaintiff to hand over the vacant possession of the suit property. The receipt of advance amount was outrightly denied by the first and second defendant. Hence, opposed the suit.

3.c. It is the stand of the fifth defendant in the written statement that on instruction of the plaintiff, the defendants 1 and 2 had executed the sale deed on 29.01.2009 on receipt of Rs.4 lakhs in respect of the Item No.2 of the suit property. It was also admitted by the fifth defendant that the suit property is in possession of the plaintiff and in respect of the Item No.2 of the suit property, the plaintiff is regularly paying the rent to the fifth defendant. Further, on the basis of the sale agreement executed in favour of the plaintiff on 26.12.2007, the defendants 1 and 2 executed the sale deed dated 29.01.2009 in favour of the fifth defendant. Electricity bill in respect of the suit property is being paid by the plaintiff. The fifth defendant did not dispute



the suit.

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3.d. In light of the above submissions, the Trial Court framed the following issues:

1. Whether the plaintiff is entitled to get the decree for specific performance as prayed for?
2. Whether the plaintiff is always ready and willing to performance on part on contract?
3. Is it true to say that the trust is acted only 8 years from the date of constituted the trust and also the said trust as per terms and conditions now it is not acted upon?
4. Is it true to say that the 1st defendant is not an legal owner of suit schedule property?
5. It is true to says that the plaintiff has not any relief under the sale agreement deed?
6. Whether the plaintiff is entitled to get the permanent injunction against the owner?
7. Whether the plaintiff is paid correct court fee?
8. Whether the terms and conditions of suit sale agreement is not binding on



2nd respondent?

9. To what any relief the plaintiff is entitled?

3.e. On the side of the plaintiff, the PW1 to PW3 were examined and marked Ex.A1 to Ex.A24. On the side of defendants, DW1 and DW2 were examined and marked Exs.B1 and B2.

3.f. Considering the oral and documentary evidences, the Trial Court has dismissed the suit vide judgment and decree dated 29.04.2022. Challenging the same, the present appeal has been filed.

4. The learned senior counsel for the appellant mainly would submit that the Trial Court has not considered the documentary evidences in proper manner. The conduct of the defendants has not been considered by the Trial Court. The plaintiff has proved the readiness and willingness from the very inception. The evidence of DW2 clearly supports the case of the plaintiff, in fact, portion of the suit property has been sold to the DW2 at the instruction of the plaintiff. The plaintiff was always ready and willing to perform his part of contract. 50% of the consideration already paid. The capacity of the



plaintiff is also not been disputed, since, he was running the business in the suit property. This aspect has not been considered by the Trial Court. The entire case of the plaintiff that the original agreement is torn by the third defendant. Despite specific allegations made in the plaint, the same has not been disputed by the third defendant, he remained exparte. The plaintiff had no opportunity to prove this allegations in view of the fact that the third defendant remained exparte, therefore, it has to be held that the plaintiff has proved his contention that the original agreement has been torn by the third defendant which has not been taken note by the Trial Court. Further, the Trial Court has also given undue importance to the fact that the first defendant is not the owner of the property, in fact, agreement itself was entered by the first defendant as a Trustee of the property. Therefore, same cannot be put against the plaintiff.

5. Whereas, the learned senior counsel for the respondents 2 and 4 submitted that the very agreement itself was fabricated, the original agreement was not produced before the Trial Court. Though the plaintiff has pleaded as if the original agreement has been torn by the third defendant, the said fact has not been established, no complaint whatsoever given in this



regard. Further, the alleged payment of Rs.4 lakhs and endorsement said to have been made on the back of the original agreement has not been proved.

Further, the first defendant is not the owner of the property. Though agreement is said to have been executed by the first defendant claiming to be a trustee, the Trust Deed/Ex.A21 makes it clear that the property was never vested to the Trust. Therefore the agreement executed by the first defendant does not bind the second defendant who is the owner of the suit property. Even assuming that there was a trust, the trust is created only for a period of 8 years. Thereafter, the property absolutely belong to the second defendant. The second defendant has never executed any agreement. Further, it is his contention that the plaintiff was never proved his readiness and willingness and the agreement itself is created. The plaintiff only in order to thwart the eviction proceedings against him squatting over the property by filing false case, the Trial Court has appreciated the entire evidence and dismissed the suit for specific performance, the same does not require interference. Hence, prays for dismissal of the appeal.

6. In light of the above submissions, now, the points that arise for



considerations are as follows:

WEB COPY (i) Whether the plaintiff has proved the loss of original agreement dated 26.12.2007 ?

(ii) Whether the agreement dated 26.12.2007 is true, valid and enforceable contract?

(iii) If the agreement is valid, whether the plaintiff has proved the readiness and willingness to seek specific performance?

(iv) To what other relief's, the parties are entitled?

Points (i) & (ii)

7. The plaint proceed as if the plaintiff was the tenant in the suit property under the first defendant running business in the name of Kamadhenu Agencies. According to the plaintiff, the suit property belongs to the Trust known as Simon Trust. The first defendant has executed a Receipt (Undertaking Letter)/Ex.P2 dated 28.11.2007 for sale of suit properties in favour of the plaintiff at Rs.3,000/- sq.ft., and received a sum of Rs.5 lakhs as advance. Thereafter on 26.12.2007, Ex.P1/Sale agreement was executed by the first respondent in favour of the plaintiff after receipt of Rs.1 lakh as further advance and it was agreed between the parties that sale shall be



completed within six months from the date of the sale agreement.

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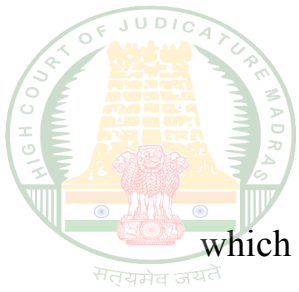
Subsequently, on 28.09.2008, the plaintiff had issued two cheques for a sum of Rs.4 lakhs and an endorsement was made in the sale agreement in this regard. In total, the plaintiff had paid a sum of Rs.10 lakhs as per the sale agreement. On instructions of the plaintiff, the defendants 1 and 2 executed a sale deed in favour of the 5th defendant with respect to the second item of the suit property. The plaintiff, in person, along with the PW2 went to the house of the first defendant, wherein, the first defendant handed over the original agreement to the third defendant, who in turn, tore the original sale agreement. This was informed to the first defendant's husband, however, the nothing fructified. Therefore, it is the contention of the plaintiff that the original document could not be produced. The defendants 1 and 2, in their written statements took a stand that the Trust was only for a period of 8 years, thereafter, property became absolute property of the second defendant. They also denied the execution of the agreement and receipt of sale consideration. They also denied that only at the instruction of the plaintiff, the second item of the suit property was sold to the 5th defendant. It is the specific contention of the second defendant that the first defendant has no right whatsoever to enter agreement, since the property absolutely belongs to the second



defendant.

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8. In light of the specific contention of the parties, now, it has to be seen whether Ex.A1 agreement has been proved by the plaintiff in the manner known to law. Though PW1 and PW2 have been examined to show Ex.A1 came to be executed by the first defendant, on careful perusal of Ex.A1/Xerox copy of the agreement filed in this regard makes it clear that first defendant as a trustee of the Simons Trust entered an agreement for sale of the property. It appears that the third defendant/one K.V.Sagadevan was also one of the attesting witness. However, in the entire agreement, there is no reference to the so-called payment of Rs.5 lakhs on 28.11.2007 towards the sale consideration of the property. The normal conduct of the parties would be to refer such payment and receipt in the agreement which was executed on a later date, i.e., 26.12.2007, whereas, Ex.A1 reads as if the entire Rs.6 lakhs has been received as advance on the date of sale agreement itself. There was no reference whatsoever made to the previous payment which was adjusted in the agreement. These facts creates serious doubt about the very contention of the plaintiff. Only in the plaint for the first time such pleadings are introduced as if Rs.5 lakhs paid on 28.11.2007 in respect of



which Ex.A2 receipt have been executed by the first defendant. Even the legal notice/Ex.A3 dated 02.07.2009 issued by the plaintiff in this regard also, there is no reference to the alleged payment of Rs.5 lakhs on 28.11.2007. Legal notice issued on 02.07.2009 also indicate as if advance to the tune of Rs.6 lakhs said to have been paid on the date of the agreement, i.e., 26.12.2007 itself. Therefore, the plea of the plaintiff that Rs.5 lakhs was originally paid on 28.11.2007 in respect of which Ex.A2 came into existence is highly doubtful. If really, Rs.5 lakhs has been paid on 28.11.2007, at-least same should have been reflected in the legal notice which was issued on 02.07.2009, almost 2 years after the alleged payments were made. Therefore, the very plea of the plaintiff with regard to the alleged payment of Rs.5 lakhs on 28.11.2007 which is said to have been adjusted in the agreement/Ex.A1 is highly doubtful.

9. On seeing Ex.A2/receipt said to have been issued by the first defendant to the plaintiff, doubt entertained by the Court is fortified by the fact that the receipt was originally issued towards the sale of Titan Watch. The name Titan Watch has been scored off, thereafter, Simon Trust building at Pennagaram Road has been introduced. The wording in receipt has been



accommodated just above the signature of the first defendant. The manner in

which Ex.A1 written and original word Titan Watch scored off, thereafter,

Simon Trust building at Pennagaram Road introduced later clearly fortify the

defence of the defendants that the document has been fabricated. If really

Rs.5 lakhs has been received towards the sale consideration, the normal

conduct of the parties would to be write the receipt undertaking, the nature of

payments and advance towards the sale consideration of the subject property,

particularly, giving a description of the property, whereas, the word Simon

Trust Building at Pennagaram Road has been very conveniently added after

scoring off the word Titan Watch. These facts clearly probabilise the defense

theory that document has been fabricated. Therefore, the failure to refer this

receipt in the Ex.A1 agreement and Ex.A3/legal notice issued on 02.07.2009

probabilise the case of the defendants that the receipt has been manipulated at

later point of time somehow or other to squat over the property. Admittedly,

the plaintiff was a tenant in the building. Now, the other contention of the

plaintiff that though 6 months times was agreed in the agreement dated

26.12.2007, according to him, he has paid another Rs.4 lakhs on 28.09.2008.

As per the plaintiff's version, the said amount has been paid through the

cheque of the first defendant. The first defendant has also made endorsement



in this regard on the back of the agreement/Ex.A1. It is relevant to note that if really the amount of Rs.4 lakhs has been paid towards the sale consideration, that too, through the bank cheques, the said facts could have been proved easily by summoning the bank statement of the first defendant. Admittedly, there is no evidence in this regard. It is hard to believe that such payments were made through cheque of first defendant. Plaintiff could have directly paid the said amount either to the first or the second defendant. There was no need for the first defendant to issue cheque to her own son. This aspect also creates serious doubt, since, these facts are against the normal human conduct and natural course of events.

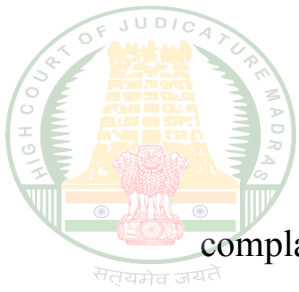
10. It is the further contention of the plaintiff that on 26.06.2009, he along with PW2 met the first defendant, at that stage, the first defendant got back the original agreement and handed over to the third defendant, who tore the agreement. It is relevant to note that if really the first defendant has made endorsement on 28.09.2008 itself in respect of the remaining sale consideration of Rs.4 lakhs, the normal human conduct of the person is to at least to take a xerox copy of the original agreement. The plaintiff should have taken xerox copy of that endorsement, however, no such alleged endorsement



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or copy of the endorsement produced before the Court. It is the specific contention of the plaintiff that on 26.06.2009, the third defendant has torn the original document namely the agreement dated 26.12.2007. It is relevant to note that if such thing had happened and original document was destroyed, the immediate reaction of the plaintiff should have been atleast to lodge the police complaint, however, he has not even given any complaint immediately, whereas, he has given a complaint only on 31.08.2009, which is marked as Ex.A5. Ex.A5 has been lodged with huge delay which also creates doubt with regard to the very contention of the plaintiff. The plaint proceeded as if that since the third defendant and other tried to interfere with the plaintiff's possession on 27.08.2009, he was forced to give a complaint on 31.08.2009. The pleading of the plaintiff in the plaint primarily indicate that Ex.A5 was given as against the alleged trespass by the third defendant and others, therefore, Ex.A5 has been given on 31.08.2009.

11. The plaintiff's allegation that original agreement has been torn by the third defendant. If really, the 3rd defendant has destroyed the original agreement and if really there was an agreement for sale, immediate reaction of the parties is to lodge a complaint in this regard, however, police



complaint has been lodged after more than three months delay. It is the

further specific case of the plaintiff that the original of Ex.A1 has been torn by the 3rd defendant in the presence of PW2. In this regard PW2, in his evidence never whispered anything about such incident in his presence. His entire evidence also shows as if the Rs.6 lakhs has been paid on the date of the agreement, i.e., 26.12.2007 which is in fact contrary to the pleadings of the plaintiff. Whereas, it is the specific case of the plaintiff that on the date of agreement only Rs.1 lakh has been paid and Rs.5 lakhs has already paid on 28.11.2007 under Ex.A2 has been adjusted in the agreement, whereas, PW2 never spoken about any such adjustment and in fact, his evidence show as if Rs.6 lakh has been paid on the date of agreement. In his cross examination, it is stated that though he has admitted on the date of agreement, Rs.1 lakh, he has no knowledge about Rs.5 lakhs paid earlier. Further, his evidence also indicate that the plaintiff's father has filed another case against the first defendant in respect of the adjacent building. His evidence also indicate that property belong to the second defendant absolutely.

12. PW1 also in his evidence had clearly admitted that the Trust was



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created only for 8 years, after 8 years, the entire property belonged to the second defendant and on the date of agreement, Trust do not have any right in the suit property. Further, it is also admitted that on the date of agreement, the second defendant was a major. Ex.A21/copy of the Trust Deed indicates that the Trust has been declared on 29.11.1985 by one Dr.D.J.Simon, S/o.D.Subbarayadu, Sosamma, W/o.Dr.D.J.Simon, Philomina and the first defendant K.A.F.Mary. The Trust has been primarily created for the benefit of the second defendant who was minor at the relevant point of time. The Trust Deed also indicate that Trust is only valid for 8 years and corpus of Trust was only Rs.1500/-. There is no indication in the Trust Deed that suit properties also brought as Trust properties. Be that as it may, it is the admitted case of the first defendant that after purchase of the property by her, she has included the property into the Trust. Even assuming that suit property also included in the Trust, the very Trust was only for a period of 8 years. Though there is no evidence available on record to show that immovable property was brought into the Trust by any document in view of the admitted position of the parties, even assuming that there was a valid Trust, Trust was only for a specific period, i.e., 8 years. Even assuming that there was a Trust, the Trustees cannot act adverse to the interest of the beneficiaries as per



Section 14 of the Indian Trusts Act, 1882. Further the Trust will be extinguished when its purpose is completely fulfilled. Therefore, when the Trust itself is for a period of 8 years and the second defendant was a beneficiary and the Trust has become extinguished, the second defendant becomes absolute owner of the property. Such being the position, the first defendant is no longer a Trustee cannot deal with the property even assuming that agreement/Ex.A1 is valid and proved.

13. The plaintiff's cross examination clearly indicate that he is aware of the Trust and duration and the second defendant is the absolute owner of the property on the date of the sale agreement. Knowing all the consequences, still entering an agreement with the first defendant creates some doubt about the entire transaction itself. Therefore, when the evidence of the PW1 clearly show that on the date of agreement the second defendant was the owner of the suit property and he is not a party to the contract, such contract cannot be specifically enforced in favour of the vendor, since the first defendant has not title at the relevant point of time.

14. Section 17 of the Specific Relief Act, 1963 reads as follows:



“17. Contract to sell or let property by one who has no title, not specifically enforceable.—

(1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor—

(a) who, knowing not to have any title to the property, has contracted to sell or let the property;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property. ”

15. When there is a clear bar under law to enforce such contract, first defendant has no title to the property, merely on the basis of some allegations which has not been proved as discussed above, the plaintiff is certainly not entitled to enforce the contract even assuming that the agreement has been proved.

16. From the overall discussions above, this Court is of the view that that the very alleged payment under Ex.A2 is doubtful and the same has been fabricated at the later point of time since this document was never reflected in Ex.A1/sale agreement and Ex.A3/legal notice. That apart, the destruction of the original is also not established. PW2 has not supported the case of the



plaintiff that in his presence, the original document was destroyed. If really there was an endorsement made by the first defendant in the agreement, nothing prevented the plaintiff from taking xerox of the same as that of Ex.A1. Merely because the third defendant remained exparte, adverse inference cannot be drawn. Despite third defendant remained exparte, the same did not prevent the plaintiff from taking coercive steps to examine the third defendant as witness which has not been done so. Considering all these facts, this Court is of the view that Ex.A1 is highly doubtful and cannot be enforced in the eye of law. All these facts clearly shows that Ex.A1 and Ex.A2 have not been established. Accordingly, these points are answered.

Points (iii) & (iv)

17. As far as the readiness and willingness is concerned, though 6 months time was agreed, the plaintiff being a tenant not even taken steps to measure the property and the legal notice has been sent only on 02.07.2009. Since, no action has been taken within the period of 6 months, this itself clearly indicate that readiness and willingness is absent on the part of the plaintiff. Therefore, merely because some bank statement is filed, it cannot be held that readiness and willingness is established. In any event, when the



very agreement relied upon by the plaintiff has not been established and suspicion revolves around the documents, such contract cannot be enforced in the eye of law. Accordingly, this point is answered.

18. Admittedly, the plaintiff is a tenant from the year 1997. The evidence of PW2 also indicate that PW1's father also filed similar case against the first defendant. This fact also clearly gives an inference that plaintiff being a tenant taken undue advantage with some document said to have been executed by the first defendant and squatting over the property all these years. Yet another argument has been placed by the learned senior counsel for the appellant that all these years, the defendants have not taken any steps to evict the plaintiff, that itself gives rise to inference that there was an agreement to sell the property. It is relevant to note that when a litigation is already pending before the Court and the tenant has filed a suit to become owner of the property, in such situation, it is difficult for any landlord to file eviction suit, particularly, during the pendency of the civil suit. Therefore, that may be a reason for non filing of the petition for eviction. Mere non filing of petition for eviction will not prove the plaintiff's case automatically.

N.SATHISH KUMAR, J.



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19. In view of the above, I do not find any merits in the appeal. The judgment and decree of the Trial Court dated 29.04.2022 made in O.S.No.38 of 2009 stands confirmed. Accordingly, this appeal suit stands dismissed with costs.

22.04.2025

dhk

Internet : Yes/No

Index : Yes/No

Neutral Citation : Yes/No

To

1. The Principal District Judge
Principal District Court, Dharmapuri

2. The Section Officer
VR Section
Madras High Court

A.S.No.308 of 2022