



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2025

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

S.A. No. 968 of 2019

Yeshodha Nandhi

... Appellant

Vs.

Vasantha Shamugam

... Respondent

Second Appeal filed Under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 14.03.2019 of the District Judge, Niligiris, passed in A.S. No.17 of 2014 confirming the Judgment and Decree dated 20.12.2013 of the Sub-Ordinate Judge, Udagamandalam, passed in O.S. No.107 of 2006.

For Appellant : Mr. R. Sivakumar

For Respondent : Mr. R. Mardhachalamurthy



JUDGMENT

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This second appeal has been filed against the Judgment and Decree dated 14.03.2019 passed by the the District Judge, Niligiris, in A.S. No.17 of 2014 confirming the judgment and Decree dated 20.12.2013 passed by the Sub-Ordinate Judge, Udagamandalam, in O.S. No.107 of 2006.

2.For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Trial Court. The appellant herein is the plaintiff and the respondent herein is the defendant in the suit. The brief facts leading to filing of this appeal by the appellant/plaintiff are as follows:

2.1 The case of the plaintiff is that, the suit property along with some other properties were jointly purchased by the plaintiff, defendant and their brother K.Shanmugam, as per Ex.A1-Sale deed and subsequent to the purchase, the plaintiff and defendant's father had constructed a superstructure in the respective sites and thereafter, the plaintiff and the defendant occupied and continued to live therein from the date of completion of the construction. Thereafter, the plaintiff and defendant had constructed 2nd floor on their respective buildings. As there was an oral Family arrangement between the



plaintiff and the defendant and several documents came into existence be

the plaintiff and the defendant during the life time of their parents thereby the

plaintiff had executed a sale deed dated 02.08.1984 in favour of the defendant in

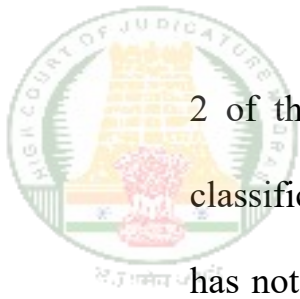
respect of land measuring 0.08 3/16 acres in R.S.No. 771/2 of Ootacamund Town,

as per Ex.A2 and another sale deed dated 28.04.1988 in favour of the defendant in

respect of the land ad measuring 00.01 acres in R.S.No. 771/2 of Ootacamund

Town as per Ex.A3.

2.2. Due to misunderstanding with regard to the right of way, drainage manhole, water pipe line, parking of vehicle, the defendant caused some inconvenience to the plaintiff and her portion and the same was settled out at the intervention of their mother by which an agreement dated 20.09.1992 was reduced in writing on 20.05.1992 as per Ex.A4. Accordingly, the plaintiff had transferred an extent of 00.09-3/16 acres in favour of the defendant under two different documents as per the said written agreement dated 20.5.1992. However, the defendant has not complied on her promise to transfer her half of the property in S.No. 771/3 in favour of the plaintiff by dividing the extent of 00.18-7/16 acres into two equal half shares inspite of repeated demands. Therefore, the plaintiff caused legal notice on 03.08.1999 to the defendant to comply the same and the defendant having received the notice, has sent a frivolous reply. Subsequently, the defendant had complied the clause 1 to 3 of the said agreement and as per clause



2 of the agreement, through the defendant has transferred the land, sin classification of property was wrongly noted in the said indenture, the plaintiff has not accepted the same. Thereby the defendant failed to fulfill the obligations cast upon her under the agreement dated 20.05.1992. Without performing her obligation, when the defendant is trying to put up a superstructure on the dispute property, the plaintiff caused legal notice dated 16.05.2006 to the Municipal Authorities calling upon them not to issue any permission in favour of the defendant and filed the suit seeking for specific performance of the agreement dated 20.05.1992.

2.3. The defendant has filed written statement in the suit stating that the suit is not maintainable both in Law and on facts. Since the alleged agreement dated 20.5.1994 is not an agreement and the same is impossible for performance and is not executable on the grounds that other than the property covered under the agreement is neither clear nor specific, hence it is to be dismissed. The alleged agreement dated 20.5.1992 is executed in favour of Late Manickammal and as such the right to sue, if any, in the event of non fulfillment of any obligations cast upon the said agreement accrues only to the said Manickammal and not to the plaintiff. The alleged suit agreement dated 20.5.1992 is barred by limitation since the suit has been filed beyond three years from the date of execution dated 20.05.1992- Ex.A4 as well as refusal Notice dated 31.08.1999 -Ex.A5. The



properties have been purchased by late Kulla Gowder in the name of pl:

defendant and K. Shanmugam under registered sale deed dated 30.04.1976-

Ex.A1. After the joint purchase of the suit property among others, their father late Kulla Gowder has constructed independent buildings and earmarked for the plaintiff and the defendant. Thereafter both the plaintiff and defendant have constructed second floor on the buildings earmarked, occupied and possessed by them. Ever since 21.1.1997 as per the entitlement, the plaintiff's property had been subdivided as R.S.No. 771/2A R.S. No. H-3-88 of Ootacamund town and the defendant's properties were subdivided as R.S.No. 771/2B and 771/3 of Ootacamund town and New R.S. No.H-3-81, H3-82, H-3-83 and H-3-89 and they are in exclusive possession and enjoyment of their respective subdivided portions as exclusive owners. The plaintiff illegally had laid underground drainage line on the right of drive way in the defendant's land and thereby had curtailed the full use of and the full extent of the right of way. Both the plaintiff and defendant had reciprocal obligations to be performed in the alleged agreement dated 20.5.1992 and the same was cancelled by Manickammal by executing affidavit dated 25.08.1999. Both of them had undertaken to abide by the decision of their mother Manickammal and in view of modification and cancellation of the alleged agreement dated 20.5.1992 by Manickammal. During her life time, the plaintiff is not entitled for any specific performance of the said agreement. The plaintiff till date never ready and willing to comply with the obligations on her part as per



alleged agreement. There was no mistake or wrong in the classification

property covered under Indenture of transfer dated 31.5.2000. Hence the suit is liable to be dismissed.

2.4. Based on the pleadings, the Trial Court had framed the following issues:

1. Whether the plaintiff is entitled to a decree as prayed for?

2. To what relief?

Further, the Trial Court has framed the following additional issues on 27.08.2013.

1. Whether the suit is barred by limitation?

2. Whether the suit schedule property described in the plaint is correct?

3. To what other reliefs?

2.5. Before the Trial Court, on the side of the plaintiff, the plaintiff's son was examined as P.W.1 and Ex.A1 to A16 were marked. On the side of the defendant, the D.W.1 and D.W.2 were examined and Ex.B1 to Ex.B23 were marked. After hearing both sides, the Trial Court dismissed the suit in O.S. No.107 of 2006, by Judgment and decree dated 20.12.2013 holding that the



plaintiff has not proved the agreement dated 20.05.1992 and the suit is bar

limitation. Being aggrieved by the said Judgment and decree, the plaintiff has filed A.S. No.17 of 2014 before the District Judge, Nilgiris. The Lower Appellate Court, after considering the submissions and evidence placed on record, has confirmed the findings of the Trial Court holding that the appellant/plaintiff has not proved the case as pleaded in the plaint and the suit is filed barred by limitation.

2.6. Aggrieved over the judgment and decree of the lower Appellate Court, the plaintiff has filed the present Second appeal.

3. At the time of admission, the following substantial questions of law have been framed.

1. Have the courts below committed an error by holding that the suit is barred by limitation?

2. Whether the findings of the court below that Ex.A4 is not a concluded contract is correct?

3. Whether the findings of the courts below that the appellant was not willing to perform her part of the contract is correct?



4. The learned counsel for the appellant/plaintiff submits that the finding of the Courts below that Ex.A4, the agreement dated 20.05.1992 is not a concluded contract and is not enforceable in law, is devoid of merits when the respondent/defendant has clearly admitted the execution of the agreement dated 20.05.1992 in her reply notices. Further, even in the reply notice dated 25.01.2005 though the respondent has denied the particular terms of the agreement, which is the subject matter of the present proceedings, has chosen to admit the execution of the agreement by stating that it is true that a meeting was convened at the instance of her mother and the terms were reduced into writing on 20.05.1992. In view of the admission of the respondent regarding the execution of the agreement dated 20.05.1992 and her claims that she had performed her part of contract, the Courts below ought not to have held that the agreement dated 20.05.1992 is not a concluded contract and it is not enforceable in law.

5. It has been further submitted that the Courts below has miserably failed to appreciate the fact that in her reply notice dated 19.10.1999-Ex.A7, though the respondent/defendant contended that the appellant/plaintiff is not entitled to get the property free of payment, she had expressed her intention to comply with the terms of the agreement dated 20.05.1992. In view of the averments contained in the reply notice dated 19.10.1999, the Courts below ought not to have held that the respondent has refused to perform her part of the agreement. The

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appellant/plaintiff has already conveyed half of her property in favour

defendant vide Sale Deeds dated 02.06.1984 and 28.04.1986 and hence, the respondent/defendant is bound to convey half of the property in S.No.771/3, which is situated near the delight bungalow, as mentioned in Ex.A4. However, the Courts below ought not to have held that the agreement dated 20.05.1992 is not a concluded contract and it is not enforceable in law. Thus, the appellant seeks to set aside the Judgments and Decree passed by the Courts below.

6.Per contra, the learned Counsel for the respondent/defendant submits that the plaintiff has sent a legal notice dated 31.08.1999 to the defendant seeking to execute the sale deed in performance of Ex.A4-Agreement dated 20.05.1992 and the defendant has sent reply notice dated 19.10.1999 refusing to perform the obligation of the plaintiff whereas the suit has not been filed within a period of three years from the date of the execution of the Ex.A4 dated 31.08.1999 as well as the date of refusal reply notice dated 19.10.1999. Since the suit has been filed beyond the limitation on 19.10.2006, the suit is barred by limitation.

7. It has been further submitted by the learned counsel for the respondent/defendant that the agreement dated 20.05.1992 had been executed by the plaintiff and the defendant in favour of their mother Manickammal, but the same is inexecutable in law for want of material particulars and impossible of



performance among others. Further, the said agreement had been subsequently canceled by Manickammal during her life time, to the knowledge of the plaintiff and other legal heirs of Late Kulla Gowder, due to non-compliance of the obligations in the said agreement casted upon the plaintiff by deposing and executing an affidavit before the Notary Public Mr. N. Krishnamurthy on 25.08.1999. Hence, the plaintiff is not entitled for any specific performance of the said agreement. Further, the suit is bad for non-joinder of all necessary parties to the alleged agreement dated 20.05.1992. Thus, he seeks to dismiss the second appeal filed by the appellant/plaintiff.

8.I have considered the submissions made on both sides and perused the entire materials available on record.

9. The plaintiff's allegation is that the defendant has not come forward to comply with the Agreement dated 20.05.1992, despite exchange of notices. Hence, the plaintiff has filed the suit for specific performance. It is an admitted fact that even though the alleged agreement was executed in the year 1992, the plaintiff has issued notice to the defendant only on 31.08.1999. Once again, the plaintiff has exchanged notices with the defendant between the year 2004 and 2005. Thereafter, the plaintiff has come forward to file the suit. Hence, it makes clear that the appellant/plaintiff was not willing to perform her part of



the contract. Further, in the cross examination of P.W.1, she has stated that t

has been filed based on the oral family arrangement effected in the year 1984 and 1986. However, there is no any recital in Ex.A4 with regard to the family arrangements and in order to prove the same, the plaintiff has not impleaded necessary parties in the suit and it is also said to have been cancelled and modified during the life time of their mother. Hence, it makes clear that Ex.A4 is not a concluded contract. Hence, Both the courts below have rightly rejected the prayer of the appellant holding that the suit for specific performance enforcing the agreement dated 20.05.1992 in the year 2006, shows that the plaintiff was not willing and ready to perform her part of contract which is not filed within a period of three years from the date of execution of the Ex.A4 dated 20.05.1992 and refusal reply dated 19.10.1999 sent by the defendant and filed beyond of three years as per the Limitation Act, and hence the suit is barred by the limitation. Further, the plaintiff has not proved Ex.A4-the subject agreement dated 20.05.1992 either by impleading the necessary parties in the suit and in the any evidence in support of the same. Hence, the first appellate Court upheld the Judgment and decree passed by the Trial Court

10. In view of the aforesaid discussions and observations, this Court is not inclined to interfere with the concurrent findings of the Courts below since there is no error in the finding of the Courts below. Further, the substantial



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question of law is answered that the suit is barred by limitation and both Courts have not committed any error on this findings and the plaintiff has not showed her ready and willingness to perform the agreement dated 20.05.1992 (Ex.A4), and further the finding that Ex.A4 is not concluded is also based on proper evidence and there is no error in the said findings. Hence, this Court is of the view that the suit is liable to be dismissed.

11. Accordingly, this second appeal is dismissed. Consequently, connected civil miscellaneous petition stands closed. No costs.

11.09.2025

Index:Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
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S.A. No.96



To:

1. The Section Officer,
VR Section, High Court, Madras.
2. The District Judge, Niligiris,
3. The Sub-Ordinate Judge, Udagamandalam.



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S.A. No.96



K. RAJASEKAR, J.

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