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S.A.No.75 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 23 / 09 / 2024

JUDGMENT PRONOUNCED ON : 02 / 01 / 2025

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.75 OF 2018
AND CMP NO.1650 OF 2018

S.R.K.Jayachandran (Died) ... Appellant /
1st Respondent /
Plaintiff

2.S.R.J.Kavitha
3.S.R.J.Pooja ... Appellants
(Sole appellant died, A2 and A3
are brought on record as LRs'
of deceased Sole Appellant
vide Order of Court dated
12.08.2024 made in CMP No.
16216 of 2024 in S.A.No.75
of 2018)

Vs.

B.Bhaskaran (Died)
1.B.Amulu (a) B.Ranjitha
2.B.Saravanan
3.G.Sandiya
4.B.Sathiya ... Respondents /
Appellants /
Defendants 2, 11, 12 & 13



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5.The Joint Sub Registrar – II
Arakonam,
Vellore District.

6.The Inspector General of Registration
Santhome,
Chennai – 600 005.

7.The Taluk Surveyor
Arakonam Taluk,
Taluk Office,
Arakonam.

8.The Village Administrative Officer
Arakonam Town,
Arakonam.

9.The Tahsildar
Arakonam Taluk,
Arakonam,
Vellore District.

10.The District Collector
Vellore,
Vellore District.

11.The Town Surveyor
Arakonam Town
Arakonam Municipal Office
Arakonam, Vellore District.

12.The Commissioner
Arakonam Municipality
Arakonam,
Vellore District.

... Respondents /
Respondents 2 to 9 /
Defendants 3 to 10



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PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated September 12, 2017 made in A.S.No.26 of 2016, by the II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District, reversing the Judgment and Decree dated January 22, 2016 made in O.S.No.108 of 2014 by the Subordinate Judge, Arakonam.

For Appellant : Mr.N.Murali Kumaran
Senior Counsel
for Mr.R.Gopinath

For Respondents 1 to 4 : Mr.K.Bijai Sundar

For Respondents 5 to 12 : Given Up

JUDGMENT

This Second Appeal is directed against the Judgment and Decree dated September 12, 2017 passed in A.S.No.26 of 2016 by the 'II Additional District and Sessions Court, Vellore at Ranipet, Vellore District' [henceforth 'First Appellate Court'] reversing the Judgment and Decree dated January 22, 2016 passed in O.S.No.108 of 2014 by the 'Subordinate Court, Arakonam' [henceforth 'Trial Court'].

2. Pending the Second Appeal, the 1st appellant herein / sole plaintiff in O.S.No.108 of 2014 passed away and his legal heirs were brought on record as legal representatives of the deceased 1st appellant / sole plaintiff.



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

PLAINTIFF'S CASE

4. The plaintiff entered into a Sale Agreement with defendants 1 and 2 on February 2, 2005 to purchase the Suit Property for Rs.6,00,000/- (Rupees Six Lakhs only), which was paid in full, and possession was handed over on the same date to the plaintiff by defendants 1 and 2. The defendants 1 and 2 also executed a General Power of Attorney on the same day in favour of plaintiff in respect of Suit Property. Based on the General Power of Attorney, plaintiff entered into a registered Sale Agreement with his mother - Janakiammal.

4.1. The defendants 1 and 2 promised to execute the Sale Deed after receiving the Title Deed pertaining to Suit Property pending before the Sub-Registrar Office. But they have failed to do so. On October 30, 2007, the defendants 1 and 2 on the pretext that they received the Title Deed from the Sub Registrar Office, sought for the Original Sale Agreement as well as the Original General Power of Attorney, which were



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under the plaintiff's custody, for perusal. The plaintiff believed them and handed over the same. Subsequently, the defendants 1 and 2 revoked the said Power of Attorney without plaintiff's knowledge and attempted to sell the Suit Property to third parties for a higher value. Despite several notices and demands, the defendants 1 and 2 neither executed the Sale Deed nor returned the consideration amount nor provided any compensation. The plaintiff is in possession of the Suit Property. Hence, the plaintiff seeks specific performance of the Sale Agreement and injunctions.

DEFENDANTS' CASE

5. Defendants 1 and 2 filed written statement which was adopted by defendants 11 to 13. In their written statement, they asserted that the plaintiff voluntarily rescinded the Sale Agreement dated February 2, 2005 and received refund of the sale consideration viz., Rs.6,00,000/- (Rupees Six Lakhs only) along with Rs.3,00,000/- (Rupees Three Lakhs only) as damages. They have denied that they handed over possession of the Suit Property to the plaintiff and claimed that the plaintiff fraudulently executed a Sale Agreement with his mother on May 4, 2007 without legal authority. They contended that the plaintiff was aware of the revocation of



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the Power of Attorney in 2005 itself. They further contended that the Suit is barred by limitation, lacks merit, and is an attempt to extort money.

They seek dismissal of the Suit. Further, the defendants 1 and 2 claimed mandatory injunction against 3rd defendant to delete the fraudulent Sale Agreement dated April 5, 2007 entered by the plaintiff with his mother from official records by way of a counter-claim.

TRIAL COURT

6. At trial, the plaintiff - Jayachandran was examined as P.W.1 and Ex-A.1 to Ex-A.10 were marked on the side of the plaintiff. On the side of the defendants, the defendant - Bhaskaran was examined as D.W.1 and Ex-B.1 was marked.

7. The Trial Court, after considering the evidence and materials available on record, held that there is no time period for performance specified in Ex-A.1 - Sale Agreement dated February 2, 2005 and therefore, the Suit is well within limitation. Further possession has been handed over. Further, the defendants 1 and 2 failed to prove their defence that they returned the advance money to the plaintiff along with



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damages of Rs.3,00,000/-. Further held that the mother of the plaintiff was not added as a party to the Suit and hence, the defendants' counter claim is not maintainable. Accordingly, Trial Court decreed the Suit except *qua* recovery of possession and dismissed the counter-claim of the Defendant Nos.1 and 2. The Suit *qua* recovery of possession was dismissed in view of its finding that the plaintiff is in possession and enjoyment of the Suit Property.

FIRST APPELLATE COURT

8. Feeling aggrieved, the defendants 2 and 11 to 13 preferred an appeal in A.S.No.26 of 2016 before the First Appellate Court, which allowed the Appeal and set aside the Trial Court's Judgment and Decree by concluding that the plaintiff failed to produce the Original Sale Agreement dated February 2, 2005 and also failed to establish the circumstances under which the said document was passed on to the defendants; that Section 66 of Indian Evidence Act, 1872 has not been complied with; that the plaintiff failed to discharge his burden of proof; that the presence of Original Sale Agreement and the Original General Power of Attorney with the defendants 1 and 2 would show that the defendant returned the sale consideration.



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SECOND APPEAL

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9. Feeling aggrieved, the plaintiff has preferred this Second Appeal, which was admitted on December 6, 2023 on the following substantial questions of law:

" (a) Whether the First Appellate Court is right in invoking presumption under Section 114(i) of Evidence Act while allowing the appeal?

(b) Whether the judgment and decree passed by the First Appellate Court is vitiated for its failure to comply with the mandatory provision of Order XLI Rule 31 of CPC? "

ARGUMENTS

10. Mr.N.Murali Kumaran, learned Senior Counsel for the appellant / plaintiff argued that the execution of Ex-A.1 - Sale Agreement dated February 2, 2005 and Ex-A.2 - General Power of Attorney dated February 2, 2005 are admitted by the defendants 1 and 2. The case of the defendants 1 and 2 is that they have refunded the advance amount of Rs.6,00,000/- to the plaintiff as well as a sum of Rs.3,00,000/- as damages. If it is so, the burden is upon the defendants 1 and 2 to prove their case.

10.1. He further submitted that no time was prescribed in Ex-A.1 - Sale Agreement for performance of contract. In such circumstances,



the plaintiff issued a notice on November 3, 2007 expressing his readiness and willingness to perform his part of contract. The defendants 1 and 2 sent a reply on January 24, 2008 containing false averments. Finally, the defendants 1 and 2 expressed their refusal for executing the Sale Deed as per Ex-A.1 - Sale Agreement on January 21, 2009. The Suit was filed on January 29, 2009 i.e., within three years from the date of refusal of the defendants 1 and 2. Hence, the Suit is perfectly in time as per Article 54 of the Limitation Act, 1963.

10.2. Further he submitted that based on Ex-A.2 - General Power of Attorney, the plaintiff executed a registered Sale Agreement dated May 4, 2007 in favour of Janagammal, mother of the plaintiff. Further, there is no notice before the alleged cancellation of General Power of Attorney. The Trial Court rightly concluded and partly decreed the Suit and thereby, directed the defendants 1 and 2 to execute the Sale Deed as per Ex-A.1 within three months, and also granted injunction. The First Appellate Court erroneously invoked the presumption under Section 114 of Indian Evidence Act, 1872 and allowed the appeal and set aside the Trial Court's Judgment and Decree by observing that only after receipt of the sale price contained in Ex-A.1 from the defendants, the plaintiff



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handed over the Original Sale Agreement and the Original General Power of Attorney. The said finding is erroneous in law. Accordingly, he prayed to allow the Second Appeal.

10.3. He would rely on the following authorities in support of his contentions:

- (i) Judgment of Hon'ble Supreme Court in ***Malluru Mallappa Vs. Kuruvathappa & Others [Civil Appeal No.1485 of 2020 decided on February 12, 2020]*** ;
- (ii) Judgment of Hon'ble Supreme Court in ***K.Karuppuraj Vs. M.Ganesan***, reported in ***(2021) 10 SCC 777*** ;
- (iii) Judgment of Hon'ble Supreme Court in ***Union of India & Another Vs. Ranchod & Others [Appeal (Civil) No.2108-2194 of 2003 decided on December 4, 2007]*** ;
- (iv) Judgment of this Court in ***Vellappa Gounder and 2 Others Vs. Palaniammal and Another***, reported in ***2001 (4) CTC 673*** ;
- (v) Judgment of this Court in ***Kannammal Vs. Kuppanna Gounder [C.M.A.No.191 of 1990 decided on August 29, 1996]*** ;



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- (vi) Judgment of this Court in ***Palanisami Pillai Vs. The Commissioner, HR & CE Department [L.P.A.No.16 of 1993 decided on February 27, 1997]*** ;
- (vii) Judgment of the Orissa High Court in ***Kaluni Dei Vs. Kanhei Sahu and Others***, reported in ***AIR 1972 ORISSA 28*** ;
- (viii) Judgment of Assam and Nagaland High Court in ***Fakar Ali Vs. Superintendent of Police and Registration Officer***, reported in ***AIR 1971 ASSAM AND NAGALAND 165***
- (ix) Judgment of this Court in ***Renuka Subbu Singh Vs. Kannaiyan and Others***, reported in ***2022 SCC OnLine Mad 1302*** ;
- (x) Judgment of this Court in ***Kanagambaram Ammal Vs. Kakammal and Others***, reported in ***2004 – 4 – L.W. 408*** ;
- (xi) Judgment of this Court in ***V.Rangaswamy and Others Vs. Arulmighu Koniamman Devasthanam and Another***, reported in ***2000 – 2 – L.W. 284*** ; and
- (xii) Judgment of the Calcutta High Court in ***Commissioner of Income Tax (C) II Vs. M.K. Foundation [ITA/14/2009 decided on February 9, 2003]***



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11. Per contra, Mr.K.Bijai Sundar, learned Counsel for the respondents 1 to 4 would submit that no ordinary prudent man would return the Original Sale Agreement and the Original General Power of Attorney unless after receiving the consideration paid under the said document. In this case, though the defendants failed to obtain a receipt for refund of advance money to the plaintiff, the handing over of the Original Agreement and the General Power of Attorney to the defendants itself is sufficient to conclude that the defendants returned the sale price received by them under Ex-A.1 - Sale Agreement. The First Appellate Court, after considering the entire facts and circumstances, rightly allowed the appeal and set aside the Trial Court's Judgment and Decree and there is no warrant to interfere with it. Accordingly, the learned Counsel prayed to dismiss the Second Appeal.

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

(i) Judgment of Hon'ble Supreme Court in ***I.S.Sikandar Vs. K.Subramani and Others***, reported in ***(2013) 15 SCC 27*** ;



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(ii) Judgment of this Court in ***P.Jayaseelan Vs. K.Selvam and Others [CRP (PD) No.356 of 2017 decided on July 19, 2023]*** ;

(iii) Judgment of the Bombay High Court in ***C.Padmawati Naidu and Others Vs. Friends Co-operative Housing Society Ltd., Nagpur and Others***, reported in ***2016 (4) Mh.L.J.289*** ;

(iv) Judgment of the High Court of Chhattisgarh in ***Durga Education Society Vs. Shakti Pictures Circuit Ltd.***, reported in ***2018 SCC OnLine Chh 692*** ;

(v) Judgment of the High Court of Kerala at Ernakulam in ***P.K.Abdul Salam vs. Abdul Jabbar and Others***, reported in ***MANU/KE/1896/2023*** ; and

(vi) Judgment of this Court in ***Home Missionary Society of India Vs. Vepery Auxiliary of The Home Missionary Society of India***, reported in ***(2015) 2 MLJ 42***

DISCUSSION

12. This Court has considered the submissions made on either side and perused the materials available on record in light of the Substantial Questions of Law.



13. There is no dispute with regard to execution of Ex-A.1

-Sale Agreement and Ex-A.2 - General Power of Attorney on February 2, 2005 and the passing of consideration under Ex-A.1 - Sale Agreement. In Ex-A. 1, there is no time period fixed for performance of contract *i.e.*, execution of Sale Deed. In Ex-A.1 - Sale Agreement, it is specifically mentioned that when the plaintiff calls upon the defendants 1 and 2 to execute the Sale Deed, they ought to do so. Further, the entire sale consideration of Rs.6,00,000/- has been paid by the plaintiff on the date of execution of Sale Agreement itself and there is no dispute with regard to the said fact.

14. The case of the plaintiff is that at the request of the defendants 1 and 2, he handed over the Original Sale Agreement and the Original General Power of Attorney. On the other hand, the case of the defendants 1 and 2 is that they cancelled the General Power of Attorney on November 25, 2005 itself and returned the advance amount of Rs.6,00,000/- along with a sum of Rs.3,00,000/- for damages, after receiving the Original Sale Agreement and the Original General Power of Attorney. In short, the defendants pleaded discharge of liability. In such a scenario, the burden is upon the person, who pleaded discharge of liability.



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In this case, neither the plaintiff nor the defendants examined any independent witnesses to prove their case. However, in view of the reasons stated *infra*, this Court concludes that the defendants 1 and 2 have discharged their onus of proof.

15. Specific Relief Act, 1963 is enacted based on the principle of equity. Hence, the conduct of the parties is relevant while deciding the Suit for Specific Performance of Contract. In this case, even according to the plaintiff, Original Sale Agreement and the Original General Power of Attorney Deed were handed over by the plaintiff to the defendants 1 and 2. If really the defendants 1 and 2 had not refunded the sale consideration received by them under Ex-A.1 Sale Agreement, no prudent man would have returned the Original Sale Agreement and the Original General Power of Attorney. The plaintiff offered an explanation that on October 30, 2007, the defendants 1 and 2 informed him that the Original Title Deed in Document No.1658/1997, which was pending before the Sub-Registrar Office, has been collected by them, and they sought for the Original Sale Agreement and Original General Power of Attorney for perusal and only at their request, the plaintiff handed over the same. It is hard to accept the said explanation given by the plaintiff, as no



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common prudent person would act so in such circumstances. If really the plaintiff handed over the documents at the request of defendants 1 and 2 without any refund of sale consideration on October 30, 2007, when the defendants 1 and 2 were evasive in executing the Sale Deed, the plaintiff would have filed the Suit immediately against them. However, the Suit at hand was filed belatedly after about two years from the date of handing over the documents. Yet another reason is that when according to the plaintiff, the entire sale consideration has been duly paid and no refund was received, there is no need for the plaintiff to wait for two years. Hence, the conduct of the plaintiff creates doubts in his case.

16. The First Appellate Court, placing reliance on Section 114 (i) of the Indian Evidence Act, 1872, rightly concluded that the defendants 1 and 2 returned the advance amount of Rs.6,00,000/- to the plaintiff and hence, the plaintiff has no cause of action against the defendants 1 and 2. There is no irregularity or illegality with the said findings of the First Appellate Court.

17. Further, admittedly, Ex-A.1 - Sale Agreement is an unregistered document. Hence, as per the Registration and Other Related Laws (Amendment) Act, 2001 (Act No. 48 of 2001), with effect from



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September 24, 2001, amended Section 53-A of the Transfer of Property

Act, 1882 came into force. After the said amendment, if possession is

handed over under an unregistered document, the purchaser cannot seek

injunction invoking Section 53-A of the Transfer of Property Act, 1882.

Moreover, the plaintiff did not produce any document to show that the

plaintiff is in possession and enjoyment of the Suit Property. There is no

evidence available on record to show that possession of the Suit Property

has been handed over to the plaintiff by the defendants 1 and 2 under Ex-

A.1. It is not believable and cannot be accepted on or after September 24,

2001. In these circumstances, the plaintiff is not entitled to get the relief of

injunction. Further, injunction against the statutory authorities, namely

Sub Registrar, is also not maintainable in view of Section 41 of the

Specific Relief Act, 1963. The Trial Court erred in appreciating Ex-A.1,

and erroneously decreed the Suit. The First Appellate Court has rightly

appreciated the facts and evidence and dismissed the Suit in which there is

no warrant to interfere.

18. This Court has perused the Judgment of the First

Appellate Court. The First Appellate Court has framed point for

consideration and answered them with appropriate reasoning. It has



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reasoned out as to why the Trial Court is not right in its conclusion and why it is differing from the Trial Court's verdict. It has stated that the Trial Court failed to note the conduct of the plaintiff throughout and that the plaintiff having not established his case, cannot pick holes from the defendants' case. Accordingly, it set aside the Judgment and Decree of Trial Court. This Court finds the Judgment of the First Appellate Court in accordance with Order XLI Rule 31 of Code of Civil Procedure, 1908.

19. There is no quarrel with the case laws relied on by the learned Counsel for the appellant / plaintiff. Substantial Questions of Law are answered accordingly in favour of the defendants 1 and 2 and against the plaintiff.

CONCLUSION:

20. In the result, the Second Appeal is dismissed. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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



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To
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- 1.The II Additional District and Sessions Judge
Vellore at Ranipet,
Vellore District.
- 2.The Subordinate Judge
Arakonam.



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R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.75 OF 2018

02 / 01 / 2025