



S.A.No.780 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2025

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.780 of 2018

Ayyasami Udayar

... Appellant

Vs.

1. Kumar
2. Jayabal
3. Angayee
4. Priya

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 23.06.2006 passed in A.S. No.10 of 2006, on the file of the Additional District Court (Fast Track Court-III), Vridhachalam, upholding the decree and judgment dated 04.04.2005 passed in O.S.No.84 of 2004, on the file of the Additional Sub Court, Vridhachalam.

For Appellant : Mr.C.Prabakaran
for Mr.V.Anand

For RR1, 3 and 4 : Mr.T.Murugamanickam
Senior counsel
for Mr.Sathya



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JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal. The plaintiff filed the suit for specific performance of contract dated 08.04.2002 (Ex.A1) or in the alternative to refund the advance amount paid by him to the defendants 1 to 3 together with interest.

2. For the sake of convenience, the parties are referred to as per their rank in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiff in a nutshell is as follows :

The suit properties belong to the joint family of the defendants 1 to 7. The defendants 1 to 3 agreed to sell the suit properties in favour of the plaintiff for a sale consideration of Rs.1,50,000/-. Accordingly, the sale agreement was entered into between the plaintiff and the defendants 1 to 3 on 08.04.2002 (Ex.A1) and a sum of Rs.1,25,000/- was paid



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towards advance by the plaintiff. The time for payment of the balance sale consideration of Rs.25,000/- was fixed as two years. The plaintiff was always ready and willing to perform his part of the contract and he requested the defendants 1 to 3 to execute the sale deed. Since the defendants 1 to 3 started evading, the plaintiff issued a legal notice dated 27.03.2004 (Ex.A2) to them to execute the sale deed on or before 07.10.2004. However, the defendants 1 to 3 did not send any reply. On the other hand, the defendants 4 and 5 in their reply notice (Ex.A8) have contended that since they have 1/7th share each in the suit properties, the sale agreement executed by the defendants 1 to 3 would not bind them. They have also contended that the suit properties are worth more than Rs.7,00,000/- and that there was no necessity to sell the suit properties in favour of the plaintiff. According to the plaintiff, the above contention of the defendants 4 and 5 are totally false. Hence the suit.

4. The defendants 1 to 3, 5 and 6 remained absent and were set *ex parte*. The suit was resisted by the fourth defendant on the following grounds:

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- i. The defendants 1 to 3 have not executed any sale agreement in favour of the plaintiff.
- ii. The suit properties is a joint family properties and all the defendants have equal shares. Hence, the defendants 1 to 3 do not have any right to enter into a sale agreement with the plaintiff.
- iii. The first defendant was not a Manager / Karta of the joint family consisting of the defendants 1 to 7.
- iv. In fact there was no necessity for alienating the suit properties for a sum of Rs.1,50,000/- which is worth Rs.7,00,000/-.

5. An Advocate was appointed as court guardian for the seventh defendant as he happened to be a minor. In his written statement, he had reiterated the contentions of the fourth defendant.

6. On the basis of the above pleadings, the trial Court framed the following issues:

"i. Whether the sale agreement dated 08.04.2002 is executed by the defendants 1 to 3 ?



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- ii. Whether the defendants can be directed to execute the sale deed as per the sale agreement dated 08.04.2002 ?*
- iii. Whether the sale agreement dated 08.04.2002 is not binding on the defendants 4 to 7?*
- iv. Whether the suit is barred by limitation ?*
- v. Whether the plaintiff is entitled to a decree for specific performance for refund of Rs.1,50,000/- with interest ?*
- vi. To what relief, the plaintiff is entitled?*

7. In the trial Court, the plaintiff examined herself and one another witness and marked Ex.A1 to Ex.A8. The fourth defendant examined himself. However, no documentary evidence was adduced on the side of the fourth defendant.

8. The learned trial court judge, after analysing the oral and documentary evidence on record, vide his decree and judgment dated 04.04.2005, dismissed the suit filed by the plaintiff with regard to the specific performance of contract. However, the trial court directed the defendants 1 to 3 to refund a sum of Rs.1,55,792/- together with interest at the rate of 6% per annum from the date of plaint till the date of



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realization. The trial court also created a charge over the properties of the defendants 1 to 3 for prompt repayment of decretal amount.

9. Aggrieved over the decree and judgment passed by the trial court judge, the plaintiff filed an appeal in A.S. No.10 of 2006 before the Additional District Court (Fast Track Court-III), Vridhachalam. The learned Additional District Judge (Fast Track Court-III), Vridhachalam, after analysing the oral and documentary evidence on record, upheld the findings recorded by the trial court judge vide his decree and judgment dated 23.06.2006, as against which the present second appeal is filed.

10. At the time of admission the following substantial questions of law were framed by my learned predecessor :

"(1)Whether the Courts below are correct in Law in dismissing the suit with reference to specific performance and ordering only the alternative relief without considering, that as per Section 15 of the Specific Relief Act, 1963, Specific Performance order against the respondents 1 to 3 who have signed the suit Agreement in



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(2)Whether the Courts below are correct in Law in not creating a charge over the entire properties in Ex.A.1, as the defendants 4 to 7 have not proved that they have a share in the suit property subject matter of Ex.A.17?”

11. Heard Mr.V.Anand, learned counsel for the appellant and Mr.T.Murugamanickam, learned senior counsel assisted by Mr.Sathyan, learned counsel for the respondents 1, 3 and 4.

12. It is an admitted fact that the suit properties are joint family properties of the defendants 1 to 7. The defendants 1 to 3 have alone executed the sale agreement in favour of the plaintiff. The trial court dismissed the suit on the ground that since all the sharers have not jointly executed the sale agreement in favour of the plaintiff, he cannot seek the relief of specific performance of contract. Mr.V.Anand, learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in ***Surinder Singh vs. Kapoor Singh (Dead) through legal heirs and***



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13. It is appropriate to extract Section 12 (2) of the Specific Relief Act, 1963

"12. Specific performance of part of contract.—

(1).....

(2)Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed by only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency."

"It is well established principle of equity that where, in the course of concluding a contract, a person has represented that he can grant a certain property, or is entitled to a certain interest in that property, and it later appears that there is a deficiency in his title or interest, the other party can obtain an



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14. However, in the instant case the plaintiff did not implead the defendants 1 to 3 as parties in the first appeal in A.S.No.10/2006 and only the defendants 4 to 7 have been shown as parties. Even in the present second appeal the defendants 1 to 3 have not been shown as respondents. In the circumstances, the plaintiff cannot seek for a specific performance of contract in respect of the shares of the defendants 1 to 3.

15. Mr.T.Murugamanickam, learned Senior Counsel for the respondents 1, 3 and 4 relied on the following decisions:

- a) ***Pemmada Prabhakar and Others vs Youngmen's Vysya Association and Others*** reported in ***(2015) 5 SCC 355*** ;
- b) ***Balmukand vs Kamla Wati and Others*** reported in ***1964 SCC Online SC 167*** ;

and contended that when the other sharers of the suit properties have not



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executed the agreement of sale, the said agreement of sale dated 08.04.2002 is not enforceable in law in view of Section 17 of the Specific Relief Act.

16. The provisions of Section 17 of the Specific Relief Act expressly states that the contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor, who does not have an absolute title and right upon the properties. It is relevant to extract Section 17 of the Specific Relief Act, 1963 which reads as under :

"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



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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."

17. In view of the provisions of the Section 17 of the Specific Relief Act, the agreement of sale entered into between the plaintiff and some of the co-sharers who do not have absolute title to the schedule property is not enforceable in law. Apart from that, the appellant has not also impleaded the defendants 1 to 3 either in the first appellate court or in the present second appeal and therefore, the plaintiff's claim in respect of the defendants 1 to 3 cannot be granted. Therefore, the substantial questions of law are answered against the appellant.

18. In the result,

- i. the Second Appeal is dismissed. No costs.



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ii. the decree and judgment dated 23.06.2006 passed in A.S. No.10 of 2006, on the file of the Additional District Court (Fast Track Court-III), Vridhachalam, and the decree and judgment dated 04.04.2005 passed in O.S.No.84 of 2004, on the file of the Additional Sub Court, Vridhachalam, are upheld.

28.02.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

1. The Additional District Court (Fast Track Court-III), Vridhachalam.
2. The Additional Sub Court, Vridhachalam.
3. The Section Officer, VR Section, High Court, Madras.

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