



WEB COPY

S.A.No.4 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25 / 09 / 2024

JUDGMENT PRONOUNCED ON : 02 / 01 / 2025

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.4 OF 2019ANDCMP NO.27 OF 2019

Kaliyannan	...	Appellant / Appellant / 3 rd Defendant
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Vs.

1.Sellammal	...	1 st Respondent / 1 st Respondent / Plaintiff
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2.Tamilselvi **	...	2 nd Respondent / 2 nd Respondent / 2 nd Defendant
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3.Rajalingam (Given Up) ***	...	3 rd Respondent / 4 th Respondent / 4 th Defendant
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[Second Appeal dismissed as abated against the 2nd respondent vide Order of this Court dated August 30, 2024 made in S.A.No.4 of 2019**

***** No relief sought against 3rd respondent. Hence 3rd respondent given up vide Order of this Court dated August 30, 2024 in S.A.No.4 of 2019]**

PRAYER: Second Appeal filed under Section 100 of the Code of Civil



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Procedure, 1908, praying to set aside the Judgment and Decree dated August 7, 2015 made in A.S.No.2 of 2013 on the file of the Sub Court, Namakkal, confirming the Judgment and Decree dated July 20, 2012 made in O.S.No.419 of 2005 on the file of the Principal District Munsif Court, Namakkal.

For Appellant : Mr.T.Dhanyakumar
For Respondent-1 : Mr.P.Ganesan
For Respondent-2 : Dismissed as abated vide this
Court's Order dated 30.08.2024
For Respondent-3 : Given Up

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated August 7, 2015 passed in A.S.No.2 of 2013 by the 'Sub Court, Namakkal' [henceforth 'First Appellate Court' for brevity] confirming the Judgment and Decree dated July 20, 2012 passed in O.S.No.419 of 2005 by the 'Principal District Munsif Court, Namakkal' [henceforth 'Trial Court' for brevity].

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

PLAINTIFF'S CASE



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3. The Suit Property was bequeathed to defendants 1 and 2

vide the Will dated July 6, 1979 executed by their father. The plaintiff entered into a registered Sale Agreement with the defendants 1 and 2 on December 2, 2004. The sale price was fixed at Rs.45,000/- (Rupees Forty Five Thousand only). The period fixed for performance of contract was on or before June 13, 2005. The plaintiff paid an advance of Rs.5,000/- on the same day viz., December 2, 2004 itself.

3.1. According to the plaintiff, the defendants 1 and 2 handed over possession of the Suit Property to the plaintiff. The plaintiff was ready and willing to perform his part of contract within the period mentioned in the Sale Agreement. The defendants 1 and 2 delayed their part of performance. Hence, the plaintiff issued a legal notice on June 3, 2005, calling upon the defendants 1 and 2 to execute the Sale Deed after receiving the balance sale consideration. The defendants received the said notice on June 4, 2005, but did not cause any reply. Hence, the plaintiff filed the Suit seeking the relief of Specific Performance of the agreement and permanent injunction.



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FIRST AND SECOND DEFENDANT'S CASE

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4. The first defendant filed written statement and the same was adopted by the second defendant. They denied the execution of Suit Sale Agreement as well as the passing of consideration and handing over possession under it. It is the case of defendants 1 and 2 that they borrowed money for their urgent requirements from various persons by executing promissory notes in their favour. Then the defendants 1 and 2 were unable to repay the loan and the lenders began demanding the money due and caused much trouble to defendants 1 and 2. Hence, with a view to escape from the lenders, they executed the Suit Sale Agreement sham and nominally, with no intention to sell the Suit Property. Moreover, the same is not acted upon. Hence, the defendants 1 and 2 sought to dismiss the Suit.

THIRD DEFENDANT'S CASE

5. The third defendant filed written statement stating that he has purchased ½ share in the Suit Property through Court Auction Sale in R.E.P. No.241/2005 and the plaintiff herein filed REA No.181/2006 in REP No.241/2005 praying not to confirm the sale. The said petition was dismissed and the sale was confirmed in favour of the third defendant in



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respect of 1/2 share in the Suit Property on December 28, 2005. Hence, the third defendant is not a necessary party to the Suit. Accordingly, he prayed to dismiss the Suit.

TRIAL COURT

6. At trial, the plaintiff – Chellammal was examined as P.W.1, two other witnesses were examined as P.W.2 and P.W.3 and Ex-A.1 to Ex-A.13 were marked on the side of the plaintiff. On the side of the defendants, the 2nd defendant – Tamilselvi was examined as D.W.1, 3rd defendant - Kaliyannan was examined as D.W.2 and Ex-B.1 to Ex-B.10 were marked.

6.1. The Trial Court, after considering the evidence and materials available on record, came to the conclusion that the Suit Sale Agreement is true and valid and accordingly, decreed the Suit for Specific Performance and directed the defendants 1 and 2 to execute Sale Deed in favour of the plaintiff after receiving the balance sale consideration of Rs.40,000/- within a period of one month. As far as the prayer *qua* permanent injunction is concerned, the Trial Court concluded that possession was not handed over to the plaintiff and accordingly, dismissed the Suit *qua* permanent injunction.



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FIRST APPELLATE COURT

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7. Feeling aggrieved by the Trial Court's Judgment and Decree, the 3rd defendant preferred an appeal in A.S.No.2 of 2013 while the 2nd defendant preferred an appeal in A.S.No.74 of 2013 before the First Appellate Court. The First Appellate Court jointly tried both the appeals and finally, concurred with the findings of the Trial Court and dismissed them.

SECOND APPEAL

8. Feeling aggrieved by the common Judgment and Decree passed by the First Appellate Court, the 3rd defendant has preferred this Second Appeal, which was admitted on January 7, 2019 on the following substantial questions of law:

"(1)Whether the plaintiff is entitled to the discretionary relief of Specific Performance in view of the finding of the Courts below that the plaintiff is not in possession of suit properties and the falsity of the case of the plaintiff regarding possession will disentitle the plaintiff to get the relief?"

(2)Whether the 3rd defendant is not entitle to the suit properties in view of the sale under Ex.B.4 through Court auction in E.P.No.241 of 2005?"



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(3)Whether the order made against the plaintiff by Executing Court in the previous suit in E.P.No.241 of 2005 on the file of the learned Additional District Judge, Namakkal, will disentitle the plaintiff to get the relief in the present suit and the same will operate as res judicata?”

8.1. It is apposite to mention here that the third defendant is none other than the Court auction purchaser of ½ share in the Suit Property in REP No.241/2005. The plaintiff herein filed REA No.181/2006 praying to raise the attachment caused in the above said Execution Proceedings. The Trial Court dismissed REA No.181/2006. Feeling aggrieved, the plaintiff herein preferred an appeal in A.S.No.94 of 2007 and the said appeal was allowed on February 29, 2012. It appears that the third defendant, who is the petitioner in REP No.241/2005, did not prefer any appeal over the decision in A.S.No.94 of 2007.

8.2. Further, after filing this Second Appeal, the second defendant, namely Tamil Selvi passed away. The appellant did not take steps to bring the legal heirs / legal representatives of the second defendant. Hence, this Second Appeal against the second respondent / second defendant was dismissed as abated *vide* this Court's Order dated August 30, 2024.

8.3. Furthermore, the appellant did not seek any relief in this



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Second Appeal against the third respondent / 4th defendant. Thus, 4th defendant has been given up. The said fact has been recorded by this Court *vide* Order dated August 30, 2024.

ARGUMENTS

9. The learned Counsel for the appellant / 3rd defendant appeared before this Court through Video-Conferencing Mode and submitted that the appellant did not seek any relief against the third respondent/4th defendant. Hence, the 4th defendant was given up. The aforesaid fact has been recorded in this Second Appeal. Further, the learned counsel submitted that both the Courts below concurrently held that the Suit Sale Agreement is true and valid and fairly prayed to pass orders based on the records.

10. Learned Counsel for the first respondent / plaintiff submitted that the Trial Court as well as the First Appellate Court concurrently held that the Suit Sale Agreement is true and valid. The said factual findings were recorded based on evidence and documents. There is no substantial question of law involved in this Second Appeal. Accordingly, he prayed to dismiss the Second Appeal.



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DISCUSSION

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11. This Court has considered both sides' submissions and perused the evidence available on record.

12. One Subramanian filed a Money Suit in O.S.No.373 of 2005 on the file of Additional District Munsif Court, Namakkal against one Sudhamadhi and 4th defendant – Rajalingham. The said Suit was decreed and the Suit Property herein was attached in the said Suit at the instance of the plaintiff therein. The plaintiff herein filed E.A.No.630 of 2006 in E.P. No.89 of 2006. The said EA was dismissed, aggrieved by which the plaintiff herein filed appeal in A.S.No.94 of 2007 and the same was allowed and Judgment dated February 29, 2012 ordering the attachment to be raised was passed (Ex-A.12 and Ex-A.13). In short, the Suit Property herein was relieved from the execution proceedings in that Suit. The said Subramaniam filed another Suit in O.S.No.242 of 2005 on the file Additional District Munsif Court, Namakkal and the same was decreed. The plaintiff therein filed execution proceedings and the appellant / 3rd defendant herein – Kaaliannan purchased the property in R.E.P. No.241 of 2005. The plaintiff herein filed E.A.No.181 of 2006 praying to set aside the Court auction sale and the same was dismissed on



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January 29, 2007 (Ex-B.1 and Ex-B.2). Feeling aggrieved the plaintiff herein filed an appeal in A.S.No.95 of 2007 (Ex-B.3) and the same was allowed on February 29, 2012 and the sale was cancelled. It appears that the 3rd defendant did not prefer any appeal. Hence the Judgment and Decree passed in A.S.No.95 of 2007 reached finality and the 3rd defendant's claim has been negated.

13. Ex-A.1 - Sale Agreement is a registered agreement and its execution is proved. The Trial Court as well as the First Appellate Court, disbelieved the case of plaintiff that possession was handed over to the plaintiff under Ex-A.1. However, both the Courts concurrently held that Ex-A.1 – Suit Sale Agreement is true and valid, and accordingly, decreed the Suit for Specific Performance.

14. Pending this Second Appeal, the second respondent / second defendant passed away. The appellant / 3rd defendant did not take any steps to bring on record the legal heirs of the second respondent/second defendant. The relief against the third respondent/4th defendant was given up.

15. In these circumstances, in view of the concurrent findings recorded by the First Appellate Court and the Trial Court, this Court is of the considered view that the Second Appeal must fail. The Substantial



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Questions of Law framed in this Second Appeal are answered accordingly
in favour of the plaintiff and against the third respondent / 4th defendant.

RESULT

16. Resultantly, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

02 / 01 / 2025

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

To

1.The Subordinate Judge
Subordinate Court
Namakkal.

2.The Principal District Munsif
Principal District Munsif Court
Namakkal.

R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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