



S.A. No.804 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16.07.2025
<i>Pronounced on</i>	28.07.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

S.A. No.804 of 2019

Sundarambal

.. Appellant

versus

Sulekha

.. Respondent

Prayer: Second Appeal is filed under Section 100 CPC, against the judgment and decree dated 07.12.2017 made in A.S.No.4 of 2014 on the file of I Additional District and Sessions Judge, Tiruppur, confirming the judgment and decree dated 05.06.2013 made in O.S.No.250 of 2009 on the file of the Subordinate Court, Tiruppur.

For Appellant : Mr. M. Sivavarthan
For Respondent : Mr. B. Bharath Kumar
for Mr. V. Nicholas



S.A. No.804 of 2019

WEB COPY

JUDGMENT

In this Second Appeal, challenge is made to the judgment and decree dated 07.12.2017 passed in A.S.No.4 of 2014 on the file of I Additional District and Sessions Court, Tiruppur, confirming the judgment and decree dated 05.06.2013 made in O.S.No.250 of 2009 on the file of the Subordinate Court, Tiruppur.

2. The appellant is the defendant in O.S.No.250 of 2009 on the file of the Subordinate Court, Tiruppur. The respondent/plaintiff filed the suit against the appellant/defendant for specific performance and cost of suit.

3. For the sake of convenience, the parties herein after referred to their nomenclature before the trial Court.

4. The case of the plaintiff is that Tamil Nadu Housing Board allotted the suit property to the defendant by an order dated 18.02.1991. The defendant agreed to sell the suit property to the plaintiff, for a sale



S.A. No.804 of 2019

consideration of Rs.1,23,000/- on 20.11.1992. As per the terms of agreement, the plaintiff has to pay monthly installments at Rs.1405/- for 168 months to the Tamil Nadu Housing Board. After payment of entire installment, the defendant agreed to Execute a sale deed in favour of the plaintiff. Accordingly, the plaintiff paid monthly installments at Rs.1405/- for 168 months totalling Rs.2,36,040/-. Further the plaintiff paid property tax, water tax and all Government dues. The plaintiff has been residing in the suit property for 17 years. After payment of entire installments, when the plaintiff approached the defendant for execution of sale deed, the defendant demanded an additional amount of Rs.50,000/- which the plaintiff agreed to pay. The defendant instructed the plaintiff to make necessary arrangement for execution of sale deed. Hence the plaintiff on 12.07.2007 purchased stamp papers for Rs.2,580/. Further the defendant executed an affidavit before the Notary public for identification. However, the defendant after obtaining sale deed from Tamil Nadu Housing Board in her favour on 18.03.2009, refused to execute a sale deed in favour of plaintiff. Therefore the plaintiff issued a legal notice dated 04.07.2009 to the defendant to perform her part of the

Page 3 of 20



S.A. No.804 of 2019

WEB COPY

contract. Though the defendant issued a reply notice dated 08.07.2009 did not come forward to execute the sale deed. Hence the suit.

4.1. The suit was resisted by the defendant by stating that she had received a sum of Rs.1,23,000/- as loan amount from the plaintiff and at the time of borrowing the loan amount, she had signed in blank stamp paper and blank paper as security for loan transactions. The plaintiff had forged the suit sale agreement dated 20.11.1992 with the help of witness and scribe by misusing the said blank stamp papers and blank papers containing defendant's signature. On 23.03.1991 the defendant and Tamil Nadu Housing Board (TNHB) had entered into Lease-cum-sale agreement deed in respect of the suit property. As per the said lease cum sale agreement deed dated 23.3.1991, the defendant had to pay the initial amount to TNHB and to pay the remaining sale price by way of 168 equal monthly installments, each at Rs.1405/-. As per the said lease-cum-sale agreement, the defendant would get the title of the suit property only on payment of all 168 monthly installments and till such time, her right towards the suit property was only as lessee. Therefore, the



S.A. No.804 of 2019

WEB COPY

defendant, who was a lessee, could not enter into the alleged sale agreement dated 20.11.1992, which is not maintainable as per the terms of lease cum sale agreement. According to her, the plaintiff's husband and the her husband are friends. On 20.11.1992 the defendant and her husband had borrowed Rs.1,23,000/- from the plaintiff and her husband and this defendant had leased out the suit property to plaintiff's occupation. From 20.11.1992 the plaintiff and her husband had been in possession and enjoyment of the suit property as lessee. The defendant had paid all 168 installments to TNHB, in person and through plaintiff. After payment of all 168 installments, the defendant approached the TNHB for getting the sale deed and accordingly got the registered sale deed dated 18.03.2009 from TNHB. The plaintiff had also taken the defendant to an Advocate office for obtaining her signatures for lease purpose. But the defendant did not see the said Notary public advocate and did not know the contents of forms in which she signed. After receiving the sale deed dated 18.03.2009, the defendant and her husband have arranged the amount Rs.1,23,000/- and approached the plaintiff and requested her to receive the said loan amount Rs.1,23,000/- and to



S.A. No.804 of 2019

WEB COPY

vacate and surrender the vacant possession of the suit property. But the plaintiff had, with the help of witnesses and scribe, forged the suit sale agreement by misusing the signatures obtained from her in blank stamp papers and blank papers and issued the legal notice and filed the above suit. Hence the suit is liable to be dismissed.

4.2. In order to prove her case, the plaintiff examined herself as P.W.1 and three other witnesses and marked 25 documents. On the side of the defendant, the defendant examined herself as D.W.1 and two other witnesses and marked 4 documents.

4.3. The trial Court, based on the materials placed on record, decreed the suit in favour of the plaintiff, vide its order dated 05.06.2013. Aggrieved by this, the defendant preferred an appeal in A.S. No.4/2014 before the I Additional District and Sessions Court, Tiruppur. The learned I Additional District and Sessions Judge, Tiruppur, dismissed the appeal suit, vide her judgment and decree dated 07.12.2017 by confirming the judgment and decree passed in O.S. No.250/2009 by the



S.A. No.804 of 2019

trial court. Challenging the same, the defendant is before this Court by way of filing a regular Second Appeal.

5. The Second appeal has been admitted on the following substantial questions of law.

"1. Whether the Courts below are justified in granting decree of specific performance based on the alleged sale agreement dated 20.11.1992 (Ex.A1), when admittedly the appellant was not the owner of the suit property on the date of the alleged sale agreement, is sustainable in law?"

2. Whether the first appellate court is justified in applying section 43 of the Transfer of Property Act, when the respondent has not pleaded that the appellant has fraudulently or erroneously represented that she was the owner of the suit property during the year 1992, is sustainable in law?"



S.A. No.804 of 2019

WEB COPY

3. *Whether Courts below are justified in granting the discretionary relief of specific performance when the respondent has approached the court belatedly, is sustainable in law?*

4. *Whether the Courts below are justified in granting the relief of specific performance contrary to section 17 of the Specific Relief Act when the respondent is well aware that the appellant had no title to the suit property on the date of the alleged sale agreement dated 20.11.1992 (Ex.A1), is sustainable in law?*

5. *Whether the Courts below are justified in granting decree of specific performance against the appellant without appreciating the oral evidence and documentary evidences in its entirety but appreciating the evidence at fraction is sustainable in law?"*

6. The learned counsel appearing for the appellant would submit that the sale agreement dated 20.11.1992 marked as Ex.A1 is a forged



S.A. No.804 of 2019

WEB COPY

document and cannot be relied upon for granting the relief of specific performance. He would further submit that, at the time of borrowing the loan for a sum of Rs.1,23,000/- from the plaintiff, the defendant had signed in blank stamp paper and blank paper as security for loan transaction. His further submission is that the suit property is developed by the Tamil Nadu Housing Board, Coimbatore, and it was allotted to the defendant. As per the terms of the lease-cum-sale agreement dated 23.03.1991 entered into between the defendant and TNHB marked as Ex.B4, the defendant had to pay the initial amount and the remaining sale price to be paid in 168 equal monthly installments at Rs.1,405/-. Only after payment of 168 monthly installments, the appellant will get title to the suit property. Therefore, the alleged sale agreement (Ex.A1) in favour of the respondent/plaintiff is invalid and cannot be enforced in view of the fact that on the date of sale agreement, i.e., 20.11.1992, the suit property belonged to the Tamil Nadu Housing Board and hence, the appellant/defendant had no title or saleable interest in the suit property. Moreover, the appellant/defendant had never agreed to sell the suit property. He would further contend that the first appellate court has



S.A. No.804 of 2019

WEB COPY

wrongly applied the provision under Section 43 of the Transfer of Property Act and thereby granting the decree of specific performance in favour of the plaintiff is unsustainable. In fact, the plaintiff has not pleaded that the appellant has fraudulently or erroneously represented that she was the owner of the suit property during the year 1992 and therefore, Section 43 of the Transfer of Property Act has no application in the facts of the present case. Therefore, the findings rendered by the first appellate court that on the date of filing the suit, the defendant had valid title to convey the suit property in favour of the plaintiff and by virtue of Section 43 of the Transfer of Property Act, the defendant is estopped from denying that he had no transferable right, are erroneous and contrary to law.

6.1. His further submission is that, to seek the relief of specific performance, the vendor must have title to the suit property on the date of agreement to sell. As per Section 17 of the Specific Relief Act, a contract to sell a property by a person who has no title is not specifically enforceable. In the present case, in the year 1992, the plaintiff is well



S.A. No.804 of 2019

WEB COPY

aware that the suit property belonged to the Tamil Nadu Housing Board and therefore, the defect in execution of the alleged sale agreement dated 20.11.1992 cannot be cured by the fact that subsequently, Tamil Nadu Housing Board had executed sale deed dated 19.05.2009 marked as Ex.A10 in favour of the defendant. He would further contend that even according to the plaintiff, the 168th installment payable to the Tamil Nadu Housing Board in respect of the suit property was paid during July 2007 and the respondent issued the legal notice under Ex.A21 only on 04.07.2009 demanding the defendant to execute the Ex.A1 sale deed in terms of the alleged sale agreement dated 20.11.1992. The delay of two years has not been explained by the plaintiff, consequently, the readiness and willingness of the plaintiff has not been established. The courts below ought to have appreciated the facts of the case in proper perspective manner, which was not done in the present case and therefore, the judgment and decree rendered by the trial court as well as the first appellate court is liable to be set aside.



S.A. No.804 of 2019

WEB COPY 7. *Per contra*, the learned counsel appearing for the respondent/plaintiff submits that the plaintiff has filed the suit for specific performance of contract to execute the sale deed on the basis of the sale agreement (Ex.A1) dated 20.11.1992. Under Ex.A1, it was agreed between the parties that the plaintiff has to pay monthly installment of Rs.1405/- for 168 months and that after completion of payment of monthly installment, the Tamil Nadu Housing Board would execute the sale deed in favour of the defendant and in turn the defendant would execute the sale deed in favour of the plaintiff and delivered possession of suit property on the same day i.e. 20.11.1992 and that on the date of agreement, the defendant has handed over all the papers to the plaintiff, which is evident from Ex.A2 to Ex.A7. In pursuant to the said agreement, the plaintiff has paid monthly installments at the rate of Rs.1,405/- to the Tamil Nadu Housing Board as per receipt under Ex.A7. The plaintiff is in possession of allottee pass book under Ex.A6. There is no evidence to show that the defendant has paid the monthly installments to the Tamil Nadu State Housing Board. After payment of entire installments, the plaintiff approached the defendant for execution of sale



S.A. No.804 of 2019

WEB COPY

deed. On 12.07.2007 the plaintiff purchased stamp papers for Rs.2,580/- as agreed by the defendant. While so, the defendant obtained the sale deed from Tamil Nadu Housing Board in her favour on 18.03.2009 and refused to execute the sale deed infavour of the plaintiff. Hence, the plaintiff issued a legal notice on 04.07.2009 to the defendant to perform her part of contract for which reply notice was sent by the defendant on 08.07.2009 disowning the sale agreement. Hence, the plaintiff filed the above suit.

7.1. His further submission is that the trial court as well as the first appellate court has rightly concluded that the plaintiff is entitled for the relief of specific performance by invoking the provisions under Section 43 of the Transfer of Property Act and therefore, there is no perversity or infirmity in the judgment and decree passed by the courts below, which warrants interference by this Court. Hence, the learned counsel for the respondent/plaintiff prays for dismissal of the Second Appeal.



S.A. No.804 of 2019

WEB COPY 8. Heard on both sides. Records perused.

9. There is no dispute that the defendant was only having lease cum sale agreement at the time of entering into Ex.A1 sale agreement. It is also not in dispute that the original lease cum sale agreement came into existence in the year 1991 and the defendant was allotted the suit property by the Tamil Nadu Housing Board on 18.02.1991 executing the lease cum sale agreement. It is the specific contention of the learned counsel for the appellant/defendant that at the time of Ex.A1 sale agreement between the plaintiff and the defendant, the defendant was not having any right to execute the sale agreement and brought to the notice of this Court that as per the terms of the lease cum sale agreement there is a total bar to alienate the property **for a period of** and the very transaction was bad at the inception as the same was opposed to law. Therefore, the alleged agreement to sell is not an enforceable contract. The learned counsel would also contend that Section 43 of the Transfer of Property Act, will not come into operation when the transferor having no interest in the property transfers the same but subsequently acquires



S.A. No.804 of 2019

WEB COPY

interest in the said property, the purchaser may claim the benefit of such subsequent acquisition of the property by the transferor and since the plaintiff was aware of the fact that the defendant was only having lease cum sale agreement at the time of entering into sale agreement and therefore, the said transaction cannot be construed as a fraudulent or erroneous. Hence, the plaintiff is not entitled to the relief of specific performance.

10. In the case on hand, the suit was filed after the lease period. No doubt, there is a non alienation clause and an agreement of sale was executed. If suit is filed within the period of non alienation clause, then there would have been force in the contention of appellant/defendant's counsel. If non alienation clause for a period was imposed, it is only after the lapse of the said period, the suit for specific performance was filed. Therefore, it cannot be said that there has been a breach of non alienation clause (Ref: *Syed Zaheer and others vs. C.V.Siddaveerappa* (ILR 2010 Kar Page 765)). Furthermore, the materials on record would clearly establish the fact that the plaintiff was put in possession of the

Page 15 of 20



S.A. No.804 of 2019

WEB COPY
suit property and future installments were paid by him, during subsistence of lease cum sale agreement. Therefore, the plaintiff is entitled to have relief under Specific Relief Act (**Ref: Smt. H.Lalithamma and another vs. Venkateshulu (2015(2) KCCR 1210)**). Moreover, in a case of suit for specific performance, agreement between the parties to sell the land, itself is not creating any interest of buyer in land nor amounting to sale. Agreement to sale simply enabling buyer to claim specific performance of agreement on proving terms "Sale" creating interest in land once accomplished, distinct from 'agreement to sale' – Sale agreement between parties cannot be treated as actual alienation or transfer of land (Ref: **Balawant Vithal Kadam vs. Sunil Baburao Kadam (AIR 2018 SC Page 49)**).

11. Therefore, the suit sale agreement between the plaintiff and the defendant cannot be treated as actual alienation or transfer of land. Since the suit is filed after the period lease cum sale agreement and the same was not filed prior to lease cum sale agreement, the relief of specific performance of agreement can be granted to the plaintiff. While granting



S.A. No.804 of 2019

WEB COPY

the specific performance decree, the Court has to examine whether any hardship is caused to the defendant or to the plaintiff. The plaintiff has substantiated his case by producing the documents which existed between the plaintiff and the defendant. The entire sale consideration has been received by the defendant and possession was delivered to the plaintiff. Moreover, the future installments were paid by the plaintiff to Tamil Nadu Housing Board. Hence, the discretion cannot be exercised in favour of the defendant. While exercising the discretion, it has to be exercised judiciously and not arbitrarily. If it is exercised in favour of the defendant, it amounts to arbitrariness considering the material on record. Furthermore, on reading of Section 43 of the Transfer of Property Act, it is clear that if any transfer is made by unauthorised person who subsequently acquired interest in property, law of estoppel is applies, if sale is made for consideration, the said Section shall impair the right of transferees in good faith for consideration. In the case on hand, no doubt the defendant was having limited interest based on lease cum sale agreement and not having absolute sale deed, but represents that he is authorised to transfer, now he cannot contend that on the date of

Page 17 of 20



S.A. No.804 of 2019

WEB COPY

execution of sale agreement not having any right to alienate. Hence, I am of the opinion that the defendant is estopped from taking the defence of Section 43 of Transfer of Property Act, which also enures the benefits in favour of the plaintiff.

12. Hence, I do not find any error in granting the relief of specific performance in favour of the plaintiff. Hence, the substantial questions raised in this Second Appeal are answered against the appellant/defendant.

13. Having considered the material on record, both oral and documentary, and also the reasoning assigned by the courts below, I am of the opinion that there is no merit in this Second Appeal.

14. In the result,

i. The Second Appeal is dismissed. No costs.



S.A. No.804 of 2019

WEB COPY

ii. The judgment and decree dated 07.12.2017 made in A.S.No.4 of 2014 on the file of I Additional District and Sessions Judge, Tiruppur, confirming the judgment and decree dated 05.06.2013 made in O.S.No.250 of 2009 on the file of the Subordinate Court, Tiruppur, is upheld.

28.07.2025

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

bga

To

1. The I Additional District and Sessions Judge, Tiruppur,
2. The Subordinate Judge, Tiruppur.
3. The Section Officer, VR Section, High Court, Madras.



WEB COPY



S.A. No.804 of 2019

K.GOVINDARAJAN THILAKAVADI,J.
bga

Predelivery judgment in

S.A. No.804 of 2019

28.07.2025