



S.A.(MD)No.427 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 29.04.2025

Pronounced on : 13.05.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

S.A(MD)No.427 of 2004

1.S.Babulal

2.Ranjithkumar

3.Dineshkumar

4.Sureshkumar

(A1 to A3 represented by their
Power Agent / A4)

(The 4th Plaintiff has been recognized
as power agent of other plaintiffs 1 to 3
by order dated 19.07.2000 in I.A.No.530 of 2000
on the file of the District Munsif of Kumbakonam.)

... Appellants / Appellants / Plaintiffs

Vs

1.Sulochana

2.R.Mallika

... Defendants / Respondents / Respondents



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Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code against the decree and judgment dated 20.10.2003 in A.S.No.32 of 2003 on the file of the Additional Subordinate Judge, Kumbakonam, confirming the judgment and decree dated 28.10.2002 passed in O.S.No.324 of 2000 on the file of the II Additional District Munsif of Kumbakonam.

For Appellants : Mr.R.Subramanian

For R1 and R2 : No appearance

JUDGMENT

This Second Appeal is filed against the decree and judgment dated 20.10.2003 in A.S.No.32 of 2003 on the file of the Additional Subordinate Judge, Kumbakonam, confirming the judgment and decree dated 28.10.2002 passed in O.S.No.324 of 2000 on the file of the II Additional District Munsif of Kumbakonam.

2. The suit property originally belongs to one Govindasamy Pillai, he executed a registered will dated 20.01.1954, bequeathing the suit property to his only son called Thangavel Pillai. After the death of Govinda Pillai, Thangavel Pillai became the owner of the property.



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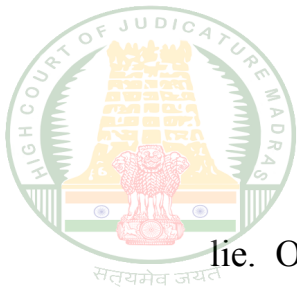
Thangavel Pillai was married to Amsavalli and Sulochana. There were no issues. The plaintiff entered into an agreement of sale with Amsavalli and the first defendant on 17.10.1991. The sale price was fixed at Rs. 4,20,001/-. Rs.70,001/- was received as advance. Later on 30.11.1991, Amsavalli and the first defendant received Rs.30,000/-. As per the agreement dated 03.09.1989 and 16.10.1989, the plaintiff approached the first defendant and the Amsavalli for execution of the sale deed. At that time, he came to know that in respect of the second item of the suit property, litigation was pending. So, later, sale agreement was revised by incorporating the recital that time for the specific performance was fixed within one year after the disposal of the litigation pending before the Madras High Court. Later, Amsavalli died leaving behind the second defendant as adopted daughter. The second defendant is bound by the agreement dated 17.10.1991. The plaintiffs were ready and willing to perform their part of the contract without waiting for the disposal of the litigation, but no information was given by the defendants regarding the pendency of the litigation. The defendants issued a reply notice on 26.09.2000 which contained false and untenable allegations.



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3. Originally, the plaintiffs were the tenant in respect of the suit properties. But from the date of the agreement he is in possession as intending purchaser. On 16.07.2000, the defendants through the husband of the second defendant came to the suit property and threatened the plaintiffs to vacate the premises within a week. So the suit is laid for permanent injunction restraining the defendants from anyway interfering into the plaintiff's possession and enjoyment of the property.

4. In the written statement filed by the first defendant adopted by the second defendant, the original ownership of the property is admitted. Similarly, the sale agreement is also admitted. But the sale agreement dated 17.10.1991 is barred by limitation. So the plaintiffs are not entitled to maintain the suit on the basis of the time barred agreement. The plaintiffs were not ready and willing to perform their part of the contract. The contra pleading is denied through the reply notice dated 29.06.2000, they have given the particulars of the litigation. The alleged threat dated 14.06.2000 is false. The plaintiff ought to have filed a suit for specific performance and not for the relief of permanent injunction. The defendant being the true owner, the suit for permanent injunction will not



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lie. On the basis of the plaint, the trial Court formulated two issues.

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i) whether the plaintiff is entitled for the decree of permanent injunction ?

ii) To what other reliefs ;

5. On the side of the plaintiffs one witness was examined and three documents were marked. On the side of the defendant, second defendant was examined as D.W.1 and no document was marked. At the conclusion of the trial process, the trial Court dismissed the suit without any cost. Against which, appeal was preferred before the III Additional Subordinate Judge, Kumbakonam in A.S.No.32 of 2003. The appellate Court confirmed the judgment and decree passed by the trial Court and dismissed the appeal without any cost. Against which, the plaintiffs filed the present Second Appeal.

6. At the time of admission, the following substantial question of law is framed :

i) Whether in law the Courts below were not wrong in refusing to grant the appellants a decree for injunction in pursuance of Section 53A of the Transfer of Property Act ?



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7. As mentioned in the pleadings of the parties, it is not in dispute that a sale agreement under Ex.A1 was entered into between the wives of Thangavel Pillai namely Amsavalli and Sulochana and the plaintiffs herein on 17.10.1991. By which it is admitted that the plaintiffs were in possession of the property as a tenant. Considering the above said position, it was agreed between the parties that a sale agreement was entered on 03.09.1989 by which the total sale price was fixed at Rs.4,20,001/- as stated above.

8. On the date of agreement, the defendant received Rs.55,001/- apart from Rs.10,000/- when the plaintiffs approached the defendant for execution of sale deed, in pursuance of the agreement dated 03.09.1989, it came to know to the parties with respect of a vacant site, lies in front of the property, litigation was pending. So the parties decided to execute sale deed after the litigation is over. So a fresh agreement was entered, incorporating the above said issue as already agreed. Apart from that the receipt of money was also stated.



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9. It is further agreed that within one year from the date of disposal of the litigation, sale deed must be executed. The continuance of the possession by the plaintiffs is also endorsed and admitted in the agreement. Other customary recitals were also made. So this document is not denied by the parties. So also the original agreement dated 03.09.1989. Now the problem started according to the plaintiffs, when the defendant through the husband of the second defendant made threat to the plaintiff to vacate the premises. Based upon which, the present suit has been filed. It is the cause of action invoked by the plaintiffs by filing the suit. After Ex.A1, on 12.06.2000, the plaintiffs issued a notice demanding execution of the sale deed, moreover, the stage of the litigation. Apart from that some trouble was also expressed in making repair works in the building, because of the non completion of sale process. In Ex.A3 - the reply, dated 28.06.2000, it has been stated that the Second Appeal in S.A.No.1061 of 1984 is still pending before the High Court and sale agreement dated 17.10.1991 is barred by limitation. So the plaintiffs are not entitled for any relief and the plaintiffs should not make any repair. The reply is dated 28.06.2000, now the present suit on 19.07.2000, seeking a mere permanent injunction.



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10. So it is seen that only plea of limitation was taken up by the defendants regarding the agreement. The possession is not derived in whatever nature. The trial Court is of the view that the cause of action stated in the plaint is not established and no permanent injunction can be granted against a true owner. It is a short finding. The trial Court is of the view that the plaintiffs without even paying the rent, remained in possession for about 12 years on payment of sale advance amount of Rs.1 Lakh. In such circumstances, the plaintiffs are not entitled for permanent injunction and if it is granted, then the defendant may not be in a position to recover the possession of the property on the basis of title.

11. In the plaint, there is no specific prayer that the defendants must be prevented from disturbing their possession otherwise than under due process of law. Regarding the terms of the agreement, the appellate Court was of the view that it is not a bar for claiming specific performance. Even before this Court, the learned counsel for the appellants reiterated the very same argument advanced before the appellate Court submitting that a limited decree of permanent injunction

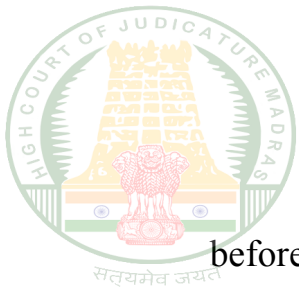


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may be granted in favour of the appellants, of course, subject to the saving of limitation to the defendants for initiating action for recovery of possession.

12. In short, their prayer is that they should not be disturbed otherwise than under due process of law. For which the plaintiff ought to have proved the basic things that attempt was made by the defendants to evict him from the suit premises otherwise than under process of law.

13. As mentioned above, 10 years after the agreement, the notice of demand was made under Ex.A2. Nothing has been stated in the notice that the defendants are trying to disturb the plaintiffs' possession otherwise than under due process of law. As mentioned above, the date of notice is dated 12.06.2000. The plaint was filed on 19.07.2000, invoking the occurrence said to have been taken place on 16.07.2000. Whether there is any evidence on record to show the alleged attempt on the part of the defendants to disturb his possession illegally, or nothing but an imaginary occurrence said to have been stated by the plaintiffs in the suit for the purpose of filing the suit. Now we will go to the evidence



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before the trial Court on this aspect. The second defendant is examined as D.W.1 and she has stated that no attempt was made by them to disturb the plaintiffs. But since the plaintiff did not pay the rent subsequent to the agreement and the litigation is dragged on for more than 10 years, so thought that if the property is available to them they can start a business.

14. So it is seen that the defendants wanted the possession to be delivered to them for starting a business. But the plaintiffs stated that only after the completion of the case, anything can be done. What transpired between her husband and the plaintiffs was not known to her. Eventhough second defendant's husband was present before this Court and D.W.1 eventhough has stated that they are going to examine her husband, he was not. She has also stated that they have no objection to pass a decree in favour of the plaintiffs in a limited manner.

15. So the evidence of D.W.1, throws much light upon the controversy over the cause of action for the suit.



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16. From that it is evident that because of the long delay in disposal of the litigation in respect of the vacant site lies in front of the suit property, both were not in a position to carry forward the sale agreement, the plaintiffs wanted the repair to be made but the defendants did not give permission. But on the contra, defendants wanted in possession of the property because of the non conclusion of the litigation. So as admitted by D.W.1, her husband approached the plaintiffs for possession. That was refused by the plaintiffs and hence the suit is filed.

17. But the problem lies why the plaintiffs have not filed a suit for specific performance instead of invoking the discretionary power of this Court. For showing the bonafideness, the plaintiffs ought to have deposited the balance sale consideration at the Court at the time of filing the suit for permanent injunction. But they did not. Whether this conduct on the part of the plaintiff disentitles them from claiming the limited prayer, is a point for consideration.

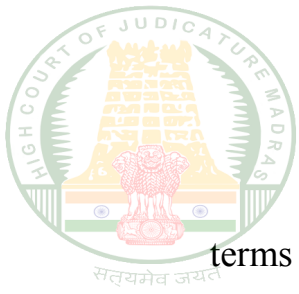


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18. The learned counsel for the appellants would rely upon the Full Bench judgment of the Hon'ble Bombay High Court in the case of ***Sadashiv Chander Bhamgare Vs Eknath Pandharinath Nangude***, reported in ***2004(4) CTC 465*** would submit that since the trial Court as well as the appellate Court has found that the specific performance is barred by limitation and his possession may be protected of course subject to the above said submissions. He would also rely upon an unreported judgment made in the case of ***Ramesh Mishrimal Jail Vs Avinash Vishwanath Patne and another*** made in ***Civil Appeal No.2549 of 2025***. So these judgments are in favour of the appellants.

19. Now it is admitted on both sides that one year time limit was prescribed from the date of conclusion of the litigation. But on the date of the suit, it is admitted on both sides that litigation was not over. So the plaintiffs cannot be blamed for the above said delay. But of course, even in such cases, the demand of execution ought to have been made within reasonable time. The agreement which was entered into in the year 1989 still could not be concluded. In spite of the above said specific



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terms in the agreement, the plaintiffs ought to have taken the steps to get the sale deed executed at least within a reasonable time. Here the time is unreasonable. Section 38 of Specific Relief Act reads as under:

38. Perpetual injunction when granted. - (1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely : -

(a) where the defendant is trustee of the property for the plaintiff ;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief ;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

20. So the question which arises for consideration is, in which one of Sub-Sections the case of the plaintiffs namely the appellant herein, fits



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in. As mentioned above, the contractual obligation arose between the parties by virtue of sale agreement. The reason for not filing the suit for specific performance as mentioned above, was the incompleteness of litigation in respect of the property lies in front. But as mentioned above, the plaintiff ought to have taken steps to get sale deed executed after waiting for reasonable time. When the litigation goes on without any possibility of completion, in a reasonable time, then the plaintiff ought to have exercised that right.

21. Granting of permanent injunction will amount to multiplicity of proceedings. As per Section 38(3)(d) of the Specific Relief Act, injunction can be granted only if there is any possibility of preventing multiplicity of judicial proceedings. So here absolutely the suit is not going to prevent the multiplicity of proceedings but it will have effect of causing multiplicity of proceedings. So on the sole ground I am of the considered view that the plaintiff is not entitled even for the limited request of permanent injunction.



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22. Therefore, this Second Appeal fails and dismissed with cost
through out.

13.05.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

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To

- 1.The Additional Subordinate Judge, Kumbakonam.
2. The II Additional District Munsif of Kumbakonam.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN, J.

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ORDER
IN
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