



S.A.(MD)No.86 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated	:	14.11.2025
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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

S.A.(MD)No.86 of 2018

and

C.M.P.(MD).Nos.1834 & 1835 of 2018

A.Murugan (died)

1.Vasantha

2.Ramesh

3.Rajesh

4.Suresh

Appellants

Vs.

1A.Veeranan @ Ravi

2.Pappa

3.Asaithambi

Respondents

PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 01.07.2016 passed in A.S.No.95 of 2013 on the file of the learned I Additional Sub-Judge, Madurai (Melur Camp) by reversing the Judgment and Decree dated 29.08.2013 passed in O.S.No.310 of 2008 on the file of the District Munsif Court, Melur by allowing this Second Appeal.



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S.A.(MD)No.86 of 2018

For Appellants :Mr.K.Mahendran

For Respondents :Mr.P.T.S.Narendravasan

J U D G M E N T

The legal heirs of the plaintiff in O.S.No.310 of 2008 on the file of the District Munsif Court, Melur, have preferred this second appeal, challenging the dismissal of the suit filed by their father for specific performance, on the basis of the unregistered agreement dated 04.05.2008.

2.The deceased/first defendant Maruthu Nadar is the owner of the suit scheduled property to an extent of 10 cents, containing well and a motor pump set. The said suit scheduled property is situated in the middle of the plaintiff's properties. In the suit scheduled property, the properties of the plaintiff and one Andiammal are situated in the western side.



S.A.(MD)No.86 of 2018

3.To be brief on all the sides the plaintiff's property was situated.

Therefore, he enjoyed the suit scheduled property before entering into the agreement as a cultivating tenant of the suit scheduled property. The plaintiff had been enjoying the suit scheduled property for more than 23 years as cultivating tenant. In the said circumstances, the first defendant agreed to sell the property for a sum of Rs.10,000/-, upon receipt of Rs. 9,000/- as advance and for making the balance payment of Rs.1,000/- and for the execution of sale deed 6 months period was mentioned. In the mean time, the plaintiff repeatedly asked to execute the sale deed, but, due to the health condition of the first defendant, he had not executed the sale deed. That being the situation, the second defendant none other than the own brother of the plaintiff who had some dispute with the plaintiff, spread the news in the area that he purchased the property from the first defendant on 17.09.2008. Therefore, he obtained the certified copy and thereafter he came to know that the first defendant executed a sale deed in favour of the second defendant, in spite of the pendency of the sale agreement. Therefore, he filed a suit for specific performance to execute the sale deed impleading all the defendants and also sought for an injunction restraining the defendants from interfering with the peaceful



S.A.(MD)No.86 of 2018

possession of the property as a cultivating tenant and who is in possession of the property by virtue of the agreement.

4.The first defendant filed the written statement denying the execution of the sale agreement and also the possession of the plaintiff over of the suit scheduled property as a cultivating tenant. He specifically denied the two material facts stated in the plaint and stated that the plaintiff is not a cultivating tenant and also he never entered into agreement for the sale and he also denied the signature and further stated that the signature was forged by the plaintiff and has made a false claim over the property. He also denied the receipt of Rs.9,000/- on 04.05.2008. He also stated that the second defendant purchased the properties and he is a *bonafide* purchaser. The second defendant filed a criminal case against the plaintiff and the plaintiff filed a criminal case against the second defendant and on the basis of the same, the plaintiff made false claim over the suit scheduled property. The said written statement also was re-iterated by the second defendant in his separate written statement. During the pendency of the suit, the first defendant died and hence, legal heirs, namely, 3rd and 4th defendants were arrayed as parties to the suit



S.A.(MD)No.86 of 2018

WEB COPY

proceedings and proper prayer to amend the pleading has also been made.

5.The learned trial Judge framed the necessary issues and to prove the case, on the side of the plaintiff P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P6 were exhibited and on the side of defendants 4 witnesses were examined as D.W.1 to D.W.4 and Ex.P1 to Ex.P14 was marked.

6.The learned trial Judge has held that the plaintiff's agreement is true and the defendant has not take steps to prove that the agreement was not executed by them and also they are in possession of the property. They also got decree for specific performance and the learned trial Judge also held the second defendant is not the bonafide purchaser and the learned trial Judge gave a finding that the plaintiff has not proved the possession over the property as a cultivating tenant, but granted decree for injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the property. Challenging the said decree, the second defendant preferred the appeal in A.S.No.95 of 2013 on the file of the learned I Additional Sub-Judge, Madurai (Melur Camp).



S.A.(MD)No.86 of 2018

WEB COPY

7.The learned Appellate judge re-appreciated the evidence and disbelieved the case of the plaintiff and dismissed the suit. The learned appellate judge made a detailed discussion on the facts and law. The learned appellate judge gave a finding that it is the duty of the plaintiff to prove that the agreement is a genuine one and his duty under Section 103 of Indian Evidence Act, is to prove the agreement and the evidence of P.W.2 is not trustworthy on the account of the fact that there is a dispute between P.W.2 and the defendants and therefore, the learned trial Judge has held that Ex.A1 sale agreement was not proved in accordance with law and the plaintiff is not entitled for the specific performance. The learned appellate judge also gave a finding that in view of the specific finding that the plaintiff has not proved the possession of the suit scheduled property as a cultivating tenant, the learned trial Judge has committed error in granting decree for injunction. The learned Appellate Judge also has held that when the plaintiff has not proved his case, then he is not entitled for specific performance. The question of the *bonafide* purchaser did not arise and hence, he dismissed the suit filed by the plaintiff. Aggrieved over the same, the present appeal was filed by the



8.At the time of admission, this Court issued notice and after serving the notice, this case was listed under the cation for orders and all the parties agreed to make submissions on merits and hence, this Court framed the following substantial question of law:

8.1.Whether the Lower Appellate Court is correct in reversing the well founded judgment of the trial Court only on the basis that there is no valid agreement between the appellant and the 1st defendant?

8.2.Whether the Lower Appellate Court is correct in shifting the burden of proof to the plaintiff, and come to the conclusion that the plaintiff failed to establish by adducing evidence that the exhibit A1 is the real document, that too when especially the person who executed the Exhibit A1 is arrayed as 1st defendant in the suit and the burden is lying with the 1st defendant to deny the execution of the sale agreement (A1) and the signature contained to the exhibit A1?

8.3.Whether the lower appellant Court is correct in setting aside the findings of the lower Court that the 2nd defendant purchased the property from the 1st defendant before the expiry of the sale agreement (Exhibit A1) and came to the conclusion that the sale took place between



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S.A.(MD)No.86 of 2018

the defendants is void-ab-initio and at present in view of the death of the 1st defendant and the suit property stands in the name of the 2nd defendant and directed the 2nd defendant to execute the sale deed in favour of the plaintiff but unfortunately the lower appellate court wrongly presumed that without any prayer in the plaint that relief given in the suit is against the law and probability of the case?

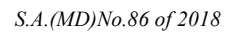
8.The suit scheduled property is situated in the middle of the plaintiff's properties. The plaintiff's specific case is that he is the cultivating tenant of the said land. The first defendant purchased the said property in the year 1985 and from 1985 onwards, it is in the possession of the plaintiff as a cultivating tenant. The plaintiff specifically pleaded that on 04.05.2008, the said suit scheduled property measuring 10 cents with well, motor pump set was agreed to be sold by the first defendant for Rs.10,000/- on 04.05.2008 and received a sum of Rs.9,000/- on the date itself and for making payment of balance Rs.1000/-, 6 months period was agreed. Due to the health condition of the first defendant, he failed to execute the sale deed in spite of the request made by the plaintiff. In the meantime, the second defendant purchased the property



S.A.(MD)No.86 of 2018

from the first defendant on 17.09.2008. It is the case of the plaintiff that the second defendant is the brother of the plaintiff, and there was dispute between them and both filed criminal complaints against each and the same was pending before the jurisdictional Court.

9.In the said circumstances, the plaintiff put forth a specific case that the first defendant executed the sale agreement. The first defendant in his written statement specifically denied the said sale agreement. He has not only denied the execution of the sale agreement but also denied the signature found in the sale agreement. He also specifically denied the receipt of Rs.9,000/-. To prove the case of plaintiff P.W.2 was examined on the side of the plaintiff. P.W.2's evidence was considered by the learned appellate Judge and he rejected the evidence of P.W.2. The learned appellate Judge rejected the evidence of P.W.2 on the ground that he had filed a case against the defendants and the same was pending. In view of the said circumstances, the probable reason given by the learned appellate Judge to disbelieve the evidence of P.W.2, in this considered opinion of this Court is correct and the same needs no interference.



11. The learned appellate Judge also considered the other aspect, namely, the learned trial Judge wrongly shifted the burden upon the first defendant to prove the case of the plaintiff and hence, this Court finds no reason to interfere with the said finding of the learned appellate Judge that the agreement was not proved as per law. The learned trial Judge in paragraph No.8 of the judgment stated that the plaintiff has not proved the possession over the property as a cultivating tenant, but, in the relief portion he granted the injunction restraining the defendants from interfering their possession. Once, learned trial Judge gave a finding that the plaintiff has not proved the possession over the suit scheduled property as a cultivating tenant, the grant of relief for the injunction is



S.A.(MD)No.86 of 2018

perverse and therefore, the learned appellate judge has correctly held that the learned trial Judge committed error in granting decree for injunction. The learned appellate judge has given a finding that once the plaintiff has failed to establish his case, the question of *bonafide* purchaser does not arise. When the agreement has not been proved as per law, the question whether the second defendant is a *bonafide* purchaser or not? does not arise. The said finding of the learned appellate judge in the peculiar circumstances of the present case is in accordance with law and hence, this Court finds no merits in the contention of the learned counsel for the appellant that the learned appellate judge committed error in giving the said finding.

12.In view of the above circumstances, the plaintiff has not proved the execution of the agreement and also his possession over the suit scheduled property as a cultivating tenant and also the learned appellate judge has correctly held that the plaintiffs are not entitled to the relief of specific performance. Therefore, the learned appellate Judge as a final Court on fact and law re-appreciated the evidence and correctly disbelieved the evidence of P.W.2 on the ground of enmity between him



S.A.(MD)No.86 of 2018

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and the defendant. The plaintiff has also failed to prove the signature in the agreement. Therefore, this Court finds no reason to interfere with the well considered judgment of the learned appellate judge. All the substantial questions of law framed are decided as against the appellant and hence, this second appeal is liable to be dismissed.

13. Accordingly, this second appeal stands dismissed and the judgment passed by the learned I Additional Sub Judge, Madurai (Melur Camp) in A.S.No.95 of 2013 dated 01.07.2016 is hereby confirmed. Consequently, connected civil miscellaneous petitions are closed. There shall be no order as to costs.

14.11.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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S.A.(MD)No.86 of 2018

To

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- 1.The District Munsif Court,
Melur.
- 2.The I Additional Sub Court,
Madurai (Melur Camp)
- 3.The Section Officer,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD)No.86 of 2018

K.K.RAMAKRISHNAN, J.

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S.A.(MD)No.86 of 2018

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