

Arokkiyaraj vs / on 18 March, 2021

Author: G.Jayachandran

Bench: G. Jayachandran

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :12.03.2021

Pronounced on :18.03.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Appeal Suit No.194 of 2013

1.Arokkiyaraj
2.Minor Jerry Ananth
3.Minor Joy Villson
2nd and 3rd rep.next friend/mother
Arokkiya Sundari

..

/versus/

A.Arokkoyaraj

..

Prayer: Appeal Suit has been filed under Section 96 of the Code read with Section 15(2) of the High Court Act, 7/1982, against the and decree passed by the Principal District and Sessions Judge, Ariyalur O.S.No.10 of 2011, dated 28.09.2012.

For Appellants :Mr.V.R.Kamalanathan
For Respondents :Mr.P.Valliappan

1/19

<https://www.mhc.tn.gov.in/judis/>

JUDGMENT

(The case has been heard through Video Conferencing) This appeal is filed by the defendants, aggrieved by the judgment and decree passed by the trial Court against them in the suit filed for Specific Performance and Mesne Profits.

2.The trial Court, on considering the pleadings and evidence granted the relief of Specific Performance but dismissed the prayer for Mesne Profits.

3.The brief facts of the case is that, the plaintiff schedule property owned by the first defendant Arokkiyaraj, S/o Anthonisamy Udaiyar. On 16.07.2009, he entered into a sale agreement with the plaintiff Arokkiyaraj, S/o Amburose Udaiyar. The sale consideration of the suit property was fixed as Rs.10,67,500/- and an advance of Rs.1,55,000/- was paid on the date of sale agreement. The purchaser/plaintiff agreed to pay the balance sale consideration of Rs.9,12,500/- within the period of six months from the date of sale agreement. The purchaser/plaintiff, when requested the vendor/first defendant to receive the balance sale consideration and execute the sale deed, the first defendant started <https://www.mhc.tn.gov.in/judis/> evading. Hence, after issuing pre-suit notice dated 05.01.2010, the suit was filed for Specific Performance of the agreement and mesne profits.

4.In the written statement, the first defendant denied the execution of sale agreement. According to him, he borrowed Rs.1,55,000/- from the plaintiff for getting electricity service connection to his land in S.No.139/5. The plaintiff, who was working as a Foreman in the Electricity Department, promised to help him for getting service connection. Knowing his need for money, the plaintiff advanced Rs.1,55,000/-, but obtained signature in Rs.20/- blank stamp paper and few blank sheets. Making use of the said blank sheets, he had fabricated the sale agreement, as if the first defendant agreed to sell his land to him. In fact, the first defendant did not use the money borrowed for getting the electricity connection. He spent the money by wayward means and therefore, there was domestic problem in his family. Thereafter, he has settled most of his properties in favour of his minor sons appointing his wife as guardian. The said settlement deeds are duly registered on 30.11.2009. He has retained only few properties with him, rest are settled in favour of his minor sons. The same has already been informed in the reply notice to the plaintiff. The plaintiff, with an intention to grab the property, had fabricated <https://www.mhc.tn.gov.in/judis/> the documents with the help of his known persons. After receipt of the pre-suit notice, with the help of elders, there was a panchayat in which the plaintiff demanded three times the money advance or else he will proceed with the case. Since the first defendant did not meet out his illegal demand, the suit has been filed based on the fabricated document. The plaintiff, in view of the averments made in the written statement, impleaded both the minor sons of the first defendant as defendants 2 and 3 represented by their mother/next friend. On impleading defendants 2 and 3, written statement has been filed on their behalf reiterating the contentions of the first defendant.

5.When the matter was taken up for trial, the trial Court, before examining the witnesses, re-casting the issues as below:-

(1)Whether the suit sale agreement is true, valid and binding on the parties to the agreement?

(2)Whether the suit sale agreement dated 16.07.2009 is a forged document as alleged by the defendants?

(3)Whether the first defendant had obtained a sum of Rs.1,55,000/- as loan only from the plaintiff after signing in a blank stamp paper to the value of Rs.20/- and also by signing other blank papers as contended by the defendants?

(4)Whether the plaintiff has fraudulently created suit sale agreement by utilizing the alleged blank stamp paper and other blank <https://www.mhc.tn.gov.in/judis/> papers containing the signatures of the first defendant as contended by the defendants?

(5)Whether the settlement deeds said to be executed by the first defendant in favour of his minor children on 30.11.2009 are valid and binding upon the plaintiff?

(6)Whether the plaintiff has all along been ready and willing to perform his part of the contract?

(7)Whether performance of contract would involve hardship on the defendants as contended by them?

(8)Whether the plaintiff is entitled to get a decree for specific performance as prayed for by him?

(9)Whether the plaintiff is entitled to get the relief of mesne profits as prayed for by him?

(10)To what relief?

6.In support of his case, the plaintiff examined three witnesses and marked 14 exhibits. On the side of the defendants, eight witnesses were examined and nine exhibits were marked.

7.The trial Court, considering the evidence of the plaintiff examined as PW- 1, attesting witness PW-2 and scribe PW-3, held that the plaintiff has proved the suit sale agreement Ex.A1. The contra evidence let in by the defendants to establish that he borrowed Rs.1,55,000/- as loan from the plaintiff, disbelieved by <https://www.mhc.tn.gov.in/judis/> the trial Court, since the defendants' witnesses DW-1, DW-2 and DW-3 contradicted themselves regarding the alleged borrowal of money. The failure of the defendants mentioning the date of alleged borrowing was pointed by the trial Court to hold, the said defence is an afterthought. Regarding non-inclusion of the relief to declare the settlement deeds Exs.B6 and Ex.B7, the trial Court held that under Section 19 of the Specific Relief Act, specific performance of the contract can be enforced against the party to the contract and the person claiming under them by the subsequent title. Except in case of a transferee a bona fide purchaser for value and had purchased the property in good faith, declare the said document as void or voidable not required. Whereas in this case, the transferees are the first defendant's minor sons and they are not the purchasers for value. Taking note of the fact that the

plaintiff, while filing the suit, had also filed lodgement schedule for deposit of the balance sale consideration and admission of the defendant witnesses that the plaintiff is man of means held that the plaintiff proved his readiness and willingness to perform the contract.

8.The present appeal is filed assailing the said reasoning given by the trial Court for allowing the suit.

<https://www.mhc.tn.gov.in/judis/>

9.Learned counsel appearing for the appellants/defendants would submit that the plaintiff had not discharged his primary duty in proving the case of execution of Ex.A1 suit sale agreement. The trial Court misdirected itself by holding that the signature found in Ex.A1 is a genuine one and not a forged document. Without considering the plea of the first defendant that the signature was obtained in a blank stamp paper and bank sheets for the loan advanced, the trial Court erred in holding that the plaintiff has discharged his primary duty of proving Ex.A1.

10.The learned counsel appearing for the appellants further submitted that the admission of the plaintiff that on the date of agreement, he did not have sufficient money to pay the sale consideration, has not been taken note by the trial Court. The trial Court ought to have held that the said admission of the plaintiff amounts to failure to prove the readiness and willingness to perform his part of contract.

<https://www.mhc.tn.gov.in/judis/>

11.In support of his submission, the learned counsel appearing for the appellants relied upon the following judgments:-

(i)In R.Rajaram and another v. T.R.Maheswaran reported in (2010) 2 MLJ 253;

(ii)In K.Nirmala v. Sellamuthu reported in (2014)MLJ831;

(iii)In S.Udayasankar v. R.Kothandapani and Ors. reported in

(iv)In R.Gnana Arulmoni v. R.S.Maharajan reported in 2019(3)CTC 564;

and

(v)Sukhwinder Singh v. Jagroop Singh and Ors., reported in (2020)SCC online (SC) 86.

12.The learned counsel appearing for the respondent/plaintiff submitted that the first defendant entered into the sale agreement on 16.07.2009 and the terms of the agreement was reduced into writing. On the same day, he advanced Rs.1,55,000/- to the first defendant and six months period was fixed for completing the contract. As soon as the plaintiff mobilised the money, he informed the first defendant to come and execute the sale deed. Since he failed to perform his part of agreement,

after issuing notice, the suit was filed. The minor children of the first defendant were impleaded as defendants 2 and 3, after coming to know that a fraudulent transfer of the property, which is the subject matter of the sale <https://www.mhc.tn.gov.in/judis/> agreement, has been created by the first defendant to defeat the interest of the plaintiff. Since the plaintiff is a third party to the transaction and the said transaction is a sham and nominal transaction to defeat the interest of the plaintiff, the supposed beneficiaries were impleaded. Therefore, Section 31 of the Specific Relief Act, 1963 has no application in this case. The plaintiff had expressed his readiness and willingness through orally and also lawyers notice. Therefore, the trial Court has rightly applied Section 19 of the Specific Relief Act, 1963 and held in favour of the plaintiff.

13. In support of his submission, the learned counsel appearing for the respondent/plaintiff relied upon the following judgments:-

(i) Coromandel Indag Products (P) Ltd., v. Garuda Chit & Trading Co. P. Ltd and another reported in 2011(6) Supreme 655;

(ii) Adilingam and another v. Narayanan and others reported in 2011(3) MWN (Civil) 559;

(iii) Nanjappa Gounder and another v. Ashok Kumar reported in 2013(3) CTC 746;

(iv) Nagarathinam v. S. Jaya reported in 2017(1) CTC 46;

(v) R. Leela Ammal v. V. Gopal reported in 2017(5) CTC 154;

(vi) A. G. Venkatachalam and another v. P. Ganesan and 9 others reported in <https://www.mhc.tn.gov.in/judis/> 2018(2) MWN (Civil) 683 and

(vii) Mariammal and others v. S. Sathyabama reported in 2019(1) MWN (Civil) 108;

14. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent. Perused the records.

15. Point for determination:-

(1) Whether the plaintiff has proved Ex.A1 sale agreement duly executed by the first defendant with intention to sell the property for the sale consideration?

(2) Whether Ex.A1-sale agreement is enforceable in the light of subsequent transfer of the suit property under Ex.B6 and Ex.B7?

16. The signatures found in Ex.A1 is admitted by the first defendant to the extent that affixed his signature in the blank stamp paper and blank papers, while borrowing a sum of Rs.1,55,000/- from the plaintiff. Neither in his reply notice nor in the written statement he has specified the date on

which, he borrowed Rs.1,55,000/-. The first defendant to establish that he borrowed the said money to <https://www.mhc.tn.gov.in/judis/> meet out his expenses for getting electricity service connection. He has relied upon Ex.B5 demand notice issued by the Electricity Board for providing electricity service connection. Along with Ex.B5, there was a Form which has to be duly filled along with the deposit money. In the cross examination, DW-2 admits that the first defendant did not submit the Form annexed duly filed alone with the deposit money. The defendant did not pay the caution deposit of Rs.50,000/- for getting service connection. Ex.B5 is dated 03.08.2007. The sale agreement is dated 16.07.2009. During the cross examination, the plaintiff admits that he borrowed Rs.1,55,000/- from the plaintiff on 16.07.2009. Taking note of this fact, the trial Court has rightly held that for demand from the Electricity Board under Ex.B5 dated 03.08.2007 to pay caution deposit of Rs.50,000/-, it is unbelievable that the first defendant borrowed Rs.1,55,000/- on 16.07.2009.

17.Further, the first defendant admits that he did not deposit the money, but spent to meet his wayward living. It is a self serving statement to avoid the enforcement of the duly executed sale agreement. The trial Court has also rightly pointed out that if the first defendant has only borrowed Rs.1,55,000/-, at least when he received pre-suit notice, he should have offered to repay the money. <https://www.mhc.tn.gov.in/judis/> Admittedly, he had not come forward to repay the money borrowed. Further if really the plaintiff has given Rs.1,55,000/- as loan, the first defendant should have fixed some interest to the loan amount. Since there is no mentioning about the interest in the written statement or in the reply notice of the first defendant, the trial Court has rightly held that the defence taken by the first defendant questioning the validity of the duly executed sale agreement is an afterthought and not based on evidence. The contradictions in the evidence of DW1, DW2 and DW3 regarding the said money transaction and the receipt of Rs.1,55,000/- from the first defendant. The contradictions among the three witnesses disprove the defence that the money was paid by the plaintiff and received by the first defendant as loan. Particularly, the first defendant admits that he received Rs.1,55,000/- from the plaintiff on 16.07.2009. In the cross examination, he also admits that when he received the money, there was no other witnesses. Whereas, DW2-Pichai Susai, who is the brother of the first defendant had deposed that he and DW3-Innasi went along with DW1, when PW-1 borrowed Rs.1,55,000/- and they saw the first defendant signed in Rs.20/- blank stamp paper and five blank green sheets. Contrarily, DW-3 in the cross examination admits that he does not know the date, month and year, when the first defendant borrowed the money from <https://www.mhc.tn.gov.in/judis/> the plaintiff did not witness the first defendant signing the blank papers.

18.The defendant had summoned DW-6 (Ramesh) who prepared the sale agreement in his computer. He had denied the suggestion that Ex.A1 was prepared by him to adjust the signature already found in the blank paper. Therefore, this witness was treated as hostile witness by the defendant and subjected to cross examination. Regarding the line and space, questions were posed to this witness. But in the said cross examination the credibility of the witness not impeached. Therefore, this Court holds that the trial Court finding that the execution of Ex.A1 has been duly proved and that the plaintiff has discharged his primary duty to prove Ex.A1, is based on evidence placed before it and there is no contra evidence to reverse the said finding. The defendant had agreed to sell the suit property and signed the sale agreement.

19.Readiness and Willingness:-

In this case, the sale agreement dated 16.07.2009 had fixed six months time to complete the contract. The plaintiff had approached the first defendant expressing his readiness and willingness and he, after causing notice on <https://www.mhc.tn.gov.in/judis/> 05.01.2010, had laid the suit on 13.01.2010. It is well within the period of six months. In the plaint itself he has specifically stated that he is ready and willing to perform his contract and ready to deposit the balance sale consideration and had also submitted the lodgement schedule and sought leave of the Court to deposit.

Under Section 16(c) of the Specific Relief Act, 1963, the explanation to the said Section clearly states that it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court. The only requirement is that the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

20.In this case, the plaintiff has expressed his ready and willing in the pre- suit notice and the plaintiff has also come forward to deposit the money in the Court by filing the lodgement schedule. The plaintiff himself admits in his plaint that the plaintiff is an employee in Tamil Nadu Electricity Board as Foreman and his wife is a Police Constable. The witnesses examined in support of his defence admit that the plaintiff has sufficient means. The fair admission of the plaintiff that on the date of agreement, he did not have sufficient money, does not mean <https://www.mhc.tn.gov.in/judis/> that he was not ready and willing to complete the contract, within six months period mentioned in the agreement. By his conduct, the plaintiff has established that he had money to complete the contract. Therefore, the trial Court finding regarding the readiness and willingness is also based on evidence, proved beyond doubt and the same is confirmed.

21.The last point raised by the learned counsel for the appellants is that without declaration of two sale deeds Ex.B6 and Ex.B7, the suit for specific performance of contract is not enforceable. It is suffice to refer Sections 19 and 31 of the Specific Relief Act, 1963, which extracted as below:-

19.Relief against parties and persons claiming under them by subsequent title:-
Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against:-

(a)either party thereto;

(b)any other person claiming under him by a title arising subsequently to the contract, except a transferee for value, who has paid his money in good faith and without notice of the original contract;

(c)any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(d)when a company has entered into a contract and subsequently becomes amalgamated with another company, the <https://www.mhc.tn.gov.in/judis/> new company which arises out of the amalgamation;

(e)when the promoters of a company have,before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company;

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

31.When cancellation may be ordered:- (1)Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury,may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

22.If any transfer subsequent to sale agreement is not for consideration and not done in good faith, then, there is no necessity to declare the document as null and void, except impleading the transferees, who are the minor children of the first defendant. These two documents not executed in good faith and certainly not for consideration. Hence, prayer to declare these two documents as valid is not required. Under Ex.B6, five items of the suit schedule property has been settled in <https://www.mhc.tn.gov.in/judis/> favour of the second defendant and under Ex.B7, four items of the suit schedule property has been settled in favour of the third defendant. According to these two sale deeds, the value of the property under these two sale deeds are Rs.1,60,200/- and Rs.2,17,000/- respectively.13 item have been shown under the sale agreement. Nine items have been transferred under Ex.B6 and Ex.B7 for total value of Rs.3,77,200/-. According to the sale agreement, the total value of 13 items of property to an extent of 7 acres 22 ³/₄ cents is Rs.10,67,500/-. Therefore, the plea that the value of the property shown under the sale agreement is under value, also belied through the defendants own document. Hence, the case of the appellants/defendants that Ex.A1 was not executed with intention to sell the property is false. Contrarily the plaintiff/respondent has proved the execution of the document by examining the scribe and advancing of Rs.1,55,000/- is admitted by the first defendant. For the first time, after the suit, the plea that the said money was received by him only as a loan has been projected which has not been supported by evidence. Therefore, this Court holds that the judgment and decree of the trial Court is based on proven facts and it has to be upheld. <https://www.mhc.tn.gov.in/judis/>

23. Accordingly, this Appeal Suit is dismissed. The judgment and decree of the trial Court is confirmed. No order as to costs.

18.03.2021 Index:yes ari To:

The Principal District & Sessions Court, Ariyalur.

<https://www.mhc.tn.gov.in/judis/> DR.G.JAYACHANDRAN,J.

ari Pre-delivery judgment made in 18.03.2021 <https://www.mhc.tn.gov.in/judis/>