

(1997) 11 MAD CK 0080

Madras High Court

Case No: Second Appeal No. 368 of 1984

S.M. Gopal Chetty

APPELLANT

Vs

Raman alias Natesan and 7
others

RESPONDENT

Date of Decision: Nov. 7, 1997

Acts Referred:

- Contract Act, 1872 - Section 10, 2
- Specific Relief Act, 1963 - Section 15

Citation: AIR 1998 Mad 169

Hon'ble Judges: S.M. Abdul Wahab, J

Bench: Single Bench

Advocate: Sh. D. Rajagopalan, for the Appellant; Sh. T.V. Sivakumar, for the Respondent

Judgement

S.M. Abdul Wahab, J.

The Second Appeal has been filed by the unsuccessful plaintiff in the lower appellate court. The suit is for specific

performance of an agreement said to have been executed on 19-10-1973 for the sale of 4.16 acres in Survey No. 275 in Naiyapakkam Village

for Rs. 1,040/-. From the said date, he has been in possession after payment of a sum of Rs. 100/- as advance. He has been paying kist also.

Again on 17-1-1974 another agreement was entered into, as the sale could not be completed as per the earlier agreement. After the second

agreement, the third defendant using his influence has obtained the sale deed for the very same property from the defendants 1 and 2, on 20-2-

1974. The sale deed is invalid. Hence the plaintiff is entitled for specific performance of sale. Defendants 1 and 2 supported the case of the

plaintiff. The third defendant alone contested the suit. According to him, the agreements dated 19-10-1973 and 17-1-1974 are not valid

agreements. They are not true documents at all. The sale in his favour is genuine. From the date of sale, he is in possession of the suit property.

2. The trial court has granted the decree as prayed for. During the pendency of the suit the first defendant was dead. Hence the second defendant

was dead. Hence the second defendant was recorded as the legal representative. Similarly, D-3 also died and defendants 4 to 10 were added as his

legal representatives. The appeal was preferred by the legal representatives of the third defendant. On a consideration of all the facts, the lower

appellate Court reversed the judgment and decree of the trial Court. Hence the Second Appeal has been preferred by the unsuccessful plaintiff.

3. The learned counsel for the appellant contended that the lower appellate Court was wrong in holding Exs. A. 1 and A. 2 are not valid

documents when the defendants 1 and 2 have not denied the agreements by going into the box. Therefore the agreements must be presumed to be

genuine one and the third defendant cannot question the same.

4. The learned counsel for the respondent on the other hand contended that the lower appellate Court was justified in coming to the conclusion that

the agreements Exs. A.1 and A.2 were not genuine.

5. Before we go into the question of genuineness and validity of Exs. A. 1 and A. 2, one vital fact which was not noticed by the lower Court is that

Exs. A. 1 and A. 2 do not contain the signature of the plaintiff at all. Exs. A. 1 and A. 2 have been signed only by the defendants 1 and 2. The first

one is on a blank paper. The preamble of the said document Ex. A-1 shows that the defendants 1 and 2 have given the said document to the

plaintiff. It shows that the defendants 1 and 2 agreed to execute the sale deed within a period of three months. There is no agreement on the part of

the plaintiff to pay the balance of sale consideration within the period mentioned in the said document and take the sale deed. Similarly in Ex. A-2

also we find that the defendants 1 and 2 have given the agreement to the plaintiff. In the said document also the defendants 1 and 2 have agreed to

execute the sale deed on or before 17-1-1974 after receiving the balance of Rs. 790/-. Again in the said document also there is no agreement on

the part of the plaintiff to pay the balance within the period. It is therefore, clear from the terms that these two documents are only agreements by defendants 1 and 2 agreeing to do something in favour of the plaintiff on receipt of the amounts. But there is no agreement on the part of the plaintiff to do anything in favour of the defendants 1 and 2. From the above it is clear that it is not an agreement between the two parties. It is not a mutual agreement or contract.

6. As per Section 2(b) of the Indian Contract Act, 1872 a proposal becomes a promise only when the person to whom the proposal is made signifies his assent thereto and when the proposal is accepted. As per Section 2(e), every promise and every set of promises forming the consideration of each other is an agreement.

7. From the two documents we are not able to find anything signifying the assent of the plaintiff. Therefore there is no contract between the plaintiff and the defendants. At the most they may be termed as undertakings by the defendants 1 and 2. As per Section 10 of the Indian Contract Act, 1872, all agreements are contracts, if they are made by free consent of the parties competent to the contract. As we have seen above, there is no agreement at all in the present case by the plaintiff.

8. If there is no contract at all, then the question of specific performance does not arise. As per Section 15 of the Specific Relief Act, 1963, the contract can be enforced only by a party to a contract. The plaintiff is not a party at all to the contract. Therefore he is not entitled to obtain a decree from Court for specific performance. Hence the suit has to be dismissed on this ground alone.

9. Next when we come to the merits of the case, the lower appellate Court has found that Exs. A. 1 and A. 2 were not genuine and they were brought up for the purpose of defeating the right of the third defendant. One of the reason for disbelieving the Exs. A. 1 and A. 2 is that according to the defendants 1 and 2 the plaintiff was not possessing sufficient funds to take the sale deed as per Exs. A. 1 and A. 2 before 17-1-1974. But as per Ex. B. 9, the plaintiff has taken a sale deed from the very same defendants 1 and 2 for Rs. 3,000/- in respect of some other property.

Another reason given by the lower appellate Court is that the definite case of the plaintiff is that he was given possession from the date of the first agreement i.e., 17-1-1974. Not only the lower appellate Court, but also the trial Court has found that the plaintiff is not in possession of the suit property at all. Ex. A. 4 is the only document under which the plaintiff has paid kist on 17-3-1974, but the fact is that on 20-2-1974 itself the property was sold to the third defendant by defendants 1 and 2. Therefore, it is clear that only after the sale has taken place the plaintiff has attempted to get the property for himself by paying the kist and taking the documents Exs. A. 1 and A. 2. This is also proved by Exs. B. 5 to B. 8 which are again kist receipts. They are subsequent to the filing of the suit and the sale in favour of the third defendant. Ex. B. 2 Adangal extract stands only in the name of the wife of the first defendant. It is not in the name of the plaintiff. So in my view, the case of the plaintiff that he was given possession on 17-1-1974 has been rightly disbelieved by the courts below. As we have seen, even the trial Court which has given a decree in favour of the plaintiff has found that the plaintiff was not in possession.

10. In my view the lower appellate Court has considered the evidence properly and the finding given by the lower appellate Court is correct.

Hence the second appeal deserves to be dismissed and it is accordingly dismissed. No costs.

11. Appeal dismissed.