

(2014) 07 MAD CK 0280

Madras High Court

Case No: Second Appeal No. 808 of 2014

D. Jawahar

APPELLANT

Vs

M. Jayashankar

RESPONDENT

Date of Decision: July 31, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Citation: (2014) 8 MLJ 565

Hon'ble Judges: T. Raja, J

Bench: Single Bench

Judgement

T. Raja, J.

The second defendant in O.S. No. 202 of 2007 on the file of the Additional Sub Judge, Pondicherry, is the appellant, and respondents 1 and 2 herein were the plaintiff and first defendant respectively before the trial Court. The plaintiff/first respondent herein filed the suit with the following prayer;

"i. to direct the defendants to execute the sale deed in favour of the plaintiff as per the sale agreement dated 25.07.2007 executed by the second defendant in favour of the plaintiff after receiving the balance sale consideration of Rs. 2,25,000/- from the plaintiff, failing which the Court may execute the sale deed in favour of the plaintiff in respect of the schedule of property;

ii. for permanent injunction, restraining the defendants, their men and agent from alienating or encumbering the suit property till the disposal of the suit."

The suit was decreed by judgment and decree dated 12.08.2011, passed in O.S. No. 202 of 2007, on the file of the Additional Sub-Judge, Pondicherry, and on appeal, the same was confirmed by the learned Principal District Judge, Pondicherry, in A.S. No. 13 of 2013, vide Judgment dated 27.03.2014. Aggrieved by the concurrent findings of the Courts below, the present second appeal has been filed. By consent, the

second appeal itself is taken up for final disposal. The parties are referred to herein according to their ranking before the trial Court, for the purpose of convenience.

Learned counsel appearing for the appellant/second defendant submitted that the first defendant is the absolute owner of the suit property, by virtue of a registered sale deed dated 20.06.1996, bearing document No. 3513 of 1996. The first defendant had executed a registered power deed dated 13.06.2006, bearing document No. 532/2006, in favour of the second defendant, offering him to sell the suit property. Thereafter, a sale agreement was executed between the second defendant and the plaintiff on 25.07.2007 for a total sale consideration of Rs. 3,25,000/- and, on the date of sale agreement, a sum of Rs. 1 lakh was paid as advance and, as per the sale agreement, the second defendant had agreed to execute the sale deed by producing all the documents viz. Encumbrance Certificate, patta, etc. to the plaintiff, after paying necessary tax and agreed to register the sale deed either in favour of the plaintiff or his authorized officer, upon receiving the balance sale consideration of Rs. 2,25,000/- from the plaintiff. The said sale agreement further states that if the plaintiff fails to come forward for registration of the sale deed within the stipulated time of three months, he would forfeit the advance amount of Rs. 1 lakh paid by him to the second defendant and if the plaintiff is ready and willing to purchase the schedule mentioned property by paying the balance sale consideration of Rs. 2,25,000/- and the second defendant did not come forward to perform the sale agreement, then the plaintiff would be entitled to file necessary suit for specific performance of the sale agreement dated 25.07.2007 through the Court of law by depositing the balance sale consideration of Rs. 2,25,000/- and then to get the sale agreement registered in his favour through Court. When the matter stood thus, learned counsel pointed out that the plaintiff/first respondent came to the second defendant/appellant stating that he was unable to pay back the balance sale consideration of Rs. 2,25,000/-. Accepting the said version of the plaintiff, the second defendant proceeded to cancel the sale agreement dated 25.07.2007 by executing the cancellation deed dated 22.10.2007. On the date of cancellation, while repaying the advance amount of Rs. 1 lakh to the plaintiff out of sympathy, the appellant agreed to pay Rs. 5,000/- towards interest, however, the plaintiff insisted for Rs. 25,000/- towards interest on the advance amount of Rs. 1 lakh; and the said sum demanded towards interest being exorbitant, the appellant/second defendant refused to pay the balance amount towards interest. Thus, the plaintiff has wrongly filed the suit for a direction to the second defendant to execute the sale deed in favour of the plaintiff as per the sale agreement dated 25.07.2007, after receiving the balance sale consideration of Rs. 2,25,000/-.

2. Learned counsel for the appellant argued that though a detailed written statement was filed mentioning as to how the plaintiff represented to the second defendant expressing his inability to pay the balance sale consideration of Rs. 2,25,000/- for execution of the sale agreement and under what circumstances, the

cancellation deed came to be extended on 22.10.2007, the Courts below ignoring all those aspects, wrongly decreed the suit. He pointed out that when the plaintiff entered into the witness box, a specific question was put to him with regard to his signature appended in the cancellation deed dated 22.10.2007, marked as Ex. B1, for which, the plaintiff/first respondent admitted the said signature. Whileso, the Courts below, without taking note of the admission of the plaintiff, erroneously proceeded to decree the suit. Therefore, if the appeal is not admitted and allowed, the second defendant/appellant would be put to great-prejudice, since he had already returned the advance amount of Rs. 1,00,000/-, after execution of the cancellation deed dated 22.10.2007.

3. In support of his submissions, learned counsel also relied upon a judgment of this Court in the case of [Govindasamy Gounder Vs. Annamalai and Ramachandran](#) for the proposition that when the executant admitted the signature and did not state any reason for his signature in the document, it can be presumed, in the absence of other evidence, that the executant signed the document after knowing the contents.

4. While concluding his arguments, learned counsel further submitted that when the power deed was executed by the first defendant in favour of the second defendant under registered document 532/2006, dated 13.06.2006, on the very next day i.e. 14.06.2006, the first defendant had cancelled the power deed. Such factum was also brought to the notice of the first appellate Court by filing an application in I.A. No. 169/2014 to show that the second defendant had no power whatsoever to execute the sale deed. But, unfortunately, the learned first appellate Court lost sight of such crucial aspect that the second defendant, who has been deprived of the power given under the power deed dated 13.06.2006, is not legally entitled to execute the sale deed in favour of the plaintiff, therefore, the concurrent findings of the Courts below are liable to be set aside.

5. Per contra, learned counsel appearing for the first respondent/plaintiff submitted that in the sale agreement dated 25.07.2007 entered into between the plaintiff and the second defendant, a specific clause was incorporated, as per which, if the plaintiff is ready and willing to purchase the schedule mentioned property from the second defendant by paying the balance sale consideration of Rs. 2,25,000/- within the stipulated time and if the second defendant fails to come forward to perform the sale agreement, then the plaintiff will be entitled to file necessary civil suit for specific performance through the Court of law by depositing the balance sale consideration of Rs. 2,25,000/-. The sale agreement further states that if the plaintiff fails to come forward for registration of sale agreement within the stipulated time of three months, he would forfeit his advance amount of Rs. 1,00,000/- paid to the second defendant. By referring to these two conditions, learned counsel for the first respondent contended that the claim of the second defendant that only after being approached by the plaintiff, the sale agreement came to be cancelled under cancellation deed dated 22.10.2007, is far from acceptance. It was the

appellant/second defendant, who was never ready and willing to perform his part of the sale agreement. Since the second defendant did not come forward to perform his part of the sale agreement and was giving evasive replies, the plaintiff was constrained to issue a lawyer's notice dated 19.10.2007 conveying his readiness and willingness to purchase the suit property and thereby, requested him to come forward to receive the balance sale consideration of Rs. 2,25,000/- enabling him to register the sale deed in favour of the plaintiff. Unfortunately, the second defendant refused to receive the lawyer's notice, as a result, the same was returned to the plaintiff on 23.10.2007. Again on the very same day, the plaintiff was constrained to issue another advocate notice, marked as Ex. A4, and the same was also acknowledged by the first defendant on 23.11.2007 and marked as Ex. A5. Thereafter, a criminal complaint was also filed against the second defendant. The above said events, he contended, would amply show that the plaintiff has been agitating the matter right from the expiry of sale agreement i.e. from 25.10.2007 to execute the sale deed after depositing the balance consideration of Rs. 2,25,000/-, therefore, the question of cancelling the sale agreement vide cancellation deed dated 22.10.2007, never arose at all. On that basis, he prayed for dismissal of the second appeal.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. From the above said pleadings and the contentions of the learned counsel appearing on either side, it is not in dispute that the first defendant had executed the power deed dated 13.06.2006 in favour of the second defendant, offering him to sell the suit property. However, the said power deed was cancelled on the very next date i.e. on 14.06.2006. It is also not in dispute that the second defendant had executed the sale agreement dated 25.07.2007 in favour of the plaintiff for a total sale consideration of Rs. 3,25,000/- and on the date of sale agreement, a sum of Rs. 1 lakh was paid by the plaintiff to the second defendant. As per the terms and conditions of the sale agreement, if the plaintiff fails to come forward for registration of sale agreement within the stipulated time of three months, he would forfeit his advance amount of Rs. 1,00,000/- paid to the second defendant and if the plaintiff is ready and willing to purchase the suit schedule property from the second defendant by paying the balance sale consideration of Rs. 2,25,000/- and if the second defendant would not come forward to perform his part of the sale agreement, then, the plaintiff would be entitled to file necessary civil suit for specific performance of the sale agreement dated 25.07.2007 through the Court of law by depositing the balance sale consideration of Rs. 2,25,000/- and thereby to get the sale registered in his favour through the Court. It is seen that having regard to the terms and conditions of the sale agreement, though the plaintiff, after the expiry of three months period stipulated for execution of sale deed, sent a lawyer's notice on 19.10.2007, conveying his readiness and willingness to purchase the suit property and requested the second defendant to come forward to receive the balance

consideration of Rs. 2,25,000/-, the second defendant did not receive the same, whereupon, the notice was also returned to the plaintiff. Thereafter, the plaintiff had sent another lawyer's notice on 23.11.2007 to the first defendant, calling upon him to make necessary arrangements for execution of sale deed in favour of the plaintiff either by himself or through the second defendant and a copy of the same was also sent to the second defendant. Even though the above said lawyer's notice dated 23.11.2007 was acknowledged, the second defendant did not give any reply to the said notice. The sequence of events would self-speak that the plaintiff was always ready and willing to perform his part of the sale agreement dated 25.07.2007, but, it was the second defendant, who acted otherwise.

8. Further, it is also pertinent to note that the first defendant, who had given power to the second defendant on 13.06.2006 to sell the property in question, had recalled the power on the very next date i.e. on 14.06.2006, thus, it is very clear that the second defendant joining hands with the first defendant executed the cancellation deed dated 22.10.2007 and that both the defendants jointly conspired to deceive the plaintiff so as to make illegal gains, therefore, their fraudulent intention and subsequent conduct would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case, a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res-judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the Court.

9. In Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, and State of Maharashtra and Others Vs. Prabhu, it is observed that a High Court, while exercising its equitable jurisdiction, must so act as to prevent perpetration of a legal fraud as the Courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and sub-letties invented to evade law."

10. In Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, it has been held as under:

"Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct."

11. In United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, this Court observed that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries. Therefore, for the reasons stated above, when the Courts below have given concurrent findings on pure questions of fact, this Court would not ordinarily interfere with these concurrent findings and review the evidence for the third time. Thus, taking into consideration all the facts and circumstances of the case, I do not

find any infirmity or illegality in the concurrent findings of the courts below for interference by this Court. Further, the essential ingredient of Section 100 of CPC viz., existence of substantial question of law for exercise of jurisdiction by this Court, being absent, the Second Appeal cannot be entertained. Accordingly, the second appeal fails and the same is dismissed, with costs of Rs. 25,000/- payable by the second defendant/appellant herein to the plaintiff/first respondent herein.