
(2025) 11 MAD CK 1923

In the Madras High Court, Madurai Bench

Case No : Appeal Suit (MD) No. 199 Of 2014, Miscellaneous Petition (MD) No. 3 Of 2014

Krishnasamy (Died) And Others

APPELLANT

Vs

Narayanasamy (Deceased) And Others

RESPONDENT

Date of Decision : 12-11-2025

Acts Referred:

Evidence Act, 1872 — Section 69, 71

Citation : (2025) 11 MAD CK 1923

Hon'ble Judges : K.K.Ramakrishnan, J

Bench : Single Bench

Advocate : B.Prahalad Ravi, Hallmark, P.Vinoth, B.Saravanan

Final Decision : Dismissed

Judgement

K.K.Ramakrishnan, J

1. The legal heirs of the original plaintiff in O.S.No.273 of 1990 on the file of the Subordinate Judge, Periyakulam, have filed this appeal challenging the dismissal of the suit in O.S.No.273 of 1990 by the impugned judgment dated 21.10.2013.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking before the trial Court.

3. The brief averments made in the plaint are as follows:-

The suit scheduled property belonged to one S.R.V.Moogaiya. S.R.V.Moogaiya executed a sale deed dated 17.02.1980 in favour of the first defendant for sale consideration of Rs.49,000/-. S.R.V.Moogaiya entered into reconveyance agreement with the first defendant on the same day itself on condition that the first defendant should receive the amount of Rs.49,000/- from the said S.R.V.Moogaiya within 10 years (17.12.1990) from the date of the agreement and thereafter, executed the sale deed in favour of the said S.R.V.Moogaiya. However, after 10 years, the said S.R.V.Moogaiya was unable to make the

payment. But the said S.R.V.Moogaiya obtained a sum of Rs.10,000/- as advance from the plaintiff and made over the agreement to the plaintiff. Since the first defendant refused to receive the agreement amount from the plaintiff and execute the sale deed in favour of the plaintiff, the plaintiff has filed the present suit.

4. The brief averments made in the written statement are as follows:-

The first plaintiff specifically denied the execution of reconveyance deed and he never received the amount in respect of reconveyance deed. S.R.V.Moogaiya executed a sale deed in favour of him for sale consideration of Rs.49,000/- on 17.02.1980. From that day onwards, he was in possession and enjoyment of the property. During the pendency of the suit, he sold the property to the remaining defendants.

5. Based on the above said pleading, the trial Court has framed the following issues:-

- i) Whether the plaintiff is entitled to get the relief of specific performance?
- ii) Whether the document dated 17.12.1980 can be modified?
- iii) Whether the reconveyance agreement is true?
- iv) Whether the reconveyance agreement is binding on the plaintiff?
- v) Whether the value of the reconveyance agreement pointed out by the defendant is huge?
- vi) What other reliefs the plaintiff is entitled to?

6. The learned trial judge, on the basis of the rival pleadings, framed the necessary issues and the plaintiffs to prove the case examined the first plaintiff himself as P.W.1 and another witness was examined as P.W.2 and marked Ex.A1 & Ex.A7 and also on the side of defendants, the first defendant examined himself as D.W.1 and marked Ex.B1 to Ex.B3 and the Court examined C.W1 as witness and marked Ex.C1 to Ex.C4.

7. The learned trial judge after considering the evidence on record, dismissed the suit by giving a finding that the plaintiff is not entitled for specific performance and dismissed the suit by the impugned judgement dated 21.10.2013.

8. Challenging the same, the present appeal has been preferred by the appellant.

9. During the pendency of this appeal, the first respondent/the original plaintiff died and his legal heirs were added as parties.

10.1. The learned counsel for the appellants would submit that even though the sole attesting witness has turned hostile, the remaining evidence clearly proved the execution of the agreement and the same was not properly considered by the learned trial Judge.

10.2. The learned counsel for the appellants would further submit that the learned trial Judge even though framed the number of issues, he addressed only the issue of execution of agreement and has not made any discussion about the remaining issues. Hence, he seeks to allow this appeal by setting aside the judgment and decree passed by the learned trial Judge.

11. The learned counsel for the respondents/subsequent purchasers would submit that during the pendency, the appellants have limited right to contest the suit on the grounds available to the original vendor. The original vendor specifically disputed the execution of reconveyance agreement. This Court specifically directed to examine the sole attesting witness to prove the execution of agreement and the sole attesting witness has not supported the case of the plaintiff. In the said event, the learned trial Judge correctly held that the reconveyance agreement has not proved in accordance with law. Once the agreement is not proved, then there is no necessity to address the remaining issues. Hence, the learned trial Judge correctly dismissed the suit without making any discussion on the other issues framed by him. When the trial Court rendered a finding on the appreciation of evidence and circumstances, this Court has no jurisdiction to interfere with.

12. This Court considered the rival submissions and perused the materials available on record and also the precedents relied upon by them.

13. The points for determination in this appeal suit is as follows:-

i) Whether the Court below is correct in holding that the suit sale agreement has not been proved in view of the hostility of the attesting witness?

14. To understand the scope of the remand, this Court extracted the following portion of the order in A.S.(MD).No.776 of 1982 vide judgment dated 25.04.2013 passed by this Court:-

10. Before going into the merits of the case whether the dismissal of the suit for specific performance of the sale of property under a re-conveyance deed is correct or not, it may be considered view that the alleged attester in the said deed ought to have been summoned by the trial court to testify the document. It is not uncommon that when a document is executed on the same day, one or the other side adds and makes re-conveyance deed the same attester or the same scribe. The sole attester happened to be the brother's son of the defendant himself and then it is pertinent to note that the defendant himself and the brother's son of the defendant ought to have been simply questioned as to the genuineness of the documents executed under the said plan. The probability is that the attester would not have thought to support the case of the plaintiff but any how the independent attester who is the brother's son of the defendant could have supported the plaintiff's case and rightly held out by the learned single judge of this court in a decision reported in (1979) 1 M.L.J. 512, (cited supra), the witnesses ought to have been called as court witness to testify the documents. Though several years have lapsed after the conveyance and

execution of re-conveyance deed, in order to render a complete justice in the matter, this Court is of the view that it has to add back the trial Court only for the purpose of examining the said attesor. If it is done, this Court is satisfied that it serves the purpose as well as the interest of both the parties and the original defendant is also given a liberty to contest the matter and the court below is directed to expedite the same.

15.This Court, by judgment dated 25.04.2013, remanded the matter to the trial court for the limited purpose of examining the attesting witness of Exhibit A1. Accordingly, the said witness was examined as LW1. However, LW1 did not support the case of the plaintiff. He specifically deposed that he had not seen the executant affix his signature in his presence, and further stated that he had never seen the first defendant signing the reconveyance deed.

16.Upon perusal of the evidence, this Court finds that LW1's testimony does not support the plaintiff's case. Consequently, the learned Trial Judge dismissed the suit, holding that the execution of the reconveyance deed had not been proved. Moreover, there was no other evidence adduced on the side of the plaintiff to substantiate the claim.

17.As per Sections 69 and 71 of the Indian Evidence Act, when an attesting witness turns hostile or denies execution, it is open to the parties to adduce evidence as contemplated under Sections 69 and 71 of the Indian Evidence Act. However, in the present case, no such evidence was adduced.

18.Hence, this Court finds no merit in the appeal, as the execution of the reconveyance deed has not been proved. Once the execution of the reconveyance deed remains unproved, the other issues raised in the appeal need not be considered. Hence, this Court holds that the appeal is liable to be dismissed.

19. Accordingly, this Appeal suit is dismissed and the judgment and decree passed by the Subordinate Judge, Periyakulam, in O.S.No.273 of 1990, dated 21.10.2013, is hereby confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.