

(2002) 07 MAD CK 0280

In the Madras High Court

Case No : Second Appeal No. 994 of 1990

R. Dhanam (deceased) and K. Selvi

APPELLANT

Vs

Subadhra and S. Gandhi

RESPONDENT

Date of Decision : 22-07-2002

Acts Referred:

Transfer of Property Act, 1882 — Section 53A

Citation : AIR 2003 Mad 80

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : M.V. Krishnan, for the Appellant; V.R. Gopalan, for the Respondent

Final Decision : Dismissed

Judgement

A. Ramamurthi, J.—The plaintiff in the suit is the appellant.

2. The case in brief is as follows:- The plaintiff filed a suit for specific performance of the Agreement of sale. The suit property is a residential building consisting of three portions. The first portion of the building belonged to her husband, the middle portion which is the suit portion of the house was owned by Sundari Ammal and the third portion belongs to the plaintiff absolutely by virtue of the sale deed in her favour dated 29.11.1978. The entire building is in the possession of the plaintiff and she is using the same as her residential house. The plaintiff's husband has leased out the front portion to a tenant and the tenant is occupying the same and in the middle portion, the plaintiff is residing with her family members. The middle portion required intensive repairs and she wanted the plaintiff to do the repairs and occupy the building as tenant and accordingly, the plaintiff paid a sum of Rs.300/= as advance rent on 23.11.1966 and spent for the repairs of the building. The total amount spent for the repair work of the building was Rs.1669-10 and she also maintained accounts. Sundari Ammal had also signed the accounts. She had agreed to pay the repair charges subsequently. Sundari Ammal wanted to sell her portion of the building and the plaintiff agreed to purchase the same. She agreed to sell the middle portion to

the plaintiff and received a further sum of Rs.500/= on 05.10.1980 and passed on a receipt for the same. The plaintiff is not acquainted with the forms and legal formalities of a sale agreement. The sale consideration for the building was fixed at Rs.2200/=. The entire electricity connection for the building and the water supply connection were made by the plaintiff with the funds of her husband. The plaintiff being an illiterate lady and a house wife never suspected the bona fides at that time. Now, it transpired that as a scheming lady, the defendant had created a sale deed in favour of the 2nd defendant only very recently purporting to sell the suit portion of the building. Sundari Ammal is not entitled to sell the building to the 2nd defendant as she had earlier accepted and agreed to sell the property to the plaintiff and received a part of sale consideration. The plaintiff has spent about Rs.1669-10 and paid Rs.500/= as advance and the total amount comes to Rs.2,169-10. The 2nd defendant cannot acquire any interest in the suit property. The alleged sale deed is sham and nominal document. The vendor Sundari Ammal subsequently died and the 1st defendant is her only daughter and legal heir. The plaintiff is always ready and willing to perform her part of the contract. Hence, the suit.

The 2nd defendant resisted the suit and denied the various averments in the plaint. The plaintiff is the owner of the last 1/3rd portion of the house and 1/3rd portion of the backyard. The undivided 1/3rd portion of the house and 1/3rd portion of the backyard in the extreme back side were owned by Sundari Ammal. The middle 1/3rd portion of the house was originally owned by the 1st defendant's uncle Thiyyagan and he sold the same to the 1st defendant's mother Sundari Ammal under a registered sale deed dated 16.07.1966. The alleged expenses for alleged repairs are not true. Sundari Ammal did not ask the plaintiff to do the repairs. The plaintiff constructed a latrine in the backyard without the consent and knowledge of the landlord. The plaintiff would not have spent more than Rs.500/= on that account. Sundari Ammal did not sign any account nor she agreed to pay for the alleged repairs. The plaintiff was in huge arrears of rent and she also promised to vacate and hand over possession within three months provided Sundari Ammal paid Rs.1000/= towards the amount spent for repairs. Under the circumstance, Sundari aammal sold the property to the 2nd defendant under a registered sale deed dated 09.11.1981 for valid consideration. The 2nd defendant is a bona fide purchaser for value and without notice of the alleged claim of the plaintiff. The plaintiff issued a notice and it was suitably replied. There was also mediation subsequently and she filed the present suit making a false claim. The terms of the compromise was reduced into writing on 19.08.1982 signed by the plaintiff and the 2nd defendant in the presence of the mediators, who attested the document. It was agreed that the 2nd defendant should pay a sum of Rs.1000/= towards the repair charges and electric fittings incurred by the plaintiff, but agreed to vacate within 3 months from 19.08.1982 after receiving the amount and undertook not to proceed with the litigation in the Court. The plaintiff is bound to withdraw the suit after receiving a sum of Rs.1000/= as per the terms of the compromise. The water supply connection do

not belong to the 2nd defendant. The plaintiff is not entitled to get specific performance in view of section 53-A of Transfer of Property Act. She is liable to pay damages for use and occupation at Rs.40/= per month till date of delivery of possession. Hence, the suit filed by the plaintiff has to be dismissed.

The trial court framed 5 issues and on behalf of the plaintiff, P.Ws.1 to 3 were examined and Exs.A-1 to A-9 were marked and on the side of the defendants, D.Ws.1 to 4 were examined and Exs.B-1 to B-3 were marked. The trial court decreed the suit and aggrieved against this, the defendants preferred A.S.No.30 of 1988 on the file of Sub Court, Kumbakonam and the learned Judge after hearing the parties, allowed the appeal, set aside the judgment and decree of the trial court and dismissed the suit. Aggrieved against this, the plaintiff has come forward with the present second appeal. During the pendency of the appeal, the plaintiff died and the 2nd appellant was impleaded as her legal heir.

3. At the time of admission of the second appeal, this Court framed the following substantial questions of law for consideration:

Whether the plaintiff was entitled to specific performance of the agreement of sale (Ex.A-2) in her favour ?

4. Heard the learned counsel for the parties.

5. The plaintiff filed the suit for specific performance and the suit property is the middle 1/3rd share of the house bearing door No.32, Braman Koil Street, Kumbakonam Town. The rear 1/3rd share of the house belongs to the plaintiff, wherein the front 1/3rd share of the house belonged to her husband. The plaintiff is a tenant of the middle 1/3rd share of the house and she is in possession of the entire house. It is the specific case of the plaintiff that Sundari Ammal, owner of the middle 1/3rd portion agreed to convey the property for a price of Rs.2200/= and the plaintiff had parted with a sum of Rs.500/= by way of advance and she had also agreed to adjust the amount towards effecting repairs for the building and in all, it works out to Rs.2169-10. The plaintiff was always ready and willing to perform her part of the contract, but Sundari Ammal had conveyed the property to the 2nd defendant. The 2nd defendant is not a bona fide purchaser for value without notice of the earlier agreement. Sundari Ammal died on 26.01.1982 and the 1st defendant being her daughter is the only legal heir.

6. The learned counsel for the appellants contended that the lower appellate court failed to see that the plaintiff is already the owner of the front and rear 2/3rd portion of the house and in the circumstance, the agreement in her favour for the purchase of the middle 1/3rd portion must be true. The finding of the appellate court that the second defendant is a bona fide purchaser under Ex.B-1 is erroneous and unsustainable. It ought to have confirmed the finding of the trial court that the 2nd defendant had knowledge of the agreement in favour of the plaintiff. The only substantial question of law raised is that the appellant is entitled to specific performance of the agreement of sale i.e.Ex.A-2 in her favour ?

7. Ex.A-2 is the impugned document dated 05.10.1980 said to have been executed by Sundari Ammal in favour of the plaintiff. It is not a registered document. The 2nd defendant took a stand that there was no agreement, much less to convey the property in favour of the plaintiff. No doubt, the plaintiff had purchased the rear 1/3rd portion of the house under Ex.A-1 from one Chakrapani Iyer for a sum of Rs.5250/=. This being so, the case of the appellants that Sundari Ammal agreed to convey her 1/3rd middle portion for a sum of Rs.2200/= appears to be highly unbelievable. No specific reason has been assigned by the appellants also for a reduction in price relating to the middle portion. There are enough circumstances to come to a conclusion that Ex.A-2 cannot be construed as a sale agreement and therefore, it cannot be enforced in a court of law. Admittedly, no sale price is mentioned in Ex.A-2 and this being so, it is not known how P.Ws.1 to 3 stated that the sale price was fixed at Rs.2200/=. P.W.1 stated that Sundari Ammal agreed to adjust the repair charges of Rs.1000/= in the sale price and this is also significantly absent in Ex.A-2. Normally whenever a sale agreement is entered into between the parties, they would agree for a period to complete the sale transaction. But, no such period is mentioned in Ex.A-2 for completing the sale transaction. This is one more circumstance to show that Ex.A-2 is not an agreement of sale and there was no intention on the part of Sundari Ammal to convey the property also. A bare reading of Ex.A-2 only indicates that Sundari Ammal would sell property in future when she intended to sell the same. Hence, I am of the view, by any stretch of imagination, Ex.A-2 cannot be considered as an agreement of sale entered into between the parties.

8. The learned counsel for the appellants stated that P.Ws.2 and 3 attestors to Ex.A-2 were examined and as such, the appellate court ought to have held that Ex.A-2 is a genuine document. Their evidence only disclosed that Sundari Ammal agreed to sell the property; but in view of the reasons stated supra, it can be easily concluded that there was no intention on her part to convey the property and the absence of any material particulars in Ex.A-2, would only lead to the irresistible conclusion that it is not an agreement of sale.

9. It is manifestly clear that Ex.A-2 is incapable of execution on one more ground and the appellate court had properly considered the same. However, the learned counsel for the appellants stated that the trial court has given valid and cogent reasons and the appellate court reversed the same without giving any reason. I am unable to agree with the contention of the learned counsel for the appellant. Ex.B-1 dated 09.11.1981 is the sale deed executed by Sundari Ammal in favour of the 2nd defendant. The 2nd defendant claimed that he is a bona fide purchaser for value without notice of Ex.A-2. The burden is only upon the appellants to establish that the 2nd defendant has got notice of the earlier agreement of sale and as such, he is not a bona fide purchaser for value. But unfortunately, no evidence has been let in, in this case to come to such a conclusion. The trial court has misdirected itself and unnecessarily put the burden of proof wrongly. It appears that D.W.1 had stated in the course of evidence that after the sale transaction Ex.B-1, there was some panchayat by

respectable persons of the locality, wherein D.W.1 agreed to pay a sum of Rs.1000/= to the plaintiff, who in turn agreed to vacate the premises. Ex.B-3 is a compromise letter entered into between the parties. Because of this, the trial court concluded that D.W.1 could have knowledge of the earlier agreement Ex.A-2. Admittedly, the compromise took place only after Ex.B-1 and if that be so, Ex.A-2 had come into existence in the year 1980 and as such, D.W.1 could not have got any knowledge. The previous title deed relating to the property was also handed over by the vendor to D.W.1. The panchayatdars were also examined as D.Ws.2 and 3. Under the circumstance, I am of the view that the lower appellate court had properly considered the dispute between the parties and there is no reason to interfere with the said finding. There is a clear finding of fact that Ex.A-2 is not an agreement of sale and as there is no substantial question of law, no interference is called for.

10. For the reasons stated above, the Second Appeal fails and is dismissed.