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AS.No.257/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 04.02.2022

DELIVERED ON 10.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AS.No.257/2018

Pungodi

... Appellant
/ Plaintiff

Vs.

1.Dhamotaran
2.Umamageswari

... Respondents
/ Defendants

PRAYER : Appeal suit filed under Section 96 of CPC read with Order 41 Rule 1 of CPC against the judgment and decree dated 15.12.2017 in OS.No.37/2011 on the file of the learned Additional District Judge, Dharmapuri.

For Appellant : Mr.R.Selvakumar

For Respondents: Mr.M.R.Jothimanian

J U D G M E N T

(1)The plaintiff in the suit in OS.No.37/2011 is the appellant in the above
Appeal Suit.



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(2)The appellant filed the suit in OS.No.37/2011 for specific performance

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of an Agreement of Sale executed by defendants in favour of plaintiff on 05.03.2009 for a consideration of Rs.13.50 lakhs and for consequential reliefs.

(3)The case of the appellant in the plaint is that defendants 1 and 2 entered into a Sale Agreement with the plaintiff on 05.03.2009 for the sale of suit properties for a sum of Rs.13.50 lakhs. The said Sale Agreement was registered after receiving a sum of Rs.13 lakhs as advance on the same date and possession and parent documents of the suit properties were delivered to the appellant. It is stated thta as per the Sale Agreement, the defendants have to execute the Sale Deed after receiving the balance of sale consideration namely, a sum of Rs.50,000/- within 24 months from the date of Agreement and in case, the plaintiff fails to pay the balance within the time, the advance amount will not be refunded. It is further stated that in case defendants fail to perform their part, the plaintiff can appraoch the Court and execute the Sale Deed and get the Sale Deed through Court by depositing the balance sale consideration in Court.

(4)Stating that the appellant was ready and willing to perform his part of contract to pay the balance as agreed under the Sale Agreement and



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that the defendants refused to execute the same despite the plaintiff approaching defendants many times in person, the suit was filed by plaintiff for specific performance.

(5) Respondents filed a written statement specifically denying the averments in the plaint and contending that the Agreement dated 05.03.2009 was never intended to be acted upon as Sale Agreement but as a security for the loan transaction. It is the specific case of defendants that they borrowed a sum of Rs.4 lakhs from one Latha and executed a similar Agreement as security for the said loan on 04.04.2007. The said Agreement was also a registered one. Since the defendants had agreed to discharge the loan within 2 years, they approached the plaintiff's husband for a loan to discharge the money which they have received as loan from the said Latha. It is further stated that the plaintiff promised to advance a sum of Rs.6.50 lakhs as loan on a condition that defendants should execute a registered Sale Agreement by giving two years time and that the amount should be repaid before two years. Following the said condition, it is stated by defendants that they executed the Sale Agreement dated 05.03.2009 after cancelling the prior Agreement the defendants had with another creditor by name Latha with the money paid by the plaintiff under the



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Sale Agreement. Defendants have repeatedly reiterated their stand in the written statement and therefore, the specific stand of the respondents/defendants was not intended to be acted upon as a Sale Agreement, but the document executed at the instance of plaintiff/appellant as security for loan for a sum of Rs.6.50 lakhs received by defendants as loan.

(6)The Trial Court framed the following issues:-

1. *Whether the plaintiff is entitled for the relief of specific performance as claimed by him?*
2. *Whether the Agreement entered into between the plaintiff and the defendants was created consensus ad idem in between the parties?*
3. *Whether the Agreement was executed only as a security as claimed by the defendants?*
4. *To what other relief the plaintiff is entitled?*

(7)Before the Trial Court, the plaintiff examined herself as PW1 and her husband as PW2. One Doraisamy who has attested the Sale Agreement dated 05.03.2009, was also examined as PW3. Exs.P1 to P10 were marked on the side of plaintiff. The 1st defendant who is the husband of the 2nd defendant was examined as DW1 and Exs.B1 and B2 were marked on the side of defendants.

(8)The Trial Court after considering the pleadings and evidence held that



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the 2nd defendant who is the exclusive owner of the suit property has never agreed to sell the property as the evidence of plaintiff and her husband would reveal that they never had discussion with the 2nd defendant regarding the sale of suit properties. The specific finding of the Trial Court is that the plaintiff who is the intending purchaser has not proved that there was meeting of minds between plaintiff and the 2nd defendant. After extracting the entire evidence of PW1 during cross examination, the 2nd issue was answered by the Trial Court that there is no mutual consent between plaintiff and 2nd defendant as per the suit Agreement marked as Ex.P1. The Trial Court also held that plaintiff has failed to prove that the suit Agreement was acted upon as a Sale Agreement and that the plaintiff is not entitled to the relief of specific performance. However, the Trial Court, strangely dismissed the suit in entirety giving liberty to the plaintiff to settle the issue regarding monetary claim by approaching the alternative redressal Forum. Aggrieved by the judgment and decree of the Trial Court, dismissing the suit for specific performance, the above Appeal is preferred by the plaintiff.

(9)Mr.R.Selvakumar, learned counsel for the appellant/plaintiff submitted



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that the plea raised by the defendants and the oral evidence let in by defendants cannot be entertained in view of Sections 91 and 92 of the Indian Evidence Act. Learned counsel contended that the finding of the Trial Court that there was no meeting of mind and that the Agreement was not properly acted upon, are untenable in law having regard to the admission that the document-Ex.P1 [Agreement] was executed by defendants for consideration. Learned counsel submitted that the findings of the Trial Court are erroneous and perverse inasmuch as the evidence of plaintiff and defendants in entirety is not considered by the Trial Court. Since the Trial Court has observed that the Agreement was not acted upon by referring to Section 10 of the Contract Act, learned counsel submitted that the conclusion reached by the Trial Court is ignoring the well settled proposition of law. It is further contended that the Trial Court failed to see that the burden lies on the defendants to prove the plea that Ex.P1-Agreement was executed as a security for the loan transaction and it was never intended to be acted upon as a Sale Agreement. Learned counsel for the appellant also relied upon a few judgments which will be discussed in the later part of this judgment.

(10) ***Per contra***, Mr.M.R.Jothimanian, learned counsel appearing for the



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respondents/defendants submitted that the suit Agreement was never intended to be a Sale Agreement. Pointing out the terms of the Agreement, learned counsel submitted that the findings of the Trial Court are unassailable. Learned counsel submitted that the plea of defendants in the written statement that the suit Agreement was executed as a security for the loan transaction is not hit by Sections 91 and 92 of the Evidence Act and he relied upon several judgments of the Hon'ble Supreme Court and this Court on the issue. Referring to the Agreement, learned counsel submitted that the plaintiff was paid a sum of 13 lakhs out of total consideration of Rs.13.50 lakhs and the plaintiff required two years time to pay the balance amount of Rs.50,000/- under Ex.P1. Stating that there is no explanation for taking two years time limit for paying a sum of Rs.50,000/- shows that the Agreement is not a regular Sale Agreement. Referring to the other terms of the Agreement, learned counsel for the respondents submitted that the registration of Agreement and providing forfeiture clause in the Agreement would show that the Agreement is in the same format which is being adopted by financiers, who advance loan on such Agreements as security for the loan advanced to the individuals.

(11)Learned counsel appearing for the respondents submitted that the



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original Title Deeds are produced by the plaintiff. Pointing out that

original Title Deeds would be handed over to the purchaser only at the time of registration of Sale Deed, learned counsel submitted that the fact that original documents were obtained by plaintiff without such recitals in the Agreement would only show that the Agreement was at the instance of plaintiff to secure money which the plaintiff had advanced as loan to defendants. Learned counsel then pointed out that there is no independent evidence to show that a sum of Rs.13 lakhs was paid by appellant/plaintiff under the Agreement-Ex.P1 dated 05.03.2009 and it is specifically disputed by defendants.

(12) Having regard to the pleadings, evidence and the submissions of learned counsels on either side, the following points arise for consideration:-

A) Whether the suit Agreement is a bona fide Sale Agreement or a document which was executed as a security for the loan transaction without any intention to act upon as a Sale Agreement?

B) Whether the plaintiff is entitled to the relief of specific performance?

C) To what other relief the plaintiff/appellant is



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*entitled to in case the appellant/plaintiff is
not entitled to the relief of specific
performance?*

POINT [A]:-

(13) There is no dispute regarding execution of the Sale Agreement which is dated 05.03.2009 which is executed by defendants in favour of plaintiff. It is admitted by the plaintiff/appellant in the plaint that the suit properties are the absolute and exclusive properties of the 2nd respondent/2nd defendant. However, the document-Ex.P1 [Agreement] was executed by defendants/respondents jointly, even though the suit Agreement refers to the Sale Deeds under which the 2nd respondent had purchased the suit properties.

(14) The material terms of the Agreement are extracted below for convenience:-

"கீழ்க்கண்ட சொத்துக்களை நம்மில்
2,3 நபர்கள் தங்கள் குடும்ப செலவிற்காக
வேண்டியும், தொழில் அபிவிருத்தி
செலவிற்காகவும் வேண்டி நாளது தேதியில்
நம்மில் 1 நபருக்கு கிரயத்திற்கு
கொடுப்பதாக விலைபேசி
மொத்தக்கிரயத்தொகையாக ரூ.13,50,000.00
முபலகு ரூபாய் பதிழுன்று இலட்சத்தி
ஐம்பதாயிரம் விலை நிர்ணயித்து நாளது
தேதியில் நம்மில் 1 நபர் நம்மில் 2,3
நபர்களுக்கு கிரய அட்வான்ஸாக
ரூ.13,50,000.00 முபலகு ரூபாய் பதிழுன்று



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இலட்சம் செலுத்தியுள்ளபடியால் நம்மில் 1 நபர்மீதித் தொகை ரூ.50,000.00 மூலகு ரூபாய் ஐம்பதாயிரத்தை இன்றையத்தேதி முதல் 24 (இருபத்திநான்கு) மாத கால வாய்தாவிற்ருள் நம்மில் 2,3 நபர்களுக்கு செலுத்தி நம்மில் 1 நபர் தன் சொந்த செலவில் கிரயம் பதிவு செய்துக் கொள்ள கடமைப்பட்டவர்.

ஊ வாய்தாவில் நம்மில் 1 நபர் மீதித் தொகையை நம்மில் 2,3 நபர்களுக்கு செலுத்தி கிரயம் பதிவு செய்துக்கொள்ளத்தவறினால் நாளதுதேதியில் நம்மில் 1 நபர் நாளது தேதியில் 2,3 நபர்களுக்கு செலுத்திய கிரய அட்வான்ஸ் தொகை முழுமையும் இழப்பதுடன் இந்த கிரய ஒப்பந்த உரிமையும் காலாவதி ஆகிறது.

ஊ வாய்தாவில் நம்மில் 1 நபர்மீதித்தொகையை நம்மில் 2,3 நபர்களுக்கு செலுத்தும் பட்சத்தில் நம்மில் 2,3 நபர்கள் மீதித் தொகையைப் பெற்றுக்கொண்டு கீழ்க்கண்ட சொத்துக்களை நிர்வில்லங்க சுத்தியாய் நம்மில் 1 நபர்பெயரிலோ அல்லது நம்மில் 1 நபர் கோரும் மற்ற நபர்களின் பெயர்களிலோ கிரயம் பதிவு செய்துக்கொடுக்க கடமைப்பட்டவர்கள் என்றும்,

ஊ வாய்தாவில் நம்மில் 1 நபர் மீதிக்கிரயத் தொகையை நம்மில் 2,3 நபர்களுக்கு செலுத்தும் பட்சத்தில் நம்மில் 2,3 நபர்கள் மீதிக் கிரயத் தொகையைப் பெற்றுக்கொள்ள மறுத்தாலோ கிரயம் பதிவு செய்துக்கொடுக்க மறுத்தாலோ தாமதப்படுத்தினாலோ நம்மில் 1 நபர் ஊ வாய்தாவில் மீதித் தொகையை சம்மந்தப்பட்ட டி.மு. கோர்ட்டில் டிபாசிட் செய்து கோர்ட்டார் மூலம் கிரயமும் சுவாதீனமும் பெறலாம் என்றும்,

இந்த ஒப்பந்தத்திற்காக கீழ்க்கண்ட



சொத்துக்கள் நம்மில் 2,3 நபர்களால் 1
நபரிட சுவாதீனம் விடப்படவில்லை என்றும் நம்
சம்மதியில் எழுதிக் கொண்ட கிரய
ஒப்பந்தப்பத்திரம் சரி."

(15)From the terms of Agreement, it is seen that a sum of Rs.13 lakhs is paid as advance and for remaining Rs.50,000/-, two years time is specified. It is also relevant to point out that in case the appellant/plaintiff failed to pay the balance amount of Rs.50,000/- within two years, the appellant/plaintiff will lose the entire amount paid as advance. This forfeiture clause is significant having regard to the plea raised by the defendants/respondents as regards the bona fides of the sale transaction.

(16)The suit Agreement is a registered one even though there is no statutory requirement of registration when the suit Agreement was executed. Similar terms of Agreement have been considered by this Court in a few precedents that such Agreements are normally obtained by persons who advance loan to property owners as a security for the loan transaction. It is to be noted that either in the plaint or in evidence, the appellant has not explained why the appellant wanted two years time for paying a meager amount of Rs.50,000/- when the appellant was in a position to pay Rs.13 lakhs under the Agreement.



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Anyone who is inclined to purchase the property, either would pay the entire amount and get the document registered or would require a short time to pay the balance when substantial amount has been paid as advance under the Agreement. In this case, it is admitted by the appellant/plaintiff that two years time was specified as the appellant/plaintiff was unable to mobilise funds.

(17) In the written statement, defendants/respondents have stated that they had already entered into an Agreement of Sale with another person by name Latha as a security for a loan of Rs.4 lakhs received by defendants. It is there further case in the written statement and in evidence that out of the sum of Rs.6.50 lakhs received by defendants from plaintiff, the said Agreement was cancelled. In the written statement, it is also the case of defendants that they approached the plaintiff only to cancel the prior Agreement dated 04.04.2007 executed by them as security in favour of a third party. The said Agreement as Ex.B2. It is contended by the defendants that the previous Agreement dated 04.04.2007 was cancelled on 05.03.2009 when the suit Agreement was executed. It is the further case of defendants that the plaintiff insisted the defendant to execute a Sale Agreement as security for the loan transaction and therefore, an Agreement was executed. No



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doubt it is true that the burden lies on the defendants to prove their case.

(18)The following circumstances has to be noted when this Court examine whether the Agreement was a sale transaction or a document which was executed by defendants as a security for the loan transaction without any intention to act upon as a Sale Agreement.

(a) As pointed out earlier, major portion of the sale consideration was paid on the date of Agreement ; but for paying the balance amount of Rs.50,000/- out of Rs.13.50 lakhs, two years time was stipulated by the plaintiff to pay and get the Sale Deed registered. From the evidence, it is also admitted by the plaintiff that the plaintiff was not in a position to mobilise the balance amount within the stipulated time. There is no explanation from the plaintiff during evidence for stipulating a longer period of two years to pay a paltry sum of Rs.50,000/- especially when the plaintiff was capable of paying the entire advance immediately after the defendants approached her to release the property from prior Agreement.

(b)The specific case of defendants that the suit properties were the subject matter of a prior Agreement under Ex.B2 dated 04.04.2007 is not disputed. When the defendants wanted urgent money to



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discharge earlier loan and as per the specific pleadings in the written statement, the plaintiff has not denied the facts stated in the written statement as regards the previous Agreement. Therefore, the case of defendants about similar Agreement being executed as security for loan transaction even earlier would probablise their case at least to the extent that it is not new to the defendants to face similar situation to execute Sale Agreement as security for loan transaction.

(c) In the Agreement-Ex.P1, there is a specific reference that possession is not handed over to the plaintiff. However, quite contrary to the recitals in the document, the plaintiff has stated in the plaint as well as in evidence that possession and the parent documents for the suit properties were delivered to the plaintiff. The fact that parent document were delivered to the plaintiff is proved by the plaintiff by producing the original Sale Deeds in favour of 2nd defendant marked as Exs.P5 to P8. Normally, parent documents are handed over to the purchaser only at the time when the actual Sale Deed is executed by the vendors. May be in certain cases, possession will be handed over to the purchaser when substantial amount of money is advanced under the Sale



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Agreement. The fact that possession was not handed over but title deeds were given to plaintiff is also a circumstance to probblise the case of defendants.

(d) In the present case, the suit Agreement is in respect of an extent of nearly 2.65 acres. Defendants have taken a specific stand in the written statement the value of the suit property on the date of Agreement is more than Rs.50 lakhs and that there was no necessity to sell the property for a sum of Rs.13.5 lakhs on the date of Agreement. The Agreement cannot be invalidated or doubted merely because the consideration was very low compared to the market value of the property. There may be different circumstances which can be explained by evidence by plaintiff or defendants to prove their case when the dispute is regarding the true nature of sale Agreement. In this case, if the plea of defendants is proved, it will be a piece of evidence which is relevant in the present context. The 1st defendant in his evidence, has spoken about the actual market value of suit property. When a suggestion was put to plaintiff whether the market value of suit property is Rs.50 lakh per acre, the plaintiff replied that it will be Rs.10 lakhs. The answer of plaintiff would suggest that the market value even



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according to the plaintiff is nearly Rs.30 lakhs.

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(e) During cross examination the plaintiff has admitted that she does not know the survey number nor the extent of suit property. She admits that she did not verify whether there was any encumbrance. Following admissions during cross examination of plaintiff are also relevant:-

"எத்தனை சர்வே நம்பர்களுக்கு கேஸ் போட்டிருக்கிறது என்றால் சர்வே நம்பர் தெரியாது. எவ்வளவு நிலம் என்று கேட்டால் நான் படிக்கவில்லை எனக்கு தெரியாது.

.....நான் தாவா சொத்து குறித்து வில்லங்கம் எதாவது பார்த்தேன் என்றால் இல்லை.

.....மேலும் இந்த தாவா சொத்து குறித்து ஏற்கனவே கிரய ஒப்பந்தம் போட்ட லதா என்பவரும் வந்திருந்தார். நான் கொடுத்த பணத்தை லதாவிடம் கொடுத்து அந்த பத்திரம் ரத்து செய்த பிறகு தான் வா.சா.1 கிரய ஒப்பந்த பத்திரம் பதிவு செய்யப்பட்டது.

.....ஏற்கனவே நான் பதிவுபெற்ற லட்சத்து கொடுத்து விட்டேன் மீதி ஐம்பதாயிரத்தை இரண்டு வருடத்திற்குள் பெரட்ட முடியவில்லையா என்று கேட்டால் பெரட்ட முடியவில்லை.

.....தாவா சொத்து ஒரு ஏக்கர் ஐம்பது லட்சம் போகும் என்றால் அவ்வளவு போகாது. எவ்வளவு போகும் என்று கேட்டால் ஒரு பத்து லட்சம் போகும்."



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(f) Of course, the plaintiff has denied several other suggestions put to her with regard to the nature of suit Agreement and the real intention for executing Sale Agreement. However, the overall circumstances would probablise the case of defendants. When the fact that the defendants wanted urgent money to cancel the prior Agreement of sale under Ex.B2 is admitted, the recitals in the suit Agreement that the plaintiff has agreed to sell the property for family expenses and for their business are artificial.

(19) The suit Agreement is a registered Agreement. As pointed out by the learned counsel appearing for respondents, the registration could have been avoided as it is not a statutory requirement particularly when a sum of Rs.13,100/- has been paid as registration charges. The expenses towards registration of Agreement would be not less than Rs.20,000/-. This extra expense could have been avoided by getting the Sale Deed executed. No reasonable prudent man will postpone execution of Sale Deed by two years if he has paid Rs.13 lakhs under Agreement and a further sum of nearly Rs.20,000/- towards expenses for registration of Sale Agreement. It is to be seen that when money lenders advance loan on the security of such Agreement, the expenses



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towards registration would only be borne by the borrowers and therefore, it would be convenient for the moneylenders to insist registration of Sale Agreement. It is true that the burden lies on the defendants to prove the nature of transaction as pleaded by them in the written statement. This Court takes notice of several instances where innocent land owners are forced to execute even Sale Deeds as security for the loan advanced to them. Since there is prohibition for charging exorbitant rate of interest for loan, this Court is not surprised to see cases where the land owners are forced to execute Agreements as security for loan transaction.

(20)The suit Agreement refers to a forfeiture clause by which the plaintiff will lose the entire amount of Rs.13 lakhs in case he is unable to pay the balance amount of Rs.50,000/- within a period of two years. The forfeiture clause appears to be to impress anyone reading the Agreement as an Agreement to be more in favour of land owners. In other words, such clauses are intended to make the Agreement appear that the vendors had equal bargaining power at the time of entering into Agreement. however, a bona fide purchaser of property would not agree to lose the entire consideration if he is unable to pay a paltry sum of Rs.50,000/-, which is just 3.7% of total consideration.



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(21)As indicated above, this Court is of the view that the case of defendants in this case is more probable than the plaintiff's assertion as regards the nature of transaction. Though the burden lies on the defendants to prove the loan transaction as pleaded by them in the written statement, this Court on appreciation of overall circumstances, is inclined to believe the case of defendants as this Court finds that the plaintiff's evidence as PW1 does not inspire confidence. The plaintiff has come forward with a false case that possession of suit properties were handed over to plaintiff under the Agreement. Whereas it is specifically referred to in the Agreement that possession is not handed over to the plaintiff under Agreement. The plaintiff further admitted that she did not negotiate regarding the sale transaction as it was only the plaintiff's husband who went to the house of defendants and she knows only from her husband about the nature of Agreement.

(22)Learned counsel for the appellant/plaintiff relied upon the judgment of this Court in the case of ***T.G.Pongiannan Vs. K.M.Natarajan and Another*** reported in ***2009 [6] CTC 301***, wherein a learned Single Judge has held as follows:-

"18.It is a trite proposition of law that the adequacy of consideration is not germane for



deciding the specific performance of an agreement to sell. Only if there is a prima facie case that fraud has been committed by one party as against the other, in such an event alone inadequacy of consideration would arise.

19.To the risk of reception without being tautologous, I would like to highlight that none of the ingredients contemplated under the provisos to Section 92 of the Indian Evidence Act, has been found exemplified or evinced in the case of the defendants."

(23)The learned Single Judge after referring to several judgments that were followed in another judgment of this Court in the case of ***P.Sampoornam and Others V. L.T.Somasundaram and Others*** reported in **2008 [3] MLJ 796**, has held as follows:-

"27.It is axiomatic that ratio decidendi of a case alone would act as a binding precedent. In the judgment cited supra, this Court rejected the prayer of specific performance on the ground that the plaintiff committed virtually fraud on the Court. As such, the said judgment cited on the side of the defendants is not applicable to the facts and circumstances of this case. Wherefore it is pellucidly and palpably, glaringly and plainly clear



that the defendants, on whom the burden of proof lies to prove that Ex.A1 is not actually an agreement to sell, but it was only a document intended to be a security for repayment of loan transaction, did not discharge their burden."

(24) Learned counsel for the appellant then relied upon a judgment of a Division Bench of this Court in the case of ***M.Ramalingam Vs. V.Subramaniam*** reported in ***AIR 2003 MAD 305*** for the proposition that the burden lies on defendant to prove that the transaction was a different transaction altogether and the alleged Sale Agreement and the intention of the parties was only to treat the Agreement as a loan transaction. A reading of the entire judgment would show that the Court has recorded a finding that the sale price shown in the Agreement was reasonable and that the defendant therein has failed to prove that the Agreement was only a loan transaction. Several circumstances relating to the bonafides of transaction were pointed out by this Court in the said judgment. It is also found that the defendants who disputed the genuineness of the sale transaction failed to prove their defence by examining the co-brother of the defendant himself who signed the document as identifying witness.

(25) The two judgments relied upon by the learned counsel for the



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appellant cannot be applied to the present case where the facts are

different and the circumstantial evidence would support the case of defendants as pointed out above.

(26)The Hon'ble Supreme Court in ***Gangabai Vs. Chhabubai*** reported in ***AIR 1982 SC 20***, relying upon Section 92 of the Evidence Act, has categorically held that it is permissible to a party to the document to plead that the Deed was not intended to be acted upon but was only a sham document. The bar under Section 92 of the Evidence Act arises only when the document is relied upon and its terms are sought to be varied and contradicted. It has been repeatedly held by Hon'ble Supreme Court and this Court in several precedents that oral evidence is admissible to show that the document executed, was never intended to operate as an agreement but that some other Agreement altogether, not recorded in the document.

(27)The judgment in ***Tyagaraja Mudaliyar V. Vedathani*** reported in ***AIR 1936 Privy Council 70***, is an authority for the proposition that oral evidence in departure from the written Deed is admissible to show that what is mentioned in the Deed was not the real transaction between the parties but it was something different. The judgment of Privy Council is followed by the Hon'ble Supreme Court as well as by



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this Court in several precedents. Therefore, the contention of the appellant that the plea of defendants in the written statement is not permissible in view of Sections 91 and 92 of the Evidence Act, cannot be countenanced.

(28) In similar situation where longer time of two years or three years is specified for paying a very meager amount as balance, this Court in several precedents accepted the long time specified for performance as one of the circumstances to doubt the transaction as a bona fide sale Agreement but one in favour of defendants to prove their case that sale Agreement was executed only as a security for loan transaction. This Court in ***Rajammal and another Vs. N.Senbagam*** reported in **2016 [5] LW 425**, has refused to grant the relief to the plaintiff in a suit for specific performance.

(29) A few other judgments in similar situation may be usefully referred as indicated below:-

[a] In the case of ***K.Muthusamy and Another Vs. K.V.K.Subramaniam*** reported in **2011 [2] LW 289**, a learned Single Judge of this Court has observed that *granting three years time for paying substantial portion of the sale consideration under the Agreement is one of the circumstances to hold*



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that the Sale Agreement is executed as a security for the loan amount.

[b]The Hon'ble Supreme Court in the case of ***Tejram Vs. Patirambhau*** reported in ***AIR 1997 SC 2702*** has dealt with a similar case. That was also a case where substantial part of sale consideration was acknowledged as advance under the Sale Agreement and very long time for completion of transaction by paying balance of sale consideration was considered. After finding that there was no explanation for giving a few years time for payment of balance, the Hon'ble Supreme Court held that the Agreement for Sale was not purported to be a sale in truth and reality. Though there were other circumstances, the Hon'ble Supreme Court considered giving unreasonably a longer time without proper reasons as a strong circumstance to indicate that the Sale Agreement is not real and accepted the case of defendant that the agreement must be taken as a security for loan transaction.

[c]A learned Single Judge of this Court in the case of ***Pappammal @ T.Pappa Vs. P.Ramasamy*** reported in ***2012 [4] CTC 100*** has opined that the Sale Agreement must have been



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executed only as security or as a loan transaction since out of total sale consideration of Rs.40,000/-, a sum of Rs.30,000/- was paid as advance and for the payment of balance of Rs.10,000/-, five year period was prescribed.

[d]In yet another case, where out of total consideration of Rs.2,00,000/- a sum of Rs.1,65,000/- was paid as advance and three years period was fixed for the payment of balance of sale consideration, this Court in the *Rajammal and Another V. M.Shenbagam* reported in **2016 [6] CTC 225**, held that in the absence of proper explanation for prescribing longer period, the Sale Agreement is not a bona fide agreement but obtained as a security to loan transaction.

(30)Learned counsel for the respondents submitted that the appellant/plaintiff has not proved his readiness and willingness and that the suit is liable to be dismissed on the ground of delay and laches as the plaintiff has filed the suit only on 06.09.2011 despite the defendants have sent a reply on 28.02.2011 itself. This Court is unable to dismiss the suit on the ground of delay and laches as the plaintiff has alleged payment of substantial amount under the Agreement and only a small amount of Rs.50,000/- is payable by way of balance. The



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judgment of Hon'ble Supreme Court relied upon by the defendants

cannot be applied to non-suit the plaintiff on the ground of delay and laches if the Agreement is held to be proved as genuine sale Agreement. Though the evidence of plaintiff as PW1 prompted learned counsel for respondents to build an argument that the plaintiff was not ready and willing to perform her part of contract, having regard to the finding of this Court that the suit Agreement is not a bona fide sale transaction and since this Court has accepted the case of defendants that the suit Agreement was never intended to be acted upon as a Sale Agreement but was executed as security for loan transaction, is not inclined to go into the issue. **Hence, Point [A] is answered to the effect that the suit Agreement is not a bona fide Agreement as it was obtained by plaintiff as a security for the loan transaction without any intention to act upon as a Sale Agreement.**

POINT [B]:-

(31) It is true that the findings of the Trial Court are on the basis of different reasoning and the Trial Court has not considered several aspects. However, the findings of the Trial Court as regards mutuality



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and consensus need not be interfered with in view of the conclusions

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reached by this Court on the first point. Since the Agreement is held to

be part of a loan transaction, this Court cannot find fault with the

judgment of the Trial Court refusing to grant the relief of specific

performance. **Hence, Point [B] is answered in negative. The**

appellant is not entitled to the relief of specific performance.

POINT [C]:-

(32) Though it is contended by the appellant/plaintiff that a sum of Rs.13

lakhs was paid as acknowledged under Ex.P1, this Court has accepted

the plea of defendants that the suit Agreement under Ex..P1 was

executed as a security for the loan transaction. Though the suit

Agreement [Ex.P1] shows payment of a sum of Rs.13 lakhs, this Court

has held that the Agreement is not a bona fide one. Having accepted

the plea of plaintiff that the sale Agreement was executed as security

for repayment of a sum of Rs.6.50 lakhs, this Court is of the view that

the appellant/plaintiff can be granted in equity, a decree for recovery of

the money which was admitted by respondents/defendants. Therefore,

this Court holds that the plaintiff/appellant is entitled to a simple

money decree for a sum of Rs.6,50,000/- [Rupees Six Lakhs Fifty

Thousand only] with interest at the rate of 12% per annum from the



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date of suit Agreement dated 05.03.2009, till the date of payment.

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(33) Accordingly, the Appeal Suit is **partly allowed while confirming the judgment and decree of Trial Court** in OS.No.37/2011 dismissing the suit for specific performance, the respondents/defendants are directed to pay a sum of Rs.6,50,000/- [Rupees Six Lakhs Fifty Thousand only] with interest at the rate of 12% per annum from the date of suit Agreement dated 05.03.2009, till the date of payment. The judgment and decree of the Trial Court in OS.No.37/2011 is modified to that extent. No costs.

10.02.2023

AP

Internet : Yes

Index : Yes / No

To

1.The Additional District Judge,
Dharmapuri.

2.The Section Officer
VR Section, High Court, Chennai.



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S.S. SUNDAR, J.

AP

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