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SA.No.1151 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.1151 of 2011

and

MP.No.1 of 2011

V.D.Govindasamy

... Appellant

- Vs -

N.Selvaraj

... Respondent

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 23.04.2010 in A.S.No.15 of 2009 on the file of the Principal Subordinate Judge at Krishnagiri reversing the judgment and decree dated 15.12.2008 in O.S.No.64 of 2006 on the file of the District Munsif Court, Krishnagiri.

For Appellant : Ms.S.P.Nirmala
for Mr.D.Shivakumaran

For Respondent : Mr.C.Parthiban
for Mr.M.V.Krishnan

JUDGMENT

The appellant is the plaintiff and the respondent herein is the defendant before the Trial Court.



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2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

The brief facts, which give rise to the instant second appeal is as follows:-

3. The plaintiff and the defendant entered into a sale agreement dated 18.02.2002 to sell the house site for Rs.40,000/-. In pursuance thereof, the defendant received an advance of Rs.10,000/- and agreed to execute the Sale Deed after receiving the balance sale consideration of Rs.30,000/- within a period of one year. It is the further submission of the plaintiff that they have paid the entire balance sale consideration of Rs.30,000/- on 01.02.2003 and that the plaintiff requested the defendant to execute the sale deed on 31.01.2006. Since the defendant was not coming forward to execute the sale deed, the plaintiff filed a suit on 13.02.2006.

4. The said suit was resisted by the defendant by contending that the suit property belong to him and that his joint family owned the property near the suit properties. According to the defendant, he purchased the suit property only to have an access to his joint family property to reach the National Highway. This defendant disputed the sale agreement dated 18.02.2002. It is the case of the defendant that he borrowed a sum of



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Rs.5,000/- from the plaintiff in the year 2001 and executed a pronote in his favour. Since the defendant was not able to pay interest on account of his financial difficulty, the defendant requested the plaintiff to provide him further loan of Rs.35,000/-. After advancing the loan of Rs.35,000/-, the plaintiff requested the defendant to execute the sale agreement by way of a security. Therefore, according to this defendant, the sale agreement is the security for the loan transaction.

Evidence, Documents and Finding of the both the Court below:-

5. Before the Trial Court, the plaintiff has marked as many as 2 documents as Exs.A1 and A2 and examined 2 witnesses as PW1 and PW2. On behalf of the defendant, one witness was examined as DW1 and no documents have been marked.

6. After considering both oral and documentary evidence and having considered the submissions made by either side, the Trial Court has believed the case of the plaintiff and decreed the suit. Aggrieved with same, the defendant has filed an appeal before the First Appellate Court, in which the First Appellate Court has found that the sale agreement was not really intended to sell the property and the same is executed only as a security. The First Appellate Court has also found that the plaintiff has not proved his



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ready and willingness and the First Appellate Court has found that the long delay from the date of agreement till the filing of the suit, as a proof for the absence of the ready and willingness on the part of the defendant and ultimately allowed the appeal and thereby dismissed the suit filed by the plaintiff.

Submission of either side counsel:-

7. The learned counsel for the appellant would submit that the plaintiff has proved the execution of the agreement by examining the plaintiff himself and that the very sale agreement is a registered document. Therefore, the finding of the First Appellate Court doubting the genuineness of the Sale Agreement-Ex.A1 has to be set aside. It is also the further contention of the learned counsel for the appellant that the defendant has miserably failed to prove the existence of the loan transaction. Therefore, if the defendant failed to prove the existence of the loan transaction, there is no other option for the Court except to grant decree for specific performance. It was also the contention of the learned counsel for the appellant that when they have paid the entire sale consideration, nothing left is to be performed on their part. Therefore, the finding of the First Appellate Court that the plaintiff failed to prove his ready and willingness is contrary to fact and law. In support of his



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contention, the learned counsel for the appellant relied upon the judgment of this Court in *M.Ramalingam (died) and others Vs. V.Subramanyam (died) and others* reported in *2003 1 MLJ 694*. Hence, prayed to allow the Second Appeal.

8. Per contra, the learned counsel for the respondent/defendant would submit that the plaintiff, who was examined as PW1, was not able to speak about the nature of the property and the way in which the agreement was executed. Therefore, the very conduct of the plaintiff would exemplify the loan transaction. It is also further contended that the long delay in filing the suit would also vindicate the case of the defendant that the agreement came into exist only as the loan transaction.

9. I have given my anxious consideration to either side submissions.

Analysis of the submissions:-

10. This Court, from the submissions of either side, has to see whether Ex.A1-Sale Agreement came into existence as security for a loan transaction or not. In this regard, the learned counsel for the respondent/defendant would rely the admission made by PW1, wherein PW1 admitted as follows:-

“01.02.2003 இல் தேதிக்கு பின்னிட்டு எத்தனை முறை கிரைய பத்திரம் எழுத சொல்லி கேட்டார்கள் என்றால் பல முறை கேட்டேன். ரசீதுக்கு பின் 10 நாட்கள் கழித்து கேட்டேன். 10 நாட்கள் கழித்து நான் கேட்கும்



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போது கிரைய ஆவணம் எழுதி கொடுக்க பிரதிவாதி முன்வரவில்லை என்றால் சரிதான். முழு பணமும் நான் செலுத்திவிட்டபடியால் கிரையம் ஆவணம் பெற்றுக்கொள்ளும் எண்ணத்திலேயே நான் இருந்தேன் என்றால் சரிதான். 01.02.2003 இல் இருந்து தாவா தாக்கல் செய்யும் வரை கிரைய ஆவணம் பெற்றுக்கொள்ள நடவடிக்கை எதுவும் எடுக்கவில்லை என்றால் சரியல்ல.”

11. During cross examination, the plaintiff has admitted that on 01.02.2003, when he requested the defendant to execute the sale deed, it appears that after 10 days from 01.02.2003, the defendant has refused to execute the sale deed. However, the suit appears to have filed on 13.02.2006.

12. As per Article 54 of The Limitation Act, the suit for specific performance has to be filed within a period of three years from the date of refusal by the vendor. In this case, the refusal took place on 11.02.2003, whereas the suit came to be filed on 13.02.2006. Therefore, even otherwise the suit for specific performance is barred by limitation. Apart from that, the long delay from filing of the suit viz., almost three years from the date of sale agreement would also probabalize the defendant's case of loan transaction.

13. Thus, this Court is of the firm view that the finding recorded by both the Courts below is based upon the evidences and there are no material available to deviate from the said finding.

14. In view of the above discussion, the substantial question of law is



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answered in favour of the respondent. At this juncture, the learned counsel for the appellant would submit that even according to the written statement, the defendant agreed that he has received a sum of Rs.40,000/- by way of a loan. Therefore, this Court is of the view that while dismissing the Second Appeal, a decree has to be granted in favour of the plaintiff, directing the defendant to repay the said amount of Rs.40,000/- with interest at the rate of 9% p.a from the date of the suit, till the date of realization and the charge is created over the suit property till the defendant repay the said amount.

15. In the result, this Second Appeal is dismissed by modifying the judgment and decree of the First Appellate Court to the effect that directing the defendant to pay a sum of Rs.40,000/- (Rupees Forty Thousand only) with interest at the rate of 9% p.a. from the date of suit, till the date of realisation. Further a charge is created upon the suit property till the above due is discharged. There shall be no order as to costs to this appeal.

09.11.2023

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Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No



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C.KUMARAPPAN,J

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To

1. The Principal Subordinate Judge,
Krishnagiri.
2. The District Munsif,
Krishnagiri.

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