



A.S.No.353 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.353 of 2021
C.M.P.No.16291 of 2021

S.Sakthivel

...Appellant /plaintiff

Vs

C.J.Sathyamoorthy

. . . Respondent/defendant

Prayer: Appeal Suit is filed under Section 96 of C.P.C against the Judgement and Decree in O.S.No.538 of 2015 dated 24.03.2021 on the file of the learned I Additional Disrict Judge, Coimbatore and to set aside the same.

For Appellant : Mr.N.Damodaran

For Respondent : Mr.S.Doraiswamy



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JUDGMENT

The plaintiff is the appellant before this Court challenging the judgment and decree passed by the learned I Additional District Judge, Coimbatore in O.S.No.538 of 2015.

2.The facts are briefly set out herein below and the parties are referred to in the same ranking as before the trial Court.

3.The plaintiff had filed the suit seeking specific performance of the agreement of sale dated 30.10.2012 and for a permanent injunction restraining the defendant his men and agents from encumbering or alienating the suit schedule property. The plaintiff has also sought for the alternative relief of refund of advance amount



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together with interest @ 24% per annum. It is the case of the plaintiff that the defendant who is the owner of the suit property had offered to sell the suit property to the plaintiff. The plaintiff and the defendant after negotiation had entered into an agreement of sale dated 30.10.2012 in and by which the plaintiff had agreed to purchase the suit property for a total sum of Rs.20,00,000/-. On the date of the agreement a sum of Rs.18,00,000/- has been paid as an advance and the parties had agreed that the balance would be paid within a period of 11 months.

4. It is the case of the plaintiff that one of the terms of the agreement was that the defendant should obtain the patta in respect of the property and also to relocate the high tension electric line crossing in the middle of the suit pathway. The defendant had undertaken to get the transmission line relocated and obtained patta for which he



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had sought 11 months time. The plaintiff has always been ready and willing to get the sale deed executed and registered by paying the remaining sale consideration. The plaintiff would submit that though he had made repeated requests, the defendant has been given evasive answers and thereafter, the plaintiff came to learn that the defendant had not made any application to the revenue department or to the electricity department in compliance with the terms of the agreement. In fact, it was the plaintiff who had approached the revenue department and got the patta transferred in the name of the defendant. The defendant thereafter also did not come forward to execute the sale deed and hence, the plaintiff has come forward with the suit in question.

5. The defendant would deny the execution of the sale deed and receipt of the sum of Rs.18,00,000/- . He would submit that he is the



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native of Sathyamangalam owning the property at Coimbatore (suit property). The defendant is hearing impaired and cannot lead a public life without the assistance of someone. Further, the defendant's wife had parted ways with him. At that juncture, in the month of April 2013, the defendant was taking steps to have the revenue records mutated in his name as per the Partition Deed dated 09.08.1999. The original patta stood in his maternal grand father, Kumarasamy Mudhaliar. The defendant had approached the plaintiff who is none else than the relative of the defendant and had sought his assistance for effecting the patta transfer on account of the fact that he had contacts with the people in Revenue Department. Further, since the defendant is hearing impaired person, he was not in a position to respond to the queries made to him and therefore, he had sought the help of the plaintiff.



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6. The defendant would submit that the original papers were handed over to the plaintiff in the month of July 2013 and whenever he had approached him, he had informed the defendant that he would get the revenue records mutated at the earliest. The defendant believed the plaintiff implicitly.

7. While so, in the first week of February 2018, the defendant came across news that people were saying that owners of the suit property were arranging for its sale. These persons had also circulated the xerox copies of the documents which included a sale agreement.

8. On verifying the alleged sale agreement dated 30.10.2012, the defendant came to learn that the plaintiff has forged his signature and had taken advantage of the fact that the original documents were in his



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custody. The defendant would further submit that he has not received any amount much less than Rs.18,00,000/- from the plaintiff. The defendant would submit that the plaintiff want to some how usurp the property from the defendant. Therefore, he sought for dismissal of the suit.

9. The learned I Additional District Judge, Coimbatore had framed the following issues.

- (1) 30.10.2012ம் தேதிய தாவா கிரய ஒப்பந்தம் உண்மையானதா? செல்லத்தக்கதா? மறுபயன் உடையதா?
- (2) வாதிக்கு ஏற்றதை ஆற்று பரிகாரம் கிடைக்கத்தக்கதா?
- (3) வாதி மாற்றுப்பரிகாரமாக தாவா தொகை மற்றும் பின்வட்டி பெற அருகரா?
- (4) வாதிக்கு உறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?



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(5) வாதிக்கு கிடைக்கும் பரிகாரம் என்ன?

10.The plaintiff had examined himself as P.W1 and marked Ex.A1 to A16. On the side of the defendant, the defendant had examined himself as D.W1 and marked Exs.B1 and B2.

11.The learned Judge had arrived at a finding that the plaintiff has not proved passing off consideration as also his wherewithal to purchase the said property. The learned Judge held that since the plaintiff has not proved passing off consideration, he is not entitled to the decree for specific performance as also for refund, particularly since the defendant has categorically denied the signature in the agreement of sale and the receipt of the money. Therefore, the learned Judge has held that the plaintiff is not entitled to his alternate prayer as well. Challenging the same, the plaintiff is before this Court.



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12. Heard the learned counsels on either side and perused the materials available on record.

13. The point for consideration in the above appeal are:

Whether the plaintiff is entitled for specific performance and consequential injunction?

14. The plaintiff would submit that the defendant has deliberately changed his signature in the written statement and vakalat. To buttress his contention that the defendant has signed the sale agreement, the learned counsel for the plaintiff would submit that a mere perusal of Exs.A7, A10, A11 and A12 etc., would clearly show that the signature in Ex.A1-Sale agreement and these agreements are



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one and the same. However, the defendant has deliberately changed his signature in the written statement and vakalat. The plaintiff is unable to explain the source from which he has mustered the sum of Rs.18,00,000/- that too in cash, which he claims was paid as advance to the defendant under Ex.A1-Agreement of Sale.

15. The plaintiff has made a half hearted attempt to state that he had obtained this money from the agricultural activities carried on by him, pledging his jewellery and obtaining money from his father-in-law. However, there is nothing to prove the above statement. That apart, the fact that the plaintiff had to borrow to pay the advance amount would go to show that he did not have necessary wherewithal for giving such a huge advance amount. Further, it is seen that the agreement of sale was entered into on 30.10.2012 and 11 months period came to an end during September 2013. However, till



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20.10.2015, no steps have been taken by the plaintiff to demand performance of the terms of the alleged agreement. This clearly proves the lack of readiness and willingness and that the plaintiff did not have the wherewithal to purchase the property. Consequently, the point for consideration is held against the plaintiff. The Appeal suit is therefore dismissed. No costs. C.M.P. is closed.

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Index : Yes/No
Speaking order/non-speaking order
srn

To

1. The IV Additional District Court, Coimbatore.
2. The Section Officer,
V.R.Section,
High Court, Madras.

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P.T.ASHA, J.,

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