



A.S.(MD)No.130 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.08.2023

Pronounced on : 30.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.130 of 2021

C.Rajendran

... Appellant/
Defendant

Vs.

1. Ramaiah

2. Manimekalai

... Respondents/
Plaintiffs

PRAYER : This Appeal Suit filed under Section 96 of C.P.C., to set aside the judgment and decree dated 01.03.2021 made in O.S.No.289 of 2018 on the file of the 1st Additional District Judge, Madurai by allowing this appeal and thereby dismissed the suit with cost throughout.

For Appellant : Mr.N.Palanisamy

For Respondents : Mr.G.Aravinthan



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JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S.No.289 of 2018 dated 01.03.2021 on the file of the I Additional District Court, Madurai.

2. The suit is for declaration and for permanent injunction.

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

4. The case of the plaintiffs is that the plaintiffs have purchased a land to an extent of measuring 1.04 acres in Navinipatti Village, Melur Taluk, vide sale deed dated 13.11.1991 and they have been in possession and enjoyment of the same, that due to the matrimonial dispute between the plaintiffs' son and daughter-in-law, their daughter-in-law lodged a police complaint with regard to pledging of her jewels and the police, after enquiry, directed the plaintiffs to arrange money for redeeming jewels or else case will be registered and hence, the plaintiffs approached the defendant, who was working as a Secretary in the village panchayat and he



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arranged loan of Rs.10 lakhs from one Saminathan-former President of the panchayat, that when they visited the register office for executing a mortgage deed, the defendant informed them that they have to execute a sale deed in favour of the said Saminathan, for which, the plaintiffs had raised objection that they cannot execute a sale deed for the loan of Rs.10 lakhs, in respect of the property worth about Rs.28 lakhs, that the said Saminathan has informed that the plaintiffs can execute a sale deed only with respect to 1 acre of land and that too in the name of the defendant, known person to both the parties and after repayment of loan amount, the plaintiffs can take a re-conveyance deed, that since the plaintiffs were compelled, with no other option, they have executed two sale deeds dated 17.01.2014 in favour of the defendant one in respect of 43 cents and the other one in respect of 61 cents on that day itself, that the defendant executed an agreement to re-convey the property, that the said Saminathan has given Rs.8,85,000/- after deducting interest and stamp duty expenses, that the plaintiffs paid monthly interest of Rs.20,000/- regularly to the said Saminathan., that the plaintiffs are in possession and enjoyment of the property and they are doing agricultural work, that the said Saminathan was murdered in the year 2017 and the defendant demanded the principal



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amount and interest by informing that there were disputes in the family of the said Saminathan, but subsequently the defendant taking advantage of the death of the said Saminathan demanded huge sum of Rs.40,16,128/- from the plaintiffs to re-convey the lands in the names of the plaintiffs, that the plaintiffs have then issued a legal notice, for which, the defendant has sent a reply notice with false and untenable allegations, that the plaintiffs have also lodged a police complaint and on that basis, FIR came to be registered in Crime No.537 of 2018 on the file of Melur Police Station, that since the Government has initiated land acquisition proceedings, they have sent an objection to the District Collector not to disburse the compensation amount in respect of the suit properties and that since the defendant has not chosen to re-convey the property, the plaintiffs were constrained to file the above suit to declare that the sale deeds dated 17.01.2014 in favour of the defendant are sham and nominal documents and the plaintiffs are its owners and for permanent injunction restraining the defendant and his men from anyway alienating or encumbering the suit property.

5. The defence of the defendant is that the defendant has not executed any unregistered agreement to re-convey the property on



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17.01.2014, that the plaintiffs at the time of executing the sale deeds obtained the signature of the defendant on a blank stamped paper for effecting sub division and for getting separate patta as the existing patta was with respect to several other properties, that the plaintiffs fraudulently and mischievously filled up the blank stamped paper by fabricating and forging, as if, the defendant agreed to resell the property and procured a witness of his own henchman, that the defendant is an innocent purchaser as he was not aware of the scheming fraudulent nature, that the defendant has never agreed to resell the property nor to execute any document, that the plaintiffs, after receiving the entire sale consideration as recited in the sale deeds and out of free will and volition, executed and registered the two sale deeds in favour of the defendant with intention to convey and handed over the possession of the property, that the defendant alone has been in actual possession and enjoyment of the property as absolute owner thereof, since the sale deeds, that the sale deeds dated 17.01.2014 are true, genuine, valid and supported by valid consideration, that the plaintiffs are estopped from challenging the registered sale deeds executed by them and set up different case, that the suit is not bonafide and filed to extract money, if possible and that therefore, the suit is liable to be dismissed.



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6. Upon considering the pleadings of both the sides, the learned trial Judge has recast the issues:-

- 1) *Whether the sale deeds dated 17.01.2014 were executed by the plaintiffs in favour of the defendant nominally as the security for the loan borrowed from one Saminathan?*
- 2) *Whether the plaintiffs are entitled to the relief of declaration as to the sale deeds dated 17.01.2014 executed by them in favour of the defendant as sham and nominal ones?*
- 3) *Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?*
- 4) *What relief the plaintiffs are entitled to?*

7. During trial, the plaintiffs have examined the second plaintiff as P.W.1 and two other witnesses Thiru.Rajeshkannan and Sub Inspector of Police Dharanya as P.W.2 and P.W.3 respectively and exhibited 18 documents as Ex.A.1 to Ex.A.18. The defendant has examined himself as D.W.1 and exhibited 10 documents as Ex.B.1 to Ex.B.10.

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 01.03.2021 holding that the



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documents under Ex.A.1 and Ex.A.2 (Ex.B.2 and Ex.B.1) are sham and nominal documents, decreed the suit as prayed for. Aggrieved by the impugned judgment and decree, the defendant has preferred the present appeal.

9. The learned counsel appearing for the defendant would submit that even according to the plaintiffs, there was an agreement for re-conveyance under Ex.A.3 and the plaintiffs ought to have filed the suit for specific performance of Ex.A.3-agreement, but they have filed the present suit to declare that Ex.A.1 and Ex.A.2-sale deeds are sham and nominal. He would further submit that the very plea of re-conveyance rules out the case of mortgage and even assuming that it was a case of mortgage, the plaintiffs ought to have filed the suit for redemption.

10. The learned counsel appearing for the defendant would submit that the plaintiffs have miserably failed to prove the loan transaction between them and the defendant or the Panchayat President Saminathan, who had allegedly advanced the loan to the plaintiffs and the documents relied on by the plaintiffs under Ex.A.1 to Ex.A.3 does not refer any of the loan transaction alleged by them.



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11. The learned counsel appearing for the defendant would further submit that the defendant, after taking possession of the suit property on the date of Ex.A.1 and Ex.A.2, has been in possession and enjoyment of the same, but the trial Court, considering the evidence of the defendant that the plaintiffs had irrigated the crops in the suit property for two months, has come to an erroneous decision that the possession is with them.

12. The learned counsel appearing for the defendant would further submit that since the plaintiffs have failed to prove that they have obtained loan of Rs.10 lakhs from the said Saminathan, the question of executing Ex.A.1 and Ex.A.2-sale deeds as a security for the loan transaction does not arise at all and that therefore, the impugned judgment and decree of the trial Court are liable to be set aside.

13. The learned counsel appearing for the plaintiffs would submit that the defendant though alleged that Ex.A.3 is a fabricated document, has admitted his signatures found in the said agreement, that the defendant has not at all lodged any complaint for taking action against the plaintiffs



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for the alleged fabrication of the document and that since no legal action has been initiated against the plaintiffs by the defendant, it can be presumed that there is an agreement between the parties to re-convey the suit property.

14. The learned counsel appearing for the plaintiffs would further submit that the defendant has failed to prove that consideration was passed that he verified the encumbrance and the guideline value of the property at that time, that the possession has not been handed over, that all the above aspects would demonstrate that the sale is only sham and nominal, that the trial Court, by appreciating the evidence available on record, has rightly come to a decision that Ex.A.1 and Ex.A.2 sales are sham and nominal and that therefore, the plaintiffs are entitled to get the reliefs claimed.

15. The points for consideration are:-

1. *Whether the trial Court erred in rendering a finding that Ex.A.1 and Ex.A.2-sale deeds are sham and nominal documents, despite showing that the plaintiffs have miserably failed to prove the loan transaction between them and the defendant or the said Saminathan, that the defendant has proved that the plaintiffs, after receiving entire sale*



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consideration, have executed the sale deeds under Ex.A.1 and Ex.A.2 and that therefore, Ex.A.1 and Ex.A.2 sales are outright sales?

- 2. Whether the plaintiffs have proved that Ex.A.1 and Ex.A.2-sale deeds were executed by them as a security for the loan transaction that existed between them and the said Saminathan?*
- 3. Whether the suit to declare that Ex.A.1 and Ex.A.2 sales are sham and nominal is maintainable, when the plaintiffs have themselves admitted that there was an agreement for re-conveyance under Ex.A.3 and that thereby admitted impliedly that the sales under Ex.A.1 and Ex.A.2 are valid?*
- 4. Whether the impugned judgment and decree dated 01.03.2021 passed in O.S.No.289 of 2018 is liable to be set aside?*
- 5. To what other reliefs, the parties are entitled to?*

16. It is pertinent to note that the plaintiffs have specifically admitted the execution of sale deeds under Ex.A.1 and Ex.A.2 in respect of the suit property. But according to the plaintiffs, the said sale deeds were executed only as a security for the loan obtained from the Panchayat President Saminathan through the defendant, whereas, according to the defendant, there was no loan transaction between the plaintiffs and the



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defendant or the said Saminathan, that the plaintiffs, after receiving the entire sale consideration, have conveyed their property under Ex.A.1 and Ex.A.2 and that therefore, Ex.A.1 and Ex.A.2 sales are outright sales.

17. The plaintiffs' case is that when they were in urgent need of money, the defendant, who was then working as a Panchayat Secretary and a known person to the plaintiffs' family, had informed the plaintiffs that he would arrange loan from the former Panchayat President Saminathan on immovable properties and that he had arranged loan of Rs.10 lakhs from the said Saminathan.

18. It is their further case that when the plaintiffs along with their son had visited the Melur Sub Registrar Office for executing a mortgage deed, the defendant informed that the said Saminathan was directing them to execute a sale deed instead of mortgage deed, that when the same was refused by the plaintiffs, the said Saminathan has informed through the defendant that sale deed can be executed not in his name, but in the name of the defendant and that on repayment of the principal and interest by the plaintiffs, the defendant will re-transfer, that the plaintiffs agreeing for the



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same have executed the sale deeds under Ex.A.1 and Ex.A.2 instead of mortgage deed and that therefore, the said sale deeds are sham and nominal documents.

19. Even according to the plaintiffs, the alleged creditor Saminathan was not a known person to them prior to Ex.A.1 and Ex.A.2-sale deeds and met the said Saminathan only at the Registrar Office on that day. The second plaintiff as P.W.1 in her cross-examination would say,

□சாமிநாதன் என்பவர் சொத்தின் பேரில் கடன் கொடுப்பதாக பிரதிவாதி என்னிடம் சொன்னார். சாமிநாதன் என்பவரை எனக்குத் தெரியாது. சாமிநாதன் யார் என்று பிரதிவாதியிடம் விசாரித்தேன். ஊருக்குள் விசாரிக்கவில்லை..... நான் சாமிநாதனிடம் கடன் கேட்கவில்லை. பத்திரம் போடும் பொழுதுதான் மேற்படி சாமிநாதனை முதன்முதலாகத் தெரியும். அவரை மேலூர் பதிவாளர் அலுவலகத்தில்தான் பார்த்தேன். அதற்கு முன்பாக மேற்படி சாமிநாதனை எனக்குத் தெரியாது சாமிநாதனிடம் நான் பேசவில்லை. சாமிநாதனும் எதுவும் பேசவில்லை.□

20. P.W.2-son of the plaintiffs in his cross-examination would say that they have not approached the said Saminathan directly but only through the defendant and that they have not communicated with the said



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Saminathan with regard to the loan transaction.

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21. As rightly contended by the learned counsel appearing for the defendant, it is not the case of the plaintiffs that except Ex.A.1 to Ex.A.3, they have executed any loan documents or gave any security to the said Saminathan for the loan of Rs.10 lakhs advanced by him. It is not the case of the plaintiffs that there existed close relationship or friendship between the defendant and the said Saminathan and that the said Saminathan had directed the plaintiffs to execute the sale deeds in favour of the defendant instead of executing the same in his favour. Considering the above, the contention of the plaintiffs that the said Saminathan, without getting any loan documents or any security, has advanced the loan of Rs.10 lakhs is very hard to believe.

22. It is the specific case of the plaintiffs that on the date of Ex.A.1 and Ex.A.2 itself the defendant has executed Ex.A.3-agreement to re-convey. As already pointed out, the defendant has specifically disputed the execution of Ex.A.3-agreement and according to him, the said agreement has been created by the plaintiffs with the help of signatures obtained from him for changing and getting separate pattas. More importantly, as rightly



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pointed out by the learned counsel appearing for the defendant, the documents Ex.A.1 to Ex.A.3 does not refer the loan transaction alleged by the plaintiffs.

23. P.W.1 in her cross-examination would admit,

□பத்திரங்களில் சாமிநாதனிடமிருந்து ரூ.10,00,000 நான் பெற்ற வகையில் என் பற்றானது என்று எழுதப்படவில்லை. பத்திரங்களில் அடமானம் என்றோ, கடன் என்றோ குறிப்பிடப்படவில்லை. இரண்டு ஆண்டுகளுக்குள் கடனை நான் திருப்பிக் கொடுத்து மறுகிரையம் செய்து கொள்ள வேண்டுமென்று பேசப்பட்டது. அந்த விபரத்தை வா.சா.ஆ.1 மற்றும் 2 பத்திரங்களில் எழுதவில்லை.□

24. Though the plaintiffs have alleged that the defendant has agreed to re-transfer the property on payment of principal and interest to the said Saminathan, no such transaction was referred in Ex.A.3-agreement. P.W.1 would admit,

□சாமிநாதனிடமிருந்து வாங்கிய ரூ.10,00,000 கடன் சம்பந்தப்பட்ட கடனுக்காக எழுதப்பட்ட பத்திரத்தை மறுகிரையம் எழுதிக் கொடுப்பதாக வா.சா.ஆ.3ல் வாசகம் இல்லை.□



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25. P.W.2 in his cross-examination would say,

□பத்திரத்தில் சாமிநாதனிடமிருந்து கடன் ரூ.10,00,000 பெற்றதாக வாசகம் இல்லை. வா.சா.ஆ.1, 2 பத்திரங்களில் நான் சாட்சி கையொப்பம் இடவில்லை. வா.சா.ஆ.1, 2ல் அடமானம் என்றோ, ரூ.10,00,000 கடன் என்றோ வாசகம் இல்லை. பிரதிவாதி மறுகிரையம் செய்து கொடுப்பதாக வாசகம் இல்லை.□

26. P.W.1 in her evidence would admit that their alleged creditor Saminathan has not signed as witness in the sale deeds under Ex.A.1 and Ex.A.2 and in Ex.A.3-agreement to re-convey. It is the specific case of the plaintiffs that they have been paying interest at Rs.20,000/- per month to the said Saminathan since Ex.A.1 and Ex.A.2 till his death. Admittedly, the plaintiffs have not produced the receipts allegedly given by the said Saminathan for the receipt of interest nor received any endorsement in the document itself. As rightly contended by the learned counsel appearing for the defendant, there is absolutely no evidence to show that the said Saminathan was paid interest by the plaintiffs from 17.01.2014 till his death. Moreover, the alleged creditor Saminathan was not at all examined by the plaintiffs. Though it was stated that the said Saminathan was reported dead, they have not chosen to examine the legal heirs of the said



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Saminathan to show that the said Saminathan had advanced a loan of Rs.10 lakhs to the plaintiffs and that he had received monthly interest of Rs.20,000/- from the plaintiffs till his death. As already pointed out, there is absolutely no clause or recital in Ex.A.1 to Ex.A.3 with regard to the loan transaction. The plaintiffs have not even chosen to examine the witnesses to Ex.A.1 and Ex.A.2-sales and the only witness to Ex.A.3-agreement before the trial Court to show the nature of the transaction.

27. Considering the above, this Court has no hesitation to hold that the plaintiffs have miserably failed to prove that there existed loan transaction between the plaintiffs and the said Saminathan. As rightly contended by the learned counsel appearing for the defendant, in the absence of any loan transaction, the question of executing sale deeds as security for loan transaction does not arise at all. Except the above, the plaintiffs have not canvassed any other reason or ground for executing the sale deeds under Ex.A.1 and Ex.A.2, without any intention to convey the property.

28. The learned counsel appearing for the plaintiffs would submit



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that the suit as filed seeking for declaration is maintainable in view of the decisions of this Court in ***Smt.Pachaiammal Vs. Murugayee and others (passed in S.A.(MD)No.35 of 2011), Kandavel and others Vs. Chidambara Padayachi (Died) and others reported in (2005) 3 CTC 344 and Mary Jacob (Died) Vs. A.N.Valliammal (passed in S.A.No.18 of 1995).*** No doubt, considering the above decisions, it is very clear that a party can challenge any document as a sham and nominal and any suit to declare such a document as sham and nominal is maintainable. But at the same time, while challenging the registered document, that party has to raise necessary pleadings and produce strong evidence to show that the document in question is sham and nominal.

29. The learned counsel appearing for the plaintiffs has relied on the judgment of the Hon'ble Supreme Court in ***Ramlal and another Vs. Phagua and others reported in (2006) 1 SCC 168,***

“Specific Relief Act, 1963 – Section 34 – Agreement to sell – Agreement subject to condition of repayment of loan within stipulated period of three years – Single Judge allowing appeal held that respondent has acquired title over suit land on payment of consideration of Rs.400/- - Sale deed was by way of surety and mere mutation of name of plaintiff in



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revenue records does not confer any right, title or interest in her favour – Plaintiff having failed to repay the loan was not competent to execute sale deed in favour of subsequent purchaser – Trial Court wrongly dismissed suit for declaration filed by respondent and Appellate Court disposed of appeal in a cursory manner without discussing evidence on record – No interference is called for in findings arrived at by High Court – Appeal dismissed.”

30. In that decision case, taking note that the defendant No.8 in her written statement has specifically admitted that her husband agreed to advance the loan and the nominal sale deed was executed in her name instead of in the name of her husband, that an agreement was entered into between the vendor and the vendee that after repayment of the amount within 3 years, re-conveyance deed will be executed in favour of the plaintiff and also taking note of the fact that the property was sold in 1958 for Rs.400/- and the plaintiff purchased the said property in the year 1964 for Rs.700/- and thereafter sold in favour of the defendant No.8 on 01.12.1965 for Rs.400/- is unimaginable, the Hon'ble Supreme Court has come to a decision that the sale deed did not convey any title to the defendant and the same has been executed only as a security for the loan.



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In the case on hand, as already pointed out, the defendant has specifically disputed the loan transaction and the execution of Ex.A.3-agreement. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Raj Kishore (dead) by L.Rs Vs. Prem Singh and others reported in AIR 2011 SC 382***, wherein also, the plaintiff has filed a suit for declaration to the effect that the sale deed executed by him in favour of the first defendant was void and ineffective and after the dismissal of the suit, the plaintiff has preferred an appeal and during the pendency of the appeal, he filed a petition to amend the plaint to add an alternative prayer to the effect that in case the sale deed in favour of defendant No.1 was held to be validly executed, the plaintiff be given a decree for specific performance, by execution of a sale deed for the transfer of the suit property in his favour and that the appellate Court, after hearing the appeal as well as the amendment application, dismissed the both and that when the same was challenged before the Gwalior Bench of Madhya Pradesh High Court, while confirming the dismissal of the amendment application allowed the appeal in part granting injunction restraining the first defendant from interfering with the possession of the plaintiff till such time he obtained a decree for partition from the Revenue Court concerned.



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The Hon'ble Supreme Court, while dismissing the appeal, has observed,

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“20. This Court also held that the principle stated by the Federal Court in Ardeshir H. Mama v. Flora Sassoon AIR 1928 PC 208 to the effect that time is not normally the essence of the contract in contracts relating to immovable property did not apply to contracts for re-conveyance of the immovable property. This Court observed:

"The above passage refers both to options for renewal and options to repurchase where, in regard to immovable property, as a matter of law time becomes the essence of the contract. Therefore in regard to contracts of reconveyance relating to immovable property the principle laid down in A.H. Mama v. Flora Sassoon - that time is not normally the essence of the contract in contracts relating to immovable property - does not apply. It is in fact, so observed in Caltex (India) Ltd. case. In view of the abovesaid decision of this Court relating to contract of reconveyance, and inasmuch as the amount was not paid within the stipulated time, the said option in favour of the plaintiff must be deemed to have "lapsed". For the aforesaid reasons, the appeal fails and is dismissed. No costs."



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21. *The Courts below have concurrently held that the plaintiff had failed to prove that he had tendered the amount of Rs.6,000/- to the purchaser within the date stipulated in the agreement for re-conveyance. That being a finding of fact any claim for re-conveyance made in default of the said stipulation must fail for the right of re-conveyance cannot in the case of default be saved from forfeiture. The general principle of law that equity grants relief against penalty in a money bond and also against the penal sums made payable on breach of bonds has an exception to it. The exception was recognized by the Federal Court in Shanmugam Pillai case (AIR 1950 FC 38) (supra) where by a majority the Court held that if under an agreement an option to a vendor is reserved for repurchasing the property sold by him, the option is in the nature of a concession or a privilege and may be exercised in fulfillment of the conditions on the fulfillment of which it is made exercisable. If the original vendor fails to act punctually according to the terms of the contract, the right to repurchase will be lost and cannot be specifically enforced. Refusal to enforce the terms for failure to abide by the conditions does not amount to enforcement of a penalty and the Court has no power to afford relief against the forfeiture arising as a result of breach of such a condition.*

The Court followed the principle set out in Davis v. Thomas (1830) 39 ER 195. The above principle was recognized to be



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correct in *K. Simrathmull* case (*supra*). This Court also quoted with approval the following passage from *Halsbury's Laws of England Vol.14, III Edn., page 622, paragraph 1151*:

"Where under a contract, conveyance, or will a beneficial right is to arise upon the performance by the beneficiary of some act in a stated manner, or at a stated time, the act must be performed accordingly in order to obtain the enjoyment of the right, and in the absence of fraud, accident or surprise, equity will not relieve against a breach of the terms". "

31. In the case on hand, the plaintiffs have issued a pre-suit notice under Ex.A.7 dated 10.09.2018, wherein, he relied on Ex.A.3-agreement to re-convey by alleging that the plaintiffs were ready to pay the principal and interest, demanding the defendant to re-convey the property on receiving the principal and interest, for which, the defendant has sent a reply stating that he had purchased the property and that since he has not executed any agreement to re-convey, the question of re-transferring the property does not arise at all. As rightly contended by the learned counsel appearing for the defendant, though the plaintiffs have issue the pre-suit



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notice demanding the defendant to re-convey the property on the basis of Ex.A.3-agreement to re-convey, they have not offered any reason or explanation for not filing the suit for specific performance and for filing the present suit for declaration. As rightly contended by the learned counsel appearing for the defendant, since the plaintiffs have admitted that there was an agreement to re-convey in their favour under Ex.A.3, it can very well be inferred that the plaintiffs have impliedly admitted the sales under Ex.A.1 and Ex.A.2 in favour of the defendant and without admitting the same, the question of seeking or demanding to re-transfer the property will not arise.

32. Even assuming for arguments sake that it is a mortgage, admittedly, the plaintiffs have not filed the suit for redemption. In the present case, even according to the plaintiffs, two documents were executed on the same day and as such, the transaction cannot be termed as a mortgage by way of conditional sale, in view of the express provisions contained in Section 58(c) of the Transfer of Property Act.

33. The learned counsel appearing for the defendant would rely on the judgment of the Hon'ble Supreme Court in **C.S.Venkatesh Vs.**



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A.S.C.Murthy (D) by Lrs. And others reported in AIR 2020 SC 930,

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wherein also, the sale deed and agreement for re-conveyance came to be executed on the same day and the Hon'ble Apex Court has held that they were of the view that since the execution of the re-conveyance deed has already been established, question of holding the sale deed to be nominal cannot be accepted. Considering the above, the learned trial Judge, without considering the above aspects in proper perspective, by giving importance to the irrelevant aspects such as non-verification of encumbrance and guideline value and possession, has come to a decision that the sale deeds under Ex.A.1 and Ex.A.2 are sham and nominal and as such, the same is liable to be set aside. Consequently, this Court concludes that the impugned judgment and decree are liable to be set aside.

34. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

35. In the result, this Appeal Suit is allowed and the impugned judgment and decree passed in O.S.No.289 of 2018 dated 01.03.2021 is set aside. The suit in O.S.No.289 of 2018 is stand dismissed. Parties are directed to bear their own costs.



A.S.(MD)No.130 of 2021

30.11.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1. The I Additional District Court,
Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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A.S.(MD)No.130 of 2021

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
A.S.(MD)No.130 of 2021

Dated : 30.11.2023