



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF OCTOBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

REGULAR FIRST APPEAL NO. 821 OF 2016 (SP)

BETWEEN:

SRI. VINOD M.,
S/O LATE SRI. MAHONLAL,
AGED ABOUT 43 YEARS,
RESIDING AT NO.207,
III CROSS, CHIKKANNA GARDEN,
SHANKARPURAM,
BANGALORE-560 004.

...APPELLANT

(BY SRI.P.D.SURANA, ADVOCATE)

AND:

1. SRI K.V.SRIKANTH,
AGED ABOUT 56 YEARS,
2. SRI K.V.MANJUNATH,
AGED ABOUT 54 YEARS,

BOTH ARE SONS OF
SRI K.H.VISHWANATH,
RESIDING AT
SRI VENKATESHWARA COMPLEX,
NO.52, A.M.LANE,
B.V.K.IYENGAR ROAD



CROSS, CHICKPET,
BENGALURU-53.

...RESPONDENTS

(BY SRI.K.RAVINDRANATH, ADVOCATE FOR
SRI S.V.SHASTRI, ADVOCATE)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC, 1908, AGAINST THE JUDGMENT AND DECREE DATED 29.01.2016, PASSED IN OS.NO.7688/2003 ON THE FILE OF THE XI ADDITIONAL CITY CIVIL JUDGE, BENGALURU, DISMISSING THE SUIT FOR SPECIFIC PERFORMANCE.

THIS APPEAL, HAVING BEEN RESERVED FOR JUDGEMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, **UMESH M. ADIGA, J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

This appeal is by the plaintiff challenging the judgment and decree dated 29.01.2016, passed by the learned XI Addl. City Civil Judge, Bengaluru, (for short 'trial Court'), in O.S.No.7688/2003.

2. We refer to the parties as per their ranks before the trial Court.



3. It is the case of the plaintiff that defendant Nos.1 and 2 are the owners of suit property bearing No.52, situated at Venkateshwara Complex, A.M.Lane, B.V.K.Iyengar Road, Bengaluru. They intended to sell the said property and were searching for the proposed buyers. Plaintiff also intended to purchase the suit property, who is a tenant in the said property. Both parties held discussion. Defendants agreed to sell the suit property for a sum of Rs.18 lakhs. Plaintiff agreed to pay the earnest money of Rs.1 lakh and five years time was granted to execute the sale deed since some portion of the suit property was in the possession of the tenants. The defendants agreed to receive the balance amount of sale consideration at the time of execution of the sale deed. Defendants also agreed to handover the possession of the suit property at the time of execution of sale deed. Both plaintiff and defendants executed an agreement of sale dated 26.10.1998 and it was registered on 27.10.1998. At the time of execution of the said agreement of sale, plaintiff paid Rs.1 lakh through



cheque as earnest money and defendants encashed the said cheque.

4. It is further case of the plaintiff that defendants borrowed Rs.7 lakhs from one Mr.C.Ashok Kumar i.e., Rupees Four lakhs on 15.07.1998 and Rupees Three lakhs on 09.08.1998. While obtaining the said loan, defendants had executed on demand promissory notes, payment receipts and blank signed cheques in favour of said Ashok Kumar. After execution of the agreement of sale, it appears that the said Ashok Kumar insisted defendants to pay the outstanding amount borrowed from him. Defendants requested plaintiff to pay the outstanding amount to Ashok Kumar. Plaintiff, defendants and said Ashok Kumar entered into a tripartite agreement dated 28.10.1998 and under the said agreement, defendant Nos.1 and 2 requested the plaintiff to pay the amount outstanding to the said Ashok Kumar out of the balance of sale consideration. According to the said tripartite agreement, plaintiff paid totally an amount of Rs.11 lakhs



to the said Ashok Kumar out of the balance of sale consideration.

5. On 04.12.1998 at the request of defendants, plaintiff paid Rs.1 lakh through cheque bearing No.502894, drawn on Amanath Co-operative Bank Ltd., towards balance of sale consideration. In all, as on the date of filing of suit, an amount of Rs.13 lakhs was paid by the plaintiff to the defendants, including Rs.11 lakhs paid on their behalf to the said Ashok Kumar. Plaintiff repeatedly requested the defendants to execute the sale deed, but defendants went on postponing to execute the sale deed. Defendants did not comply with the terms of the agreement of sale and failed to execute the sale deed by receiving the balance of sale consideration.

6. Plaintiff was always ready and willing to perform his part of the contract by keeping the balance of sale consideration. Since the defendants did not evict all the tenants from the portion of suit property and obtained clearance certificate from the Income-tax department, sale



transaction was not completed. Plaintiff made several requests to the defendants to execute the sale deed, however they did not come forward to do so. With these reasons, plaintiff prayed for decreeing the suit.

7. The defendants contended that they admit execution of Ex.P-1, but according to them, it was not an agreement of sale, but an acknowledgement for obtaining loan of Rs.1 lakh from plaintiff to meet their financial necessities and development of their business. They denied the execution of tripartite agreement between plaintiff, Ashok Kumar and defendants. They also disputed taking of loan from said Ashok Kumar. They denied the receipt of additional sum of Rs.1 lakh from plaintiff vide cheque dated 04.12.1998. According to their contention, plaintiff was a tenant in the suit property. He created Ex.P-1 to gulp their property. The suit property is the only property belonging to the defendants and they have been residing in a portion of it. In one of the shops, they are



running business. If suit is decreed, they would put to untold hardship and hence, prayed to dismiss the suit.

8. From the rival contentions of the parties, the trial court framed the following issues:

- 1) Whether the plaintiff proves that the defendants were agreed to sell the suit schedule property for Rs. 18 lakhs and executed an agreement of sale dated 26.10.1998 by receiving an advance amount of Rs. 1 lakh?*
- 2) Whether the plaintiff proves the payment of further advance of Rs.1 lakh on 4.12.1998?*
- 3) Whether the plaintiff proves that the defendants entered into tripartite agreement on 28.10.1998 with him and one C.Ashok Kumar agreeing to treat the loan amount of Rs.11 lakhs paid to Sri.C.Ashok Kumar as part sale consideration of the agreement of sale dated 26.10.1998?*
- 4) Whether the defendants proves that the plaintiff got executed the agreement of sale dated 26.10.1998 and received two on demand promissory note, consideration receipt along with 5 blank signed cheques drawn on Amanath*



Co-operative Bank as a security to the loan of Rs.1 lakh?

5) Whether the plaintiff proves that he has always been ready and willing to perform his part of contract?

6) Whether the plaintiff is entitled the relief of specific performance of contract?

7) To what order or decree?

9. During the trial of the case, plaintiff examined PW.1 and PW-2 and got marked Exs.P-1 to P-9. Defendants examined DW-1 and got marked Ex.D-1.

10. The trial Court after hearing both the parties and appreciating pleadings and evidence on record, answered issue Nos.1 to 3 and 5 in the negative, issue No.4 in the affirmative and by the impugned judgment, dismissed the suit. Being aggrieved by the same, the plaintiff preferred this appeal on the grounds mentioned in the appeal memo.



11. We have heard the arguments of learned counsel for both the parties and perused the materials placed on record.

12. The learned counsel for the appellant submits that Ex.P-1 was executed on 26.10.1998 and it was registered on 27.10.1998. The defendants admit the execution of Ex.P-1, but their contention is that it was a document of security for obtaining loan from the plaintiff. The trial Court ignoring the oral and documentary evidence produced by the plaintiff, accepted the defence of the defendants contrary to the contents of registered agreement of sale. The defendants are not supposed to lead the evidence contrary to the contents of the documents. The trial Court has not considered the same.

13. The learned counsel for the appellant has further submitted that defendants obtained loan of Rs.7 lakhs from one C.Ashok Kumar and said Ashok Kumar insisted the defendants to repay the amount lent to them. The defendants did not have money to pay him. Therefore,



they requested the plaintiff to pay the outstanding amount to said Ashok Kumar. Accordingly, tripartite agreement was executed. In the cross-examination of PW-1, he admits their signatures on Ex.P-2. The said admission was also not considered by the trial Court. The plaintiff paid Rs.2 lakhs to the defendants by way of cheque and that is admitted by PW-1. The defendants admit receipt of Rs.1 lakh from the plaintiff. They deny receipt of Rs.1 lakh through cheque on 04.12.1998.

14. The learned counsel for the appellant further submits that plaintiff and his brother are in occupation of two of the shop premises situated in the suit property. There are several shop premises in the said suit building and few shops were leased out to different persons which is not in dispute. To secure the actual possession of the property from the tenants, five years time was granted to conclude the sale transaction; these facts are not properly appreciated by the trial court. The trial court has made much about non-examination of said Ashok Kumar, which



was not necessary in view of admission of DW-1 about execution of Ex.P-1 and Ex.P-2.

15. Learned counsel for the appellant further submitted that it is not in dispute that plaintiff had sufficient source of income and he was always ready and willing to perform his part of the contract. On the contrary, inspite of several requests, defendants were not ready to execute the sale deed by receiving the balance amount of sale consideration. The defendants have not led any reliable rebuttal evidence to disprove the case of the plaintiff. The trial Court has not appreciated the case of both side properly and erroneously dismissed the suit, which needs interference by this Court. With these reasons, he prayed to allow the appeal. In support of his contentions, learned counsel for the appellant has relied upon some of the judgments.

16. Learned counsel for the respondents/defendants submits that Ex.P-1 was executed for security to the loan of Rs.1 lakh obtained by the plaintiff. The contents of



Ex.P-1 also reveal that it was a loan transaction. The tripartite agreement at Ex.P-2 is not reliable. The relevant witnesses to the said document are not examined. If defendants were already indebted to said Ashok Kumar and he was pressing hard for repayment of the amount, then defendants should have insisted the plaintiff to pay the amount to them, so that they could pay to said Ashok Kumar to clear-off the debt. However, a different document was said to be executed by the defendants without any reasons and there is no whisper in Ex.P-1 in this regard, which creates doubt in the case of the plaintiff.

17. The sale agreement was said to be executed on 26.10.1998 and the suit was filed during the year 2003 i.e., nearly after five years. Therefore, the contention of the plaintiff that he was always ready and willing to perform his part of the contract is not proved. It is the only property of the defendants. They are residing in the portion of said building. They are running business in one



of the property. The value of the building was more than Rs.50 lakhs as on the date of Ex.P-1. If appeal is allowed, then much hardship would cause to defendants and they will be on streets along with their family. The learned trial Judge has considered all these facts and came to a right conclusion. There are no reasons to interfere in the said findings. With these reasons, he prayed to dismiss the appeal.

18. From the contentions of the parties, the following point emerges for our determination:

(i) Whether the learned trial Judge is justified in holding that Ex.P-1 was executed as document of security for the loan of Rs.1,00,000/- obtained by defendants?

(ii) Whether learned trial Judge is justified in holding that plaintiff has failed to prove the payment of Rs.11,00,000/- towards sale transaction to Ashok Kumar and execution of tripartite agreement dated 28.10.1998?

(iii) Whether the learned trial Judge is justified in holding that plaintiff has failed to prove that he was always ready and willing to perform his part of agreement?



Our finding on above points is in the negative for the following reasons:

19. Following facts are not in dispute.

That defendants are absolute owners of suit property; that three-storied building was built on the suit land; That defendants reside in the portion of building at second and third floor; That plaintiff and his brother occupied two of the shops in the suit property as tenants; That defendants have also occupied one of the shops of suit property and running business of electrical articles; There are shops in the ground, first and part of second floor and two shops are let out to others; That suit property is situated in market place. Hence, discussion of these facts are not necessary.

20. From the evidence of both side, execution of Ex.P-1-registered agreement of sale (AOS) is not in dispute and receipt of Rs.1 lakh by the defendants by executing Ex.P-1. Plaintiff contends that it was executed with an intention to sell the suit property. But defendants



contend that it was executed as a security to the loan of Rs.1 lakh obtained by the defendants to improve their business. That is moot point in this case. PW-1 in his evidence says that defendant No.2 is serving in his shop. He denies suggestions of defendants that for the purpose of improvement of their business, as well as to meet marriage expenses of their younger sister, they obtained a loan of Rs.1 lakh and in that regard, at the instance of the plaintiff, Ex.P-1 was executed. As observed by the learned trial Judge, in his cross-examination at para-24, PW-1 admits that "Ex.P-1 was executed by the defendants as they have obtained money from him to improve their business."

21. In Ex.P-1 at page No.2, it is mentioned as *"Whereas the Vendors having acquired right, title and interest over the Schedule Property have agreed to execute this agreement in order to **"raise finance for family necessity and legal benefit"** and also to*



overcome commitments in their independent business of their own, ...".

22. It is not in dispute that defendants are running a shop in electrical items under the name and style "*Srikant Electricals*" in the suit property. It is also not the case of the plaintiff that defendants are running their shop in different property. If they decided to sell the very same property, then the question of improving the business of their shop does not arise. It is also the evidence of PW-1 that for the purpose of improving their business, they agreed to sell the property. This fact leads to an inference that they had not intended to sell the property.

23. The plaint schedule shows that suit property is situated in the market place, as well as center place of Bengaluru. In the cross-examination of PW-1, he admits that suit property is situated in a commercial area. It consists of ground, first, second and third floor. PW-1 in his cross-examination denies the suggestion that as on the date of Ex.P-1, its worth was more than Rs.50 lakhs.



As per Ex.P-1, as well as plaint averments, the total area of the suit property is 19.6 ft. East to West and 33 ft. North to South. It consists of land, as well as three-storied building. The defendants in their written statement, as well in their evidence consistently stated that the value of the suit property was more than Rs.50 lakhs. In the cross-examination of DW-1, it was not brought out that value of the suit property was not more than Rs.18 lakhs as contended by the plaintiff. DW-1 in his cross-examination stated that a few years prior to Ex.P-1, building was constructed in the suit property. Hence, it is difficult to believe that they would agree to sell the property worth more than Rs.50 lakhs at a price of Rs.18 lakhs if really they intended to sell the same. It also leads to an inference that it might not be executed with an intention to sell the property.

24. Considering the pleadings, evidence and documents, one can infer that Ex.P-1 was executed as a



security document for the loan obtained by the defendants.

25. The plaintiff has contended that defendants were indebted to one C.Ashok Kumar to an extent of Rs.7 lakhs and he was insisting the defendants to pay the said amount. Therefore, a tripartite agreement was entered into between plaintiff, defendants and said Ashok Kumar. According to the said tripartite agreement, plaintiff had undertaken to repay the loan amount of Rs.7 lakhs to Ashok Kumar out of balance of sale consideration payable to defendants. Defendants have stoutly disputed execution of Ex.P-2 and the said case is made out by the plaintiff. Even they contended that Ashok Kumar was not known to them.

26. Plaintiff in his evidence has narrated the said facts. In his cross-examination he stated that the said Ashok Kumar is his cousin (son of elder brother of his father). He was not residing in the suit property. The defendants have denied the execution of tripartite



agreement at Ex.P-2. It is an unregistered document. Plaintiff has not explained as to why it was not registered. It is in continuation of Ex.P-1 and executed on the next day of registration of Ex.P-1. An additional amount of Rs.7 lakhs was agreed to be paid to said Ashok Kumar out of balance of sale consideration. That creates doubt about execution of the said document. In the cross-examination, DW-1 says that he and his brother signed on Exs.P-1 to P-4. But on the basis of such stray admission, it cannot be held that execution of Ex.P-2 is proved. Defendants contend that at the time of payment of loan, plaintiff got their signatures on promissory notes, stamp papers and also obtained blank cheques containing their signatures as collateral security documents. Looking to the said contentions, much importance cannot be given to stray admissions of DW-1. In the lengthy cross-examination of DW-1, plaintiff could not get any other admissions/ answers to prove the execution of Ex.P-2.



27. PW-2 in his cross-examination pleads ignorance as to who prepared Ex.P-2. He stated that he had to put his signature on Ex.P-2 at the instance of plaintiff. He denied the suggestion that he, plaintiff and Ashok Kumar created Ex.P-2. He says that he is the cousin of plaintiff. He says that in his presence, Ashok Kumar and defendants had financial transaction, which is not the case of plaintiff. It is worth to note that both Ashok Kumar and PW-2 are cousins of plaintiff who are signatories to Ex.P-2.

28. Ex.P-2 was said to be executed on 28.10.1998 i.e., on the next day of registration of Ex.P-1. The recitals of Ex.P-2 do not have any reference to Ex.P-1 and *vice versa*. The said C.Ashok Kumar is said to be the resident of Mudigere as per Ex.P-2 and he is said to be a coffee planter. It is not the case of the plaintiff that said Ashok Kumar was a money lender and doing money lending business at Bengaluru. It is not placed on record as to how the defendants came in contact with said Ashok Kumar. The defendants are running a small electrical



shop in a portion of suit premises. The details of said loan transactions were not placed on record. He lent amount without any security. Ashok Kumar was not examined to prove these facts.

29. It is also worth to note that, except the alleged promissory notes, no documents were executed in favour of Ashok Kumar as a security for loan of Rs.7 lakhs said to be given to defendants. It is also not clear from the evidence of PWs.1 and 2 or from the contents of plaint averments or Ex.P-2 as to how the said Ashok Kumar came to know about execution of Ex.P-1 just a day after registration of Ex.P-1. There is no explanation. The plaintiff has also not explained as to how he came to know that defendants were liable to pay certain amount to said Ashok Kumar. These facts create serious doubt about the transaction between Ashok Kumar and defendants.

30. Plaintiff averred in the plaint that defendants had borrowed a sum of Rs.7 lakhs from the said Ashok Kumar. Defendants denied said facts. Therefore, there is a burden



on the plaintiff and said Ashok Kumar to prove that defendants had obtained loan of Rs.7 lakhs from Ashok Kumar and executed promissory notes, receipts and cheques. The best witness to prove these facts is the said Ashok Kumar. He was not examined. Absolutely there is no evidence in this regard. Defendants contend that plaintiff at the time of lending amount of Rs.1 lakh, got executed promissory notes and receipts. They also handed over blank signed cheques as collateral security. The said contentions cannot be ruled out. The plaintiff has miserably failed to prove that defendants were indebted to Ashok Kumar to an extent of Rs.7 lakhs. When the loan itself is not proved, question of execution of the tripartite agreement at Ex.P-2 does not arise at all.

31. It is also pertinent to note that in Ex.P-1, it is not at all mentioned that defendants intended to sell the property to clear-off the debt of Rs.7 lakhs with interest borrowed from said Ashok Kumar. There was no hurdle to mention that for repayment of the loan amount to Ashok



Kumar, they were intending to sell the property. Even in the cross-examination of DW-1, it was not brought out that defendants informed Ashok Kumar of their intention to sell the suit property to clear-off their debt payable to Ashok Kumar. It also creates doubt about execution of Ex.P-2.

32. Plaintiff examined PW-2 to prove Ex.P-2. PW-2 in his cross-examination pleads ignorance about Ex.P-2. He also pleads ignorance as to who wrote the said document, but he admits that he signed Ex.P-2 at the instance of plaintiff. He says that he was asked by the defendants to sign on Ex.P-2 and he also admits that he was not related to defendants. He admits that he is cousin of plaintiff; In that event, if at all he was asked to be present while executing Ex.P-2, then it must be the plaintiff and not the defendants who were not at all connected with PW-2.

33. As already stated above, it is nobody's case that Ashok Kumar gave money to the defendants in the



presence of PW-2. But PW-2 says that he was present at the time of financial transaction between plaintiff and defendants. Admittedly, PW-1, PW-2 and said Ashok Kumar are cousins. Said Ashok Kumar is resident of Mudigere, which is far away place from Bengaluru. Defendants say that said Ashok Kumar was unknown to them, which appears to be believable. The said Ashok Kumar has not entered the witness box and stated as to how he came in contact with defendants or paid Rs.7 lakhs to them without any security. All these facts create serious doubt about the execution of Ex.P-2.

34. According to the case of the plaintiff, Rs.1 lakh was given to defendants at the time of execution of agreement of sale at Ex.P-1. The plaintiff further contends that an amount of Rs.1 lakh was paid to defendants on 04.12.1998. Plaintiff has paid Rs.5 lakhs to Ashok Kumar on 05.04.2001 under Ex.P-7 and Rs.3 lakhs on 20.12.2002 as per Ex.P-8 and Rs.3 lakhs on 17.01.2003 as per Ex.P-9, in all he paid Rs.11 lakhs to Ashok Kumar. The amount



due to Ashok Kumar was only Rs.7 lakhs as per the terms of Ex.P-2. Then why did he pay Rs.11 lakhs to Ashok Kumar is not explained by the plaintiff. For the sake of discussion, even if we believe that Rs.4 lakhs paid by the plaintiff to the said Ashok Kumar is towards interest, then there must be an agreement or there must be some mention in the plaint or evidence in this regard. But there is no such evidence available on record.

35. According to plaintiff, the sale consideration was Rs.18 lakhs. He paid Rs.2 lakhs to the defendants by way of cheques and balance of sale consideration was Rs.16 lakhs. Condition No.2 of Ex.P-2 reads as under :

" 2. That on discharge of the loan by the second party the liability of the second party to pay the rent and the liability of M/s.Mohan Industries Supplies to pay the rents in respect of the respective shop forming part of the schedule property shall abate. The parties of the third party shall not demand the rents from the said tenant"

36. In Ex.P-2, schedule of payment of loan to Ashok Kumar is not stated. After repayment of amount to



Ashok Kumar, PW-1 and his brother were not supposed to pay rent to defendants. Still why was plaintiff waiting to pay the balance amount to Ashok Kumar is not explained. Part of amount was paid nearly three years after execution of Ex.P-2. The second installment was paid four years and third installment was paid after five years from the date of execution of Ex.P-2. No liberty was given to plaintiff under Ex.P-2 that he can pay the amount as and when he desires. Both the parties were of the opinion that defendants are liable to pay interest to Ashok Kumar and according to the plaintiff, Rs.4 lakhs additional amount was said to be paid to said Ashok Kumar. If really the said amount of Rs.4 lakhs is towards interest, then it was paid due to the default of the plaintiff in paying back the amount to Ashok Kumar. Learned counsel for respondent submits that plaintiff in collusion with others created Ex.P-2 only to gulp the property of defendants, cannot be ruled out.



37. It is the case of the plaintiff that he was always ready and willing to perform his part of the contract. Plaintiff contends that Ex.P-1 was executed on 26.10.1998 and registered on 27.10.1998. The defendants agreed to sell the property for improving their business and marriage of their sister. It indicates that they were in dire need of money. Admittedly, except two shops, remaining portion of the entire suit building was in the possession of defendants and part of the said property was in the possession of the plaintiff and his brother. There is no difficulty for evicting the other two tenants. During the course of trial, it came in the evidence that the said tenants have vacated the shops. This fact is very well known to the plaintiff since he is residing in one of the shops in the suit building. If really he is interested in completing the sale transaction at the earliest, then nothing prevented him from approaching the defendants and calling upon them to execute the sale deed. But plaintiff did not take any such initiation. Even he did not send a notice calling upon the defendants to execute the



sale deed in terms of Ex.P-1 and Ex.P-2. Providing a term of five years to complete the sale transaction itself is highly doubtful looking to the contentions of both the parties. The said reasons indicate that the plaintiff was not ready and willing to perform his part of the promise if really we believe that Ex.P-1 was executed with an intention to sell the property.

38. The learned trial Judge has considered all these facts in detail by reproducing the evidence of the witnesses and documents produced by both parties in the impugned judgment and held that the plaintiff has utterly failed to prove that Ex.P-1 was executed with an intention to sell the suit property; and defendants have also executed Ex.P-2, in continuation of Ex.P-1 and plaintiff was always ready and willing to perform his part of the contract. When all these facts are not proved by the plaintiff, he is not entitled for equitable relief of specific performance.



39. The learned counsel for the appellant has relied on the following judgments.

(1) In *Jamila Begum (D) Thr. LRs. -vs- Shami Mohd. (D) Thr. LRs. and another*¹, the Hon'ble Apex Court observed that, "A registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption."

(2) In *M.Ramalingam, deceased by LRs. -vs- V.Subramanyam, deceased by LRs.*², the Madras High Court held that " the part payment of consideration and the execution of Ex.A1 agreement. It is pertinent to point out that Ex.A1 agreement was also registered.

¹ AIR 2019 SC 72

² AIR 2003 MADRAS 305



Though the plaintiff was cross examined in length, not even one circumstance was brought forth to disbelieve or discredit the evidence of the plaintiff. In view of the admission of the execution of the said document along with the receipt of Rs.35,000/- by the defendant coupled with the evidence of P.W.1 and also the clear and unambiguous terms and recitals found therein, the Court is of the considered view that no more proof could be expected to prove the document."

(3) In **P.S. Ranakrishna Reddy -vs- M.K. Bhagyalakshmi and another³**, the Hon'ble Apex Court in Paragraphs 11 and 12 has held as under :

" 11. The agreement in question has been described as an agreement for sale. The appellant admittedly was owner of the property. The agreement shows that there had been negotiations between the parties as a result whereof the respondent herein had offered to buy and the appellant had agreed to sell the said property for a sum of Rs.45,000. The terms and conditions

³ (2007) 10 SCC 231



stipulated therein were arrived at as a result of the negotiations between the parties.

12. No part of the agreement supports the contention of Mr Chandrashekhar that the same was not meant to be acted upon. It was signed by the parties. Two witnesses who had attested the signature of the parties to the agreement were examined before the trial court. It may be that despite the said agreement, Respondent 1 was allowed to continue to remain in possession of the premises in question as a tenant and not in part performance of the said agreement for sale, but it was not necessary for the parties to adopt the latter course only. The parties, on a plain reading of the agreement, apparently intended to continue their relationship as landlord and tenant till a regular deed of sale was executed."

40. In the present case, as discussed in the above paragraphs, execution of Ex.P-1 is highly doubtful. Contents of Ex.P-1 as well as in the cross-examination of PW-1, it is stated that the said document was executed for obtaining financial assistance to improve the business. Admittedly the defendants are running business in a shop situated in the suit property. Defendants admit that they



took loan of Rs.1 lakh by executing Ex.P-1 and Rs.1 lakh was paid under Ex.P-1. In the cross-examination of DW-1 it was not brought out that Ex.P-1 was executed with a sole intention to sell the suit property. Serious doubt is clouded on Ex.P-1 as well as on Ex.P-2. The payment of part sale consideration as stated in the plaint is also doubtful in view of non-examination of Ashok Kumar. Under these circumstances, merely Ex.P-1 is registered, does not mean that it shall be accepted as a gospel truth.

In the above referred judgments, the plaintiff therein was able to establish the execution of agreement of sale. Considering the same, the Hon'ble Apex Court did not accept the defence of the defendants contrary to the registered document. Therefore, the aforesaid judgments will not help the plaintiff/appellant in the present case in any way.

(4) The judgment of Hon'ble Apex Court in ***Sughar Singh -vs- Hari Singh (Dead) Through LRs. and others***⁴

⁴ AIR 2021 SC 5581



relied upon by the learned counsel for the appellant pertains to readiness and willingness to perform the contract.

41. Learned counsel for the respondents/defendants relied upon a judgment of Division Bench of this court in the case of ***Sri Punny Akat Philip Raju, since dead by his LRs. –vs- Sri Dinesh Reddy***⁵, wherein it is held as under :

" Mere stepping into the witness box and saying on oath that he is ready with the balance sale consideration or that he is going to borrow money from any financial institution or that he has got sufficient funds in his Bank accounts or that he has kept money in Fixed Deposit, without that oral evidence being supported by documentary evidence will not prove the plaintiff's readiness to pay the balance sale consideration. It is immaterial whether such oral evidence is challenged in cross-examination or not. The plaintiff has to prove to the satisfaction of the Court that he possessed the requisite funds. He has to produce such documentary evidence, which would enable the Court to come to the conclusion that plaintiff is ready with the requisite balance sale consideration to complete

⁵ ILR 2016 KAR 2252



the sale transaction. If no evidence is adduced in this regard by way of documentary evidence, no prudent man would come to the conclusion that the person has proved the possession of funds. In the absence of any such documentary evidence being produced, it is a case of plaintiff's case being not proved. Plaintiff cannot expect the Court to pass a decree for specific performance of a contract of sale when the plaintiff has not proved his readiness to perform his part of the contract."

42. In the instant case, the readiness and willingness of the plaintiff to perform the terms of the agreement of sale are discussed in the aforesaid paras. The first payment of Rs.1 lakh, which is admitted, was made on 26.10.1998. The remaining payments stated in the plaint are not proved. The plaintiff knew that one of the tenants who occupied the suit property had vacated the suit premises. He never issued a notice calling upon the defendants to execute the sale deed for the reasons best known to him. During the course of trial, he had not proved that he had sufficient source of income to pay the balance amount of sale consideration to get the registered



sale deed even if it is believed that defendants have executed an agreement of sale. Payments made to Ashok Kumar as contended by PW-1 shows that he had no funds to pay lumpsum amount to defendants. Therefore, merely stating a fact in the pleading and evidence that plaintiff was always ready and willing to perform his part of the contract is not sufficient. Plaintiff has utterly failed to prove that he was always ready and willing to perform his part of the contract to get executed the registered sale deed.

43. The suit is for the specific performance of the contract. Therefore, the court also has to consider hardship. The defendants in the written statement have contended about their hardship. It was not rebutted by the plaintiff. Certain facts are not in dispute. The defendant No.1 is running an electrical shop in a portion of suit premises. Both the defendants are residing in the very same property. Defendant No.2 has been serving in the shop of the plaintiff. It is not brought out that they



had any other source of income except income earned from the salary as well as business of defendant No.1. If the defendants are directed to execute the sale deed believing that they have executed Ex.P-1 with an intention to sell the property, then defendants will be put to serious hardship. They would be without business as well as residence. In addition to that, defendants by oral evidence have shown that the value of the suit property was much more than what is stated in Ex.P-1. Looking to the location of the land as stated in the pleadings and construction of the building thereon, indicates that the suit property is worth more than the value as stated in Ex.P-1. If the defendants are directed to sell the property after lapse of about 26 years from the date of execution of Ex.P-1, then they would be put to much more hardship. On the contrary, the plaintiff was not able to prove the payment of Rs.12 lakhs as mentioned in Ex.P-2, Exs.P-7 to P-9 and the cheque dated 04.12.1998 for Rs.1 lakh. As such, the amount of Rs.1 lakh paid by the plaintiff to the defendants could be ordered to be paid with



reasonable interest, which can compensate the rights of the plaintiff for recovery of the amount as the defendants are put to more hardship than the plaintiff.

44. Though the plaintiff has contended that he gave a cheque for Rs.1 lakh, dated 04.12.1998 and the amount was withdrawn by the defendants, but plaintiff has not produced any documents to corroborate the same.

45. It is true that plaintiff did not seek for an alternative relief of refund of earnest money. The relief of specific performance is an equitable relief. The defendants have not disputed that they have received Rs.1 lakh at the time of execution of Ex.P-1. Therefore, though the relief of refund of earnest money of Rs.1 lakh was not prayed by the plaintiff, to meet the ends of justice, it is necessary to direct the defendants to refund the said amount of Rs.1 lakh to the plaintiff with reasonable interest. Looking to the facts and circumstances of the case and the purpose for which the defendants have obtained loan from the plaintiff, we feel it proper to direct the defendants to pay



interest at the rate of 10% p.a. on Rs.1 lakh from the date of filing of the suit till its realization. To that extent, decree needs modification.

46. In view of the aforesaid discussion, we pass the following:

ORDER

The Appeal is ***allowed in-part.***

The judgment and decree dated 29.01.2016, passed by the learned XI Addl. City Civil Judge, Bengaluru, in O.S.No.7688/2003, is modified. The dismissal of the suit for specific performance is confirmed. Defendants/ respondents are directed to refund the earnest money of Rs.1 lakh to the plaintiff with future interest at the rate of 10% p.a. from the date of suit till its realization.

Both parties to bear their own costs.

Draw modified decree accordingly.



Registry to transmit the records along with copy of
this judgment to the concerned trial court without delay.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE

BK
List No.: 19 Sl No.: 8