



A.S.No.601 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **15.04.2024**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T.ASHA**

A.S.No.601 of 2016

S.Jansirani

... Appellant

-Vs-

P.Mohanraj

... Respondent

PRAYER: First Appeal filed under Section 96 and Order XLI Rule 1 of the Code of Civil Procedure, 1908, to set aside the order and decree passed in O.S.No.136 of 2014 dated 12.07.2016 on the file of the I Additional District and Sessions Court, Tirupur.

For appellant : Mr.Sunny Sheen

for Mrs.V.Srimathi

For respondent : Mr.V.P.Sengottuvel, Senior Counsel,

for Mr.K.R.Nishanth



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JUDGMENT

The defendant in the suit for specific performance is the appellant before this Court. The defendant seeks to challenge the decree for specific performance granted by the learned I Additional District and Sessions Judge, Tirupur, in O.S.No.136 of 2014.

2. The facts which have resulted in the above appeal are set out hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

PLAINTIFF'S CASE:

2.1. The plaintiff has filed the above suit for specific performance of an agreement of sale dated 17.12.2012. It is the case of the plaintiff that the suit schedule property belongs to the defendant who had purchased the property under a registered sale deed dated 31.03.2004. On 17.12.2012, the plaintiff and the defendant had signed an agreement and the agreement was registered on the file of the office of Joint I SRO, Tirupur, as Document



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No.9480/2012. The plaintiff had agreed to purchase the property for a total sale consideration of Rs.13,00,000/- (Rupees Thirteen Lakhs only) and on the date of the agreement, the plaintiff had paid a sum of Rs.11,00,000/- (Rupees Eleven Lakhs only) to the defendant. The parties had agreed that the balance sum of Rs.2,00,000/- (Rupees Two Lakhs only) shall be paid to the defendant within a period of one year ie., on or before 17.12.2013 and on receipt of the balance sale consideration, the defendant would execute and register the sale deed in favour of the plaintiff or his nominees.

2.2. The plaintiff would contend that he has been ready and willing to proceed with the sale throughout. However, the defendant was residing in the said premises and therefore, she had sought time for getting an alternative accommodation, after which she will execute the sale deed and hand over the vacant possession to the plaintiff. The plaintiff would submit that on 17.06.2013, he had paid a further sum of Rs.1,60,000/- (Rupees One Lakh and Sixty Thousand only) and he had issued a separate receipt for the same.



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2.3. The plaintiff would contend that he was ready to pay the balance sale consideration of Rs.40,000/- (Rupees Forty Thousand only), but, the defendant was wantonly postponing the execution of the sale deed. Therefore, the plaintiff had issued a legal notice dated 22.11.2013 calling upon the defendant to receive the balance sale consideration and to execute and register the sale deed. The defendant had sent a reply on 07.12.2013 containing totally false and untenable allegations. The defendant had contended that she had borrowed a sum of Rs.1,00,000/- (Rupees One Lakh only) for interest and the sale agreement had been executed as a security for the loan. The defendant would further contend that she was paying interest for the said amount and she had fully paid the loan amount and requested the plaintiff to cancel the agreement. The plaintiff would submit that the aforesaid contentions are totally false. Therefore, the plaintiff has come forward with the suit in question for the reliefs stated *supra*. The plaintiff had also asked for the alternative relief directing the defendant to pay a sum of



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Rs.14,24,540/- (Rupees Fourteen Lakhs Twenty Four Thousand Five Hundred and Forty only) with interest on Rs.12,60,000/- (Rupees Twelve Lakhs Sixty Thousand only) at the rate of 18% per annum.

WRITTEN STATEMENT OF THE DEFENDANT:

2.4. The defendant has denied the agreement of sale by contending that the same has been executed only as a security for the loan. Therefore, the allegations in the plaint that the document had been executed for the purpose of selling the suit property and that the plaintiff is ready and willing throughout, are all false and incorrect.

2.5. The defendant would contend that the plaintiff is carrying on a finance business and the defendant, to meet her urgent family expenses, had asked for a hand loan of Rs.1,00,000/-(Rupees One Lakh only) from one Ramkumar. The said Ramkumar had introduced the plaintiff to the defendant. At the request of the defendant, the plaintiff had also accepted to give the hand loan,



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however, on condition that interest at the rate of Rs.6/- per Rs.100/- has to be paid along with the loan amount. The plaintiff had also accepted the condition.

2.6. Thereafter, on 17.12.2012, the plaintiff had prepared the document and taken the defendant to the office of the Registrar. The defendant was informed that the document in question was a loan deed and believing his words, the defendant had affixed her signature to the document. The defendant was under the belief that what she was executing was a loan document and not an agreement of sale.

2.7. The defendant would further submit that two days later, the plaintiff had taken the defendant to the Sub Registrar Office and asked her to sign yet another document by terming it to be supporting document for the loan deed. Once again, having implicit faith in the plaintiff, the defendant had executed the said document as well. The defendant would submit that she has been paying



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monthly interest to the plaintiff without default. Thereafter, the defendant had made an arrangement to repay the loan amount in full and in October 2013, she had requested the plaintiff to cancel the loan deed. However, the plaintiff postponed the dispute.

2.8. The defendant had believed the plaintiff and therefore, kept quiet. However, to the shock and surprise of the defendant, on 22.11.2013, the plaintiff had issued a legal notice and it was then, the defendant had come to know that she had executed a sale agreement for Rs.13,00,000/- (Rupees Thirteen Lakhs only) on 17.12.2012 and that on the same day, she has been paid Rs.11,00,000/- (Rupees Eleven Lakhs only) by the plaintiff and that a further sum of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only) has been stated to be paid on 17.06.2013.

2.9. The defendant would submit that these statements in the legal notice are contrary to the truth. The defendant had never executed the sale agreement and further, she had no necessity to sell



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the property worth over Rs.45,00,000/- (Rupees Forty Five Lakhs only) for a sum of Rs.13,00,000/- (Rupees Thirteen Lakhs only). The defendant would submit that she had only availed a hand loan of Rs.1,00,000/- (Rupees One Lakh only) which amount she had completely repaid together with interest at the rate of Rs.6/- for every Rs.100/-. Therefore, the defendant sought for the dismissal of the suit stating that there was no cause of action.

TRIAL COURT:

3. The Trial Court had framed the following issues.

“1. வாதி கோரியுள்ள ஏற்றதை ஆற்றுக பரிகாரம் வாதிக்கு கிடைக்கத் தக்கதா?

2. மாற்று பரிகாரமாக வாதி கோரியுள்ளது போல முன் தொகையை வட்டியுடன் பெற உரிமை உண்டா?

3. வாதிக்கு வேறு என்ன பரிகாரம் கிடைக்கத்தக்கது?”

4. The plaintiff had examined himself as P.W.1 and one Arunachalam as P.W.2 and marked Exs.A1 to A7 and Ex.X1



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through P.W.2. The defendant had examined herself as D.W.1 and one Ramkumar as D.W.2 and marked Ex.B1.

5. The Trial Court, on considering the evidence on record, had decreed the suit as prayed for. The learned Judge had taken into consideration the fact that the defendant had admitted her signature in the agreement of sale – Ex.A1. That apart, P.W.2, one of the attesting witnesses, had been examined to prove Ex.A1. The defendant, to rebut this document, had not examined her daughter who had signed as the first witness in Ex.A1.

6. The learned Judge observed that the defendant has not proved her case that she had only borrowed the sum of Rs.1,00,000/- (Rupees One Lakh only) and she had executed Ex.A1 thinking that the same was a loan deed. The learned Judge observed that the defendant has not examined her husband who was the attesting witness of Ex.A2 to discredit the evidence of the plaintiff. The defendant also failed to prove that the property's value is



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Rs.45,00,000/- (Rupees Forty Five Lakhs only) as contended by her in her written statement. On the contrary, the plaintiff has proved his readiness and willingness. Therefore, the suit was decreed.

7. Challenging the same, the defendant is before this Court.

POINTS FOR CONSIDERATION:

8. After hearing the arguments of the learned counsel on either side, the following points arise for consideration.

“(1)Whether Ex.A1 was intended to be an agreement of sale or security for a loan?”

(2)Whether Ex.A2 has been executed by the defendant and the amount specified therein has been paid to the defendant?

(3)Whether the plaintiff has proved the readiness and willingness?

(4)Whether the judgment and decree of the Trial Court has to be confirmed or set aside?”



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SUBMISSIONS:

9. Mr.Sunny Sheen, learned counsel appearing on behalf of the learned counsel for the appellant/defendant would submit that the defendant has no intention of selling the suit property and the agreement of sale was executed as a security for the hand loan. He would further submit that in the agreement of sale, there is no recital as to why a period of one year has been fixed for paying the balance sale consideration, particularly, when the plaintiff has paid more than 90% of the sale consideration. As against the total sale consideration of Rs.13,00,000/- (Rupees Thirteen Lakhs only) ie.,Rs.11,00,000/- (Rupees Eleven Lakhs only) has been paid on the date of the agreement leaving just a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as balance.

10. He would further submit that in her written statement, the defendant has clearly stated that she has repaid the entire loan amount. Further, the contention of the plaintiff that the sum of



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Rs.1,60,000/- (Rupees One Lakh and Sixty Thousand only) was paid on 17.06.2013 was also denied by the defendant. The defendant had not only denied her signature in the document, but, had also denied the passing of consideration therein and despite the denial, the plaintiff has not taken any step to prove the same.

11. He would draw the attention of the Court to the fact that it is only in the plaint for the first time that the plaintiff would come forward to state that the period of one year had been decided since the defendant was residing in the suit property and had sought for a year's time to find an alternative accommodation. He would further submit that the plaintiff had also got a power of attorney executed in favour of his father within two days of agreement of sale, which fact he had not set out in the plaint and this would go to show that the document in question was never intended to be acted upon for the sale, but, only as a security. He would further submit that P.W.1 when asked a question as to why he had not got the sale executed using Ex.B1 - Power of Attorney, the plaintiff has responded as



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follows:

“அதிகார பத்திரத்தை முன்னிட்டு நான் கிரயம்

பெற்றிருந்தால் பிரதிவாதி நில அபகரிப்பு தொடுப்பார் என்ற

காரணத்தால் இந்த வழக்கை நான் தாக்கல் செய்துள்ளேன்

என்று சொன்னால் சரியல்ல.”

(The reference to this portion of the oral evidence is not clear.)

12. He would also submit that P.W.1 has admitted that there is no recital in the agreement of sale to show why the period of one year has been prescribed for paying the balance sale consideration. Except in the plaint and in the oral evidence, the plaintiff has not specified the reason in the agreement of sale. He would further submit that the evidence of P.W.2 - Arunachalam would clearly prove the averments contained in the written statement. P.W.2 has submitted that he would obtain loans on payment of commission and the defendant has on earlier occasions approached the said Arunachalam (P.W.2) for obtaining a loan. This admission, according to the learned counsel, would go a long way to prove the



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case of the defendant that she did not have direct contact with the plaintiff and it was only through Ramkumar and Arunachalam that the defendant had come into contact with the plaintiff for the purpose of obtaining the loan.

13. The learned counsel would vehemently argue that though a substantial sum of Rs.11,00,000/-(Rupees Eleven Lakhs only) was paid, there was no explanation as to why the plaintiff has not taken steps to immediately pay the balance sale consideration and has got the sale executed. This would go to show that the plaintiff had only extended a loan and has not entered into agreement of sale. To buttress this argument, he would rely upon the judgment of this Court in the case of *Pappammal @ T.Pappa vs P.Ramasamy* reported in **2012 (4) CTC 100**. It is a case where the respondent had entered into an agreement of sale with the appellant for a total sale consideration of Rs.40,000/- (Rupees Forty Thousand only) and Rs.30,000/- (Rupees Thirty Thousand only) was paid at the time of the agreement and the balance sum of Rs.10,000/- (Rupees Ten



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Thousand only) was to be paid in a five year period. This Court, relying upon an earlier judgment of the Hon'ble Supreme Court in the case of *Tejram vs. Patirambhau* reported in (1997) 9 SCC 634, had observed that the sale consideration fixed, the advance paid and time fixed for payment of balance sale consideration would clearly indicate the true intent of the documents. The Court therefore, took into consideration the fact that what was payable was only a sum of Rs.10,000/- (Rupees Ten Thousand only), for which, a five year period was fixed, therefore this would clearly indicate that the document was only a loan transaction. The learned counsel would argue that the same analogy has to be drawn to the instant case.

14. He would therefore, submit that the Court below has erred in granting the decree for possession, particularly, when the plaintiff has failed to prove that it is an agreement of sale and not given any reason as to why a year's time was given for paying the balance sale consideration.



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15. Per contra, Mr.V.P.Sengottuvel, learned Senior Counsel, appearing on behalf of the learned counsel for the respondent/plaintiff would submit that the plaintiff has proved the execution of Ex.A1 by the defendant by relying upon D.W.1's own oral evidence, where she has admitted the execution of Ex.A1-sale agreement. He would further submit that the plaintiff has proved the execution of Ex.A1 by examining the second attesting witness, Arunachalam, who has not only spoken about the execution of sale deed and passing of sale consideration, but, also the fact that the parties had entered into an agreement only for the purpose of purchasing/selling the suit property. He would submit that the defendant has not let in any evidence whatsoever to rebut the case of the plaintiff. The defendant who has claimed that she has been paying interest regularly has not let in any evidence whatsoever to prove the same.

16. Further, the defendant's daughter attested Ex.A1-agreement of sale as the first attesting witness and the defendant's



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husband had executed Ex.A2 as the attesting witness, but, the defendant has not examined either of them and an adverse inference has to be drawn for their non-examination by the defendant. He would submit that the Trial Court has extensively considered the evidence on record and come to the conclusion that Ex.A1 was an agreement of sale and was intended to be acted upon as the agreement of sale. He would rely upon the following judgments in support of his argument that once substantial amount has been paid there is nothing further required to be proved by the plaintiff.

(1) *P.Ramasubbamma vs. V.Vijayalakshmi and Ors.*, reported in **2022 (7) SCC 384**;

(2) *Lakshmi Ammal Vs. Gejaraj & Ors.*, reported in **2022 SCC Online Mad 7211**.

17. Heard the learned counsel on either side and perused the materials available on record.

DISCUSSION:



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18. The defendant had taken a plea that the document in question is a loan transaction and that she had only borrowed a sum of Rs.1,00,000/- (Rupees One Lakh only) which amount she has repaid in full along with interest. The defendant has not chosen to examine her daughter who had executed the sale deed - Ex.A1 as the attesting witness to support her argument that the plaintiff and the defendant had entered into a loan agreement and not a sale agreement. It is also seen from the pleadings that though the defendant had pleaded that she had approached Ramkumar, who had directed her to Arunachalam, who, in turn, directed her to the plaintiff, for a hand loan, ultimately admits the execution of Ex.A1. However, it is her case that she had executed the same as the security for the hand loan.

19. The said Arunachalam who has been examined as P.W.2 has clearly and categorically stated that on 17.12.2012, when he was going to meet one Govindaraj, he had met the defendant who requested him to arrange for the sale of her property. The witness



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has stated as follows:

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“கோவிந்தராஜை பார்க்க நான் சென்று கொண்டிருந்த போது பிரதிவாதி அவரது வீட்டின் முன்னால் நின்று கொண்டிருந்தார். அப்போது பிரதிவாதி என்னிடம் தாவா சொத்தை விற்று கிரயம் செய்து கொடுக்குமாறு என்னிடம் சொன்னார். பிரதிவாதியின் வீடு மேற்கு பார்த்து வாசல் கொண்ட வீடாகும். பின்னிட்டு வாதியை சுமார் 6/12/12ம் தேதி சந்தித்தேன். வாதிக்கு தாவா சொத்தை காண்பித்தேன். பின்னர் வாதி, பிரதிவாதி ஆகியோர் கிரயம் சம்மந்தமாக பேசிக் கொண்டார்கள். வாதி என்னிடம் ரூ.13 லட்சம் கிரய தொகை நிர்ணயித்ததாகவும், ரூ.11 லட்சம் முன் பணம் கொடுப்பதாகவும் பேசிக் கொண்டதாக என்னிடம் சொன்னார். நான் 17/12/12 அன்று காலை 10.30 மணியளவில் பாபு தட்டச்சு அலுவலகம் சென்றேன். நான் சென்ற போது வாதி, பிரதிவாதி, அவரது கணவர் ஆகியோர்கள் இருந்தனர். கிரய ஒப்பந்தம், பாபு தட்டச்சு அலுவலகத்தில் தட்டச்சு செய்யப்பட்டது. ஒரு பெண்தான் தட்டச்சு செய்தார். வா.சா.ஆ.1 நான் படித்து பார்த்தேன். வா.சா.ஆ.1ஐ தட்டச்சு செய்தது பாபு ஆவார். முத்திரை தாள்கள் யார் வாங்கி வாந்தார்கள் என்பது பற்றி எனக்கு தெரியாது. யார் பெயரில் வாங்கப்பட்டது என்பதும் எனக்கு தெரியாது. நான் சென்ற போது வா.சா.ஆ.1 தட்டச்சு செய்யப்பட்டு இருந்தது. வாதி, பிரதிவாதிகள் எத்தனை பக்கங்களில், எத்தனை தாள்களில் கையெழுத்து செய்தார்கள் என்ற விவரம் எனக்கு தெரியாது. வா.சா.ஆ.1ல் கையெழுத்திட்டவர் வழக்கறிஞர் சௌந்தரராஜன் ஆவார். வா.சா.ஆ.1ல் வாதி முதலில் கையெழுத்திட்டார். வா.சா.ஆ.1 ல் உள்ளது வழக்கறிஞர்



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கையெழுத்து என்றால் சரிதான். பின்னர் சுமார் 11.00 மணியளவில் சார் பதிவாளர் அலுவலகம் சென்றோம். அங்கு நான் கையெழுத்து செய்த உடன் வந்து விட்டேன் என்றால் கடைசி வரை இருந்தேன்.”

This clearly goes to show that the parties had entered into an agreement of sale and the defendant had signed the document well knowingly that what she was executing was an agreement of sale. P.W.2 has also pleaded about the plaintiff speaking to him about the Rs.11,00,000/- (Rupees Eleven Lakhs only) advance. Once the execution of the agreement is proved, the onus falls upon the defendant to prove the otherwise. The defendant has not taken steps to examine her daughter who had executed Ex.A1 to corroborate the defendant's statement that she had borrowed only a sum of Rs.1,00,000/- (Rupees One Lakh only) and she had repaid the said sum with interest. Therefore, the point for consideration no.(1) is answered in favour of the plaintiff.

20. The plaintiff would contend that he has paid a sum of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only) on 17.06.2013 to the defendant. The defendant has denied her signature



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in the said document and had also denied the receipt of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only). She has also gone on to state that her signature has been obtained on a blank paper at the time of execution of sale which paper has been put into use now. Though the defendant has categorically denied the execution of the agreement, the plaintiff has not taken any step to examine the attesting witness Ramasamy to prove the execution of Ex.A2. Further, a perusal of the stamp papers used for preparing Exs.A1 and A2 give rise to a serious doubt that Exs.A1 and A2 have been prepared around the same time. The document has also not been proved by the plaintiff. Therefore, this Court is not in agreement with the finding of the Trial Court that the sum of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only) had been paid on 17.06.2013.

21. That apart, even as per the plaintiff's pleadings, Rs.2,00,000/- (Rupees Two Lakhs only) was to be paid only when the defendant vacates the property and executes the sale deed. Both



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of these events had not taken place. In fact, even in the legal notice, the plaintiff has not pleaded that the defendant has not vacated the premises. Therefore, there was no necessity to pay a further sum of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only), that too, without getting possession of the same. For these reasons, the finding of the Trial Court regarding the further payment of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only) is set aside. Therefore, the point for consideration no.(2) is answered in favour of the defendant.

22. As regards the readiness and willingness of the plaintiff, it is seen that as per the agreement, the contract has to be concluded by 17.12.2013. The plaintiff has sent a legal notice on 21.11.2013 to which the defendant had sent a reply on 07.12.2013 claiming the document to be one executed as security for the loan. The suit has been filed on 16.06.2014. Further, the plaintiff has paid 90% of the sale consideration and it was submitted that the balance of Rs.40,000/- (Rupees Forty Thousand only), as calculated by the



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plaintiff, has been deposited by him. Therefore, the readiness and willingness of the plaintiff to proceed further with the agreement of sale has been proved. However, since this Court has held that the sum of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only) which is stated to be paid by the plaintiff to the defendant has not been proved, the plaintiff shall deposit a sum of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only) within a period of eight weeks from the date of receipt of a copy of this judgment. Therefore, the judgment of the Trial Court is confirmed with a modification that the plaintiff should deposit the sum of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only) within a period of eight weeks from the date of receipt of a copy of this judgment. Therefore, the point for consideration nos.(3) and (4) are answered as above.

Accordingly, with the above modification, this first appeal is partly allowed. Consequently, connected C.M.P. stands closed. No costs.



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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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To

- 1.The I Additional District and Sessions Court, Tirupur.
- 2.The Section Officer, V.R.Section, High Court, Madras.

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