



WEB COPY



S.A.No.494 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 494 of 2021
&
C.M.P. No. 9674 of 2021

V.S.Rajamanickam

...Appellant

Vs.

G.Rajendiran

...Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 20.12.2019 made in A.S.No.14 of 2019 on the file of the I Additional District and Sessions Judge, Vellore, Vellore District in modifying the Judgement and Decree dated 06.10.2018, made in O.S.No.115 of 2007, on the file of the Principal Sub Ordinate Judge, Vellore.

For Appellant : Mr. V.Raghavachari
Senior Counsel
For Mr. A.Gouthaman

For Respondent : Mr. K.A.Ravindran.



S.A.No.494 of 2021

J U D G M E N T

WEB COPY

The defendant in a suit for specific performance has filed the above Second Appeal. The facts are set out herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.115 of 2007 on the file of the Principal Sub Court, Vellore seeking specific performance of an agreement of sale alleged to have been entered into between the plaintiff and the defendant. The plaintiff would submit that the defendant is the absolute owner of the suit schedule property and he had agreed to sell the property for a total sale consideration of Rs.2,50,000/-. The terms of the contract was reduced into writing in a registered agreement of sale dated 03.02.2005. On the date of the agreement, a sum of Rs.2,00,000/- has been paid as advance and the balance amount of Rs.50,000/- was to be paid within a period of two and half years i.e., on or before 02.08.2007.

3. The plaintiff would submit that he was ready and willing to



perform his part of contract and it was the defendant who was evading to perform his part of the contract. The plaintiff had also issued a legal notice dated 04.07.2007 calling upon the defendant to perform his part of contract, for which there was no response. Hence, the plaintiff has come forward with the suit in question.

4. The defendant had filed a written statement inter alia denying the allegations that he had executed the document with an intention to sell the property to the plaintiff. It is the contention of the defendant that he had approached the plaintiff to give him financial assistance as he required amounts for his agricultural operations and to effect improvements to his lands. The plaintiff agreed to give him this assistance on his executing a simple mortgage deed. The defendant would submit that the plaintiff had asked him to go over to Sub Registrar Office, K.V.Kuppam, where the plaintiff has taken signature of the defendant in stamp papers without its disclosing contents.

5. The defendant would submit that only when he received a legal



notice he had come to know about the fraud that has been played on him. He would submit that he had no intention of selling the property to the plaintiff, particularly for such a paltry sum. The fact that two and half years interval has been given for payment of the sum of Rs.50,000/- would only fortify the contention of the defendant that the defendant had not intended to sell his property and the agreement of sale has been executed only as a security.

6. The defendant would submit that when he received the legal notice he had approached the plaintiff. The plaintiff replied that if the defendant was ready to repay the entire amount he would not proceed with the notice. Despite such an assurance he has come forward with the suit. The defendant would submit that the suit is devoid of merits and sought for its dismissal.

7. The Trial Court had framed the following issues:



“1.வாதி பிரதிவாதிகளுக்கு இடையே தாவா
சொத்து குறித்து 03.02.2005ல் ஓர் கிரய ஒப்பந்தம்
ஏற்பட்டதா?

2.வாதி ஏற்றதை ஆற்றும் பரிகாரம் பெற
அருகதை உடையவரா?

3.வாதி கோருகின்ற பரிகாரங்கள் பெற
அருகதை உடையவரா?

4.இதர பரிகாரங்கள் என்ன?

8. The plaintiff had examined himself as P.W.1 and one Magendran as P.W.2 and marked Ex.A.1 to Ex.A.3. The defendant had examined himself as D.W.1 and marked the police complaint given by him to Superintendent of Police on 03.01.2013.

9. The learned Principal Sub Judge, Vellore, had taken note of the fact that for paying a meagre sum of Rs.50,000/- time for performance was stated to be two and half years and there is nothing in the plaint or in the agreement to state as to why such a long time has been given.



The learned Judge had observed that if the plaintiff had really intended to purchase the property, he would have completed the sale immediately. The learned Judge taking into account the time gap held that the conduct of the plaintiff would indicate that he was not ready to perform his part of the contract.

10. Further, the learned Judge has taken note of the fact that the plaintiff has not taken any steps to deposit the balance sale consideration, which would once again prove the lack of readiness and willingness on the part of the plaintiff. The learned Judge proceeded to order the alternate relief of recovery of a sum of Rs.2,00,000/- together with interest at 12% per annum.

11. Aggrieved by the said Judgement and Decree, the plaintiff has filed A.S.No.14 of 2019 on the file of the I Additional District and Sessions Judge, Vellore.

12. The learned I Additional District and Sessions Judge, Vellore



by her Judgement dated 20.12.2019 has taken into consideration the factors that have not been placed before her either in the form of pleadings or evidence. The learned Judge proceeded to observe that the defendant was fully aware of the fact that he was entering into an agreement of sale. Further, the defendant has not let in any contra evidence. Therefore, the learned Judge proceeded to allow the appeal and set aside the Judgement and Decree of the Trial Court. The defendant has therefore preferred the present Second Appeal.

13. The Second appeal has been admitted on the following substantial questions of law:

“1) 'Whether a First Appellate Court in exercise of its powers under Section 96 of CPC can disregard the well carved out exceptions to Section 92 of the Indian Evidence Act, 1872 and disturb a decree of trial Court which has believed the version of defendant qua Ex.A1 (03.02.2005 sale agreement) and held that to be a loan transaction, without discussion qua deposition and as to



WEB COPY



S.A.No.494 of 2021

whether this leads to perversity warranting interference under Section 100 of CPC?'

2) 'Absent above perversity, would not have the conclusion of First Appellate Court been the exact bipolar opposite/converse of conclusion that has now been arrived at?'

14. Heard the learned counsels and perused the records.

15. The plaintiff has come to the Court stating that he has entered into an agreement to purchase the suit property for a total sale consideration of a sum of Rs.2,50,000/- and on the date of the agreement i.e., on 03.02.2005, a sum of Rs.2,00,000/- had been paid and what remained to be paid was a sum of Rs.50,000/-. As per the terms of the agreement a period of two and half years is provided for paying the amount of Rs.50,000/-. No reason has been given as to why such a long time has been provided for the payment of the balance sale



S.A.No.494 of 2021

consideration.

WEB COPY

16. It is the case of the plaintiff that he had entered into this agreement with a view to purchase the property. It becomes all the more suspicious when in his evidence the plaintiff would submit that on the date of the execution of the agreement, he had a sum of Rs.13,00,000/- which was his retirement benefits. However, in his evidence, the plaintiff would state as follows:

“ரூ.2.00,000/- நான் வங்கியில் போடவில்லை.
கையில் தான் வைத்திருந்தேன். நான்
பணிபுரிந்து பிடிப்பு பணம் போக மீதமுள்ள பணம்
ரூ.13.00,000/- கொடுத்தார்கள்.

17. He would improve his statement by stating that since Rajamanickam had cultivated Banana in the said land, he had requested this time for executing the sale deed and his evidence in this regard reads as follows:

“ரூ.50,000/- 2 1/2 வருடம் வாய்தா



போடப்பட்டது என்று சொன்னால் அந்த நிலத்தில்
ராஜமாணிக்கம் பயிர் செய்து இருந்தார். அதனால்
2 1/2 வருடம் டைம் கேட்டிருந்தார்.

18. However, a perusal of the pleading does not reflect such a statement. The plaintiff has simply stated in paragraph no.2 as follows:

“The plaintiff further submits that as per the terms of the contract though the time is not essence of the contract the defendant will have to execute the sale deed on or before 02.08.2007 after receiving the balance sale consideration. The plaintiff is always ready and willing to perform his part of contract. But on the other hand the defendant evading to perform his part of contract for the reasons best had known to him.”

19. Therefore, it is crystal clear that the plaintiff was not ready and willing to complete his part of the contract by paying the balance sale consideration and have the sale deed executed, but at each stage was only trying to develop his case.



20. Further, the conduct of the plaintiff supports the statement of the defendant that the only intent of the plaintiff was to grab the defendant's property. It appears that initially an ex parte decree had been obtained by the plaintiff and without even filing the execution petition, the plaintiff has forcibly taken possession of the property. This fact has been admitted by the plaintiff as P.W.1. In his evidence, he would submit as follows:

“2 வருடம் கழித்து நான் பயிர் செய்ய ஆரம்பித்துவிட்டேன் என்று சொன்னால் சரிதான். 2007 முதல் நான் தான் பயிர் செய்து வருகிறேன். ராஜமாணிக்கம் எனக்கு தாவா சொத்தை சுவாதீனம் கொடுக்கவில்லை என்றும் நானாகவே தான் எடுத்துக்கொண்டேன் என்றால் சரிதான். 2007 7ம் மாதம் ஊரில் பஞ்சாயத்து வைத்தேன், ரிஜிஸ்டர் செய்து தரமாட்டேன் என்று ராஜமாணிக்கம் சொல்வதாக சொன்னேன். ஊர் ஆட்கள் நீ போய் பயிர் செய்துக்கொள் என்று சொன்னார்கள். ஆதனால் பயிர் செய்து வருகிறேன்.

21. Further, not only has the plaintiff illegally taken possession of the property but he has also prevented the defendant from drawing



water from the well in the suit property in which the defendant has a half share. This clearly speaks volume about the conduct of the plaintiff. The agreement of sale was never intended to be acted upon as an agreement of sale by the defendant, which is evident from the fact that for a mere sum of Rs.50,000/- the agreement gives two and half years time to the plaintiff to pay the balance. The plaintiff has not proved his readiness and willingness from the date of agreement till the date of suit and thereafter also.

22. The plaintiff's conduct in forcibly entering into the defendant's property without following due process of law also indicates his intention to some how grab the property. Further, the plaintiff who has come to the Court stating that he has to pay the balance of Rs.50,000/- to the defendant would in his cross examination state that a sum of Rs.50,000/- was paid to the defendant for meeting his wife's medical expenses.

23. The Lower Appellate Court has not given cogent reasons for



S.A.No.494 of 2021

setting aside the Judgement and Decree of the Trial Court while granting the relief of specific performance. The Lower Appellate Court has totally brushed aside the findings of the Trial Court with reference to the readiness and willingness and has not considered this factor while modifying the Judgement and Decree of the Trial Court. In fact the Lower Appellate Court which had framed the readiness and willingness as a point for consideration has not returned any finding with reference to the same.

24. Therefore, both the substantial questions of law are answered against the plaintiff and the appeal is allowed and the Judgement and Decree of the Trial Court is restored. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

25. It is clearly evident that in the year 2007 the plaintiff has forcibly entering the premises of the defendant and has started



cultivating the same. Even as per his evidence the plaintiff has stated that the sugarcane, which is cultivated in the defendant's land are being sent to Sugar factory and he has prior to adducing evidence sent the sugarcane to the factory 6 or 7 times. In the year 2016 he had earned a sum of Rs.20,000/- and in the current year, ie., 2017, he has earned Rs.24,000/- The evidence was given in the month of October 2017. He has also stated that from cultivating paddy he has earned nearly a sum of Rs.5,000/- to 10,000/- rupees. Therefore, the plaintiff shall provide the details of the income earned from the property to the defendant and the same shall be adjusted towards the amounts payable under decree in O.S.No.115 of 2007. In case the amount earned by the plaintiff exceeds the amount which is repayable by the defendant to the plaintiff under the decree, then the plaintiff shall pay the said sum to the defendant and in the case of failure on the part of the plaintiff to pay the money, this decree can be executed by the defendant as decree for money. The learned counsel for the defendant would submit that pursuant to orders of this Court a sum of Rs.3,99,000/- was deposited to the credit of O.S.No.115 of 2007. This sum shall also be given credit



S.A.No.494 of 2021

to and in case the amount payable by the respondent / plaintiff is more
the appellant shall withdraw the amount lying in excess in deposit.

05.02.2024

Index : Yes/No
Internet : Yes/No
kan

To

1.The I Additional District and
Sessions Judge,
Vellore.

2.The Principal Sub Ordinate Judge, Vellore.

P.T. ASHA, J,

kan



WEB COPY



S.A.No.494 of 2021

S.A.No.494 of 2021

05.02.2024