



A.S.No.292 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment	Date of Pronouncing the Judgment
30.07.2024	27.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.292 of 2021
and
C.M.P.No.14288 of 2021

D.Manikandan

... Appellant

-vs-

S.Radhakrishnan

... Respondent

Appeal suit filed under Section 96 of the Civil Procedure Code, 1908, as against the judgment and decree in O.S.No.15 of 2018, on the file of the II Additional District Court, Vellore @ Ranipet, dated 02.03.2021.

For Appellant : Mr.R.Ganesh Kumar

For Respondent : Mr.P.Jagadeesan



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J U D G M E N T

For the sake of convenience, the parties are referred to as per their ranking in the suit.

2. The defendant is the appellant herein.

3. The respondent / plaintiff filed the suit for specific performance of the sale agreement dated 22.02.2016 (Ex.A1).

4. The plaint proceeds on the basis that the suit property is belonged to the defendant. The plaintiff and the defendant have entered into a registered sale agreement dated 22.02.2016. As per the said sale agreement, the defendant has agreed to sell the suit property to the plaintiff for a sum of Rs.14,00,000/- and the defendant has received a sum of Rs.13,00,000/- towards advance and agreed to receive the balance sale price of Rs.1,00,000/- within two years and to execute a registered sale deed in favour of the plaintiff.



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5. According to the plaintiff, he was always ready to pay the balance sale price of Rs.1,00,000/- to the defendant and to get the registered sale deed from the defendant in his favour. However, the defendant was evading to perform his part of the contract, despite repeated demands made by the plaintiff. Therefore, the plaintiff issued a legal notice to the defendant on 25.01.2018, but the defendant had not received the notice and returned the same as unclaimed.

6. The brief facts of the written statement of the defendant are that the defendant obtained a sum of Rs.4,00,000/- from the plaintiff on 22.02.2016 and at that time, the plaintiff demanded him to execute a sale agreement in his favour. Believing his good faith and urgent need of money, the defendant executed a sale agreement in favour of the plaintiff and it was executed only for a security purpose of the loan amount.

7. According to the defendant, the said document is only a loan



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agreement and not a sale agreement as alleged by the plaintiff. The sale agreement is only a nominal one and not intended to be acted upon. The plaintiff demanded exorbitant interest at the rate of 48% per annum and it was also paid by the defendant for about one year. Thereafter, he was unable to pay such an exorbitant interest to the plaintiff. At the time of sale agreement, the value of the property was more than Rs.25,00,000/-. The defendant was never intended to sell the property at any point of time. When the defendant received the legal notice from the plaintiff, he came to know about the fraudulent act of the plaintiff. Further, the suit is barred by limitation.

8. The Trial Court has formulated as many as four issues for consideration.

9. On the side of the plaintiff, P.Ws.1 & 2 were examined and Exs.A1 to A6 were marked. On the side of the defendant, D.Ws.1 & 2 were examined and no document was marked.

10. After hearing the rival submissions of the learned counsel on either side and after perusing the documentary evidence, the Trial Court, by



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Judgment and Decree, dated 02.03.2021, decreed the suit. Challenging the same, the defendant has preferred this appeal suit.

11. Learned counsel appearing for the defendant would contend that the alleged agreement (Ex.A1) is not a sale agreement, but it was executed only as a security purpose for the loan amount borrowed by the defendant from the plaintiff.

12. Learned counsel appearing for the defendant would further contend that the vital aspect, as pointed by D.W.1 in the witness box regarding certain portions that have been struck off in Ex.A1, was not at all discussed by the Trial Court and for the alleged balance payment of Rs.1,00,000/-, an enormous period of two years was granted.

13. Demonstrating that Ex.A1 is not an agreement of sale, but it was executed only as a security document for the amount due to the defendant, learned counsel for the defendant contended that the case of the defendant was not appreciated by the learned Trial Judge in proper perspective.



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14. Per contra, learned counsel appearing for the plaintiff would contend that initially, the suit was filed for the relief of specific performance of the sale agreement, dated 22.02.2016 (Ex.A1). The suit was decreed by the Trial Court. Challenging the same, the defendant has preferred this appeal.

15. Learned counsel for the plaintiff would further contend that pending this appeal, the plaintiff filed C.M.P.(MD) No.10095 of 2023 to include the alternative relief of refund of the advance amount paid under the sale agreement (Ex.A1) in the plaint. This Court, by order dated 27.09.2023 allowed the said civil miscellaneous petition.

16. Learned counsel for the plaintiff further made submissions in support of the Judgment of the Trial Court.

17. After hearing the oral submissions of the respective counsels and after perusing the documentary evidence, the following points arise for consideration:

- (i) Whether the sale agreement, dated 22.02.2016, (Ex.A1) is true, valid, genuine



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and acted upon?

- (ii) Whether the plea of the defendant that Ex.A1 is only a security document for the loan amount and it was never intended to be a sale agreement is proved in the manner known to law.
- (iii) Whether the plaintiff is ready and willing to perform his part of the contract?
- (iv) Whether the plaintiff is entitled for the alternative relief of refund of the advance amount of Rs.13,00,000/-?
- (v) Whether the plaintiff is entitled for the main relief of specific performance?
- (vi) To what other reliefs the parties are entitled?

Point Nos.(i) and (ii):

18. After perusing the oral evidence of P.W.1 / plaintiff and Exs.A1 and A2 as well as the evidence of D.W.1 / defendant, this Court finds that the plaintiff has filed the suit for the relief of specific performance of contract on the basis of a sale agreement dated 22.02.2016 (Ex.A1) alleged to



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19. The case of the plaintiff is that the defendant has agreed to sell the suit property to the plaintiff for the sale price of Rs.14,00,000/- and the defendant has received a sum of Rs.13,00,000/- as advance after executing the registered sale agreement in favour of the plaintiff on 22.02.2016, in which the defendant has agreed to receive the balance sale price of Rs.1,00,000/- within two years from the date of the sale agreement and to execute a registered sale deed in favour of the plaintiff.

20. According to the plaintiff, the time referred to in the suit sale agreement (Ex.A1) is not the essence of the contract and the plaintiff was always ready and willing to pay the balance price of Rs.1,00,000/- to the defendant and to get the registered sale deed in his favour from the defendant and in spite of repeated demands made by the plaintiff, the defendant was evading to perform his part of the contract.

21. The defendant, both in his written statement as well in his evidence, has categorically stated that the alleged sale agreement (Ex.A1) is



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only a security document for the loan amount and he never agreed to sell the suit property to the plaintiff for the sum of Rs.14,00,000/- and he did not receive Rs.13,00,000/- from the plaintiff towards advance.

22. It is the specific case of the defendant that at the time of borrowing the amount, it was only a sum of Rs.4,00,000/- for which, the plaintiff demanded him to execute the sale deed in his favour and on the good faith, he executed the said document.

23. The plaintiff was examined as P.W.1 and the witness to the suit sale agreement (Ex.A1) was examined as P.W.2. On the side of the plaintiff, Exs.A1 to A6 were marked.

24. On a combined reading of the evidence of P.W.1 and D.W.1, this Court finds that there is no whisper about the borrowal of a sum of Rs.4,00,000/- by the defendant from the plaintiff in Ex.A1 sale agreement and nowhere, it was stated that the defendant has executed the said document only as a security document in favour of the plaintiff.

25. D.W.1 filed a chief proof affidavit stating that the plaintiff, his friends and P.W.2 joined as subscribers in the Chit conducted by him and due



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to the loss in the Chit, he owed to pay Rs.4,00,000/- to the plaintiff and the plaintiff had obtained the signature of the defendant in a blank document on 22.02.2016 for the amount of Rs.4,00,000/- with interest at Rs.4/- for Rs.100/- and obtained the signatures of the defendant and his wife in the Sub-Registrar Office by stating that, it is only a mortgage deed and they are only the sureties and at the time of execution of mortgage deed, both the plaintiff and P.W.2 were present.

26. However, the evidence of D.W.2, who is an independent witness, duly corroborates the evidence of D.W.1, which assumes significance.

27. Further, having elicited in the cross-examination of D.W.2, to disreect his evidence, D.W.2, in his evidence, has deposed that a Chit was conducted by the defendant. D.W.2 was one of the subscribers, so also the plaintiff and it remains to be stated that:

“பிரதிவாதி மணிகண்டன் 10 வருடமாக பதிவு செய்யப்படாத சீட்டு நடத்திவந்தார். 2012 முதல் நடத்தி வந்தார். நான் 2012ல் இருந்தே அவரிடம் சீட்டு கட்டிவந்தேன். 2015ம் வருடம் முதல் அவருடன் எனக்கிருந்த தொடர்பு முறிந்துவிட்டது. 2015க்கு பிறகு



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பிரதிவாதி என்ன செய்தார் என்று எனக்கு தெரியாது என்றால் சரிதான். நான் சீட்டு கட்டிய பணத்தை பிரதிவாதி எனக்கு கொடுத்துவிட்டார். வரதி ராதாகிருஷ்ணனுக்கு பிரதிவாதி சீட்டு பணம் கொடுத்தாரா என்று எனக்கு தெரியாது. இந்த வழக்கில் தாவா சொத்தை பிரதிவாதி வாதிக்கு கிரையம் கொடுத்ததாக ஒப்புக்கொண்டு வா.சா.ஆ.1 கிரைய ஒப்பந்த பத்திரம் எழுதிக்கொடுத்த விவரம் தெரியுமா என்றால் தெரியும். ஆனால் அடமான பத்திரம் என்று சொல்லி கிரைய ஒப்பந்த பத்திரத்தை வாதி எழுதிக்கொண்டதாக பிரதிவாதி என்னிடம் சொல்லி தெரிந்து கொண்டேன்.”

28. At this juncture, this Court perused Ex.A1 suit sale agreement. The terms of the suit sale agreement, as per the evidence of Ex.A1 and the evidence of P.W.1 are one and the same. However, this Court finds some abnormality in the sense that for the total amount of Rs.14,00,000/-, Rs.13,00,000/- is said to have been paid and for the balance amount of Rs.1,00,000/- two years time has been granted. It appears to be an abnormal condition, which creates a state of doubt in the minds of the Court.

29. Admittedly, the market value of the suit property on the



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prevailing date is approximately Rs.25,00,000/- and hence, in such circumstances, whether the defendant can come forward to sell the suit property at a throwaway price of Rs.14,00,000/- also assumes significance.

30. Yet another point is that there is no direct pleading in the plaint or an oral / documentary evidence regarding the mode of advance payment of Rs.13,00,000/- or there is no document to the effect that the consideration has passed on the defendant.

31. The agreement for sale stipulates that the time for completion of agreement for sale (Ex.A1) is two years, and therefore, it is understood that the plaintiff had caused a legal notice at the fag end of the two years period. This singular fact, in the absence of due evidence, will prove that the plaintiff does not possess even sufficient funds for payment of Rs.1,00,000/-. In such an event, the plaintiff, in the absence of sufficient proof for possessing funds, cannot claim in a mechanical manner that he is ready and willing to perform his part of contract throughout the period of contract.

32. The sale agreement (Ex.A1) contains a time limit for completion of the contract within a period of two years from its execution and



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the plaintiff. Therefore, the plaintiff cannot plead that he was ready throughout the period of contract, without any express act / conduct to prove the same, especially he had issued a legal notice to the defendant, namely, Ex.A2, dated 25.01.2018 at the fag end of the two years also assumes significance.

33. Besides that, there is no explanation as to how the plaintiff has paid Rs.13,00,000/- to the defendant and he evaded the answer for the same in his cross-examination assumes significance. Further, the market value of the suit property, at the relevant point of time being Rs.25,00,000/-, this Court is unable to understand as to how the defendant has agreed to sell the suit property at a throwaway price of Rs.14,00,000/- and for payment of balance amount of Rs.1,00,000/-, two years period has been granted.

34. At this juncture, on perusal of the suit sale agreement (Ex.A1), at the second page, it has been written as follows:

“vq;rpa ifkhw;Wj; bjhif U.4,00,000/-

(vGj;jhy; Ugha; ehd;F nyl;rk; kl;Lk;) j;ij 2Mk;

ghh;l;oaplk; nUe;J bgw;Wf;bfhz;L, mth;



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bgahpByh my;yJ mth; BfhUk; egh; my;yJ egh;fs;

bgahpByh vGjg;gLk; fpua gj;jpuj;ij gjpt[bra;J

bfhLf;f Btz;oaJ.”

35. A perusal of the above clause shows that there is a mentioning about rupees four lakhs, which the second party of the sale agreement has to pay on the date of execution of the sale deed to the first party. However, the said clause has been struck off and it has been countersigned by the defendant. However, this is touching upon the case of the defendant that at the time of obtaining his signature, it was represented to him that it is only a loan agreement. By misrepresenting to the defendant that the document is a loan agreement, a sale agreement has been registered appears to be more probable.

36. On a combined reading of the evidence of D.W.1 coupled with D.W.2 and the discussions made in the preceding paragraphs coupled with the portion found in Ex.A1, which is extracted supra and though it has been



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struck off, it is clearly readable, it is seen that the same runs contrary to the pleadings of the plaintiff. Hence, I found that the sale agreement (Ex.A1) is not a sale agreement, but it appears to be a loan agreement.

37. This Court is conscious of the Limitation Act, 1963, and Sections 91 and 92 of the Indian Evidence Act, 1872 and also keeping in mind the explanation thereon, since the defendant both in his written statement as well as in his evidence coupled with the independent witness could able to demonstrate as to the coming into existence of Ex.A1 document and misrepresentation by the plaintiff with regard to the nature of the document and the abnormality in the terms of the agreement, as indicated above, this Court has no hesitation to come to the conclusion that Ex.A1 is not a sale agreement, but it is intended to be only a loan agreement. Accordingly, Point Nos.(i) and (ii) are answered in favour of the defendant and against the plaintiff.

Point Nos.(iii) & (v):

38. Section 16(c) of the Specific Relief Act, 1963, contemplates



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that a party seeking specific performance must establish that he is all along and still ready and willing to perform his part of the contract and the same must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief is not sufficient.

39. Even in the absence of a specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act, 1963, and when there is a non-compliance with the said statutory mandate, the Court is not bound to grant specific performance and is left with no other alternative, but to dismiss the suit.

40. It is seen that the plaintiff has issued the legal notice, dated 25.01.2018, at the fag end of two years period granted for payment of the remaining amount of Rs.1,00,000/- and the plaintiff has not deposited the amount to be paid to show that he is ready and willing to purchase the suit property

41. It remains to be stated that in the preceding paragraphs, it is



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found that Ex.A1 cannot be treated as a sale agreement, if at all, it can be treated as a loan agreement and hence, even viewing from any angle, the plaintiff has not demonstrated the statutory requirement under Section 16(c) of the Specific Relief Act, 1963, to show that he is ready and willing to perform his part of the contract.

42. Having failed to do so, the plaintiff is not entitled for the relief of specific performance and accordingly, the contra finding recorded by the Trial Court is erroneous and it is liable to be vacated. Hence, the finding of the Trial Court with regard to the relief of specific performance is hereby vacated. Accordingly, Point Nos.(iii) and (v) are answered in favour of the defendant and against the plaintiff.

Point No.(iv):

43. By filing C.M.P.(MD) No.10095 of 2023, the plaintiff sought for the alternative relief of refund of the advance amount paid by him under the agreement (Ex.A1) in the plaint. This Court, by order dated 27.09.2023 allowed the said civil miscellaneous petition. Accordingly, the alternative relief of refund of advance amount was included in the plaint.



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44. Ex.A1 is a registered document. With regard to the quantum of the amount of Rs.13,00,000/-, it was admitted by the plaintiff (P.W.1) and P.W.2, however, it was disputed by the defendant (D.W.1). Except the oral assertion of the evidence of D.W.1 that he received only a sum of Rs.4,00,000/- as loan and not Rs.13,00,000/- as pleaded by the plaintiff, there is no documentary evidence to prove the same. The burden of proof is upon the defendant to prove that he received only a sum of Rs.4,00,000/- and not Rs.13,00,000/- as mentioned in Ex.A1. To dismay, the defendant has not demonstrated any independent witness with regard to the quantum that was passing as advance amount under Ex.A1 and hence, this Court is of the considered view that the plea raised by the defendant that only Rs.4,00,000/- was paid under Ex.A1 is not proved in the manner known to law.

45. Ex.A1 is a registered document indicating a sum of Rs.13,00,000/- and in the absence of any positive evidence on the side of the defendant and in the absence of any documentary evidence to discharge his burden that it was only Rs.4,00,000/- and not Rs.13,00,000/-, this Court is of the considered view that Rs.13,00,000/- was paid under the said document. Hence, this Court is of the view that the plaintiff is entitled for refund of the advance amount of Rs.13,00,000/- under Ex.A1.



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46. In this view of the matter, the plaintiff is entitled for the relief of alternative relief of refund of the advance amount of Rs.13,00,000/-, even though he is not entitled to the main relief of specific performance for the reasons as discussed supra. Accordingly, Point No.(iv) is answered in favour of the plaintiff and against the defendant.

47. In the result:

- (i) This appeal suit is partly allowed.
- (ii) The Judgment and Decree, dated 02.03.2021, passed in O.S.No.15 of 2018, on the file of the II Additional District Court, Vellore @ Ranipet, are hereby set aside.
- (iii) The Judgment and Decree of the Trial Court are modified to the effect that the the suit in O.S.No.15 of 2018 in respect of the relief of specific performance is



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dismissed partly. However, the suit stands partly decreed in respect of the alternative relief of refund of Rs.13,00,000/- from the defendant.

- (iv) Consequently, from the date of the agreement (Ex.A1) i.e., 22.02.2016 till the date of filing of the suit i.e., 21.02.2018, the plaintiff is entitled for 9% interest per annum.
- (v) From the date of filing of the suit i.e., 21.02.2018 till the date of disposal of the suit i.e., 02.03.2021, the plaintiff is entitled for 6% interest per annum.
- (vi) Future rate of interest shall be at 9% per annum.
- (vii) Accordingly, there shall be a money decree to the extent as indicated above.
- (viii) No costs. Consequently, connected miscellaneous petition is closed.



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27.12.2024

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

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To:

1.The II Additional District Judge,
Vellore @ Ranipet.

2.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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RMT.TEEKAA RAMAN, J.

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JUDGMENT
IN
A.S.No.292 of 2021
and
C.M.P.No.14288 of 2021

27.12.2024