



S.A.No.732 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 16.02.2024

Judgment Delivered on : 01.03.2024

CORAM:

THE HON'BLE MR. JUSTICE P.B.BALAJI

S.A.No.732 of 2018
and CMP.No.21389 of 2018

P.Senthamarai

...Appellant

vs.

C.Dhanasekaran

...Respondent

Prayer: Second Appeal filed under Section 100 CPC, against the judgment and decree, dated 20.11.2017 made in AS.No.397 of 2013 by the VI Additional City Civil Judge, Chennai allowing the appeal and reversing the judgment and decree dated 06.04.2023 made in OS.No.7145 of 2011 by IV Assistant City Civil Judge, Chennai.

For Appellant : Mr.B.Harikrishnan

For Respondent : Mr.Samir S. Shah
for M/s.Shah & Shah



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JUDGMENT

The plaintiff, who is unsuccessful in a suit for specific performance, is the appellant before me. The parties are described as per their litigative status before the Trial Court.

2. The brief facts that are essential for deciding the above second appear are as follows:

i) The plaintiff states that the property to an extent of 2400 sq.ft., bearing No.16, Old No.8, Moorthinagar Street, 2nd lane, Vysarpadi, Chennai belongs to the defendant and the plaintiff was his neighbour. The defendant was employed in Bank of Baroda and he availed a loan with the employer Bank by depositing title deeds of the above mentioned property.

ii) It is the further case of the plaintiff that he also signed as a surety for the said loan, which was obtained in July 1997. Subsequently, the defendant decided to sell a portion of the total extent of the property, viz., an extent of 508 sq.ft. being the North Eastern portion, which



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comprises of land and superstructure, viz., light roof sheets supported by brick walls.

iii) According to the plaintiff, the plaintiff agreed to purchase the said portion for a total consideration of Rs.2,20,000/-. Even on the date of agreement on 04.05.2001, a sum of Rs.2,00,000/- was paid as advance by the plaintiff to the defendant. The balance sale consideration of Rs.20,000/- was paid by the plaintiff to one Velayutham, who was a tenant under the defendant, and it is the amount to be paid by the defendant to the said Velayutham towards refund of rental advance.

iv) The further case of the plaintiff is that in view of the mortgage with the Bank, the defendant had undertaken to execute a registered sale deed conveying Schedule B property to the plaintiff, after retrieving the title deeds from the Bank and no time was fixed for such completion of sale. According to the plaintiff, he was put in possession of the Schedule B property viz., the property agreed to be sold to him and from the date of agreement, he continued to be in possession and was maintaining the property on his own costs. While so, in March 2010, the plaintiff attempted to change the light roof sheets and the defendant



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objected to the same. It led to lodging a complaint on 21.03.2010 in Crime No.9252 of 2010 and also filing of a Original Petition before this Court under Section 482 of the Criminal Procedure Code. The said OP was closed, since the dispute was of civil in nature and liberty was granted to the plaintiff to approach the appropriate Forum. In view of the hostile behaviour of the defendant, the plaintiff issued a Lawyer's Notice on 11.03.2011, calling upon the defendant to execute the sale deed. On receipt of the said notice, the defendant issued a reply notice dated 22.03.2011 denying the plaintiff's claim. In view of such stand taken by the defendant, the plaintiff filed a suit seeking specific performance of the agreement of sale dated 04.05.2011 and also sought for the relief of permanent injunction.

3. The defendant filed a written statement denying the claims of the plaintiff. It is the case of the defendant that the plaintiff was a tenant under him and not a neighbour as claimed by the plaintiff. The averments of the plaintiff that he signed as surety in the loan availed by the defendant, was also denied. According to the defendant, there was no sale transaction at all and consequently, the plaintiff's averments were stoutly denied.



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4. It is the further case of the defendant that he borrowed a hand loan from the plaintiff during the times of difficulty and in all, he had borrowed Rs.2,00,000/- for his family expenses and also marriage expenses of his children. According to the defendant, he executed a letter dated 04.05.2011 when he was in an inebriated state and the plaintiff never even shared a copy of such document to the defendant. The defendant also states that the tenant, Velayutham vacated the portion and the plaintiff has let out the said portion again for rent to persons who are running a small cottage industry and warehouse for keeping their materials. The rents have been collected by the plaintiff on the understanding that it would be adjusted against the loan amount due and payable by the defendant.

5. According to the defendant, the plaintiff is trying to misuse the authorisation letter signed by him on 04.05.2011 by projecting it as a sale agreement. The defendant also states that the plaintiff is illegally running finance business and demanding exorbitant interest rates. Thus, the defendant prayed for dismissal of the suit.



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6. The Trial Court, on finding that the sale agreement was in the own handwriting of the defendant, proceeded to accept the case of the plaintiff and decreed the suit, granting the relief of specific performance.

7. The defendant preferred an appeal in A.S.No.397 of 2013 and the first appellate court has reversed the judgment and decree of the Trial Court, thereby dismissing the suit for specific performance.

8. At the time of admission of the above second appeal on 10.12.2018, the following three substantial questions of law were framed:

- "1. Whether non-signing of Exhibit A-1 by the plaintiff will render the document invalid and un-enforceable and whether the signature of the plaintiff is necessary in Exhibit A-1?*
- 2. Whether the word "sale deed" should find a mention in the document, in order to construe it as a sale agreement or the intention of the parties is necessary to determine the nature of a document?*
- 3. Whether the Lower Appellate Court is right in terming agreement viz., Exhibit A-1 as a lease deed when there is no pleading or evidence to that effect by the defendant himself?"*



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9. I heard Mr.B.Harikrishnan, learned counsel for the appellant and Mr.Samir S. Shah, learned counsel appearing for M/s.Shah and Shah for the respondent. I have also carefully gone through the pleadings and oral documentary evidence adduced before the Trial Court. I have also gone through the judgments of the Courts below.

10. The learned counsel for the appellant/plaintiff would state that the First Appellate Court had erred in holding that Ex.A1 was a lease deed, when the defendant had not pleaded or even let in any evidence to that effect. He would also state that the First Appellate Court committed a grave error in construing the document as a lease deed and not as a sale agreement, without ascertaining the true intention of the parties.

11. The learned counsel for the appellant also stated that not signing of Ex.A1 agreement by the plaintiff would not be fatal to the case, since the obligation was entirely on the side of the defendant and having received the entire sale consideration, what remained was only the registration of the sale deed.



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12. The learned counsel for the appellant further stated that having admitted to have written Ex.A1 in his own handwriting, the defendant cannot go back on the said statement as if he was in an inebriated mood and had written the same. No evidence was placed on record by the defendant to prove such claim of having signed the authorising letter while he was in an inebtriated condition. The learned counsel also stated that the defendant was employed in the same Bank where he had obtained a loan.

13. The learned counsel for the appellant also stated that the appellant, in furtherance of getting possession of the property, has been letting out the property and collecting rents and also maintaining the property by carrying out repairs and necessary maintenance works. Therefore, the learned counsel for the appellant prayed for allowing the appeal.

14. The learned counsel for the respondent would submit that even from Ex.A1, no inference can be drawn that it was a sale agreement, especially when none of any usual covenants of a regular agreement of sale were found in Ex.A1. Further, he would state that Ex.A1 was not



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signed by the plaintiff and also not attested by any witness and therefore
by no stretch of imagination, it can be treated as an agreement of sale.

15. The learned counsel for the respondent would further contend that the plaintiff was already in possession of a portion of the property as a tenant, but Ex.A1 is totally silent about the plaintiff being put in possession under such agreement as contended by the learned counsel for the appellant. He also stated that the agreement neither contained the total sale consideration agreed upon between the parties nor contained the correct description of the property for sale. The learned counsel would therefore pray for dismissal of the second appeal.

16. The short question that remains to be answered is the nature of Ex.A1 agreement. According to the appellant, it is an agreement of sale and according to the respondent/defendant, it was only an authorisation letter. The Trial Court construed Ex.A1 as a sale agreement and decreed the suit. However, the First Appellate Court construed Ex.A1 as a lease agreement and dismissed the suit. In view of the substantial questions of law revolving around Ex.A1, for easy reference, I am extracting the said Ex.A1 agreement.



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17. Ex.A1 reads as follows:

"உரிமை ஒப்பந்த பத்திரம்

திரு.தனசேகரன் S/o.சின்னகண்ணு எண்.8, புதிய எண்.16, மூர்திங்கர் தெரு, 2-வது சந்து, வியாசர்பாடி, சென்னை -39 எனக்கு சொந்தமான மனை சர்வே எண்.516/29, 516/30-இல் வடக்கு பகுதியில் திரு.துளசிக்கு சொந்தமான மனைக்கு ஒட்டினார் போல் உள்ள மனை மற்றும் கூரை உட்பட மனை அளவு அகலம் 15.4 அடி நீளம் 33 அடி.

திரு.செந்தாமரை S/o.பெருமாள், எண்.8, புதிய எண்.16, மூர்திங்கர் தெரு, 2-வது சந்து, வியாசர்பாடி, சென்னை-39 ல் வாடகைக்கு குடியிருக்கும் தங்களுக்கு மேற்சொன்ன மனை மற்றும் கூரை உட்பட எனக்கு சொந்தமான வீடு, மனை பட்டா வங்கியிலிருந்து மீட்க பட்டவுடன் திரு.செந்தாமரைக்கு ரிஜிஸ்தர் செய்து கொள்வதற்கு சுயநினைவுடன் ஒப்பம் அளிக்கப்படுகின்றது. இதற்காக ரூ.2,00,000/- (ரூபாய் இரண்டு லட்சம் மட்டும்) பணமாக பெற்றுக் கொண்டேன். ஆகவே தங்களுக்கு ஒப்பந்தம் செய்து கொடுத்த நாளிலிருந்து நீங்கள் வீடு கட்டிக்கொள்ளவும், வேறுபயனுள்ள வகையில் வாடகை விடுவதற்கும் ஒப்பம் அளிக்கப்படுகின்றது. அந்த இடத்தில் MES 10 HP மீட்டர் பொருத்தியுள்ள மின்சார இணைப்பு தங்களுக்கு சொந்தம் என்று சுய நினைவுடன் எழுதிக்கொடுக்கும் உரிமை ஒப்பந்த பத்திரம்.

ரூ.20,000/- அட்வான்ஸ்
கம்பனிவாங்கிய வாடகை
கழிக்கப்பட்டுள்ளது.
ரூ.2.20 (இரண்டு லட்சத்து
இருபதாயிரம் மட்டும்)

இப்படிக்கு,"

18. On a perusal of the above agreement Ex.A1, the following can be ascertained:

i) The document is neither styled as sale agreement nor as authorisation letter and from the nomenclature, it is clear it is termed only as Right of Agreement Deed (உரிமை



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ஒப்பந்த பத்திரம்)

ii) *The plaintiff was a tenant on the date of the said agreement under the defendant.*

iii) *The defendant had undertaken to execute a document in favour of the plaintiff on getting return of the original title deed and patta from the Bank.*

iv) *The receipt of Rs.2,00,000/- has been acknowledged by the defendant.*

v) *The plaintiff was authorised to construct a building (house) or utilise the property for generating rental income.*

vi) *MES 10 hp metre service connection available was agreed to be declared as that of the plaintiff and a sum of Rs.20,000/- rental advance paid by the tenant Company was adjusted and total consideration was Rs.2.2 lakhs.*

vii) *Admittedly, the said agreement has been signed by the defendant and plaintiff has not signed the same and no witness had also attested the said agreement.*

19. On an over-all cumulative assessment of the salient features of Ex.A1, I am unable to treat the same as a sale agreement. Admittedly, when the total extent of the suit property available is one ground, the agreement merely mentions that Northern portion adjoining the portion owned by one Tulasi with measurement of 15.4 ft. breadth and 33 ft. length. The agreement does not mention about any undivided share of land agreed to be conveyed to the plaintiff or whether the land and



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building mentioned in Ex.A1 was agreed to be conveyed to the plaintiff as a whole.

20. As rightly pointed out by the learned counsel for the respondent, the agreement also does not mention about the total sale consideration agreed to be paid and no time limit is also fixed for completion of the transaction. There is absolutely no mention whatsoever as to whether the transaction, which was intended by the parties under Ex.A1 was a sale agreement or otherwise. Unless there is *consensus-ad-idem* between the parties, the sale agreement is not enforceable in a Court of Law.

21. Though the first Appellate Court has come to the conclusion that Ex.A1 was a lease agreement, which may not be correct in my opinion, but yet it does not clothe the appellant with the right to seek specific performance of Ex.A1, styling it as a sale agreement. The usual customary covenants that are incorporated in a sale agreement are evidently absent in Ex.A1. Though the fact that the plaintiff has not signed the agreement, it would not be fatal to his case, as all his obligations had been fulfilled and what remained was only an obligation



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on the part of the defendant to execute and register the sale deed, however, the document is not even attested by witnesses. However, the agreement also empowers the plaintiff to construct buildings and let out the same to tenants. If it was a sale agreement, such clauses would never find place in the agreement. The terms incorporated in Ex.A1 agreement only suggest that the "Right Agreement Deed", was probably a usufructuary mortgage executed by the defendant in favour of the plaintiff.

22. Apart from coming to the conclusion that Ex.A1 agreement was a lease deed, I do not find that the other findings arrived at by the First Appellate Court to non suit the plaint to be unjustified or perverse. However, I also find that even in Ex.A1, based on which the plaintiff has come to Court, it is specifically stated that the plaintiff has already been in occupation of the property as a tenant. However, contrary to the same, in his plaint, the plaintiff has chosen to project a false case as if he is a neighbour of the defendant and he had proceeded to purchase the property and under the sale agreement, he was put in possession. I find no such covenants in Ex.A1 implying that the plaintiff was put in possession in part performance of the agreement, as claimed by the



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plaintiff.

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23. It is clear that the plaintiff has not approached the Court with clean hands and hence, he does not deserve the grant of specific performance, especially when he has not even established that the disputed agreement is only an agreement of sale.

24. In fine, the substantial question of law (i) is answered as hereunder: non-signing of Ex.A1 by the plaintiff does not render the agreement invalid and unenforceable, for all the reasons and discussions made herein supra. Substantial question of law (ii) is answered as hereunder: It is only the intention of the parties that would be relevant to determine the nature of the document and the plaintiff has miserably failed to establish that Ex.A1 agreement was in fact only a sale agreement. Substantial question of Law (iii) is answered as hereunder: Lower Appellate Court has erred in terming Ex.A1 as a lease deed, in the absence of any pleadings or evidence at the instance of the defendant.

25. In view of the findings with regard to the substantial question



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of law (ii), the plaintiff is not entitled to a decree of specific performance. In fine, the second appeal is dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

To

1. VI Additional City Civil Judge, Chennai
2. IV Assistant City Civil Judge, Chennai.
3. S.O., V.R.Section, High Court, Madras.



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P.B.BALAJI, J.

pvs

PRE DELIVERY JUDGMENT IN

S.A.No.732 of 2018
and CMP.No.21389 of 2018

01.03.2024