

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.01.2016

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.21 of 2016

S.Jeevarathinam

.. Appellant/Respondent/
Plaintiff

vs.

Balakrishnan

.. Respondent/Appellant/
Defendant

Prayer:- This Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree of the learned Principal District Judge, Villupuram made in A.S.No.18 of 2012 dated 26.11.2013 and the order in I.A.No.136 of 2013 in A.S.No.18 of 2012 dated 26.11.2013 reversing the well considered judgment and decree of the learned Additional Subordinate Judge, Tindivanam made in O.S.No.92 of 2010 dated 21.12.2011.

For Appellant : Mr.A.Maheshnath
for Mr.R.N.Amaarnath

For Respondent : Mr.R.Sankarappan

JUDGMENT

The plaintiff in O.S.No.92 of 2010 on the file of the Additional Subordinate Judge, Tindivanam is the appellant herein. The respondent is the defendant in the suit. The said suit was filed for specific performance of contract of sale allegedly entered into between the plaintiff and the defendant on 15.06.2008. The trial Court by decree and judgment dated 21.12.2011 declined to grant the decree for specific performance and instead, directed the defendant to repay the advance money of Rs.5,00,000/- to the plaintiff within a period of three months. As against the same, the defendant filed an appeal in A.S.No.18 of 2012 on the file of the learned Principal District Judge, Villupuram. The First Appellate Court by decree and judgment dated 26.11.2013 allowed the appeal and set aside the decree and judgment of the trial Court. Challenging the same, the plaintiff is before this Court with this second appeal.

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2.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and I have also

perused the records carefully.

3.The case of the plaintiff is that the defendant is the absolute owner of the suit property. On 15.06.2008, the defendant entered into a sale agreement with the plaintiff by which, the defendant agreed to sell the suit properties for a total sale consideration of Rs.5,25,000/-On the date of execution of sale agreement itself, the plaintiff paid a sum of Rs.5,00,000/- to the defendant as advance. The balance sale consideration was only Rs.25,000/-. Incorporating the said terms and conditions, the sale agreement was executed and the same was registered in the office of the Sub Registrar. From the date of sale agreement itself, the plaintiff was ready and willing to perform his part of contract. But, the defendant did not come forward to perform his part of contract. Therefore, the plaintiff filed the present suit for specific performance.

4.The defendant in his written statement has seriously disputed the above allegations. According to him, he had borrowed a sum of Rs.3,00,000/- from the plaintiff and he also repaid Rs.2,10,000/- already. The balance was Rs.90,000/-. But, demanding exorbitant interest, the plaintiff was insisting that the defendant should pay Rs.2,50,000/- towards the balance of principal as well as interest. The defendant was not agreeable for the same. According to the defendant, he was abducted by the plaintiff on 15.05.2008 and at about 3.00 am, in respect of a same, a complaint was made to the police by the wife of the defendant and a case was also registered. When the said case was under investigation, according to the defendant, the plaintiff again abducted him on 15.06.2008 and took him to the Sub Registrar's office and got the alleged sale agreement in question executed. It is the case of the defendant that he never intended to sell the suit properties to the plaintiff at all and the so-called sale agreement is not real and the same is not enforceable in law.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, five witnesses were examined and three documents were exhibited. On the side of the defendant, five witnesses were examined and one document was exhibited.

6.Having considered all the above, the trial Court declined to grant the decree as prayed for by the plaintiff but, however directed the defendant to pay a sum of Rs.5,00,000/- to the plaintiff within a period of three months. Aggrieved over the same, the defendant filed an appeal and the First Appellate Court allowed the appeal thereby setting aside the decree and judgment of the trial Court. That is how the appellant/plaintiff is before this Court with this second appeal.

7. In this second appeal, the learned counsel for the appellant would submit that there is perverse finding by the Courts below that the sale agreement was not real and

enforceable in law. According to him, though it is alleged by the defendant that on 15.06.2008, he was abducted by the plaintiff to the Office of the Sub Registrar and under coercion and force the alleged sale agreement was executed, not even a complaint was made to the police in respect of the same. Absolutely, there is no acceptable evidence to prove that the defendant was abducted by the plaintiff and the alleged sale agreement was obtained by coercion and by force. In the absence of positive evidence, according to the learned counsel, the Courts below ought not to have held that the sale agreement was not real and not enforceable.

8.The learned counsel would further submit that the trial Court directed the defendant to pay the advance amount of Rs.5,00,000/- to the plaintiff. But, the First Appellate Court, has erroneously set aside that part of decree also while setting aside the decree and judgment of the trial court.

9.I have considered the above submissions.

10.The question whether the sale agreement in question was executed by the defendant with the intention to sell the suit properties to the plaintiff or not, and whether the sale agreement was real and enforceable in law or not, are pure questions of facts. It is in evidence that on 15.05.2008, the wife of the defendant made a complaint to the Police that her husband namely, the defendant was abducted by the plaintiff in connection with a loan transaction. The First Appellate Court has gone extensively through the F.I.R and has found that there are averments to the effect that the defendant had borrowed a sum of Rs.3,00,000/- from the plaintiff and the plaintiff demanded 150% of interest. Since, the defendant was not willing to pay the same, he was abducted. It is also stated in the complaint that a sum of Rs.2,10,000/- was already paid by the defendant to the plaintiff. The registration of the said criminal case against the plaintiff would go to show that there was no love lost between the plaintiff and the defendant at least from 15.05.2008. Hardly within one month i.e., on 15.06.2008, it is too difficult to believe that the defendant would have agreed to sell the suit properties to the plaintiff when especially, the criminal case was still pending under investigation and there was a reference about the above said loan transaction in the F.I.R. Considering this vital aspect along with the oral evidence of both parties, the Courts below have held that the sale agreement is not real and the same is not enforceable in law.

11.Having held that the sale agreement is not real and the same is not enforceable in law, the trial Court ought not to have ordered for payment of advance money of Rs.5,00,000/- by the defendant to the plaintiff. If at all any amount is due from the defendant, which is on account of the loan transaction, it may give rise to separate cause of action, upon which, the plaintiff could have initiated action to recover the said amount

from the defendant. Therefore, the First Appellate Court was right in setting aside that part of decree passed by the trial Court also, in which, I do not find any perversity. In such view of the matter, I do not find any merits at all in this second appeal. Above all, I do not find any question of law much less a substantial question of law warranting admission of this second appeal.

12.In the result, the second appeal fails and accordingly, the same is dismissed and the decree and judgment passed by the First Appellate Court is hereby confirmed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Additional Subordinate Judge,
Tindivanam.

2.The Principal District Judge,
Villupuram.

+1 cc to M/s.R.N.Amarnath, Advocate, sr.4720

+1 cc to M/s.R.Sankarappan, Advocate, sr.4044

S.A.No.21 of 2016

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kra 04.03.2016

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