

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 22.11.2017
CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

Appeal Suit No.161 of 2017

N.Ramadoss

.. Appellant/Plaintiff

S.Ramalingam

Vs

.. Respondent/Defendant

First Appeal preferred under Section 96 read with Order 41 Rules 1 and 2 of CPC against the judgment and decree dated 15.12.2016, made in O.S.No.1 of 2011, on the file of the District and Sessions Court, Thiruvarur.

For Appellant : Mr.J.Ramakrishnan
For Respondent : Mr.S.V.Jayaraman, Senior Counsel
for Mr.T.Dhanasekaran

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM, J.]

Challenge in this Appeal Suit is to the judgment and decree dated 15.12.2016, passed in Original Suit No.1 of 2011 by the District and Sessions Court, Tiruvarur.

2.The appellant herein, as plaintiff, has instituted Original Suit No.1 of 2011 on the file of the trial Court, praying to pass a decree of specific performance, in pursuance of sale agreement, dated 24.10.2008, wherein, the present respondent has been shown as sole defendant.

3.The material averments made in the plaint are that the suit property is the absolute property of the defendant. The defendant has agreed to sell the same for a sum of Rs.19,00,000/- in favour of the plaintiff and to that extent, the suit sale agreement has come into existence on 24.10.2008. On the date of its execution, the plaintiff has paid a sum of Rs.18,00,000/-. Further, it is agreed that the plaintiff has to pay the remaining sum of Rs.1,00,000/- within a period of six months and after receipt of the same, the defendant has to execute a sale deed in favour of the plaintiff. Despite of repeated demands made by the plaintiff, the defendant has not come forward to execute a registered sale deed in favour of the

plaintiff. Under the said circumstances, a legal notice has been issued on 04.04.2010 and even after receipt of the same, the defendant has not come forward to execute a registered sale deed and therefore, the present suit has been instituted for getting the relief sought therein.

4.The material averments made in the written statement are that the defendant is the absolute owner of the suit property and he purchased the same from R.Gomathi, K.Santhi and R.Pooma, by a registered sale deed. At the time of getting a registered sale deed from them, the plaintiff has lent his assistance to the defendant. It is false to aver that the defendant has agreed to sell the suit property for a sum of Rs.19,00,000/-. It is also equally false to aver that on the date of execution of suit sale agreement, the defendant has received a sum of Rs.18,00,000/-. The plaintiff has obtained signatures of the defendant on blank papers, at the time of getting sale deed from R.Gomathi, K.Santhi and R.Pooma and subsequently, the suit sale agreement has been falsely created and there is no merit in the suit and the same deserves to be dismissed.

5.In the additional written statement filed on the side of the defendant, it is averred that the suit sale agreement is nothing but concoction. The defendant has never executed the suit sale agreement in favour of the plaintiff and there is no merit in the suit and the same deserves to be dismissed.

6.On the basis of divergent pleadings raised on either side and after analysing the both oral and documentary evidence, the trial Court has dismissed the suit. Against the judgment and decree passed by the trial Court, the present appeal has been preferred at the instance of the plaintiff, as appellant.

7.The consistent case of the plaintiff is that the suit property is the absolute property of the defendant and he agreed to sell the same for a sum of Rs.19,00,000/- and to that extent, a suit sale agreement has come into existence on 24.10.2008 and on the date of its execution, the defendant has received a sum of Rs.18,00,000/- and further, it is agreed that the plaintiff has to pay remaining Rs.1,00,000/- within a period of six months and the defendant has to execute a registered sale deed in favour of the plaintiff. Despite repeated adjournments, the defendant has not come forward to execute a registered sale deed in favour of the plaintiff. Under the said circumstances, a legal notice dated 04.04.2010 has been issued to the defendant and even after receipt of the same, he failed to execute a registered sale deed in favour of the plaintiff and therefore, the present suit has been instituted for getting the relief sought therein.

8.The defence put forth on the side of the defendant is that the defendant has not executed any sale agreement at any point of time, much less on 24.10.2008 in favour of the plaintiff and the defendant has not received the alleged advance amount of Rs.18,00,000/-. The defendant has purchased suit properties from R.Gomathi, K.Santhi and R.Pooma and at the time of sale transaction, the plaintiff has lend his assistance to the defendant and at that time, he obtained signatures of the defendant on various blank papers and subsequently, he utilised the same for creating false sale agreement and therefore, the plaintiff is not entitled to get the relief sought in the suit.

9.The trial Court, after evaluating the evidence available on record, has given a specific finding to the effect that the suit sale agreement dated 24.10.2008 is nothing, but a concocted document and ultimately, dismissed the suit.

10.The learned counsel appearing for the appellant/plaintiff has contended to the effect that the suit property is the absolute property of the defendant and he agreed to sell the same for a sum of Rs.19,00,000/- in favour of the plaintiff and to that extent, a suit sale agreement has come into existence on 24.10.2008 and on the date of its execution, the defendant has received a sum of Rs.18,00,000/- and further, it is agreed by both the plaintiff and defendant that the plaintiff should pay balance sale consideration of Rs.1,00,000/- within a period of six months and the defendant has to execute a registered sale deed and on repeated demands, the defendant has not come forward to execute a registered sale deed in favour of the plaintiff and under the said circumstances, a legal notice dated 04.04.2010 has come into existence and even after receipt of the same, the defendant has failed to execute the sale deed. Under the said circumstances, the present suit has been instituted for getting the relief sought therein and for the purpose of proving the due execution of the suit sale agreement dated 24.10.2008, apart from the plaintiff, two persons namely, Balu alias Balasubramanian and Rajendran has been examined as P.Ws 2 and 3 and P.W.3 is closely related to the defendant and his specific evidence is that the defendant has executed a suit sale agreement dated 24.10.2008 in favour of the plaintiff and the trial Court, after considering the abundant evidence available on the side of the plaintiff, has erroneously dismissed the suit and therefore, the judgment and decree passed by the trial court are liable to be set aside.

11.To repudiate the contentions put forth on the side of the appellant/plaintiff, the learned Senior Counsel appearing for the respondent/defendant has sparingly contended to the effect that the specific defence taken on the side of the defendant is that the suit sale agreement is nothing, but a concoction and

further, the plaintiff is not having sufficient means to part with a sum of Rs.18,00,000/- on the date of alleged execution of suit sale agreement and the trial Court, after considering the evidence even available on the side of the plaintiff, has rightly dismissed the suit and therefore, the judgment and decree passed by the trial Court do not require any interference.

12.Basing upon the divergent submissions made on either side, the Court has to meticulously analyse as to whether the defendant has executed a suit sale agreement in favour of the plaintiff on 24.10.2008 and he also received a sum of Rs.18,00,000/- on the date of its execution.

13.The suit sale agreement has been marked as Ex.A1 and a copy of the legal notice has been marked as Ex.A2.

14.The consistent case of the defendant is that the defendant has not executed any sale agreement in favour of the plaintiff at any point of time much less on 24.10.2008.

15.Considering the definite stand taken on the side of the defendant, the entire burden lies upon the plaintiff to prove the due execution of Ex.A1 and also passing of part of sale consideration to a tune of Rs.18,00,000/-.

16.The plaintiff has been examined as P.W.1. During the course of cross-examination, he has candidly admitted to the effect that he is not having sufficient means to pay a sum of Rs.18,00,000/-, on the date of its execution. Further, he stated in his evidence that he obtained Rs.18,00,000/- by way of pledging his jewels. For the purpose of proving the said aspect, no document has been filed.

17.Considering the fact that the plaintiff himself has clearly admitted in his evidence to the effect that he is not having sufficient means to pay a sum of Rs.18,00,000/-, it is needless to say that Ex.A1 is nothing, but concocted document.

18.Since P.W.1 himself has given a definite evidence to the effect that he is not having sufficient means to advance a sum of Rs.18,00,000/- on the date of execution of Ex.A1, the Court can very well eschew the evidence adduced by P.Ws.2 and 3. Since the evidence of P.Ws.2 and 3 can easily be eschewed and since the plaintiff himself has admitted in his evidence that he is not having sufficient means to pay the amount of Rs.18,00,000/- on the date of execution of Ex.A1, there is no incertitude in coming to a conclusion that Ex.A1 has been falsely created for institution of present suit.

19.The entire case of the plaintiff hinges upon Ex.A1. The definite stand taken on the side of the defendant is that Ex.A1

is a concocted document. Considering the fact that the plaintiff himself has given a contra evidence to the averments mentioned in the plaint, the Court cannot grant the equitable relief of specific performance.

20.The trial Court after considering the evidence available even on the side of the plaintiff, has rightly dismissed the suit. In view of the discussion made earlier, this Court has not found any acceptable force in the contention put forth on the side of the appellant/plaintiff and altogether, the present Appeal Suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed with costs. The judgment and decree dated 15.12.2016, passed by the trial Court in Original Suit No.1 of 2011 are confirmed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
The District and Sessions Court,
Thiruvarur.

copy to

The Section Officer
VR Section
High court
Madras (+2 copies)

+1 cc to Mr.T.Dhanasekaran Advocate sr 83198
+1 cc to Mr.J.Ramakrishnan Advocate sr 83041

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