

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.858 of 2017
and C.M.P.No.21619 of 2017

Amaravathi Ammal ... Appellant/Appellant/Defendant

...vs...

Sheik Jaffer Saheb ... Respondent/Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the Judgment and decree of the Principal Subordinate Judge, Thiruvannamalai dated 24.10.2008 in A.S.No.21 of 2006, confirming the judgment and decree of the Additional District Munsif Court at Thiruvannamalai dated 09.12.2005 in O.S.No.240 of 2004.

For Appellant : Ms.K.Sandhya
for M/s.Sarvabhauman Associates

For Respondent : Mr.R.Asokan

J U D G M E N T

The defendant is the appellant in a suit for specific performance.

2. The case of the plaintiff is that the defendant is the owner of the suit property and that she offered to sell the suit property to the plaintiff for a sum of Rs.59,000/- (Rupees fifty nine thousand only). The defendant also had executed a registered agreement of sale deed dated 18.12.1998 in favour of the plaintiff agreeing to sell the schedule mentioned property and the plaintiff had paid a sum of Rs.54,000/- (Rupees fifty four thousand only) as advance. The receipt of the said amount was also acknowledged by the defendant in the said agreement. It is only the balance sum of Rs.5,000/- (Rupees five thousand only) to be paid by the plaintiff on or before 17.12.2001. The plaintiff was ready and willing to pay the balance of the sale

consideration and get the sale executed in her favour. However, the defendant was not ready and willing to execute the sale deed and was evading and postponing the same on untenable grounds. Therefore, the plaintiff had issued a legal notice on 13.10.1999 calling upon the defendant to perform her part of the contract. As there was no reply, the suit had been filed.

3. The appellant/defendant contested the suit contending that the alleged sale agreement was obtained by the plaintiff fraudulently by undue influence and that the defendant never intended to sell the property to the plaintiff. It is her further case that she is an illiterate lady and put her thumb impression in the said agreement and the same was taken advantage by the plaintiff. The intention of the defendant was only to execute a mortgage deed in favour of the plaintiff for borrowal of a sum of Rs.30,000/-. It is also further contended that the property is worth more than two lakhs, but the same was shown as Rs.59,000/- in the sale agreement. Hence, she prayed for dismissal of the suit.

4. Before the Trial Court, on the side of the Plaintiff, the plaintiff examined himself as P.W.1 and one more witness was examined as P.W.2 and Exhibits A1 to A5 were marked. On the side of the defendant, the defendant herself examined as D.W.1 and one more witness was examined as D.W.2 and no documents were marked.

5. Based on the above said pleadings, the Courts below had concurrently found that the plaintiff was entitled to the decree for specific performance and granted a decree directing the defendant to receive the balance of the sale consideration and execute the sale deed within a period of four months and deliver the possession of the suit property to the plaintiff. Against the concurrent findings of the Courts below, the above Second Appeal has been preferred by the defendant.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

7. So far as the question of validity of Ex.A-1 is concerned, the defendant as D.W.1 had categorically admitted the left thumb impression found on the Sale Agreement (i.e) marked as Ex.A-1. Though she had contended that she received only a sum of Rs.30,000/- on the date of execution of the sale agreement, she has not substantiated the same. According to the appellant / defendant, she had executed the said sale deed on the bonafide belief that it was only a mortgage deed. It is a well settled principle that once the execution of a document is admitted, the burden automatically shifts upon the defendant to

prove that the same was obtained by coercion and undue influence. The scribe of Ex.A-1 was examined as P.W.2, who had clearly and categorically deposed that the said contentions of the sale deed were read over and explained to the defendant at the time of execution of the said deed. P.W.2 had further stated that he had even seen the defendant put her thumb impression on the sale agreement. In the absence of any contra evidence on the side of the defendant to prove that it was only intended to be written as a mortgage deed, the Courts below had rightly come to the conclusion that what was executed by the defendant was the valid sale agreement and the defendant is bound by the same. It is also to be seen that though the defendant had alleged that the plaintiff had fraudulently got the sale agreement executed instead of the mortgage deed, that too by coercion and undue influence, there is no document or evidence was produced on the side of the defendant to show that she had taken any steps to cancel the sale deed either by giving a police complaint or by any other mode.

8. The next question to be considered is as to whether the plaintiff was ready and willing to perform his part of the contract, to entitle him for an equitable relief.

9. Admittedly, the plaintiff was a money lender and he had sufficient means for paying the balance of the sale consideration. In fact, the plaintiff had parted with 90% of the sale consideration and only a meagre sum of Rs.5,000/- to be paid as balance. The plaintiff had issued Ex.A-4-notice on 13.10.1999 itself demanding the execution of the sale deed after receiving the balance sale consideration. It is not in dispute that the defendant had not responded to the said notice and also had not taken any steps to rebut the allegations of the plaintiff to come and execute the sale deed.

10. From the above, it is clear that the plaintiff was ready and willing to perform his part of contract and it was only the defendant, who had been procrastinating the proceedings. When admittedly, the plaintiff was a money lender and the balance to be paid was only Rs.5,000/-, the financial incapacity of the plaintiff does not arise. Therefore, the Courts below had rightly held that the plaintiff had proved the genuineness of Ex.A-1 and also established the readiness and willingness to perform his part of the contract. On the contrary, the defendant had failed to prove her case inconfirmity with her pleadings. As the sale agreement is not proved to have been obtained by coercion or undue influence, the same is held to be valid.

11. In the light of the above discussions, there is no

error or infirmity in the judgment of the Courts below warranting any interference by this Court. Further, there is no question of law arising for consideration in the above facts.

12. Accordingly, the Second Appeal is dismissed confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

srn

To

- 1.The Principal Subordinate Judge,
Thiruvannamalai
- 2.The Additional District Munsif Court,
Thiruvannamalai.

Copy To

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

+1cc to Mr.Sarvabhuman Associates, Advocate SR.No.92507
+1cc to Mr.R.Asokan, Advocate SR.No.92201

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