

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.307 of 2011

and

M.P.No.1 of 2011

Jamuna ... Appellant/Plaintiff

Vs.

Ganesan .. Respondent/Defendant

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 26.11.2010 in A.S.No.80 of 2007 on the file of the Subordinate Court, Kancheepuram, against the judgment and decree dated 28.03.2007 in O.S.No.240 of 2004 on the file of the Additional District Munsif Court, Kancheepuram.

For appellant : Mr.R.Siddharth for M/s.T.R.Rajaraman
For respondent : Mr.R.Mubarak Basha

JUDGMENT

The unsuccessful plaintiff before the first appellate Court, has filed this Second Appeal challenging the judgment and decree dated 26.11.2010 in A.S.No.80 of 2007 on the file of the Subordinate Court, Kancheepuram, in reversing the judgment and decree dated 28.03.2007 in O.S.No.240 of 2004 on the file of the Additional District Munsif Court, Kanchipuram.

2. The plaintiff approached the trial Court contending that a sale agreement was entered into by the defendant with the plaintiff on 27.06.1998. As the defendant has failed to execute the sale deed, the suit was filed for specific performance and mandatory injunction, and in the alternative, if the Court comes to the conclusion that the plaintiff is not entitled to the relief of specific performance, recovery of Rs.76,000/- may be directed to be paid by the defendant.

3. The defendant denied the allegations made in the plaint with regard to the sale agreement contending that there was no agreement whatsoever the sale. The defendant further contended that there was an earlier agreement dated 11.03.1992 and the present one is in continuation of the earlier agreement and that

loan was obtained for a sum of Rs.80,000/- and the possession of the property was agreed to be given to the defendant, as at the time of availing the loan, the possession was given to the plaintiff.

4. The trial Court decreed the suit as prayed for, by accepting the contentions of the plaintiff, against which, the defendant preferred First Appeal before the first appellate Court, which had reversed the judgment and decree of the trial Court, against which, the present Second Appeal is filed by the plaintiff.

5. At the time of admission of the Second Appeal on 09.03.2012, this Court framed the following substantial question of law for consideration:

"(i) When the defendant admits the execution of the suit agreement in Ex.A-1, but would state that it was not intended to be sale agreement, but as a security for a loan transaction between the parties, but has not discharged his burden of proving the same, is the learned Subordinate Judge right in reversing the judgment of the trial Court ? and

(ii) When all the circumstances lead to the inference that Ex.A-1 is a sale agreement that the defendant has no reply for Ex.B-1 draft sale deed, the learned Subordinate Judge ought to have dismissed the appeal ?

6. It is contended by the learned counsel for the plaintiff that there was a sale agreement on 27.06.1998, which is in continuation of the earlier sale agreement and that the sale consideration was fixed at Rs.76,000/-, out of which, Rs.70,000/- was paid as advance. The time limit for execution of the sale deed was fixed as 30 days. Since the defendant did not comply with the conditions, a notice dated 29.07.1998 was sent by the plaintiff to the defendant, for which there was no reply. Hence, the plaintiff has filed the present suit for specific performance with an alternative plea stated above.

7. The first appellate Court, after analysing the points for consideration, accepted the contention of the defendant that the defendant is the owner of the property, which was allotted to the defendant by the Tamil Nadu Housing Board, and it also rendered a finding that the alleged earlier sale agreement was only loan transaction and that even though it is an extension of the earlier agreement, it could be treated only as a loan transaction. Even though Ex.A-1 is silent about the continuation of the earlier agreement, it is not in dispute that a portion of the amount had been alleged to have been paid by the plaintiff to the defendant and from the agreement, it is very clear on

plain terms that it was executed only as a security for allowing the plaintiff to occupy the suit property without executing any mortgage. By no stretch of imagination, it can be said to be a sale agreement, as it was executed only as a security for allowing the plaintiff to occupy the suit property without executing any mortgage deed. Admittedly, the suit property was allotted by the Tamil Nadu Housing Board to the defendant and a party cannot encumber or alienate the property in any manner. As no sale agreement could be executed or property would be registered based on the sale agreement, afraid of the action by the TNHB, an unregistered sale agreement was entered into between the parties and the plaintiff was also put in possession. It is also a finding by the first appellate Court that the amount of Rs.66,000/- was already paid, which has not been questioned by the plaintiff at any point of time in the pleading and the agreement was only in the nature of loan agreement and taking into account Exs.A-1 and B-2, it could be construed not as a sale agreement, but only as a loan transaction, and hence, the plaintiff is not entitled to the relief of specific performance.

8. Since the agreement has been entered and the amount of Rs.76,000/- has been mentioned in Ex.A-1 agreement, and that the amount of Rs.70,000/- had been received instead of Rs.76,000/- as mentioned in Ex.A-1, the lower appellate Court further held that the plaintiff would be entitled to refund of Rs.70,000/- already paid by the plaintiff to the defendant as advance. In view of the fact that the plaintiff is not entitled to the relief of specific performance, the possession of the property which is now vested with the plaintiff, will have to be handed over to the defendant.

9. I find that there is no reason to interfere with the judgment and decree of the first appellate Court, which had reversed the judgment and decree of the trial Court, thereby, it has to be held that the plaintiff is not entitled for specific performance.

10. When the matter came up during last hearing, this Court found that money value had gone down and that the defendant would pay a sum of Rs.1,50,000/- to the plaintiff, so that the matter could be given a quietus. Pursuant to the suggestion made by this Court, the defendant has duly issued a Demand Draft for Rs.1,50,000/- payable to the plaintiff, but however the best efforts had been made by the learned counsel for the plaintiff, the plaintiff is not satisfied with the above settlement and insisted that he is entitled to the relief of specific performance and thereby refused to accept the said Demand Draft of the defendant.

11. Taking note of the findings of the lower appellate Court and also the relief sought for by the plaintiff in the plaint, more particularly, the alternative relief prayed for by the plaintiff, the substantial questions of law are answered against the plaintiff, but in favour of the defendant, and thereby, this Court finds that the Second Appeal filed by the plaintiff is liable to be dismissed. The defendant shall be put back in possession of the property in question. The original Demand Draft has also been handed over to the learned counsel for the defendant. Accordingly, the judgment and decree of the lower appellate Court are confirmed and the Second Appeal is dismissed.

12. After dictating the above judgment, learned counsel for the plaintiff requested time for the plaintiff to vacate and hand over the vacant possession of the property in question to the defendant. Accordingly, the plaintiff shall vacate the premises in question and hand over the vacant possession of the same to the defendant, within a period of three months from the date of receipt of a copy of this judgment. It is made clear that the plaintiff has been in possession without paying any single pie as rent. The defendant is ready to deposit Rs.70,000/- to the plaintiff and after rounding off the interest to Rs.30,000/-, and accordingly, the defendant shall pay Rs.1,00,000/- (Rupees one lakh only) to the plaintiff by way of deposit to the credit of the suit before the trial Court and the plaintiff shall withdraw the said amount of Rs.1,00,000/- by filing appropriate application before the Court below. The said amount of Rs.1,00,000/- shall be so deposited by the defendant within a period of four weeks from the date of receipt of a copy of this judgment by him.

13. In view of the decisions of this Court reported in 2014 (2) LW 927 (Radhika Sri Hari and another Vs. The Commissioner of Police and another) and 2015 (3) CTC 807 (S.Ashokan Vs. State, Rep. by the Commissioner of Police and others), the defendant shall approach the concerned Police authorities seeking Police protection, if any such situation warrants at the time of taking possession from the plaintiff.

14. With the above observations and directions, the Second Appeal is dismissed. No costs. The Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

Copy to

1. The Subordinate Judge, Kancheepuram.

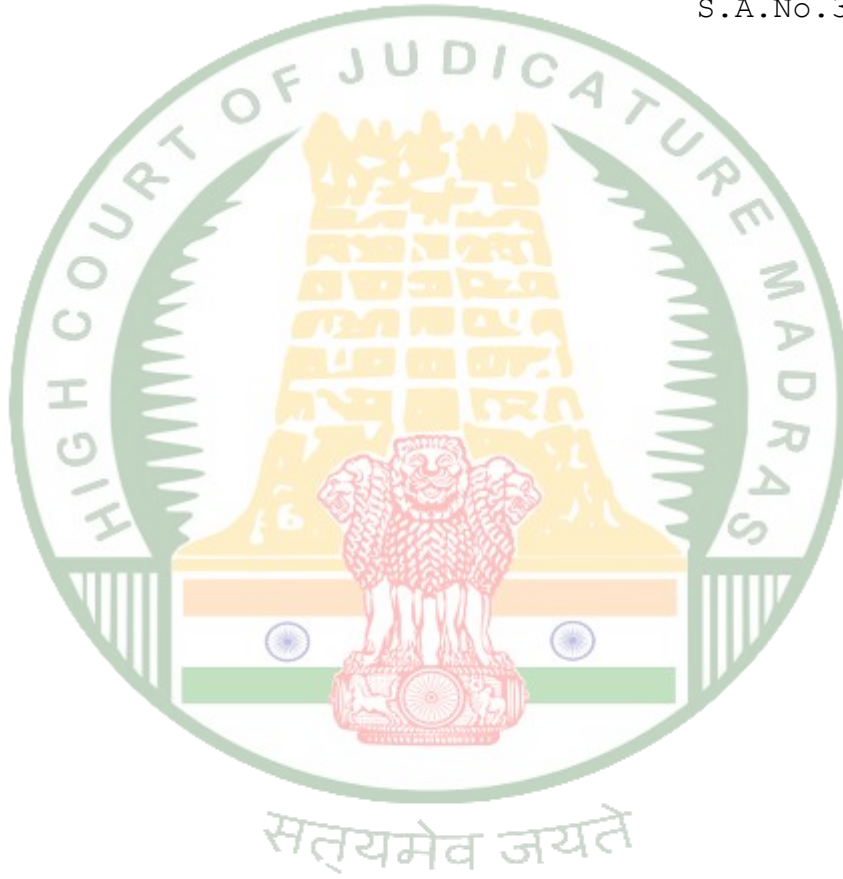
2. The Additional District Munsif, Kancheepuram.

+1 cc to Mr.T.R.Rajaraman,advocate,sr.20607

+1 cc to Mr.R.Mubarakbasha,advocate,sr.21137.

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S.A.No.307 of 2011



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