

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Second Appeal No.820 of 2011

K.Duraisamy ... Appellant/Respondent/Defendant

Vs.

M.Chinnasamy ... Respondent/Appellant/Petitioner

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 28.10.2010 passed in A.S.No.48 of 2008 by the I Additional District Court, Coimbatore, reversing the judgment and decree dated 11.10.2007 passed by the I Additional Sub Court, Coimbatore in O.S.No.509 of 2006.

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

For Respondent : Ms.V.S.Usharani

J U D G M E N T

The appellant herein is the defendant in the suit. Aggrieved by the judgment and decree dated 28.10.2010 passed in A.S.No.48 of 2008 by the I Additional District Judge, Coimbatore, reversing the judgment and decree dated 11.10.2007 passed by the I Additional Sub Court, Coimbatore in O.S.No.509 of 2006, the defendant has come up with the present appeal.

2. According to the respondent/plaintiff, the appellant/defendant is the owner of the suit property. The defendant entered into a written Sale Agreement with the plaintiff on 28.08.2003 agreeing to sell the suit property for a total sale consideration of Rs.3,00,000/-. As per the terms of the agreement, the sale has to be completed within a period of one year from the date of agreement. The defendant received a sum of Rs.2,00,000/- as part of the sale consideration on 28.08.2003. Though, according to the plaintiff, he was ready to pay the balance sale consideration and execute the Sale Deed, the defendant was not ready to execute the sale, citing family circumstances. Since the defendant requested payment of further

amount towards the sale consideration, the plaintiff paid a sum of Rs.90,000/- to the defendant on 02.08.2004 as additional advance towards sale consideration and the same was endorsed on the original agreement and the time for completion of sale was also extended for two more years.

3. It is the case of the plaintiff that he was always ready to pay the balance sale consideration of Rs.10,000/- and get the sale deed executed. But, the defendant was evading execution of the sale deed even after 02.08.2004, despite several requests made by the plaintiff. Hence, the plaintiff caused a legal notice to the defendant on 30.09.2004 calling upon him to come to Sub-Registrar Office, Periyanaickenpalayam on 13.10.2004 for the execution of the Sale Deed. The defendant sent a reply notice through his Advocate on 06.10.2004, denying the averments of the plaintiff and stating that it was only a loan transaction. Thereafter, the defendant approached the plaintiff and requested him not to approach Court and that the matter can be settled by way of mediation. Yet, the defendant did not come forward to execute the Sale Deed. Hence, having no other alternative, the plaintiff filed a suit in O.S.No.509 of 2006 seeking the relief of specific performance.

4. Denying the plaint averments, the defendant filed a Written Statement before the Trial court stating that the plaintiff did not give any amount to him on 02.08.2004 for extension of time nor gave additional advance amount. He has further stated that the plaintiff issued two legal notices, one on 30.09.2004 and the other on 01.10.2004 and the defendant had issued a reply notice dated 06.10.2004. Hence, according to the defendant, there is no cause of action in the suit.

5. The Trial Court, on a consideration of the entire oral and documentary evidence, dismissed the suit filed by the plaintiff, stating that he is not entitled to the relief of specific performance or the alternative relief. Aggrieved by the same, the plaintiff approached the I Additional District Court, Coimbatore in A.S.No.48 of 2008 and the First Appellate court, by a judgment and decree dated 28.10.2010, allowed the appeal, granting the alternative relief sought by the plaintiff by directing the defendant to pay a sum of Rs.3,82,513/- together with interest at 6% per annum, for the principal amount of Rs.2,90,000/- borrowed from the plaintiff, from the date of the suit till the date of realization. Challenging the same, the defendant is before this Court by way of the present appeal.

6. Learned Senior Counsel appearing for the appellant contended that though the Trial Court accepted the contention of

the appellant/defendant that he received amount from the plaintiff only as a loan and dismissed the suit, the First Appellate Court misconceived the loan transaction availed by the appellant/defendant on mortgage of his house and land, as a sale transaction. According to the learned Senior counsel, the appellant/defendant has received only a sum of Rs.50,000/- as loan from the respondent/plaintiff by signing in blank papers and that Ex.B1 - Agreement, dated 20.12.1996 was executed only for surety purpose and that the appellant has no intention to sell the suit property.

7. It is the further contention of the learned Senior Counsel that the suit itself is barred by limitation, as the respondent/plaintiff sought to invoke an Agreement of the year 1996 and the suit has not been filed within a period of three years.

8. In reply, learned counsel appearing for the respondent/plaintiff submitted that there is no pleading by the defendant with regard to the Agreement said to have been made in the year 1996, in the Written Statement, even though the plaint refers that a sum of Rs.2,00,000/- has been paid by the plaintiff on 20.12.1996. According to the learned counsel, the entire relief has been sought only based on Ex.A1 - Sale Agreement, dated 28.08.2003. Further, she drew the attention of this Court to the evidence of the appellant/defendant before the Trial Court, wherein, he has categorically stated that there was an Agreement dated 20.12.1996, which was made only for loan purpose and as the transaction has been completed, no action has been taken based on the said Agreement.

9. Learned counsel for the respondent further submitted that the appellant/defendant has subsequently received a sum of Rs.2,00,000/- from the respondent/plaintiff, i.e. vide Ex.A1 and that Ex.B1 - Agreement is not a genuine one. She also submitted that at no point of time, the appellant/defendant had any intention to sell the suit property and even the respondent/plaintiff does not have the intention to buy the suit property.

10. Heard the learned counsel on either side, gave careful consideration to their submissions and perused the material documents available on record.

11. Substantial questions of law that arise for consideration in this appeal are:

“(i) Whether the First Appellate Court is right in holding that the loan transaction between the appellant/defendant and the

respondent/plaintiff can be treated as an Agreement to enforce it, is valid in law contrary to the loan transaction dealings between the concerned parties?

(ii) Whether the relief sought by the respondent/plaintiff is based partly on Ex.A1 or partly on Ex.B1 or entirely on Ex.A1?"

12. It is seen that the First Appellate Court, in its judgment and decree, has held that it is only to safeguard the loan amount, Ex.A1 - Agreement has been entered into between the parties. But, instead of granting the relief of specific performance, the First Appellate Court has granted the alternative relief sought by the respondent/plaintiff.

13. On a perusal of the material documents, it is seen that the relief sought is based on two Agreements, one marked by the respondent/plaintiff as Ex.A1, dated 28.08.2003 and the other marked by the appellant/defendant as Ex.B1, dated 20.12.1996. As per Ex.A1, the appellant/defendant has initially received a sum of Rs.2,00,000/- as part of the sale consideration and even as per Ex.B1, the appellant/defendant has received a sum of Rs.2,00,000/- from the respondent/plaintiff, but as a loan.

14. The fact remains that the suit property mentioned in Ex.A1 and Ex.B1 are totally different. In the Agreement of the year 1996, it is no doubt true that a sum of Rs.2,00,000/- has been received by the appellant/defendant from the respondent/plaintiff and the total consideration was agreed at Rs.2,25,000/-. But, the Agreement marked as Ex.A1, dated 28.08.2003 refers to a different property and in that also, a sum of Rs.2,00,000/- has been parted with, but the total sale consideration is Rs.3,00,000/-.

15. The above mentioned facts are not in dispute. It is true that in the plaint, the respondent/plaintiff has stated that he paid a sum of Rs.2,00,000/- on 20.12.1996 to the appellant/defendant as part of the sale consideration. The entire pleadings have got to be read as a whole and not in a truncated manner. According to the respondent/plaintiff, the appellant/defendant has received a further sum of Rs.90,000/- towards part of balance sale consideration. There is no categorical finding by the First Appellate Court that Ex.A1 - Agreement, dated 28.08.2003 itself is bad. The Court has expressed its doubt with regard to the Agreement and that is the reason why, instead of granting the relief of specific performance, it has granted the alternative relief of payment of a sum of Rs.3,82,513/- along with interest at 6% per annum on

the principal amount of Rs.2,90,000/- and this Court finds no reason to interfere with the finding of the First Appellate Court in this regard. The first substantial question of law is answered accordingly.

16. In such view of the matter, this Court holds that the entire suit is based only on the Agreement marked as Ex.A1 and not partly on Ex.A1 or partly on Ex.B1. The second substantial question of law is answered accordingly.

17. Hence, this Court finds no reason to interfere with the judgment and decree of the First Appellate Court and the same is confirmed, thereby setting aside the judgment and decree of the Trial Court.

In fine, the Second Appeal is dismissed. No costs. Consequently, connected M.P.No.1 of 2011 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional Sub Court,
Coimbatore.
2. The I Additional District Court,
Coimbatore.

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.24255

+1cc to Mr.V.S.Usha Rani, Advocate, S.R.No.23652

+1cc to the Government Pleader, S.R.No.

GJII(CO)
RS(23/06/2017)

S.A.No.820 of 2011