

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2017

Coram:

The Hon'ble Mr. Justice S.VAIDYANATHAN

Second Appeal No.884 of 2011

M.Manickam

.. Appellant/Defemdant

Vs

R.Santhamani

... Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 09.04.2008 passed in A.S.No.60 of 2006 by the I Additional District Judge, Coimbatore against the judgment and decree dated 24.09.2004 passed in O.S.No.30 of 1999 by the Subordinate Judge, Tirupur.

For Appellant : Mr.S.S.Swaminathan

For Respondent : Mr.J.Hariharan
for M/s.V.Nicholas

J U D G M E N T

The unsuccessful defendant before the Courts below is the appellant herein.

2. It is the case of the respondent/plaintiff before the Trial Court that the appellant/defendant entered into a sale agreement dated 02.07.1987 with her in respect of the suit property for a sale consideration of Rs.1,20,000/- and obtained a sum of Rs.1,00,000/- towards advance sale consideration agreeing to complete the sale on receiving the balance sale consideration of Rs.20,000/- within 11 months. According to the respondent/plaintiff, though she was ready and willing to perform the sale by paying the balance sale consideration of Rs.20,000/-, the appellant/defendant did not evince any interest in the same. Hence, the plaintiff effected a legal notice to the defendant on 05.01.1999.

3. The defendant received the said notice on 07.01.1999 and sent a reply to the plaintiff on 21.01.1999, denying the averments of the plaintiff. According to the defendant, the plaintiff's husband Rajamanickam is employed in Tamil Nadu

Electricity Board and he used to advance money for interest and the defendant borrowed a sum of Rs.50,000/- from Rajamanickam in February 1998 and that the defendant was ready to execute any document as security, as he was in urgent need of money for his business. Hence, Rajamanickam and the plaintiff agreed to execute and register a Sale Agreement. Since Rajamanickam is a Government employee, the document was executed in the name of his wife, Shanthamani, the plaintiff herein. It is the further case of the defendant that at the time of executing the document, Rajamanickam told the defendant that he being a Government employee, if any property is purchased by him or his family members, he has to obtain prior permission from his higher officials. Since that was a loan transaction, Rajamanickam did not obtain any prior permission from his higher officials and assured the defendant that the alleged document dated 13.02.1998 is only a loan transaction and a security for payment of loan and he will not take any action for usurping the property. It is his contention that the suit itself is an abuse of process of Court and that the plaintiff is not entitled for a decree of specific performance.

4. Before the Trial Court, the Sale Agreement was marked as Ex.A1 and the Legal notice issued by the plaintiff to the defendant on 05.01.1999 was marked as Ex.A3. The Trial Court, on examining the oral and documentary evidence available on record, decreed the suit in favour of the plaintiff, by holding that the Sale Agreement, dated 13.02.1998 marked as Ex.A1 is valid.

5. Challenging the said judgment and decree of the Trial Court, the defendant went on appeal before the Subordinate Judge, Tirupur and the First Appellate Court, by a judgment dated 24.09.2004, confirmed the judgment and decree of the Trial Court. Aggrieved by the same, the defendant is before this Court by way of the present Second Appeal.

6. The substantial questions of law that arise for consideration in this Appeal are as follows:

(i) Whether the nomenclature of the document alone is sufficient to conclude the nature of the transaction?

(ii) Whether Ex.A1 - Sale Agreement, by circumstantial evidence, can be considered as a loan document or as an actual Sale Agreement?

7. Learned counsel for the appellant/defendant contended that the transaction between the plaintiff and the defendant is only a loan transaction and not a Sale Agreement. He further

contended that the Courts below failed to note that the plaintiff miserably failed to prove the readiness and willingness on her part which is vital for the suit for specific performance.

8. In reply, learned counsel appearing for the respondent/plaintiff submitted that the plaintiff was always ready and willing to perform her part of the contract and that both the Courts below have rightly held that Ex.A1 - Sale Agreement is valid in law.

9. The Trial Court has observed that the plaintiff has proved her readiness and willingness on her part to execute the Sale Agreement. It has further observed that P.Ws.1 to 4 have been examined as witnesses and Ex.A1 - Sale Agreement has also been accepted by the defendant in the suit. Even though it has been contended by the defendant that at the time of entering into the agreement, he had no intention to sell the property and that Ex.A1 had been written only for the purpose of availing loan, the Trial Court has rightly held that the plaintiff is entitled for specific performance, which is confirmed by the First Appellate Court. Now, the burden is on the appellant/defendant to establish that the Sale Agreement has been entered into for a different purpose and he has no intention to sell the property.

10. Even though it has been stated that the appellant/defendant has taken only Rs.50,000/- as loan and not Rs.1,00,000/- as mentioned in the Sale Agreement, no steps have been taken by him to cancel the loan agreement within the period of 11 months stipulated in the Sale Agreement. The Court below has also stated that the appellant/defendant has approached the respondent/plaintiff to borrow loan and that two persons, viz. Mani and Palanisamy have also helped the appellant/defendant in that process. But, no steps have been taken by the appellant/defendant to examine those two persons. It is also contended that the appellant/defendant purchased the property in the year 1997 for a sum of Rs.1,32,000/- and within a period of six months, when the prices have escalated, he has entered into an agreement of sale for a sum of Rs.2,00,000/-.

11. It is clear from the registered sale agreement dated 13.02.1998 that for business purposes, money is necessary and hence the appellant/defendant was willing to take money from the respondent/plaintiff by selling the land and paying the balance sale consideration within a period of 11 months. Though there are communications between the parties, admittedly, there is a sale agreement and the appellant/defendant has not taken any steps either to issue notice or to contend that prior to the receipt of legal notice from the respondent/ plaintiff, he received the amount from the respondent/plaintiff only as a loan

to meet out his business expenses.

12. As Ex.A1 - Sale Agreement stands proved and four persons have been examined on behalf of the respondent/plaintiff, the question of giving a different interpretation to Ex.A1 - Sale Agreement and coming to a different conclusion cannot be accepted, when a decision has been arrived at. Hence, this Court cannot re-appreciate the evidence and come to a different conclusion.

13. In view of the above, this Court finds no illegality or perversity in the findings of the Courts below and hence, the same is liable to be confirmed. Thus, the substantial questions of law are answered in favour of the respondent/plaintiff.

In fine, the Second Appeal is dismissed, confirming the judgment and decree of the First Appellate Court. No costs. Consequently, connected M.P.No.1 of 2011 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The I Additional District Judge, Coimbatore.
2. The Subordinate Judge, Tirupur.
3. The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.45184

+1cc to Mr.V.Nicholas, Advocate, S.R.No.44791

S.A.No.884 of 2011

BR(CO)
GN(10/10/2017)