



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.09.2018

PRONOUNCED ON : 23.10.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.20 of 2015

1. M.Rajendran
2. Minor Arvind Prabhu
Rep. by his father and guardian M.Rajendran
(2nd appellant declared as major and his father
and guardian discharged from the guardianship
vide order of the court dated 23.02.2018
made in CMP Nos.3745 & 3746 of 2018
in S.A.No.20 of 2015. ...Appellants /Defendants

Vs.

M.Ruthramoorthy ...Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 10.09.2014 passed in A.S.No.44 of 2011 on the file of III Additional District Court, Dharapuram, reversing the judgment and decree dated 20.01.2010 made in O.S.No.12 of 2004 on the file of subordinate judge, Dharapuram.

For Appellants : Mr.S.Parthasarathy, Senior Counsel
for Mr.R.Baskar

For Respondent : Mrs.Hema Sampath, Senior Counsel
for Mr. K.V.Muthuvisakan

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 10.09.2014 passed in A.S.No.44 of 2011 on the file of the III Additional District Court, Dharapuram, reversing the judgment and decree dated 20.01.2010 passed in O.S.No.12 of 2004 on the file of the subordinate Court, Dharapuram.

2. The second appeal has been admitted on the following substantial questions of law.



WEB GATES

loans by way of executing the agreement of sale and likewise he had availed a loan of Rs.2,70,000/- from the plaintiff undertaking to repay the same with interest at the rate of 36% per annum and towards the abovesaid liability, the sale agreement had come to be executed as a security and the defendants had been paying the interest for one year with reference to the loan obtained and unable to pay any amount thereafter and accordingly requested some time to pay the interest and it is stated that the plaintiff had refused to the same and come forward with the false suit and accordingly it is stated that there had been no consensus ad item between the parties as regards the sale of the suit properties in favour of the plaintiff by the defendants and therefore the plaintiff is not entitled to enforce the alleged sale agreement which had been executed only as a security for the loan transaction and it is also stated that the first defendant had availed loan from the plaintiff's brother by executing the sale agreement on earlier occasions, wherein the plaintiff had also subscribed his signature as an attester and after the discharge of the said loan, the plaintiff's brother had duly executed the deeds of revocation in favour of the defendants and in a similar way, the defendants had also availed loan from one Vishnu by executing an agreement of sale as a security and after the discharge, the said agreement was also cancelled and accordingly, the suit sale agreement had also come to be executed only as a security for obtaining the loan from the plaintiff and not with an intention to effect any sale transaction in respect of the suit properties and the value of the suit properties is more than Rs.6,00,000/- at the relevant point of time and therefore, to say that the defendants had agreed to convey the suit properties to the plaintiff for a sum of Rs.2,82,000/- is false and unacceptable. The time set out in the sale agreement for the payment of the balance sale consideration, etc., are only nominally made and not intended to convey the suit properties and therefore the plaintiff is not entitled to seek the relief of specific performance in respect of the sale agreement.

6. In the light of the above defence set out by the defendants, it is seen that the defendants, as such, had admitted the execution of the sale agreement involved in the matter dated 31.01.2003 marked as Ex.A1. According to the defendants, Ex.A1 sale agreement had been executed by them only as a security in connection with the loan obtained from the plaintiff in a sum of Rs.2,70,000/- and not with an intention of conveying the sale deed in favour of the plaintiff. Further, according to the defendants, though they had been paying the interest amount in respect of the loan secured for some time, thereafter, they were unable to discharge the loan and accordingly prayed for further time with reference to the same and refusing to accept to the said request, it is stated that



the plaintiff has come forward with the false case.

7. The plea had been specifically taken by the defendants that on earlier occasions, they had executed similar sale agreements in favour of one Vishnu and the plaintiff's brother for the purpose of securing loan and accordingly after the discharge of the abovesaid loans, the sale agreements executed by them had come to be cancelled and in this connection, the defendants would rely upon the documents marked as Exs.B1 to B6. In this connection, it is apposite to refer to the evidence of the plaintiff examined as PW1 and PW1 during the course of cross examination, has admitted that the first defendant had executed a sale agreement in favour of his brother Eswara Murthy on 28.07.2000 in respect of the suit properties for a sum of Rs.5,20,000/-, marked as Ex.B1 and the abovesaid sale agreement had been subsequently cancelled by way of the deed of cancellation (registered) on 03.05.2001 marked as Ex.B2 and he has also further admitted that in respect of the abovesaid sale agreement marked as Ex.A1, though the sale consideration was fixed at Rs.5,20,000/-, the advance sum has been entered only as Rs.1,00,000/- and furthermore on the date of Ex.B2, another sale agreement in respect of the suit properties had been entered into between the first defendant and his elder brother Eswara Murthy for a sum of Rs.2,80,000/- whereunder a sum of Rs.2,50,000/- had been recited as payment of advance and also admitted that the abovesaid sale agreement had been cancelled on 31.01.2003 by way of a registered cancellation deed marked as Ex.B4 and admitted that he has attested the abovesaid transactions and furthermore also admitted that on the date of Ex.B4, the present suit sale agreement had been entered into between the first defendant and him in respect of the suit properties for a sum of Rs.2,82,000/- whereunder a sum of Rs.2,70,000/- had been stated to be the advance paid and also admitted that in the suit sale agreement, his brother Eswara Murthy had attested. Furthermore, as could be seen from the documents marked as Exs.B5 and B6, it is seen that in respect of the suit properties, the first defendant had entered into sale agreement with one Vishnu for a sum of Rs.1,05,000/- and thereafter the abovesaid sale agreement had come to be cancelled by a deed of cancellation (registered) on 23.08.1995 marked as Ex.B6. It is thus noted that considering the above evidence of PW1 as well as the documents projected by the defendants marked as Exs.B1 to B6 in toto, it is found that to the knowledge of the plaintiff, the first defendant had been executing various sale agreements in favour of the plaintiff's brother wherein the plaintiff had attested only for the purpose of securing loan from his brother and after the discharge of the abovesaid loan amount, the sale agreements executed between the first defendant and the plaintiff's brother had come to be cancelled by way of the registered cancellation deeds. Likewise, it is seen that as



rightly put forth by the defendants, the suit sale agreement had also come to be executed on 31.01.2003. At this juncture, it is to be noted that the suit sale agreement had come to be executed on the date when the sale agreement dated 03.05.2001 entered into between the plaintiff's brother and the first defendant had been cancelled by way of the registered cancellation deed marked as Ex.B4. In such view of the matter, the materials placed on record pointing to the practice adopted by the parties in executing sale agreements for the purpose of securing loan on earlier occasions as admitted by the plaintiff himself, accordingly, it is seen that the case of the defendants that the suit sale agreement had also come to be executed in a similar fashion in favour of the plaintiff on 31.01.2003 for a sum of Rs.2,82,000/- and accordingly, the recitals had been incorporated therein as if a sum of Rs.2,70,000/- had been paid as advance, is more probable.

8. In this connection, according to the plaintiff, the sale consideration has been fixed at Rs.2,82,000/- under the sale agreement Ex.A1, whereas to the knowledge of the plaintiff, in the sale agreement entered into between the plaintiff's brother and the first defendant in respect of the suit properties by way of the sale agreement dated 28.07.2000 marked as Ex.B1, the sale price had been fixed at Rs.5,20,000/-, and when to the knowledge of the plaintiff, the sale price of the suit properties had been fixed at Rs.5,20,000/- during the year 2000 itself, the case projected by the plaintiff that in the year 2003, the sale price had been fixed only at Rs.2,82,000/-, as such, cannot be easily believed and accepted. Therefore, it is seen that a genuine doubt arises as to whether at all, a real agreement of sale would have been entered into between the plaintiff and the defendants on 31.01.2003 as sought to be projected by the plaintiff.

9. If really, the parties have entered into the sale agreement marked as Ex.A1 with the intention of conveying the suit properties in favour of the plaintiff, accordingly, there is no need for the parties to fix the outer time limit of one year for paying the balance amount of Rs.12,000/- to complete the sale transaction. When according to the plaintiff, he is a man of means and always ready and willing to obtain the sale deed from the defendants, as to why an outer limit of one year had been fixed under Ex.A1 for paying the balance sum of Rs.12,000/-, a meagre amount, has not been properly explained. Therefore, the abovesaid factor also throws a great suspicion in the genuineness of Ex.A1 sale agreement.

10. According to the plaintiff, he has been always ready and willing to perform his part of the contract by paying the balance sale consideration of Rs.12,000/- to the defendants and obtain the sale deed and on the other hand, it is only the defendants who had been avoiding the same on some pretext or the



other. In this connection, the plaintiff would aver that he had sent a notice demanding the execution of the sale deed to the defendants on 18.06.2003, marked as Ex.A2. Prior to 18.06.2003, there is no material placed by the plaintiff to show that he had been ready and willing to pay the balance sale consideration and obtain the sale deed from the defendants. As to why the plaintiff had waited for nearly 6 months for issuing the notice marked as Ex.A2 in paying the balance sale consideration to the defendants for obtaining the sale deed, as to why he had not endeavored to pay the balance sale consideration prior to the same, there is no proper explanation. It is found that the abovesaid notice of the plaintiff Ex.A2 had been repudiated by the first defendant by sending a reply on 04.08.2003, marked as Ex.A4. Even as per the case of the plaintiff, the first defendant sent the abovesaid reply repudiating the case by setting forth false allegations. If that be so, as to why the plaintiff had not endeavored to immediately lay the civil action against the defendants, has not been properly explained. On the other hand, it is stated by the plaintiff, after the receipt of Ex.A4 reply notice, he had again sent another notice to the defendants on 08.09.2003 marked as Ex.A5 and it is stated by the plaintiff that the first defendant sent a rejoinder to the same on 03.10.2003 containing the false allegations, which had been marked as Ex.B7. On a perusal of Ex.B7, it is seen that the defendants after refuting the case of the plaintiff as regards the entitlement of obtaining the sale deed based on Ex.A1 sale agreement, enclosed a copy of the demand draft in favour of the plaintiff for Rs.2,70,000/- drawn on ICICI bank limited, Dharapuram and accordingly it is seen that by way of Ex.B7, the defendants had chosen to return the amount borrowed by them from the plaintiff by way of Ex.A1 sale agreement. However, according to the plaintiff even thereafter, he had sent another notice to the defendants on 03.12.2003 marked as Ex.A8 and it is stated that the defendants did not respond to the abovesaid notice. On a perusal of Ex.A8, as rightly put forth by the defendants, the plaintiff has averred that he had approached the defendants to execute the sale deed based on the sale agreement dated 31.01.2003 even on 09.04.2003 and the same had been refused by the defendants. In such view of the matter, as rightly put forth, when even as per the case of the plaintiff, right from 09.04.2003 onwards the defendants had repudiated the claim of the plaintiff to obtain the sale deed from them based on Ex.A1 sale agreement, despite the same, the further case of the plaintiff that even thereafter, he had been sending various notices abovestated to the defendants calling upon them to execute the sale deed in his favour, as such, is found to be unnatural and unacceptable and accordingly, it is found that inasmuch as the amount recited under Ex.A1 had been parted only as a loan amount by the plaintiff in favour of the defendants, accordingly, it is seen that the plaintiff had also not



endeavored to enforce the sale agreement Ex.A1 immediately and on the other hand, been granting time to the defendants so as to enable them to discharge the loan secured by way of Ex.A1 sale agreement. However, for the reasons best known to the plaintiff, despite the defendants sending the demand draft in his favour for a sum of Rs.2,70,000/- by way of Ex.B7, it is seen that the plaintiff had nevertheless chosen to lay the suit against the defendants for the relief of specific performance.

11. Considering the abovesaid factual matrix involved in the matter, it is seen that on the basis of Exs.B1 to B6, it has been clearly established by the defendants that they had been in the habit of executing sale agreements in favour of others to the knowledge of the plaintiff for the purpose of securing loan and after the discharge of the loan, the abovesaid sale agreements had come to be cancelled by the deeds of cancellation and when admittedly the plaintiff is a party to the abovesaid transactions, particularly, Exs.B1 to B4 and similarly, his brother, Eswara Murthy is also a party to Ex.A1 sale agreement and furthermore, considering the fact that when in the sale agreement marked as Ex.B1, the sale consideration had been fixed as Rs.5,20,000/- and on the other hand, in EX.A1 sale agreement, the sale consideration had been fixed only at Rs.2,82,000/- and furthermore, when the stamp papers utilised for the cancellation deed marked as Ex.B4 and Ex.A1 are found to be in seriatim and furthermore, when from the conduct of the plaintiff in issuing various notices to the defendants calling upon him to execute the sale deed, despite the resistance of the defendants to his entitlement of obtaining of the sale deed from them way back on 09.04.2003 itself, it is seen that the first appellate court without considering the abovesaid factors in the right perspective, had proceeded to hold that the sale agreement dated 31.01.2003 marked as Ex.A1, is a real sale agreement entered into between the parties for the purpose of conveying the suit properties in favour of the plaintiff by the defendants for the consideration recited therein.

12. On the other hand, as rightly determined by the trial court, in the light of the aforestated overwhelming evidence put forth by the parties, disclosing vividly that Ex.A1 sale agreement would not have been entered into between the parties with the intention of conveying the suit properties in favour of the plaintiff by the defendants and on the other hand, the sale agreement had been executed only for the availment of loan as a security and accordingly, it is seen that the defendants are entitled to take the defence that the sale agreement had been entered into only for the abovesaid loan transaction and never intended to acted upon as a sale agreement and accordingly when it is found that even the plaintiff had not endeavored to establish his readiness and willingness in completing the sale



transaction right from the date of Ex.A1 sale agreement and on the other hand, as above discussed, despite the repudiation of his entitlement to obtain the sale deed by the defendants as on 09.04.2003 itself, still found to be endeavoring to grant further time to the defendants, would only go to show that, inasmuch as the parties had not entered into Ex.A1 sale agreement with a avowed object of conveying the suit properties as recited therein and on the other hand, the abovesaid sale agreement had come to be entered into only as a security for the loan transaction entered into between the parties, in such view of the matter, it is seen that the trial court had rightly invoked Section 20 of the Specific Relief Act for refusing the relief of specific performance sought for by the plaintiff.

13. As rightly put forth by the defendants' counsel without prejudice to the defence taken by the defendants that the sale agreement is executed only as a security for the loan transaction, considering the fact that the plaintiff had not endeavored to pay the balance sale consideration right from the date of inception of the sale agreement and on the other hand though his entitlement had been refuted by the defendants from the inception, in all, it is found that essential ingredients of readiness and willingness having not been established by the plaintiff for claiming the equitable relief of specific performance, accordingly, it is found that the first appellate court has erred in granting the discretionary relief of specific performance prayed for by the plaintiff on the basis of alleged sale agreement dated 31.01.2003 marked as Ex.A1.

14. The counsel for the defendants in support of his various contentions placed reliance upon the decisions reported in

1. 2016-5-L.W.425 (Rajammal & another v. M.Senbagam)
2. 1993(2) MLJ 272 (G.Chelliah Nadar (died) and others v. Periasami Nadar and others).
3. 2003-3-L.W. 479 (Govindappa Naidu v. C.Sidda Chetty and others).
4. 2010(3) CTC 297 (Jugraj v. P.Sankaran and others).
5. 2016-4-L.W. 66 (S.Mallika and others v. R.Saravanan and another).
6. (2017)5 SCC (Jayakantham and others v. Abaykumar).
7. (2018)1 MLJ 746 (S.Palanivel and another v. P.Natesan and others).
8. 2007-1-L.W.309 (Kamireddi Sattiaraju and others v.



Kandamuri Boolaeswari).

9. (1997) 9 SCC (Tejram v. Patirambhau).

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at the hand.

15. The determination of the first appellate court that Ex.A1 sale agreement is intended to be acted upon is not legally sustainable in the light of the oral and documentary evidence projected in the matter pointing contrary to the same that Ex.A1 sale agreement had been intended only as a security for the loan transaction entered into between the parties and accordingly the first appellate court is found to have erred in granting the discretionary relief of specific performance in favour of the plaintiff ignoring the oral and documentary evidence projected in the matter clearly pointing to the execution of the sale agreement in question only as a security for the loan transaction effected between the parties and even otherwise also failing to consider that the plaintiff is not entitled to obtain the discretionary relief of specific performance on account of his failure to establish his readiness and willingness in performing his part of the sale agreement, if it is to be acted upon. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendants.

16. For the reasons above stated, the judgment and decree dated 10.09.2014 passed in A.S.No.44 of 2011 on the file of the III Additional District Court, Dharapuram, are set aside and the judgment and decree dated 20.01.2010 passed in O.S.No.12 of 2004 on the file of the subordinate Court, Dharapuram, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. III Additional District Judge, Dharapuram



2. Subordinate Judge, Dharapuram

3. The Section Officer, V.R.Section,
High Court, Madras.

+2cc to Mr. K.V.Muthuvisakan, Advocate sr.no.72855,
72284

+2cc to Mr.R.Baskar, Advocate sr.no.72224

S. A.No.20 of 2015

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