

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 31.10.2018****PRONOUNCED ON : 23.11.2018****CORAM****THE HONOURABLE MR.JUSTICE T.RAVINDRAN****S.A.No.445 of 2015**

P.Selvaraj

...

Appellant

Vs.

R.Gopal

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 15.09.2012 passed in A.S.No.19 of 2012 on the file of the Subordinate Court, Harur, reversing the Judgment and Decree dated 06.04.2011 passed in O.S.No.178 of 2008 on the file of the District Munsif Court, Krishnagiri.

For Appellant : Mr.H.Adaikala Arokiaraj

For Respondent : Mr.S.Arokia Maniraj

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 15.09.2012 passed in A.S.No.19 of 2012 on the file of the Subordinate Court, Harur, reversing the Judgment and Decree dated 06.04.2011 passed in O.S.No.178 of 2008 on the file of the District Munsif Court, Krishnagiri.

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

" (a).The lower appellate Court has also failed to see that if at all original document namely patta in the present suit is given as a security for the loan, no person will sign an agreement for sale. The respondent/defendant herein has entered into an agreement of sale and submitted his original patta to the plaintiff/appellant?

(b).Though the respondent /defendant pleads that he is an illiterate and without reading the document signed the document namely Exhibit A1, PW1 has stated that in cross examination that he has read over the content to the respondent/defendant and after that only the respondent/defendant signed Exhibit A1?

(c).Whether the lower appellate Court is correct in calculating the period for filing the suit?

(d).Whether the lower appellate is right in coming to the conclusion that there is no pleading about expressing his willingness in legal notice marked as Exhibit A4?”

3.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4.The suit has been laid by the plaintiff/appellant for the relief of specific performance based on the sale agreement dated 08.08.2001. According to the plaintiff, in brief, the suit property belongs to the defendant and that he had agreed to convey the same to him for a sum of Rs.12,500/- and accordingly, the sale agreement dated 08.08.2001 was executed by the defendant in favour of the plaintiff for the conveyance of the suit property and on the date of the sale agreement, it is stated that the plaintiff has paid a sum of Rs.10,000/- and the defendant had also entrusted the rough patta in respect of the suit property to the plaintiff and thereafter, despite the several repeated demands and requests putforth by the plaintiff to receive the balance sum and execute the sale deed in favour of the plaintiff, the defendant had been evading the same on some pretext or other and accordingly, it is stated that the plaintiff has issued the legal notice on 21.04.2005,

however, the same had been returned without service and accordingly, it is stated that the plaintiff has been necessitated to lay the suit for appropriate relief.

5.The defendant has resisted the plaintiff's case contending that no sale agreement had been executed by him in favour of the plaintiff agreeing to convey the suit property to the plaintiff for a sum of Rs.12.500/- as putforth in the plaint and also denied the case of the plaintiff that he had paid a sum of Rs.10,000/- as advance on the date of the sale agreement and that he had been always ready and willing to pay the balance sum and get the sale deed executed and that it is only the defendant, who had been evading the same on some pretext or other and also the defendant disputed the case of the plaintiff that he had sent the legal notice on 21.04.2005 expressing his readiness and willingness to perform his part of the contract. Per contra, it is the case of the defendant that the plaintiff was running a finance concern in the name of P.S.K. Finance and that the defendant had borrowed a sum of Rs.10,000/- from him on 08.08.2001 and repaying the same at Rs.400/- per month till 08.02.2002, however, thereafter, on account of the poverty and unemployment, the defendant shifted his residence and unable to pay the borrowed sum and the plaintiff had obtained the agreement from him as security for the loan transaction by obtaining his signature and thumb impression in the paper and also obtained his wife thumb

impression and also he had been necessitated to handover the patta to the plaintiff and however, no sale agreement had been entered into between the parties as putforth by the plaintiff and the plaintiff had not sent any legal notice to the address, where the defendant is residing and on the other hand, deliberately sent the legal notice to his old address for the purpose of the case and also contended that the plaintiff has altered the period recited in the sale agreement from 20 months into 45 months fraudulently and accordingly, made material alterations in the sale agreement for the purpose of saving the limitation and therefore, the plaintiff has not come forward with the true facts and not entitled to obtain the relief prayed for and the suit laid by the plaintiff is liable to be dismissed.

6. Based on the materials placed on record, the trial Court was pleased to decree the suit in favour of the plaintiff as prayed for and the first appellate Court set aside the judgement and decree of the trial Court and thereby, dismissed the plaintiff's suit. Impugning the same, the present second appeal has been laid.

7. The plaintiff has laid the suit for specific performance based on the sale agreement dated 08.08.2001 and the said document has been marked as Ex.A1. Now, according to the defendant, no such sale agreement had been entered into between him and the plaintiff in respect

of the conveyance of the suit property and it is stated that he had only availed loan from the plaintiff and in connection with the same, the sale agreement had been obtained as a security by the plaintiff and no notice had been issued by the plaintiff as claimed in the plaint and also it is mainly contended by the defendant that the plaintiff has materially altered the period mentioned in the sale agreement from 20 months into 45 months for the purpose of saving the limitation and on the abovesaid ground, the suit laid by the plaintiff is liable to be rejected and also contended that the case of the plaintiff that he was always ready and willing to perform his part of the contract is not true and hence, the suit laid by the plaintiff is liable to be dismissed.

8. At the foremost, the plaintiff having laid the suit for specific performance, should establish that he has been always ready and willing to perform his part of the contract based on the agreement dated 08.08.2001. It is the case of the plaintiff that the sale consideration has been fixed at Rs.12,500/- and it is further pleaded by the plaintiff that on the date of the sale agreement itself, he had paid a sum of Rs.10,000/-. If that be so, if really the parties had agreed to enter into the sale agreement in question for the purpose of the conveyance of the suit property as put forth by the plaintiff and when as per the case of the plaintiff, the balance sum, remaining to be paid amounts to only Rs.2,500/-, as rightly put forth by the defendant's counsel, there is no

need on the part of the parties to fix an outer limit of 45 months for completing the sale transaction. If really the parties had entered into the sale agreement for the purpose of the conveyance of the suit property, the plaintiff having paid nearly 85% of the sale consideration, would not have endeavoured to wait for a further period of 45 months for taking the sale deed from the defendant in respect of the suit property based on the sale agreement. Therefore, the abovesaid case of the plaintiff itself throws a great suspicion as to whether at all a sale agreement would have been entered into between the parties for the conveyance of the suit property as put forth by the plaintiff.

9. Even assuming for the sake of arguments that the parties had agreed to fix the outer limit of 45 months for completing the sale transaction, in so far as this case is concerned, there is no material placed on the part of the plaintiff that pursuant to the sale agreement Ex.A1, he had been always ready and willing to pay the balance sum of Rs.2,500/- and obtain the sale deed from the defendant pursuant to the same. With reference to the same, other than the ***ipsi dixit*** testimony of the plaintiff, there is no other material forthcoming on the part of the plaintiff. The plaintiff has averred in the plaint that he had been always ready and willing to pay the balance sum and obtain the sale deed from the defendant from the inception and on the other hand, it is only the defendant, who had been evading the same on some pretext or other. If

that be so, there is no explanation on the part of the plaintiff as to why he has waited for a period of 45 months for sending the legal notice. If really the plaintiff had been always ready and willing to pay the balance sum and get the sale deed executed from the defendant and it is only the defendant, who had been evading the same as put forth by the plaintiff, on noting the abovesaid conduct of the defendant, nothing prevented the plaintiff in sending the legal notice immediately expressing his readiness and willingness and thereafter, levy the suit. Therefore, the very fact that the plaintiff had chosen to issue the legal notice only on 21.04.2005 would itself go to show that the plaintiff has not been ready and willing to perform his part of the contract as claimed in the plaint assuming that the sale agreement is a true and genuine document. In addition to that, it is seen that the legal notice alleged to have been sent by the plaintiff to the defendant has not been served upon the defendant. It is seen that according to the defence version, the plaintiff had deliberately sent the legal notice to his old address knowing fully well that the defendant had shifted his residence. However the fact remains that the legal notice sent by the plaintiff had not been received by the defendant.

10.As abovenoted, even assuming for the sake of arguments that the parties had agreed to fix the outer limit of 45 months for completing the sale transaction, as rightly found by the first appellate Court, the period of 45 months would expire during April, 2005. It is thus found that

right from 2001 onwards i.e. the date of the execution of Ex.A1 sale agreement till 21.04.2005, there is no piece of evidence on the part of the plaintiff to establish that he has been always ready and willing to part with the balance sum of Rs.2,500/- and obtain the sale deed from the defendant. Therefore, it is seen that the plaintiff has miserably failed to establish his readiness and willingness in performing his part of the contract as provided under Section 16C of the Specific Relief Act and on the abovesaid ground alone, the plaintiff's suit has to be rejected. That apart, even after sending the notice dated 21.04.2005, it is found that the plaintiff has not chosen to levy the suit immediately and he has taken his own time in instituting the suit and the suit is found to have been laid by the plaintiff only on 09.12.2005 i.e. nearly 7 months after the issuance of the alleged legal notice. In toto, it is seen that inasmuch as no sale agreement had been entered into between the parties as putforth by the defendant, it is found that the plaintiff has not endeavoured to express his readiness and willingness in paying the balance sum and obtain the sale deed from the defendant immediately pursuant to Ex.A1 sale agreement.

11. In the light of the abovesaid factors, the first appellate Court is totally justified in non suiting the plaintiff, on his failure to establish his readiness and willingness to perform his part of the contract based on the sale agreement dated 08.08.2001.

12.The defendant has taken the defence that the plaintiff has materially altered the sale agreement dated 08.08.2001 by altering the period from 20 months into 45 months. On a perusal of Ex.A1 sale agreement, it is seen that the date has been altered glaringly from 20 months into 40 months and thereafter, as 45 months and with reference to the same, there is no proper explanation on the part of the plaintiff. Even the plaintiff examined as PW1 would admit that there is alteration by scoring the period of 12 months and rewriting the same as 40 months. The scribe examined as PW2 has also admitted that the period has been altered from 20 months into 45 months in Ex.A1 sale agreement and there is no reference about the same in the document. In the light of the above position, when on a naked eye, the period mentioned in Ex.A1 sale agreement is found to have been altered from 20 months into 40 months and thereafter, as 45 months and with reference to the same, there is no proper explanation on the part of the plaintiff and coupled with the fact that the plaintiff has not established his readiness and willingness to perform his part of the contract right from the date of the sale agreement, accordingly, it is seen that as rightly putforth by the defendant as well as determined by the first appellate Court, with a view to save the point of limitation as well as with a view to justify the delayed issuance of the legal notice dated 21.4.2005 and to suit the same, it is seen that conveniently the plaintiff has chosen to alter the period in the sale agreement from 20 months into 40 months and thereafter, as 45

months and in such view of the matter, accordingly, the first appellate Court, based on the appreciation of the evidence adduced by the plaintiff and his witness in toto, rightly held that the plaintiff has failed to explain properly the material alteration committed in the document as regards the period mentioned therein and so viewed, it is found that only to save the point of limitation the period had been altered from 20 months into 40 months and thereafter, as 45 months and in such view of the matter, on the abovesaid ground of material alteration of the document in question, it is seen that the first appellate Court is wholly justified in rejecting the plaintiff's case on the footing that on account of the material alteration, the agreement in question has lost its validity and enforceability.

13. The defence version is that no sale agreement had been entered into between the parties for the conveyance of the suit property and the sale agreement had been secured by the plaintiff only as a security for the loan transaction. Materials placed on record go to show that the plaintiff was engaged in Finance business. In this connection, on an analysis of the evidence adduced by the defendant and his witnesses, particularly, the documents marked as Ex.X1 as well as Ex.B2 and considering the evidence of DWs3 & 4 as well as the defendant DW1, in toto, it is found that the plaintiff has been running the finance concern in the name of PSK finance and accordingly, lending amount to the third

parties. Accordingly, it is found that the case of the defendant gets probalised that the sale agreement had been obtained by the plaintiff only as a security for the loan transaction and coupled with the fact that if really the parties had intended to enter into a agreement fixing the sale consideration at Rs.12,500/- and if really, the plaintiff had paid the sum of Rs.10,000/- as advance on the date of the sale agreement, no prudent person would have fixed the outer limit of 45 months for paying the balance sum of paltry amount at Rs.2,500/- for the purpose of the completion of the sale transaction. On the other hand, as the document in question Ex.A1 has come as a security document in connection with the loan transaction, with a view to enable the defendant to discharge the loan, the time limit of 20 months had been fixed by the parties. However, on noting that the inability of the defendant to repay the borrowed sum and thereafter, with a view to take advantage of the security document viz., Ex.A1, it is found that as rightly determined by the first appellate Court, the plaintiff had altered the period from 20 months into 40 months and thereafter, as 45 months to suit the convenience and had come forward with the suit for the relief of specific performance. However, as above discussed, the plaintiff has failed to establish the material alteration made in the document concerning the period stipulated therein as well as readiness and willingness and also the unusual fixation of the outer limit of alleged 45 months for paying the paltry sum of Rs.2500/-. In toto, the only conclusion that could be taken,

as putforth by the defendant, is that the sale agreement had been taken only as a security document towards the loan availed by the defendant from the plaintiff and in such view of the matter, it is seen that the plaintiff would not be entitled to enforce the sale agreement for obtaining the discretionary relief of specific performance.

14.The defendant, in support of his various contentions, relied upon the decisions reported in **(2017 (6) CTC 113 (M.R.Rathindran Vs. Saraswathi Narayanan and 14 others), 2017 (6) CTC 579 (Y.Mariya Selvam Vs. E.Yesuraj and 4 others), 2016 (6) CTC 225 (Rajammal and another Vs.M.Senbagam), 2017 (2) CTC 625 (G.Vasantha Vs. Sri Maharaja Kallash Benefit Fund Ltd., Mayiladuthurai) & 2009 (1) CTC 803 (K.R.Venugopal Vs. K.R.Srinivasan and 4 others)**. The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

15.In the light of the above discussions, merely because the patta had been entrusted to the plaintiff by the defendant that by itself would not render the sale agreement in question as a true, genuine and valid document entitling the plaintiff to obtain the discretionary relief of specific performance based on the same. When on the basis of the materials placed on record, it is found that there had been a material alteration in

the sale agreement concerning the period of performance and when the same has not been properly explained by the plaintiff and when the said material alteration is found to have been done only for the purpose of saving the limitation and thereby, it is seen that the first appellate Court is wholly justified in holding that the sale agreement in question, as such, has lost its credibility and enforceability and accordingly, rightly held that the plaintiff is not entitled to enforce the same. Furthermore, the first appellate Court is also correct in coming to the conclusion 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 contract and the factum of the issuance of the legal notice by the plaintiff belatedly on 21.04.2005 by itself would not enure to the benefit of the plaintiff for upholding his case as regards his claim of readiness and willingness. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendant.

In conclusion, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No

Internet : Yes / No

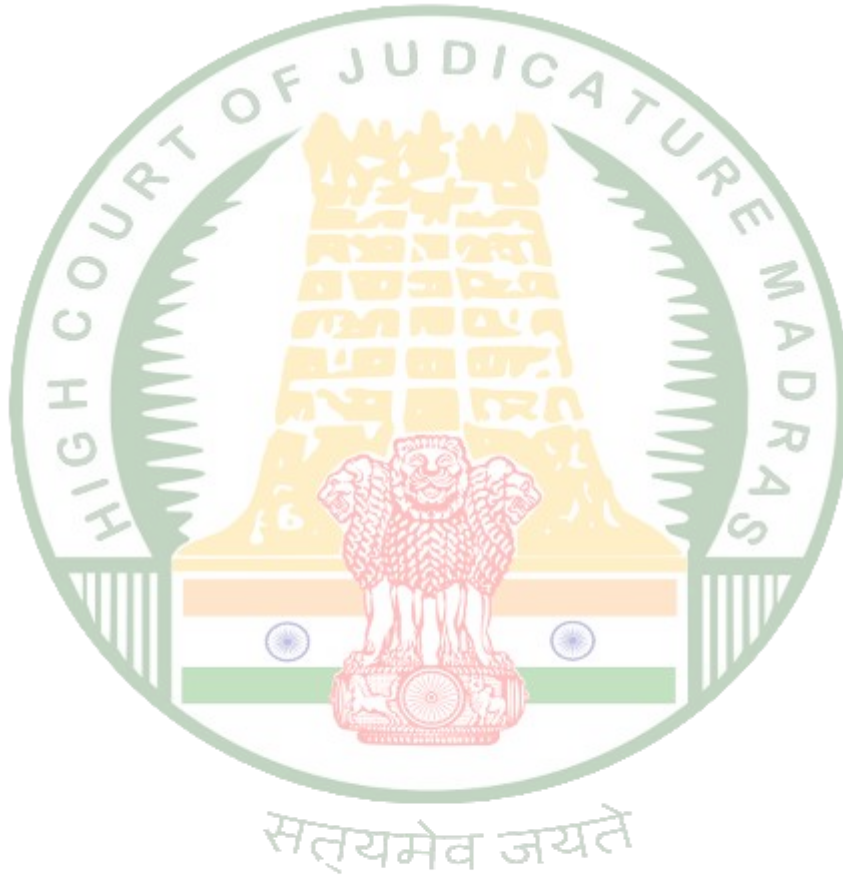
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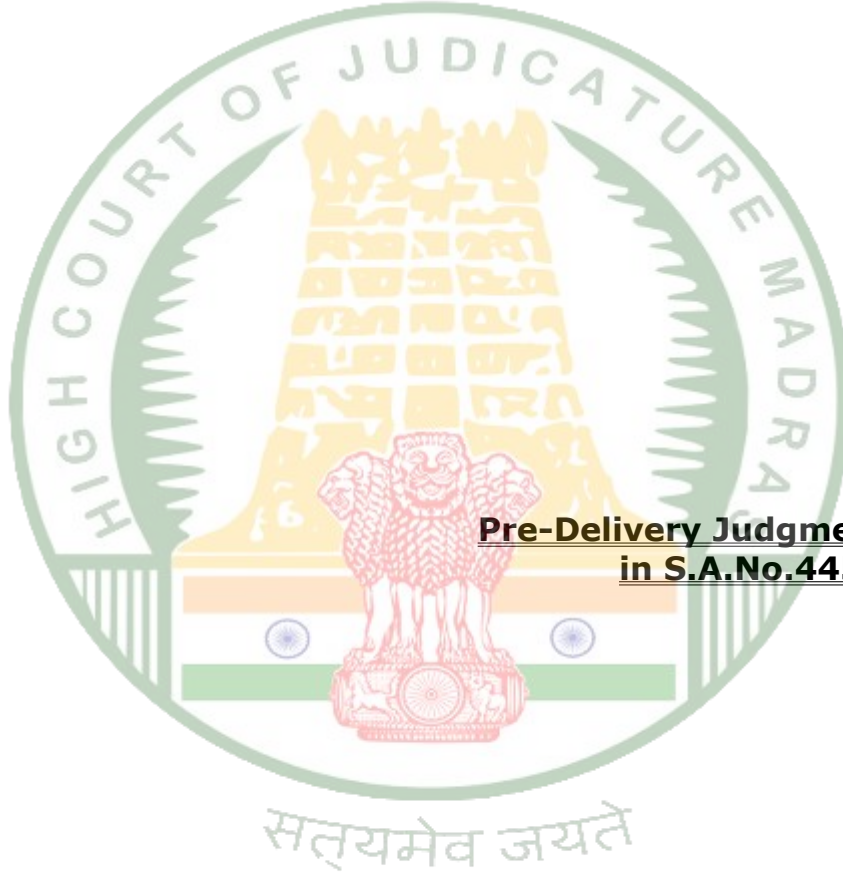
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- 2.The District Munsif Court, Krishnagiri.



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T.RAVINDRAN, J.

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