

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2018

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

S.A.No.1279 of 2001
and C.M.P.No.13394 of 2001

R.Lakshmanan

.. Appellant/First Defendant/
Defendant in Trial Court

Vs.

S.Kamalam Achi

... Respondent/Plaintiff in
Trial Court

Since no relief is prayed against
D2 & D3, they are not impleaded
in this appeal

Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 04.02.2000 made in A.S.No.20 of 1999 on the file of Additional District Court-cum-Chief Judicial Magistrate, Nagapattinam modifying the judgment and decree made in O.S.No.23 of 1997 on the file of Principal Subordinate Judge, Nagapattinam, dated 19.04.1999.

For Appellant : Mrs.P.Srividhya

For Respondent : Mr.M.V.Venkateseshan

J U D G M E N T
सत्यमेव जयते

The plaintiff in O.S.No.23 of 1997 filed the suit for the relief of specific performance under the agreement dated 09.07.1995 and direct execution of a sale deed in favour of the plaintiff either by the defendants jointly or by any one of them or by the third defendant, failing which the Hon'ble Court may be pleased to execute a sale in favour of the plaintiff.

(i) alternatively in case the Hon'ble Court declines the relief of specific performance, pass a decree for a sum of Rs.2,75,500/- (Rupees Two Lakhs Seventy Five Thousand Five Hundred only) against the defendants they being the beneficiaries of the sum paid.

(ii) direct the undermentioned property be put in possession of the plaintiff herein, in case plaintiff was dispossessed hereafter.

(iii) award cost of the suit.

The Lower Court decreed the suit. Aggrieved by the same, the defendants 2 and 3 in O.S.No.23 of 1997 preferred appeal before the Lower Appellate Court. The Lower Appellate Court modified the judgement in O.S.No.23 of 1997. As against the same, the first defendant in O.S.No.23 of 1997, who entered into an agreement with the plaintiff filed the present Second Appeal.

2.The appellant herein is the first defendant. The respondent herein is the plaintiff. The defendants 2 and 3 in the suit are not impleaded in the second appeal. For the sake of convenience, the parties are hereinafter referred to as per their rank in the suit.

3. The sum and substance of the plaint averments are as follows:

3.1 The plaintiff, entered into an agreement for sale with the first defendant. Under the terms of the agreement, price was fixed as Rs.2,75,000/- and thereafter, an advance amount of Rs.15,000/- was given to the first defendant and the balance of the amount was to be paid in fixed sums and at agreed intervals. The suit property is situated in an area of growing importance. The plaintiff expected appreciation in value. Therefore, the plaintiff negotiated through her husband with the first defendant and to get the property, a higher price was fixed. The subsequent payments made by the first defendant to the second defendant under the agreement were provided by the plaintiff. The said agreement was also known personally to the second defendant. The second defendant was only interested in securing his part of amount and in fact assured both the first defendant as well as the husband of the plaintiff that he is willing to sell the property either in portion or in a single lot to whomsoever the plaintiff entered into transactions for sale.

3.2 The plaintiff further avered that though initially the agreement started as a temporary financial accommodation with a view to safeguard her husband's funds as well as interest, she had entered into a separate agreement for sale with the first defendant on 09.07.1995. Out of 215 kuzhis in the undermentioned property, she was only interested in 190 kuzhils. Accordingly, she fixed the price with the first defendant as Rs.2,75,500/-. The agreement was executed for adjusting the previous amount to be paid by the plaintiff to the first defendant. After the agreement executed, the plaintiff

was put in possession of the lands. The first defendant assured the plaintiff that there was some difficulties standing in the way of the second defendant to complete the transactions and the nature of difficulties were not disclosed to the plaintiff. The first defendant prolonged the matter for registering the Sale Deed. The plaintiff feeling something wrong with the first defendant for executing the Sale Deed in favour of the plaintiff, issued legal notice to the first respondent. However, the first defendant did not reply to the same. Thereby, the plaintiff filed a suit for specific performance and an alternative return of the sale consideration paid to the first defendant.

4. The sum and substance of the written statement filed by the first defendant is as follows:

4.1 The first defendant executed the agreement in between the plaintiff and the first defendant. However, the said agreement is restricted to 190 kuzhis. There was a compromise in between the plaintiff and the defendants and there was an agreement of sale in between defendants 2 and 3 in respect of 190 kuzhis and the second defendant, as the owner of the property in turn agreed to execute the Sale Deed in favour of the third defendant. However, in fact, the first defendant's brother borrowed a sum of Rs.1,90,000/- from the plaintiff's husband and the plaintiff also borrowed a huge amount from the third defendant. Thereby, as per the first defendant's brother, the first defendant entered into an agreement with the plaintiff for 190 kuzhis. In fact, the plaintiff did not give Rs.2,75,500/- to the first defendant. Initially, there was an agreement. However, the previous debts were adjusted for a sale price. Before the agreement, the first defendant filed a suit against the defendants 2 and 3 in O.S.No.23 of 1997 and as per the elders advice, the said suit was withdrawn by the first defendant and there was a confusion in between the ownership of the suit property. Accordingly, the plaintiff is not entitled to any relief in the suit.

5. The sum and substance of the written statement filed by the third defendant, which was adopted by the second defendant is as follows:

5.1 The third defendant admitted that there was an agreement in between the first defendant and the plaintiff. However, the first defendant has no right to enter any sale agreement in respect of 190 kuzhis. Admittedly, the suit property belong to the second defendant and the said agreement is not binding on defendants 2 and 3. In fact, the second defendant already executed a Sale Deed and the second defendant agreed to sell the property in favour of the third defendant for a sale consideration at Rs.2,50,000/-. However, the first defendant

entered into an agreement with the plaintiff at Rs.2,75,500/-. But, the first defendant is not the owner of the property. Before filing the suit, there was a compromise mooted by the elders of the village and as per the compromise, the defendant agreed to sell 190 kuzhis in favour of the third defendant and the possession was also handed over to the third defendant. In fact, the plaintiff borrowed a huge amount from the third defendant for which a sum of Rs.2,75,500/- was adjusted in between the defendants. As per the above compromise entered into between the parties, the plaintiff is not entitled to claim any amount, since the plaintiff's debt was adjusted through compromise. Accordingly, the plaintiff is not entitled to any relief.

6. In trial, on the side of the plaintiff, the plaintiff examined herself as PW1 and exhibits Ex.A1 to Ex.A6 were marked. On the side of the defendants, defendants 1 and 2 examined themselves as DW1 and DW2 and one another was examined as DW3 and exhibits Ex.B1 to Ex.B19 were marked.

7. The Trial Court after framing the issue and on perusal of the records, decreed the suit in favour of the plaintiff. Aggrieved by the same, defendants 2 and 3 preferred appeal. The Lower Appellate Court reversed the findings and dismissed the suit in respect of the relief for specific performance. However, directed the first defendant to pay the sale consideration of Rs.2,75,500/- in favour of the plaintiff. Aggrieved over the same, the first defendant is before this Court by way of this Second Appeal.

8. At the time of admission, the following substantial questions of law were framed for consideration:

(i) Whether the judgment of the lower appellate court is vitiated in not adverting to the discrepancy in the plaint and oral evidence of P.W.1 which will falsify the plaintiff's case?

(ii) Whether the learned District Judge erred in holding that Ex.B.1 to Ex.B.6 cannot advance the case of the first defendant overlooking the fact that they were promissory notes executed in favour of the first defendant's brother in favour of the plaintiff's husband?

(iii) Whether the learned District Judge erred in holding that the first defendant is liable to pay the plaintiff the sum of Rs.2,75,500/- merely because of the recital in Ex.A.1 overlooking the fact that neither the plaintiff nor her husband had the wherewithal to advance such huge sum when they are heavily indebted to third parties?

(iv) The learned District Judge erred in not holding that Ex.A.1 is not a true transaction but only executed as a security

for the due repayment of the debt due by the first defendant's brother, the plaintiff's husband?

9. The learned counsel appearing for the appellant fairly submitted that the first defendant is not the owner of the property. However, without ownership, he has entered into an agreement in favour of the plaintiff, which is unsustainable one. The Lower Appellate Court after perusing the entire records, passed a reasonable order, as the plaintiff is not entitled for any specific performance. However, the Lower Appellate Court granted alternative prayer directing the appellant to refund the amount of Rs.2,75,500/-. In fact, the plaintiff borrowed a huge amount from the third defendant and the third defendant's brother also borrowed amount from the plaintiff. There was a panchayat in between the plaintiff and the defendants. In that panchayat, the amounts borrowed by the plaintiff as well as defendants 1 and 3 were adjusted in between the parties and no receipts were marked before the Lower Appellate Court. In order to establish the same, the first defendant issued a sum of Rs.2,75,500/-. Analysing these facts, the Lower Appellate Court erroneously granted alternative prayer and directed the first defendant to pay the sale consideration, which is not sustainable. Accordingly, prayed for allowing the second appeal.

10. Per contra, the learned counsel appearing for the respondent would submit that even prior to agreement, huge amount was paid in favour of the first defendant. Since the first defendant and his brother were not able to pay the borrowed amount, the first defendant entered into a sale agreement in respect of 190 kuzhis with the plaintiff.

11. On perusal of the entire records, the Lower Court decreed the suit. However, the Lower Appellate Court rejected the prayer for specific performance, but, granted alternative prayer for returning of sale consideration. The sale agreement was marked as Ex.A1. The sale agreement is confirmed with the first defendant as Rs.2,75,500/- as sale consideration and on perusal of Ex.A1, the Lower Appellate Court granted alternative prayer and directed the appellant to return the sale consideration. Admittedly, as against the order of the Lower Appellate Court, the plaintiff did not prefer any appeal before this Court in respect of suit for specific performance.

12. In fact, the first defendant/appellant is not the owner of the property. However, he entered into a sale agreement with the plaintiff. It is also noted that the plaintiff did not prefer any appeal before this Court, as against the rejection of suit for specific performance. However, the first defendant alone preferred appeal before this Court. The core issue

involved in the second appeal is as to whether the first defendant returned the money to the plaintiff or not. On perusal of Ex.A1, there was a sale agreement in between the plaintiff and the first defendant and the first defendant confirmed the receipt of Rs.2,75,500/- from the plaintiff and after perusal of Ex.A1, the Lower Appellate Court concluded that the first defendant has to return the advance amount to the plaintiff. On perusal of the finding and on perusal of Ex.A1, I do not find any error in the order passed by the Lower Appellate Court. Accordingly, the substantial questions of law are answered against the appellant.

13. In the result, the Second Appeal stands dismissed. The judgment and decree dated 04.02.2000 made in A.S.No.20 of 1999 passed by the learned Additional District Court-cum-Chief Judicial Magistrate, Nagapattinam, is confirmed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Additional District Court-cum-Chief
Judicial Magistrate,
Nagapattinam.

2.The Principal Subordinate Judge,
Nagapattinam.

copy to
The section Officer
VR Section
High Court, Madras-104

+1 cc to M/s.A.Muthukumar Advocate sr 21700
+1 cc to M/s.M.V.Venkataseshan Advocate sr 21813

S.A.No1279 of 2001

rji(co)
aa18/04/2018