BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **27.04.2018**

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.(MD)No.537 of 2015
and
M.P. (Md)No. 2 of 2015 and C.M.P.(MD)No.9994 of 2016

1.Palanisamy
2.Tamilarasan
3.Barathi ...Appellants/Appellants/Defendants 1, 3 and 4

...vs...

1.S.Kandasamy ...1st respondent /1st respondent / Plaintiff

2. Revathi ...2nd Respondent/2nd Respondent/ 2nd defendant

Second Appeal filed under Section 100 C.P.C. against the Judgment and decree dated 21.04.2014 in A.S.No.29 of 2013 on the file of Principal District Judge, Karur, confirming the Judgment and Decree dated 22.06.2012 in O.S.No.341 of 2010 on the file of the Principal Sub Court, Karur.

For Appellant : Mr.A.Arumugam

For Respondent-1 : Mr.M.Vallinayagam, Senior Counsel for Mr.N.Shanmugaselvam

For Respondent-2 : No Appearance.

JUDGMENT

This Second Appeal has been filed by defendants 1, 3 and 4 against the Judgment and decree dated 21.04.2014 made in A.S.No.29 of 2013 on the file of Principal District Judge, Karur, confirming the Judgment and Decree dated 22.06.2012 in O.S.No.341 of 2010 on the fie of the Principal Sub Court, Karur.

2. The case of the plaintiff is that the suit property comprised in A.P.S No.91, Ac.1.03 originally belongs to the first defendant and his brother Seiyyappa Gounder. The second defendant is the daughter of Seiyyappa Gounder. She purchased half a share owned by her father. The defendants 3 and 4 are son and daughter of the first defendant. Hence, the first defendant and the defendants 3 and 4 are jointly entitled to the remaining half

share. The first defendant, on his behalf and on behalf of the defendants 3 and 4 and the second defendant had entered into a sale agreement with the plaintiff on 02.8.2006 agreeing to sell the suit property for a sum of Rs.11,25,000/-. A sum of Rs.1,00,000/- was paid as an advance. As per the terms of sale agreement, the sale should be completed within 40 days from the date of sale agreement. The sale agreement was reduced into writing with the nomenclature as Token Advance Receipt. It is further stated that the plaintiff was always ready and willing to perform his part of contract. On the other hand, the defendants have not come forward to perform their part of contract. The plaintiff got information that attempts were made to encumber the suit property by the defendants and issued paper publication on 05.09.2006. In the mean time, on 04.09.2006, the plaintiff demanded the defendants to comply with the terms of sale agreement by tendering money. But, they were not ready and willing to perform their legal obligations. Therefore, the plaintiff issued a notice on 06.09.2006 to the defendants 1 and 2 calling upon them to be present at Chinnadharapuram Sub Registrar Office for execution of sale deed on 11.09.2006. But, they did not turn up. The plaintiff has deposited the balance of sale price in Union Bank of India, K.Paramathi Branch. On 12.09.2006, the defendants issued a false reply for the notice issued by the plaintiff. Therefore, the plaintiff filed the suit for the relief of specific performance and for alternative relief of refund of advance amount with interest at 12% p.a. from the date of plaint till the date of realization. During the pendency of the suit, the second defendant has executed two sale deeds dated 17.08.2009, one in favour of the plaintiff and the other one in favour of his wife with regard to her undivided half share in the suit property for a valuable consideration, after deducting her proportionate share of advance amount received by her, pursuant to the sale agreement dated 02.08.2006 which was named as token advance receipt. In respect of remaining extent, the defendants 1, 3 and 4 are liable to execute the sale deed. Hence, the suit.

3. The first defendant had filed the written statement which is adopted by the second defendant and the defendants 3 and 4. In the written statement, the defendants denied the entire plaint allegations. The defendants claimed that the defendants 1 and 2 never executed any sale agreement on 02.08.2006. It is further stated that only negotiation had taken place and no sale price was fixed as Rs.10,25,000/- . The property will fetch the value of more than one crore. The token advance of Rs.1,00,000/- was paid at the insistence of brokers. The defendants 1 and 2 were not willing to sell the property for a meager price. The alleged contract is not valid and concluded one. Hence, the plaintiff cannot insist the defendants to execute the sale deed. In any event, the claim of return of advance money is barred by limitation. It is further stated that the first defendant alone is not the exclusive owner of the property. His son and daughter,

who are the defendants 3 and 4, are also entitled to the suit property. The plaintiff's claim that the first defendant entered into sale agreement on behalf of his son and daughter is also denied and hence, the plaintiff is not entitled to any charge over the suit property and hence prays for dismissal of the suit.

4. Before the Trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and one more witness was examined as P.W.2 and Exhibits A1 to A14 were marked. On the side of the defendants, the first defendant himself was examined as D.W.1 and no documents was marked.

5. Based on the oral and documentary evidence, the Trial Court had decreed the suit in O.S.No.341 of 2010 and an appeal was filed by the defendants 1, 3 and 4 before the First appellate Court in A.S.No.29 of 2013 and the same was dismissed. Aggrieved by the same, the defendants 1, 3 and 4 have preferred the above Second Appeal.

5. At the time of admitting the above Second Appeal, only notice was ordered by this Court.

6. Heard the learned counsel for the appellants and the learned counsel for the first respondent and perused the materials available on record.

7. The question involved in the present *lis* is challenging the validity of Ex.A-1. It is the case of the plaintiff that Ex.A-1 is the Sale Agreement entered into between the defendants 1 and 2 and himself for sale of the suit property. The first defendant, who is the father of the defendants 3 and 4, has entered into the sale agreement in his capacity as the Kartha of the joint family property on behalf of himself and the defendants 3 and 4. The defendants 1, 3 and 4 had specifically contended that Ex.A-1 is not a sale agreement, but it is only a token advance receipt for the loan transaction between the plaintiff and the defendants 1 and 2. The lower appellate Court had dismissed the contention of the defendants 1, 3 and 4 holding that Ex.A-1 is the Sale Agreement, though it is styled as a token advance receipt for the alleged loan transaction between the plaintiff and the defendants 1 and 2. The said finding was based on the ground that there is no specific pleading in the written statement about the loan transaction as contended by the defendants 1,3 and 4.

8. It is relevant to mention that any amount of evidence, in the absence of pleading, has to be eschewed. Hence, the lower appellate Court has rightly dismissed the contention of the defendants 1,3 and 4. The lower appellate Court had found that the pleadings in Paragraph 14 of the written statement, which states that a token amount of Rs.1 lakh was paid at the insistence

of the brokers fortifies the case of the plaintiff. The appellants/defendants 1, 3 and 4 had contended that Ex.A-1 was written on two conqueror sheets instead of stamp papers and that the defendants 1 and 2 signed the same in bonafide belief that the same was only a promissory note. The said contention of the defendants 1,3 and 4 is mutually destructive to the earlier contention that Ex.A-1 is a token advance receipt issued for the loan transaction. Though inconsistent pleas are allowed to be taken by the defendants, the rule of law mandates that a person should not be allowed to blow hot and cold. Though mutually inconsistent pleas of the defendants only weaken their case and the lower appellate Court had rightly dismissed the said contention, which cannot be said to be erroneous or perverse.

9. It is also a settled principle that the contents and substance of the document and not its nomenclature which decides the nature of the document. Though Ex.A-1 is termed as token advance receipt, a perusal of the terms set out therein makes it abundantly clear that the recitals clearly spoken out the sale agreement between the plaintiff and the defendants 1, 3 and 4. The contents of Ex.A-1 further clearly establishes the consensus of mind between the parties in entering into a contract and valid and enforceable agreement especially when the defendants have admitted the execution of the sale.

10. Yet another point raised on behalf of the appellant is that Ex.A-1 is not a concluded contract in the absence of signature of vendee. The Honourable Supreme Court has settled the above position that even in the absence of signature of the purchaser, if the document is executed by the owner of the property, the purchaser is entitled to file a suit for specific performance, as signature of the vendor alone is suffice to make a concluded contract. It is relevant to note that the second defendant, who is the daughter of the brother of the first defendant and a joint owner of the property, had also entered into the sale agreement and executed the sale deed in favour of the plaintiff and his wife with respect to his undivided half share in the suit property during the pendency of *lis.* The second defendant, being the 50% share holder of the property, without any murmur, had executed the sale deed in favour of the plaintiff. The act of the second defendant in this regard makes the case of the plaintiff more probable. Thus, the Courts below had rightly found that Ex.A-1 is valid and enforceable sale agreement, which finding does not warrant any interference by this Court.

11. The next contention raised by the appellants is that Ex.A-1 is an unenforceable document, as the property has not yet been divided. Hence, the equitable relief of specific performance cannot be granted. The defendants 1,3 and 4, who are the appellants, have not even filed a separate written statement to putforth their stand in this regard, instead, they have admitted

the stand of the first defendant by adopting the same written statement. Thus, the conduct of the parties has become very relevant in deciding the above issue. The defendants 3 and 4 herein have consciously chosen to contest the suit along with the first defendant. The defendants 3 and 4 have also not entered into the witness box for the reasons best known to them. It is also not the case of the appellants/defendants 1, 3 and 4 that there is no legal necessity for the first defendant to sell the suit property nor it is the case that the sale consideration was received by the first defendant for any illegal or immoral purpose other than for the benefit of the family. The conduct of the parties also would go to show that Ex.A-1 was executed with an intention to sell the property in favour of the plaintiff.

12. As the plaintiff had proved his readiness and willingness by depositing the balance of the sale consideration, he is entitled for the equitable relief of specific performance, which has been rightly granted by the Courts below and there is no reason to interfere with the same.

13. In the result, the Second Appeal is dismissed confirming the judgment and decree of the Courts below. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1.The Principal District Judge, Karur

2. The Principal Subordinate Judge, Karur.

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srn/arr
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