

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2019

PRONOUNCED ON : 13.11.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.328 of 2013

A.Ramachandiran Appellant/Plaintiff

Vs.

A.Abdul Samath Respondent/Defendant

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code as against the judgment and decree dated 28.01.2013 in O.S.No.206 of 2010 on the file of the I Additional District Court, Salem.

For Appellant : Mr.T.Murugamanickam
for M/s. Zeenath Begum

For Respondent : Mr. V.Venkatasamy

JUDGMENT

Aggrieved over the judgment and decree dated 28.01.2013, passed in O.S.No.206 of 2010, on the file of the I Additional District Court, Salem, the plaintiff has preferred the first appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for specific performance or in the alternative for the refund of the advance amount with interest and also for permanent injunction.

4. Briefly stated, according to the plaintiff's case, the sale agreement had been entered into with reference to the suit property between the plaintiff and the defendant on 24.06.2010, whereunder, the defendant had agreed to sell the suit property to the plaintiff for a sale price of Rs.15,00,000/- and the plaintiff has paid a sum of Rs.12,00,000/- as advance on the date of the sale agreement and the parties had agreed that the

sale deed should be executed within three months and according to the plaintiff, he has been always ready and willing to perform his part of the contract and got the balance sale price ready with him and despite several demands in person, the defendant has failed to come forward and execute the sale deed after receiving the balance sale consideration and hence, it is put forth that the plaintiff issued a legal notice on 15.09.2010, calling upon the defendant to receive the balance sale consideration and execute the sale deed on or before 22.09.2010 and despite the same, the defendant failed to comply with the abovesaid demand and failed to come to the Sub-Registrar's office for executing the sale deed and on the other hand, the plaintiff learnt that the defendant is attempting to alienate the suit property to others and hence, according to the plaintiff, he has been necessitated to lay the suit against the defendant for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that he had not executed any sale agreement in respect of the suit property on 24.06.2010 and received a sum of Rs.12,00,000/- as advance on the date of the sale agreement and not agreed to execute the sale deed within three months from the date of the sale agreement and disputed the claim of the plaintiff that he has been always ready and willing to perform his part of the contract and got the balance of sale price ready with him. It is false to state that several times the plaintiff personally demanded the defendant to execute the sale deed but the defendant had been postponing the same. According to the defendant, to the notice issued by the plaintiff, he has sent a reply dated 01.10.2010, containing true facts. The defendant also disputed that the plaintiff was present at the Registrar's office for completing the sale transaction and it is only the plaintiff who had failed to come to the Registrar's office as alleged in the plaint. According to the defendant, both the defendant and the plaintiff were having business relationship since 2004. The defendant has entered into a sale agreement with one Syed Basha, in respect of her self acquired property and the plaintiff has entered into another sale agreement in respect of another half of the same property with one Salma and the plaintiff and the defendant had also jointly purchased property from another sharer, namely, Rohia Bivi through her power agent Salma in 2007 and the defendant had made two documents in favour of the plaintiff from Salma on 19.11.2007 nominally, having bonafide belief on the plaintiff and it is only the defendant who had paid Rs.2,35,336/- towards the land tax for 16 years and it is only the defendant who had been looking after all the transactions on behalf of the plaintiff with reference to the abovesaid sale transactions. Furthermore, the defendant has also helped the plaintiff in filing the suit on the file of the Fast Track Court No.2, Salem and also by

arranging counsel at High Court Madras and despite the position being above, the plaintiff sold the major portions of the abovesaid properties and gained huge profits and kept all the money with him and the defendant questioned about the illegal acts of the plaintiff, hence, according to the defendant, the plaintiff has fabricated the sale agreement and come forward with the false suit. Furthermore, according to the defendant, on the date of the sale agreement, he was not present and out of station, for which, he has strong proof. Therefore, according to the defendant, the sale agreement is a forged and fraudulently created document and therefore, unenforceable in law. The defendant reserves his right to initiate appropriate criminal proceedings against the plaintiff. To the notice issued by the plaintiff, the defendant has sent a reply containing true facts. It is only the defendant who was present in the Registrar's office on 22.09.2010 and the plaintiff was not present. The plaintiff, therefore, has no cause of action to lay the suit and the suit is liable to be dismissed.

6. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed for consideration by the trial Court.

1. Whether the plaintiff is entitled for specific performance as prayed for?
2. What are the other reliefs the plaintiff is entitled for?

7. From the materials available on record, it is found that though the defendant had filed a written statement in the suit, it is seen that he has subsequently remained absent and consequently been set ex-parte and accordingly, it is found that in support of the plaintiff's case, PW1 has been examined and Exs.A1 to A3 were marked. Inasmuch as the defendant had been set ex-parte, no oral and documentary evidence has been adduced on his side.

8. On a consideration of the materials available on record, it is found that the trial Court was pleased to dismiss the plaintiff's suit. Impugning the same, the present first appeal has been preferred by the plaintiff.

9. The following points arise for determination in this first appeal:

1. Whether the judgment and decree dated 28.01.2013, passed in O.S.No.206 of 2010, on the file of the I Additional District Court, Salem are sustainable in law?
2. To what relief, the plaintiff/appellant is entitled to?

3. To what relief, the defendant is entitled to?

Point No.1:

10. The suit has been laid by the plaintiff for specific performance based on the sale agreement dated 24.06.2010. According to the plaintiff, the defendant had agreed to sell the suit property in his favour for a sale price of Rs.15,00,000/- and he had paid Rs.12,00,000/- as advance on the date of the sale agreement and the parties had agreed to complete the sale transaction within three months from the date of the sale agreement and according to the plaintiff, he had been always ready and willing to pay the balance sum and obtain the sale deed and despite his readiness, the defendant had been delaying the same and hence, the plaintiff had issued a legal notice and in spite of the same, inasmuch as the defendant had failed to comply with the demands made by the plaintiff, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

11. The defendant has filed the written statement putting forth the various pleas in extenso. However, the same need not be dealt with in detail. It is suffice to state that according to the defendant, the sale agreement projected by the plaintiff is a created and fraudulent document and the defendant had not entered into any sale agreement on 24.06.2010 and further, according to the defendant, on the date of the sale agreement, he was not in station and elsewhere and therefore, the plaintiff is not entitled to seek any relief based on the fraudulent sale agreement and sought for the dismissal of the plaintiff's suit. The defendant had also disputed the readiness and willingness alleged on the part of the plaintiff pursuant to the sale agreement as put forth by him.

12. Though the defendant has filed the written statement putting forth various allegations in extenso, however, it is found that the defendant has not chosen to contest the plaintiff's case and remained ex-parte. Therefore, it is seen that the defence version having not been substantiated in any manner and the defendant having remained ex-parte, the plaintiff had been called upon to adduce evidence in support of his case and following the same, it is seen that the plaintiff has chosen to examine himself as PW1 and marked the sale agreement as Ex.A1, the copy of the legal notice as Ex.A2 and the acknowledgement card as Ex.A3. However, according to the trial Court, the abovesaid oral and documentary evidence projected on the part of the plaintiff are not sufficient for determining that the payment of the advance sum of Rs.12,00,000/- was made by the plaintiff on the date of the sale agreement and further

held that the plaintiff has failed to establish his solvency on the date of the sale agreement and finding that the plaintiff has not produced any receipt for the payment of Rs.12,00,000/- and on that basis, refused to accept the plaintiff's case and resultantly, dismissed the plaintiff's suit. Aggrieved over the same, the plaintiff has preferred the first appeal.

13. As rightly contended by the plaintiff's counsel, when the defendant had not chosen to contest the plaintiff's case other than filing the written statement, when there is no material on the part of the defendant with reference to the defence version as put forth in the written statement and furthermore, when there is no contra evidence adduced on the part of the defendant, in such view of the matter, when it is found that according to the plaintiff, pursuant to the sale agreement entered into between the parties he had paid a sum of Rs.12,00,000/- on the date of the sale agreement which had been incorporated in Ex.A1 sale agreement and the said fact had not been controverted by the defendant as such, he having remained exparte, when the sale agreement itself amounts to the acknowledgement of the receipt of Rs.12,00,000/-, in such view of the matter, there is no necessity on the part of the plaintiff to obtain a separate receipt for the abovesaid amount other than the sale agreement. When the abovesaid fact had also been put forth in the legal notice marked as Ex.A2 and the same is found to have been acknowledged by the defendant, though the defendant claims to have issued a reply notice, the alleged reply notice said to have been sent by the defendant not seeing the light of the day and the defendant having failed to adduce any evidence with reference to the same, in such view of the matter, the trial Court is found to have erred in holding that the plaintiff has failed to place the receipt for the payment of Rs.12,00,000/- other than the sale agreement and hence his case cannot be accepted, as such cannot be countenanced. When the sale agreement itself amounts to a receipt, in such view of the matter, particularly, when there is no contra evidence to the case projected by the plaintiff, the trial Court is found to be not justified and correct in declining the reliefs prayed for by the plaintiff. It is not the determination of the trial Court that the plaintiff is not ready and willing to perform his part of the contract. On the other hand, it is seen that within the time stipulated under the sale agreement, the plaintiff has issued the legal notice calling upon the defendant to receive the balance sale consideration and execute the sale deed. The case of the plaintiff that prior to the legal notice, he had been demanding the defendant to comply with the sale agreement, not having been challenged by the defendant by adducing evidence and when PW1 has tendered evidence on the abovesaid aspects clearly, the trial Court is found to be not correct in dismissing the plaintiff's suit. As rightly put forth by the

plaintiff's counsel, considering the fact that the trial Court has only recorded the ex-parte evidence of the plaintiff and if really, the trial Court has felt that some more evidence is warranted on the side of the plaintiff, it could have given further time to the plaintiff for such other or further evidence as the Court may deem fit in the facts and circumstances of the case, but, on the other hand, found to have erroneously dismissed the plaintiff's suit in entirety. In such view of the matter, the judgment and decree of the trial Court, in my considered opinion, do not warrant acceptance in law.

14. Though the defendant had remained ex-parte in trial Court and not endeavoured to adduce evidence in support of his defence version, it is seen that the defendant had entered appearance in the first appeal and justified the determination of the trial Court in dismissing the plaintiff's suit. However, the defendant has not chosen to adduce any evidence whatsoever to hold that the sale agreement is a created document as contended by him, particularly, the defendant having failed to sustain his plea of alibi as claimed in the written statement and also failed to substantiate the other allegations put forth in the written statement, in such view of the matter, the contentions now projected by the defendant for upholding the judgment and decree of the trial Court, in my considered opinion do not warrant acceptance.

15. As above noted, in support of the plaintiff's case, the plaintiff has adduced evidence as PW1 and marked Exs.A1 to A3. However, the trial Court had opined that the abovesaid evidence adduced on the part of the plaintiff is not sufficient for upholding his case. In such view of the matter, the trial Court being only called upon to dispose of the plaintiff's suit by considering the evidence adduced by the plaintiff, in such view of the matter, to meet the ends of justice, in my considered opinion, the matter should be remitted back to the trial Court to enable the plaintiff to adduce such other or further evidence as the plaintiff may deem it fit and necessary for the case and thereupon, the trial Court should endeavour to dispose of the plaintiff's suit on the available materials put forth by the plaintiff.

16. In the light of the above said discussions, the judgment and decree of the trial Court are liable to be set aside and the matter is remitted back to the trial Court with a direction to the trial Court to provide further opportunity enabling the plaintiff to put forth further evidence in support of his case and thereafter, dispose of the plaintiff's suit in accordance with law. Accordingly the point no.1 is answered.

Point Nos.2 & 3:

17. In the light of the abovesaid discussions, the judgment and decree dated 28.01.2013, passed in O.S.No.206 of 2010, on the file of the I Additional District Court, Salem are set aside and the matter is remitted back to the trial Court with a direction to the trial Court to provide further opportunity to the plaintiff to adduce further evidence in support of his case and thereafter, proceed to dispose of the plaintiff's suit in accordance with law. Accordingly, the first appeal is disposed of. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

The I Additional District Court,
Salem.

Copy to:

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

+lcc to M/s.Zeenath Begum, Advocate Sr.94160

+lcc to M/s.V.Venkatasamy, Advocate Sr.93936

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