

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.10.2019
PRONOUNCED ON : 14.11.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.69 of 2013
and
M.P.No.1 of 2013

P. Rasu

...Appellant/Plaintiff

Vs.

1.G.A. Sakthivel

2. Minor Gowsikan by Guardian

...Respondents/Defendants

Prayer: First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree in O.S.No.44 of 2006 dated 10.09.2012 on the file of the Court of the Principal District Judge, Namakkal.

For Appellant : Mr. S. Doraiswamy

For Respondents: Mr. N. Manokaran

JUDGMENT

Aggrieved over the judgment and decree dated 10.09.2012 passed in O.S.No.44 of 2006 on the file of the Principal District Court, Namakkal, 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 amount with interest.

4. The case of the plaintiff, in brief, is that the plaintiff schedule properties belong to the first defendant absolutely and the first defendant had mortgaged the suit properties in favour of one B.V.Rajkumar on 23.08.2001 for a sum of Rs.50,000/- and the first defendant further borrowed a sum of Rs.2,00,000/- on 16.01.2005 from one Periyasamy and executed a promissory note in favour of Periyasamy and further, he had borrowed a sum of Rs.2,00,000/- on 14.11.2004 from one Palanivelu and executed a promissory note in favour of Palanivelu and thereafter, he had

borrowed a sum of Rs.2,00,000/- on 15.12.2004 from Sengottaiyan and executed a promissory note in favour of Sengottaiyan and thereafter he had further borrowed a sum of Rs.2,00,000/- on 13.02.2005 from one K.Devarajn and executed a promissory note in favour of K.Devarajan and to discharge the abovesaid debts incurred by way of mortgage deed and pronotes, the first defendant had agreed to sell the suit properties in favour of the plaintiff for a sum of Rs.10,00,000/- and accordingly the parties had entered in to an arrangement to discharge the abovesaid loans in a sum of Rs.9,63,500/- and the first defendant had received a sum of Rs.16,500/- in cash and accordingly on the basis of the abovesaid arrangement, the sale agreement had been entered into between the plaintiff and the first defendant on 30.11.2005 and the first defendant had agreed to receive the balance sale consideration of Rs.20,000/- within 6 months from the date of the sale agreement and execute the sale deed and based on the terms set out in the sale agreement, it is only the plaintiff who had discharged the loans incurred by the first defendant by way of mortgage and pronotes and the plaintiff had been always ready and willing to perform his part of the contract and get the sale deed executed from the first defendant. However, the first defendant had been evading the execution of the sale deed and hence the plaintiff caused a legal notice to the first defendant on 04.05.2006 directing him to receive the balance sale consideration and execute the sale deed, however, the first defendant had evaded to receive the said notice, hence, according to the plaintiff, he has been necessitated to lay the suit against the first defendant for appropriate reliefs.

5. The defendants resisted the plaintiff's suit contending that the suit properties belong to the first defendant by way of purchase under the registered sale deed dated 09.04.1997 and admitted that the first defendant had mortgaged the suit properties to one B.V.Rajkumar on 23.08.2001 for a sum of Rs.50,000/-, however, denied the receipt of Rs.2,00,000/- each from Periyasamy, Palanivelu, Sengottaiyan and Devarajan on different dates and the execution of the pronotes in their favour as alleged in the plaint and also disputed the case of the plaintiff that for the purpose of discharging the abovesaid debts, the first defendant had entered into the sale agreement with the plaintiff on 30.11.2005 agreeing to sell the suit properties for Rs.10,00,000/- and according to the first defendant, the sale agreement dated 30.11.2005 is a fabricated document and further according to the defendants, the brothers of the first defendant, namely, T. Subramani, T. Perumal, his sister Saroja and her husband S.K.Thangavel were doing business under the name of Sri Sabari Chambers, which had been actively run and managed by the first defendant's brother-in-law S.K.Thangavel and he is a close friend of B.V.Rajkumar and the

first defendant at that point of time was in need of money to meet the urgent family necessities and S.K.Thangavel introduced B.V.Rajkumar to the first defendant and arranged the loan of Rs.50,000/- from him and at the time of lending the loan, B.V.Rajkumar insisted for the mortgage deed in his favour and also for the delivery of the original sale deeds in respect of the suit properties as well as unfilled signed promissory notes and stamp papers from the first defendant and his sister Saroja as well as his brothers, T.Subramani and T. Perumal as well as his brother-in-law S.K. Thangavel and abiding to all the abovesaid conditions, the first defendant had borrowed the abovesaid sum and at the time of the execution of the mortgage deed, the rate of interest was agreed at the rate of Rs.2/- per month per Rs.100/-. However, subsequently, B.V.Rajkumar demanded an exorbitant rate of interest from the first defendant and the first defendant was unable to pay the same and misunderstanding arose between the parties and consequently, B.V.Rajkaumar had created the concocted sale agreement in the name of the plaintiff and the first defendant had not agreed to sell the suit properties in favour of the plaintiff as alleged in the plaint and hence, according to the defendants, the plaintiff is not entitled to seek the reliefs prayed for in the suit.

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

1. Whether the plaintiff is entitled to specific performance of the agreement dated 30.11.2005 and as an alternative relief, whether the plaintiff is entitled to a sum of Rs.10,40,760/- together with interest at the rate of 9% per annum on the principle sum of Rs.9,80,000/-?
2. Whether the sale agreement between the plaintiff and the first defendant is fabricated?
3. To what relief if any the plaintiff is entitled to?

Additional Issue

1. Whether the first defendant executed pronote in favour of Periyasamy, Palanivelu, G. Sengottaiyan and K.Devarajan?

7. In support of the plaintiff's case, P.Ws.1 to 6 were examined and Exs. A1 to A12 were marked. On the side of the defendants, D.Ws.1 and 2 were examined and no document evidence has been marked. Ex.X1 has been marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiff's suit with costs. Impugning the same, the first appeal has been preferred by the plaintiff.

9. The following points arise for determination in the first appeal.

1. Whether the sale agreement dated 30.11.2005 is true, valid and binding on the defendants?
2. Whether the plaintiff is entitled to obtain the relief of specific performance in respect of the sale agreement dated 30.11.2005 as put forth in the plaint?
3. Whether the plaintiff is entitled to claim the refund of advance amount with interest as an alternative relief?
4. To what relief the plaintiff/appellant is entitled to?
5. To what relief, the defendants are entitled to?

Point Nos.1 to 3

10. The suit has been laid by the plaintiff seeking the relief of specific performance based on the sale agreement dated 30.11.2005 and the abovesaid sale agreement has been marked as Ex.A1. It is not in dispute that the suit properties belong to the first defendant. The second defendant is the minor son of the first defendant. It is also not in dispute that the first defendant had borrowed a sum of Rs.50,000/- from one B.V.Rajkumar and executed the mortgage deed in his favour on 23.08.2001 and the abovesaid mortgage deed has been marked as Ex.A4. According to the plaintiff, the first defendant was indebted to B.V.Rajkumar by way of the abovesaid mortgage transaction and also put forth the case that the first defendant had executed promissory notes in favour of Periyasamy, Palanivelu, Sengottaiyan and Devarajan for the borrowal of Rs.2,00,000/- each from them on different dates and accordingly as he was unable to discharge the abovesaid debts, according to the plaintiff, the first defendant had agreed to convey the suit properties in his favour for a sum of Rs.10,00,000/- and as per the agreement entered into between the parties, the plaintiff has discharged the loan amount incurred by the first defendant in a sum of Rs.9,63,500/- and paid Rs.16,500/- in cash to the first defendant on the date of the sale agreement and further according to the plaintiff, the parties had agreed for the completion of the sale transaction within 6 months from the date of sale agreement and though the plaintiff had been always ready and willing to perform his part of the contract, however, the first defendant had been evading and delaying the same and hence

according to the plaintiff, he had issued a legal notice on 04.05.2006 marked as Ex.A2 and the same had been evaded to be received by the first defendant and hence, according to the plaintiff, the need for the suit for appropriate reliefs.

11. The defendants resisted the plaintiff's suit contending that the first defendant had not received any debt under pronotes from Periyasamy, Palanivelu, Sengottaiyan and K.Devarajan each for Rs.2,00,000/- as alleged in the plaint and therefore, according to the first defendant, there is no necessity on the part of the first defendant to discharge the abovesaid alleged pronote debts and it is the case of the defendants that he and his family members were engaged in the business and the same had been looked after by his brother-in-law, S.K. Thangavel and at that point of time, as the first defendant was in need of money to meet his urgent needs, he had received Rs.50,000/- from B.V.Rajkumar by way of mortgage through his brother-in-law and at that point of time B.V.Rajkumar insisted for the custody of the original sale deeds as well as unfilled signed stamp papers and unfilled signed pronotes from the first defendant as well as from his sister and brothers and brother-in-law and left with no other alternative, the first defendant complied with the abovesaid conditions and received the loan amount and thereafter as B.V.Rajkumar demanded exorbitant rate of interest than the interest agreed to, misunderstanding arose between them and hence, according to the defendants, B.V.Rajkumar had concocted the sale agreement by utilising the signatures obtained from the first defendant as abovestated and fabricated the sale agreement in the name of the plaintiff and come forward with the suit and therefore, according to the defendants, they had not entered into the sale agreement with the plaintiff as alleged by the plaintiff and hence, the plaintiff is not entitled to seek the relief of specific performance as prayed for.

12. In the light of the abovesaid rival pleas put forth by the respective parties, as rightly put forth by the defendants' counsel, the onus is heavy upon the plaintiff to establish the truth and validity of the sale agreement Ex.A1 projected by him. However, considering the evidence of the the plaintiff examined as P.W.1, particularly, as adduced by him during the course of cross examination, which had been extensively incorporated in the judgment of the trial court, it is found that the plaintiff has clearly admitted that he does not know whether the suit properties belong to the first defendant and not seen any document of title pertaining to the suit properties standing in the name of the first defendant and also does not know whether the patta in respect of the suit properties stands in the name of the first defendant and also admitted that he had not verified the encumbrance certificate in respect of the suit

properties and also admitted that only as directed by B.V.Rajkumar, he had entered into the sale agreement and that too, he had entered into the sale agreement only with B.V.Rajkumar and paid the advance amount only to B.V.Rajkumar and paid the advance sum of Rs.50,000/- only to B.V.Rajkumar and admitted that he does not know the date and month on which the sale agreement was executed and would put forth that he entered into the sale agreement in the year 2006 and further clearly admitted that at the time of execution of the sale agreement, the first defendant was not present and it is only B.V.Rajkumar who had written the sale agreement which was in his custody and further also admitted that the first defendant did not execute the sale agreement in his favour and would state that the first defendant had only executed the sale agreement in favour of B.V.Rajkumar and does not know the sale agreement entered into between the first defendant and B.V.Rajkumar and would also state that the sale agreement projected by him in the suit is only the sale agreement which had been entered into between B.V.Rajkumar and the first defendant and also would state that he had also filed the sale agreement entered into between him and B.V.Rajkumar and to cap it all, he has also admitted that at the time of entering into the sale agreement with B.V. Rajkumar, he had no knowledge about the debts incurred by the first defendant and had not recited about the discharge of the abovesaid debts in the sale agreement executed between him and B.V.Rajkumar and the evidence of P.W.1 being above, when it is seen that the plaintiff has given a complete go by to the case projected by him in the plaint during the course of evidence and would state that the first defendant had not executed any sale agreement in his favour and it is only B.V.Rajkumar who had executed the sale agreement and when it is further noted that the plaintiff is not aware of the debts incurred by the first defendant, particularly, the pronotes, as alleged in the plaint from different persons and when the plaintiff has admitted that the first defendant was not in the scene at the time of execution of the sale agreement projected in the matter and when he has admitted that it is only B.V.Rajkumar who had executed the sale agreement, in such view of the matter, the case of the plaintiff that the first defendant had agreed to sell the suit properties in his favour for the discharge of the debts incurred by him and based on the same, the plaintiff had discharged the debts incurred by the first defendant, as such cannot be believed and accepted and therefore, it is evident that as rightly put forth by the defendants it is found that at the time of lending the loan under the mortgage, B.V.Rajkumar had obtained various unfilled signed pronotes and stamp papers from the first defendant and others and utilising the same, is found to have fabricated the sale agreement in the name of the plaintiff and accordingly, the plaintiff is unable to depose anything about the execution of the sale agreement between him

and the first defendant as put forth in the plaint. On the other hand, as abovenoted, from the evidence of the plaintiff, it is found that he has only projected the case as if he had entered into the sale agreement with B.V.Rajkumar and seeking to enforce only the sale agreement entered into with B.V.Rajkumar. The position being above, the claim of the plaintiff that he is entitled to seek the reliefs against the defendant based on the sale agreement projected by him, as such, cannot be countenanced in any manner.

13. Further according to the plaintiff, as adduced by him during the course of cross examination, two days prior to the execution of the sale agreement he had purchased the stamp papers in his name and only in the said stamp papers the sale agreement had been engrossed on 30.11.2005. On a perusal of Ex.A1 sale agreement, it is found that the stamp papers on which the sale agreement had been engrossed, particularly the first page, the same is found to have been purchased on 23.08.2001 in the name of the first defendant and therefore, it is highly doubtful, whether the plaintiff is aware of the case put forth by him and on the other hand, considering the evidence of the plaintiff, in toto, as rightly put forth by the defendants' counsel, the plaintiff is found to have laid the suit only at the instigation of B.V.Rajkumar and accordingly unable to depose anything other than his agreement entered into with B.V.Rajkumar and accordingly completely unable to put forth anything with reference to the sale agreement said to have been entered into with the first defendant in respect of the suit properties.

14. In the light of the abovesaid factors, it is found that the plaintiff has miserably failed to establish the execution of the sale agreement in his favour by the first defendant in respect of the suit properties for the reasons alleged by him and also the plaintiff has miserably failed to establish that it is he who had discharged the debts particularly when he has given contra evidence to the case projected by him as above pointed out, in all, it is found that the sale agreement projected by the plaintiff is rightly held to be a fabricated document, by the trial court. As above pointed out, the first defendant had admitted the receipt of the loan from B.V.Rajkumar on 23.08.2001 under Ex.A4 mortgage deed. According to the first defendant, at the point of time B.V.Rajkumar insisted to entrust unfilled signed stamp papers and unfilled signed promissory notes. The stamp paper on which the sale agreement had been engrossed is purchased on 23.08.2001 in the name of the first defendant. The same also coincide with the defence version projected by the defendants and all put together, it is seen that B.V.Rajkumar had misused the unfilled stamp papers and the unfilled promissory notes obtained from the first defendant and his family members and created the suit sale agreement in the

name of the plaintiff and instigated the plaintiff to levy the suit against the defendants and accordingly, the plaintiff being completely unaware of the abovesaid factors, as above pointed out, not able to substantiate his case and come out with the truth. In the light of the abovesaid factors, the sale agreement and the promissory notes projected by the plaintiff for sustaining his case are found to be created and concocted documents and as rightly held by the trial court, with a view to grab the suit properties belonging to the first defendant and in the light of the abovesaid discussions, it is seen that the trial court has rightly declined the reliefs prayed for by the plaintiff.

15. Counsel for the defendants in support of his contentions placed reliance upon the decisions reported in

1. (2017) 12 SCC 810 (Jaswinder Kaur (deceased) through her Lrs and others vs. Gurmeet Singh and others)
2. 2018 (1) CTC 701 (Mad) (M. Jayaprakash Narayanan vs. Santhammal & others)
3. 2018 (1) MWN (civil) 734 (Mad) (R. Ramasamy Saradamani Kandappan vs. Thusamy (deceased) rep. by Lrs)

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

16. For the reasons aforestated, I hold that the plaintiff has failed to establish the truth and validity of the sale agreement dated 30.11.2005. I therefore hold that the plaintiff is not entitled to obtain the relief of specific performance in respect of the sale agreement dated 30.11.2005 as well as the alternative relief claimed in the plaint. Accordingly, the point numbers 1 to 3 are answered against the plaintiff and in favour of the defendants.

Point Nos. 4 and 5

17. In the light of the above discussions, the judgment and decree dated 10.09.2012 passed in O.S.No.44 of 2006 on the file of the Principal District Court, Namakkal, are confirmed. Resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

s/d-

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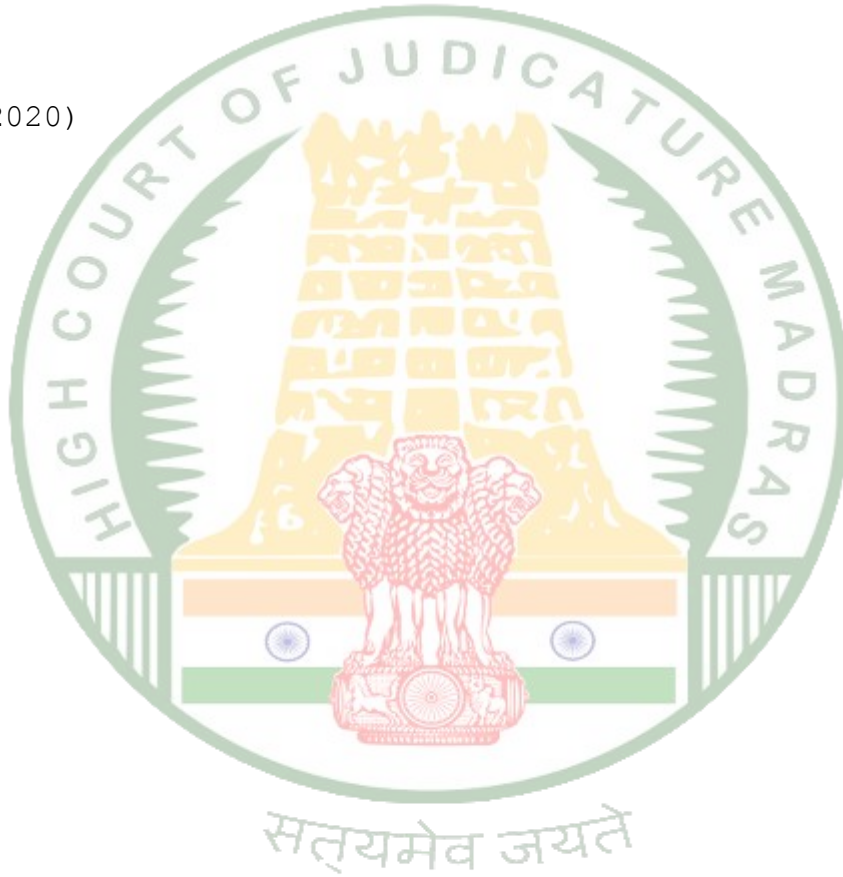
1.The Principal District Judge, Namakkal

+1 CC to Mr.S. Doraiswamy, Advocate sr 95035.

+1 CC to Mr.N. Manokaran, Advocate sr 94830.

A.S.No.69 of 2013

TM(CO)
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