

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2019

RONOUNCED ON : 20.11.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.807 of 2009

K. Santhi ...Appellant/Defendant

Vs.

N.A. Chinnappan ...Respondent/Plaintiff

Prayer: First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree passed in O.S.No.12 of 2006 on the file of the Principal District Judge, Vellore, dated 27.08.2008.

For Appellant : Mr. P. Seshadri

For Respondent : Mr. I. Abrar Mohammed Abdullah
for M/s. G. Jeremiah.

JUDGMENT

Aggrieved over the judgment and decree dated 27.08.2008 passed in O.S.No.12 of 2006 on the file of the Principal District Court, Vellore, the appeal has been preferred by the defendant.

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

3. Suit for specific performance.

4. The case of the plaintiff in brief is that, the defendant executed a sale agreement in favour of the plaintiff on 16.09.2005 agreeing to sell the suit property for a sale consideration of Rs.6,10,000/- and received a sum of Rs.2,70,000/- as advance on the date of the sale agreement and agreed to receive the balance sale consideration of Rs.3,40,000/- at the time of the registration of the sale deed and to execute the sale deed in favour of the plaintiff. Even though the time has been fixed in the sale agreement for completion of the sale transaction as 15.01.2006, time is not the essence of the contract. The plaintiff had made arrangements with the State Bank of India, Vellore, for getting housing loan of Rs.2,60,000/- for purchasing the schedule

property and was also having the cash ready raised by selling the land and house and the plaintiff had sold the properties and raised necessary money as he was eager to purchase the suit property. The plaintiff has always been ready and willing to perform his part of the contract and requested the defendant several times to execute and register the sale deed, however, the defendant had been evading the same for one reason or the other. When the plaintiff pressed for the execution of the sale deed, the defendant voluntarily, on her own volition, unilaterally executed a confirmation letter on 10.01.2006 confirming the receipt of advance of Rs.2,70,000/- and further a sum of Rs.10,000/- as loan. But, the plaintiff is not the party to the same and never agreed to give up his right under the sale agreement. The defendant left the said letter with the plaintiff even though the plaintiff was not willing to take back the advance given by him. The plaintiff, therefore, sent a registered legal notice dated 30.01.2006 calling upon the defendant to receive the balance sale price and execute the sale deed. Despite the receipt of the notice, the plaintiff has not responded and hence, according to the plaintiff, he has filed the suit for specific performance.

5. The defendant resisted the plaintiff's suit contending that she is a widow and approached the plaintiff for a loan of Rs.2,70,000/- under a promissory note for family necessity and executed the promissory note in favour of the plaintiff for the abovesaid sum and the plaintiff had also obtained her signatures on a guarantee bond and in addition to that, the plaintiff had also obtained her signatures in the blank stamp paper, which the plaintiff has represented as a guarantee letter for the abovesaid loan. There was no need or occasion for the defendant to execute the sale agreement in favour of the plaintiff in respect of the suit property. Therefore, it is false to state that the defendant had agreed to sell the suit property in favour of the plaintiff for Rs.6,10,000/- and received Rs.2,70,000/- as advance towards the sale consideration on the date of the sale agreement and agreed to receive the balance sum and execute the sale deed in favour of the plaintiff as recited in the sale agreement. The above case has been invented by the plaintiff. The suit property consisting of the building would fetch more than Rs.10,00,000/- and therefore, the case of the plaintiff that the defendant had agreed to sell the same for Rs.6,10,000/- is false. If the agreement is true, the plaintiff would have registered the sale agreement. The sale agreement had been concocted by the plaintiff by making use of the signatures obtained from the defendant at the time of

lending of the loan. Therefore, the suit is liable to be dismissed.

6. The following issues were framed by the trial court for consideration.

1. Whether direction has to be given to the defendant to execute and register the sale deed as prayed for in the plaint?
2. Whether on deposit of balance of sale amount this court has to execute the sale deed as prayed for in the plaint?
3. Whether the plaintiff is entitled to delivery of property as prayed for in the plaint?
4. To what relief the plaintiff is entitled to?

7. In support of the plaintiff's case P.Ws.1 and 2 were examined, Exs. A1 and A2 were marked. On the side of the defendant, D.Ws.1 to 4 were examined, Exs. B1 was 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 decree the suit in favour of the plaintiff as prayed for. Impugning the same, the defendant has preferred the first appeal.

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

1. Whether the sale agreement dated 16.09.2005 is true, valid and binding on the defendant?
2. Whether the plaintiff has been always ready and willing to perform his part of the contract?
3. Whether the plaintiff is entitled to obtain the relief of specific performance in respect of the sale agreement dated 16.09.2005 as prayed for?
4. To what relief the plaintiff is entitled to?
5. To what relief the defendant / appellant is entitled to?

10. The case of the plaintiff in brief is that the defendant had agreed to sell the suit property in his favour for Rs.6,10,000/- and accordingly executed a sale agreement on 16.09.2005 with reference to the same and received Rs.2,70,000/- on the date of the sale agreement and had agreed to receive the balance sale consideration at the time of the registration of the sale deed and execute the sale deed and though the time for the completion of the sale agreement is fixed as 15.01.2006 in the sale agreement, according to the plaintiff, time is not the essence of the contract and further according to the plaintiff, he has been always ready with the necessary cash for paying the balance sale consideration and been repeatedly requesting the defendant to come forward to execute the sale deed by receiving the balance sale price. However, the defendant evaded to receive the same and hence, according to the plaintiff he had issued the legal notice on 30.01.2006. Despite the receipt of the notice, the defendant had not responded and complied with the demands made by the plaintiff thereunder and hence the need for the suit for appropriate relief.

11. The defendant had taken the plea that she had not executed the sale agreement in favour of the plaintiff as put forth in the plaint and on the other hand, according to the defendant, she had only received Rs.2,70,000/- as loan from the plaintiff and executed the promissory note with reference to the same and at the time of lending the loan amount, the plaintiff had obtained her signatures in a guarantee bond as well in a blank stamp paper representing the same to be the guarantee letter for the abovesaid loan and therefore, according to the defendant, the sale agreement projected by the plaintiff is a concocted document prepared by making use of her signatures obtained as stated above and further it is put forth that the suit property is worth more than Rs.10,00,0000/- and therefore, the suit is liable to be dismissed.

12. In the light of the abovesaid rival pleas put forth by the respective parties, it is for the plaintiff to establish that the sale agreement dated 16.09.2005 marked as Ex.A1, had been, indeed, executed by the defendant in his favour as put forth in the plaint. With reference to the same, the plaintiff has tendered evidence as P.W.1 and also examined one of the attestors to the sale agreement M.Usman as P.W.2. Both P.W1 and P.W.2 have clearly tendered evidence as regards the acceptance of the defendant in selling the suit property in favour of the plaintiff for Rs.6,10,000/- and the

execution of the sale agreement Ex.A1 with reference to the same by the defendant in favour of the plaintiff and the receipt of Rs.2,70,000/- as advance on the date of the sale agreement and P.W.1 has also deposed about the agreement entered into between the parties to complete the sale transaction within 4 months from the date of the sale agreement i.e. on or before 15.01.2006. It is found that though P.W.1 had been cross examined by the defendant, nothing has been culled out from him on the part of the defendant in support of her defence version. As regards the evidence of P.W.2, as could be seen from the materials available on record, it is found that the defendant had not cross examined P.W.2 despite several opportunities and it is also further seen that the defendant's endeavour to adjourn the case for the purpose of the cross examination of P.W.2, had been turned down by the trial court and thereafter, the matter had been proceeded with the evidence of the defendant and therefore, it is seen that as far as the evidence of P.W.2 is concerned, the same remains unchallenged and therefore, considering the evidence of P.Ws.1 and 2, in toto, it is seen that Ex.A1 sale agreement had been, indeed, executed between the parties only for the sale of the suit property as put forth by the plaintiff.

13. In addition to that, it is also seen that the plaintiff had issued a legal notice on 30.01.2006 calling upon the defendant to receive the balance sale consideration and execute the sale deed and according to the plaintiff, the defendant had received the plaintiff's notice and not responded to the same and also not complied with the demand made therein. The defendant in the written statement has not disputed the receipt of the legal notice sent by the plaintiff. The defendant is found to have not responded to the legal notice. There is no proper explanation offered on the part of the defendant for not responding to the legal notice. If really, the defendant had not executed the sale agreement, as now put forth by her, and the plaintiff had made use of her signatures obtained from her at the time of the lending of the alleged loan transaction, on receipt of the legal notice, as a prudent person, the defendant should have repudiated the same, if the case projected by her is true. On the other hand, the defendant is found to have not controverted the contents of the legal notice sent by the plaintiff and the resultant conclusion that could be arrived is that inasmuch as the case which had been put forth by the plaintiff in the legal notice is true, the defendant is unable to repudiate the same one way or the other.

14. The plaintiff has pleaded in the plaint that he had made necessary arrangements for mobilizing the balance sale consideration by raising the loan from the State Bank of India and also by selling his other properties and has always been ready and willing to perform his part of the contract and been repeatedly requesting the defendant to receive the balance sale consideration and execute the sale deed. The defendant in the written statement has not, in particular, controverted the abovesaid case of the plaintiff, particularly, with reference to the capacity of the plaintiff to mobilise the balance sale consideration and his readiness and willingness to pay the same as averred by the plaintiff. Therefore, as contended by the plaintiff's counsel, the abovesaid ground put forth by the plaintiff in the plaint remains uncontroverted. That apart, the same had also been averred by the plaintiff in the legal notice marked as Ex.A2. As above pointed out, the defendant has not repudiated the contents of the legal notice, despite the receipt of the same. The plaintiff has also tendered clear evidence as regards the readiness and willingness in completing the sale transaction.

15. The defendant would put forth the contention that the value of the suit property is more than Rs.10,00,0000/-. However, with reference to her abovesaid case, there is no reliable material as such and therefore, the case of the defendant with reference to the value of the suit property cannot be countenanced without any proof to substantiate the same.

16. The defendant to establish that she had received only Rs.2,70,000/- from the plaintiff and that the plaintiff had obtained her signatures in the blank stamp paper and guarantee deed, has examined herself as D.W.1 and also examined D.W.2 to D.W.4. However, considering the evidence of D.W.1, the defendant, when she had admitted during the course of cross examination that she had mortgaged the suit property in favour of the building society and she had discharged the said loan after obtaining the loan from the plaintiff and when she has further admitted that her signatures are contained in the sale agreement Ex.A1 and also not disputed the signatures of the attesotrs as such and further clearly admitted that only with reference to the execution of Ex.A1, she had received Rs.2,70,000/- from the plaintiff and the evidence of D.W.1 being above, her case that she had only received Rs.2,70,000/- as loan from the plaintiff, as such, cannot at all be believed and accepted. As regards the evidence of D.W.2, K.Devaarasam, it is seen that he has admitted during course of cross examination that he was not present at the time of the execution of the sale

agreement and not attested the same and further admitted that the defendant had executed the sale agreement in favour of the plaintiff and at that point of time he and others were present and also further deposed about the receipt of Rs.2,70,000/- by the defendant from the plaintiff and the evidence of D.W.2 being above, his testimony made during the chief examination that the defendant had only received Rs.2,70,000/- as loan from the plaintiff as such cannot be accepted and rightly disbelieved by the trial court. Similarly, D.W.3, Srimathi, during the course of cross examination would admit that she had not attested any document with reference to the borrowal of the loan amount by the defendant and she had no acquaintance with the plaintiff prior to the alleged loan transaction and further admitted that she had seen the plaintiff only at the time of the lending of the loan amount and admitted that the defendant had received Rs.2,70,000/- from the plaintiff and further would state that the defendant had not discharged the loan amount received from the building society by making use of the said loan amount and also stated that she does not know as to how the defendant had made use of the loan amount received from the plaintiff. As above pointed out, according to the defendant she had received the alleged loan amount from the plaintiff only for discharging the society's loan. Per contra, D.W.3, would state that the defendant had not discharged the society's loan after receiving the loan amount from the plaintiff and when it is seen that D.W.3 is not the signatory to the loan transaction, in such view of the matter, the evidence of D.W.3, as such cannot be relied upon and rightly discarded by the trial court. As regards D.W.4, he has only spoken about the loan obtained by the defendant from the building society. Therefore, his evidence would not be useful to sustain the defence version.

17. The evidence of D.W.1 to D.W.4 being above and when the defendant had admitted her signatures in the sale agreement and the plaintiff has established the truth and validity of the sale agreement by tendering his evidence as well as the evidence of the attessor, as above noted, when the evidence of the plaintiff and the attessor has not been denied in any manner by the defendant by way of cross examination and infact, the attessor had not even been cross examined by the defendant and as above noted, the defendant had also not responded to the legal notice sent by the plaintiff and accordingly when the plaintiff has established the truth and validity of the sale agreement and when the defendant has taken the plea that the plaintiff had concocted the

sale agreement based on the signatures obtained from her at the time of lending of the loan amount, however, the very factum of loan transaction put forth by the defendant having not been established by the defendant in any manner by adducing acceptable and reliable evidence and when the evidence tendered by the defendant with reference to the same, as above discussed, not appealing and trustworthy, in all, it is found that the plea of loan transaction put forth by the defendant as the basis for the creation of the sale agreement remains not established and the resultant conclusion that could be arrived is that the sale agreement put forth by the plaintiff is a true and valid document and binding upon the defendant.

18. As regards the readiness and willingness on the part of the plaintiff, as above pointed out, the capacity of the plaintiff to mobilise the balance sale consideration and his readiness and willingness to pay the same to the defendant within the stipulated period has not been controverted by the defendant in the written statement in any manner. That apart, the same has also been clearly spoken to by the plaintiff as P.W.1. The same has also not been shown to be unreliable by the defendant despite the cross examination of the plaintiff. It is found that the sale agreement stipulates a period of 4 months for the completion of the sale transaction, that is to be completed on or before 15.01.2006. Now, according to the plaintiff, he has been always ready and willing to perform his part of the contract and it is only the defendant who had been evading the same for one reason or the other, accordingly, it is found that the defendant after waiting for a considerable period, on noting the evasive attitude of the defendant, had finally chosen to send the legal notice on 30.01.2006. No doubt, the legal notice had been sent by the defendant after the stipulated period, however, considering the fact that time may not be the essence of the contract in respect of the immovable property and though the parties had fixed a particular time for completing the sale transaction in the sale agreement, however, when it is seen that the plaintiff had established his readiness and willingness throughout and also send the legal notice within 15 days from the expiry of the stipulated period, considering the abovesaid conduct of the plaintiff in toto, in my considered opinion, there is no delay, as such, on the part of the plaintiff in sending the legal notice and as above pointed out, the defendant having not responded to the legal notice in any manner repudiating the claim of the plaintiff made there under and as above discussed, the plaintiff having established his case in toto, in

all, it is found that the plea of the defendant that she had not received the advance amount of Rs.2,70,000/- pursuant to the sale agreement Ex.A1 and the same has been received only as loan, as such, cannot be believed and accepted.

19. The plaintiff has taken a plea in the plaint that the defendant has confirmed the receipt of Rs.2,70,000/- as advance as well as a further sum of Rs.10,000/- as loan by executing a confirmation letter dated 10.01.2006 and according to the plaintiff, he is not the party to the abovesaid letter and thereby he has also not agreed to give up his right under the sale agreement and further according to the plaintiff, the abovesaid letter had been left with him by the defendant. The abovesaid facts had not been controverted by the defendant in the written statement. The same had also been averred by the plaintiff in the legal notice Ex.A2. The defendant had not responded to the legal notice. In such view of the matter, the arguments put forth by the defendant's counsel that the plaintiff's case should be disbelieved on the failure of the plaintiff in not producing the abovesaid confirmation letter said to have been executed by the defendant. As above pointed out, when the pleas made by the plaintiff with reference to the same, both in the plaint as well as in the legal notice having not been controverted by the defendant in any manner and when the abovesaid document may be an additional factor for supporting the plaintiff's case and not the solo factor for sustaining the plaintiff's case and when the plaintiff has established his case in a convincing manner by tendering oral and documentary evidence, as above pointed out, and when the same had not been shown to be unreliable or untrustworthy by the defendant, in such view of the matter, in my considered opinion, the non production of the abovesaid confirmation letter executed by the defendant on 10.01.2006 would not, in any manner, undermine the plaintiff's case. In such view of the matter, the authority relied upon by the defendant's counsel reported in (2012) 8 SCC 706 (Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniammam Educational Trust), in my considered opinion, would not be applicable to the facts and circumstances of the case at hand.

20. In the light of the abovesaid discussions, I hold that the sale agreement dated 16.09.2005 is true, valid and binding on the defendant. I further hold that the plaintiff has always been ready and willing to perform his part of the contract and therefore, I hold that the

plaintiff is entitled to the relief of specific performance in respect of the sale agreement dated 16.09.2005 as prayed for. Accordingly, the point numbers 1 to 3 are answered.

Point Nos. 4 and 5

21. In the light of the abovesaid discussions, the judgment and decree dated 27.08.2008 passed in O.S.No.12 of 2006 on the file of the Principal District Court, Vellore, are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bga

To

1.The Principal District Judge, Vellore

Copy to: The Section officer,
V.R. Section, High Court, Madras

+1cc to Mr.P.Seshadri, Advocate, S.R.No.96437

+1cc to Mr.G.Jeremiah, Advocate, S.R.No.96746

A.S.No.807 of 2009

SSI(CO)

CB(21/08/2020)

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