

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.No.61 of 2010 and
M.P.No.1 of 2010

Ramalinga Reddiar ... Appellant/Plaintiff

Vs.

Rani Ammal ... Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 09.12.2009 passed in A.S.No.69 of 2009 of by the Principal District Judge, Villupuram modifying the decree and judgment dated 25.06.2009 passed in O.S.No.54 of 2006 by the Additional Subordinate Judge, Tindivanam.

For Appellant : Mr. R.Kannan

For Respondent : Mr. G.Vijayakumar

JUDGMENT

This second appeal is against the decree and judgment of the learned Principal District Judge, Villupuram in A.S.No.69 of 2009 dated 09.12.2009 modifying the judgment and decree of the learned Additional Subordinate Judge, Tindivanam in O.S.No.54 of 2006 dated 25.06.2009.

2. The parties are referred to as per their ranking in the original suit and at appropriate places, their ranks in the present appeal would also be indicated, if necessary.

3. The plaintiff's case in brief.

The suit is for specific performance of the contract between the plaintiff and the defendant. The plaintiff is the son-in-law of the defendant. The defendant is the owner of the suit property and had executed a sale agreement on 16.06.2004 with the plaintiff agreeing to sell the suit property for Rs.1,60,000/- out of which Rs.1,50,000/- was received by the defendant then itself and three years time was given for payment of the remaining sum of Rs.10,000/-. The plaintiff was always ready to perform his part of the contract, but much to his dismay, the defendant did not evince interest and also indicated that the suit property was fetching more price. On 22.06.2006, the plaintiff issued a

legal notice expressing his willingness and readiness to make the remaining payment of Rs.10,000/- and get the sale deed registered within 10 days but instead got a reply from the defendant making false statement. The suit property is in possession of the plaintiff only. Hence, the suit for specific performance of contract.

4. The defendant resisted the suit by stating that she never executed any sale agreement with the plaintiff on any date much less on 16.06.2004. The plaintiff being her first son-in-law and a local resident of Alapakkam of Madurantakam Taluk, was taking care of the defendant's suit in O.S.No.222 of 1999 on the file of District Munsif Court at Tindivanam. Her third son-in-law got indebted to some outside creditors and to save him she had agreed to mortgage the suit property to the creditors in order to avoid further complication to her third son-in-law. However, papers and documents related to the case were in the custody of the plaintiff. O.S.No.222 of 1999 was settled through compromise after payment of agreed amount. According to the defendant, these papers along with some blank sheets were misused by the plaintiff to create the sale agreement in a fraudulent manner. It was also contended that the sale agreement could have got registered had it been genuine. So the suit is liable to be dismissed.

5. The trial court after analysing the facts and going through the documentary and oral evidence concluded that though the defendant tried to substantiate her contention that the agreement was not signed by her, as she was away in Chennai for medical treatment in ESI Hospital over there, the similarity in the ink used, the minute details of the purchase of the stamp paper like the vendor from whom it was purchased, who wrote it etc., have made defendant's case weak. It was found that she was treated only as an outpatient in ESI hospital, Chennai and it was possible for her to reach Tindivanam after the medical check up to execute the agreement, the same day. The trial court decreed the suit with direction to the plaintiff to pay the remaining sum of Rs.10,000/- to the defendant and get the sale deed executed and registered within three months.

6. Aggrieved over the decree and judgment passed by the trial court, the defendant went on an appeal. In the appeal, the defendant had several points to highlight.

(i) When the entire sale consideration was for Rs.1,60,000/-, why three years time was given to the plaintiff to remit the remaining Rs.10,000/-, when Rs.1,50,000/- was paid on the same day of agreement.

(ii) The person, who wrote the sale agreement was not examined on the side of the plaintiff.

(iii) The compromise arrived between the parties in O.S.No.222 of 1999 was also not taken into consideration.

(iv) The trial court had only relied on the deposition of the witnesses and could not see the larger conspiracy of the plaintiff to usurp the defendant's property.

7. The lower appellate court had dwelled on various aspects of the case wherein the first and foremost was the joint ownership of the suit property. The PW1 (plaintiff) in her cross examination has deposed that the suit property was jointly owned by the defendant and her husband. In such an event, the sale agreement itself becomes invalid with a single signature of the defendant alone. It was also observed that the deposition of PW1 (plaintiff) clearly established that the suit property was not in his possession as claimed by him. Similarly, the contention of the plaintiff that when the sale consideration itself was Rs.1,60,000/- the advance amount being Rs.1,50,000/- and three years period given for the payment of Rs.10,000/- also defied logic and reasoning. The lower appellate court also observed that the plaintiff's legal notice itself was after 2 years and this showed that he had not exhibited his readiness and willingness to remit Rs.10,000/- for two years. The further observation is that the prayer of the plaintiff that in the event of the refusal of the defendant to accept the balance amount of Rs.10,000/- within 3 years and get the sale deed registered, he was satisfied with the return of his money of Rs.1,50,000/- and compensation of Rs.10,000/- in lieu of the property is also equally perplexing. Therefore, the first appellate court concluded that in the compromise arrived in O.S.No.222 of 2009 by agreeing to pay the loan amount was presumably provided by the plaintiff and in order to secure the amount, the defendant was asked to execute a sale agreement for Rs.1,60,000/- showing Rs.1,50,000/- as advance amount and balance Rs.10,000/- as amount payable within three years, presumably the interest. The appeal was allowed and hence this second appeal by the plaintiff.

8. While admitting the second appeal, the following substantial questions of law were framed.

1. Whether the lower appellate court is right in refusing the relief of specific performance but granting a decree for refund of advance amount?

2. Whether the lower appellate court is right in holding that the defendant admits the execution of Ex.A1 sale agreement in view of the attestation made by the husband of the respondent herein?

9. The finding of the lower appellate court that the suit property when owned jointly as admitted by the plaintiff, the sale agreement itself was not valid, has not been raised by the defendant. The defendant has never resisted the suit or even in the first appeal, citing this as a reason. The first appellate court has gone beyond the contentions of the defendant. However, during the pendency of this second

appeal, the learned counsel appearing for the appellant produced the original sale deed in favour of the defendant and therefore, it can be safely concluded that the suit property stood in the name of the defendant and not a joint property.

10. The crux of the issue is whether the sale agreement was fabricated as claimed by the defendant misusing the signed blank papers given to the plaintiff by the defendant.

11. The trial court had held that there was no reason to believe that the sale agreement was fabricated as the fact that it was executed by the defendant was clearly substantiated by the oral evidence adduced by plaintiff. The lower appellate court also had agreed that the contention of the defendant that she did not execute the sale agreement as she was in Chennai for medical check up, was untenable as she was only treated as an out patient and it was possible for the defendant to execute it after returning from Chennai on the same day due to the short distance between the two stations. The first appellate court in fact, has presumed that the amount of Rs.1,50,000/- mentioned in the agreement could be the amount lent to the defendant by the plaintiff to pay for the compromise made in O.S.No.222 of 1999 and Rs.10,000/- the interest for 3 years. This is only a presumption. Similarly the observation of the first appellate court that the prayer of the plaintiff in the O.S.No.54 of 2006 that in the event of refusal to get the suit property registered in the plaintiff's name, to return the amount of Rs.1,50,000/- paid and Rs.10,000/- as compensation is a confirmation for the money transaction between the two parties at the time of the compromise in O.S.No.222 of 1999 cannot also be sustained. Interestingly, the defendant had made an averment that her property was worth five lakhs and the plaintiff was trying to grab it. Normally in a suit for specific performance of contract, the plaintiff while seeking for specific performance of contract, would also pray for return of advance amount already paid by him. This is because, the relief of specific performance is a discretionary relief. More over, Section 22 of the Specific Relief Act provides that in a case of Specific performance, the plaintiff can ask for the reliefs provided for in Clause 1(a) and 1(b), but Sub Section 2 of Section 22 mandates that the afore said reliefs in Section 22(1)(a) and (b) shall be granted only if the same is specifically claimed. Therefore, normally the plaintiff would be careful while drafting the plaint and in a suit for specific performance, they would ask for a refund of advance amount as an alternative prayer.

12. The possession of the property is immaterial as both the parties had contradictory version but will not alter the outcome of the case. The trial court had observed that the ink used by all the signatories in the sale agreement

proved the genuineness of the sale agreement. The trial court has gone into all the aspects before holding that the agreement is true and valid. The evidence adduced on the side of plaintiff clearly prove the execution of the sale agreement. In fact, as already observed, the first appellate court also did not accept the claim of the defendant that she was out of station on the date of the sale agreement. On the other hand, it concluded that the sale agreement was made as a security for the loan advanced by the plaintiff.

13. A perusal of the sale agreement dated 16.06.2004 shows that the sale consideration was fixed at Rs.1,60,000/- out of which, the plaintiff has paid Rs.1,50,000/- towards advance. Time for payment of balance sale consideration and execution of the sale agreement is indicated in Ex.A1 as three years. The contention of the plaintiff is that he was always ready and willing to perform his part of the contract and whenever he approached the defendant for execution of the sale deed in his favour, the defendant demanded more amount on the ground that some third parties are quoting higher rates for the suit property. He issued a legal notice dated 22.06.2006 to the defendant requesting her to receive the amount of Rs.10,000/- and execute the sale deed in his favour. A copy of the said notice is marked as Ex.A2. The defendant has received the notice as evidenced by the postal acknowledgment card Ex.A3 and sent a reply notice (Ex.A4) contending that the suit agreement is a rank forgery.

14. This court has already held in the preceding paragraphs that the sale agreement is true and valid. Though the time fixed in the sale agreement Ex.A1 is three years, the plaintiff has issued notice, within two years to the defendant for payment of balance sale consideration of Rs.10,000/-. It is also relevant to point out that the plaintiff is the son-in-law of defendant and in the circumstances, the contention of the learned counsel appearing for the respondent that if really the parties had intended for the sale of the property, the plaintiff would not have taken such a long time to pay the balance sale consideration of Rs.10,000/- to the defendant, cannot be accepted. The facts and circumstances of the present case clearly go to show that the plaintiff was always ready and willing to perform his part of the contract. It is also evident from the records that the defendant had handed over all the original documents pertaining to the suit property to the plaintiff. The fact that the plaintiff had issued a notice within the period prescribed in the sale agreement Ex.A1 clearly goes to show that the plaintiff was ready and willing to perform his part of the contract and in the instant case, more than 90% of the sale consideration was paid to the defendant. Therefore, it cannot be said that the plaintiff had no intention to purchase the property from the defendant and the conclusion of the trial court that the plaintiff is entitled for the specific performance of the contract is perfectly in order. In view of the reasons recorded by this court, it is held that the first appellate court was

wrong in refusing the relief of specific performance and was also wrong in holding that the sale agreement is made for loan transaction. The substantial questions of law are answered accordingly.

15. In the result,

(i) The Second Appeal is allowed. No costs. The connected miscellaneous petition is closed.

(ii) The decree and judgment dated 09.12.2009 passed in A.S.No.69 of 2009 by the Principal District Judge, Villupuram is set aside.

(iii) The decree and judgment dated 25.06.2009 passed in O.S.No.54 of 2006 by the Additional Subordinate Judge, Tindivanam is upheld.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The Principal District Judge, Villupuram.
 2. The Additional Subordinate Judge, Tindivanam.
 3. The Section Officer, VR Section, High Court, Madras
- +1cc to Mr.R.Kannan, Advocate SR.No.62255
- +1cc to Mr.G.Vijayakumar*, Advocate SR.No.62146

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M.P.No.1 of 2010

SR (CO)
GMY (24/01/2020)

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