

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.01.2017

PRONOUNCED ON : 30.11.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Civil Suit No.427 of 2008

L.Veeraraghavan ..Plaintiff

Vs

S.Balaji ..Defendant

PRAYER : Civil suit is filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 CPC praying for the following reliefs:-

(1) for specific performance directing the defendant to execute the sale deed of the suit schedule property in favour of the plaintiff as per the terms of the suit agreement dated 24.11.2007 and put the plaintiff in possession thereof; failing which this Court may be pleased to execute the sale deed of the suit schedule property in favour of the plaintiff.

(2) directing the defendants to pay the costs of the suit.

(3) and to pass such other relief or reliefs as this Court may deem fit.

For Plaintiff : Mr.V.Venketaseshan

For Defendants : Mr.G.Thyagarajan

J U D G M E N T

The civil suit is filed by the plaintiff for specific performance.

2. The gist of the plaint filed by the plaintiff is as follows :-

(a) The Plaintiff states that the Defendant is the owner of the property comprised of land measuring 2350 sq.ft., in T.S.No.75, Block 32-D, Plot No.C-379, together with superstructure bearing door no.30, 3rd Street, Periyar Nagar, Chennai-82, having purchased the same by a registered sale deed dated 14.04.2004 from Mr.S.Sundararajan, who is none other than his father.

(b) According to the plaintiff, the defendant approached the plaintiff for selling the above said property more fully described in the schedule hereunder during November, 2007. Accordingly, the Defendant handed over the xerox copies of (i) lease cum sale agreement dated 11.11.1974. (ii) Handing over certificate dated 11.11.1974, (iii) Deed of conveyance dated 23.11.1989 (iv) sale deed dated 14.04.2004 and (v) Encumbrance Certificate for the period from 1.1.2004 to 22.11.2007, thereby fixing a sale consideration of Rs.64,00,000/- and the plaintiff accepted the said offer made by the defendant.

Thereafter, an agreement for sale was entered on 24.11.2007 in respect of the schedule mentioned property and a sum of Rs. 5,00,000/- was paid towards advance, in which a sum of Rs.3,00,000/- was paid by way of cash and a sum of Rs.2,00,000/- was paid by way of cheque dated 24.11.2007 bearing No.996527 and subsequently the cheque was encashed by the defendant. Thus a binding contract for sale was concluded between the plaintiff and the defendant.

(c) Further, according to the plaintiff, he was ready and willing and continues to be ready and willing to perform his part of the contract. The plaintiff mobilized the funds and he was ready with balance sale consideration of Rs.59,00,000/- and called upon the defendant to conclude the contract thereby executing sale deed in favour of the plaintiff. The plaintiff had entered into the contract only after verifying the latent and patent defects relating to the suit property and there was no encumbrance. The defendant is in possession by letting it out to the tenant. So, the plaintiff could not understand why the defendant was deliberately delaying to perform his part of the contract. So, the plaintiff verified through certain sources and then only acquired knowledge that the suit property had been mortgaged by the

defendant with ICICI Bank by creating an equitable mortgage over the suit property. The fact was not at all disclosed by the defendant to the plaintiff at the time of entering into the agreement for sale or at any subsequent time. The defendant had misrepresented that the property is free from any encumbrance and entered into the suit agreement for sale with the plaintiff and had also received an advance of Rs.5,00,000/-. Yet, the plaintiff was ready and willing to purchase the suit property as per the terms of the agreement and only requested the defendant to discharge the mortgage loan as early as possible and execute the sale deed after eviction of the tenant who is none other than the sister of the defendant.

(d) It is further stated that the defendant instead of executing sale deed in conformity with the agreement of sale on receipt of balance sale consideration i.e. a sum of Rs.59,00,000/-with an intention to defeat the right of the plaintiff is in the habit of negotiating with some third parties for selling the suit property, which action tantamount to fraud, misrepresentation, cheating and criminal breach of trust. Further the plaintiff with a bonafide intention to complete sale transaction, also agreed to discharge the mortgage debt by himself, but the defendant has not chosen to give the details regarding

the loan and consent for discharging the mortgage by the plaintiff. But he continues with the action of negotiating with the third parties. Therefore, the plaintiff issued a legal notice dated 11.12.2007 to the Defendant and his father expressing his readiness and willingness to pay the entire sale consideration and called upon the defendant to discharge the mortgage and to execute the sale deed on receipt of entire balance sale consideration and also expressed his willingness to discharge the mortgage debt by himself on production of details regarding the mortgage and total outstanding as on date. The said notice was duly received by the defendant on 13.12.2007. The defendant even on receipt of the said notice has neither chosen to issue any reply notice nor furnish any details in respect of mortgage debt.

(e) The petitioner further states that though there is no upper time limit fixed for performance of contract, even now itself the plaintiff is ready and willing to pay the balance sale consideration to get the sale deed executed in his favour after discharging the mortgage by the defendant or in alternative the plaintiff is also ready and willing to discharge the mortgage by himself on behalf of the defendant, out of the balance sale consideration, if the defendant authorizes the plaintiff to do so with all relevant particulars. This was averred

by the plaintiff even in paragraph 5 of his notice dated 11.12.2007. It is further stated that the Plaintiff at the risk of repetition submits that he is always ready and willing to perform his part of the contract and equally the defendant is also burdened with the legal obligation to fulfill his part of the contract which he is attempting to wriggle out with the devious intention to defraud the plaintiff. The intention of the defendant seems to avoid the transaction and remain as a spectator not even choosing to issue any reply nor come forward to execute the sale deed on receipt of the balance sale consideration, even subject to mortgage. Such an action of the defendant is wholly unsustainable both on fact and law.

(f) It is further submitted that he has been fulfilling his part of the contractual obligations from the time of execution of the agreement for sale duly executed between the parties and he is always ready and willing to perform his part of the contract for which he approached the defendant on several occasions but all his attempts ended in vain. The plaintiff understands that the defendant, with an ulterior motive is attempting to wriggle out of the contract by involving in the action of negotiating with the third parties for selling the suit property in utter violation of the sale agreement. The plaintiff

left with no other option approached this Court for filing the suit for specific performance. It is further stated that the Plaintiff received a sum of Rs.5,00,000/- as advance in pursuant to the agreement of sale, the defendant has created a lien is also in favour of the plaintiff under law. But the evasion of the defendant to perform his part of the contract created a strong apprehension in the mind of the plaintiff that the defendant was taking clandestine actions and steps to alienate the suit property to third parties and thereby create third party interest in the suit property and thereby put the plaintiff to further difficulties in getting the sale executed in his favour. So, with a view to avoid any such unwanted consequences the plaintiff filed O.S.No.131 of 2008 on the file of the VIII Assistant City Civil Court, Chennai praying for relief of permanent injunction based on suit agreement. Along with the suit the plaintiff filed I.A.No..204 of 2008 praying for interim injunction. On 04.1.2008 the learned VIII Assistant Judge was pleased to grant interim injunction and the same is still in force. Even at the time of filing the above suit, the plaintiff filed necessary application seeking leave to file the above said suit reserving his right to file this present suit for specific performance and that was also ordered. In the counter filed in the I.A.No.204/2008 the defendant came up with a false and untenable allegation

even went to the extent of saying that the suit agreement is only a loan transaction, merely taking advantage of the deficit stamp. But that defect was also cured by payment of deficit stamp duty before obtaining interim order on the file of VIII Assistant City Civil Court, Chennai. It is further averred that on one occasion the defendant approached the plaintiff stating that he will execute the sale deed as per the terms of the agreement dated 24.11.2007 and stated that there is some error in the boundary description in the sale deed dated 14.04.2004 executed by his father in his favour which is the subject matter of the sale agreement. So, at his behest a deed of rectification was prepared and it was presented for registration before the Sub-Registrar, Sembium on 01.02.2008. Since huge stamp duty was demanded for registration, the parties felt that the error in the original sale deed was inconsequential and it would not stand in the way of executing the sale deed in favour of the plaintiff and therefore, decided not to register the rectification deed but to proceed with the sale as per the terms of the agreement. It is significant to note that this deed of rectification was drafted and signed by the defendant and his father on 01.02.2008 and it was attested by the plaintiff. But the suit for injunction was moved on 04.01.2008 and interim injunction was obtained on the same day. This would clearly show that even after filing of that

suit the defendant had approached the plaintiff promising to stand by the terms of the agreement. Yet, he is evading performance of his terms of the contract. Hence this suit. The plaintiff submits that he reliably learns that the defendant has no intention to stand by the terms of the suit agreement, under such circumstance, the plaintiff has no other remedy except to file this suit praying for a decree for specific performance before this Hon'ble Court. Since, the plaintiff is filing this comprehensive suit for specific performance, he undertakes to withdraw the suit O.S.No.131/2008 filed in the VIII Assistant City Civil Court, Chennai.

3. The defendant filed written statement denying the averments made in the plaint.

(i) The defendant states that the above suit is filed for specific performance and he denied the allegation made in paragraph 4 of the plaint stating there is no agreement to sell as on today, as claimed by the plaintiff and a signature is obtained on a revenue stamp affixed in white paper and it is fabricated as a receipt for sale by the plaintiff. Except the defendant signature on the revenue stamp, nothing was written on it at the time of signing in respect of the suit property. The plaintiff has not signed any agreement. The

defendant submits that the plaintiff has not signed the agreement nor anyone else had signed the agreement on behalf of the plaintiff which is filed as suit document No.2 and therefore, there is no legally enforceable agreement as on date.

(ii) The claim of the plaintiff that he has performed his part of obligations of the contract stating that he had paid Rs.5 lakhs was denied by the plaintiff stating that in the absence of valid document, this suit is not maintainable.

(iii) The defendant submits that the plaintiff cannot seek the relief of specific performance under the Specific Relief Act since the plaintiff or agent does not sign the agreement to sell.

(iv) The defendant categorically denied the allegations made in paragraph 5 to 10 of the plaint stating at no point of time, he had the intention to sell the suit property and his intention was only to receive some financial assistance from the plaintiff to overcome the sudden financial crisis. The plaint averments of advance Rs.5 lakhs and mortgage with ICICI Bank was not at all true.

(v) The defendant also submits that there was no verification of any original documents, no inspection of the suit property by the plaintiff before the alleged agreement of sale, there is no schedule of property with boundaries, for a valid sale agreement in respect of an immovable property.

(vi) The defendant further submits that there is no enforceable agreement and therefore, for the notice sent by the plaintiff, he did not send any reply, however, the plaintiff filed O.S.No.131 of 2008 before the City Civil Court, Chennai and obtained an ex parte interim injunction behind back. It is submitted that an agreement of sale is only conferring personal right on the individual, it does not confer any right on the properties, and so, the suit filed for bare injunction cannot be filed and the present suit filed for specific performance is an after thought.

(vii) The defendant submits that filing of present suit after giving an undertaking to withdraw the earlier suit is hit by Order II Rule 2 of CPC.

(viii) The defendant states that apart from the above legal impediments, the plaintiff also cannot seek specific performance on the basis of so called

fabricated agreement of sale under the Specific Relief Act, Section 20 (1), by which it is a settled proposition of law that agreement being mutual, if the plaintiff or agent does not sign the agreement to sell, he cannot seek the relief of specific performance.

(ix) The defendant states that he denies the allegations made in paragraph 5 to 10 of the plaint as it is a cock and bull story, only to receive the sympathy of this Court. The defendant categorically asserts that at no point of time any intention to sell the suit property. All what he intended was only to receive some financial assistance from the plaintiff to overcome the sudden financial crisis. It is true that the defendant delivered the Xerox copies of the documents only to facilitate to obtain loan from any financial institution and not for any other purpose, as alleged in the plaint. No sane person on the earth will advance such a huge sum of Rs.5 lakhs, as a part of sale consideration priced at Rs.64 lakhs, as claimed by the plaintiff, without verifying the original documents. This is one of the pieces of impeccable evidence to show the bonafide of the defendant loan transaction. It is claimed by the plaintiff that he came to know through reliable source later on, that there was a mortgage with ICICI Bank is invented story for this suit purpose. If that being the case, he

would have verified and insisted upon the defendant to produce the original documents, prior to tendering advance amount.

(x) The defendant states that there was no verification of any original documents. There is no inspection of the suit property by the plaintiff before the alleged agreement of sale. There are no covenants, which will draw the attention of this Hon'ble Court to come to a conclusion that there is a valid, enforceable contract with terms and conditions. There is no schedule of property with boundaries, fixing the location of property, identifiable as per the documents. In the absence of all these essential ingredients for a valid sale agreement in respect of an immovable property, this suit may be dismissed as devoid of any merit.

(xi) The defendant states that he denies the allegation made in para 11 the plaintiff is too often narrating that there is an enforceable agreement and that he sent a notice to that effect for which no reply was sent by the defendant. As there was no enforceable agreement, the defendant did not give any reply. However without allowing the defendant to give reply, the plaintiff herein has hurriedly filed civil suit O.S.No.131 of 2008 before the City Civil Court,

Chennai and obtained an ex parte interim injunction behind back. An agreement of sale is only conferring personal right on the individual, it does not confer any right on the properties, while that being so, the plaintiff cannot file a suit for bare injunction and be granted an ex parte order of injunction. However, it is an after thought action to file a suit for specific performance before this Court. That apart it is also averred in the affidavit that he was granted leave by this Hon'ble Court under Order II Rule 3 of CPC, reserving the right to file the present suit. It was also averred in the plaint, that he gave an undertaking to withdraw that suit. As per the provisions of law, when a relief is sought by a person, it must be complete and comprehensive, there cannot be piecemeal relief and filling up the lacunae by filing suit one after another, which is hit by order II Rule 2 of CPC.

(xii) The defendant states that the plaintiff has stated that the defendant misrepresented that the property is free from any encumbrance and had entered into the suit agreement for the sale of the suit property, which is utter false. Further the plaintiff would say that with an intention to defeat the right of the plaintiff, the defendant in the habit of negotiating with some third parties for selling the suit property, which action tantamount to fraud, misrepresentation,

cheating and criminal breach of trust, which is nothing but made out with an ulterior design to make a wrongful gain, by adopting coercive methods so as to constrain the defendant to execute a sale deed in favour of the plaintiff, which he is not entitled to at any stretch of imagination. The genuineness of the agreement is doubtful. Relief under specific performance could be granted only. If it is a clear case of agreement of sale between the parties, which is pleaded and established by some acceptable evidence. The forgoing discussion and submission by the defendant before this Court has made it crystal clear that there is no valid legally enforceable agreement of sale leading to concluded enforceable contract between the parties, out of free will or out of force or coercion. With due respects, the defendant submit that the plaintiff herein frequently boast that he is ever ready and willing to perform the remaining part of the contract, as claimed by the plaintiff that he would pay the balance sale consideration, besides discharging the mortgage loan as understood by the plaintiff. Whereas, a cursory reading of the prayer in the plaint would show that at Page No.7 paragraph No.14(a) that there is no whisper about his readiness and willingness to pay the balance consideration assuming the alleged agreement is valid. Therefore, the above suit has to be dismissed, treating the same as loan transaction and accepting the document

No.2 as a receipt acknowledging the debt of Rs.5 lakhs. The contents of the Document No.2, at any trickish interpretation would irresistibly enable us to come to a conclusion that it is only a receipt and not an agreement of sale, capable of enforcing the same in a court of Law.

(xiii) The defendant states that the Specific Performance is an equitable relief. A person who approaches this Court ought to come with clean hands. This Court may not be a party to the dealing of tardy. Certainly, the plaintiff is not entitled for any relief under the Specific Performance Act. If at all, he has any remedy, it is only for personal right in the form of either compensation or damages by filing appropriate suit before the appropriate Court, by paying due Court fee. Absolutely, the suit as well as the applications are filed with imagination to construct castles in the air by abusing the process of law and harassing the defendant by one or other way, who has to be compensated with heavy costs.

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(xiv) The defendant states that the suit is not maintainable as it is laid,

for the simple reason that there is no valid, legally enforceable agreement of sale as claimed by the plaintiff, in the absence of valid and legally enforceable written document, the doctrine of part performance will not be available for the plaintiff to seek any remedy before this Court, assuming there be an agreement of sale, there is no prayer to express the readiness and willingness of the plaintiff, to pay the alleged balance sale consideration either to the defendant or depositing the same into court and above all, the plaintiff has not claimed his relief as complete at the earliest point of time, when the suit initially filed before the Hon'ble City Civil Court, Chennai which is hit by order II Rule 2. That apart, the leave granted by this Court, as stated by the plaintiff in his plaint under Order II Rule 3 of CPC is also to be revoked.

4. Based on the pleadings, documents filed by both parties and submission made by both the learned counsel, the following issues are framed for trial on 09.07.2010:-

- i. Whether the Agreement for sale dated 24.01.2007 entered into between the plaintiff and the defendant is valid in law?
- ii. Whether the Agreement has been entered into between the parties with full knowledge of the terms of the Agreement?

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- iii. Whether the impugned document dated 24.01.2007 is a receipt or Acknowledgment of Debt?
- iv. Whether the alleged transaction is a Loan transaction?
- v. Whether the suit is hit by Order 2 Rule 2 of C.P.C as alleged by the defendant?
- vi. Whether the plaintiff has proved his readiness and willingness and entitled for discretionary relief of Specific Performance?
- vii. Whether the suit is barred by Limitation?

5. During trial, the plaintiff examined himself as PW1 and marked Ex.P1 to Ex.P9 and the defendant examined himself as DW1. However, no document was marked on his side.

6. Heard the rival submissions made on both sides and perused the materials available on record.

7. The case of the plaintiff is that the suit property belonged to the defendant and he approached the plaintiff for selling the property and handed over the xerox copies of the title deeds, encumbrance certificate from 01.01.2004 to 22.11.2007. The plaintiff agreed to purchase the property and accordingly, sale agreement was entered into between the parties on

24.11.2007 and sale consideration was fixed at Rs.64,00,000/-. On the date of sale agreement, the plaintiff paid a sum of Rs.5,00,000/- as advance in which Rs.3,00,000/- by way of cash and Rs.2,00,000/- by way of cheque and the father of the defendant has signed the sale agreement as witness.. Further, the defendant has let out the property to the tenant, who is none other than his sister. From the date of agreement of sale, the plaintiff was ready and willing to perform his part of the contract, however, the defendant evaded to execute the sale deed in favour of the plaintiff as agreed by vacating the tenant. Subsequently, the plaintiff came to understand that the property has been mortgaged by the defendant with the ICICI Bank by creating equitable mortgage deed over the suit property. But at the time of executing the agreement, by representing that the property is free from encumbrance, the defendant had entered into a sale agreement with the plaintiff and received a sum of Rs.5,00,000/- as advance. Even then, the plaintiff requested defendant to discharge the mortgage loan and to execute the sale deed, by vacating the tenant, but the defendant evaded to perform his part of contract. Therefore, the plaintiff issued a legal notice dated 11.12.2007 to the defendant, however, the defendant neither replied nor furnish the details of the mortgage debt.

8. The plaintiff denied the statement of the defendant that there is no sale agreement entered into between the plaintiff and the defendant to sell the suit property, as claimed by the plaintiff and Ex.P2 is only a receipt for receiving a loan borrowed by the father of the defendant. He further denied the defendant's statement that on demand made by the plaintiff, he signed on the Revenue Stamp affixed in the blank white paper as security for the loan availed by his father, and latter, it was filled up by the plaintiff and was created as agreement of sale and on the date of signing the document, it was only a blank white paper affixing a revenue stamp and no one signed as witness.

9. The plaintiff contended that even in the legal notice dated 11.12.2007, which is marked as Ex.P3, the plaintiff asked the defendant to produce the details of mortgage and outstanding as on date to the bank and on authorisation of the defendant, he is willing to clear the mortgage. But the defendant after receiving a huge sum of Rs.5,00,000/- as advance, simply stated that his father received a loan and for the same, he signed the document as security. The contention of the plaintiff is that, he is ready and willing to perform his part of contract and hence, the suit may be decreed for specific performance in his favour.

10. The contention of the defendant is that he has not executed any sale agreement as alleged by the plaintiff and the document stated to have been executed as sale agreement is not an agreement at all and he never entered into a sale agreement with the plaintiff and agreed to sell the property and hence, the plaintiff is not entitled for a discretionary relief of specific performance as prayed for and the suit is liable to be dismissed.

11. The learned counsel appearing for the plaintiff submitted that the suit property belonged to the defendant and the defendant made an advertisement to sell his property. After seeing the advertisement, the plaintiff approached the defendant to purchase the property. The defendant had handed over the copies of the title deeds and encumbrance certificate and after satisfying the same, the plaintiff agreed to purchase the property and the sale consideration was fixed at Rs.64,00,000/-. Accordingly, plaintiff has entered into a sale agreement with the defendant on 24.11.2007, a certified copy of which is marked as Ex.P2 and on the same day, he paid a sum of Rs.5,00,000/- as advance, in which a sum of Rs.3,00,000/- was paid by way of cash and a sum of Rs.2,00,000/- was paid by way of cheque and subsequently, the defendant also encashed the cheque and thereafter, he evaded to execute the

sale deed, as agreed. He further submitted that the plaintiff made an enquiry and he came to know that the defendant mortgaged the suit property with the ICICI Bank and he let out the property to his sister and despite repeated demands made by the plaintiff, the defendant evaded to execute the sale deed, after receiving balance sale consideration. Even the plaintiff one step further asked the defendant to produce the bank details and outstanding amount for clearing the mortgage debts and after deducting the mortgage loan to be paid to the bank, he is willing to pay the balance sale consideration, the defendant has not come forward to accept the same. Hence, the plaintiff issued a legal notice. But the defendant had taken a stand that there was no agreement entered into between the parties and he never agreed to sell the property and only his father had obtained a loan from the plaintiff and for which the defendant has signed as security on the Revenue Stamp affixed in the blank white paper and hence, Ex.P2 is only a receipt, not an agreement. Therefore, the plaintiff has no other option except to approach this court for getting a relief of specific performance.

12. The learned counsel appearing for the defendant submitted that the defendant has no intention to sell the property and never executed any sale

agreement as alleged by the plaintiff. The father of the defendant borrowed loan from the plaintiff for which the defendant signed the revenue stamp affixed in the blank white paper; at the time of signing the revenue stamp no recitals in the paper, he signed only in the blank paper and not in the agreement. He further submitted that no person would give such huge advance, without seeing the original documents and the plaintiff himself admitted that he has not seen the original documents and only on getting the xerox copies of the title deeds, he paid a sum of Rs.5,00,000/- as advance and that the plaintiff has not come with clean hands and hence, he is not entitled for discretionary relief of specific performance.

13. **Issue No.3 and 4:**

According to the plaintiff, the defendant approached the plaintiff for selling the suit property during November 2007 and he entered into a sale agreement dated 24.11.2007 with the plaintiff to sell the property for a sale consideration of Rs.64,00,000/- and handed over the xerox copies of the title deeds namely sale deed dated 14.04.2004 (copy of which is marked as Ex.P1) and encumbrance certificate for a period from 01.01.2004 to 22.11.2007 and the plaintiff paid a sum of Rs.5,00,000/- as advance on the date of sale

agreement itself, in which a sum of Rs.3,00,000/- was paid by cash and a sum of Rs.2,00,000/- was paid by way of cheque bearing No.996527 and subsequently, the cheque was encashed by the defendant. Thus the contract for sale accepted by the plaintiff and the defendant and in order to prove the same, the plaintiff produced a certified copy of the receipt cum agreement dated 14.11.20027, which is marked as Ex.P2 and since the defendant tried to sell the property to the third parties, he sent a legal notice dated 11.12.2007, copy of which is marked as Ex.P3 expressing his ready and willingness to perform his part of contract and to complete the sale transaction agreed, however, the defendant has not sent any reply. Thereafter, he filed a suit in O.S.No.131 of 2008 before the VIII Assistant City Civil Court, Chennai for grant of permanent injunction restraining the defendant and his men from alienating or encumbering the suit property. He also filed an application in I.A.No.204 of 2008 and he got an interim injunction. In that application, the defendant has filed a counter affidavit and denied the agreement. According to the plaintiff, initially, it was objected by the defendant to mark the agreement (Ex.P2), as it was not sufficiently stamped and thereafter, the plaintiff paid stamp duty, penalty and marked the document.

14. It is the contention of the plaintiff that the defendant admitted his signature found in Ex.P2 and his father also signed as a witness and hence, once the defendant admitted his signature found in Ex.P2, it is to be presumed that he admitted the execution of the document. Hence, it is for the defendant to rebut the presumption and to prove that he has not intended to sell the property as recited in the sale agreement.

15. According to the defendant, the impugned agreement Ex.P2 is not an agreement and even in the earlier suit filed by the plaintiff in O.S.No.131 of 2008, only a relief of permanent injunction has been sought for and the plaintiff has not filed the above suit for comprehensive relief. It is the contention of the defendant that after filing the above suit and obtaining interim injunction, he filed a counter affidavit to the I.A.No.204 of 2008 in O.S.No;131 of 2008 and in the counter affidavit, he has denied the very same agreement itself and he explained under what circumstances, he signed the document. The further contention of the defendant is that, without obtaining any original documents or seeing the original documents, no prudent man would give a huge amount of Rs.5,00,000/- as advance and the plaintiff obtained the signature of the defendant on the revenue stamped affixed in the

blank white paper and since his father obtained a loan from the plaintiff, he signed the document as collateral security and subsequently, this suit has been filed. The defendant contended that if at all the agreement is true and valid, the plaintiff would have filed the suit in the first instance (O.S.No.131 of 208) for specific performance and therefore, the subsequent suit filed by the plaintiff is not maintainable and the present suit is hit by Order II Rule 2 of the Code of Civil Procedure.

16. Now, the core question is that whether the document Ex.P2 is an agreement or simply a receipt.

17. A perusal of Ex.P2, a copy of the agreement, shows that it was not written in any non Judicial Stamp Paper and it is only written in the white paper and the signature of the defendant is found on the one rupee revenue stamp affixed in the white paper. The plaintiff himself admitted in his evidence that he was working in a bank and he is an literate and therefore, he knows how to right the agreement. Even though an agreement need not be always in writing and it can be either by oral or in writing and the written agreement has no prescribed format. However, the plaintiff approached an

unknown person (defendant) over phone, after seeing the advertisement, and the defendant expressed his willingness to sell the property and sale consideration was fixed. Even during the cross examination of PW1, he admitted that he has not seen the original documents and without seeing the original documents he entered into a sale agreement and paid a sum of Rs.5,00,000/- as advance. Normally, in the sale agreement the usual terms are i) to complete the sale agreement within the stipulated time, and the time limit has to be fixed for payment of sale consideration, in case any tenant is occupied, time to vacate the tenant and in case of mortgaging the property, the time to discharge the mortgage. Nothing has been found in the agreement. Further, a perusal of the recitals of Ex.P2 appears that the signature of the defendant was obtained in a blank paper, because the first thirteen lines of the recitals have been written leaving some space and the remaining seven lines of the recitals have been written without giving the same space and the space was reduced in order to complete the document within the remaining space of the signed paper. Therefore, Ex.P2 document is not a genuine one. Though there is no prescribed format for sale agreement, when a person who was working in the bank entered into a sale agreement with an unknown person and paid a huge amount as advance, without seeing the original documents, he must be

very careful and put all the terms and conditions in the agreement as stated above. Therefore, the document Ex.P2 is only a receipt and at the time of obtaining loan by the defendant, the plaintiff obtained the signature of the defendant in the revenue stamp affixed in the blank paper and thereafter, he had filled the recitals to suit his convenience, within the space available in that page and created the same as an agreement. Accordingly, this court finds that Ex.P2 dated 24.11.2007 is not an agreement and it is only a receipt and therefore, the alleged transaction is not an agreement and it is only a loan transaction. The issue is answered accordingly.

18. Issue No.5

After the alleged agreement dated 24.11.2007, the plaintiff had filed a suit in O.S.No.131 of 2008 on the file of the VIII Assistant City Civil Court, Chennai, for bare injunction restraining the defendant and his men, agents and servants from alienating or encumbering the suit property. He also filed an application in I.A.No,204 of 2008 and got an interim injunction. In that application, the defendant has also filed a counter affidavit and denied the agreement. Subsequently, the plaintiff has filed the present suit with liberty to withdraw the above suit.

19. The previous suit filed by the plaintiff is not a comprehensive suit and it was only for a bare injunction. If the agreement Ex.P2 is true and genuine and he was ready and willing to perform his part of contract and possessed sufficient amount to pay the entire sale consideration, he would have filed comprehensive suit for specific performance at the first instance. In paragraph No.12 of the plaint in C.S.No.427 of 2008 he undertook to withdraw the suit O.S.No.131 of 2008 on the file of the VIII Assistant City Civil Court, Chennai. Further, a reading of the copy of the plaint in O.S.No.131 of 2008 (Ex.P4) shows that the plaintiff has not obtained any leave from the court that he reserved a right to file a suit for specific performance. Without obtaining leave from the court, he had filed the present suit and after that, he withdrew the earlier suit in O.S.No.131 of 2008. Only if the leave is obtained in the previous suit, the plaintiff can file a subsequent suit under the same cause of action. When the agreement itself was denied by the defendant in the earlier suit, which was filed only for a bare injunction and not for specific performance, and without obtaining any leave in the earlier suit to file a fresh suit under the same cause of action, the present suit filed by the plaintiff is hit by Order II Rule 2 of the Code of Civil Procedure. The issue is answered accordingly.

20. Issue No.6

Though the plaintiff has stated that he was ready and willing to perform his part of contract, the defendant had denied the very same agreement itself. Further, in the earlier issue, it is decided that the alleged agreement Ex.P2 is not an agreement and it was executed only for a loan transaction and hence, the plaintiff has not proved his readiness and willingness to perform his part of contract and so, he is not entitled for the discretionary relief of specific performance. Accordingly, the issue is answered.

21. Issue No.7

As per the plaint, the alleged sale agreement is dated 24.11.2007 and in the said agreement, time limit has not been prescribed for execution of sale deed. Further, the suit has been filed in the year 2008 itself. Therefore, the suit is not barred by limitation and the issue is answered accordingly.

22. Issue No.1 and 2

As already decided in the earlier issue, the document Ex.P2 dated 24.01.2007 is not an agreement and it is only a receipt. When the defendant denied that he had not entered into a sale agreement with the plaintiff, it is for

the plaintiff to prove the same. Except the plaintiff, no other witness was examined on the side of the plaintiff to prove his contentions. Even though the agreement of sale is not required to be attested. However, when the defendant denied the execution of the agreement and stated that only his father obtained a loan from the plaintiff and for the same, he put his signature in the revenue stamp affixed in the blank paper for security purpose, the document stated to be a sale agreement has to be proved by examining any of the witness. Further in the sale agreement, there is no description of the property and the terms such as i) duration for completing the sale transaction, ii) if the property is mortgaged, the same shall be discharged by the purchaser and after deducting the amount paid for discharging the mortgage, remaining sale consideration should be paid, iii) if the property is in possession of the tenant, before executing the sale deed, the tenant should be vacated.

23. Further, as already discussed above, the manner in which the agreement is written would go to show that the alleged agreement is not genuine, because, the first thirteen line of the recitals have been written leaving uniform line space and the remaining seven lines have been written by reducing the line space in order to complete the recitals within the available

space. That is why the plaintiff could not give the description of the property within the available space on that page, signed by the defendant. According to the plaintiff, on seeing the advertisement, he approached the defendant and after seeing the copies of the title deeds and encumbrance certificate, he agreed to purchase the property for a sale consideration of Rs.64,00,000/- and paid a sum of Rs.5,00,000/- as advance. When the defendant denied that he had not made any advertisement and he was not willing to sell the property, it is for the plaintiff to mark the copy of the advertisement to prove his contentions. During the cross examination of the defendant, he has stated that his father only looking after the property. When the defendant stoutly denied the execution of the agreement and stated that he signed only on the Revenue stamp affixed in the blank white paper and subsequently the plaintiff filled up the same by his own wish and created as sale agreement, it is the duty of the plaintiff to specifically plead and prove his contentions by examining the witnesses and he has to stand on his own leg and he cannot take advantage of the loop holes left by the defendant. Though the defendant admitted his signature in Ex.P2, he denied the execution of agreement and thereby rebutted the presumption. Therefore, the plaintiff has to prove his case in the manner known to law. It is to be noted that except the plaintiff examined as PW1, no

other witness has been examined on the side of the plaintiff to prove the contention of the plaintiff that he gave Rs.5,00,000/- to the defendant as advance but not as loan. More over, during the course of cross examination, the plaintiff himself admitted that he has not seen the original documents. The defendant need not prove his defence by letting in direct evidence, he can always rebut the presumption by preponderance of probabilities. Therefore, this court finds that the plaintiff has not proved the genuineness of the sale agreement Ex.P2 and hence, it is not an agreement and at the best it can be construed as receipt for acknowledgment of debts. As already decided in the earlier issues, at the time of signing the document by the defendant, there was no recitals mentioning the terms and conditions in the agreement and it was being blanked. Therefore, the alleged sale agreement dated 24.11.2007 is not valid in law and it was not entered into between the parties with full knowledge of sale. Hence, the plaintiff is not entitled for discretionary relief of specific performance. Accordingly, the issues are answered.

24. In the result, the suit is dismissed. However, considering the facts and circumstances of the case, no costs.

Index : Yes/No

Internet : Yes/No
mst

30.11.2020

List of Witness examined on the side of the plaintiff

L.Veeraraghavan

PW1

List of documents marked on the side of the plaintiff

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	The xerox copy of the sale deed	14.04.2004
2.	P2	The certified copy of the receipt-cum agreement	24.11.2007
3.	P3	The copy of the legal notice	11.12.2007
4.	P4	The xerox copy of the plaint in O.S.No.131/08	02.01.2008
5.	P5	The certified copy of the affidavit in I.A.No.204/08	02.01.2008
6.	P6	The order of interim injunction in I.A.No.204/08	04.01.2008
7.	P7	The xerox copy of the counter in I.A.No.204/2008	22.02.2008
8.	P8	The xerox copy of the reply counter	10.03.2008
9.	P9	Rectification Deed (original)	01.02.2008

List of Witness examined on the side of the defendant

S.Balaji

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DW1

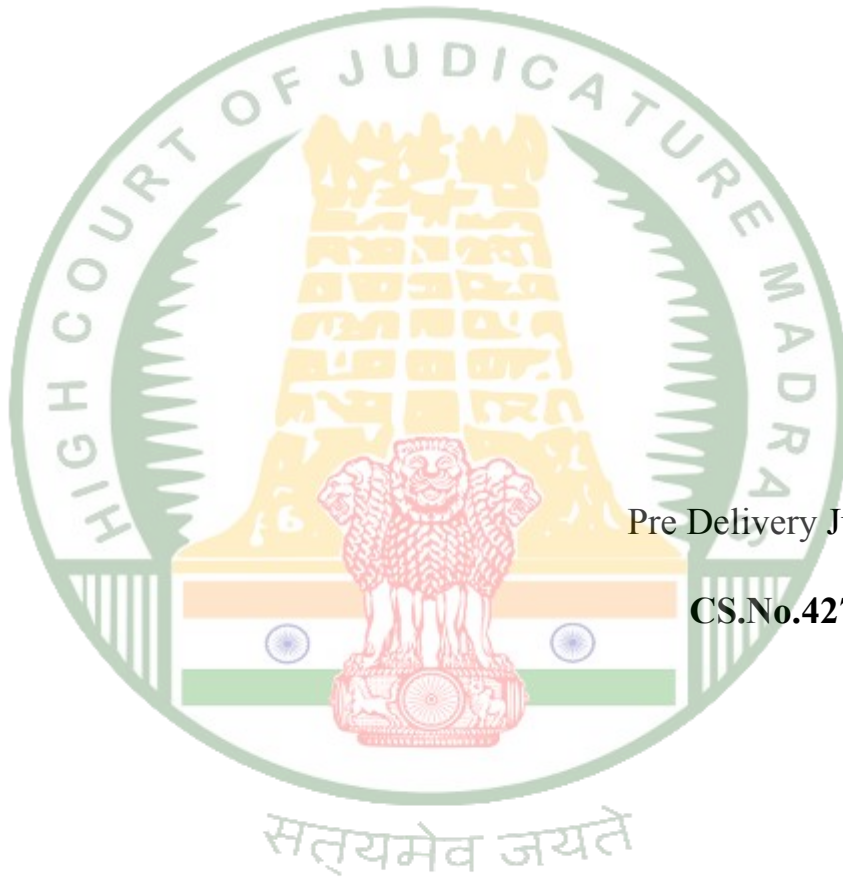
List of document marked on the side of the defendant

NIL

30.11.2020.
(P.V.J.)

P. VELMURUGAN, J.

mst



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CS.No.427 of 2008

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