IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.11.2019

PRONOUNCED ON : 03.01.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.402 of 2014

1.D.Lakshmi
2.D.Krishnakumar
3.D.Premkumar ... Appellants

Vs.

R.Naresh Kumar ... Respondent

Prayer:- First Appeal has been filed under Order XLI Rule 1 r/w Section 96 of CPC and Order IV Rule 14 of the High Court Appellate Side Rules against the judgment and decree dated 08.07.2013 passed in O.S.No.2493 of 2011 on the file of the XVIII Additional City Civil Court, Chennai.

For Appellants : Mr.T.N.Sugesh
for Ms.T.R.Thara

For Respondent : Mr.K.Rajasekaran

JUDGMENT

Aggrieved over the judgment and decree dated 08.07.2013 passed in O.S.No.2493 of 2011 on the file of the XVIII Additional City Civil Court, Chennai, the defendants have 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, Permanent Injunction and Declaration.

4.The case of the plaintiff in brief is that the first defendant obtained title to the suit property by way of the sale deed dated 14.06.1976 and the release deed dated 27.06.2001 and agreed to sell the suit property to the plaintiff for Rs.7,50,000/- and the parties entered into a sale agreement with reference to the same on 12.09.2002 and out of the sale price fixed, the first defendant on the date of the sale agreement received a sum of Rs.5,00,000/- from the plaintiff and the parties had agreed that the balance sale consideration should be paid within six months and the sale deed should be executed by the first defendant to the plaintiff and the plaintiff is in affluent circumstances and engaged in business and having sufficient funds to pay the balance sale consideration and accordingly, he had requested the first defendant to receive the balance sale consideration and execute the sale deed in his favour. However, the first defendant had not come forward to receive the balance sale consideration and execute the sale deed and been avoiding the same with an ulterior motive. The first defendant had lodged a complaint falsely against the plaintiff before the Central Crime Branch, Egmore as if the plaintiff gave a loan of Rs.5,00,000/- with an exorbitant interest and harassed the first defendant for getting the money back. The police registered a case against the plaintiff and the plaintiff obtained anticipatory bail. In the event of the abovesaid situation, the plaintiff issued a legal notice dated 02.05.2005 calling upon the first defendant to fix a date for registering the sale deed, after receiving the balance sale consideration. To the same, the first defendant sent a reply on 22.05.2005 containing false allegations and also disputed the execution of the sale agreement itself and put forth the case that the transaction between the plaintiff and the first defendant is only a loan transaction and the efforts made by the plaintiff through the mediators to complete the sale ended in vain. While so the plaintiff learnt that the first defendant had executed a settlement deed with reference to the suit property in favour of the defendants 2 & 3 on 18.02.2005, however the same has not been stated in the reply notice with a view to cheat the plaintiff. The abovesaid settlement deed had been effected in favour of the defendants 2 & 3, who are the sons of the first defendant and the abovesaid deed is sham and nominal document and not binding upon the plaintiff and hence, according to the plaintiff, he has been necessitated to levy the suit against the defendants for appropriate reliefs.

5.The defendants resisted the plaintiff's suit contending that as the first defendant was in need of money to redeem the property mortgaged by her mother and as the property was also brought up for auction, put forth the case that the first defendant's husband borrowed a sum of Rs.2,00,000/- and the first defendant borrowed a sum of Rs.5,00,000/- from the plaintiff and the first defendant deposited the title deeds of the suit property as a security to the plaintiff and the plaintiff had also tendered only Rs.4,00,000/- by retaining Rs.1,00,000/- towards security and the first defendant's husband had paid Rs.2,00,000/- and the first defendant was only liable to pay Rs.4,00,000/- and on various dates, paid a total sum of Rs.3,16,000/- and Rs.84,000/- remains to be paid and the first defendant was ready and willing to pay the said amount and redeem the property, however, the plaintiff demanded Rs.4,00,000/-. Therefore, the first defendant was necessitated to lodge a criminal complaint against the plaintiff, however, the police had not taken proper action against the plaintiff. At the time of lending of the loan, the plaintiff had obtained the signatures of the first defendant and her husband in blank papers and also in the promissory notes and also obtained blank cheques and blank stamp papers and the first defendant had never executed any sale agreement in favour of the plaintiff agreeing to convey the suit property in his favour as put forth by him. The plaintiff is not entitled to claim the reliefs prayed for and therefore, the suit is liable to be dismissed.

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

" (1).Whether the sale agreement entered by the plaintiff with the 1st defendant on 12/09/2002 is true or valid?

(2).Whether it is true that the plaintiff paid Rs.5,00,000/- out of the sale consideration of Rs.7,50,000/-?

(3).Whether the plaintiff was ready and willing to pay the balance sale consideration as per the sale agreement?

(4).Whether it is true that the money transactions between parties are loan transactions as alleged in the written statement?

(5).Whether the plaintiff is entitled for a decree of Specific Performance?

(6).Whether the plaintiff is entitled for permanent injunction to restrain the defendants from alienating of encumbering the suit property?

(7).Whether the plaintiff is entitled to get declaration that the settlement deed dated 18/2/2005 executed by 1st defendant in favour of 2nd and 3rd defendants is null and void?

(8).To what relief the plaintiff is entitled?"

7.In support of the plaintiff's case, PW1 was examined and Exs.A1 & A7 were marked. On the side of the defendant, DW1 was examined and Exs.B1 and B5 were 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 grant the reliefs in favour of the plaintiff as prayed for. Impugning the same, the first appeal has been preferred by the defendants.

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

"(1).Whether the sale agreement dated 12.09.2002 is true, valid and binding upon the defendants?

(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 12.09.2002 as put forth by him?

(4).Whether the plaintiff is entitled to obtain the relief of permanent injunction against the defendants as prayed for?

(5).Whether the plaintiff is entitled to obtain the relief of declaration qua the settlement deed dated 18.02.2005 as put forth by him?

(6).To what relief the plaintiff is entitled to?

(7).To what relief the defendants/appellants are entitled to?"

10.**Point Nos.1 to 5**

The first defendant is the owner of the suit property. According to the plaintiff, the first defendant agreed to sell the suit property for Rs.7,50,000/- and entered into a sale agreement with reference to the same on 12.09.2002 and received a sum of Rs.5,00,000/- as advance and put forth the case that the parties had agreed to complete the sale transaction within six months and it is stated by the plaintiff that he is an affluent person and having sufficient funds and has always been ready and willing to pay the balance sale consideration and obtain the sale deed from the first defendant. The first defendant had been avoiding the same on some pretext or the other and subsequently, lodged a false police complaint against him, as if he had been demanding exorbitant interest in the alleged loan transaction between the plaintiff and the first defendant and therefore, it is put forth that the plaintiff had been necessitated to issue the legal notice on 02.05.2005 and as the first defendant did not comply with the demand made under the said notice, instead sent a reply containing false allegations on 22.05.2005, according to the plaintiff, the suit has come to be laid by him for appropriate reliefs. It is also put forth by the plaintiff that in the meanwhile, the first defendant, with a view to defeat the plaintiff, had settled the suit property in favour of her children viz., the defendants 2 & 3 by way of the settlement deed dated

18.02.2005 and therefore, it is stated that the abovesaid settlement deed is not valid and binding upon the plaintiff and accordingly, the plaintiff has also sought for the relief of declaration with reference to the abovesaid settlement deed.

11.The defence taken by the first defendant is that she and her husband had borrowed money from the plaintiff with a view to discharge the mortgage in respect of the suit property created by her mother and at that point of time, it is put forth that the plaintiff had taken the signatures of the first defendant and her husband in blank papers and stamp papers and also obtained promissory notes and blank cheques and the first defendant never intended to convey the suit property in favour of the plaintiff and enter into any sale agreement as alleged by the plaintiff and therefore, according to the first defendant, the said sale agreement is not true, valid and created by the plaintiff with reference to the loan transaction entered into between the parties as above stated and also contended that he has repaid substantial amount towards the loan and even thereafter, the plaintiff had been insisting for the payment of huge sum and therefore, according to the first defendant, she had lodged a police complaint and thereafter, the plaintiff had come forward with a false suit and therefore, prayed for the dismissal of the plaintiff's suit.

12.In the light of the rival contentions put forth by the respective parties, the plaintiff having come forward with the suit seeking the relief of specific performance, the onus is upon the plaintiff to establish that the sale agreement dated 12.09.2002 marked as Ex.A1 had been entered into between him and the first defendant as put forth in the plaint. However, the plaintiff has not examined any one associated with the sale agreement, particularly, the witness to the same and other than the ***ipsi dixit*** testimony of the plaintiff, there is no other material worth acceptance to hold that the first defendant had agreed to convey the suit property to the plaintiff and for that purpose, entered into the sale agreement with him.

13.It is the specific case of the first defendant that only with a view to discharge the loan in respect of the suit property, she and her husband had borrowed the money from the plaintiff on 12.09.2002 and at that point of time, the plaintiff had obtained their signatures in blank papers and stamp papers and also obtained promissory notes and cheques. From the materials placed on record, it is found that a General Power of Attorney had been executed by the first defendant in favour of the plaintiff on 12.09.2002 and the plaintiff has not offered any explanation as to how come the abovesaid General Power Attorney had been executed in his favour, particularly, on the date, when the sale agreement is said to have been executed between the parties concerned. When according to the plaintiff, the first defendant had agreed to convey the suit property in his favour and entered into a written sale agreement dated 12.09.2002 and when further according to the plaintiff, he had already paid a substantial sum of Rs.5,00,000/- on the date of the sale agreement and only a sum of Rs.2,50,000/- remain to be paid, in such view of the matter, it does not stand to reason as to why a General Power of Attorney deed had also been obtained by the plaintiff from the first defendant on the same date with reference to the suit property. That apart, when it is found that according to the first defendant, she had only borrowed loan from the plaintiff along with her husband to discharge mortgage loan in respect of the suit property and accordingly, her husband had also borrowed Rs.2,00,000/- from the plaintiff on 12.09.2002 and executed a mortgage in respect of another property and the same could be evidenced from the mortgage deed dated 12.09.2002 marked as Ex.B2, as rightly put forth by the first defendant's counsel, if really the first defendant had intended to convey the suit property in favour of the plaintiff for Rs.7,50,000/-, the first defendant would have endeavoured to receive the full sale price in respect of the suit property on 12.09.2002 itself and endeavoured to execute the sale deed in favour of the plaintiff, particularly, when it is found that on the same date, the first defendant's husband had also been necessitated to receive Rs.2,00,000/- from the plaintiff by creating the mortgage. Therefore, if really, the intention of the parties is to execute the sale agreement for Rs.7,50,000/- as rightly contended, there would have been no necessity on the part of the first defendant's husband to receive Rs.2,00,000/- from the plaintiff on the same date and execute a separate mortgage deed and on the other hand, the first defendant and her husband would have been satisfied if they had been paid the entire sale consideration of Rs.7,50,000/- by the plaintiff on 12.09.2002 and thereby, the plaintiff would have also endeavoured to obtain the sale deed from the first defendant straightaway instead of taking a sale agreement from the first defendant with reference to the sale of the suit property. The abovesaid inconsistency has not been properly explained by the plaintiff in a convincing manner. Further, it is found that the first defendant's husband had also discharged the mortgage loan and the same could be evidenced from the copy of the receipt marked as Ex.B3.

14.According to the first defendant, she had only borrowed a sum of Rs.5,00,000/- as loan from the plaintiff and that too, it is put forth that the plaintiff, after deducting Rs.1,00,000/-, had paid only Rs.4,00,000/- to her and retained Rs.1,00,000/- towards the security and according to the first defendant, she had also repaid a sum of Rs.3,16,000/- to the plaintiff towards the loan borrowed from him. No doubt, the first defendant had failed to substantiate the abovesaid repayment of Rs.3,16,000/- as put forth by the plaintiff. Be that as it may, when it is seen that the parties had, according to the plaintiff, fixed the sale price at Rs.7,50,000/- and when the plaintiff has put forth the case that he has paid a substantial part of the sale price on the date of the sale agreement and the plaintiff claims himself to be an affluent person and possessed of sufficient funds at all times, it is not known as to why the plaintiff had agreed for a period of six months for completing the sale transaction for the purpose of the payment of balance sale consideration and the obtainment of the sale deed. If really the parties had intended to go for a sale transaction concerning the suit property and if the plaintiff had been anxious to purchase the suit property as claimed by him, as rightly contended, the plaintiff would have endeavoured to give the full sale price on 12.09.2002 itself and endeavoured to obtain the sale deed straight away executed from the first defendant. Therefore, considering the period of six months fixed for the payment of Rs.2,50,000/- in the facts and circumstances of the case, appears to be very odd and the same raises a serious doubt as regards the element of veracity of the sale agreement projected by the plaintiff. As above noted, the plaintiff, despite the challenge thrown to the sale agreement put forth by him on the part of the first defendant, had not endeavoured to sustain his case by examining the attestors to the same or any other person associated with the sale agreement, particularly, that he had paid a sum of Rs.5,00,000/- only towards the sale consideration under the sale agreement as claimed by him. No doubt, the first defendant has admitted her signatures in the sale agreement. However, considering the abovesaid discussions, when according to the first defendant, her signatures had been secured by the plaintiff in blank papers, stamp papers at the time of lending the loan amount, which fact is not to be discarded easily and when as above noted, the plaintiff has not offered any explanation as to why he had obtained the General Power of Attorney deed from the first defendant on the date of the execution of the sale agreement and what was the necessity for the first defendant's husband to independently borrow Rs.2,00,000/- from the plaintiff on the same date, all put together and as above noted, though the plaintiff claims to be an affluent person and possessed of sufficient funds, as to why a period of six months had been fixed for completing the sale transaction, in such a scenario, on the whole, a serious doubt centres around the genuineness and veracity of the sale agreement Ex.A1 projected by the plaintiff.

15.If really the sale agreement had been entered into between the parties with regard to the sale of the suit property as put forth by the plaintiff on 12.09.2002 and when according to the plaintiff, six months period had been fixed for the completion of the sale, though time may not be essence of the contract in respect of the immovable property, be that as it may, when the parties had endeavoured to fix an outer time limit for completing the sale transaction, at least one would have expected the plaintiff to go ahead with the sale transaction either within the time stipulated or within a reasonable time thereafter. On the other hand, it is found that only after the first defendant had lodged the police complaint against the plaintiff complaining of demanding exorbitant amount from her in the case of the loan transaction and the registration of the case against the plaintiff, it is seen that the plaintiff, after coming to know about the same, had chosen to issue legal notice on 02.05.2005 as if he had been always ready and willing to pay the balance sale consideration and complete the sale transaction. Therefore, when it is found that from 12.09.2002 to 10.03.2005 nearly for 2 ½ years there has been total inaction on the part of the plaintiff in moving ahead with the execution of the sale agreement and the abovesaid factor viewed cumulatively with the other circumstances of the case as above pointed out, would only lead to the conclusion that inasmuch as the first defendant had not intended to convey the suit property in favour of the plaintiff and on the other hand, the sale agreement had been created by the plaintiff by making use of the obtainment of the first defendant's signatures in blank papers and stamp papers as put forth by her as security towards the loan transaction, the plaintiff also has not evinced interest to proceed further in the completion of the sale transaction based on the sale agreement dated 12.09.2002 only on that account, it is seen that the plaintiff has not moved his little finger to proceed further to complete the sale transaction and on the other hand, he has chosen to issue the legal notice 2 ½ years after the execution of the sale agreement. The abovesaid legal notice issued by the plaintiff has been suitably responded by the first defendant immediately on 22.05.2005 contending that no sale agreement had been entered into between the parties other than the loan transaction. It is only thereafter the plaintiff has come forward with the suit.

16.Considering the abovesaid factors, even assuming for the sake of arguments that the sale agreement projected by the plaintiff is a true one, when considering the factum of readiness and willingness on the part of the plaintiff in completing the sale transaction, when it is found that there is complete absence of readiness and willingness on the part of the plaintiff right from the inception of the sale agreement for nearly 2 ½ years subsequent thereto, when proper explanation has been offered by the plaintiff as to why he had not endeavoured to take immediate steps to complete the sale transaction by performing his part of the contract, all put together, would only go to show that no valid sale agreement had been entered into between the parties as claimed by the plaintiff and accordingly, he has also not evinced any interest to initiate further action for the accomplishment of the sale transaction pursuant to the sale agreement Ex.A1.

17.Meanwhile, it is also noted that the first defendant had chosen to cancel the General Power of Attorney executed by her in favour of the plaintiff which fact is gathered from Ex.B5 and it is also seen that the first defendant being the owner of the suit property had also chosen to settle the same in favour of her children viz., the defendants 2 & 3 by way of the settlement deed dated 18.02.2005 much ahead of the issuance of the legal notice on the part of the plaintiff on 02.05.2005. Therefore, it is seen that only thereafter the plaintiff had chosen to institute the suit against the defendant for the reliefs claimed. However, as above pointed out, when the plaintiff has failed to establish the truth and validity of the sale agreement Ex.A1 in toto and on the other hand, when the facts and circumstance surrounding the case go to point out that no such sale agreement had been contemplated and also entered into between the parties with reference to the sale of the suit property and only a loan transaction had been entered into between the parties concerned and accordingly, the plaintiff as above noted having not evinced interest to go ahead with the accomplishment of the sale transaction within a reasonable time after the execution of the alleged sale agreement, in all, it is found that the plaintiff's case cannot be accepted in any manner and the trial Court is found to have accepted the plaintiff's case merely on the footing that the first defendant has failed to establish the repayment of the alleged loan amount said to have been borrowed by her from the plaintiff. No doubt the first defendant has failed to establish the abovesaid facet of her defence. Be that as it may, considering the facts and circumstances in toto as above discussed, in all, it is found that the plaintiff is not entitled to obtain the discretionary and equitable relief of specific performance, for the reasons aforestated and therefore, the judgment and decree of the trial Court upholding the plaintiff's case do not merit acceptance.

18.In support of his contentions, the counsel for the defendants placed reliance upon the decisions reported in ***(1997) 3 Supreme Court Cases 1 (K.S.Vidyanadam and others Vs. Vairavan), 2017 (1) MWN (Civil) 698 (Rajammal Vs. A.P.Mani) and 2018 (1) CTC 50 (S.Palanivel and another Vs. P.Natesan and others).*** The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

19.In the light of the abovesaid discussions, I hold that the sale agreement dated 12.09.2002 is not true, valid and binding on the defendants. I hold that the plaintiff has not been ready and willing to perform his part of the contract, assuming the sale agreement to be true, I further hold that the plaintiff is not entitled to obtain the relief of specific performance in respect of the sale agreement dated 12.09.2002 as claimed by him. I hold that the plaintiff is not entitled to the relief of permanent injunction as prayed for. I further hold that the plaintiff is not entitled to obtain the relief of declaration with reference to the settlement deed dated 18.02.2005 as claimed. Accordingly, the point Nos.1 to 5 are answered.

20.**Point Nos.6 & 7**

For the reasons aforestated, the judgment and decree dated 08.07.2013 passed in O.S.No.2493 of 2011 on the file of the XVIII Additional City Civil Court, Chennai, are set aside and consequently, the suit laid by the plaintiff in O.S.No.2493 of 2011 is dismissed with costs. Accordingly, the first appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
sms

03.01.2020

To
The XVIII Additional City Civil Court, Chennai.

Copy to

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

A.S.No.402 of 2014

T.RAVINDRAN, J.

sms

Pre-delivery Judgment made in A.S.No.402 of 2014

03.01.2020