



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2021

PRONOUNCED ON : 25.03.2021

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THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1704 of 2008

Vimala
Chinnasamy

Vs.

...Appellant/Plaintiff
...Respondent/Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 20.08.2008 passed in A.S.No.24 of 2007 on the file of the Principal District Court, Villupuram, reversing the Judgment and Decree dated 04.12.2006 passed in O.S.No.117 of 2003 on the file of the Subordinate Court, Kallakurichi.

For Appellant : Mr.S.Sounthar
For Respondent : Mr.P.Jagadeesan

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 20.08.2008 passed in A.S.No.24 of 2007 on the file of the Principal District Court, Villupuram, reversing the Judgment and Decree dated 04.12.2006 passed in O.S.No.117 of 2003 on the file of the Subordinate Court, Kallakurichi.

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

3.The plaintiff in O.S.No.117 of 2003 is the appellant in the second appeal.

4.Suit for specific performance and possession.

5.The case of the plaintiff, in brief, is that the suit properties belong to the defendant and the plaintiff and the defendant entered into an agreement of sale dated 24.04.2002 by way of which, the defendant agreed to sell the suit properties to the plaintiff for a sum of Rs.2,02,000/- and received an advance of Rs.1,80,000/- on the date of the agreement of sale and it was agreed between the parties that the balance amount of Rs.22,000/- should be paid by the plaintiff to the defendant within one year from the date of the sale agreement i.e. on or



before 24.04.2003 and that the defendant should execute and register the sale deed in favour of the plaintiff. The plaintiff had been always ready and willing to perform her part of the contract in paying the balance sale consideration and obtaining the sale deed executed and registered from the defendant. However, the defendant had been evading to perform his part of the contract despite the several requests of the plaintiff and hence, the plaintiff issued a legal notice on 20.03.2003 calling upon the defendant to perform his part of the contract and the defendant sent a reply on 26.03.2003 containing false and frivolous allegations. The defendant is now attempting to alienate the suit properties to the third parties with a view to deprive the lawful right for the plaintiff under the sale agreement. Hence, according to the plaintiff, she has been necessitated to lay the suit against the defendant for appropriate reliefs.

6. The defendant resisted the plaintiff's suit contending that the suit properties belong to the defendant and however, disputed the case of the plaintiff that he had agreed to alienate the suit properties to the plaintiff for a sum of Rs.2,02,000/- and in that connection, the parties had entered into an agreement of sale on 24.04.2002 and that the plaintiff had paid a sum of Rs.1,80,000/- to the defendant as advance on the date of the sale agreement and that the parties had agreed to fix the time limit of one year for enabling the plaintiff to pay the balance sale consideration of Rs.22,000/- and on the other hand, according to the defendant, no such agreement of sale had been entered into between him and the plaintiff and he had not received any sum much less of Rs.1,80,000/- on the date of the alleged sale agreement and put forth the case that the sale agreement projected by the plaintiff is a fabricated document and it was created with the assistance of the plaintiff's husband to obtain unjust enrichment and therefore, there is no question of the defendant requiring to perform any performance under the forged sale agreement and it is false to state that the plaintiff had been requesting the defendant to perform his part of the contract on several occasions and to the legal notice sent by the plaintiff, the defendant sent a reply containing true facts. According to the defendant, his son Arivazhagan, his brother's son Anbarasan are engaged in a business by name "Harico Lab" and in connection with the running of the abovesaid business, they had obtained loan from the plaintiff's husband Manivel and at the time of lending of the loan, the plaintiff's husband had secured one signed blank promissory note from Arivazhagan and four signed blank promissory notes from Anbarasan and also obtained the signature of the defendant in stamp and blank papers and Manivel is working as a teacher and based on the abovesaid signed papers entrusted at the time of lending of the amount, Manivel had



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created the sale agreement in the name of his wife Vimala, the plaintiff and therefore, the sale agreement had been created only for the loan lent by Manivel as above stated and the disputes arose between Manivel and the defendant's son and the defendant brother's son qua the money transaction and the plaintiff's husband demanded more amount than what had been lent by him and when the same had been refused, the sale agreement had been prepared by Manivel in the name of his wife falsely and therefore, the suit laid by the plaintiff is not legally sustainable and the defendant's son and the defendant brother's son are ready to settle the loan transaction by paying the amount actually borrowed by them and the plaintiff is living far away from the suit village and the suit properties are worth more than Rs.10,00,000/- during 2002 itself and therefore, to say that the defendant had agreed to sell the suit properties for Rs.2, 02,000/- is totally unbelievable and the plaintiff is also not aware as to where the suit properties are located and therefore, contended that there is no valid cause of action for the suit and the suit is liable to be dismissed.

7.In support of the plaintiff's case, PWs1 & 2 were examined and Exs.A1 to A7 were marked. On the side of the defendant, DW1 was examined and Ex.B1 was marked.

8.On an appreciation of the materials placed on record, both oral and documentary and the submissions put forth, the trial Court was pleased to decree the suit in favour of the plaintiff as prayed for. Impugning the same, the first appeal has been preferred by the defendant and the first appellate Court, on a consideration of the oral and documentary evidence adduced in the matter and the submissions put forth by the respective parties, was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendant, resultantly, dismissed the plaintiff's suit. Challenging the same, the present second appeal has been laid by the plaintiff.

9.At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

"a.Whether the findings of the Lower Appellate Court that suit sale agreement is not genuine is sustainable in law when the respondent himself admitted in his pleadings that signature found in sale agreement is that of him?

b.Whether the Lower Appellate Court committed error in accepting the case of the respondent that he signed suit sale



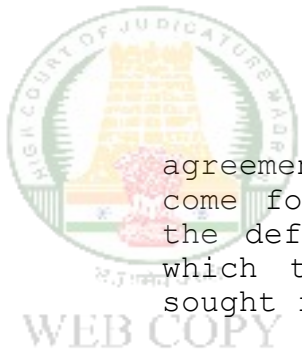
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agreement in blank stamp papers when there is no acceptable evidence to substantiate the said plea? Whether the fining of the lower appellate Court is based on no evidence?"

10.The suit has been laid by the plaintiff seeking for the relief of specific performance and possession.

11.It is not in dispute that the suit properties belong to the defendant. Now, according to the plaintiff, the defendant had agreed to sell the suit properties to her for a sum of Rs.2,02,000/- and following the same, the parties had entered into an agreement of sale on 24.04.2002 marked as Ex.A1 and further put forth the case that on the date of the sale agreement, the plaintiff paid Rs.1,80,000/- to the defendant as advance and according to the plaintiff, the parties had agreed to complete the transaction within one year i.e. the plaintiff should pay the balance amount of Rs.22,000/- within the time agreed and the defendant should execute and register the sale deed in favour of the plaintiff qua the suit properties. According to the plaintiff, she has been always ready and willing to perform her part of the contract and only the defendant had been avoiding the same on some pretext or the other and the legal notice, therefore, had come to be issued by the plaintiff marked as Ex.A2 and the defendant has sent a false reply, which has come to be marked as Ex.A4. Therefore, the suit has come to be laid by the plaintiff.

12.The defendant in toto has disputed the execution of the sale agreement in favour of the plaintiff as averred in the plaint. According to the defendant, the sale agreement had been created by the plaintiff with the connivance of her husband Manivel and that he had not received any sum much less Rs.1,80,000/- from the plaintiff on the date of the sale agreement and therefore, according to the defendant, there is no question of directing him to perform his part of the alleged contract said to have been entered into between the plaintiff and him. According to the defendant, his son Arivazhagan and his brother's son Anbarasan were engaged in the business by name "Harico Lab" and in connection with the same, they had obtained the loan from the plaintiff's husband Manivel and at that point of time, signed blank promissory notes had been obtained by Manivel from Arivazhagan and Anbarasan and also he had obtained the signatures of the defendant in the stamp and blank papers and therefore, according to the defendant, with a view to make unjust enrichment, Manivel had created the sale agreement by utilising the signed blank stamp/blank papers and further put forth the case that as the disputes arose between Manivel and the defendant's son and Anbarasan qua the money transaction, the sale



agreement had been created by Manivel in the name of his wife and come forward with the false suit and therefore, contended that the defendant's son and Anbarasan are ready to pay the amount, which they had actually received from Manivel and therefore, sought for the dismissal of the plaintiff's suit.

13.The suit has been laid by the plaintiff for specific performance and possession. It is found that on the date of the alleged sale agreement Ex.A1, the suit properties had not been entrusted to the possession of the plaintiff. Now, according to the plaintiff, the defendant had agreed to convey the suit properties to her for Rs.2,02,000/- and that she had paid Rs.1,80,000/- as advance on the date of the sale agreement. If the abovesaid case of the plaintiff has any element of truth, naturally, as rightly contended by the defendant's counsel, the plaintiff having advanced a major portion of the sale price to the defendant on the date of the sale agreement itself, she would have endeavoured to secure the possession of the suit properties on the date of the sale agreement itself from the defendant. However, it is very strange to note that the plaintiff had not endeavored to obtain the possession of the suit properties on the date of the sale agreement.

14.If really, the defendant had agreed to sell the suit properties to the plaintiff for Rs.2,02,000/- and the plaintiff had agreed to purchase the same on the terms as said to have been agreed to between the parties, if really, the sale agreement had been entered into between the parties only for the conveyance of the suit properties in favour of the plaintiff, the plaintiff being the agreement holder, would have seen to it that the sale transaction based on Ex.A1 agreement is completed at the earliest point of time, particularly, when it is noted that the plaintiff has paid the major part of the sale transaction i.e. 1,80,000/- on the date of the sale agreement as claimed by the plaintiff. The balance amount being only Rs.22,000/-, if really, the sale agreement is actually effected between the parties concerned, the plaintiff would not have agreed for a period of one year for paying the balance sale price of Rs.22,000/- in completing the sale transaction. It is thus noted that the case of the plaintiff that the parties had agreed to complete the sale transaction within one year from the date of the agreement is found to be very odd and strange, particularly, when the plaintiff is required to pay only Rs.22,000/- therefore, the period of one year said to have been agreed between the parties for completing the sale transaction that too for paying the paltry sum of Rs.22,000/- would only disclose that as no sale agreement had been actually entered between the parties concerned and on the other hand, the sale agreement had come to be created by the plaintiff for an ulterior reason, the time limit of one year had been incorporated in the same.



15.The plaintiff is the agreement holder and if her case is assumed to be true and as per the sale agreement, she is required to pay only Rs.22,000/- and if according to the plaintiff, she had actually entered into the sale agreement only for the purchase of the suit properties from the defendant, nothing prevented the plaintiff from tendering the balance sum of Rs.22,000/- immediately and obtaining the execution of the sale deed from the defendant qua the suit properties. Though the plaintiff would plead that she had been always ready and willing to perform her part of the contract right from the inception of the sale agreement, however no acceptable and reliable materials pointing to the same has been produced by the plaintiff. On the other hand, for the first time, the readiness and willingness of the plaintiff is found to be exhibited only in the legal notice sent by her on 20.03.2003. Therefore, it is found that though the plaintiff is required to pay only a sum of Rs.22,000/- for completing the sale transaction, she has taken not less than one year to exhibit her abovesaid readiness and willingness to the defendant by way of the legal notice and subsequently, after the receipt of the reply notice from the defendant repudiating the authenticity of the sale agreement marked as Ex.A4 has come forward with the suit. Therefore, the abovesaid aspect of the matter would only go to expose that the plaintiff has not been ready and willing to perform her part of the contract and the same could only be due to the factor that inasmuch as no sale agreement, as such, had come to be executed between the parties concerned, the plaintiff had been remaining silent for more than one year in performing her part of the contract.

16.The plaintiff has examined one of the attestors of the sale agreement as PW2. Though PW2 would depose that the sale agreement had been executed by the defendant and that the defendant had received the amount from the plaintiff, however, during the course of cross examination, PW2 would admit that he does not know who had written the sale agreement and where it had been written and admitted that Ex.A1 had not been registered and therefore, from the evidence of PW2, it is evident that he is not personally acquainted or having knowledge as to when and by whom the sale agreement had been prepared and therefore, such being the evidence of PW2, as rightly concluded by the first appellate Court, PW2 would have attested the document as per the direction of the plaintiff and her husband and accordingly, no safe reliance could be placed on the evidence of PW2 to come to the conclusion that the sale agreement had come into effect between the parties concerned only after knowing the contents of the same.

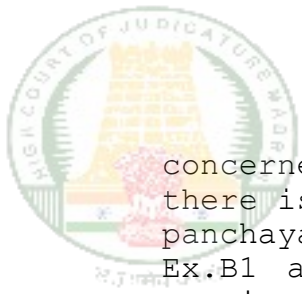
17.In so far as this matter is concerned, the first appellate Court has mainly relied upon the Panchayat Muchalika



entered into between the parties concerned marked as Ex.B1. It is found that Ex.B1 Panchayat Muchalika had come to be marked only during the cross examination of the plaintiff examined as PW1. As rightly determined by the first appellate Court, PW1 during the course of cross examination has admitted that her husband Manivel, Anbarasan and Arivazhagan, were running a firm by name "Harco Lab" and Anbarasan had obtained money from her husband and in connection with the same, issued a cheque and further also admitted that in connection with the money transaction between her husband, Anbarasan and Arivazhagan, the panchayat has convened and in the said panchayat, a muchalika had been written and the copy of the muchalika is marked as Ex.B1 and an enquiry has also been conducted between the parties concerned at the DSP office, Kallakurichi following the petition given by her husband. Therefore, it is found that even as per the admission of PW1, there had been money transaction between the defendant's son Arivazhagan, his brother's son Anbarasan and the plaintiff's husband Manivel. As above pointed out, all the abovesaid three persons are found to be running a firm by name "Harico Lab" as admitted by the plaintiff.

18.At this juncture, we have to consider the defence version of the defendant. Now, according to the defendant, his son Arivezhagan and his brother's son Anbarasan were engaged the business by name "Harico Lab" and in connection with the same, obtained loan from the plaintiff's husband Manivel and at the time of the lending of the loan amount, Manivel had obtained signed blank promissory notes from them and also obtained the signature of the defendant in blank and stamp papers and as subsequently, disputes arose between the abovesaid parties qua the money transaction, it is his case that the plaintiff's husband Manivel had created the sale agreement by utilising his signature in the blank/stamp papers obtained at the time of lending of the loan amount and therefore, according to the defendant, Ex.A1 sale agreement had been created by the plaintiff in connivance with her husband and by way of the same, the defendant had not agreed to convey the suit properties to the plaintiff and also not received any sum from the plaintiff as averred in the plaint.

19.Keeping the abovesaid defence version in the background, now when we consider the abovesaid evidence of PW1 and when she has clearly admitted that in connection with the money transaction between her husband, Arivazhagan and Anbarasan, a panchayat was convened and in the said panchayat, the Muchalika had been entered into between the parties concerned and therefore, on her own admission, it is found that the copy of the Muchalika has come to be marked as Ex.B1. In the light of the abovesaid position, when PW1, the plaintiff has clearly admitted the execution of Panchayat Muchalika Ex.B1 between the parties



concerned, as rightly determined by the first appellate Court, there is no necessity on the part of the defendant to examine the panchayatar or the attestors of the abovesaid Muchalika marked as Ex.B1 and the abovesaid Muchalika only buttresses the defence version. On a perusal of the contents of Ex.B1, it is found that the same had been signed by the parties concerned viz., Arivazhagan, Anbarasan, Manivel as well as the panchayatars and when the execution of Ex.B1 Muchalika having been admitted by the plaintiff, accordingly, on a reading of the contents of Ex.B1, it is found that with regard to the money transaction, the abovesaid muchalika had been entered into between the abvoesaid parties and thereby, it is found that the defendant's son Arivazhagan had been directed to pay a sum of Rs.1,00,000/- to the plaintiff and in turn the plaintiff should handover the sale agreement in the name of the defendant as well as the signed blank stamp papers and cheques to Arivazhagan S/o. the defendant's son and also Anbarasan, had been directed to pay certain sum to the plaintiff which are not required to be adverted to in detail as far as the present case is concerned. Therefore, when as per Ex.B1 Muchalika, the plaintiff had agreed to hand over the sale agreement in the name of the defendant qua the properties as well as the signed blank papers etc., and when it is noted that Ex.B1 had come into existence after the exchange of notices between the parties concerned, accordingly, when the contents of Ex.B1 fortifies the defence version that the plaintiff's husband Manivel had obtained the defendant's signatures in blank and stamp papers as well as obtained signed blank cheques from Arivazhagan and Anbarasan and accordingly, Ex.B1 would only project the case that the sale agreement had not been agreed to be executed by Chinnasamy with the intention of the conveying the suit properties to the plaintiff and on the other hand, it is found that the sale agreement had come to be subsequently created by the plaintiff based on the stamp/blank signed papers obtained from the defendant at the time of lending of the loan to Arivazhagan and Anbarasan by her husband, accordingly, it is found that subsequent to the exchange of notices by way of Ex.B1 Muchalika, the plaintiff had agreed to return back the sale agreement in the name of the defendant and the abovesaid factor would only expose that inasmuch as no sale agreement had been actually entered into between the parties concerned, the plaintiff had also agreed to return back the same to the defendant's son as per Ex.B1 Muchalika and accordingly, the first appellate Court is found to be wholly justified in coming into the conclusion that Ex.B1 Muchalika belies the case of the plaintiff qua the alleged sale agreement Ex.A1 and accordingly, right in determining that the sale agreement had been not entered into by the defendant qua the suit properties as claimed by the plaintiff and on the other hand, the sale agreement had come to be created by the plaintiff only by utilising the signed blank stamp/blank papers obtained from the defendant qua the money



transaction as above pointed out and in such view of the matter, the first appellate Court is correct in negating the relief of specific performance sought for by the plaintiff based on the alleged sale agreement Ex.A1.

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20. In the light of the abovesaid discussions, merely because the defendant has admitted the signature in the sale agreement, however considering the facts as above discussed, when the defendant had not actually entered into any agreement with the plaintiff qua the suit properties and on the other hand, the sale agreement had come to be created by the plaintiff in connivance with her husband only based on the signed stamp/ blank papers obtained from the defendant at the time of the loan transaction and accordingly, by way of Ex.B1 Muchalika, the plaintiff had also agreed to hand over the created sale agreement in the name of the defendant as recited therein, in such view of the matter, the determination of this first appellate Court that the sale agreement is not a genuine one, needs no interference. Similarly, even though the defendant has not pleaded about the panchayat in the written statement, however, the panchayat having been clearly admitted by the plaintiff during the course of her evidence and it is only through the plaintiff, the copy of the panchayat muchalika has come to be exhibited, accordingly, inasmuch as the panchayat muchalika had been entered into between the parties, in such view of the matter, the contentions put forth by the plaintiff's counsel that the first appellate Court had accepted the defence version without their being any pleas and evidence qua the said defence version, as such, cannot be accepted. Particularly, when the plaintiff is found to have accepted to return back the sale agreement created in the name of the defendant by way of Ex.B1 Muchalika and if really, the sale agreement had been executed only for the sale of the suit properties as averred in the plaint, it does not stand to reason as to why the plaintiff had agreed to return the sale agreement under Ex.B1 Muchalika. Furthermore, the plaintiff had not only agreed to return the sale agreement in the name of the defendant but also agreed to return the blank signed stamp papers and signed blank cheques and the abovesaid factors viewed cumulatively would only go to show that as signed blank/stamp papers, blank cheques have been secured by the plaintiff's husband at the time of money transaction, after the parties had agreed to settle the issue under Ex.B1 Muchalika, the plaintiff also without any demur had agreed to return back the same and in toto, so viewed, it is found that the first appellate Court is wholly justified in accepting the defence version and the abovesaid determination of the first appellate Court is found to be only based on the admitted evidence adduced by the plaintiff as above discussed. Furthermore, as above discussed, considering the terms of the alleged sale agreement, particularly, the parties having agreed to fix a time limit of one year for paying



the paltry sum of Rs.22,000/- and also considering the fact that the plaintiff has failed to expose her readiness and willingness in completing her part of the sale transaction at the earliest point of time, all would only go to disclose that as the sale agreement had not been really executed between the parties concerned, accordingly, the plaintiff had also not endeavoured to obtain the sale deed from the defendant qua the suit properties at the earliest point of time and accordingly, it is also noted that the plaintiff had not endeavoured to secure the possession of the suit properties at the time of the sale agreement and the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendant.

21.In conclusion, the Judgement and Decree dated 20.08.2008 passed in A.S.No.24 of 2007 on the file of the Principal District Court, Villupuram, reversing the Judgment and Decree dated 04.12.2006 passed in O.S.No.117 of 2003 on the file of the Subordinate Court, Kallakurichi, are confirmed and resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sms

To:

- 1.The Principal District Judge, Villupuram.
- 2.The Subordinate Judge, Kallakurichi.

COPY TO :

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

- +1 CC to Mr.S.Sounthar, Advocate, Sr.No. 19959.
- +1 CC to Mr.P.Jagadeesan, Advocate, Sr.No. 19289.

S.A.No.1704 of 2008

SSI (CO)
PR(29/09/2021)