



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.09.2021

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THE HON'BLE Ms. JUSTICE R.N.MANJULA

S.A.No.1258 of 2009

and

M.P.Nos.1 of 2009, 1 & 1 of 2010

Sellathal

... Appellant/Plaintiff

Vs.

1.Lakshmi Asari

2.Lakshmi

... Respondents/Defendants

Prayer: This Second Appeal is filed under Section 100 of Code of Civil Procedure against the judgement and decree of the learned First Additional District Judge, Coimbatore in A.S.No.80 of 2007 dated 06.08.2009 in reversing the judgement and decree of the learned Sub Judge, Tirupur in O.S.No.214 of 1997 dated 19.04.2007.

For Appellant : Mr.Arihant
for Mrs.A.Madhumathi

For Respondents: Mr.B.R.Shankaralingam

JUDGEMENT

(Heard through video conferencing)

This Second Appeal has been preferred against the judgement and decree dated 06.08.2009 passed by the learned First Additional District Judge, Coimbatore in A.S.No.80 of 2007 in reversing the judgement and decree dated 19.04.2007 passed by the learned Sub Judge, Tirupur in O.S.No.214 of 1997.

2. The appellant was the plaintiff. The suit has been filed for specific performance and recovery of possession.

3. The short averments:-

The suit property belonged to the defendants by virtue of a sale deed dated 13.11.1986. They agreed to sell the same in favour of the plaintiff for a sale consideration of Rs.1,50,000/- and entered into a sale agreement on 17.05.1994. A part sale consideration of Rs.1,25,000/- was paid by the plaintiff on the day of execution of the sale agreement itself. It was agreed between the parties that the remaining sale consideration of Rs.25,000/- shall be paid within a period of 3 years and the plaintiff should pay the same and



get the sale deed executed. Despite the plaintiff was ready and willing to perform her side of contract by way of sending the money, the defendants refused to receive and execute the sale deed. Hence, after issuing pre-suit notice, the plaintiff has filed the suit for the relief of specific performance and recovery of possession.

4. The first defendant has filed the written statement and the same was adopted by the second defendant in which it was stated that the plaintiff and her husband are money lenders. Since the first defendant was in an urgent need of Rs.75,000/-, he approached the plaintiff for giving him a loan. The plaintiff agreed to give a loan of Rs.75,000/- provided, the defendant agrees to execute a sale agreement in respect of the suit property as stated in the plaint. The sale agreement has been executed only as a security for the loan amount given to him and it was not with an intention of acting upon it. The value of the suit property is very much higher than the value of the suit agreement and hence, the plaintiff is not entitled to the relief as prayed for.

5. On the basis of the pleadings made by the respective parties, the learned trial Judge has framed the following issues:-

1. Whether the plaintiff is entitled for specific performance?
2. Whether the agreement was not executed for money transaction?
3. To what relief?

6. During the course of the trial, on the side of the plaintiff, two witnesses were examined as P.W.1 & P.W.2 and Exs.A1 to A7 were marked. On the side of the defendants, two witnesses were examined as D.W.1 & D.W.2 and no documents were marked.

7. After hearing both sides, the learned trial Judge decreed the suit as prayed for. Aggrieved over that, the defendants preferred an appeal before the District Court, Coimbatore in A.S.No.80 of 2007. The said appeal was assigned to the file of the First Additional District Judge, Coimbatore and after hearing the appeal, the learned First Appellate Judge allowed the appeal by setting aside the judgement and decree of the lower Court, however, granted the relief of refund of a sum of Rs.1,25,000/- to the plaintiff with interest of 6% p.a. Challenging the same, the plaintiff has filed this Second Appeal and the Second Appeal has been admitted on the following substantial questions of law:-

1. Whether the first lower Appellate Court is right in disbelieving the document Ex.A-1 relied by the Appellant which is registered and the same is contrary to Section 92 of the Evidence Act?



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2. Whether the first Appellate Court is right in coming to the conclusion that Ex.A1 being the Agreement for sale is executed is only for the purpose of security for the alleged loan amount obtained by the respondents?

3. Whether the first Appellate is right in coming to a conclusion that the transaction was only a money transaction basing on the preponderance of probabilities without any oral or documentary evidences?

8. The execution of Ex.A1 - sale agreement is not in dispute but the contention of the respondents/defendants is that the said sale agreement was not executed with an intention of selling away the suit property for a sale consideration of Rs.1,50,000/- as found in the sale agreement but it was executed only as a security for an alleged loan of Rs.75,000/- availed by them from the plaintiff. Though the learned trial Judge was convinced with the submission of the plaintiff that the sale agreement was intended to be executed only in accordance to its terms, the learned First Appellate Court has reversed the judgement. The First Appellate Court has found that the sale agreement is not reliable due to some unnatural and suspicious circumstances surrounding it. On the date when Ex.A1 - sale agreement was executed, a major sale consideration of Rs.1,25,000/- has been paid. Under such circumstances, it is unreasonable for the purchaser to wait for three years to pay the paltry sum of Rs.25,000/- and get the sale deed executed.

9. While submitting the argument, the learned counsel for the appellant has stated that the long period for the sale agreement is obviously to allow the defendants to find an alternate accommodation as they were in occupation of the property subjected to the sale agreement. Such kind of pleadings was not found in the plaint filed by the plaintiff. No purchaser who pays a major sale consideration will wait for three long years for getting the sale deed executed by allowing the vendor to be in possession of the property. It was not the contention of the appellant that he was in receipt of any consideration in view of such a long time given to the defendants.

10. It is submitted by the learned counsel for the appellant that according to Section 92 of the Indian Evidence Act, 1872, when the terms of any contract has been reduced to a form of document and its execution is proved, its contents should also be taken as proved. It is further submitted that in the absence of any contrary proof given by the defendants to disprove the real nature of the sale agreement, the First Appellate Court is not right in presuming that the sale agreement was executed with an intention of giving a security for the loan amount availed by the defendants.



11. It is trite law that the plaintiff who has filed the suit should prove her contentions. It is correct that the execution of the sale agreement between the parties was not in dispute. The recitals of Ex.A1 is also not disputed. But what is in dispute is the intention of parties. So even without the aid of Section 92 of the Indian Evidence Act, the pleadings of the parties themselves would show that there is no disagreement about the execution of Ex.A1 and its recitals. But the allegation of the defendants is that they were in coercive circumstances to execute the sale agreement as they were forced to give it as a security for the loan amount availed by them.

12. It is correct that when the plaintiff discharges his burden of proving his case, the onus to rebut would shift upon the defendants. But such rebuttal proof or contrary proof need not necessary be the evidence adduced by and from the defendants. It can also be inferred from the conduct of the plaintiff and the contradictions in the evidence of the plaintiff. Since the intention of the parties has to be appreciated, the learned First Appellate Judge has analysed the conduct of the parties while executing the sale agreement. As discussed already, 3 years time taken for paying the remaining sum of Rs.25,000/- for a property which has been agreed to be sold at a sum of Rs.1,50,000/-, is something unbelievable and unreasonable. Hence, the learned First Appellate Judge has recorded that the conduct of the plaintiff would show that the nature of the sale agreement is just a document of security. It is common knowledge that during money transactions, the lenders are in the habit of getting such sale agreements by way of security and the creditors would be paying the interest for the loan amount given to them. Only to ensure the repayment of the loan amount without any default such coercive practices are in vogue. And this kind of arrangement is made between the parties just to avoid stamp duty, which is inevitable while executing pucca mortgage deeds.

13. The conduct of parties and the circumstances revolving the sale agreement have been rightly appreciated by the learned First Appellate Judge before arriving at a conclusion that Ex.A12 is just a document of security. Since the relief of specific performance is an equitable relief, the plaintiff cannot be entitled to a decree of specific performance just because the execution of the sale agreement is proved. The learned First Appellate Judge has rightly granted the alternate relief of refund of a sum of Rs.1,25,000/- with 6% interest. In these circumstances, I do not find any reason for interference and hence, the substantial questions of law are answered against the appellant.

In the result, this Second Appeal is dismissed and the judgement and decree dated 06.08.2009 passed by the learned



First Additional District Judge, Coimbatore in A.S.No.80 of 2007 is confirmed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

1.The First Additional District Judge,
Coimbatore.

2.The Sub Judge,
Tirupur.

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

+1cc to Mr.A.Madhumathi, Advocate, S.R.No.50327

+1cc to Mr.B.R.Shankaralingam, Advocate, S.R.No.50313

S.A.No.1258 of 2009

NK(CO)
GN(17/11/2021)