



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 29TH DAY OF OCTOBER 2021

THE HON'BLE MR. JUSTICE N.SESHASAYEE

C.S. No.364 of 2012

C.S.No.364 of 2012:-

Mr.B.Shantilal Choudhary,
S/o.Mr.Bhairon Singh Choundhary,
Old No.39, New No.21,
General Muthiah Street,
Sowcarpet, Chennai – 600 079.

... Plaintiff

Versus

Mrs.D.Geetha,
W/o.Mr.Somesehara Reddy,
No.3/5, Ramachandra Road,
T.Nagar, Chennai – 600 017.

... Defendant

Civil Suit praying that this Hon'ble Court be pleased to pass a Judgment and

Decree:-

a)Directing the defendant to execute and register the sale deed in respect of the suit property, as per agreement for sale after receiving the balance of sale consideration of Rs.86,00,000/- at the expense of the plaintiff and on default of defendant to execute the sale deed this Hon'ble court to execute and register the sale deed on behalf of the defendant.



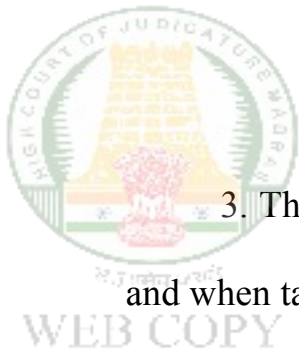
b) To grant an order of permanent injunction restraining the defendant or any other person or persons claiming through them from alienating or encumbering dealing with the suit schedule mentioned property either by way of sale, mortgage, or in any other manner detrimental to the interest of the plaintiff.

c) To pay the costs of the suit.

This suit having been heard on 08.09.2021 in the presence of Mr.S.N.Parthasarathy, Senior Counsel for Mr.S.Ramesh Kumar, Advocates for the plaintiff herein and Mr.K.Pattabhi, Advocate for the defendant herein and upon reading the plaint filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein and having stood over for consideration till this date and coming on this day before this court for orders in the presence of said advocates and the said advocates for the parties hereto and **it is ordered and decreed as follows:-**

That the plaintiff herein, be and is hereby directed to pay/deposit the balance sale consideration of Rs.86,00,000/- (Rupees Eighty Six Lakhs Only) within 4 months from this date.

2. That on such payment/deposit within time as mentioned in clause (1) supra, the defendant herein, be and is hereby directed to execute the sale deed in respect of the suit property morefully setout in the schedule hereunder.



3. That the defendant herein do pay to the plaintiff herein the costs of this suit as and when taxed by the taxing officer of this court and noted in the margin thereof.

SCHEDULE OF PROPERTY

All the plece and parcel of immovable property bearing Plot No.A-16, Industrial Plots, Mugappa East, Chennai – 600 037, comprised in S.No.376 Part, measuring an extent of 3 ground and 240 Sq.Ft., of MUGAPPAIR VILLAGE, Ambattur Taluk, Chennai District, being bounded on the

North by	:	Plot No.A-15;
South by	:	Plot No.A-17;
East by	:	66 Feet Road; and
West by	:	TNHB Land;

Within the sub Registration District of Konnur and Registration District of Chennai North.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 29TH DAY OF OCTOBER 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments.



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09/12/2021

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C.S. No.364 of 2012

DECREE

DATED :29/10/2021

THE HON'BLE MR.JUSTICE
N.SESHASAYEE

FOR APPROVAL:11/02/2022

APPROVED ON: 14/02/2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 08.09.2021

Judgment Pronounced on : 29.10.2021

CORAM : JUSTICE N.SESHASAYEE

C.S.No.364 of 2012

B.Shantilal Choudhary

...Plaintiff

Vs.

D.Geetha

...Defendant

Prayer : Civil Suit filed under Order VII Rule 1 of CPC., r/w. Order IV Rule 1, O.S.
Rules praying to :

(a) direct the defendant to execute and register the sale deed in respect of the suit property as per agreement for sale after receiving the balance of sale consideration of Rs.86,00,000/- at the expense of the plaintiff and on default of the defendant to execute the sale deed, this Court to execute and register the sale deed on behalf of the defendant.

(b) to grant an order of permanent injunction restraining the defendant or any other person or persons claiming through them from alienating or encumbering, dealing with the suit schedule mentioned property either by



way of sale, mortgage or in any other manner detrimental to the interest of the plaintiff;

(c) to pay the costs of the suit.

For Plaintiff : Mr.S.N.Parthasarathy
Senior Counsel for Mr.S.Ramesh Kumar

For Defendant : Mr.K.Pattabhi

JUDGMENT

The plaintiff has laid a suit for specific enforcement of the contract and the defense is that the said agreement is the one for securing a loan, which the defendant has obtained from the plaintiff.

2.1 The suit property measures 3 grounds and 240 sq.ft., in Ambattur Taluk, Chennai District. The case of the plaintiff is that, on 02.11.2010, the plaintiff and defendant had entered into a registered bilateral agreement for the sale of the property and that the defendant had sold the property to the plaintiff for a total consideration of Rs.1.41 crores. Under the agreement, Rs.20 lakhs was paid. The contract provided 12 months period for performing mutual contractual obligations that flows out of the contract.



2.2 While so, on 13.11.2010, the plaintiff has paid another Rs.25 lakhs to the defendant.

The defendant in turn had handed over the original title documents of the property and also possession of the property to the plaintiff. To this, an endorsement was made in the very agreement. Thereafter, on 13.08.2011, the plaintiff has paid another Rs.10 lakhs to the defendant. In all, the plaintiff has paid a sum of Rs.55 lakhs to the defendant.

2.3 Be that as it may, on 20.10.2011, the parties agreed to extend the time for performance by another six months from 01.11.2011, on which date, the time originally fixed was to expire. Subsequently, the plaintiff has been approaching the defendant, requiring the latter to convey him, his readiness and willingness to perform his part of the contract and also the defendant to perform part of the contract. On 12.4.2012, he also caused issuance of suit notice, and as the defendant did not perform her contractual obligation, the plaintiff has laid the suit.

3. In the written statement, the defendant primarily contends that the plaintiff is a money lender, that the defendant was in dire need of money and when approached the plaintiff, he promised to advance a sum of Rs.1 crore. Out of this, all the amounts which the plaintiff has paid are only part of the amount, which the plaintiff have agreed to advance. The sale agreement itself was executed only as a security for



repayment of the loan amount. Indeed, the plaintiff had obtained several signed blank promissory notes and signed blank papers along with the sale agreement. So far as the loan amount is concerned, it was the plaintiff who has denied the payment of loan amount. The property is worth about Rs.3 crores, which would indicate that the sale value in the sale agreement was less than the market value. From December 2010, the defendant had paid the interest on the amount borrowed at 18% per annum for 18 months. In fact, he has been paying Rs.1.5 lakhs per month during this period, which is constituted partly of the principal amount and partly of the interest amount. The allegation that the defendant has handed over possession of the property on 30.11.2010, is denied.

4. On the above pleadings, following issues are framed for trial :

- 1. Whether the plaintiff is entitled for a judgment and decree of specific performance based on the registered agreement for sale dated 02/11/2010 between the plaintiff and the defendant?*
- 2. Whether the plaintiff proved that he was ready and willing to perform the agreement for sale dated 02.11.2010?*
- 3. Is it not the defendant barred by Section 92 of the Indian Evidence Act to raise a plea against the contents of the registered document, which is a document u/s.91 of the Indian Evidence Act?*



4. To what other relief the plaintiff is entitled to?

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5.1 The matter went to trial. The plaintiff examined himself as P.W1 and has produced Exts.P1 to P20. The defendant did not enter the box, but for her, her husband was examined as D.W.1. No documents were produced on the side of the defendant.

5.2 Turning to the critical documents that are produced by the plaintiff, Ext.P1 to Ext.P7 essentially relate to the title documents and other related documents of the defendants. Ext.P11 is the sale agreement in question. Ext.P18 is the endorsement dated 13.11.2020, on which date, the plaintiff claims to have parted with an additional advance of Rs.25 lakhs and also claimed to have obtained possession of the property. Ext.P19 is another endorsement dated 13.08.2011, which records the receipt of Rs.10 lakhs by the defendant. Ext.P20 is another endorsement dated 20.10.2011, by which, performance was extended by six months. Ext.P13 is a suit notice.

6. Even though the defendant admitted the execution of the sale agreement and various endorsements, since she denies the character of the document, the burden essentially is on the defendant to establish that Ext.P11 sale agreement was not intended to be what it is.



7. The learned counsel for the defendant presented before this Court the following circumstances :

(a) If the defendant had agreed to sell the property, and has also parted with the original title deeds to the plaintiff, there is hardly any reason to plea that the defendant would be less anxious to have the sale deed executed at the earliest point of time. If according to the plaintiff even possession has been handed over to him, then the ordinary course of human tendency would only lead to a just inference that he would be in absolute urgency to have the sale deed executed at the earliest point of time. But, since it was agreed at that point of time that Ext.P-11 was only to secure the loan, neither the plaintiff was keen about it, nor the defendant was anxious about it.

(b) The defendant not only has pleaded but also has deposed through D.W.1 about the payment of interest-cum-principal for about 18 months, that the possession was never handed over to the plaintiff, that the plaintiff has received blank cheques and blank signed papers, but none of these three facts were cross-examined.



(c) The plaintiff has addressed Ext.P13 suit notice to the old address of the defendant, and even this was not served on the defendant, but it was received by some stranger.

(d) The plaintiff has omitted to cross examine the defendant on three material aspects: (i) on the aspect that possession was not given to the plaintiff; (ii) that the value of the property is more than Rs.3 crores; (iii) about the payment of interest. This will imply that these facts have to be taken as admitted facts.

(e) The learned counsel for the defendant also touched upon Section 16, 17(3) r/w 19 of the Contract Act.

8. Mr.S.N.Parthasarathy,learned Senior Counsel appearing for the plaintiff would argue :

(a) that the defendant had purchased the property under Ext.P7 in 2006, for a total consideration of Rs.24 lakhs. Ext.P11 is an agreement dated 02.11.2010, and the consideration fixed thereunder is Rs.1.41 crores. By no stretch, the value would escalate manifolds in a span of four years, which implies that the price as fixed by the party is more than the fair price that the property might fetch.



(b) In paragraph No.9 of the written statement, the defendant contends that she has been paying interest of Rs.1,50,000/- per mensem, calculated at 18% per annum, from December 2010. First there is no evidence whatsoever for this statement. Secondly, even if the defendant's statement is accepted on its face value, she will be liable to pay Rs.1,50,000/- only if the amount alleged to have been borrowed by him is Rs.1.0 crore. But, at that time, the total amount paid by the plaintiff admittedly was only Rs.55 lakhs, the last of which payment is evidenced by Ext.P19, dated 13.08.2011. Secondly, even the last instalment was paid in August 2011, belying the statement of the defendant that she has been paying Rs.1,50,000/- from December 2010.

(c) Without any loss of time, the plaintiff has issued the suit notice in Ext.P13, dated 12.04.2012 and there was no reply. The defendant thus has failed to take up the plea that she has now taken at the earliest point of time, and now she has invented a plea that Ext.P11, agreement was executed for securing the debt, for the first time in his written statement. And even it was not proved.

(d) In Paragraph No.7 of the affidavit of chief-examination of PW1, he had asserted that possession of the property has been handed over to him, and this was not



cross-examined by the defendant. He added that the property is a vacant plot, and exercising any right over it has to be understood contextually, based on the character of the property.

(e) So far as the value of the property and payment of interest are concerned, DW1 in his cross-examination has admitted to every aspect of Ext.P-11 sale agreement.

(f) So far as the conduct of the plaintiff is concerned, he not only has paid Rs.55.0 lakhs to the defendant, but also is in the possession of the balance Rs.86.0 lakhs, right through the time of performance and till date. This is proved by Ext.P12, the bank statement of his savings bank account. This would prove the plaintiff's readiness and also his willingness to perform his part of the contract. He relied on the judgements of this Court in *Nanjammal & Another Vs. Palaniammal* [SCC Online 205] and *S.Illamaran Vs. B.Hahibunnisa Begam & Another* [2018-4-L.W.83].

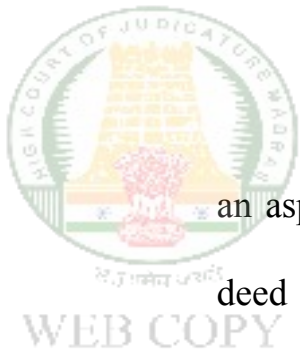
9. The defendant would now argue that every statement in the cross-examination of DW1 is on the agreement, but he has also denied it, hence, the testimony must be read as a whole.

**Discussion:**

10. There is one fact and there are two versions: It is not in dispute that Ext.P-11 has been duly executed between the parties, but is it intended to be what it is? While the burden is on the defendant to disprove the character of Ext.P-11, its nomenclature notwithstanding, it is also necessary to state that the facts that are necessary to establish the same, usually would be circumstantial and rarely direct. And, such circumstantial evidence must be strong enough to preponderate the case against the purported character of the document in question. Have the defendant able to produce the same?

11. Now, the circumstances which the defendant relies on to substantiate that Ext.P-11 is only intended to be a security are required to be considered:

- Defendant says that the property would fetch 3.0 crores on the date of Ext.P-11, and argues that she was not cross examined on this aspect. Does it in any way aid in altering the character of an apparent sale agreement into a loan transaction? The nearest is the value of the property. The defendant asserts that on the date of Ext.P-11, the property would fetch more than Rs.3.0 crores in the market. This is rebutted by the plaintiff when he says that on 01.12.2006 the defendant had purchased the property for Rs.24.0 lakhs, and exactly after 47 months, on 02-11-2010, she had agreed to sell the property for Rs.1.41 crores, and this implies that the property has appreciated in value by 587.50% in less than four years. This is



an aspect that emerges inferentially from the combined reading of Exts.P-7 sale deed and P-11 sale agreement. The effect of this cannot be nullified by a mere statement in the oral testimony of the defendant. And, it will not improve the situation for the defendant merely because the plaintiff had omitted to cross examine. This Court looks for dependable material to dislodge the effect created by Ext.P-7 and Ext.P-11, and the defendant has not come forward to produce any.

- Second is her assertion that from December, 2010, she had paid Rs.1.50 lakhs p.m. as interest on the amount paid by the plaintiff at 18% p.a. Notwithstanding the fact that the defendant had not produced any documentary evidence to substantiate it, the argument of the plaintiff against this contention adequately exposes its untenability. If the defendant was to pay the interest as stated, then the total amount received by her from the plaintiff should be Rs.1.0 crore, but he had paid only Rs.55.0 lakhs in all, and upto December, 2010, he had paid only Rs.45/- lakhs. The defendant reaction to the impossibility of what she contends is an inexplicable silence. This fails.
- Next to the conduct of the plaintiff. The question the defendant poses is, when the plaintiff had been given the title deed of the property, why should he delay things? This Court does not find that the plaintiff is in delay. Ext.P-11



agreement was executed on 02-11-2010. The time provided is 12 months and was to expire on 02-11-2011. And parties have agreed to extend the time by another six months, which implies time would expire in April, 2013. In between the plaintiff had paid Rs.55.0 lakhs. And on 12-04-2012, he issued the suit notice, and laid the suit on 02-05-2012. And he has demonstrated before this Court that Vide Ext.P-12 he has the balance sale consideration in his account. This Court does not spot anything which is contrary to ordinary course of human conduct in the way the plaintiff has acted. This circumstance too fail.

The combined effect is that the contention of the defendant fails, and this Court holds that Ext.P-11 is a sale agreement.

12. Turning to possession and non-cross examination of D.W.1 on this aspect is concerned, it may have to be stated that possession *per se* is not going to affect the real character of Ext.P-11. And on the point of possession, the plaintiff too not cross examined. Therefore, on this both the sides have not cross examined the other. And, its effect is that it is not going to impact the outcome of the suit, since the cause of action for the suit is founded on the character of Ext.P-11, and not possession. Here, the argument of the plaintiff that since the suit property is a vacant plot, no acts of possession can be demonstrated on the site is acceptable.



13. In conclusion, the suit is decreed with costs, and the plaintiff is directed to pay/deposit the balance sale consideration of Rs.86.0 lakhs within 4 months from today, whereupon the defendant is directed to execute the sale deed.

Sd./-N.S.S.J

29.10.2021 **APPENDIX**

I. Witnesses :

<i>Plaintiff :</i>	
PW1	B.Shantilal Choudhary (Plaintiff)
PW2	P.Venkatesh
<i>Defendant :</i>	
DW1	Somasekar Reddy (Husband of the defendant)

II. Exhibits :

<i>Plaintiffs :</i>		
Ex.P1	02.02.2002	Original Division Notice
Ex.P2	02.02.2002	Original Division Notice
Ex.P3	03.07.2003	Original Letter addressed by TNHB to M/s.Pharmatek, intimating balance payment towards allotment of plot
Ex.P4	14.08.2003	Pucca sale deed for Industrial Plot executed between the TNHB and M/s.Pharmatek
Ex.P5	01.12.2005	Original payment receipt for Rs.250/-
Ex.P6	01.12.2005	Original payment receipt for Rs.250/-
Ex.P7	01.12.2006	Original sale deed executed by M/s.Pharmatek in favour of the defendant
Ex.P8	26.02.2008	Original Town Survey Field Register
Ex.P9	08.12.2009	Original Encumbrance Certificate
Ex.P10	19.10.2010	Original Encumbrance Certificate



Plaintiffs :		
Ex.P11	02.11.2010	Original sale agreement executed by the defendant in favour of the plaintiff
Ex.P12		Original Bank pass book of the plaintiff
Ex.P13	12.04.2012	Legal notice issued by the plaintiff's counsel to the defendant
Ex.P14	25.01.2016	Original Postal Acknowledgment Card
Ex.P15	30.04.2012	Original sale deed executed by the defendant in favour of the plaintiff
Ex.P16	30.04.2012	Cheque bearing No.666065 issued by the plaintiff in favour of the defendant for a sum of Rs.86.00 lakhs
Ex.P17	30.04.2012	Telegram Receipt
Ex.P18 to Ex.P20		Subject to objection made by the counsel for the defendant, the three endorsements made in Ex.P11, are marked as Ex.P18, Ex.P19 & Ex.P20 respectively.
Defendants : Nil		

Sd./-N.S.S.J
29.10.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.