

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON :19.03.2021
PRONOUNCED ON:01.04.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1611 of 2011

and

M.P.No.1 of 2011

&

M.P.No.1 of 2013

&

C.M.P.No.21565 of 2018

P.Bakkialakshmi,
W/o, Ponnusamy,
No.35, Near V.G.Garden,
Velampalayam (via) Mangalam,
Palladam Taluk.

... Appellant/Defendant

Vs.

1. P.Natarajan,
S/o, Palanisamy Gounder,
No.97-A, Best Company Road,
3rd Street, Thaneer Panthal Colony,
Anupparpalayam,
Tiruppur.

2. R.Ponnusamy
S/o, Rangasamy Gounder

3. P.Suresh Kumar,
S/o, R.Ponnusamy,

Respondents 2 and 3 are
residing at Door No.1/554,
Kanakangadu,
Velampalayam,
Palladam Taluk,
Tiruppur District.

4. The Branch Manager,
Catholic Syrian Bank Limited,
Avinashi Branch,
Tiruppur District.

[RR2 to R4 impleaded vide order
of Court dated 26.10.2018 made
in CMP.No.7499 of 2018 in
S.A.No.1611 of 2011]

... Respondents/Plaintiffs

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 19.08.2011 made in A.S.No.31 of 2007 on the file of the Court of the Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore, modifying the judgment and decree dated 11.10.2006 made in O.S.No.348 of 2002 on the file of the Court of the Subordinate Judge, Tirupur.

For Appellant : Mr.T.P.Manoharan, SC
for M/s.Sithirai Anandam

For R1 : Mr.R.Ramya

For R4 : M.Arun Kumar

R2 and R3 : Set exparte
vide order of this Court
dated 19.03.2021. in SA.1611/2011

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 19.08.2011 passed in A.S.No.31 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore, modifying the judgment and decree dated 11.10.2006 passed in O.S.No.348 of 2002 on the file of the Subordinate Court, Tirupur.

2. The parties are referred to as per their rankings in the trial court.

3. Suit for specific performance or in the alternative, for the refund of the advance amount with interest.

4. Briefly stated, the case of the plaintiff is that the defendant is the owner of the suit property and on 29.07.1998, the defendant agreed to sell the suit property to the plaintiff for a sum of Rs.1,25,000/- and the parties had entered into a sale agreement on the same date and the defendant received the sum of Rs.1,00,000/- from the plaintiff on the date of the agreement and the time fixed for the execution of the sale deed is 11 months and the defendant handed over the original settlement deed to the plaintiff on the date of the sale agreement and the plaintiff from the date of the agreement has been ready with the balance sale consideration and always been ready and willing to perform his part of the contract and despite several requests made to the defendant in connection with the same, the defendant had been avoiding the execution of the sale deed on some pretext or the other and hence the plaintiff issued the legal notice on 25.06.1999, calling upon

the defendant to execute the sale deed. The defendant had refused to receive the legal notice, did not comply with the terms of the sale agreement and not come forward to execute the sale deed and hence according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that the plaintiff's suit is not maintainable either in law or on facts and put forth the case that it is true that the defendant had executed a document styled as an agreement of sale on 29.07.1998 in favour of the plaintiff and that the said document has also been registered in the office of the Sub Registrar, Palladam and however according to her, it is false to state that the defendant had agreed to sell the suit property to the plaintiff for a sum of Rs.1,25,000/- and received a sum of Rs.1,00,000/- on the date of the sale agreement and also false to state that the parties had agreed to complete the sale transaction within 11 months and further admitting that it is true that the defendant had handed over the original title deed to the plaintiff, but it had not been handed over on 29.07.1998 in support of the alleged sale agreement. The suit property was worth not less than Rs.5,00,000/- in the year 1998 itself and the defendant borrowed a sum of Rs.1,00,000/- from the plaintiff in the beginning of 1997 and the plaintiff is a financier by profession and the rate of interest stipulated was 36% per annum. In order to secure the repayment of the loan, the plaintiff compelled the defendant to execute a power of attorney in favour of the plaintiff's partner Deivasigamani in respect of another property belonging to the defendant. By misusing the said power of attorney, the plaintiff has taken the sale deed in the name of his wife in respect of that property. The suit filed by the plaintiff's wife on the strength of the sale deed is pending before the District Munsif Court, Palladam. Since the defendant was unable to pay the interest due on the loan amount of Rs.1,00,000/- regularly, the plaintiff compelled the defendant to execute the suit document on 29.07.1998 and on that date, the arrears of interest payable by the defendant was Rs.60,000/- and the plaintiff wanted to treat the said sum as another loan and mentioned the sum as Rs.1,00,000/- as advance in the suit document. Even at the time of lending the sum of Rs.1,00,000/- in 1997, the plaintiff had taken the defendant's title deed dated 12.12.1996 and towards the interest outstanding on 29.07.1998, the defendant had already paid Rs.30,000/-, therefore according to the defendant the suit document was not intended to be acted upon as an agreement of sale and it had been taken only as the security for the amount payable by the defendant to the plaintiff on the loan transaction of Rs.1,00,000/-. Therefore the plaintiff is not entitled to enforce the suit document as an agreement of sale to seek the reliefs as prayed for.

6. The defendant also denied the case of the plaintiff that

he has been always ready and willing to perform his part of the contract and made several requests in connection with the same and also disputed that the plaintiff had sent a notice on 25.06.1999 and the defendant had refused to receive the same. If really, the defendant had agreed to sell the suit property for Rs.1,25,000/- and the plaintiff had paid Rs.1,00,000/- on the date of the sale agreement, there is no need for fixing the period of 11 months to pay the balance sum of Rs.25,000/- to execute the sale deed. No explanation has been offered by the plaintiff for belatedly sending the legal notice. The plaintiff is also not entitled to the alternative relief sought for and the interest claimed is excessive. The plaintiff has levied the false suit only with a view to make the defendant to withdraw her defence in the suit pending before the District Munsif Court, Palladam. The plaintiff is not entitled to charge over the suit property and there is no cause of action for the suit and the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A5 were marked. On the side of the defendant, D.Ws.1 to 4 were examined. Exs.B1 to B3 were marked.

8. On an appreciation of the materials placed on record and the submissions put forth in the matter, the trial court was pleased to grant the reliefs in favour of the plaintiff with reference to both the main relief as well as the alternative relief as claimed by the plaintiff. On appeal by the defendant, the first appellate court, on a consideration of the materials placed on record, both oral and documentary and the submissions put forth in the matter, was pleased to partly allow the appeal and thereby upheld the judgment and decree of the trial court in granting the relief of specific performance in favour of the plaintiff as prayed for and accordingly dismissed the alternative relief prayed for by him and accordingly disposed of the first appeal laid by the defendant. Challenging the same, the present second appeal has been laid by the defendant.

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

i. Whether the judgment of the Courts below were vitiated in its findings by holding that the Ex.A1 Sale Agreement has to be strictly construed in terms of Sec.92 of the Indian Evidence Act, when there is an evidence to show that the agreement was intended to be a security for a financial transaction?

ii. Whether the Courts below were erred in holding that the respondent was always ready and willing to perform his part of the contract after a

period of 2 years and 9 months i.e., at the verge of limitation period from the date of expiry of time stipulated under the Sale Agreement to execute the sale?

iii. Whether the Courts below was right in shifting the burden of proof on the defendants to prove that the said Ex.A1 viz., the Sale Agreement was obtained by the undue influence?

10. The suit has been laid by the plaintiff seeking for the main relief of specific performance based on the sale agreement dated 29.07.1998 which has been marked as Ex.A1. According to the plaintiff, the defendant, the owner of the suit property, agreed to sell the same to the plaintiff for a sum of Rs.1,25,000/- and based on the said agreement, the parties had reduced the same into an agreement of sale on 29.07.1998 marked as Ex.A1 and the plaintiff had paid the sum of Rs.1,00,000/- on the date of the agreement of sale and the parties had agreed to complete the sale transaction within a period of 11 months i.e., the plaintiff should pay the balance sum and the defendant should execute the sale deed within a period of 11 months from the date of the sale agreement. It is also put forth that the defendant had handed over the title deed of the suit property to the plaintiff on the date of the sale agreement i.e., on 29.07.1998. It is stated by the plaintiff that he has been always ready and willing to perform his part of the contract and made several requests to the defendant with reference to the same and the defendant had been avoiding the execution of the sale deed on some pretext or the other and hence it is stated that the plaintiff issued the legal notice and the defendant had refused to receive the same and hence according to the plaintiff, he has been necessitated to institute the suit against the defendant for appropriate reliefs. The plaintiff has also prayed in the alternative for the refund of the advance sum with interest and to create the charge over the suit property for the payment of the said sum as claimed.

11. In the written statement, the defendant has clearly admitted that he has executed the document styled as an agreement of sale on 29.07.1998 in favour of the plaintiff. It is thus found clearly that the defendant has executed Ex.A1. It is also noted that Ex.A1 has been registered in the office of the Sub-Registrar, Palladam and the same has also been clearly admitted by the defendant in the written statement. However according to the defendant, the defendant had not intended or agreed to sell the suit property to the plaintiff for Rs.1,25,000 and it is put forth by her that she had borrowed a sum of Rs.1,00,000/- from the plaintiff in the beginning of 1997

and the plaintiff stipulated the interest to be paid at 36% per annum and only as the security for the abovesaid loan, according to the defendant, the plaintiff had obtained the sale agreement from the defendant and accordingly pleaded by the defendant that the plaintiff compelled her to execute the agreement of sale on 29.07.1998 marked as Ex.A1. It is also putforth by the defendant that in connection with the abovesaid loan, the plaintiff has also compelled the defendant to execute a power of attorney in faovur of the plaintiff's partner Deivasigamani in respect of another property belonging to the defendant and on the strength of the abovesaid power of attorney, the sale deed had been taken in the name of the plaintiff's wife qua that property and the suit levied by the plaintiff's wife with reference to the said property is pending before the District Munsif Court, Palladam. According to the defendant, as on 29.07.1998, he had paid the sum of Rs.30,000/- towards the interest and only a sum of Rs.60,000/- was due towards interest. Thus, according to the defendant, he has not received a sum of Rs.1,00,000/- from the plaintiff as advance based on the alleged sale agreement on 29.07.1998 and not agreed to complete the sale transaction within a period of 11 months as putforth in the plaint and therefore according to the defendant, as the sale agreement Ex.A1 had been taken by the plaintiff only as the security for the amount payable by the defendant to the plaintiff on the loan transaction of Rs.1,00,000/- , the plaintiff is not entitled to seek and obtain the equitable and discretionary relief of specific performance.

12. As above pointed out, though the defendant in para 2 of the written statement has clearly admitted that she had executed the document styled as agreement for sale on 29.07.1998 in favour of the plaintiff and the document has also been registered before the concerned Sub Registrar, however in para 4 of the written statement would putforth the case that qua the loan transaction of Rs.1,00,000/- received by the defendant from the plaintiff in the beginning of 1997, the plaintiff had compelled her to execute the agreement of sale on 29.07.1998. The defendant examined as D.W.1, during the course of cross examination has clearly admitted that it is she who had executed the sale agreement marked as Ex.A1 and further stated that she does not remember on which month of 1997, she had borrowed the money from the plaintiff and further admitted that the power of attorney given in favour of Deivasigamani is with reference to some other property and not to the suit property and also admitted that she has not filed any material or proof to show that the plaintiff and Deivasigamani had been carrying on the finance business and further admitted that she had paid Rs.30,000/- towards interest and however would state that no receipt has been given for the payment of the abovesaid interest amount and according to her, though she had claimed the

receipt, the same had not been issued by the plaintiff and despite the same, it is stated by her that she used to pay the interest regularly and further admitted that her address is Bagyalakshmi, W/o, Ponnusamy, 63, Velampalayam (via) Mangalam, VGP Garden, Palladam Taluk. Considering the abovesaid evidence adduced by the defendant during the course of her cross examination, it is found that there has been no compulsion put forth on her by the plaintiff to execute the sale agreement marked as Ex.A1. On the other hand, it is seen that she had voluntarily, without any force or coercion exercised on the part of the plaintiff, executed the sale agreement in favour of the plaintiff qua the suit property. As far as the case of the defendant that the power of attorney had been executed in favour of Deivasigamani, it is seen and also admitted by the defendant, the same pertains to some other property and not to the suit property. The defendant has clearly admitted that she has not filed any proof or material evidencing that the plaintiff and Deivasigamani had been carrying on the finance business. There is no material whatsoever placed on record to show that the defendant had received a sum of Rs.1,00,000/- from the plaintiff in the beginning of 1997 and the interest stipulated by the plaintiff with reference to the same was 36% per annum. Though the defendant would claim that she had been regularly paying the interest towards the loan transaction and that she had paid Rs.30,000/- as on 29.07.1998, even pointing to the same, there is no material whatsoever placed on the part of the defendant. If really, any such amount had been paid by the defendant towards the interest qua the alleged loan transaction as put forth by her, the receipts pointing to the payment of the interest amount issued by the plaintiff would have been produced by the defendant. On the other hand, she has admitted that no receipt has been filed by her and according to her though she had demanded the issuance of the receipt, the same had not been given by the plaintiff. The abovesaid case projected by the plaintiff is totally unacceptable. When she has not been placed any material to show that the plaintiff was engaged in the finance business, when there is no material to hold that she had received a sum of Rs.1,00,000/- from the plaintiff in the beginning of 1997, when there is no material to conclude that she had paid a sum of Rs.30,000/- towards interest for the abovesaid alleged loan transaction as on 29.07.1998 and when there is no material to hold safely that the sum of Rs.60,000/- alone remains to be paid towards interest in connection with the abovesaid loan transaction as on 29.07.1998, the case projected by the defendant that the plaintiff had compelled her to execute the sale agreement Ex.A1 as security for the alleged sale transaction completely falls to the ground. When Ex.A1 sale deed is found to be a registered document, as rightly concluded by the Courts below, if any compulsion had been exercised by the plaintiff on the defendant to execute the sale agreement marked

as Ex.A1 from the defendant contrary to law, the defendant would not have endeavored to go for the registration of the sale agreement. Further as rightly concluded by the Courts below, if Ex.A1 sale agreement had been taken as a security only for the alleged loan transaction, the defendant would have exposed the same to the concerned Registrar at the time of registration. On the other hand, when it is seen that the defendant had not raised any protest whatsoever at the time of the registration of Ex.A1 sale agreement and when her case of the sale agreement Ex.A1 had been taken as a security for the loan transaction is not fortified or established by any acceptable material whatsoever, the case projected by the defendant that the sale agreement had been taken by the plaintiff by way of compulsion on 29.07.1998, that too, in connection with the alleged loan transaction said to have taken place in the beginning 1997 cannot at all be countenanced. As above pointed out, it is the clear admission of the defendant in the written statement that the agreement of sale had been taken only on 29.07.1998 from her by the plaintiff.

13. The case has been projected by the plaintiff that the defendant had handed over the title deed to him on the date of the sale agreement, in evidence of her promise to sell the suit property to the plaintiff for Rs.1,25,000/-. The title deed qua the suit property dated 12.12.1996 has been marked as Ex.A2 on the side of the plaintiff. The defendant has not disputed the handing over of the title deed to the plaintiff. However in the written statement, she would plead that even at the time of lending Rs.1,00,000/- in 1997, the plaintiff had taken the title deed marked as Ex.A2. Therefore, according to the defendant as putforth in the written statement, Ex.A2 title deed had been handed over to the plaintiff or taken by the plaintiff in 1997 itself. However, the defendant examined as D.W.1, in the course of chief examination itself would only state that the plaintiff had compelled her to hand over the title deed ie., Ex.A2 from her on the date of the sale agreement ie., on 29.07.1998. Therefore, according to the defendant, the title deed had been handed over to the plaintiff only on the date of the sale agreement though by way of compulsion as on the date of Ex.A1. On the other hand, quite inconsistent to the same, in the written statement she has putforth the case that the title deed had been taken by the plaintiff in the beginning of 1997 itself ie., when the alleged sum of Rs.1,00,000/- had been advanced by the plaintiff. The abovesaid inconsistency qua the case of the defendant as regards the entrustment of the title deed to the plaintiff would only go to show that the defendant wants to extricate herself from the factum as to why her title deed had been handed over to the plaintiff at the time when the parties had entered into the sale agreement. Therefore, as rightly concluded and held by the Courts below, inasmuch as the sale

agreement had been entered into between the parties concerned, after the defendant had agreed to convey the suit property to the plaintiff for Rs.1,25,000/- and as the plaintiff had advanced the major sum of the sale price ie., 1,00,000/- on the date of the sale agreement itself, it is found that the defendant had voluntarily handed over the title deed to the plaintiff on the date of the sale agreement. If there had been any compulsion exercised on the part of the plaintiff in obtaining the sale deed from the defendant, as put forth by the defendant, as above pointed out, the plaintiff would not have expressed her consent for registering the sale agreement before the appropriate authority. If the abovesaid defence version of the defendant has any element of truth, the defendant would have taken appropriate legal steps against the plaintiff to retrieve her title deed in accordance with law ie., if the plaintiff had obtained the title deed or for the matter, the sale agreement from the defendant by way of force, the defendant would have issued the legal notice or instituted appropriate civil action against the plaintiff for getting back the title deed as well as for seeking appropriate declaration that no sale agreement had been executed by her voluntarily on 29.07.1998 as claimed by the plaintiff. Only after the plaintiff had instituted the abovesaid civil suit against the defendant, for the first time the defendant has come forward with the abovesaid false version. Accordingly it is seen that the defendant is unable to substantiate her defence qua the same, on the other hand, has only put forth the inconsistent pleas in connection with the same as above pointed out.

14. Now according to the plaintiff, he had been always ready and willing to pay the balance consideration and been requesting the defendant to receive the same and execute the sale deed as per Ex.A1 sale agreement and the defendant had been evading the said requests on some pretext or the other and therefore it is stated by the plaintiff that he issued legal notice to the defendant on 25.06.1999, the office copy of which has been marked as Ex.A3. According to the plaintiff, the legal notice has been refused to be received by the defendant. The returned cover received by the plaintiff has been marked as Ex.A4. On a perusal of Ex.A3, it is found that the legal notice has been sent to the defendant's proper and correct address as admitted by the defendant in the course of her evidence. Therefore, it is found that the legal notice sent by the plaintiff has been wantonly and deliberately refused to be received by the defendant. Therefore, according to the plaintiff, inasmuch as, the defendant had agreed to execute the sale deed qua the suit property by way of Ex.A1 sale agreement and also received a sum of Rs.1,00,000/- towards the sale price and agreed to receive the balance sum within 11 months and execute the sale deed based on the sale agreement and if really

the sale agreement had not been executed by the defendant with the intention of conveying the suit property to the plaintiff, on the other hand, the same had been executed only as a security towards the loan transaction, if the abovesaid defence version is true, the defendant on the receipt of the legal notice from the plaintiff would have endeavored to challenge the plaintiff's case by issuing the proper reply to the same. On the other hand, despite the refusal of the legal notice and thereby the defendant deemed to be having knowledge about the notice, the conduct of the defendant in not responding to the same as per law, particularly she having not come forward with any version as to under what circumstances, Ex.A1 sale agreement had come to be executed, in all, as rightly concluded by the Courts below, inasmuch as, the defendant had executed the sale agreement with the intension to convey the suit property to the plaintiff and also received Rs.1,00,000/- towards the sale price on the date of the sale agreement and agreed to convey the property within 11 months as recited in the sale agreement, the defendant is unable to refute the case projected by the plaintiff in the legal notice marked as Ex.A3. Therefore, as rightly held by the Courts below, particularly, the appellate court, if really, the value of the suit property on the date of the sale agreement was Rs.5,00,000/- and the defendant had not executed the sale agreement as putforth by the defendant, atleast when according to the defendant she had handed over the title deed qua the suit property in 1997 itself, whereas in the evidence, she would state that she had handed over the title deed on the date of the sale agreement, if really the defendant had no intention to sell the suit property and she had been compelled to part with the title deed, atleast after coming to know of the issuance of the legal notice by the plaintiff, the defendant would have endeavored to procure the title deed from the plaintiff as per law and also would have refuted the case of the plaintiff by sending a proper reply to the notice as contemplated under law.

15. To sustain her defence version, the defendant has examined the attessor to the sale agreement one Palanisamy S/o, Subramanian as D.W.2. D.W.2 would support the case of the defendant in the chief examination. During the course of cross examination, D.W.2 has clearly admitted that he has studied up to IX standard and Ex.A1 sale agreement contains his signature as well as the signatures of the defendant and the plaintiff and further admitted that at the time of putting his signature in Ex.A1, he had read the contents of the same and only after knowing the contents of the same, he had put his signature in Ex.A1 and Ex.A1 clearly recites that the defendant had agreed to convey the suit property to the plaintiff for Rs.1,25,000/- and the sum of Rs.1,00,000/- has been paid on the date of the sale agreement and neither he nor the defendant had objected to the signing of Ex.A1 sale agreement by putting forth that Ex.A1 does

not recite the true facts and on the other hand, they had with full consent, signed the same and further admitted that he does not know as to what was the transaction entered into between the plaintiff and the defendant prior to Ex.A1 and he knew about the same only through others and also further admitted that he does not know as to what has transpired between the plaintiff and the defendant after Ex.A1 and further also admitted that at the time of the execution of Ex.A1, the defendant's father Marappa Gounder, the defendant's husband Ponnusamy also were present and the above being the evidence of the attester to Ex.A1 namely D.W.2, when as per the evidence of D.W.2, it is clearly noted that both the defendant and D.W.2 had signed the Ex.A1 willingly with full consent and therefore they had the knowledge about the contents recited in Ex.A1 at the time of signing Ex.A1, to say that the defendant had been compelled to sign Ex.A1 sale agreement by the plaintiff as putforth by the defendant does not merit any acceptance. As above pointed out, atleast if there had been any compulsion on the part of the plaintiff at the time of the execution of Ex.A1, when Ex.A1 is found to be subsequently registered before the appropriate authority, if Ex.A1 had been obtained by the plaintiff using force or coercion one way or the other, the defendant would have objected to the registration of the same before the appropriate authority. As regards the abovesaid case of compulsion, the defendant had not putforth the said version by sending a reply after the refusal of the legal notice sent by the plaintiff and on the other hand, it is found that the conduct of the defendant in refusing to receive the legal notice would only go to show that she had schemed to avoid the legal notice one way or the other as to take appropriate defence, when the case is levied by the plaintiff based on the sale agreement. Therefore, the evidence of D.W.2, as rightly concluded by the Courts below, does not support the defence version and on the other hand, only fortifies the case projected by the plaintiff in all aspects and D.W.2 is not aware of any transaction entered into between the plaintiff and the defendant prior to Ex.A1. It is thus evident that he has no knowledge about the alleged money transaction said to have been taken place in the year 1997 and therefore his evidence would be of no use with reference to the alleged loan transaction putforth by the defendant.

16. The defendant would come forward with the case that the sale agreement had been executed between her and the plaintiff qua the some other property on 12.09.1997 marked as Ex.B1. As rightly concluded by the Courts below, particularly, the appellate court when the agreement marked as Ex.B1 has not been pleaded by the defendant in the written statement, no evidence/proof adduced by the defendant qua the same can be considered. Furthermore, Ex.B1 sale agreement has nothing to do with the suit property and only during the course of his

evidence, Ex.B1 is found to have been projected. Ex.B1 by itself would not in any manner advance the defence of the defendant particularly, to hold that the plaintiff was running a finance business and that the defendant had borrowed Rs.1,00,000/- from the plaintiff in 1997 and only in connection with the same, the sale agreement had been obtained by the plaintiff by way of compulsion as a security. Similarly the document marked as Ex.B2 would also not be of any use to sustain the defence version as the same is found to be pertaining to some other property and not to the suit property.

17. The defendant would also putforth the case that in connection with the alleged loan transaction, the power of attorney had been taken in the name of Deivasigamani and misusing the same, the sale deed had been executed in favour of the plaintiff's wife and in connection with the same, the civil suit is pending on the file of the District Munsif Court, Palladam. However, when the abovesaid alleged acts are found to be in connection with some other property and not to the suit property involved in the present proceeding, in such view of the matter, the abovesaid defence version by itself would not be of any use to hold that the sale agreement had been taken by force by the plaintiff only in connection with the loan transaction as putforth by the defendant. In such view of the matter, the evidence tendered by D.W.3 in connection with the abovesaid transaction as well as Ex.B1 would be of no use to sustain the case projected by the defendant. Though D.W.3 would claim that the plaintiff and Deivasigamani had been carrying on the finance business and that he used to recommend the persons to them who seek loan, however in connection with the abovesaid claim, he has admitted during the course of cross examination that other than his oral evidence, there is no proof to evidence the same. Therefore, as rightly contended by the plaintiff's counsel, there is no material worth acceptance on record to show that the plaintiff or for the matter, Deivasigamani had been carrying on the finance business and that the defendant had received the sum of Rs.1,00,000/- from the plaintiff in 1997 and paid the interest towards the loan transaction amounting to Rs.30,000/- as on 29.07.1998. When the loan transaction putforth by the defendant is totally not established and when as above pointed out, the defendant is found to be a consenting party in executing the sale agreement Ex.A1 knowing the contents of the same in entirety and also not objected to the registration of Ex.A1 and also not responded to the legal notice sent by the plaintiff and on the other hand, deliberately refused to receive the legal notice and when the defendant is found to have entrusted the title deed qua the suit property to the plaintiff and the title deed is also not found to have been parted with by the defendant in connection with the alleged loan transaction, all put together, as rightly concluded by the Courts below, the

plaintiff had executed the suit sale agreement only with the intention to convey the suit property to the plaintiff for the sale price of Rs.1,25,000/- and accordingly received the sum of Rs.1,00,000/- from the plaintiff on the date of the sale agreement and agreed to execute the sale deed within a period of 11 months after receiving the balance sale price.

18. The defendant's counsel would contend that the conduct of the plaintiff in seeking the alternative relief would only go to show that the plaintiff is not serious about the execution of the sale deed qua the suit property and only concerned with the return of the loan advanced by him. However, the abovesaid argument does not merit acceptance. Merely because the plaintiff has sought for the alternative relief of the refund of the advance amount with interest, on that score alone, we cannot presume or hold that the sale agreement had been taken only as the security in connection with the loan transaction as putforth by the defendant.

19. The defendant's counsel would also contend that considering the period of 11 months fixed in the sale agreement for paying the balance sale price of Rs.25,000/- , according to him, the abovesaid feature would only point out that the sale agreement had only been taken as a security for the alleged loan transaction and not intended to be a sale agreement for the conveyance of the suit property. However, as rightly concluded by the Courts below, particularly the appellate court, when the parties had agreed to fix the time limit of 11 months for paying Rs.25,000/- and when according to the plaintiff, as adduced in the course of evidence, the time limit of 11 months has been fixed only as per the request of the defendant for handing over the possession of the suit property after harvesting the cotton planted in the suit property, though the abovesaid reason has not been disclosed in the sale agreement, however as above pointed out, the defendant and the attesor D.Ws.1 and 2 had subscribed to the sale agreement only after knowing the contents of the same voluntarily and with full consent and the defendant has also handed over the title deed voluntarily to the plaintiff on the date of the sale agreement and not endeavored to respond to the legal notice as per law, all put together, it is found that as rightly contended by the plaintiff's counsel, the time limit of 11 months has been fixed in the sale agreement only as per the request made by the defendant for enabling her to hand over the possession of the suit property to the plaintiff and on that ground alone, we cannot infer or determine that the sale agreement is taken only as a security for the alleged loan transaction as claimed by the defendant.

20. The defendant would putforth the case that the suit property was worth about Rs.5,00,000/- on the date of the sale

agreement and its price has enhanced further. However pointing to the same, when there is no material worth acceptance is forthcoming on the part of the defendant, other than her Ipse dixit testimony and as above pointed out when the sale price fixed in the sale agreement has been brought to the knowledge of the defendant at the time of the execution of the sale agreement by the defendant, as above pointed out, it has to be only held that the defendant had the intention to execute the same, knowing the contents of the recitals in the sale agreement. Therefore, the price escalation /increase pleaded by the defendant qua the suit property by itself would not be the ground to dis-entitle the plaintiff to claim the relief of specific performance when he is always lawfully otherwise entitled to secure the same.

21. In the light of the abovesaid discussions, the contention of the defendant's counsel that the sale agreement Ex.A1 was intended to be a security for financial transaction as putforth in the written statement does not merit acceptance particularly, when there is no material whatsoever pointing to the same on the part of the defendant and on the other hand, when the materials placed on record as above discussed, point out that only with the intention of conveying the suit property, the defendant had executed the sale agreement in favour of the plaintiff as recited therein, in such view of the matter, the Courts below are found to be justified in applying the embargo placed on the defendant to adduce evidence contrary to the terms recited in Ex.A1 and therefore the reasonings and conclusions of the Courts below for upholding the plaintiff's case on that score cannot be held to be vitiated as sought to be argued by the defendant's counsel.

22. Though the plaintiff has come forward with the suit for specific performance after the period of 2 years 9 months, when it is found that the plaintiff had chosen to issue the legal notice prior to the time fixed by the parties under the sale agreement and even thereafter, the defendant having not come forward to execute the sale deed and that when the plaintiff has also pleaded that the defendant had been assuring thereafter also that she would come forward to execute the sale deed, in such view of the matter, merely on the delay on the part of the plaintiff in instituting the suit for the relief of specific performance, on that score alone, the plaintiff cannot be held to be not entitled to obtain the relief of specific performance. As rightly concluded by the appellate court, merely from the delay in the filing of the suit after the accrual of the cause of action, that by alone, cannot be held against the plaintiff, as if he has not been always ready and willing to perform his part of the contract and when it is found that the suit has been laid by the plaintiff within the period of limitation and

particularly considering that the suit for specific performance should be viewed in the light of the statutory frame work available in our country and in such view of the matter, the delay in the laying of the suit by the plaintiff by itself would not disentitle the plaintiff to obtain the discretionary and equitable relief of specific performance on the ground that he had not been always ready and willing to perform his part of the contract.

23. When the materials placed on record go to show that the defendant had voluntarily executed the sale deed without any protest and also handed over the title deed in continuation of the sale agreement and also the sale agreement had been registered, in such view of the matter, when according to the defendant, the sale agreement Ex.A1 had been obtained by using force, undue influence etc., when no such plea of undue influence has been specifically taken by the defendant and she would only plead that the sale agreement had been taken by way of compulsion and when the said plea has also not been established by the defendant, in such view of the matter, moreso, when the defendant has also failed to establish that the plaintiff is engaged in the finance business and in the habit of obtaining sale agreement for the loan advanced to third parties, in such view of the matter, it cannot be inferred or held straightaway, in the absence of any material, that the plaintiff had exercised undue influence in obtaining the sale agreement from the defendant at the time of the alleged loan transaction.

24. In view of the above, the contention raised by the defendant's counsel that the the Courts below had erroneously shifted the burden of proof on the defendant to prove that the sale agreement Ex.A1 was obtained by undue influence cannot be countenanced in any manner.

25. In the light of the abovesaid discussions, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendant.

26. In support of her various contentions the plaintiff's counsel placed reliance upon the decisions reported in

1. 2018 (1) MWN (Civil) 165 [M.R.Subramaniam Vs. G.S.Abimunissa]
2. 2017 (1) MWN (Civil) 489 [R.Jothi Vs. N.Neelavathi]
3. 2005(1) CTC 753 (Mad) [Arulraj and others Vs. Jabesthial]
4. 2019 (8) SCC 2 [R.Kakshmikantham Vs. Devaraji]

27. In support of his various contentions, the defendant's

counsel placed reliance upon the various decisions reported in

1. 2004 (4) SCC 794 [Parvindersingh Vs. Renu Gowtam & Others]
2. 2007(3)LW 580 [Kamireddisattiaraju Vs. KandamuriBoolaeswari]
3. 2012(4)CTC100 [Pappammal@T.Papa Vs. P.Ramasamy]
4. 2012(1) CTC 53 [Lakshmi and others Vs. Muthsamy]
5. 2013(3)MWN(Civil) 330 [P.Jaswantkumar Vs. M.Rajashekar]
6. 2018 (11) SCC 761 [B.Vijayabharathi Vs. P.Savitri and others]
7. 2014(4) SCC 693 [Rajasthan Road Transport Corporation Vs. Bajranglal]
8. 2013(15)SCC 161 [Sebastiao Luis Fernandes (dead) Through Lrs Vs. K.V.P.Shastri (Dead) Through Lrs]
9. AIR 1968 SC 1413 [Gopal Krishnaji Ketkar Vs. Mohammed Haji Latif and others]
10. 2011(8) SCC 613 [Ramesh Kumar and another Vs. Furu Ram and another]
11. 2004 (3) SCC 137 [Sopan Sukhdeo sable and others Vs. Assistant Charity Commissioner and others]
12. 2011(12) SCC 658 [Vimaleshwar Nagappa shet Vs. Noor Ahmed Sheriff and others]
13. AIR 1988 Mad 330 [Shanmughasundaram Vs. A.S.Narayanaswami and others]
14. AIR 1961 Cal 359 [A.E.G.Carapiet Vs. A.Y.Derderian]

The principles of law outlined in the decisions relied upon by the plaintiff's counsel as well as the defendant's counsel are taken into consideration and followed as applicable to the case at hand.

28. For the reasons aforesaid, the judgment and decree dated 19.08.2011 passed in A.S.No.31 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore, modifying the judgment and decree dated 11.10.2006 passed in O.S.No.348 of 2002 on the file of the Subordinate Court, Tirupur are confirmed and resultantly the second appeal dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Additional District and Sessions Judge,
Fast Track Court No.II,
Coimbatore.

2.The Subordinate Judge,
Subordinate Court,
Tirupur.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.T.U.Krishnamachari, Advocate, S.R.No. 21318
+1cc to Mr.Sampath Kumar & Associates, Advocate, S.R.No.21578
+1cc to Mr.S.Sithirai Anandam, Advocate, S.R.No. 22111

S.A.No.1611 of 2011
and
M.P.No.1 of 2011
&
M.P.No.1 of 2013
&
C.M.P.No.21565 of 2018

GN(11/05/2021)

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