



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

A.S. No.573 of 2018 and C.M.P. No.15218 of 2018

1.S.A.Giridaran

2.Banumathi

3.G.Yuvashri

4.G.Vigneswaran

... Appellants/Defendants

-vs-

A.Mallika

... Respondent/Plaintiff

Prayer: Appeal Suit filed under Order 41 Rule 1 r/w Section 96 of Civil Procedure Code to set aside the judgment and decree dated 17.04.2018 made in O.S. No.18 of 2015 on the file of the III Additional District cum Sessions Court, Gobichettipalayam by allowing this First Appeal before this Court.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.R.T.Duraisamy

JUDGMENT

(Judgment of the Court was made by T.RAJA,J.)

The appellants, who are defendants before the Trial Court, having suffered the impugned judgment and decree dated 17.04.2018 passed by the III Additional District cum Sessions Judge, Gobichettipalayam in O.S. No.18 of 2015, have come to this Court by way of filing this appeal.

2.It is the case of the plaintiff/respondent before the Trial Court that on 11.12.2014, the plaintiff/respondent and defendants/ appellants have entered into a registered sale agreement/Ex.A3 for a total sale consideration of Rs.25,00,000/- and the defendants/ appellants received an advance amount of Rs.20,00,000/- from the plaintiff/respondent and as per the above sale agreement, the physical possession has to be handed over to the plaintiff/respondent by receiving the remaining



amount of Rs.5,00,000/- from the plaintiff/ respondent. While so, when the plaintiff/respondent was agreed to pay the balance amount of Rs.5,00,000/-, appellants/defendants requested time to hand over the possession giving a reason that there is some difficulty in getting the rental accommodation for shifting the residence. Thereafter, when the plaintiff/respondent asked the defendants/appellants to hand over the possession, again they have made some lame excuses. Subsequently, when pre-suit notice Ex.A4 was issued by the plaintiff stating that she was ready and willing to pay the balance amount of Rs.5,00,000/- on several occasions, the defendants/appellants failed to execute the sale deed. In this regard, though the plaintiff/respondent had been waiting in the Registrar Office on 18.11.2015 with the balance amount of Rs.5,00,000/- and asking the defendants/appellants to come and collect the money and execute the sale deed, they did not turn up. Instead of executing the sale deed, the defendants/appellants sent a reply Ex.A9 stating that the sale agreement dated 11.12.2014 is not true and valid and they have no intention to sell the property and they have asked the plaintiff/respondent to send the copy of the sale agreement for giving detailed reply. The plaintiff/respondent sent a rejoinder Ex.A10 stating that since the agreement dated 11.12.2014 is a registered document, they can get a copy from the Registrar Office. Since the defendants/ appellants failed to perform their part of contract and to execute the sale deed, the plaintiff/respondent filed the suit for specific performance. Though the plaintiff/respondent pleaded his readiness and willingness to pay the balance amount and to register the sale deed, defendants/appellants failed to hand over the physical possession. Therefore, the plaintiff/ respondent prayed for possession also.

3. Written statement has been filed by defendants/appellants stating that the above sale agreement was executed towards security for the loan transaction and there was no consensus ad idem between the parties. When in the normal transaction, original title documents will be handed over only at the time of execution of the sale deed, the defendants/appellants are continued to be in the possession of the suit property shows that there was no intention to execute the sale agreement. When the value of the property is worth Rs.50,00,000/-, no prudent person would have agreed to sell it for Rs.25,00,000/-. The plaintiff/respondent and her husband, being the money lenders, are in the practice of making false plea for getting possession under the sale agreement towards security for the loan transaction. When the second defendant is the owner of the property and there was no sale agreement and it was only a loan transaction, the plaintiff/respondent cannot insist the defendants to sign the document. Therefore, the suit filed by the plaintiff/respondent is liable to be dismissed.



4.Learned counsel appearing for the appellants demonstrated before us that the entire transaction is based on the alleged sale agreement dated 11.12.2014, which is marked as Ex.A3 and the same has been executed as an usual and customary practice prevailing in the place of Sathyamangalam. Since it is only a loan transaction for the amount of Rs.20,00,000/-, which has been received by the appellants with a promise that the said amount would be returned on payment of monthly interest, the same has been mis-used by the plaintiff/respondent. When the loan amount of Rs.20,00,000/- was borrowed by the defendants/appellants on payment of 12% interest, the plaintiff/respondent asked for more rate of interest. As it was denied by the defendants/appellants, taking advantage of the registered sale agreement dated 11.12.2014, the plaintiff/respondent filed the suit for specific performance, in which, the plaintiff/ respondent has prayed for two reliefs, namely, decree for specific performance of the sale agreement dated 11.12.2014 on deposit of the balance amount of Rs.5,00,000/-, alternatively for a direction to re-fund the amount of Rs.20,00,000/- with interest at the rate of 12%. When the plaintiff/respondent approached the Trial Court seeking decree for specific performance, she has failed to explain as to why she has taken two years' time for execution of the sale deed from the date of sale agreement dated 11.12.2014. When the plaintiff/ respondent specifically pleaded in the plaint and also in the pre-suit notice that she was having the balance amount of Rs.5,00,000/-, the same clearly proves the case of the defendants/appellants that it was only a loan transaction and not the sale agreement dated 11.12.2014, marked as Ex.A.3, which is only a document for security towards loan transaction. Secondly, when the plaintiff/respondent has specifically asked for possession of the suit property, which is a residential house, the plaintiff respondent, being a money lender, having parted with Rs.20,00,000/-, ought not to have agreed for two years' time for payment of meager amount of Rs.5,00,000/-, which itself would prove the case of the defendants/appellants and ought not to have filed a suit seeking possession of the property. As the burden of proving the genuineness of the transaction is entirely upon the plaintiff and the suit property is the only source of shelter for the appellants/defendants, the appellants/defendants would suffer a lot in the event of enforcing the suit sale agreement. Therefore, the judgment passed by the Trial Court is liable to be set aside.

5.Learned counsel appearing for the plaintiff/respondent submitted that when it was the case of the defendants/appellants that there was only a loan transaction for a sum of Rs.20,00,000/-, at no point of time, they have substantiated the proof of loan transaction and the same is not a sale agreement. In the absence of proof for loan transaction, the Trial Court rightly decreed the suit. Therefore, the judgment passed by the



Trial Court does not call for any interference.

6.The Trial Court, on the basis of the above pleadings, framed the following issues:

- 'i)Whether Specific Performance of the Contract as sought by the plaintiff is allowable?
- ii)Whether the plaintiff is entitled for any other alternative relief for getting back the advance amount along with interest?
- iii)Whether the plaintiff is entitled for permanent injunction as prayed for?
- iv)Whether there was any loan transaction between the plaintiff and the respondent?
- v)What are the other reliefs?'

7.On the side of the plaintiff, P.Ws.1 and 2 were examined and Exs.A1 to A23 were marked. On the side of defendants, D.W.1 and D.W.2 were examined and no documents were marked.

8.On a consideration of the oral and documentary evidence, the Trial Court, allowed the suit and granted a decree in favour of the plaintiff for specific performance and also granted permanent injunction in favour of the plaintiff. Aggrieved thereby, the present appeal has been filed by the appellants/defendants.

9.We have heard Mr.N.Manokaran, learned counsel appearing for the appellants and Mr.R.T.Duraisamy, learned counsel appearing for the respondents. The following issues arise for determination in this appeal:

- '1.Whether the impugned judgment and decree passed in favour of the plaintiff is sustainable.
- 2.Whether the agreement said to have executed, is a sale agreement or only a loan transaction.'

10.It is seen from the records that the plaintiff and defendants have entered into a registered sale agreement/Ex.A3 on 11.12.2014 for a total sale consideration of Rs.25,00,000/- and the defendants received an advance amount of Rs.20,00,000/- from the plaintiff. As per the above sale agreement, the suit property has to be handed over to the plaintiff by receiving the remaining amount of Rs.5,00,000/- from her. When she was ready and willing to pay the balance amount, the defendants failed to execute the sale deed by making some lame excuses. Since the defendants/appellants failed to perform their part of contract, the plaintiff/respondent filed the suit for specific performance.

11.In the written statement filed by defendants/appellants, it has been stated that the above sale agreement was executed towards security for the loan transaction and that there was no



intention to execute the sale agreement with regard to the suit property. When the defendants/appellants are in possession of the suit property, the plaintiff/respondent has taken a false plea of getting possession under the agreement. When the second defendant is the owner of the suit property and there was no sale agreement, which is only a loan transaction, the defendants cannot execute any sale deed in favour of the plaintiff. Therefore, the defendants sought for dismissal of the suit.

12. Admittedly, there was an agreement between the plaintiff and the defendants for a total sale consideration of Rs.25,00,000/- on 11.12.2014, out of which Rs.20,00,000/- has been received by the defendants from the plaintiff. Both in the written statement filed by the defendants/appellants as well as in the plaint, it has been specifically mentioned that on receipt of Rs.5,00,000/- the defendants have to execute the sale deed in favour of the plaintiff, for which, two years time limit has been fixed. No reason or justification has been shown in the sale agreement or in the plaint as to why two years' time limit has been fixed for execution of sale deed. Such a long delay indicates that there is no readiness or willingness on the part of the plaintiff, hence, the impugned judgment is unsustainable in law and thus the first issue is answered against the plaintiff/respondent.

13. Moving to the second issue, for the sake of convenience, it is necessary to advert to the following portion of the decision of the Hon'ble Supreme Court in Parakunnam Veetill Joseph's Son Mathew v. Nedumbara Kuruville's Son [AIR 1987 suppl. SCC 340] wherein the Hon'ble Supreme Court has cautioned about the granting of relief of specific performance adverting to Section 20 of the Specific Relief Act, 1963:

"9. In Parakunnam Veetill Joseph's Son Mathew v. Nedumbara Kuruville's Son this Court cautioned and observed as under (SCCp.345, para 14)

"14. Section 20 of the Specific Relief Act, 1963 preserved judicial discretion to courts as to decreeing specific performance. The court meticulously consider all facts and circumstances of the case. The court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff."

14. The observation of the Court shows that it is the settled legal principle that specific relief is a discretionary relief which cannot be exercised by the Court when the facts



pleaded and proved by the plaintiff are all untrustworthy and vague because the readiness and willingness has not been proved by the plaintiff, hence, the Court is not bound to grant specific performance merely because it is lawful to do so, therefore, we are of the considered opinion that the Trial Court had erred in relying on the untrustworthy and vague evidence to grant the discretionary relief of specific performance in contravention to the mandate of Section 20 of Specific Relief Act. Accordingly, the second issue is answered.

15. After elaborate arguments made by both the learned counsel and in view of giving quietus to this issue, when this Court posed a question to the learned counsel for the appellants as to the payment of Rs.20,00,000/- to be payable by the appellants, learned counsel appearing for the appellants sought time to pay the above said amount within a period of four weeks citing the reason of pandemic situation due to Covid-19.

16. Since the learned counsel appearing for the appellants sought for four weeks' time to pay the entire amount, namely, Rs.20,00,000/- we are inclined to grant four week's time for making the above payment. Accordingly, the appellants are directed to give a demand draft in favour of the plaintiff/respondent for the sum of Rs.20,00,000/- with interest at the rate of 12% per annum from the date of the agreement till the date of realisation, within a period of four weeks from the date of receipt of a copy of this order.

17. With the above direction, the appeal is partly allowed. Consequently, C.M.P. No.15218 of 2018 is closed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vga

To

1. The III Additional District cum Sessions (Court) Judge,
Gobichettipalayam.

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

+1cc to Mr. N. Manokaran, Advocate SR.No.17366

+1cc to Mr. R. T. Duraisamy, Advocate SR.No.17725

A.S. No.573 of 2018 and C.M.P. No.15218 of 2018

LN(CO)
GMY(06/09/2021)



WEB COPY