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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NO.459 OF 2014
AND M.P.NO.1 OF 2014

P.Annathai

... Appellant/
Respondent/Plaintiff

Vs.

M.Mala

... Respondent/
Appellant/Defendant

PRAYER:

The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree, dated 30.07.2013 in A.S.No.41 of 2011 passed by the Principal District Court, Thiruvallur setting aside the judgment and decree passed by the Sub Court, Poonamallee in O.S.No.102 of 2005, dated 06.01.2011.

For Appellant : Mr.J.A.S.Sathish Kumar

For Respondent : Mr.R.Kamesh Kumar

J U D G M E N T

The plaintiff in O.S.No.102 of 2005 whose suit for specific performance was decreed by the trial Court, upon its reversal by the lower appellate Court in A.S.No.41 of 2011, has come up with this second appeal.

2. The plaintiff filed a suit for specific performance on the basis of the sale agreement dated 27.10.2003. As per the agreement, the sale consideration was fixed at Rs.5,00,000/- and the plaintiff has paid a sum of Rs.4,50,000/- on the same day and registered the agreement vide document No.5638/2003 at the Sub Register Office, Virugambakkam. Two years was fixed for completion of the contract of sale. The plaintiff was always ready and willing to pay the balance sale consideration of Rs.50,000/- and get the sale executed in her favour. Though the defendant having received 90% of the sale price and registered a



general power of attorney in favour of the plaintiff's son S.S.P.Mahesh in order to show the bonafide intention towards the plaintiff to execute and register the sale deed, had failed to perform her part of the contract. The plaintiff caused a lawyer's notice on 24.01.2005 calling upon the defendant to perform the contract. The defendant having received the notice, cancelled the power of attorney registered in favour of the plaintiff's son and evaded to register the property in favour of the plaintiff. On 08.07.2005, through the encumbrance certificate, the plaintiff came to know that the defendant had cancelled an earlier mortgage over the suit property, which of course was redeemed later. Therefore, on 16.08.2005, she lodged a complaint before the Maduravoyal Police Station and the police advised the defendant to honour the agreement. Still the defendant deliberately evade to complete the sale transaction. Hence, the plaintiff sued for specific performance.

3. The defendant filed a written statement, denying all the averments made in the plaint and contended that the plaintiff is a money lender and she used to give money at exorbitant interest to everybody. The defendant borrowed a sum of Rs.3 lakhs from the plaintiff and paid a sum of Rs.50,000/- towards interest. As the defendant was not able to repay the principal amount of Rs.3 lakhs, the plaintiff insisted the defendant to execute the sale agreement in respect of the suit property, fixing a sale consideration of Rs.5 lakhs, adding 1.5 lakhs towards interest to the principal amount borrowed by her. The plaintiff's son, S.S.P.Mahesh threatened the defendant with dire consequences one week prior to the date of execution of the sale agreement. Therefore, the defendant has no other option, except to sign the alleged sale agreement, dated 27.10.2003 and the defendant has not executed the same out of her own will, but under threat, coercion and undue influence by the plaintiff. The averments that after paying 4.5 lakhs out of total sale consideration of Rs.5 lakhs, fixing unusual time of two years for balance sale consideration, would falsify the case of the plaintiff. To the legal notice, dated 24.01.2005, the defendant has given a reply on 20.04.2005 stating that she had cancelled her power of attorney in favour of the plaintiff's son on 11.03.2005. Hence, the plaintiff is not entitled to the discretionary relief sought for.

4. At trial, the plaintiff examined herself as P.W.1 and one Raja has been examined as P.W.2. On the side of the defendants, the defendant examined herself as D.W.1 and one Pandarisalem was examined as D.W.2. Exs.A1 to A5 were marked on the side of the plaintiff and Exs.B1 to B5 were marked on the side of the defendant.



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5. The trial Court after framing appropriate issues decreed the suit in favour of the appellant/plaintiff. On appeal, the first appellate Court set aside the findings of the trial Court and dismissed the suit. Aggrieved over the same, the plaintiff is before this Court.

6. On 20.07.2016, the following substantial questions of law are framed by this Court at the time of admission:

- i. Whether the lower Appellate Court is justified in law in reversing the Judgment and decree of the trial court on the reason that the suit agreement was not entered into for the purpose of alienation of suit property when the defendant has not discharged his onus of proving such contention by adducing material evidence?
- ii. Whether both the Courts below are right in law in not considering the issue of readiness and willingness and giving a finding on that aspect based on the evidence adduced by the parties?

7. I have heard the submissions of the learned counsel appearing on either side and perused the materials available on record.

8. The plaintiff as P.W.1 deposed that the plaintiff demanded repayment of money on several occasions on daily basis. Even after several demands, the defendant has not repaid the money and therefore she filed a suit. The said evidence was strongly relied on by the first appellate Court to give a finding that the transaction between the parties is not one for sale but it is a loan transaction.

9. Admittedly, an agreement was entered on 27.10.2003 and on the very same day, a power of attorney was also executed in favour of the plaintiff's son. Normally when a sale agreement entered between the parties, the sale deed will be registered on payment of balance sale consideration. It is an unusual practice to execute the power of attorney in favour of the plaintiff's son without receiving the balance sale consideration. The first entry found in Ex.A2 itself shows the factum of discharge of loan with the defendant secured from one C.Ramani and on the same date, the sale agreement as well as the power of attorney came to be registered. As all the three transactions had happened on the same day, the submissions made in the plaint that the plaintiff was aware of the prior mortgage through encumbrance, only on 08.07.2005, cannot be said to be proved. As contended by the defendant, to discharge the previous mortgage, the defendant borrowed money from the plaintiff, stands proved.



10. It is also to be noted that the total sale consideration fixed is at Rs.5,00,000/- and 90 % of sale consideration Rs.4,50,000/- was paid on the date of agreement. For paying the remaining balance of Rs.50,000/- two years time was fixed. The plaintiff in her evidence as P.W.1 deposed that she was doing whole sale flower vending business in the whole sale market and was getting good income from the business. In that event, fixing two years of time for execution of the sale deed is unusual. In an usual circumstance, the buyer for want of funds, will seek sometime for mobilizing funds. In this case, the plaintiff had paid a sum of Rs.4,50,000/- out of the sale consideration of Rs.5 lakhs. In spite of having sound financial status as she was doing whole sale flower vending business in a whole sale market, fixing two years time for balance sale consideration is unusual.

11. Be that as it may, in a suit for specific performance, for exercising the discretion infavour of the plaintiff, the plaintiff has to fulfill the mandatory requirements provided under Section 16 (C) of the Specific Relief Act. Section 16 (C) of the Specific Relief Act mandates the plaintiff to prove that the plaintiff was always ready and willing to perform her part of the contract on day to day basis. In the instant case on hand, even though the sale agreement entered on 27.10.2003, the legal notice Ex.A3 was issued only on 24.01.2005. In between, there was no demand on the side of the plaintiff to execute the sale deed in her favour. No documents were produced to show that she had enough money for paying the balance sale consideration and that the defendant had evaded the receipt of money. On the other hand, the legal notice issued after a period of two years, by itself proved that the plaintiff was not always ready and willing to perform her part of contract. In order to comply with the requirements, she had issued a notice as she was ready and willing and demanded performance of the contract. Therefore, the Courts below have given concurrent finding that the plaintiff has not proved the readiness and willingness in the manner expected in law. In such circumstance, this Court is of the considered opinion that the findings of the Courts below are correct and the question of law No.2 is answered against the appellant/plaintiff.

12. As already discussed, the first appellate Court has considered the issue of readiness and willingness, the nature of transaction on the basis of evidence of PW1 for arriving at a right conclusion that the transaction between the parties was not for the purpose of alienation of the suit property and it was one for loan transaction. The admission of the plaintiff as P.W.1 that she demanded money on several occasions and on daily basis and in spite of several demands, the defendant had failed



to repay the money and therefore she filed a suit, would categorically prove that it was a loan transaction and not one for selling the suit property. In that event, the 1st question of law is also answered against the appellant and that the finding the first appellate Court reversing the finding of the trial Court is legally correct and justified.

13. The respondent/defendant has come out with the memo that they will repay the loan amount borrowed by her on 27.10.2003. According to the respondent/defendant they had already paid a sum of Rs.50,000/- and the balance amount is to be paid. With the consent of both sides, this Court directs the defendant to deposit a sum of Rs.4 lakhs (Principal 3 lakhs + interest 1 lakh) within a period of one month from the date of receipt of a copy of this order, failing which, the appellant/plaintiff is entitled to recover the money in the manner known to law.

14. In fine, the Second appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The Principal District Judge, Thiruvallur
2. The Sub Judge, Poonamallee

Copy To

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

+1cc to Mr.J.A.S.Sathish Kumar, Advocate, S.R.No.51835

S.A.No.459 of 2014
and M.P.No.1 of 2014

SJ(CO)
PM/09/06/2022