



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	09.07.2021
Pronounced On	08.10.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.608 of 2014

and

M.P.No.1 of 2014

(Through Video Conferencing)

K.Ramalingam

... Appellant/Defendant

Vs.

J.Manjula

... Respondent/Plaintiff

Second Appeal filed under Section 100 of Civil Procedure Code, 1908 against the Judgment and Decree in A.S.No.11 of 2012 dated 26.02.2013 on the file of the learned District Judge, Tiruvannamalai confirming the Judgment and Decree in O.S.No.93 of 2003 dated 02.03.2012 on the file of the learned Principal Subordinate Judge, Tiruvannamali.

For Appellant : Mr.N.Suresh

For Respondent : Mr.G.Arul Murugan

J U D G M E N T

By an order dated 16.06.2014, this Court had admitted this Second Appeal and framed the following substantial questions of law to be answered at the time of final hearing:-

i. Whether the Courts below have erred in decreeing the suit for specific performance when admittedly the plaintiff has no explanation as to why he has not taken any action for nearly 3 years from the date of the agreement?

ii. Whether the Courts below have erred in decreeing



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the suit without even framing an issue as to the plea of readiness and willingness as raised by the plaintiff?

iii. Whether the Courts below have erred in decreeing the suit without taking into consideration the admitted facts and circumstances that the transaction can only be a loan transaction?

iv. Whether the Courts below have erred in decreeing the suit for specific performance in favour of plaintiff when allegedly the suit agreement came into existence on 16.06.2000 and having allegedly paid nerealy 95% of the consideration and got the agreement registered and there is no explanation as to why a sale deed could not have been executed on the said day itself?

2. In this Second Appeal, the appellant has challenged the impugned Judgment and Decree dated 26.02.2013 passed by the District Court, Tiruvannamalai (hereinafter referred to as Appellate Court), in A.S.No.11 of 2012 confirming the Judgment and Decree dated 02.03.2012 passed by the Principal Subordinate Court, Tiruvannamalai (hereinafter referred to as Trial Court), in O.S.No.93 of 2003.

3. The Trial Court, by a Judgment and Decree dated 02.03.2012 in O.S.No.93 of 2003, had decreed the suit filed by the respondent herein for a specific performance by directing the appellant herein to execute the sale deed in terms of Ex.A1 dated 16.06.2000 in favour of the respondent.

4. It is submitted that the appellant had denied the liability under Ex.A1 Agreement dated 16.06.2000 stating that the said Agreement was that of the Loan Agreement between the appellant and the respondent's husband and that the respondent's husband had misused and registered the same. It was the case of appellant that even though the appellant herein had substantially re-paid the loan amount amount of Rs.63,840/- out of Rs.66,000/- borrowed from the respondent's husband, over a period of time, the respondent filed the above suit for a specific performance of the obligation under the Ex.A1 Agreement dated 16.06.2000. It was a Loan Agreement. The Trial Court had framed the following issues in the suit for consideration:-



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- i. Whether the plaintiff is entitled to the relief of specific performance?
- ii. Whether the plaintiff is entitled to the alternative relief of refund of suit amount with interest and cost?
- iii. Whether it is true that the alleged sale agreement is falsely executed in favour of the plaintiff for the loan amount borrowed from the plaintiff's husband without paying any amount to the defendant as alleged by the defendant?
- iv. Whether the suit is not maintainable as alleged by the defendant?
- v. Whether there is no cause of action for the suit?
- vi. To what reliefs, the plaintiff is entitled?

5. The Trial Court had answered the same in favour of the respondent by directing the appellant to execute the sale consideration vide Judgment and Decree dated 02.03.2012. Assailing the same, the appellant herein had filed A.S.No.11 of 2012 before the Appellate Court on the ground that all land in Ex.A1 did not belong to the appellant herein and that by Ex.B2 dated 25.03.1994, a portion of the land in Survey No.134/1B4 (Item-1 of the Suit Schedule Properties) to an extent of 50 Cents out of total extent of 1.29 Acres had already been sold to the appellant's brother by appellant's father and balance of 79 Cents alone was in the name of appellant's sons.

6. That apart, it was submitted that the appellant was not the owner of the land as there was no service connection in the aforesaid land. It was further submitted that the appellant had borrowed a total sum of Rs.66,000/- from the respondent's husband and had already re-paid a sum of Rs.63,840/-. It is further submitted that taking advantage of the money power, Ex.A1 was registered by the respondent's husband under coercion.

7. It is further submitted that though the Trial Court had framed the above issues, it had not decided the fundamental issue as to whether the respondent was ready and willing to perform her obligations under Ex.A1 Agreement dated 16.06.2000.



8. That apart, it was further submitted that the Trial Court had failed to note that though the amount was allegedly advanced on 16.06.2000 vide Ex.A1 and the last date for payment of balance amount of Rs.10,000/- was 31.12.2000 under the aforesaid Agreement, the respondent issued a notice on 28.12.2002 vide Ex.A2 and filed suit on 30.03.2003. It is submitted that the fact that the respondent herself was not keen to pursue with the suit for a specific performance immediately after the cause of action arose indicates the arrangement in Ex.A1 was that of a Loan Agreement and not that of the Sale Agreement.

9. The learned counsel for the appellant further submits that though the Appellate Court has correctly determined the point in issue as to whether the respondent was ready and willing to perform her part of the contract, it however has failed to give any cogent reasons barring an observation that on a reading of evidence of P.W.1 along Ex.A1 Sale Agreement dated 16.06.2000 and Ex.A2 Legal Notice dated 28.12.2002, the respondent was ready and willing by holding that the Trial Court has come to a correct conclusion that the respondent was willing to perform her part of the contract and come to the Court with a clean hands and she was entitled the suit for specific performance.

10. In this connection, the learned counsel for the appellant drawn my attention to the contradiction elicited during cross examination of the respondent who tendered evidence as P.W.1. The learned counsel for the appellant submits that during the cross examination, the respondent P.W.1 has stated that she would be satisfied if the money was re-paid and it cannot be conclusively said that she was not interested in the property. The relevant portion of the answers elicited from the respondent reads as under:-

எனக்கு பணத்தை திரும்ப கொடுத்தால் போதுமானது. சொத்தின் பேரில் விருப்பம் இல்லை என்று சொல்ல முடியாது.	It is fine if the amount is refunded. It is not correct to say that I have no interest in the property.
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11. The learned counsel for the appellant submits that the Appellate Court had committed a grave error in rejecting the appeal filed by the appellant by concluding that the respondent was willing to perform her obligations. The learned counsel for the respondent has relied on the following decisions of the



Hon'ble Supreme Court and that of this Court:-

- i. Saradamani Kandappan Vs. S.Rajalakshmi & Ors. 2011 (4) CTC 640;
- ii. P.Meenakshisundaram Vs. P.Vijayakumar 2018 (3) CTC 428;
- iii. Thangaraj (Deceased) and others Vs Radhakrishnan and others, 2018 (4) MLJ 538.

12. The learned counsel for the appellant further submits that the Honourable Supreme Court in Saradamani Kandappan Vs. S.Rajalakshmi & Others, 2011 (4) CTC 640 has categorically laid down the principles to be followed while decreeing or rejecting the suit for specific performance and the Courts should bear in mind when the parties prescribe a time/period, for taking certain steps for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored. Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract. It is submitted that every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the Agreement. It is also submitted that Courts frown upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part of the specific performance, where, equity shifts in favour of the purchaser.

13. He further submits that Courts have held that the suits for specific performance can be filed even after a lapse of time stipulated in the agreement for paying the balance amount. Similarly, a reference was made to the decision in Thangaraj (Deceased) and others Vs Radhakrishnan and Ors., 2018 (4) MLJ 538, wherein, the suit was filed after two years. He submits that in all cases, this Court has also interfered with the Judgment and Decree of the Lower Court in as much as there was an inordinate delay to approach the court. The learned counsel for the appellant therefore submits that this appeal is liable to be allowed and all the substantial questions of law have to be answered in favour of the appellant.



14. Defending the impugned Judgment and Decree, the learned counsel for the respondent submits that the appellant has not denied the execution of Ex.A1 dated 16.06.2000 in the written statement and in the additional written statement. He is further submitted that after filing of the written statement on 18.08.2004, the appellant filed an additional written statement on 13.06.2011 by stating that 50% of the land had been sold by the appellant's father in favour of the appellant's brother. He further submitted that in any event, the factum of execution of Ex.A1 has not been denied.

15. The learned counsel for the respondent therefore submits that the well-reasoned Judgment and Decree of the Trial Court which has been affirmed by the Appellate Court need not to be disturbed.

16. The learned counsel for the respondent further submits that both in the plaint and in the evidences, the readiness and willingness of the respondent was to observe her obligations in Ex.A1 stands proved. Therefore, the impugned Judgment and Decree of the Appellate Court and Judgment and Decree of the Trial court are liable to be affirmed. He therefore submits that the questions of law has been framed by this Court to be answered against the appellant by dismissing the appeal.

17. Heard the learned counsel for the appellant and the respondent and also considered the evidence on record and the decisions of the Hon'ble Supreme Court and this Court.

18. It is noticed that before the Trial Court, the respondent examined herself as P.W.1 and examined one Ramachandiran as P.W.2 who is the witness of Ex.A1. The respondent had filed Exs.A1 to A3, namely, Sale Agreement, Legal Notice and the original of the Postal Cover Receipt which was refused to be received by the appellant. The appellant examined himself as D.W.1 and another person also by name Ramalingam son of Sadhasiva Chettiar as D.W.2 who attested Ex.A1 Sale Agreement. The appellant has filed Ex.B1 to B6.

19. From the averments in the plaint and in the written statement, what is evident is that there was a loan transaction between the appellant and the respondent's husband who was an employee in Telephone Department (BSNL) and that since the respondent's husband could not enter into such loan transaction, he has used the respondent's name as an agreement holder. The



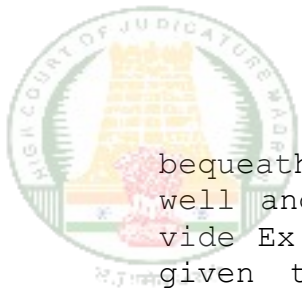
respondent has no independent source of income.

20. The Trial Court has decreed the suit even though the Ex.A1 Agreement dated 16.06.2000 was said to have been executed as loan agreement. The evidence of D.W.2 Ramalingam who was the attesting witness in the Ex.A1 Agreement has clearly stated that the transaction between the appellant and the respondent's husband Janakiraman who was employed with Central Government in BSNL was that of a loan agreement and that the D.W.2 acquainted the appellant to the respondent's husband.

21. The evidence of D.W.2 Ramalingam also brings out the fact that the originally the appellant had borrowed a sum of Rs.10,000/- and thereafter another sum of Rs.8,000/- for purchase of two wheeler. Since the appellant had not paid the amount, the respondent's husband Janakiraman demanded a sum of Rs.20,000/- as total due amount towards principal and interest. The attesting witness in Ex.A1 dated 16.06.2000 Agreement, i.e. D.W.2, had further deposed before the Trial Court that during the course of time, the appellant had further borrowed a sum of Rs.15,000/- from one Mahadevan and the respondent's husband had further repaid the amount borrowed by the appellant to the said Mahadevan and insisted to execute a Security Deed for the total amount of Rs.35,000/- (Rs.20,000/- + Rs.15,000/-) and that the appellant and the attesting witness were informed that the loan agreement was being executed to secure the interest of the respondent's husband. It is under these circumstances that the D.W.2 had affiliated the signature in Ex.A1 Agreement dated 16.06.2000 also at the time of registration of the same.

22. The Trial Court has however disbelieved the evidence of D.W.2 stating that the witness had stated a new story in support of the appellant. It is also noticed that the appellant had also contradicted himself before the Trial Court while agreeing that he had put signature in Ex.A1 Agreement dated 16.06.2000. The appellant had filed written statement before the Trial Court and while admitting the execution of Ex.A1 Agreement dated 16.06.2000 for the purpose of securing the interest of the respondent's husband Janakiraman for the money lender, the appellant had included the details of property as that of the appellant.

23. After 7 years, the appellant filed additional written statement, wherein, it was alleged that Item-1 of the suit schedule properties in S.No.135/1B4 along with other properties had been bequeathed by his father in favour of the appellant on 12.04.1993. However, he came to know that the father had



bequeathed 50 Cents of land out of 1.28 Acres and 1/4th share in well and 5 H.P.Pumpset to the appellant's brother Krishnamurthy vide Ex.B2 Sale Deed dated 25.03.1994 and that the appellant had given the details of the property in Ex.A1 Agreement under impression and mistakes that the appellant's father had bequeathed the entire properties in favour of the appellant.

24. From the above, it was further noticed that 50 Cents of land out of 1.28 Acres and 1/4th share in well and 5 H.P.Pumpset had been bequeathed to the appellant's brother Krishnamurthy vide Ex.B2 Sale Deed dated 25.03.1994. Overall facts and circumstances of the case indicates also that the respondent was not clear about the property, in respect of which, the Ex.A1 Agreement dated 16.06.2000 was executed and that though Ex.A1 Agreement dated 16.06.2000 deals with the entire property, the appellant was not owner of the entire properties in Ex.A1 Agreement dated 16.06.2000, particularly Item No.1 in the suit schedule properties.

25. The Trial Court also merely concluded that D.W.2 who was the attesting witness in Ex.A1 Agreement dated 16.06.2000 has given evidence in concurrence with the evidence of appellant as D.W.1. It is to be however noticed that the appellant had borrowed a sum of Rs.66,000/- from the respondent's husband and repaid a sum of Rs.63,840/-. Mere mismatch in the amounts admitted by the appellant and the amounts stated by D.W.2 would not mean that evidence of D.W.2 was disbelieved.

26. The fact remains that the respondent during the cross examination has also accepted that she would be satisfied if the amounts mentioned in the sale agreement was refunded to back her though she also has deposed that it cannot be said that she was not interest in the suit schedule property. The fact that the Agreement in Ex.A1 dated 16.06.2000 obligation for execution of sale deed was not pursued with alacrity as in the case of genuine transaction for specific performance of Agreement does raise a suspicion. The fact also remains that the legal notice was issued on 28.12.2002 vide Ex.A2 and since it has been returned on 31.12.2002, the suit was filed later on 30.03.2003.

27. The evidence on record and the conduct of the parties also indicate that the Agreement entered between the appellant and the respondent in Ex.A1 was not that of a Sale Agreement, but, that of a Loan Agreement though Ex.A1 was duly registered and witnessed by D.W.2. The evidence of the appellant (D.W.1) and D.W.2 also confirm that what was being registered was to be a loan agreement.



28. At the same time, even though according to the appellant, he had borrowed only Rs.66,000/- in different tranches and he has repaid a sum of Rs.63,840/-, there is no evidence to substantiate the same. There is also no evidence to substantiate that the appellant has received a sum of Rs.2,00,000/- from the respondent. However, Section 92 of the Indian Evidence Act, prohibits the oral evidence on the context of document. It is noticed that the respondent's husband was not examined as a witness even though the written statement filed by the appellant has categorically stated that the respondent's husband was the person with whom the appellant had transaction and the respondent was merely a name lender.

29. The Trial Court ought to have framed a proper issue before granting the discretionary relief of specific performance to the respondent. In fact, the Trial Court has also not decided as to whether the respondent was ready and willing to perform on part of her obligation under Ex.A1 Agreement dated 16.06.2000. Considering the overall facts and circumstances of the case, it has to be concluded that the Agreement between the appellant and the respondent vide Ex.A1 dated 16.06.2000 was that of the Loan Agreement and not that of a Sale Agreement and consequently, the prayer of the respondent in the suit which was allowed and decreed by the Trial Court and confirmed by the Appellate Court is liable to be interfered with. Thus, the impugned Judgment and Decree of the Appellant Court confirming the Judgment and Decree of the Trial Court is liable to be set aside.

30. There is almost a lapse of 2 years between the last date for paying balance amount of Rs.10,000/- and filing of the suit on 30.03.2003. Apart from that, if the contents of Ex.A1 Agreement were to be treated as that of the Sale Agreement, it remains inexplicable as to why after having paid almost 95.23 %, i.e. Rs.2,00,000/- out of entire sale consideration of Rs.2,10,000/-, the respondent did not pay the balance amount in time after the alleged cause of action for executing the Sale Agreement arose or take steps to enforce her rights. Thus, the respondent has not established any equity on the facts and circumstances of the case in favour of her. Further, relief in a suit for specific performance is ultimately a discretionary relief granted to an agreement holder.

31. Considering the fact that the appellant has also not clearly established having repaid a sum of Rs.63,840/-, the amount mentioned in Ex.A1 dated 16.06.2000 has to be taken on its face value under Section 92 of the Indian Evidence Act, 1872.



32. Therefore, while setting aside the impugned Judgment and Decree of the Appellate Court confirming the Judgment and Decree of the Trial Court, the Judgment and Decree of the Trial Court is modified by directing the appellant to re-pay a sum of Rs.2,00,000/- to the respondent together with interest at 7.5% per annum from the date of 16.06.2000 till the date of repay, within a period of eight weeks from the date of receipt of a copy of this Judgment. The appellant shall also deposit the cost awarded by the Trial Court, if any, within the aforesaid period.

33. If the appellant deposits the aforesaid amount within the aforesaid period, the Judgment and Decree of the Trial Court shall stand modified as above, failing which, the decision of the Trial Court and the Appellate Court shall stand automatically upheld.

34. The questions of law are thus answered as above and this Second Appeal is accordingly partly allowed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

jas / jen

To

1.The District Court, Tiruvannamalai.

2.The Principal Subordinate Court, Tiruvannamalai.

Copy to:The Section Officer,
V.R.Section, Madras High Court.

+1cc to Mr.N.Suresh, Advocate SR.No.53654

+1cc to Mr.G.Arul Murugan, Advocate SR.No.53463

S.A.No.608 of 2014
and M.P.No.1 of 2014

BS (CO)
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