IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.148 of 2017
and CMP No.3150 of 2017
and 3202 of 2019

V.Baskar ... Appellant/Plaintiff

Vs.

1. Shanmugam

2. Kadirvel
(R1 and R2 are represented by
Power agent Ranganathan)

3. Ranganathan ... Respondents/Defendants

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree, dated 08.11.2016 in A.S.No.16 of 2016 on the file of the I Additional District and Sessions Court, Vellore District, confirming the Judgment and Decree dated 30.11.2015 in O.S.No.24 of 2008 on the file of the Subordinate Court, Gudiyatham, Vellore District.

For Appellant : Mr.V.M.G.Ramakkannan

For Respondents R3 : Mr.S.T.Dhanyakumar

For Respondent 1 & 2 : No Appearance

J U D G M E N T

The plaintiff in O.S.No.24 of 2008 on the file of the Subordinate Judge, Gudiyatham whose suit for specific performance was dismissed by the trial Court, upon its affirmation by the appellate Court, has come up with this Second appeal.

2. The plaintiff is the appellant herein. According to the plaintiff, he entered into an agreement of sale with the 1st and 2nd defendants through their power agent, the 3rd defendant herein. The total sale consideration was fixed at Rs.1,10,000/-, out of which the plaintiff paid a sum of Rs. 1 lakh towards part of sale consideration and got a registered

sale agreement to that effect on 04.10.2006. A period of 18 months was fixed for payment of balance sale consideration and execution of sale deed i.e. on or before 03.04.2008. The plaintiff was always ready and willing to perform his part of the contract. But the defendants were postponing to perform their part of contract under some pretext or the other. Hence, the plaintiff had issued a legal notice on 24.03.2008, requiring the defendants to be present at the Sub-Registrar Office, Gudiyatham for receiving the balance sale consideration and to execute the Sale deed. But, there was no reply from the defendants to the said legal notice. Since the defendants did not come forward to execute the Sale Deed, the plaintiff sued them for specific performance. During the pendency of the suit, on 28.05.2008, the 3rd defendant, Power of Attorney got the sale deed executed in his favour and therefore he was impleaded as a party respondent to the suit in his individual capacity.

3. The suit was resisted by the defendants contending that they did not enter into an agreement of sale with the plaintiff and the alleged transaction was a loan transaction. The value of the property was more than 5 lakhs and there was no need to sell the property for a meager price of Rs.1,10,000/-. The mountain of difference between the sale price stated in the agreement and the actual price of the property at the time of agreement, would clearly falsify the case of the plaintiff. The plaintiff is a money lender and he is famous for Kanthu vaddi business and that it is only a transaction between the plaintiff and the Power Agent. There is no intention for the defendants to sell the property. It is the custom prevailing among money lenders to obtain sale agreement as security for the loan given by them. Similarly, the plaintiff has obtained the suit document through their power agent. On the above contentions, the defendants sought for dismissal of the suit.

4. During trial, the plaintiff examined himself as P.W.1 and one K.Palani was examined as P.W.2. On the side of the defendants, the 3rd defendant has examined himself as D.W.1 and two other witnesses were examined as D.W.2 and D.W.3. The plaintiff marked Exs.A1 to A5, the defendants marked Exs.B1 and B2.

5. The trial Court after framing appropriate issues and upon consideration of the evidence on record, came to a conclusion that the suit agreement was not intended to be acted upon as a agreement of sale and dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.16 of 2016. The lower Appellate Court on re-consideration of the evidence on record, agreed with the finding of the trial Court and dismissed the appeal.

6. Aggrieved over the concurrent findings of the Courts below, the plaintiff has come forward with the second appeal. The following substantial questions of law were framed by this Court at the time of admission on 06.03.2017:

i. Whether the Courts below are correct in law in having failed to appreciate the settled legal proposition that no oral evidence could be relied upon so as to vary or deny the recitals of the document which was reduced in writing by the parties to such document as envisaged under Sections 91 and 92 of the Indian Evidence Act?

ii. Whether the Courts below are correct in law in having failed to consider the legal position that the defendants 1 and 2 who were originally parties to the suit and who sold the Suit lands to their power agent – the 3rd defendant pending the suit, had not chosen to get into box to depose evidence to establish their defense that the sale consideration was received by them only as loan and the sale agreement was meant only for a security and that they did not intend to sell the lands?

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. It is the case of the plaintiff that he agreed to purchase the suit property for a total sale consideration of Rs.1,10,000/- and entered into an registered agreement of sale and paid a sum of Rs.1 lakh towards part of sale consideration. The balance amount was agreed to be paid on or before 03.04.2008. This was the main suspicion in the minds of the Courts below as to why a long time was fixed for execution of the Sale deed, which does not admittedly mean that the said transaction is a loan transaction. The defendants have categorically pleaded that the plaintiff is a money lender and he is famous for Kanthu Vaddi and the defendants have obtained money only for the purpose of security. Even assuming that it was only a loan transaction, it is pertinent to note the entry found in Ex.A1, which specifically states that it was a sale agreement entered between the plaintiff and the 3rd defendant, power of Attorney of the defendants 1 and 2. Even though, the defendants have taken a stand in the written statement that it is a loan transaction and the plaintiff is a money lender, there is no absolute evidence on the side of the defendants to prove the same. Curiously, the 1st and 2nd defendants who are the principals of the sale agreement have failed to enter into the box to prove that they have not intended to sell the property

and sale agreement was sham and nominal. It is relevant to note that the sale deed entered into between the defendants 1 and 2 and the 3rd defendant who is their power of attorney, reveals the property was sold for a consideration of Rs.2,09,000/-. As stated in the written statement, the value of the property is about Rs.5 lakhs, while so, the property would not have been sold for a sum of Rs.2,09,000/-. In this regard, there is no evidence let in by the defendants 1 and 2 to clarify that the sale deed was registered as per the market value, in favour of the 3rd defendant. Consequently, the recitals in the sale deed registered in favour of the 3rd defendant, would clearly go to show that the suit property was in possession of the defendants 1 and 2 till the date of sale and the possession was handed over to the 3rd defendant on the date of registration of the Sale deed. In that event, the pleading that the 3rd defendant was a cultivating tenant for over 30 years and he did not have money to purchase the stamp papers and hence he obtained a registered power of attorney, appears to be false. It is stated that the power agent alone is the owner of the property. Even assuming that the statement is true, burden is cast upon the defendants to clarify as to whether the third respondent in the capacity of the owner or on behalf of his principals, as agent, had entered into the sale agreement. There is absolutely no evidence to justify the position of the parties and the nature of transaction. Hence, it is obvious that the defendants have not come forward with clean hands and failed to prove that they have not clarified the aspect as to what purpose they borrowed the amount and that entered into the sale agreement with an intention to sell.

9. It is also imperative to note that after filing of the suit, the 1st and 2nd defendants have sold the property to the 3rd defendant for a sale consideration of Rs.2,09,000/-. From this transaction, it is made clear that either the 1st and 2nd defendants should have got money from the 3rd defendant or the 3rd defendant was in a sound financial position to pay the sale consideration. If it is assumed that the sale agreement entered into between the plaintiff and the defendants 1 and 2, is a loan transaction, the parties would have repaid the sum of Rs.1 lakh along with interest to the plaintiff. However, there is no explanation as to why the loan was not discharged and there should be a specific pleading as to why interest was not charged on the money and what was the period, within which the amount to be repaid, the number of installments and what was the amount to be payable for every installment. Apart from the above, they should have furnished the details regarding the amount paid till the demand made by the lender and the balance amount due to the lender. Without any such specific details, a bald averment that it is a loan transaction, will not satisfy the requirements of the pleadings in a suit for specific performance and it will

construed as a false defense taken by the defendants to prejudice the minds of the Court.

10. No doubt true, 18 months time was fixed for completion of sale consideration. It is not the case of the defendants that the plaintiff was not having money to perform the contract and he was not ready and willing to perform the contract. On the other hand, an explanation has been given by the plaintiff that the 3rd defendant approached the plaintiff for want of money, entered into a registered sale agreement. The defendants have not stated any reason for fixing 18 months time for execution of sale. On the other hand, as mentioned above, the 1st and 2nd defendants have neither filed independent written statement nor entered the witness box to establish their defense, but the written statement was filed by the 3rd defendant only in the capacity of power of attorney. It is also required to be noted that the 3rd defendant who was arrayed as a party respondent in his individual capacity, after execution of the sale deed in his favour, had not chosen to file written statement in his individual capacity to explain as to how he got the sale deed executed in his favour, while Ex.A1, sale agreement executed by him as power Agent in favour of the plaintiff, was subsisting. It is also pertinent to note that as per the written statement, the case of the 1st and 2nd defendants is that the 3rd defendant borrowed money from the plaintiff for purchasing stamp papers. But there is no evidence on the side of the 3rd defendant who deposed as DW1 to prove the said fact. But he would depose that he has mobilized the money, purchased stamp papers and got the property registered, the 1st and 2nd defendants discharged loan and cancelled the sale agreement registered in favour of the plaintiff. Nevertheless, the averments in the plaint are admitted. He admitted that on the strength of the power of attorney, a sale agreement was registered for a sale consideration of Rs.1,10,000/- for which, a sum of Rs.1,00,000/- was received as advance. As per Ex.A2, the plaintiff had issued a legal notice, for which no reply was given by the defendants. The 3rd defendant who was also aware of the fact that a suit for specific performance has been filed on 02.04.2008, purchased the suit property during the pendency of the suit and he has not disclosed this fact before the trial Court in his chief examination. He also suppressed the fact of registration of the Sale Deed, dated 28.05.2008 in his written statement filed on behalf of his principals, dated 15.07.2008. Both these oral and documentary evidences clearly prove the suppression of fact and dishonest conduct on the part of the defendants. The Courts below have failed to note the conduct of the defendants, in suppressing the facts, as well as, their ulterior move to defeat the rights of the plaintiff. Though the Courts below had found in the suit that there is suppression of fact, failure to appear before the Courts below to let in

evidence with an dishonest motive in executing the sale deed pending suit, I do not find any evidence to show that the plaintiff is a money lender and the transaction between the parties is a loan transaction. Therefore, the finding of the Courts below are totally erroneous.

11. Insofar as the question of law 1 is concerned, Section 91 of the Indian Evidence Act clearly mandates the parties not to go against the terms of the registered instrument. As per Section 92 of the Indian Evidence Act, when the terms of any contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted. It shall be proved in accordance with section 91 of the Indian Evidence Act.

12. In the instant case on hand, the terms of the contract between the parties clearly shows that it is an agreement of sale, for which the defendants 1 and 2 have received a major amount of sale consideration and agreed to execute the sale deed within a period of 18 months i.e., on or before 03.04.2008. Now, they cannot take a different stand that it was a loan transaction which is contrary to their terms. Even though a stand is taken as discussed above, the defendants have not discharged the onus of proving that the plaintiff is a money lender and the agreement which has been entered with the plaintiff is illegal. In that event, the first question of law answered in favour of the appellant/plaintiff.

13. Insofar as the second question of law is concerned, the 1st and 2nd defendants who are agreed to sell the property through their power of attorney, have not chosen to get into the box to depose and to establish their defense that it was only a loan transaction. The 3rd defendant who was later impleaded as party to the suit, in his individual capacity as a subsequent purchaser, has also not filed any written statement. In that event, the said sale transaction itself shall be considered as malafide and it should be construed to be an act to defeat the rights of the plaintiff. In any event, the defendants 1 and 2 or the 3rd defendant have not established the fact that they have borrowed money from the plaintiff for their independent needs, and consequently failed to prove that it was a loan transaction. In the absence of any evidence to prove that it is a loan transaction, the 2nd question of law also answered in favour of the appellant/plaintiff.

14. In view of the discussions made above, the Judgment and Decree passed in O.S.No.24 of 2008 on the file of the Subordinate Court, Gudiyattam as confirmed in A.S.No.16 of 2016

on the file of the I Additional District and Sessions Judge, Vellore, dated 08.11.2016 stand set aside and the suit is decreed in favour of the appellant/plaintiff. The appellant/plaintiff is directed to pay the balance sale consideration of Rs.10,000/-(Rupees Ten thousand only) to the defendants within a period of one month form the date of receipt of a copy of this order. The respondents/defendants are directed to execute the sale deed in favour of the appellant / plaintiff within a period of three months thereafter.

15. In fine, the Second Appeal stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

vum

To
1. The I Additional District and Sessions Court,
Vellore District.

2. The Subordinate Court, Gudiyatham,
Vellore District.

Copy to:
The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1cc to Mr.T.Dhanyakumar, Advocate, S.R.No.50630

+1cc to Mr.V.M.G.Ramakkannan, Advocate, S.R.No.50620

S.A.No.148 of 2017
and CMP No.3150 of 2017
and 3202 of 2019

RSI(CO)
KM(16/03/2022)