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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM:

The Hon'ble Mr. Justice KRISHNAN RAMASAMY

S.A.No.740 of 2017
and
C.M.P.No.18627 of 2017

Ramesh

..Appellant

Vs

1.Dhurkaiyan
2.Valliyammal

..Respondents

Prayer : Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree made in A.S.No.2 of 2012 dated 20.12.2016 on the file of the III Additional District Judge, Kallakurichi by confirming the judgment and decree made in O.S.No.107 of 2008 dated 28.04.2011 on the file of Sub-Judge, Kallakurichi.

For Appellant : Mr.R.Balasubramanian

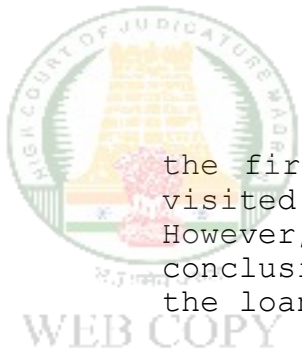
For Respondents : Mr.P.Valliappan

J U D G M E N T

The present second appeal has been filed against the judgment and decree passed in A.S.No.2 of 2012, dated 20.12.2016, on the file of the III Additional District Judge, Kallakurichi by confirming the judgment and decree made in O.S.No.107 of 2008, dated 28.04.2011, on the file of Sub-Judge, Kallakurichi.

2. The learned counsel appearing on behalf of the appellant would submit that a sale agreement was entered by the appellant with the first respondent on 19.10.2006 to purchase the property. The total sale consideration was fixed to a sum of Rs.2,00,000/-, out of the said sale consideration, a sum of Rs.1,70,000/- was paid to the respondent at the time of entering into the sale agreement.

3. Further, the learned counsel submits that both the Courts below has wrongly concluded the agreement is only as a security for the loan, whereas the present transaction is only to sell



the first respondent's property to the appellant. The appellant visited the respondent place and entered into agreement. However, both the Courts below have concurrently come to the conclusion that this sale agreement was only as a security for the loan.

4. The contention of the learned counsel for the appellant is that if it was a security for the loan transaction, there is no necessity for the appellant to visit the respondent's house and enter into the sale agreement. Since it was a sale agreement, the appellant visited the respondent place and this aspect was not considered, without considering this aspect, both the Courts below have wrongly come to the conclusion that it is only as a security for the loan transaction.

5. Challenging both the judgment and decree of both the Courts below, he filed the present Second Appeal by suggesting the following substantial questions of law:

A) Whether or not the Courts below have committed error in not appreciating the oral and documentary evidence properly?

B) Whether or not the judgment of the Courts below are based on surmises and conjectures, warranting interference under Section 100 of CPC?

C) Whether or not the findings of the Courts below are based on misreading of evidence or so perverse that no reasonable person of ordinary prudence could take the said view, warranting interference U/sec.100 CPC?

D) Whether or not the findings of the Court below are arbitrary, unreasonable and perverse one, warranting interference U/Sec.100 C.P.C.?

E) Whether or not the Lower Appellate Court has committed error, in ignoring to advert to Ex.A3, additional evidence, while disposing of the Appeal?

F) Whether or not the Lower Appellate Court have committed error in mechanically affirming the findings of the Trial Court without due and proper application of mind?

G) Whether or not the findings of the Lower Appellate Court are vitiated by non-consideration of the relevant evidence and by an essentially error only approach to the subject matter, warranting interference U/Sec.100 C.P.C?

H) Whether or not the findings of the Lower Appellate Court stand vitiated on wrong test and on the basis of assumption and conjectures, resulting therein an element of perversity, 2005 (2) SCC 500?

I) Whether or not the findings of fact recorded by the Lower Appellate Court stood



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vitiated on account of non-consideration of additional evidence of a vital nature, 2010 (13) SCC 216?

J) Whether or not the Lower Appellate Court is right in not framing the points for determination in the First Appeal as contemplated under order 42 Rule 31 of CPC?

K) Whether or not the Lower Appellate Court erred in not following the Principles settled in the cases Reported in 2017 (1) Madras Weekly Notes (Civil) 103 and 2017 (1) Madras Weekly Notes (Civil) 513, Wherein, it was held that all points would be framed for adjudication of the claim in the First Appeal?

1) Whether or not the findings of the Lower Appellate Court is vitiated for not considering the provisions of Sec.91 and 92 of the Evidence Act while construing the oral evidence of the Defendants which is contrary to Ex.A-1 Agreement of Sale duly registered?

M) In the light of the law settled by the Hon'ble Supreme Court of India Reported in 2015(2) Current Tamil Nadu Cases 178 Courts, Whether or not the Learned Judge is right in holding that the Defendant is entitled to lead evidence contrary to Ex.A-1 Agreement of Sale duly registered?

N) Whether or not the Lower Appellate Court is right in holding that the Appellant/Plaintiff was not ready and willing to perform his part of the contract, when admittedly, the suit has been filed within the period fixed for performance of the contract under Ex.A-1 Agreement of Sale?

By proposing the above substantial questions of law, he insisted the Court to admit the appeal.

6. Upon the hearing of the arguments of the learned counsel for the appellant and on perusal of the materials available on record and the judgments of both the Courts below, it appears that the defendant entered into a sale of agreement through Ex.A1 on 19.10.2006, in terms of the sale agreement a sum of Rs.1,70,000/- was paid to the appellant as per the records. It was acknowledged in the receipt that a sum of Rs.1,70,000/- and total sale consideration was fixed and a sum of Rs.2,00,000/-. Both the Courts below came to the conclusion that it was executed as a security for the loan and the relevant portion of



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the judgment of the Appellate Court, at this juncture, would be appropriate to extract hereunder:

"11. For the sake of convenience, the parties hereinafter are referred to as per their rankings in the trial Court. Ex.A1 is the registered agreement of sale entered into between the plaintiff and defendant. In Ex.A1, the suit schedule property, the extent of the property has been stated as 3.03 acres along with 7.5 HP motor, which is the case of the defendant that, the agreement of sale dated 19.10.2006 has been executed towards security which the defendant has obtained Rs.1,70,000/- as hand loan from the plaintiff for deepening the Well and Ex.A1 was never intended to be agreement of sale. Ex.A2 is the certified copy of sale deed dated 23.01.2006 in and by which the defendant has sold 1.42 acres of the suit schedule property to one Subramaniyan. By way of Ex.B1, the ancestral properties of the defendant's family were sold on 02.03.2000 for a sum of Rs.2,25,000/- and out of the sale proceeds of Ex.B1, Ex.B2 (i.e) the suit schedule property in S.No.155/4 have been purchased admeasuring 3.47 acres were purchased. Ex.B3 is another sale deed dated 30.10.2006 in and by which the defendant purchased another 1.00 acre in the suit schedule property in S.No.155/4. Hence, the counsel for the defendant argued that, on the date of agreement of sale (i.e) on 19.10.2006, the defendant did not even have right over the entire 3.03 acres in the suit schedule property. But, only 2.03 acres in the suit schedule property. Hence, the above facts would go to show that, Ex.A1 is intended to be a security for the loan.

12. Moreover, on perusal of Ex.A2 which is the sale deed executed by defendant to one Subramaniyan in and by which, he has sold 1.42 acres in S.No. 155/4, the right to common cart-track has been given. However, in Ex.A1, the said clause did not find place and to probabalise the case of the defendant that, Ex.A1 is not intended to be an agreement of sale. On perusal of Ex.A1 and Ex.B3, both are registered on the same day (i.e) on 30.10.2006. As per Ex.A1,



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agreement of sale, the defendant has agreed to sell 3.03 acres of the suit schedule property for Rs. 2,00,000/- and has received a sum of Rs. 1,70,000/-. As per Ex.B3, the defendant has purchased another 1.00 acre in S.No. 155/4 on the same (i.e) on 30.10.2006. Hence, this court is of the opinion that the argument of the defendant counsel has force that no prudent man would enter into an agreement of sale on the date of purchase of property in the same survey number.

13. PW1 is the plaintiff and PW2 is the Attestor of Ex.A1. PW2 has admitted that he is the relative of PW1. PW2 in his evidence stated that, the said agreement is intended to be an agreement of sale. On the other hand, DW2 is also one another Attestor of Ex.A1 and he has stated that, the agreement is intended to be towards security for loan of Rs. 1,70,000/-. Moreover, DW2 has also stated that, since the defendant's father is involved in religious affairs and going on pilgrimage and also involved in Bajanaai, the defendant has been managed the family. This court believes the evidence of DW2 since DW2 is an independent witness. The counsel for the defendant argued that, the plaintiff is financially sound and he has admitted the same in his cross-examination and there is no need for the plaintiff to enter in to agreement of sale for Rs. 2,00,000/- and pay a sum of Rs. 1,70,000/- and take time for two years to make the balance payment of Rs. 30,000/- and hence the same would go to show that the agreement of sale has been entered in to by the plaintiff and the defendant only as a security towards the loan of Rs. 1,70,000/- obtained by the defendant. On perusal of the evidence of PW1, PW1 has admitted that he is financially sound. When the plaintiff himself has admitted that, he is financially sound and he has paid a sum of Rs. 1,70,000/- on 19.10.2006 and he need not wait for another two years to pay the balance amount of Rs. 30,000/- and this circumstances also strengthen the case of the defendant that, Ex.A1 is intended to be a security for the loan amount and since the plaintiff has insisted the defendant to enter into an agreement of sale dated



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19.10.2006. Moreover, non-mentioning of right to cart-track and also a dilapidated house in the suit schedule property and also created considerable doubt about Ex.A1. Hence, on perusal of Ex.A1 and Ex.B3, this court is of the opinion that, Ex.A1 is not intended to be an agreement of sale. The instance that Ex.A1 and Ex.B3 were executed on the same day (i.e) Ex.A1 agreement of sale executed for 3.03 acres in S.No. 155/4 and also Ex.B3 sale deed by which the defendant purchased 1.00 acre in S.No. 155/4 would probabilise the defence put forth by the defendant that Ex.A1 is not intended to be agreement of sale. Though the defendant has stated that he has paid Rs. 42,000/-. The learned counsel for the respondent has submitted a decision reported in 2008(2) CTC 382 : P. Sampooram and others v. L.T.Somasundaram and others. Wherein it has been held by the Hon'ble High Court, Madras that,

"The relief of Specific Performance is a discretionary relief and even if a doubt arises whether it is probable or possible that Agreement of Sale would have been executed at all, discretionary relief shall not be granted."

The defendant, has put forward the probabilities that, the sale agreement executed between the plaintiff and the defendant was not intended to be an agreement of sale, but only as security for loan and the documents put forth by the defendant and the evidence of the defendant and along with the evidence of attesting witness DW2 would probabilise the case of the defendant. Hence, this court is of the opinion that, the defendant has proved that, Ex.A1 has been executed as security for loan and the trial court has rightly disbelieved the case of the plaintiff and declined the relief of specific performance and has granted alternative relief of repayment of Rs. 1,70,000/- with subsequent interest @ 12% p.a. Hence, this court is of the



opinion that the judgment of the trial court does not suffer from any infirmities and the well considered and reasoned judgment of the trial court need not be interfered.

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7. On perusal of the judgment would show that the first Appellate Court as well as the Trial Court came to the conclusion that it is a security to the loan and further they have discussed about the receipt of a sum of Rs.1,70,000/- as acknowledged in the sale agreement and the time limit provided in the sale agreement for making the balance sale consideration of a sum of Rs.30,000/-. The Courts below found that the plaintiff is having a sound financial position and there is no necessity for taking two years of time to pay the balance sale consideration of Rs.30,000/-. When the appellant/plaintiff was able to arrange a sum of Rs.1,70,000/- at the time of agreement, taking two years time, for making balance sale consideration of a sum of Rs.30,000/- would show that this agreement was not made to purchase the land but for the provision of security for granting the loan. Further, the appellant has not shown any ready and willingness to make balance amount of Rs.30,000/- over the period of two years.

8. In this regard, both the Trial Court and the Appellate Court has examined thoroughly all the documentary evidences as well as the oral evidences and after analyzing all the evidences, both the Courts below have rendered a well reasoned judgment. As far as the sole contention raised by the appellant before this Court with regard to the necessity of the appellant who is the lender to visit the first respondent's place, is concerned, these all are the matters regarding the facts of the case. The Courts below have concurrently come to the conclusion, that is only for the provision of security and not for purchasing the property. Therefore, this Court is also of the view that merely by visiting the lender to the borrower place, ipso facto, cannot be considered that the appellant visited only for the purpose of entering into a sale agreement with the intention to purchase the property.

9. Therefore, in any angle, this Court is not able to accept the contention of the learned counsel for the appellant and ultimately finds that there is no substance in his contention and further this Court is also not able to trace out any reasons to interfere with the judgment and decree passed by the Courts below.

10. In view of the above, this Court does not find any substantial question of law that arises for consideration as suggested by the appellant in the memorandum of appeal and ultimately deserves for dismissal.



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11. In the result, this second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Sub-Judge,
Kallakurichi.

2.The IIIrd Additional District Judge,
Kallakurichi.

3.The Record Keeper,
V.R.Section, High Court, Madras.

+1cc to Mr.P.Valliappan, Advocate, S.R.No.5762

S.A.No.740 of 2017
and
C.M.P.No.18627 of 2017

VSN-II (CO)
CB(08/09/2021)