



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.01.2021

PRONOUNCED ON : 11.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

S.A. (MD) No.125 of 2012

and

M.P. (MD) No.1 of 2012

Gajendran

...Appellant/Respondent/Defendant

Vs.

1.Sivanandi (died)

2.Easwari

3.Sivarajan

4.Senthilrajan

...Respondents/Appellants/Plaintiffs &
Lrs of R1

(Respondents 2 to 4 were brought on record as legal heirs of the deceased R1 vide Court order dated 04.01.2021 made in CMP 1617 to 1619 of 2018)

PRAYER: This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.58 of 2008 dated 10.10.2011 on the file of the Principal District Judge, Dindigul modifying the judgment and decree passed in O.S.No.339 of 2002 dated 22.10.2008 on the file of the Principal Sub-Ordinate Court, Dindigul.

For Appellant : Mr.R.G.Shankar Ganesh

For Respondents : Mr.H.Lakshmi Shankar

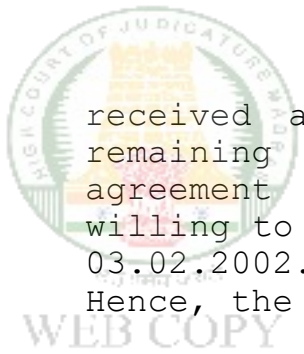
JUDGMENT

Aggrieved over the finding of the first appellate Court directing the defendant to refund a sum of Rs.2,35,000/- along with interest, this second appeal is filed.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Appeal Suit, are as follows:-

The defendant has agreed to sell the property to the plaintiff for a total consideration of Rs.2,37,000/- on 14.05.2001 and executed a registered sale agreement on the same day and also



received a sum of Rs.2,35,000/- as an advance and to pay the remaining amount of Rs.2,000/-, 15 months time from the date of agreement was stipulated. The plaintiff was always ready and willing to perform his part of contract and issued a legal notice on 03.02.2002. However, the defendant evaded to execute the sale. Hence, the suit has been filed for specific performance.

4. It is the case of the defendant that he has received a sum of Rs.1,50,000/- as loan and agreed to pay the said sum with interest at the rate of 1% and towards the above said loan, the plaintiff insisted an agreement. Accordingly, he has executed an agreement on 21.05.1999. However, the agreement was not intended for sale of the property as per the above agreement dated 21.05.1999 and as per the directions of the plaintiff an another agreement dated 14.05.2001 was also executed for a sum of Rs.2,35,000/-. However, it is the contention that he has never received such amount and he is liable to pay only a sum of Rs.96,000/- with interest at the rate of 1%.

5. Based on the pleadings, the following issues were framed by the trial Court:-

(1) Whether the plaintiff and the defendant have entered into a sale agreement on 14.05.2001?

2) Whether the agreement was executed only towards the loan transaction?

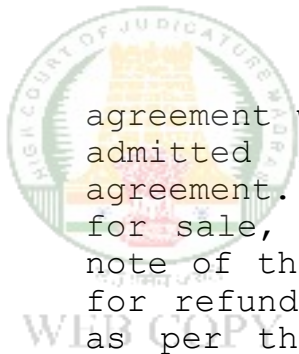
3) Whether the plaintiff was entitled for the relief of specific performance?

4) To what other reliefs?

6. Based on the above pleadings, on the side of the plaintiff P.Ws.1 to 3 were examined and Exs.A1 to A3 were marked and on the side of the defendant P.W1 was examined and Exs.B1 to B8 were marked.

7. On the basis of the evidence and materials, the trial Court dismissed the suit filed for specific performance.

8. It is to be noted that during trial, no alternative relief has been sought. However, when the appeal was pending in A.S.No.58 of 2008, an application to amend the prayer claiming alternative relief appears to have been filed and the same was allowed. Challenging the same, a Civil Revision Petition in C.R.P.(MD)No.5 of 2011 was filed and the same was dismissed confirming the order of the First Appellate Court allowing the petition seeking amendment to claim alternative relief. The First Appellate Court after considering the entire evidence found that the contentions of the appellant that the agreement, dated 14.05.2001 was forcibly executed could not be accepted. On re-appreciation of the entire evidence, the alleged theory of force and coercion was disbelieved by the First Appellate Court and it was also found that the registered



agreement was executed by the defendant. The defendant himself has admitted in his written statement that he has executed the agreement. Though it is stated that the agreement is not intended for sale, the execution of the agreement is not disputed. Taking note of the above facts, the First Appellate Court granted a decree for refund of amount received by the appellant i.e., Rs.2,35,000/- as per the agreement with interest. Challenging the same, the present Second Appeal is filed.

9. While admitting the Second Appeal, the following questions of law have been framed:-

(1) Whether it is right on the part of the First Appellate Court in directing for refund of a sum of Rs.2,35,000/- along with interest when the appellant had established that the amount involved is only a money transaction?

(2) Whether in a suit for specific performance a decree can be passed for refund of money involved in a money transaction?

10. It is the main contention of the learned counsel for the appellant that the Courts below found that the transaction is the money transaction as a result of which an agreement came to be executed and such view of the fact, refund of amount cannot be ordered. It is further contended that admittedly, an alternative prayer was sought only during appeal proceedings, that is after three years of filing of the suit. Therefore, to claim a refund of money paid in a loan transaction, a suit ought to have been filed within three years. Therefore, the suit is barred by limitation. It is the contention that the Courts having held that the agreement is not intended for sale and it is only at the result of money transaction, refund of money cannot be granted.

11. In support of his contentions, he has relied upon the following judgment:-

1) S.Nagapandi Vs. K.Palanisamy [2020-5.L.W.280]

12. The learned counsel appearing for the respondents contended that the relief of including alternative relief can be claimed at any stage. The agreement in question is a registered agreement and its execution has been clearly admitted. Accordingly, merely because the defendant has contended that it is a money transaction, it cannot be stated that the amount paid only in a loan transaction, when the very execution of the agreement is not denied and the appellant cannot deny the nature of the agreement. Therefore, the learned counsel for the respondents submitted that the judgment of the First Appellate Court does not require any interference.



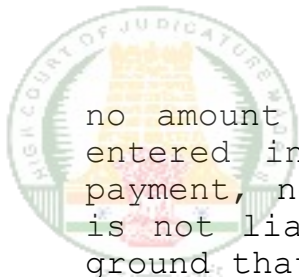
13. In respect of his submission, he has also relied upon the following Judgements:-

- 1) Muniyammal and others vs. K.R.Manickam [S.A.No.827 of 2019]
- 2) Tejram vs. Patirambhau [1997 (4) Supreme 81]
- 3) Firm Srinivas Ram Kumar vs. Mahabir Prasad [Civil Appeal No.82 of 1949.178]
- 4) Fathima Majeed vs. Subhapratha Ravikumar [O.S.A.No.287 of 2002].

14. As averred above, the suit has been filed for specific performance on the basis of the registered agreement dated 14.05.2001. The defendant in his entire written statement has not disputed the execution of the agreement. However, it was contented that agreement came to be executed in a money transaction. It is his further contention that the sale agreement came to be executed by force and coercion. The above contention on appreciation of evidence, was negatived by the First Appellate Court. The defendant is not an illiterate and he has executed a registered agreement for sale. Such agreement is capable of enforcement for specific performance. At the relevant point of enforcing an agreement. There was no alternative relief whatsoever sought for by the respondents till the suit is decreed. Only during the First Appeal proceedings, amendment was sought to include the additional prayer, which was allowed by the First Appellate Court and confirmed by this Court in a Civil Revision Petition.

15. It is relevant to note that the agreement is a registered agreement and its execution is not disputed. In fact, the First Appellate Court considered the entire evidence and found that the contentions of the trial Court cannot be countenanced. Further, it is found that the amount has been received by the defendant and also directed refund of the amount. Though it is stated by the learned counsel for the appellant that since the transaction appears to be a money transaction, the amount could not be refunded in a suit for specific performance. It is to be noted that in a judgment relied upon by the learned counsel for the appellant in S.A.No.827 of 2019, this Court has held that Ex.A1, agreement was executed as a security for the loan advanced and held that the amendment after three years is barred by limitation and the amount cannot be ordered to be refunded. The said judgment cannot be applied to the facts of the present case.

16. In this case, the First Appellate Court has recorded its finding that the contentions of the defendant as to the execution of the agreement by coercion is negatived and the First Appellate Court has also categorically found that the amount mentioned in the agreement has been paid and received by the defendant. In the entire written statement, it is not the case of the defendant that



no amount whatsoever received by him. When the defendant having entered into a registered agreement and admitted the receipt of payment, now he cannot take a contrary stand to the effect that he is not liable to pay the amount back to the person, mainly on the ground that, since he has pleaded that it is a money transaction and such amount cannot be refunded in a specific performance suit. Such contention, in my view cannot be accepted. When the defendant has consciously admitted the payment of money, he is liable to return the amount.

17. Section 22 of the Specific Relief Act makes it very clear that the person may in an appropriate case ask for refund of any earnest money or deposit paid, in case his claim for specific performance is refused. Section 22 of the Act also gives discretion to the Court to allow the plaintiff to amend the plaint for refund of advance amount at any stage. Reading of the proviso to Sub Clause 2 of Section 22 of the Act, it is made clear that at any stage of the proceedings, when the amendment is sought to include the alternative prayer of refund of amount, the Court shall allow such prayer. Such view of the matter, when the amendment was sought during the proceedings of the appeal, which is the continuation of the suit, it cannot be stated that refund of amount is not permissible.

18. When the defendant has admitted not only in his pleadings but also in his evidence as to the payment of amount and execution of agreement, which is also a registered agreement, now he cannot say that the amount cannot be refunded. Therefore, this Court does not find any infirmity in the judgment of the First Appellate Court. The substantial questions of law are answered, accordingly.

19. In the result, this Second Appeal is dismissed and the judgment and decree passed in A.S.No.58 of 2008 dated 10.10.2011 on the file of the Principal District Judge, Dindigul modifying the judgment and decree passed in O.S.No.339 of 2002 dated 22.10.2008 on the file of the Principal Sub-Ordinate Court, Dindigul is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To

- 1.The Principal District Judge, Dindigul
- 2.The Principal Sub-Ordinate Judge, Dindigul.
- 3.The Section Officer, (2 copies)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.H.LAKSMI SHANKAR, Advocate (SR-990[F] dated
18/01/2021)

Judgment made in
S.A. (MD) No.125 of 2012
and
M.P. (MD) No.1 of 2012
11.01.2020

VB (25.01.2021) 6P 6C