



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2021

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.958 of 2011

and

M.P(MD)No.1 of 2011

A.Indiravathy ... Appellant/Appellant/Defendant

Vs.

L.Essakkiraj ... Respondent/Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 25.02.2010 passed in A.S.No.17 of 2009, on the file of the Subordinate Court, Ambasamuthram, Tirunelveli District, confirming the judgment and decree, dated 28.11.2006 passed in O.S.No.378 of 2004 on the file of the Principal District Munsif Court, Ambasamuthram.

For Appellant : Mr.V.Kannan
For Respondent : Mr.K.P.Krishnadoss

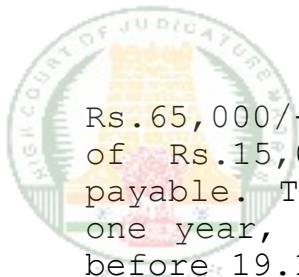
JUDGMENT

The concurrent Judgments and decrees, passed in O.S.No.378 of 2004 by the Principal District Munsif Court, Ambasamuthram and in A.S.No.17 of 2009, by the Subordinate Court, Ambasamuthram, are being challenged in the present Second Appeal.

2.The respondent herein as plaintiff, has instituted a suit in O.S.No.378 of 2004, on the file of the trial Court for Specific Performance, wherein, the appellant has been shown as the defendant.

3.The case of the plaintiff is as follows:

The schedule mentioned property belonged to the defendant, who had agreed to sell the same to the plaintiff for a sale consideration of Rs.80,000/- (Rupees Eighty Thousand only) and the defendant received a sum of Rs.65,000/- (Rupees Sixty Five Thousand only) on 19.12.2002 from the plaintiff towards advance amount and they entered into a sale agreement, which was registered in the Sub-Registrar Office, Kadayam. Out of the sale consideration of Rs.80,000/- (Rupees Eighty Thousand only), after deducting a sum of



Rs.65,000/- (Rupees Sixty Five Thousand only) towards advance, a sum of Rs.15,000/- (Rupees Fifteen Thousand only) alone would be payable. The defendant, after receiving the balance amount, within one year, has to execute the sale deed in favour of the plaintiff before 19.12.2003.

WEB COPY

4.The plaintiff is always ready to fulfil the terms of the sale agreement and however, the defendant delayed the execution of the sale deed in favour of the plaintiff. The plaintiff sent a legal notice on 11.12.2003, stating that as per the sale agreement, the plaintiff would purchase stamp papers and the defendant has to execute the sale deed on 17.12.2003 before the Sub Registrar Office, Kadayam or otherwise, a date may be informed to the plaintiff for registration, on which date, the plaintiff would make him ready for registration. The defendant though received the said notice on 12.12.2003, did not send any reply. On 17.12.2003, the plaintiff waited in the Sub Registrar Office, Kadayam, but, the defendant had not come. On 19.12.2003, the defendant on coming to know about the steps taken by the plaintiff, came and met the plaintiff and requested not to take any action. The plaintiff has also agreed for the same, but the defendant failed to fulfil the same. Hence, the suit came to be filed for specific performance.

5. Denying the averments in the plaint, the defendant filed the written statement stating that the defendant did not enter into any agreement with regard to the schedule mentioned property. The sale agreement, dated 19.12.2002 is invalid in law. The plaintiff cannot seek for specific performance based on the said sale agreement. The said document is not a sale agreement, but it is only a document relating to loan.

6.In order to settle the family loan, the defendant asked a sum of Rs.65,000/- (Rupees Sixty Five Thousand only) towards loan and the plaintiff also agreed for the same and executed a sale deed for Rs.85,000/- (Rupees Eighty Five Thousand only) relating to the suit property and also a promissory note and a blank cheque. The defendant also gave one signed blank cheque and also a cheque from her friend - Thalavai Sundaram, drawn in the Tirunelveli Central Co-operative Bank, Kadayam. It is true that the defendant borrowed a sum of Rs.65,000/- (Rupees Sixty Five Thousand only) from the plaintiff on 19.12.2002 and she also paid interest for seven months and the document relied on by the plaintiff is invalid in law. The suit property did not belong to the defendant alone and the brothers and sisters of the defendant are having the right over the suit property. Hence, the suit is bad for non-joinder of necessary parties and prayed for the dismissal of the suit.

7.Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and Exs.A1 to A4 were marked. On the side of the defendant, the defendant examined himself as

<https://hdsr.srccourt.gov.in/cse/Ver/1> to B.13 were marked.



8. On the basis of the rival pleadings on either side, the trial Court has framed necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit in favour of the respondent / plaintiff and that the defendant has to accept the balance sum of Rs.15,000/- to be paid by the plaintiff and to execute the sale deed in favour of the plaintiff within a period of two months.

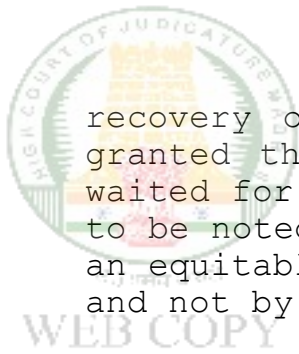
9. Aggrieved by the Judgment and decree passed by the trial Court, the defendant as appellant, had filed an Appeal Suit in A.S.No.17 of 2009. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.

10. Challenging the said concurrent judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the defendant, as appellant.

11. The learned counsel appearing for the appellant/defendant contended that both the Courts below have failed to note that under the provisions of the Specific Relief Act, readiness and willingness from the date of agreement should be pleaded and proved by the respondent/plaintiff or otherwise, inference has to be drawn against him; the relief of specific performance is inequitable considering the facts and circumstances of the case; considering the facts and circumstances of the case, the predominant object would be for recovery of dues with interest and hence, the Court is not bound to grant the relief of specific performance, the defendant has come forward with the present Second Appeal and prayed for allowing the Second Appeal.

12. Heard the learned counsel for the appellant and the learned counsel appearing for the respondent and perused the materials available on record.

13. A perusal of the Judgement of the trial Court reveals that the Court has accepted the plea of specific performance blindly and decreed the suit, which is erroneous and it is only a sham and nominal document executed for a loan payment by the appellant and that the appellant / defendant is the absolute owner of the suit schedule property is without any basis and the schedule property is a joint family property and the same ought to have been dismissed for non-joinder of necessary parties for having rights to the property and the agreement itself is a need for a small share and it cannot be executed to the entire extent as it belongs to several persons and that the willingness and readiness from the date of agreement should be pleaded and the plaintiff does not show any light on the same and there was no clear terms to sell the suit property, in case from encumbrance and predominant object was only to

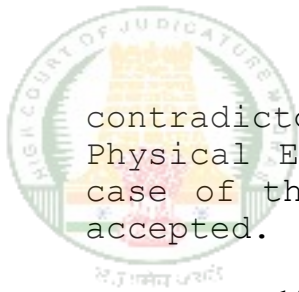


recovery of money with interest and the Court ought not to have granted the relief of specific performance and the respondent had waited for a long period to pay the balance share of Rs.15,000/- are to be noted by the Court and the specific performance relief is only an equitable remedy and such discretion is exercised only as per law and not by arbitrariness.

14.It is also further submitted that if at all there is coercion on the part of the plaintiff then what is the steps taken by the defendant, whether he had given any complaint to the police department or examined his friend one Thalavai Sundarram, who had handed over the cheque slip, was also not examined. It is further submitted that he has paid interest for a long period was also not established by providing any receipts for the same and also the sale agreement was not contradictorily proved. Further on 11.12.2003, the plaintiff had sent a notice to the defendant and the same was also received by the defendant, which has been marked by him. But he has not sent any reply to the same and there was no proper reasons stated by the defendant to show that for what reason, he had not sent any reply.

15.It is also further seen that the defendant has executed a sale agreement in favour of one Karpagavalli on 28.11.2002 for a sum of Rs.50,000/- and also executed a pro-note in favour of one Meenakshi Pandiyan and obtained a sum of Rs.50,000/- was also proved. When that being the case, it is also further proved that on 19.12.2002, he had obtained Rs.65,000/- from the plaintiff and has returned the amount to be paid to Karpagavalli and Meenakshi Pandiyan on 19.12.2002 by cancelling the said sale agreement and the same also has been accepted by the defendant, which would show that the amount of Rs.50,000/- from Meenakshi Pandiyan and a sum of Rs.50,000/- from Karpagavalli has been returned by getting an amount of Rs.65,000/- from the plaintiff and this amount was also accepted without any doubt and the admission made by the defendant that even though he tried to sell the properties for Rs.85,000/- to the plaintiff, but in order to get more amount only, he has cancelled the earlier document, dated 28.11.2002 executed in favour of Karpagavalli which would show that the claim made by the defendant is only a sham and nominal document executed for security, which is not proved and the same is rejected and it clearly proved that it is only a sale agreement executed in favour of the plaintiff.

16.Further sending of notices by the plaintiff is accepted and the sale for specific performance and the defendant has not established his case whether he went to the Sub Registrar Office or not and other reasons also were not known to him. That being the case, a sum of Rs.15,000/- towards the remaining amount was deposited by the plaintiff by a lodgement schedule before the Bank on 30.06.2006 . That being the case, the plaintiff has



contradictorily by let in any evidence, as he was working as a Physical Education Teacher and he is getting salary and it is the case of the plaintiff that he has means to pay the same, which is accepted.

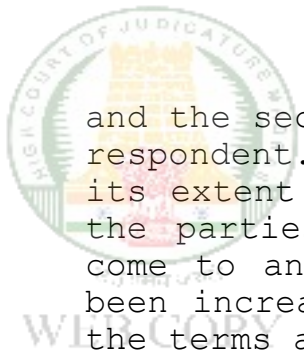
17.It is also further submitted that the reasons stated by the defendant that it is a joint family property, has not been proved without any doubt. When he has not made any of the persons as party to the lis or to prove the same or he has not examined any of the family members to prove the same as a joint family property. From Exs.A.1 and B.3, the said schedule property was absolutely belongs to the defendant is proved and when there is no other contradictory evidence let in by the defendant to prove the said documents.

18.This Court is of the view that the property in question belongs to the defendant, has been proved by the Courts below.

19.Originally, the property belong to one Chellaiah and whose son namely, the defendant's father and his brother Srinivasan and half of the property executed by way of settlement deed in favour of the defendant and the remaining portion of Srinivasan, was also sold in favour of the defendant by his father as a power of agent of Srinivasan in the year 2001. That being the case, the question arise regarding whether the property is an individual property or a joint family property, is also proved that the property does not belong to several persons and the defendant has only a small share, is rejected and the said individual ownership has been proved and as the defendant is not in a position to prove his case, as the plaintiff has proved his by way of a sale agreement and that the specific performance was accepted by the trial Court as well as the Appellate Court and the same has been concurrently held in favour of the plaintiff and the specific performance relief was granted by both the Courts.

20.Aggrieved by the same the appellant / defendant has filed this second appeal raising various grounds. From the factual aspects, it has been clearly proved that the defendant is the absolute owner and has entered into a sale agreement with the plaintiff and the plaintiff has categorically proved without any ambiguity that the defendant has intended to sell the property and he had entered into an agreement for a sum of Rs.80,000/- and an advance amount of Rs.65,000/- has been paid and accepted and the remaining amount of Rs.15,000/- has to be deposited into the Court for a relief of specific performance and the Courts below has rightly come to the conclusion that the plaintiff is entitled for the relief of specific performance.

21.When the matter came up for hearing today, this Court after considering all the averments, is of the considered view that the question of law arises for consideration in this case



and the second appeal has to be decided in favour of the plaintiff / respondent. This Court is of the view that as the matter has reached its extent that this court is of the view that instead of directing the parties to go before the Trial Court, both the parties shall come to an agreement amongst themselves, as the cost of land has been increased day-by-day, this Court directs the parties to accept the terms and conditions to be issued by this Court.

22. Accordingly, the learned Counsel on either side also contact their respective parties and then reported before this Court. This Court directs that nowadays the cost of the plots have been increased, the plaintiff shall pay a another sum of Rs.2,00,000/- (Rupees Two Lakh only) either by way of cash or demand draft or by RTGS transfer to the defendant and thereafter, defendant shall execute a sale deed in favour of the plaintiff on or before 31.12.2021. Even though this Court do not find any reason to interfere with the orders of the Courts below, this Court is inclined to issue the above said directions, for early disposal to arrive at a amicable solution in the issue in question.

23. The plaintiff is directed to purchase necessary stamp papers for execution of sale deed. The matter will be listed before this Court on 04.01.2022 for reporting compliance.

24. For the reasons aforesaid, this Court is of the considered view that this Court finds no reason to interfere with the well-considered judgments and decrees rendered by the Courts below and accordingly, the Second Appeal fails and the same stands disposed of with the aforesaid observations. No costs. Consequently, connected Miscellaneous Petition is closed.

25. Post the matter under the caption ''for reporting compliance'' on **04.01.2022**.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Subordinate Court,
Ambasamuthram.

2.The Principal District Munsif Court,
Ambasamuthram.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

4.The Section officer,
Judicial Section,
Madurai Bench Of Madras HighCourt,
Madurai.

+1 CC to M/s.V. KANNAN, Advocate (SR-35801[F] dated 25/11/2021)

+1 CC to M/s.K.P.KRISHNADOSS, Advocate (SR-35809[F] dated 25/11/2021)

**S.A(MD)No.958 of 2011
24.11.2021**

RD(03.12.2021) 7P 8C