



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 17.12.2021

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THE HON'BLE MRS.JUSTICE **V. BHAVANI SUBBAROYAN**

S.A.(MD) No.301 of 2021
S.P.PALANIYAPPAN .. Appellant/Appellant/ Plaintiff

Vs

S.GANESAN .. Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 25.02.2020 in A.S. No.35 of 2017 on the file of the learned Principal District Judge, Sivagangai confirming the the judgment and decree in O.S. No.149 of 2012 dated 31.07.2017 on the file of the learned Subordinate Judge, Sivagangai.

For Appellant : Mr.P.Ganapathi Subramanian

JUDGMENT

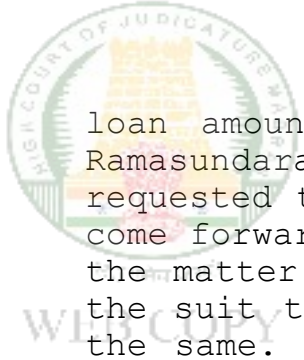
Challenging the concurrent findings of the courts below in dismissing the suit for specific performance, the appellant has approached this court by way of the present Second Appeal.

2. For the sake of convenience the parties herein are referred to in the same rank, as they were arrayed in the suit.

3.The case of the plaintiff, as per the averments made in the plaint, in short, is as follows :

(i) The suit schedule property belonged to the defendant. The plaintiff agreed to purchase the land of the defendant which is a suit scheduled property for a sale consideration of Rs.1,50,000/- and paid a sum of Rs.1,00,000/- as advance to the defendant. The defendant agreed to execute the sale deed on receipt of balance sale consideration. A registered sale agreement was entered into between the parties on 14.06.2010. Even though, the plaintiff was ready and willing to perform his part of contract, despite his repeated demands, the defendant had not come forward to perform his part of contract. The plaintiff issued legal notices on 13.06.2012 and 24.08.2012, but the defendant had not replied for the same. Hence, the plaintiff filed the suit for specific performance.

(ii) The defendant had filed a written statement denying all the averments made in the plaint. The defendant admitted that he received Rs.1,00,000/- from the plaintiff, but he availed the same as loan. The plaintiff insisted to execute sale agreement as security, and hence, he had executed the suit sale agreement. The



loan amount was repaid by the defendant in the presence of one Ramasundaram and Somaramanathan Chettiyar. Though the defendant had requested to cancellation of sale agreement, the plaintiff has not come forward to close the same, but was postponing the same. Having the matter pending the plaintiff filed the suit. Even after filing the suit the defendant approached the plaintiff and inquired about the same. The plaintiff informed that it was filed by mistake and therefore, the defendant did not proceed further.

4. On the above pleadings, the Trial Court had framed the following issues for consideration:-

(i) Whether the suit sale agreement was intended to be acted upon?

(ii) Whether the sale agreement was executed as security for loan transaction?

(iii) Whether the plaintiff is entitled for the relief of specific performance?

(iv) To what other reliefs the plaintiff is entitled to?

5. During the trial, the plaintiff himself was examined as PW1 and one Periyakaruppan was examined as PW. 2 and five documents were marked as Exs.A1 to A5 on the side of the plaintiff. The defendant examined himself as DW1 and no document was marked on the side of the defendant.

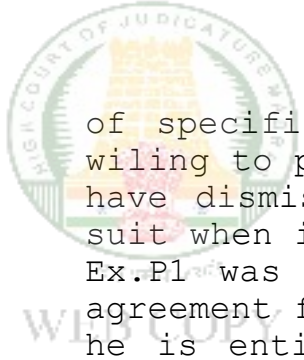
6. On analysis of the oral and documentary evidence, the Trial Court had come to the conclusion that the sale agreement has been executed as security for loan transaction as claimed by the defendant and the plaintiff had not proved that the suit sale agreement is only a sale agreement and the plaintiff is not ready and willing to perform his part of contract from the date of sale agreement had dismissed the suit.

7. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff, as appellant, had filed an Appeal Suit in A.S. No.35 of 2017, on the file of the learned Principal District Judge, Sivagangai.

8.The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, had dismissed the appeal and confirmed the Judgment and Decree passed by the trial Court.

9. Challenging the said concurrent Judgments and Decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the plaintiff, as appellant.

10.The learned counsel appearing for the plaintiff / appellant would submit that when the execution of the sale agreement was admitted by the defendant, the plaintiff is entitled for the relief



of specific performance. When the plaintiff is always ready and willing to perform his part of contract, the Court below ought not to have dismissed the suit. The Courts below erred in dismissed the suit when it disbelieved the defence put forth by the defendant that Ex.P1 was executed for loan transaction and cannot be treated as agreement for sale. Since the plaintiff proved his case as per law, he is entitle for the relief and the Courts below ought to have decreed the suit.

11. The learned counsel appearing for the respondent/ defendant would vehemently oppose the Second Appeal by contending that the well considered Judgments of the Courts below need not be interfered with, as there is no question of law involved in this Second Appeal and prayed for dismissal of the Second Appeal.

12. This Court paid its anxious consideration to the rival submissions made and also carefully perused the materials placed on record.

13. According to the plaintiff, originally, the suit schedule property belonged to the defendant. The plaintiff agreed to purchase the land of the defendant, which is a suit scheduled property for a sale consideration of Rs.1,50,000/- and paid a sum of Rs.1,00,000/- as advance to the defendant. The defendant agreed to execute the sale deed on receipt of balance sale consideration. A registered sale agreement was entered into between the parties on 14.06.2010. Even though, the plaintiff was ready and willing to perform his part of contract, despite his repeated demands, the defendant had not come forward to perform his part of contract. Hence, the plaintiff issued legal notices on 13.06.2012 and 24.08.2012, but the defendant had not replied for the same.

14. According to the defendant, though he admitted that he received a sum of Rs.1,00,000/-from the plaintiff, but he availed the same as loan. The plaintiff insisted to execute sale agreement as security, and hence, he had executed the suit sale agreement. The loan amount was repaid by the defendant in the presence of one Ramasundaram and Somaramanathan Chettiyar. Though the defendant had requested to cancellation of sale agreement, the plaintiff has not come forward to close the same, but was postponing the same.

15. Ex.A1, dated 14.06.2010, is the suit sale agreement. A perusal of Ex.A1 shows that the time for completion of sale transaction is one month. Even assuming that the plaintiff was always ready and willing to perform his part of contract, no material has been adduced that he made efforts to get the sale deed executed from the date of agreement ie., 14.06.2010 to 13.06.2012, when he issued Ex.A2, first legal notice. The evidence of P.W.2 would show that P.W.2 had only made a general statement that the plaintiff was ready, but the defendant was not ready for execution



of the sale deed. But, the evidence of P.W.2 is silent whether he made any demand from the defendant to execute the sale deed or the plaintiff made any demand to get the sale deed executed. Even the plaintiff did not adduce any evidence that he was having sufficient amount in his hand from the date of execution of Ex.A1, sale deed.

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16. The plaintiff's case was rightly rejected by the Courts below, and this Court finds no reason to interfere with the well reasoned Judgments of the Courts below and also there is no question of law much less substantial question of law involved in this Second Appeal for consideration by this Court. Accordingly, the Second Appeal is liable to be dismissed.

17. In fine, the Second Appeal is dismissed, confirming the Judgment and Decree made in A.S. No.35 of 2017 on the file of the learned Principal District Judge, Sivagangai, in confirming the the Judgment and Decree in O.S. No.149 of 2012, on the file of the learned Subordinate Judge, Sivagangai. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

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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 Principal District Judge, Sivagangai

2. The Subordinate Judge, Sivagangai

Copy to

The Section Officer, V.R.Section
Madurai Bench of Madras High Court, Madurai

S.A. (MD) No.301 of 2021
17.12.2021

SRK (CO)
KB(09.02.2022) 4P 5C