



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.08.2021

Pronounced on : 16.09.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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C.R.P. (MD) .No.1111 of 2021

I. Sheik Mydeen .. Petitioner / plaintiff
Vs.
P. Nanthagopal .. Respondent / defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in O.S.No... of 2020 on the file of the Principal Sub Court, Dindigul dated 12.06.2021 and directed the learned Principal Sub Judge to number the suit and proceed further.

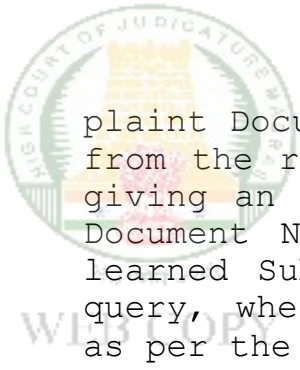
For petitioner : Mr. R. Balakrishnan

O R D E R

The Civil Revision is directed against the order returning the plaint, dated 12.06.2021 and seeking orders directing the Principal Subordinate Judge, Dindigul, to take the plaint on file.

2. The revision petitioner is the plaintiff and filed the suit for specific performance of the sale agreement and alternatively for refund of the advance amount with interest and costs.

3. The case of the plaintiff is that the suit property belongs to the defendant, that the defendant in order to meet out her daughter's marriage expenses offered to sell the suit property and the plaintiff has agreed to purchase the same, that both the parties had fixed the sale price at Rs.3,00,000/- and the plaintiff has paid Rs.50,000/- on 15.10.2016, that subsequently, the plaintiff has paid further advance of Rs.1,00,000/- on 13.12.2016, that both of them have entered into a sale receipt on 13.12.2016, evidencing the transaction already had and the terms of the sale. The plaintiff's further case is that the plaintiff is always ready and willing to pay the balance sale price and get the sale deed executed, that since the defendant has been postponing the sale on some pretext or other, the plaintiff was constrained to issue a lawyer notice, dated 04.01.2020 directing the defendant to receive the balance sale price and to execute the sale deed, that the defendant has sent a reply with false and untenable allegations and that since the defendant has not chosen to comply with the same, the plaintiff was forced to file the above suit for specific performance of sale agreement and alternatively for refund of the advance amount. The learned Subordinate Judge vide order, dated 11.02.2020 has returned the plaint, directing the plaintiff "to explain the



plaint Document No.I is a sale agreement and receipt." It is evident from the records that the plaintiff has represented the plaint by giving an explanation that as per the receipt Ex.A1, the plaint Document No.I is to be considered as a sale agreement, that the learned Subordinate Judge has again returned the plaint raising a query, whether the said receipt can be treated as sale agreement, as per the decision of the Hon'ble Supreme Court reported in **2004 (4) LW 186** and that the plaintiff has again represented the plaint by endorsing "As per Section 2(e) of Contract Act, 1872, Every promise and every set of promises forming the consideration for each other is an agreement, considering this Ex.A1 is to be considered as an agreement." It is further evident that the learned Subordinate Judge has returned the plaint again stating that the previous return was not clarified and that the Document No.I is not a registered sale agreement. Thereafter, the plaintiff has again represented the plaint with the following endorsement:

"The judgment reported in 200(4) LW, page 188 is not applicable to the present case, since the above cited judgment discussed about Section.68 of Evidence Act, as that an agreement must have two parties and both are to sign the same, only then it is an agreement. Further, in the above cited judgment, the disputed sale agreement (Ex.A1) not signed by the defendant and therefore, the Hon'ble High Court held that "the document enforceable in law".

But the present plaint, the plaintiff produced a document headed as "Sale receipt" signed by both the parties to the document and witness also and therefore, that document produced fulfilled the requirement U/s. 68 of Evidence Act and further, the plaintiff is ready to prove the nature of document as "Sale Agreement" during the course of trial. Hence, represented with complying the directions."

4. Thereafter, the learned Subordinate Judge has passed the impugned order of return, dated 12.06.2021 raising the following queries:

“திருப்பப் படுகிறது

1. இப்பிராதுடன் தாக்கல் செய்துள்ள 1வது ஆவணம் ஒரு ரசீது ஆகும் அது கிரைய ஒப்பந்தமல்ல."
2. ரசீது ஏற்பட்ட காலத்திலிருந்து 3 வருடகாலம் 14.10.2019 வுடன் முடிந்து விட்டது மேலும் வழக்கறிஞர் அறிவிப்பும் மூன்று வருட காலம் முடிந்த பின்பே பிரதிவாதிக்கு கடந்த 04.01.2020 ல் அனுப்பப் பட்டுள்ளது.



3. ரசீது ஆவணத்தில் குறிப்பிட்ட காலக்கெடு ஏதும் குறிப்பிடப்படாததால் 15.10.2016 தேதியே கணக்கிடும் சூழ்நிலை உள்ளது."

இதனால் இப்பிராது காலவரையின்றி எவ்வாறு நிலைநிற்கத்தக்கது என்பதனை விளக்குக."

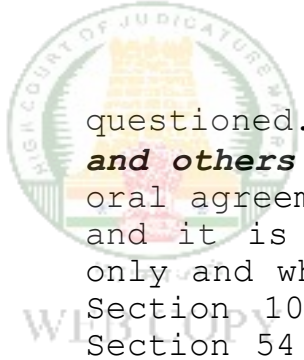
5.At the outset, this Court is constrained to say that the learned Principal Subordinate Judge, without looking into the basic concepts, and the settled legal position, has been returning the plaint again and again raising unwarranted queries.

6. The learned Subordinate Judge has referred a decision reported in **2004(4) LW 186**, as the decision of the Hon'ble Supreme Court, but that decision was rendered by this Court in **Chinnadurai Vs. Rajalakshmi**, and whereunder, this Court has held that an agreement must have two parties and both of them are to sign the same and that for this basic necessity, there may be exceptions under the exceptional circumstances as it has been advocated on the parts of the Courts. Considering the facts and circumstances of the case, this Court by commenting the plaintiff failure to sign the papers has held that the document under Ex.A1 is neither an agreement nor could it be taken as a genuine document enforceable in law.

7. As rightly contended by the learned counsel for the plaintiff, the above decision referred by the learned Subordinate Judge is not applicable to the case on hand. As already pointed out, both the parties have entered into an agreement for the sale of suit properties to the plaintiff by the defendant for the price fixed at Rs.3,00,000/- and after the payment of advance amount of Rs.50,000/- on 15.12.2016, they have entered into a document named as sale receipt and whereunder, they have referred the earlier transaction held on 15.10.2016 and also the payment of further advance of Rs.1,00,000/- made on that day. As rightly pointed out by the learned counsel for the plaintiff, in the said sale receipt, both the plaintiff and the defendant have subscribed their signatures along with witnesses.

8. Section 10 of the Indian Contract Act, 1872 contemplates that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void. Section 2(e) of the said Act defines the agreement, as "every promise and every set of promises, forming the consideration for each other."

9. It is pertinent to note that when an oral agreement is found to fulfil the above essentials as required under Section 10 of the Contract Act, the same is very much valid and the same cannot be



questioned. The Hon'ble Apex Court in **Alka Rose Vs. Paramatma Devi and others (Civil Appeal No. 6197 of 2020)**, has observed as to how oral agreements are valid and held that a sale agreement can be oral and it is not necessary that agreement should be in written form only and what is important is that it should be within the ambit of Section 10 of the Indian Contract Act, 1872. Moreover, under Section 54 of the Transfer of the Property Act, an oral sale of a contract is valid, but the person claiming the right is duty bound to prove the existence of such agreement. It is necessary to refer the following passage in **Alka Rose's** case ;

"All agreements of sale are bilateral contracts as promises are made by both - the vendor agreeing to sell and the purchaser agreeing to purchase. On the other hand, the observation in *S.M. Gopal Chetty (supra)* that unless agreement is signed both by the vendor and purchaser, it is not a valid contract is also not sound. An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it. Section 10 of the Act provides all agreements are contracts if they are made by the free consent by the parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the provisions of the Contract Act. The proviso to section 10 of the Act makes it clear that the section will not apply to contracts which are required to be made in writing or in the presence of witnesses or any law relating to registration of documents. Our attention has not been drawn to any law applicable in Bihar at the relevant time, which requires an agreement of sale to be made in writing or in the presence of witnesses or to be registered. Therefore, even an oral agreement to sell is valid. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid. In any agreement of sale, the terms are always negotiated and thereafter reduced in the form of an agreement of sale and signed by both parties or the vendor alone (unless it is by a series of offers and counter-offers by letters or other modes of recognized communication). In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and



accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale."

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10. The learned Subordinate Judge has observed that the agreement period got expired on 14.10.2019 and the lawyer notice was also issued only subsequent to the said period. He has also further observed that since the time for performance is not mentioned in the receipt, the period of limitation is to be calculated only from the date of document, i.e., from 15.10.2016. Article 54 of the Indian Limitation Act prescribes the limitation of 3 years:

Suit for specific performance	Three years	The date fixed for performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
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11. Considering the above article, it is very much that when a date is fixed for performance, then the limitation period is 3 years from such date and if no such date is fixed, the period of three years is to be computed from the date when the plaintiff has notice of the refusal. In the case on hand, admittedly, the period of performance is not mentioned. Moreover, the plaintiff has sent the legal notice on 04.01.2020 and the defendant has issued a reply notice on 14.01.2020 disputing the sale agreement. Considering the above, impugned return with respect to the limitation aspect is very much against the settled legal position. Moreover, this Court is also at loss to understand as to how the Court has adopted the role of defendant and raised such queries, which are totally untenable and unwarranted. In view of the above, this Court has no hesitation to hold that the impugned order of return is not good in law and the same is liable to be set aside.

12. In the result, the Civil Revision Petition is allowed and the learned Principal Subordinate Judge, Dindigul is directed to take the plaint on file if it is otherwise in order. No costs. The Registry is directed to return the original plaint filed along with the revision petition to the learned counsel for the petitioner, enabling them to represent the same before the Principal Sub Court.

Sd/-

Assistant Registrar (Cs-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



trp/das

To

The Principal Subordinate Court,
Dindigul.

Copy to

1.The Registrar Judicial,
Madurai Bench of Madras High Court, Madurai.

2.The Section Officer, V.R.Section(2C)
Madurai Bench of Madras High Court, Madurai

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.

+1 CC to M/s.R.BALAKRISHNAN, Advocate (SR-29486[F] dated 17/09/2021)

C.R.P. (MD) .No.1111 of 2021
16.09.2021

PS (CO)
KB(21.10.2021) 6P 6C