



WEB COPY

S.A.(MD) No.597 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 30.9.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

S.A.(MD) No.597 of 2021

and

C.M.P.(MD) No.7860 of 2021

V.Parthipan

... Appellant/Appellant/Plaintiff

vs.

M.Raman

... Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 2.9.2020 passed in A.S.No.66 of 2019 on the file of the I Additional District Judge, Madurai confirming the Judgment and decree dated 16.8.2018 passed in O.S.No.910 of 2014 on the file of the III Additional Subordinate Judge, Camp @ Usilampatti.

For Appellant : Mr.S.J.Chakravarthy

JUDGMENT

The concurrent finding of the courts below in declining to grant the relief of specific performance is under challenge in this Second Appeal at the instance of the plaintiff.

2.The plaintiff had filed the suit for specific performance in respect of the suit property claiming that the defendant was in separate possession and enjoyment of the suit property and he had entered into a sale agreement dated 27.9.2012 with the plaintiff agreeing for the sale consideration of Rs.2,00,000/- and received an advance of Rs.1,40,000/- and it was further agreed that the remaining sale consideration of Rs.60,000/- was to be paid within 2 years from the date of sale agreement and as agreed, when the plaintiff was waiting at the Sub Registrar office on 3.4.2014 with the balance sale consideration, the defendant failed to perform his part of the contract as promised while the plaintiff was ready and willing to perform his part of the contract. Hence, it is claimed that the plaintiff had issued a legal notice on 7.4.2014 and on receipt of a false reply dated 10.6.2014, the plaintiff was constrained to file the suit.

3.The case of the defendant in his written statement and additional written statement is that the suit property originally belonged to his father Machakalai and after his death, it was inherited by the defendant and his brothers Rajendran and Manoharan and misusing the defendant's addiction to liquor, the plaintiff had created the sale agreement when the defendant was in intoxication, with an intention to grab the share of the defendant in the joint family and the joint patta stands in the name of the defendant and



his brothers and the wife of the deceased brother Rajendran and his daughter Tamilselvi and Muthukumar. It is the case of the defendant that the suit property is a joint family property and the plaintiff is not entitled to the relief sought for.

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

(i) Whether the plaintiff is entitled to the relief of specific performance?

(ii) Whether the plaintiff is entitled to the alternate relief of refund of advance amount with interest?

(iii) To what other relief, the plaintiff is entitled?

5. During the trial, the plaintiff examined himself as PW1 apart from examining one Paulraj as PW2 and marked four documents while the defendant examined himself as DW1 and has not chosen to mark any document.

6. On analysis of the oral and documentary evidence, the Trial Court had dismissed the suit holding that the plaintiff is not entitled to the relief of specific performance, however, granted the alternate relief of refund of advance amount with interest at 9% per annum from the date of sale agreement till the date of filing of the suit and at 6% per annum from thereafter till the date of realisation.

7. Aggrieved against that judgment and decree, the plaintiff had filed the first appeal which confirmed the findings of the Trial Court and dismissed the Appeal. Questioning the correctness of such concurrent findings of the courts below, the plaintiff has filed the present Second Appeal.

8. Learned counsel for the appellant would submit that the courts below have erred in dismissing the suit insofar as the claim of specific performance is concerned on the ground that the suit property is a joint family property whereas the defendant has got at least 1/3 share in the suit property and the courts below have erred in totally rejecting the claim of specific performance.

9. The issue involved in the present case revolves around the truth, validity and genuineness of the Agreement of Sale, Ex.A1. The case of the plaintiff is that he had entered into the agreement of sale on paying a sum of Rs.1,40,000/- towards advance sale consideration in respect of the suit property and he had to pay the remaining amount of Rs.60,000/- towards the balance sale consideration within two years prescribed in the said agreement of sale and accordingly, he had approached, but, since he could not succeed in getting the sale deed registered in his name, he had filed the suit seeking the relief of specific performance or in the alternate for refund of the advance amount paid by him with



10.The case of the defendant is two fold, one is of denial of execution of such agreement of sale and his case is that the plaintiff had utilised the intoxication of the defendant to create such an agreement of sale and the other being the suit property is a joint family in which his brothers and their legal heirs have got share and interest and hence, the agreement of sale, somehow created by the plaintiff cannot confer any right upon the plaintiff to claim the relief of specific performance. Ultimately, it is the case of the defendant that no advance amount was paid by the plaintiff towards the alleged agreement of sale. To strengthen the case of the defendant that the suit property is a joint family property, it appears that joint patta stands in the name of other family members too. Therefore, if at all, the agreement of sale alleged to have been executed by the first defendant is accepted, the plaintiff cannot have his claim over the joint family property by enforcing such agreement of sale and it loses its value.

11.Though PW2, a witness to Ex.A1 agreement of sale, speaks about the consideration being passed on when Ex.A1 was entered into between the plaintiff and the defendant, the courts below, finding that it is a joint family property and that Ex.A1 will not be binding on the other owners of the property, had rejected the claim of the plaintiff. However, the courts below have granted the alternate relief of refund of advance amount paid by the plaintiff to the defendant. The court below had held that the defendant cannot take shelter of having received the amounts under intoxication. This court find that the judgments of both the courts below do not call for any interference.

12.In the opinion of this court, there is no error or infirmity in the findings of both the courts below and the Appellant has not made any substantial question of law to admit this Second Appeal. The Hon'ble Apex Court in **Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)** has categorically held as under:-

"23. Sub-section (1) of Section 100 of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of Section 100 of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If



no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re-formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

13.In view of the above, the Second Appeal fails and is, accordingly, dismissed without being admitted. No costs. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

ssk.

Note:In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised 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 I Additional District Judge,
Madurai.

2.The III Additional Subordinate Judge,
Camp @ Usilampatti.

Copy to

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

+1 CC to M/s.S.J.CHAKKKARAVARTHY, Advocate (SR-30737[F] dated 30/09/2021)

**S.A. (MD) No.597 of 2021 and
C.M.P. (MD) No.7860 of 2021
30.9.2021**

SRR (CO)

RS/PM (10.11.2021) 4P 6C

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