



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S. (MD) .Nos.155 & 156 of 2019

A.S. (MD) .No.155 of 2019

C.Ravikumar : Appellant / Plaintiff

Vs.

1.E.Maheswari
2.Minor Gokila : Respondents/Defendants
(Minor 2nd respondent through
her mother and next friend
1st respondent)

Prayer : Appeal filed under Section 96 of C.P.C., against the judgment and decree dated 28.03.2019 made in O.S.No.106 of 2014, on the file of the learned Principal District Judge, Dindigul.

A.S. (MD) .No.156 of 2019

C.Ravikumar : Appellant / Plaintiff

Vs.

E.Subhalakshmi : Respondent / Defendant

Prayer : Appeal filed under Section 96 of C.P.C., against the judgment and decree dated 28.03.2019 made in O.S.No.152 of 2017, on the file of the learned Principal District Judge, Dindigul.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.S.Dheenadhayalan

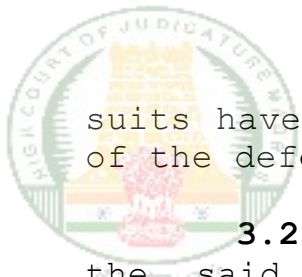
COMMON JUDGMENT

Aggrieved over the dismissal of the suits filed for specific performance, the appeals came to be filed by the plaintiff.

2. The two suits were disposed of by common judgment by the trial Court. The parties are referred to as per their ranking before the trial Court.

3. The brief facts leading to filing of the present appeals are as follows:-

3.1. The defendants in both the suits are mother and daughters of one Mr.K.S.Elangovan. The suit properties originally belonged to the said K.S.Elangovan, who is the husband of the first defendant and father of the second defendant in O.S.No.106 of 2014 and also the father of the defendant in O.S.No.152 of 2017. The plaintiff filed her suit on 24.06.2013. The plaintiff and defendant in the



suits have entered into agreement on 07.10.2013 to sell the share of the defendants therein.

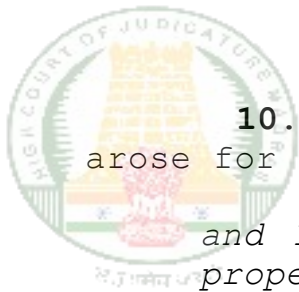
3.2. It is the case of the defendants that the mother of the said K.S.Elangovan has relinquished her 1/4th share on 07.10.2013 in favour of the other defendants in both the suits by entering into agreement and similarly another agreement was also entered by the first defendant in O.S.No.106 of 2015 and daughter of the said K.S.Elangovan in O.S.No.152 of 2017 on 15.10.2003 for total sale consideration of Rs.4,00,000/- and received Rs.2,00,000/- as advance and on 07.10.2013 the defendants received Rs.8,00,000/- as advance. In both the agreements, time stipulated for completion of the sale was three years and the plaintiff is always ready and willing to perform his part of contract. However, the defendants have been postponing the same on some pretext or the other. Hence, the plaintiff issued a legal notice to the defendants on 30.09.2014. Therefore, the plaintiff filed suits.

4. The defence of the defendants in both the suits is that the plaintiff denied for entering into the agreement for sale. It is their contention that after the death of the said K.S.Elangovan, the defendants were in mental stress and the plaintiff's brother, viz., Soundararajan has utilised the said situation in his favour and approached the wife of the said K.S.Elangovan, namely, the first defendant in O.S.No.106 of 2014 that he would arrange for mortgaging the property, so as to enable her to repay the chit fund amount payable to the said Soundarajan by her husband. Believing the words of the said Soundarajan, the defendants in O.S.No.106 of 2014 visited the Registrar Office on 07.10.2003 and at the first instance, they have obtained signatures from one Panchavarnam, mother of the said K.S.Elangovan and submitted documents for registration. Similarly, another agreement was also signed by the first defendant's daughter on the other day, since she was in the hostel at the relevant point of time. Hence, it is the contention of the defendants that the suit agreements were not intended for sale.

5. Based on the above pleadings, the following issues have been framed by the trial Court.

"1. Whether the sale agreement dated 07.10.2013 alleged to have been entered into between the plaintiff and the first defendant in O.S.No.106 of 2014 and the sale agreement dated 15.10.2013 alleged to have been entered into between the plaintiff and the defendant in O.S.No.152 of 2017 are true, valid and legal?

2. Whether the plaintiff had taken the sale agreement fraudulently from the defendants as if they



10. In the light of the above submissions, now the point arose for consideration in the appeals is that:-

"1. Whether the sale agreements dated 07.10.2013 and 15.10.2013 are not intended for sale of the suit property.

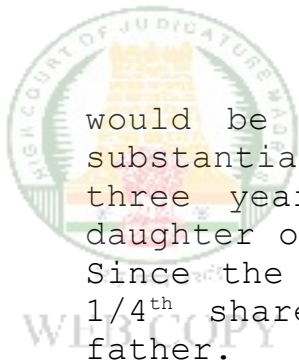
2. Whether the plaintiff is always ready and willing to perform his part of contract.

3. Whether the plaintiff is entitled for specific performance in respect of minors properties.

4. To what other relief, the plaintiff is entitled?"

11. It is the specific case of the plaintiff that the sale agreements, which were marked as Ex.A.4 and Ex.A.5 dated 07.10.2013 and 15.10.2013 were executed by the defendants. Ex.A.4-the sale agreement, which is said to have been executed by the first defendant in O.S.No.106 of 2014 not only on behalf of her, but also for her minor daughter. Similarly, Ex.A.5-sale agreement, dated, 15.10.2013, which is said to have been executed by the first defendant and the defendant in O.S.No.106 of 2014. Normally, once an agreement is established on record, the onus lies on the other side to prove that the agreement is not intended for sale and thus, the sale agreement is obtained under pretext of signing in the mortgage deed. Though the onus is heavy on the part of the defendants to show that the agreement is not intended for sale, it came into existence in some other circumstances, as long as, there was no material evidences brought on record, the execution of the agreement cannot be doubted. At the same time, whether this agreement was intended for sale or not can be gathered from other circumstances also. Though strict rule of proof not placed to countenance the contention of the parties. The court cannot shut his eyes to gather facts from circumstances to find out whether the agreements are intended for sale or not?

12. Admittedly, the husband of the first defendant in O.S.No.106 of 2014 committed suicide. This fact is not in dispute and he has taken such forcible steps due to the fact that he entangled with the debt trap with different transactions. Suit agreement came into existence immediately after the death of K.S.Elangovan and this fact has not been disputed by both sides. If really the purchaser was intended to purchase the property, having paid the substantial sale consideration of Rs.10,00,000/- and to pay the remaining sale consideration of a sum of Rs.4,00,000/-, fixing the time for three year is highly against the normal course of events and human conduct. If the person is really intended to purchase the property, his immediate reaction



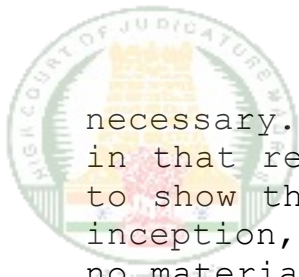
would be to expedite the sale, particularly having paid the substantial sale consideration, and he would not wait for another three years period. It is also to be noted that the minor daughter of the said K.S.Elangovan has 1/3rd share in the property. Since the mother of the said K.S.Elangovan is also released her 1/4th share, the property is devolved upon the minor from her father.

13. Such view of the matter, this Court is of the view that when the property came to minors as her undivided property the permission of the Court under Section 8 of the Hindu Minority and Guardianship Act, 1956, is also mandatory to deal with the minors' property that has not been done in this case. No efforts whatsoever placed by the purchaser to verify whether the minor property could be subjected for sale. This is also one of the circumstances can be taken note of by the Courts to come to the conclusion that the agreements are not intended for sale of the property. Though in the normal rule the parties cannot go beyond contracts, but, at the same time, the law does not prohibit oral evidence on entirety to show that contract is not intended for sale.

14. As narrated above, the agreements are not intended for sale of property. Further, even assuming that the agreement is valid and capable of enforcement with regard to remaining share of the parties, it is to be noted that to enforce such a part of the contract, the intention of the plaintiff, namely, the agreement holder to purchase the property by relinquishing his rights in respect of unenforceable part of contract to be seen.

15. Section 12 of the Specific Relief Act, 1963, stipulate that only when party relinquishes all claims to the performance of the remaining part of the contract and all right to compensation either for the deficiency or for the loss or damage sustained by him through the default of the defendant. The part of contract can be enforced. Absolutely, there is no pleadings in the plaint with regard to the relinquishment in respect of the other part of contract.

16. Such view of the matter, this Court is of the view that the plaintiff is certainly not entitled for specific performance with regard to readiness and willingness, the trial Court has observed that since the plaintiff has not deposited the remaining sale consideration and no lodgement has been filed, the plaintiff has not proved ready and willingness. It is to be noted that deposit of the remaining sale consideration is not a *sine-qua-non* for seeking relief. The explanation to Section 16 of the Specific Relief Act, 1963, makes it very clear that actual tender of the remaining sale consideration or deposit in the Court is not



necessary. Therefore, the conclusion arrived by the trial Court in that regard is not according to law, however, at the same time to show that the plaintiff was ready and willing from the date of inception, expect issuing a legal notice on 30.09.2014, there is no material whatsoever produced by the plaintiff. Therefore, this Court hold that the readiness and willingness has not been established by the plaintiff. Accordingly, all the points are answered.

17. However taking note of the execution of the agreement, though this Court has held that this agreement is not intended for sale of property, the fact remains that the sale agreements are registered agreements and sum of Rs.10,00,000/- has been received and both the contracts are registered before the Registrar. The defendants cannot go beyond the terms of the contract with regard to the receipt of the money. Such view of the matter, though the alternative prayer for refund of money is not pleaded, since the execution of the agreements are established in which Rs.10,00,000/- is also paid, the defendants in both the suits, particularly, the first defendant in O.S.No.106 of 2014 and the defendant in O.S.No.152 of 2017 are liable to pay Rs.10,00,000/- amount along with 6% simple interest from the date of agreement till the date of realisation. This Court, taking note of the amount received and the contract, is of the considered view that the Court's power to order refund of advance amount which has now proved in a contract, has not been taken away. Such view of the matter, the defendant No.1 in O.S.No.106 of 2014 and the defendant in O.S.No.152 of 2017 are directed to refund Rs.10,00,000/- (Rupees Ten Lakhs only) along with 6% simple interest to the appellant herein within a period of three months from the date of receipt of a copy of this order. Failure to pay the amount within such time, there shall be a charge over the property till the entire amount is paid.

18. With the above observations, the Appeals stand dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar (CS)



The Principal District Judge, Dindigul.

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Madurai Bench of Madras High Court,
Madurai.

+2 CC to Mr.S.DEENADHAYALAN, Advocate (SR-13401, 13400[F] dated 24/03/2021)

+2 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate (SR-13683, 13686[F] dated 25/03/2021)

Common Judgment made in
A.S.(MD).Nos.155 & 156 of 2019
24.03.2021

KM(20.05.2021) 7P 8C