BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.06.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
A.S.(MD)No.29 of 2018 and
C.M.P.(MD)No.1430 of 2018

1. M.R.Lakshmi
2. S.Ezhil
3. M.Ravindran ... Appellants/Defendants

Vs.

1. M.Kuppammal
2. M.Vimala ... Respondents/Plaintiffs

Prayer: Appeal suit filed under Section 96 of C.P.C., to set aside the Judgment and decree dated 20.10.2016 made in O.S.No.158 of 2014 on the file of the Principal District Judge, Tiruchirappalli by allowing this appeal and dismiss the suit in O.S.No.158 of 2014.

For Appellants : Mr.Shangar Murali
For Respondents : Mr.M.Saravanan

J U D G M E N T

The defendants in O.S.No.158 of 2014 on the file of the Principal District Judge, Thiruchirapalli, are the appellants in this second appeal.

2. The respondents filed the said suit for recovery of a sum of Rs.14,71,000/- with interest from the appellants herein. According to the plaintiffs, on 20.10.2010 the defendants entered into a sale agreement and for conveying the suit schedule property, the defendants had received a sum of Rs.10,00,000/- towards sale consideration. The time for performing the contract was originally fixed as one year. Later the same was extended on 20.04.2012 and 20.10.2012 and then again on 28.02.2013. Later the plaintiffs came to know that the suit property was sold in favour of one Kalaiselvam on 19.05.2014. Therefore, the plaintiffs issued notice dated 01.09.2014 seeking refund of the advance amount together with interest. The defendants sent a reply denying the very execution of the sale agreement. Therefore, the plaintiffs filed the said suit on 25.09.2014.

3. The defendants filed a written statement denying the plaint averments. The learned trial Judge framed the following issues:-

"1) Whether the agreement dated 20.10.2010 in between the plaintiffs and the defendants 1 and 2 is true, valid and binding upon the parties?

2) Whether the defendants are liable to pay the suit claim to the plaintiffs?

3) Whether there is no privity of contract in between the plaintiffs and the defendants?

4) Whether there is no cause of action for the suit?

5) Whether the agreement dated 20.10.2010 came into existence as contended in para 6 of the written statement?

6) Whether the plaintiffs are entitled to the reliefs sought for in the plaint?

7) To what relief, the plaintiffs are entitled? "

4. The second plaintiff examined herself as P.W.1 and marked Ex.A.1 to Ex.A.11. On the side of the defendants, the husband of the second defendant examined himself as D.W.1 and marked Ex.B.1 to Ex.B.5. After a consideration of the evidence on record, the trial Court by the impugned judgment and decree dated 20.10.2016 decreed the suit and directed the first defendant to pay the plaintiffs a sum of Rs.14,71,000/- with interest at the rate of 9% p.a. on the principal sum of Rs.10,00,000/- from the date of plaint till the date of decree and 6% p.a. from the date of decree till realisation. Aggrieved by the same, this appeal came to be filed.

5. The learned counsel appearing for the appellants submitted that though the point of limitation was not specifically pleaded in the written statement and no issue was framed before the trial Court, it is a duty cast on the Court under Section 3 of the Limitation Act to dismiss the suit, if it is found to be time barred even if no defence is specifically taken to that effect. The learned counsel submitted that on going through the testimony of P.W.1, it can be concluded that even though the document has been styled as sale agreement, it was in essence a loan document. Even according to the plaintiffs, the entire sale consideration has been paid and only a meagre sum of Rs.20,000/- was the balance amount. Therefore, the learned counsel would contend that the suit transaction must be treated as a loan transaction. If that be so, the limitation would run from the date of the document. Admittedly, the suit was filed beyond a period of three years from the date of Ex.A.1. He would further contend that extending the time for performance cannot extend the limitation. The learned counsel also stated that the defendants who availed a loan of Rs.30,00,000/- have been vexed with as many as four suits and few criminal cases. The learned counsel would state that the real nature of transaction had been clearly set out in the reply notice as well as in the written statement. He would contend that it is not necessary that the defendants should personally step into the witness box. In this case, the husband of the second defendant has testified in the witness box. His further argument is that the so called endorsements made in Ex.A.1 cannot be construed as an acknowledgement of liability. This is not a case in

which Section 18 of the Limitation Act would get attracted. His further contention is that as a result of the sale agreement, no charge had been created on the suit property and therefore, Article 62 of the Limitation Act will not come into play. The learned counsel placed reliance on the decision reported in (2021) 3 CTC 513 (Vijaya Ragavan and Others V. N.M.Thangavel and Others)

6. Per contra the learned counsel appearing for the respondents/plaintiffs would submit that the statutory charge was created on the suit property in view of Section 55(6)(b) of the Transfer of Property Act, 1882. He relied on the decision reported in (2004) 3 SCC 711 (Videocon Properties Ltd. Vs. Bhalchandra Laboratories and Others). He also took me through the evidence of D.W.1 and submitted that when the execution of Ex.A.1 and the endorsements made therein are admitted, it is too late in the day to contend that there is no creation of charge on the property. He pressed for dismissal of the appeal.

7. I carefully considered the rival contentions and went through the evidence on record.

8. In view of the submissions made by the learned counsel appearing for the parties, apart from the issues framed by the trial Court, an additional point arises for determination.

> "Whether the suit filed by the respondents herein is time barred or it can be said to be within time in view of Article 62 of the Limitation Act?"

9. As already pointed out, the suit had been instituted on the strength of Ex.A.1 dated 20.10.2010. Ex.A.2 to Ex.A.4 are the endorsements made on the said document on various dates. The defendants do not dispute the execution of either Ex.A.1 or the endorsements made thereon. On the other hand, there is a definite admission made by D.W.1 in this regard. There is also no dispute that in Ex.A.6 notice dated 01.09.2014 issued by the plaintiffs, it has been categorically stated that since the suit property had already been sold, they are only seeking return of the advance amount. In the plaint also, the plaintiffs have categorically stated that since there were certain issues regarding obtaining access to the suit property, time for performance was periodically extended. Since the suit property was no longer available for sale, the plaintiffs decided to convert the cause of action for specific performance to one for refund of money.

10. The learned counsel appearing for the appellants would point out that the plaint had been valued under Section 22 of the Tamil Nadu Court-Fees and Suits Valuation Act and not Section 42 of the Act. In my view, this would not make any difference. Since the suit property had already been sold by the defendants when the suit was instituted, the plaintiffs were entitled to treat their claim as

a money claim and value the suit under Section 22 of the Act. I sustain the contention of the learned counsel appearing for the respondents that the defendants cannot take advantage of some of the admissions made by P.W.1. It is not as if some misleading nomenclature has been given to the documents. The terms of the documents are fairly clear. Having signed the same with open eyes, it is not open to the defendants to take a stand that the transaction was actually a loan transaction and not a sale agreement.

11. The next question that arises for consideration is whether the plaintiffs will have a charge on the suit property. Section 55(6)(b) of the Transfer of Property Act, 1882 is very clear. In the decision reported in (2004) 3 SCC 711 (Videocon Properties Ltd. Vs. Bhalchandra Laboratories and Others), it has been held that the buyer will be entitled to statutory charge on the purchase money already paid by him. This is not a case in which the plaintiffs have improperly declined to receive delivery. The defendants by their conduct frustrated the sale agreement. In such an event, the plaintiffs had a twofold option before them. The plaintiffs could have either applied for specific performance or for refund of the advance amount. The plaintiffs have chosen to take the latter course. Therefore, Article 62 of the Limitation Act is applicable. The trial Court had correctly approached the issues and I do not find any case made out for interference.

12. This appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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:

The Principal District Judge,
Tiruchirappalli.

Copy to

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

+1 CC to M/s.K.S.SANKARMURALI, Advocate (SR-20356[F] dated 28/06/2021)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-20357[F] dated 28/06/2021)

A.S.(MD)No.29 of 2018
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KB(16.11.2021) 5P 6C