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SA(MD).No.228 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.04.2021

PRONOUNCED ON : 13.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

SA(MD).No.228 of 2016

CMP(MD)No.1023 of 2020

(Through Video Conferencing)

Amsavalli

Appellant/Appellant/
Defendant

Vs.

Kandasamy

Respondent/Respondent/
Plaintiff

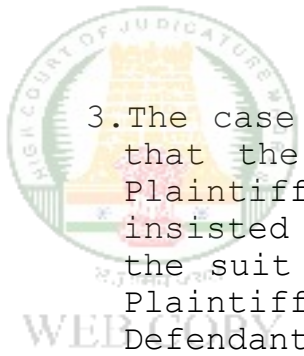
PRAYER:- This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree, dated 03.07.2013 made in AS.No.14 of 2010 by the District Judge, Karur, confirming the judgment and decree dated, 14.10.2008 passed in OS.No.182 of 2005 by the Subordinate Judge, Karur.

For Appellant : Mr.A.Arumugam
for Mr.J.C.Rathinavel Pandian

For Respondent : Mr.K.Rajkumar

JUDGEMENT

- 1.This Second Appeal has been filed by the unsuccessful Defendant before both the courts below, against the Judgment and Decree, dated 03.07.2013 made in AS.No.14 of 2010 by the District Judge, Karur, confirming the judgment and decree dated, 14.10.2008 passed in OS.No.182 of 2005 by the Subordinate Judge, Karur.
- 2.The case of the Plaintiff as set out, in the plaint is that the Defendant had entered into a registered sale agreement dated 13.10.2004, with the Plaintiff, agreeing to sell the suit property for a sale consideration of Rs.5 lakhs and to complete the sale, within a period of one year and that the Defendant had received an advance sale consideration of Rs.4 lakhs and that since the Defendant failed to perform her part of the contract, the Plaintiff had issued a notice to the Defendant on 4.6.2005, calling upon her to complete the sale on receipt of balance of sale price and that though the Defendant had received the notice on 6.6.2005, no reply was sent, but, she sought for three months time and even thereafter, the Defendant failed to comply with the terms of contract of sale. Though the Plaintiff was always ready and willing to perform his part of the contract, the Defendant was not ready and willing to perform her part of contract and hence, the suit has been filed, seeking specific performance of the contract.



3.The case of the Defendant as set out in the written statement, is that the Defendant had borrowed a loan of Rs.3 lakhs from the Plaintiff for her urgent necessity, for which, the Plaintiff insisted the Defendant to execute a mortgage deed in respect of the suit property as a security for the loan and accordingly, the Plaintiff and her document writer obtained signatures of the Defendant in various stamp papers and also in front of the Sub Registrar concerned and she did not know the contents of the document, as the Plaintiff did not allow the Defendant to peruse the document. Only after filing of the suit, the Defendant came to know that the alleged sale agreement was created by fraud and misrepresentation using innocence of the Defendant. The Defendant also discharged the debts borrowed from the Plaintiff and there was a dispute between the Plaintiff and Defendant with regard to interest alone. While so, the Plaintiff issued a notice to the Defendant and on receipt of notice, the Defendant approached the Plaintiff and questioned the same, for which, the Plaintiff told that as she has to pay interest, notice was issued to her. On intervention of mediators, the Plaintiff assured that he would not proceed against the Defendant and hence, the Defendant did not issue a reply notice. The Defendant has no intention to sell the suit property, which is worth more than 9 lakhs. The alleged sale agreement is not a genuine document and hence, the Plaintiff is not entitled to the relief as claimed in the suit and in such circumstances, the suit is liable to be dismissed.

4.Before the trial Court, on the side of the Plaintiff, two witnesses were examined as PW.1 and PW.2 and Ex.A1 to A8 were marked. On the side of the Defendant, three witnesses were examined as DW.1 to DW.3 and Ex.B1 was marked. The Trial Court, after appraising the entire oral and documentary evidence, had decreed the suit in favour of the Plaintiff. On the appeal, the lower appellate court had dismissed the appeal, confirming the judgement and decree of the Trial Court. Aggrieved against the same, this Second Appeal has been filed by the Defendant.

5.This Second Appeal was admitted, on the following substantial question of law:-

(a)Whether the courts below were right in concluding that the suit sale agreement was not executed as security for a loan transaction overlooking the fact that almost 80% of the sale consideration has been paid and a period of one year is fixed for performance?

6.This Court heard the submissions of the learned counsel on either side and also their rival contentions on the substantial question of law framed as above.

7.The learned counsel for the Appellant has submitted that the alleged sale agreement was not executed in favour of the Respondent and that the clauses in the alleged sale agreement



would show that the appellant had not executed a sale agreement other than the mortgage deed. The learned counsel would further submit that the courts below erred in not considering the documents filed by the appellant and the ocular evidence of DW.3 regarding the market value and that the Respondent did not aver and prove that he was ready to perform his part of the contract and in such circumstances, this Second Appeal is to be allowed, dismissing the suit. The learned counsel has relied on the decisions reported in **AIR 1987 SC 2328 (Parakunnam Veetill Joseph's son Vs. Nedumbara Kuruvila's son), 1996 2 LW 461 (Seeni Ammal Vs. Veerayee Ammal), 2007 1 MLJ 499 (Kamireddi Sattiaraju Vs. Kandamuri Boolaeswari), 2011 5 CTC 543 (Lakshamma Vs. Rathinammal) and 2017 1 MWN CIVIL 187 (P.Vaidyanathan Vs. K.Sundaram).**

8.The learned counsel for the Respondent would submit that after receiving the advance amount, the sale agreement was executed in front of the Sub Registrar concerned and that since the Appellant did not come forward to execute the sale deed, after receiving the balance of sale consideration, the suit has been filed even before the expiry of the period, which would not affect the rights of the Respondent and that when the Appellant appeared before the Sub-Registrar and put the signatures in the sale agreement, agreeing to sell the suit property for the price mentioned in the sale agreement, she cannot deny the execution of the said document and she also is estopped from questioning the market value of the property or to aver that it is not a sale agreement and in such circumstances, this Second Appeal is liable to be dismissed. The learned counsel would rely on the decisions reported in **1987 100 LW 582 (N.B.Namazi Vs. Central Chinmaya Mission Trust), 2004 4 CTC 150 (P.DSouza Vs. Shondriilo Naidu), 2005 1 CTC 753 (Arulraj Vs. Jabesthial), 2007 4 LW 218 SC (P.S.Ramakrishna Reddy Vs. M.K.Bhagyalakshmi), 2010 MWN Civil 241 (A.Jayalakshmi Vs. M.Ramalingam) and 2013 1 LW 31 (Virgo Industries Vs. Venturetech Solutions).**

9.This Court considered the rival submissions of the learned counsel on either side and also perused the materials available on record. For the sake of convenience, the parties herein after are referred to as they were arrayed in the suit.

10.According to the Plaintiff, even after issuance of legal notice, Ex.A2, without replying to the same, the Defendant failed to perform her part of the contractual obligation as per the terms of Ex.A1 sale agreement, after receiving the advance sale consideration of Rs.4 lakhs and hence, he is entitled for specific performance of the contract.

11.The main contentions of the Defendant are that Ex.A1 is not a sale agreement and it was a mortgage deed, executed as a security for the loan borrowed by her to the tune of Rs.3,00,000/-, which



was also repaid and the dispute was only with respect to payment of interest and that her signatures obtained in various stamp papers in the presence of Sub Registrar were misused and fraud was played on her, in executing the document.

12.PW.1 is the Plaintiff and the scribe of Ex.A1 is PW.2. DW.1 is the Defendant and DW.2 is none other than the father of the Defendant, who is one of the attesting witnesses to Ex.A1.

13.Even assuming that Ex.A1 is a mortgage deed, in respect of which an amount was paid and that the dispute was only with respect to interest thereon, as contended that by the Defendant and that if really the Defendant had an intention to execute the mortgage deed, definitely, on receiving the notice, Ex.A2, the Defendants would have replied to the same, repudiating the execution of Ex.A1. But, as per the averment in the written statement, after receiving the notice, she contacted the plaintiff and questioned the contents of the notice, for which, the plaintiff replied that he would not proceed on the basis of the notice issued by him. Except such an averment and the evidence of DW.1 and D.W.2, neither any independent witness was examined nor any document was marked to prove that Ex.A1 is a mortgage deed, pursuant to which, the sum was paid and that the dispute was only with respect to payment of interest.

14.Though the valuation of the property is more than the sale consideration stated in Ex.A1, the Plaintiff is not estopped from getting the relief of specific performance. When there are allegations of fraud played on the part of the Plaintiff at the time of registration and when the Defendant had an intention only to execute a mortgage deed, a duty is cast upon the Defendant to substantiate and prove the same, by letting in valid evidence and examining the concerned registering authority, but the Defendant failed to do so.

15.Ex.A1 is a registered document . The evidence of DW.1 discloses that she is well aware of the registration procedures of a document. DW.2, who is the father of DW.1 is the attestor of the said document. At the time of signing Ex.A1 as Executrix and Attestor, they would have come to know that it was a mortgage deed and accordingly, brought the same to the notice of the Sub Registrar and the registration would have stopped. But, without raising any questions before the Sub Registrar, they signed in the document at the time of registration. Further, the recitals of Ex.A1 very clearly show that it was executed as an agreement of sale and not a mortgage deed and mere denial by the Defendant without any evidence would not substantiate the case of fraud. As such, the claim of fraud on the part of the Plaintiff is unbelievable.

16. See <https://hccourtservices.gov.in>, as P.W.1 and the scribe of Ex.A1, PW.2 have



categorically deposed that the Defendant with an intention to sell the property had entered into the suit sale agreement with the plaintiff after receiving a sum of Rs.4 lakhs as advance. Further, this Court finds no contra evidence let in by the Defendant in support of his contentions.

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17. In so far as the contention of the Defendant that the suit is premature, is concerned, it is to be noted that Ex.A1 is dated 13.10.2004 and the sale transaction should be completed on or before 12.10.2005. Ex.A2, notice was issued on 4.6.2005 and the defendant who received the notice under Ex.A3, neither sent a reply notice, nor chosen to come forward to perform her part of the sale agreement.

18. In view of the above discussions and on perusal of the materials on record, this Court comes to the conclusion that on the face of Ex.A1, it is only a sale agreement and not a mortgage deed as alleged by the Defendant and that the Defendant had executed the suit sale agreement, Ex.A1, in favour of the Plaintiff, after receiving the advance amount of Rs.4 lakhs, agreeing to sell the suit property for a total sale consideration of Rs.5 lakhs and consequently, the Plaintiff is entitled for the relief of specific performance as claimed in the plaint.

19. To sum and substance, this Court is of the firm view that both the courts below, after considering the evidence, have concurrently and rightly come to the conclusion that the Defendant had executed the suit sale agreement in favour of the Plaintiff and she did not come forward to perform her part of the contract, as per terms of the suit sale agreement and rejected the contentions of the Defendant and consequently, the Plaintiff is entitled for the relief of specific performance, as claimed in the suit and there is no infirmity or illegality in the impugned judgements, which warrant interference by this Court. Accordingly, the substantial question of law is answered in favour of the Plaintiff.

20. In fine, this Second Appeal is dismissed. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

Srcm



To

1. The District Judge, Karur.
2. The Subordinate Judge, Karur.
3. The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/S. K.RAJKUMAR, Advocate, SR-22336, dated 13/07/2021

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