



A.S.No.433 of 2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.11.2022

DELIVERED ON : 24.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

A.S.No.433 of 2011 &

M.P. No.1 of 2011

P. Gnanasekaran

...Appellant

Vs.

1. A. Swarnavalli

2. M/s. Alliance Orchid Tech Park Pvt. Ltd.

Rep. by its Authorised Signatory

Bommi Reddy Suresh Reddy

No.556, Jeevan Anand Building, 2nd Floor

Anna Salai, Teynampet

Chennai 600 018

3. A. Muralidaharan

...

Respondents

Prayer: First Appeal filed under Section 96 CPC against the decree and judgment dated 30.06.2011 made in O.S. No.10119/2010 on the file of the Additional District Judge, Chennai, Fast Track Court-1, Chennai.

For Appellant : Mr. T. Thiageswaran

for M/s. Waraon

For R1 : No appearance

For R2 & R3 : Mr.V. Kuberan



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for M/s. Rank Associates

JUDGMENT

This appeal has been filed by the unsuccessful plaintiff in O.S.No.10119 of 2010 on the file of the Additional District Judge, Fast Track Court No.1, Chennai, against the decree and judgment dated 30.06.2011.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court and in appropriate places, their ranks in the present appeal would also be indicated.

3. The appellant/plaintiff filed the suit for (i) specific performance of contract dated 03.04.2004, (ii) declaring that the sale deed dated 09.03.2006 as null and void and (iii) recovery of possession of the suit property.

4. Briefly into the facts of the case:

4.1 The 1st defendant was the absolute owner of the suit property admeasuring 2410 sq. ft. land with a thatched roof shed in Plot



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No.A-5, Venkateswara Nagar, Korattur Village, Ambattur Taluk, Tiruvallur District. The same was purchased by the 1st defendant in 1988 and since then she was in possession and enjoyment of the same.

4.2. The plaintiff was a friend of the husband of the 1st defendant. The husband (one Arunachalam) of the 1st defendant had approached the plaintiff for a hand loan of Rs.4,00,000/- for business purpose. The plaintiff had reportedly handed over the loan amount of Rs.4,00,000/- in cash to the 1st defendant and her husband on 12.06.1999 at his residence at Virugambakkam, Chennai. The original title deeds of the suit property were handed over to the plaintiff by the 1st defendant and her husband with an intention to create an equitable mortgage as a security for the hand loan of Rs.4,00,000/-.

4.3. The 1st defendant and her husband did not repay the loan despite several reminders. The 1st defendant and her husband were in severe financial difficulties and had offered the suit property for a



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consideration of Rs.7,00,000/- in lieu of the loan. This was reduced to writing in the form of a sale agreement on 03.04.2004 (Ex.A2). After adjusting the principal plus interest of Rs.6,40,000/- payable by the 1st defendant and her husband, the balance amount payable worked out to Rs.60,000/-. The 1st defendant and her husband left the place and were not traceable which resulted in non execution of the sale deed.

4.4. Subsequently, the plaintiff sensing trouble had taken out the Encumbrance Certificate (Ex.A5) for the suit property on 01.12.2006 only to find that the suit property was already sold by the 1st defendant through her Power Agent, the 3rd defendant in favour of the 2nd defendant company by a sale deed dated 09.03.2006 (Ex.A4) registered as document No.881 of 2006 before Sub Registrar of Villivakkam.

4.5. The plaintiff who is holding the original title deeds as well as the sale agreement had expressed his willingness to complete the sale transaction by remitting the balance amount of Rs.60,000/- and therefore prayed for a direction to declare the sale deed dated 09.03.2006 as null



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and void and to recover the suit property and also for specific performance of contract after receiving the balance amount of sale consideration. He has also prayed for a liquidated damages of Rs.3,00,000/- from the 1st defendant.

5. The 1st defendant resisted the suit by contending that the original title deeds were taken by the plaintiff only for a patta transfer way back in 1995-96 and that they were misused by the plaintiff. The 1st defendant also denied having availed any loan from the plaintiff and that the suit is liable to be dismissed.

6. The trial court framed the following issues.

- i. Whether the sale agreement dated 03.04.2004 is true and valid?
- ii. Whether the original title deed went to the hand of plaintiff as alleged by the 1st defendant?
- iii. Whether the plaintiff is entitled to the relief of declaration prayed?
- iv. Whether the plaintiff is entitled to the relief of specific performance?



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7. The trial court after analysing deposition of P.W.1 to P.W.3 as witnesses on the side of the plaintiff and Ex.A1 to Ex.A9 as their exhibits along with D.W.1 and D.W.2 as witnesses on the defendants' side, dismissed the suit in O.S.No.10119/2010. The dismissal of the suit by the trial court was on the following grounds:

- i. Though the signature on the sale Agreement (Ex.A2) was disputed by the 1st defendant, the plaintiff could not substantiate satisfactorily the execution of the said agreement. P.W.3 an independent witness who deposed without any court summons vouched that he had seen the execution of the sale agreement. He had admitted the presence of the husband of the 1st defendant during the execution but could not explain as to why his signature was not obtained on the agreement. Moreover, the agreement (Ex.A2) was on stamp papers bought at Sattankulam on 03.04.2004 as could be seen on them. The time of purchase of the



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stamp paper was mentioned as 11 a.m. by P.W.1 while the execution of the agreement also was at 11 a.m the same day. The distance between Chennai and Sathnkulam being about 650 km, it was practically impossible to have bought the stamp paper on 03.04.2004 at Sathankulam and executed the agreement at Chennai on the same date. It becomes even more difficult to comprehend when the time is mentioned as 11 a.m for both the happenings.

- ii. Though the 1st defendant claimed that the original title deeds were handed over for patta transfer to the plaintiff who is a VAO even as early as 1995-96, they had not initiated any steps to recover the same except for one police complaint on 15.12.2006. Thus according to the trial court the version of the 1st defendant also did not carry any conviction. However, since the hand loan of Rs.4,00,000/- was not proved by the plaintiff by way of any satisfactory documentary evidence the trial court dismissed the suit.



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iii. The suit itself was not maintainable as it was not a specific performance suit against the 1st defendant and the new purchaser (2nd defendant) but instead was a suit for declaration of the sale as null and void which *ab initio* is not maintainable.

In the result, the suit was dismissed.

8. The points for consideration in the present appeal are:-

- i. Whether the sale agreement dated 03.04.2004 is true and valid?
- ii. Whether the plaintiff is entitled to the relief of specific performance of contract?
- iii. Whether the sale deed dated 09.03.2006 is null and void?

9. Heard Mr. T. Thiageswaran, learned counsel appearing for the appellant and Mr.V. Kuberan, learned counsel appearing for the respondents 2 and 3.

10. At the outset one aspect is crystal clear and that the plaintiff



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is trying to pick holes in the defendants' case instead of trying to substantiate his contention. The learned counsel for the appellant/plaintiff would contend that the loan was given to the 1st defendant in cash and since they were friends the title deeds were taken by the plaintiff only as a security though no documents were executed at the time of disbursing the loan in 1999. It was further contended that only in the year 2004 when the 1st defendant expressed her difficulty in liquidating the loan, the sale agreement was entered into. It was also pointed out that though the sale deed executed in favour of the 2nd defendant by the 1st defendant through her Power Agent mentions that the original title deeds were handed over to the 2nd defendant, the truth was otherwise and this itself showed the evil design of the 1st defendant and her husband.

11. Per contra the learned counsel for the 1st respondent would contend that the plaintiff had breached the faith reposed in him. She would contend that neither the 1st defendant nor her husband had ever borrowed from the plaintiff and that though she disputed her signature on



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the sale agreement the trial court had declined to go ahead with signature verification analysis and instead held that the execution of the sale agreement was even otherwise not proved by the plaintiff. Another contention was that had the sale agreement been genuine why there was no legal notice at some point of time calling the 1st defendant to complete the sale transaction as agreed upon. The learned counsel for the 1st defendant also argued that there was no merit in the case of the plaintiff and the appeal also is liable to be dismissed.

12. There are a few unanswered questions to the 1st defendant like why the original title deeds were handed over to the plaintiff when xerox copies were sufficient for patta transfer. Similarly, why the patta transfer was requested in 1999 for the suit property bought in 1988 and even if it is true why the VAO of Perambur was approached for a property not falling under his jurisdiction.

13. The date of stamp paper and the date of execution of agreement also arouse suspicion on the genuineness of the agreement.



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Regarding the contention that the first defendant and her husband had taken a hand loan of Rs.4,00,000/- on 12.06.1999, the same has not been substantiated by any valid documentary evidence except for a mention in the sale agreement dated 03.04.2004, which itself is under a cloud and therefore this contention also remains unsubstantiated by the plaintiff. The trial court has held that the signature of the 1st defendant tallies. But the very execution has not been satisfactorily proved. The date of agreement is 03.04.2004 and why the plaintiff did not issue even a single legal notice to the 1st defendant is also equally perplexing. Moreover the plaintiff did not show his readiness and willingness throughout the contract period and this suit was filed just one day prior to the expiry of limitation period. Therefore the plea of the specific performance fails. Thus the entire sequence of events leaves one wondering as to who deceived whom. But technically and legally the plaintiff has to prove his case to the hilt and should not pick holes in the defendants' version of the facts. The plaintiff has failed miserably and adding to his woes is the fiasco of stamp paper bungling. The trial court at the same time had not failed to point out the deficiencies in the version of the defendants but the



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plaintiff had not performed his duty of proving his case and therefore, I do not find any reasons to interfere and disturb the verdict of the trial court. Thus the points No.1 to 3 are answered against the appellant.

14 . In the result,

- i. the first appeal is dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.
- ii. The decree and judgment dated 30.06.2011 made in O.S. No.10119/2010 on the file of the Additional District Judge, Chennai, Fast Track Court-1, Chennai, is upheld.

24.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

1. The Additional District Judge, Fast Track Court-1, Chennai,
2. The Section Officer, VR Section, High Court, Madras.

Pre-delivery Judgment in
A.S.No.433 of 2011

24.11.2022