IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.616 of 2003

R.Ramasamy .. Appellant

Versus

1. D.Devika
2. Glori Hebsyba .. Respondents

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code against the decree and judgment, dated 28.03.2002 in O.S.No.72 of 2000 on the file of the Additional Sub-Court, Pondicherry.

For Appellants : Mr.R.Syed Mustafa

For Respondents : No Appearance

<u>JUDGMENT</u>

A. The Appeal Suit :

This Appeal Suit is filed aggrieved by the judgment and decree, dated 28.03.2002 in O.S.No.72 of 2000 on the file of the learned Additional Sub-

Ordinate Judge, Pondicherry, in and by which, the suit filed for specific performance by the plaintiff, is dismissed.

B. The Plaint :

2. The case of the plaintiff is that the first defendant held out to the plaintiff that, the first defendant was in absolute ownership, possession and enjoyment of the suit property and offered to sell the property for a consideration of Rs.2,85,000/-. Accordingly, an agreement for sale was executed on 07.01.1999 which was also registered as Doc.No.60 of 1999 on the file of the Sub-Registrar, Oulgaret. Even though the first defendant received an advance amount of Rs.2,82,500/-, she did not come forward to execute the sale deed. However, suddenly, the first defendant again bargained for higher price stating that the price of the property is much higher. Therefore, once again, the plaintiff and the first defendant agreed for a new sale consideration as Rs.5,70,000/- and once again, a fresh sale agreement, dated 10.05.1999 was entered into and was registered as Doc.No.1990 of 1999. Since the sale consideration went above Rs.5,00,000/-, the parties had to obtain Income Tax Clearance Certificate under Section 230-A of the Income Tax Act, 1961. Even though time fixed under the agreement was reached out, the first defendant did not obtain

Income Tax Clearance Certificate and failed to come forward to execute the sale deed. The plaintiff, therefore, caused a legal notice on 11.08.1999. However, clandestinely, the first defendant, on 20.12.1999, sold the property to the second defendant by grossly undervaluing the suit property at Rs.1,85,000/- and hence the suit against both the defendants directing to transfer the suit property to the plaintiff by execution of sale deed and registering the same after receiving balance consideration of Rs.7,000/-.

C. The Written Statement :

3. The suit was resisted by the defendants by filing separate written statements. The case of the first defendant is that she is engaged in Real Estate business and used to purchase vacant sites and construct buildings to sell it off to third parties. For business purposes, she used to borrow money from various money lenders including the plaintiff. In the year 1996, she borrowed a sum of Rs.1,50,000/- on 05.09.1996 and executed a similar document like the present document. Even in the year 1996, a borrowal was made and a similar sale agreement was executed. Therefore, the transaction is only a loan transaction and the sale agreement was not executed with an intention to sell the property. The defendant is ready to repay the document mentioned amount of Rs.2,82,500/-. While so, when she was unable to

complete buildings and attract prospective purchasers, the first defendant again asked a further sum of Rs.2,82,500/- and therefore, the sale agreement was executed for a consideration of Rs.5,70,000/-. Therefore, the first defendant sold the property to the second defendant and out of the sale proceeds, she had to pay off some other debtors and promised to pay the amount to the plaintiff after selling the next property. Not satisfied by this arrangement, the plaintiff has filed the suit by using the sale agreements made on 07.01.1999 and 10.05.1999.

4. The second defendant filed a separate written statement stating that on 16.10.1999, she entered into a sale agreement for purchase of the suit property for a total sum of Rs.10,56,000/- and the first defendant received an advance amount of Rs.7,06,000/-. Thereafter, upon receipt of balance sale consideration of Rs.3,50,000/- and producing the originals, the sale was registered on 20.12.1999. Only to avoid stamp duty for registration, the second defendant mentioned the value of the document as Rs.1,80,000/-.

D. The Issues :

5. On the strength of the said pleadings, the Trial Court framed the following issues:-

1. Whether the first defendant has entered into an agreement to sell on 10.05.1999 with the plaintiff in respect of the suit property by receiving an advance of Rs.5,63,000/- as against the total sale consideration of Rs.5,70,000/-?

2. Whether the agreement dated 10.05.1999 in between the plaintiff and the first defendant has been executed only for the loan amount received by the first defendant from the plaintiff and not for selling the suit property as claimed by the plaintiff?

3. Whether the first defendant is not liable to execute any sale deed in respect of the suit property pursuant to the agreement dated 10.05.1999?

4. Whether the second defendant is a bonafide purchaser of the suit property for a valid consideration?

5. Whether the plaintiff is entitled for a decree of specific performance against the defendants as claimed in the suit?

6. Whether the plaintiff is entitled for a judgment and decree as prayed for?

7. To what other relief or reliefs the parties are entitled?

E. The Evidence :

6. On the said issues, the plaintiff examined himself as P.W.1 and ***Exs.A-1*** to ***A-7*** were marked. One *Rangarajan* was examined as D.W.1 and ***Exs.B-1*** to ***B-8*** were marked.

F. The Findings of the Trial Court :

7. The Trial Court, thereafter, considered the case by the parties and by a judgment dated 28.03.2002, came to the conclusion that the increase in sale consideration even within a short span of time from Rs.2,85,000/- to Rs.5,70,000/- does not appear to be normal conduct and such a doubling of sale consideration to the tune of 100% within three months cannot be believed and further, if the plaintiff has almost paid the entire sum of sale consideration and he is stating that it was kept pending for only non-payment of Rs.7,000/- in the second instance and Rs.2,500/- in the first instance, are all pointing out that the transaction is not a sale transaction as claimed by the plaintiff and held that it would be inequitable to order specific performance and, the sum as admitted by the first defendant in her written statement, can be treated as an advance amount and the plaintiff will only be entitled for the said advance amount.

G. The Submissions :

8. Heard *Mr.R.Syed Mustafa*, learned Counsel appearing on behalf of the appellant. Inspite of service of notice, none appears on behalf of the respondents.

H. Points for consideration :

9. Upon hearing the submissions of the learned Counsel for the appellant and perusing of the records, the following points arise for consideration:-

> *(i) Whether the plaintiff is entitled for the relief of specific performance on the basis of* ***Exs.A-1*** *and* ***A-4*** *sale agreements?*
>
> *(ii) To what relief, the parties are entitled?*

I. Question No.i :

10. It can be seen that the first sale agreement in ***Ex.A-1*** was entered into on 07.01.1999 and in the said agreement, the total sale consideration was mentioned as Rs.2,85,000/-. It is further to be seen that out of the said amount of Rs.2,85,000/-, a sum of Rs.2,82,500/- is said to have been paid

and received by the first defendant. Therefore, keeping the transaction pending for payment of only Rs. 2,500/- is the first circumstance. Again within a period of only four months, the parties negotiated the sale consideration on 04.05.1999 and it is said that the price is re-fixed as Rs.5,70,000/-. This is unusual and abnormal and is the second circumstance, out of the total sum of Rs.5,70,000/- a sum of Rs.5,63,000/- is paid. And the matter is kept pending for a balance payment of Rs.7,000/-., this is the third circumstance. The same clearly probabilise the case of the defendants and in such an eventuality, it would be inequitable to order specific performance of the suit sale agreement. Hence, I hold that the plaintiff is not entitled to the relief of specific performance. Accordingly, I answer the Point No.i.

J. Question No. ii:

11. However, it may be seen that the first defendant has clearly and categorically admitted that she had received the first sum of Rs.2,82,500/- on 07.01.1999 and the second sum of Rs.2,80,500/- on 10.05.1999, in all totalling to Rs.5,63,000/- with the sum remaining unpaid. Even though the Trial Court had also found that the plaintiff would be entitled for refund of the said amount, the Trial Court did not pass a decree in respect thereof and

therefore, to that extent, the plaintiff would be entitled for the refund of the said sum of Rs.5,63,000/- with interest. The first defendant herself admitted that the transaction was for commercial purpose as she was developing and selling properties and the borrowal was for the said purposes. Therefore, the plaintiff will be entitled for interest at the rate of 12% per annum. Accordingly, the point No.ii is answered.

K. The Result:

12. In the result, this Appeal Suit in A.S.No.616 of 2003 is partly allowed on the following terms:-

(i) The Original Suit in O.S.No.72 of 2000 on the file of the Additional Sub-Court, Pondicherry is partly decreed directing the first defendant to pay to the plaintiff a sum of Rs.5,63,000/- with further interest at the rate of 12% per annum from the date on which the amounts were borrowed till the date of realisation;

(ii) However, in the facts and circumstances of the case, there shall be no order as to costs.

18.11.2022

Index : no
Speaking order

grs

To

1. The Additional Sub-Court,
   Pondicherry.

2. The Section Officer,
   VR Section,
   High Court of Madras.

3. The Principal Secretary to Government,
   Department of Revenue and Disaster Management,
   Secretariat,
   Fort St.George,
   Chennai - 600 009.

D.BHARATHA CHAKRAVARTHY, J.,

grs

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