IN THE HIGH Court OF JUDICATURE AT MADRAS

Judgment Reserved on : 31.10.2022

Judgment Delivered on : **15.11.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Appeal Suit No.949 of 2015

L.Prakash ... Appellant

Versus

1.T.Saraswathi, (Died)

[Sole respondent died recorded as per memo dated 21.12.2021, in S.R.No.37675, Vide Court order dated 20.01.2022 in made in A.S.No.949 of 2015.]

2.Shanthi
3.Jayaprakash

[R3 name corrected as Jayaprakash instead of Sivaprakash, Vide order dated 14.09.2022.]

4.Radhakrishna
5.Nalini
6.Paranthaman
7.Rekha
8.Priya
9.Parimala ... Respondents

[R2 to R9 brought on record as LR's of the deceased sole respondent, Viz., (T.Saraswathi), Vide Court order, dated 08.09.22 made in

CMP.No.6396 of 2022 in A.S.No.949 of 2015)

Prayer: Appeal Suit is filed under Section 96 of the Code of Civil Procedure, 1908, challenging the Judgment and Decree dated 20.07.2015 in O.S.No.68 of 2014 on the file of the Principal District Judge, Vellore.

For Appellants : Mr.R.Rajarajan

For Respondent : Mr.S.Ganesh Kumar

JUDGMENT

A.The Appeal :

This appeal suit is filed by the appellants aggrieved by the Judgement and Decree of the learned Principal District Judge, Vellore dated 20.07.2015 in and by which O.S.No.68 of 2014 filed by the plaintiff for recovery of a sum of Rs.14,43,200/- together with future interest at the rate of 24% per annum on the principal sum of Rs.11,00,000/- was dismissed by the Trial Court.

B.Brief Facts:

2.The case of the Plaintiff is that the defendant was the original owner of the property at Door No.80, Ida Scudder Road, Vellore. By a registered sale deed dated 02.12.2011, through her Power of Attorney agent, the defendant sold the said property to the plaintiff for a total sale consideration of Rs.7,50,000/-. However, in the year 2013, the defendant wanted to repurchase the same from the plaintiff. The sale consideration was fixed at Rs.20,00,000/-. It was agreed between the parties that even after the sale, the plaintiff shall continue as a tenant and run the tea stall business. Therefore, a sum of Rs. 6,00,000/- was quantified as advance for the non-residential shop premises and the same was deducted out of the sale consideration. This apart, the defendant had paid cash of Rs.3,00,000/- on the date of registration of the sale deed on 12.04.2013. For the balance Rs.11,00,000/- sale consideration, the defendant executed the suit promissory note in favour of the plaintiff agreeing to repay the said sum of Rs.11,00,000/- together with interest at the rate of 24% per annum. Even though the plaintiff as a tenant is paying the monthly rent, the defendant did not pay the amount due under the promissory note inspite of repeated demands and hence the suit.

3.Even though the defendant entered appearance, he thereafter did not file the written statement, and thus was set *ex-parte*.

4.The plaintiff examined himself as P.W.1 and ***Exs.A-1 to A-5*** were marked. The Trial Court, thereafter, considered the matter for passing *ex-parte* decree, and by a judgment dated 20.07.2015, it was found that in ***Ex.A-1/*** suit promissory note, it is not mentioned that any money has been borrowed or advanced, but the sale transaction of the property has been specifically mentioned and that the sale consideration was mentioned as Rs.20,00,000/-, and it is recited that there is a balance sum of Rs.11,00,000/- payable by the defendant to the plaintiff, hence the promissory note was executed. The Trial Court found that in ***Ex.A-2*** i.e., the copy of the sale deed, which was marked, it is covenanted that the total sale consideration was fixed as Rs.10,00,000/-, as the plaintiff has, for the purposes of his family expenses, obtained the same as cash on the date of sale deed. And in consideration thereof, the sale deed has been executed. Therefore, the Trial Court held that once it is admitted that the sale consideration is for a sum of Rs.10,00,000/-, then the contents of the promissory note being contrary to the registered document, cannot be acted upon. The Trial Court found that when ***Ex.A-5/*** sale deed is a false one, and is created to cheat the Government to evade the stamp duty, then such a transaction is impliedly barred under Section 9 of the Civil Procedure Code, and dismissed the suit. Aggrieved by the same, the Appeal Suit is filed before this Court.

D. The submissions :

5.*Mr. R .Rajarajan,* learned counsel for the appellants would submit that the defendant had duly signed the promissory note and did not deny the execution thereof and remained *ex-parte*. The presumption under Section 118 of the Negotiable Instruments Act, 1881, is very much available for the suit promissory note. If the parties have undervalued the sale, it can be appropriately brought to the notice of the Government, so that, the balance of stamp duty and registration charges can be collected from the plaintiff/respondent herein, in the manner known to law. For that purpose, the defendant cannot be vested with the property without even paying the balance sale consideration. The Trial Court ought to have seen that the same would amount to unjust enrichment to the defendant. There is no proposition of law by which the sale deed will have precedence over a promissory note, which has a statutory presumption. Therefore, the Trial Court ought to have granted the *ex-parte* decree in favour of the plaintiff.

6.Per contra, *Mr. S. Ganesh Kumar,* learned counsel appearing on behalf of the respondent/plaintiff would submit that the suit is based on the promissory note. Even as per the promissory note, a cash of Rs.20,00,000/- was not borrowed, but, it is mentioned that the sale was for Rs.20,00,000/-, and subsequently, after the adjustments, there is a balance of Rs.11,00,000/-. However, the said averment in the promissory note is falsified by the very sale deed itself, which states that the sale consideration is only for Rs.10,00,000/- and that the entire amount was paid to the plaintiff by the defendants. If the sale consideration was Rs.20,00,000/-, even future consideration could have been mentioned in the sale deed and appropriate stamp duty must have been paid thereof and on this note, the Trial Court has rightly dismissed this suit.

E.Points for consideration :

7.Upon consideration of the rival submissions, and perusal of the material records of this case, the following points arise for consideration:-

> " i) Whether or not the plaintiff is entitled to plead and recover the balance sale consideration of Rs.11,00,000/- under ***Ex.A-1*** promissory note in the teeth of ***Ex.A-5*** sale deed containing recitals that, the sale consideration is Rs. 10,00,000/- and that the same is received as cash?
>
> ii) To what other relief the plaintiff is entitled to?"

8.To answer the first point for consideration, even according to the plaintiff, the sale consideration was Rs.20,00,000/-, and it is clearly mentioned in ***Ex.A-1/***Promissory note that, the balance sum of Rs.11,00,000/- was payable with interest as only Rs.9,00,000/-, out of the total sale consideration which was received/given credit to by the plaintiff. In that view of the matter, ***Ex.A-5/*** sale deed is the best evidence to prove the said fact. ***Ex.A-5*** categorically states that the total sale consideration is only Rs.10,00,000/-, and that the entire amount was paid by the defendant and the receipt of the same is acknowledged by the plaintiff. Therefore, there is no question of any presumption in the instant case, as it is expressly mentioned in the promissory note itself. Thus, the plaintiff's case fails by itself. The argument of the learned counsel that, even if the transaction was for the purpose of evasion of the stamp duty, still the Government can be enabled to collect the same, and a decree can be passed in favour of the plaintiff, is legally unsustainable. If the same is accepted, it would be clear that by mentioning Rs.10,00,000/- in the sale deed and by separately executing a promissory note, the parties' intentions are to evade stamp duty and registration charges and to keep the sum of Rs.10,00,000/-, as an unaccounted transaction. In this regard, the Hon'ble Supreme Court of India, in ***G. Pankajakshi Amma Vs. Mathai Mathew***[1] held that Courts cannot come to the aid of the party in an illegal transaction and in such cases the loss must be allowed to lie where it falls. It is useful to extract the relevant paragraph No.10 of the Judgment, which reads as under.

> "*10. There is any reason also why the impugned judgement cannot be upheld. According to the 1st respondent these transactions were to be unaccounted transactions. No Court can come to the aid of the party in an illegal transaction. It is settled law that in such cases the loss must be allowed to lie where it falls. In this case as these are unaccounted transactions, the Court could not have lent its hands and passed a decree. For these reasons also the suit was required to be dismissed.*"
>
> (emphasis supplied)

9.This apart, this Court in O.S.A.No.212 of 2017, ***Monicca Shantha Nelson and 2 ors. Vs. Rajalakshmi Venugopal and 3 others***[2]**,** held that agreements of the parties to evade tax etc., would be hit by the principles of *Pari Delicto* and as such Courts cannot aid by enforcing thereof. It is useful to extract the relevant Paragraph No.31 of the said Judgment, which reads as follows:-

> "*31. ... In such cases, the Courts have evolved the doctrine of pari delicto principle, which*

1 (2004) 12 SCC page 83

2 (2022) 3 MLJ 322

> *means that the Courts will not will not grant relief based on such agreement with an illegal purpose at the instance of a person who himself is a party to the illegality or fraud."*

Thus, I have no hesitation to answer the point for consideration that the plaintiff is not entitled to a decree in this case.

10. In view of my above findings, I also answer the second point for consideration that the Trial Court has rightly dismissed the suit, and the plaintiff is not entitled for any relief in this Appeal Suit.

F.Result :

11.In the result,

(i) The Appeal Suit in A.S.No.958 of 2012 is dismissed ; and

(ii) However, there shall be no orders as to costs.

15.11.2022

Index : yes
Speaking order

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To
1.The Principal District Judge, Vellore.

2.The Section Officer, V.R. Section, High Court of Madras.

D.BHARATHA CHAKRAVARTHY, J.

klt

A.S.No.949 of 2015

15.11.2022