



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.01.2022
CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

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S.A.No.874 of 2019
and
C.M.P.No.219 of 2022

Mrs.Maheswari

...Appellant/Plaintiff

Vs.

Mrs.Kamalam

...Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 03.12.2018 made in A.S.No.02 of 2017 on the file of Principal District Judge, Namakkal, confirming the Judgment and Decree dated 19.08.2016 in O.S.No.26 of 2014, on the file of the learned Subordinate Judge, Rasipuram.

For Appellant : Mr.Prem Kumar for
Mr.C.Jagadish
For Respondent : Mr.T.Dhanyakumar

JUDGMENT

This Second Appeal is filed against the judgment and decree of the Principal District Judge, Namakkal in A.S.No.2 of 2017 confirming the judgment and decree of the Subordinate Judge, Rasipuram in O.S.No.26 of 2014.

2. The appellant filed a suit for specific performance on the basis of the sale agreement dated 26.02.2013. Since the defendant intended to sell the suit property, the plaintiff approached the defendant for the same and they entered into a sale agreement on 26.12.2013. The sale price was fixed at Rs.2,70,000/-. A sum of Rs.2,65,000/- was paid by the respondent/defendant as advance. It was agreed that the balance sale consideration of Rs.5,000/- will be paid within a period of two years and that the sale deed would be executed as per the terms and conditions of the sale agreement. The appellant/plaintiff was ready and willing to pay the balance sale consideration of Rs.5,000/-. Despite several oral requests and legal notice, the respondent/defendant did not come forward to execute the sale deed. Therefore, this suit was filed.

3. The respondent denied execution of the sale agreement. The suit property was allotted to the respondent by the Government of Tamil Nadu. She constructed a house in the suit property, after obtaining loan from Rasipuram Housing Society



and from the third parties. The appellant's husband and the respondent were working in Kathiranallur Union Middle School for about 25 years as Noon Meal Organizer and Noon Meal Cook respectively. Further, the respondent sought for money from the appellant's husband for his son's lorry business. On the direction given by the appellant's husband, the appellant borrowed a sum of Rs.70,000/- from one Kumarasamy for interest and paid Rs.3.50 as interest for every 100 Rupees. Since the interest is exorbitant, the husband of the appellant stated to the respondent that he would take over the loan given by the said Kumarasamy and Palanivelu and accordingly, took charge of the loan amount with interest to the tune of Rs.1,60,000/- and he settled the loan of Kumarasamy. In this regard, the appellant demanded the respondent to pay a sum of Rs.1,60,000/- at 2% interest. The expenses relating to cancellation of General Power of Attorney deed executed in favour of Kumarasamy, was for Rs.2,65,000/- and for this amount, a sale agreement was executed as security. Hence, this suit is liable to be dismissed.

4. The trial Court framed the following Issues:-

- (i) Whether the plaintiff is entitled for the relief of specific performance?
- (ii) Whether the case of the defendant that the sale agreement was entered into as a security for transaction, is correct?

5. During the trial, PW1 and PW2 were examined and Exs.A1 to A10 were marked on the side of the appellant/plaintiff. D.W.1 and D.W.2 were examined and Exs.B1 to B11 were marked on the side of the respondent/defendant.

6. Considering the oral and documentary evidence produced on either side, the trial Court held that the sale agreement was entered into only as security for the loan transaction and therefore, the appellant/plaintiff is not entitled for the relief of specific performance. Hence, the suit was dismissed. Challenging the same, the appellant/plaintiff filed A.S.No.2 of 2007. The Appellate Court also found that the said sale agreement was executed only as a security for loan transaction. Further, the appellant was not ready and willing to perform his part of the contract and therefore, the first Appellate Court, confirmed the judgment of the trial Court and dismissed the appeal. Challenging the judgment of the first Appellate Court, this Second Appeal is filed by the plaintiff.

7. This Second Appeal was admitted on the following substantial questions of law:-

- (i) Whether the Courts below are right in holding that a registered sale agreement has been executed as a



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collateral security for a loan transaction ignoring the provisions of Sections 91 and 92 of the Indian Evidence Act?

(ii) Whether the Courts below being the Courts of Equity right in law in denying the relief of refund of advance money on the ground that the plaintiff has not sought for specific relief under Section 22(2) of the Specific Relief Act, 1963, ignoring the provisions of Order VII Rule 7 of the Code of Civil Procedure, particularly, when the plaintiff has admitted the execution and registration of the sale agreement Exhibit A5 and the receipt of the advance sale consideration under Exhibit A5?

8. The learned counsel for the appellant/plaintiff restricted his submissions only to the refund of money transaction. He submitted that, it is seen from the written statement that the respondent/defendant admitted the receipt of Rs.2,65,000/- from the appellant. Both the Courts below have not given a direction to refund this amount. The reason given by the Courts below for not ordering refund of the money received by the respondent/defendant is that the appellant/plaintiff has not specifically prayed in the suit for refund of advance money. It is true that the appellant has not specifically prayed for refund of advance money. Therefore, the appellant/plaintiff has filed CMP.No.219 of 2021. In this petition, he has prayed for return of advance amount to be included in the prayer sought.

9. The learned counsel for the respondent/defendant submitted that the respondent is willing to refund the money obtained as loan. Therefore, he has no objection to allow the amendment petition and also order refund of money received by the respondent from the appellant.

10. Section 22 of the Specific Relief Act deals with refund of earnest money or deposit. Unless it has been specifically claimed refund cannot be ordered. However proviso to the Section provides for amending the relief of the plaint for refund of money at any stage of proceedings. Section 22 of the Specific Relief Act is extracted hereunder:-

"22. Power to grant relief for possession, partition, refund of earnest money, etc.-(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate



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case, ask for-

(a) possession, or partition and separate possession, of the property in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or (made by) him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (I) shall be granted by the court unless it has been specifically claimed.

Provident that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause(b) of sub-section (I) shall be without prejudice to its powers to award compensation under Section 21."

11. Therefore, permission to amend the prayer for refund of advance amount, can be ordered at any stage of the proceedings, that too, even in the Second Appeal. In this view of the matter, C.M.P.No.219 of 2022 is allowed. Trial Court is directed to make appropriate amendment in the plaint.

12. Though it is the case of the appellant/plaintiff that the amount was paid as advance amount towards the sale transaction, it is the case of the respondent/defendant that the amount was due to the appellant/plaintiff in connection with the loan transaction and other expenses relating to cancellation of Power of Attorney and not for execution of the sale agreement.

13. The learned counsel for the respondent/defendant genuinely admitted the receipt of Rs.2,65,000/- and is ready to return the same. Thus, the substantial questions of law are answered in the above terms.

14. In the result, this Second Appeal is allowed. The judgment of the first Appellate Court is set aside and modified to the effect that the respondent/defendant is directed to return the sum of Rs.2,65,000/- to the appellant/plaintiff with interest at the rate of 12% p.a from the date of filing the suit till the date of decree and thereafter at 6% p.a. till the date of realisation of the amount within a period of three months from today or she shall deposit the same before the trial Court and the said amount shall carry interest at 12% p.a from today until the payment



is made. There shall be no order as to costs. Consequently, connected miscellaneous petition filed in C.M.P.No.219 of 2022 stands allowed.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kmm
To

1. The Subordinate Judge, Rasipuram.

2.The Principal District Judge, Namakkal.

Copy to:

The Section Officer,
VR Section,
High Court, Madras

+1 cc to Mr.S.Senthil, Advocate Sr.NO. 1918

S.A.No.874 of 2019

BR(CO)
A.SK(22.02.2022)