



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.168 of 2014

and

MP No.1 of 2014

M.Kanniyappan

... Appellant

Vs.

Mr.G.Babu

... Respondent

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the Judgement and decree passed in A.S.No.8 of 2012 dated 23.08.2013 on the file of the II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District revising the judgement and decree passed in O.S.No.93 of 2005 dated 20.09.2010 on the file of the Sub-Court Ranipet, Vellore District.

For Appellant : Mr.K.Mohanamurali

For Respondent : Mr.T.R.Rajaraman

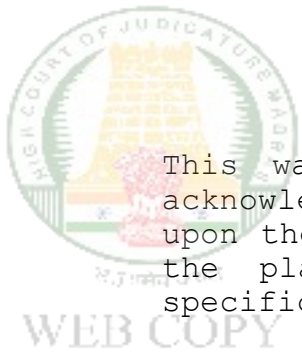
JUDGMENT

The defendant is the appellant in this second appeal.

2.The respondent / plaintiff filed a suit seeking for the relief of specific performance based on the agreement of sale dated 07.09.2002.

3.The case of the plaintiff is that the defendant is the owner of the suit property and they entered into an agreement of sale on 07.09.2002 marked as Ex.A1. As per the agreement, the total sale consideration was fixed as Rs.2,00,000/- and even on the date of agreement, the plaintiff had paid a sum of Rs.1,75,000/- as advance. Therefore, what remained was the balance sale consideration of Rs.25,000/- to be paid by the plaintiff to the defendant and thereafter, the defendant was expected to execute the sale deed in favour of the plaintiff.

4.The further case of the plaintiff is that the defendant was repeatedly approached by stating that the plaintiff is ready and willing to perform his contract and in spite of the same, the defendant is said to have evaded to accept the balance sale consideration and execute the sale deed in favour of the plaintiff. Hence, a legal notice came to be issued to the defendant on 30.08.2005, marked as Ex.A2.



This was received by the defendant on 01.09.2005 and the acknowledgment was marked as Ex.A3. The defendant did not act upon the legal notice and hence, the suit came to be filed by the plaintiff on 06.09.2005, seeking for the relief of specific performance.

5. The defendant took a stand that there was no agreement of sale between the parties and that the plaintiff had misused the signature made in the blank stamped papers when the defendant had taken a loan from the plaintiff. The defendant specifically pleaded that he had obtained a loan of Rs.10,000/- from the plaintiff and had signed in some empty stamped papers which was retained as a security. The defendant further stated that the entire loan amount was repaid with interest and inspite of the same, the signed papers were not returned back and these papers were utilized for the purpose of fabricating a sale agreement. Hence, the defendant rejected the very claim made by the plaintiff and sought for the dismissal of the suit.

6. The Trial Court on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, dismissed the suit through judgement and decree dated 20.09.2010 after finding that Ex.A1 was only given as a security for the debts and it cannot be treated as an agreement of sale.

7. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.8 of 2012 before the IInd Additional District and Sessions Judge, Vellore. The Lower Appellate Court on re-appreciation of the oral and documentary evidence and after considering the findings of the Trial Court, allowed the appeal and set aside the judgement and decree of the Trial Court. As a consequence, the suit was decreed as prayed for. Aggrieved by the same, the defendant has approached this Court and filed the present Second appeal.

8. When the second appeal was admitted, the following substantial questions of law were framed by this Court :-

(a) Whether the First Appellate Court is correct in reversing the judgement and decree in O.S.No.93 of 2005 when the plaintiff fail to prove his ready and willingness from the date of agreement to sell dated 07.09.2002 and further failed prove his ready and willingness even by an order dated 19.10.2005.

(b) Whether the learned Appellate Court is correct in shifting the burden of the defendant when the plaintiff will have to establish in his case.

9. Heard the learned counsel for the Appellant and the learned counsel for the respondent and this Court has also carefully perused the materials available on record and the findings rendered by both the Courts below.



10. There are two issues that requires the consideration of this Court. The first issue is with regard to the nature of document that was marked as Ex.A1. The 2nd issue is as to whether the plaintiff was ready and willing to perform his part of the contract, if ultimately Ex.A1 is held to be a sale agreement.

11. It is pertinent to note that the defendant pleaded in the written statement as if he obtained a loan of a sum of Rs.10,000/- from the plaintiff and he had signed in blank stamped papers as a security. Thereafter, the defendant filed an additional written statement to the effect that the suit is time barred, if the alleged document is taken to be a sale agreement. During the evidence, the defendant who examined himself as DW1 came up with a stand that he received a sum of Rs.2,00,000/- from the plaintiff as loan and had signed in blank stamped papers as security. Yet another issue that requires the consideration of this Court is the fact that the first witness in the sale agreement is none other than the son of the defendant.

12. The Lower Appellate Court after considering all these factors came to a categorical conclusion that the defendant has not established that Ex.A1 was given as a security for the loan transaction and hence, gave a finding to the effect that Ex.A1 is an agreement of sale.

13. The above findings rendered by the Lower Appellate Court was based on appreciation of evidence and this Court does not find any perversity in the findings of the Lower Appellate Court. The plaintiff had proved Ex.A1 to be a sale agreement by examining one of the attesting witness as PW2. Therefore, this Court holds that Ex.A1 is a sale agreement and to that extent, the findings of the Lower Appellate Court is upheld.

14. In a suit for specific performance, it is the duty of the plaintiff to establish readiness and willingness on his part. The Court while exercising its discretionary power has to satisfy itself by assigning proper reasons as to whether the plaintiff has proved readiness and willingness in performing his part of contract. A careful reading of the judgement of the Lower Appellate Court shows that the Lower Appellate Court has made a passing remark to the effect that the plaintiff is ready and willing to perform his contract and the same has been proved sufficiently. The Lower Appellate Court has not made any discussion as to how the plaintiff has proved the readiness and willingness on his part. This is more so since the sale agreement is dated 07.09.2002 and the legal notice was issued only on 30.08.2005. As to what happened during this interregnum period between 2002 to 2005, the legal notice states that the plaintiff had approached the defendant many times and expressed his readiness and willingness to pay the balance sale consideration. There were certain questions



which were put during the course of evidence in this regard. The Lower Appellate Court ought to have discussed the evidence available on record and should have rendered a finding on the issue of readiness and willingness by assigning proper reasons. The judgement of the Lower Appellate Court is completely bereft of reasons in an issue which is the very basis while granting a decree for specific performance. Hence, this Court holds that the finding of the Lower Appellate Court on the issue of readiness and willingness requires interference. The 1st substantial question of law is answered accordingly.

15. This Court does not want to answer the 2nd substantial question of law since to answer this question, this Court will have to deal with the merits of the case. Since this Court is intending to remand the matter back to the file of the Lower Appellate Court, this Court does not want to render any findings on merits.

16. In view of the above discussion, this Court upholds the finding of the Lower Appellate Court to the effect that Ex.A1 is an agreement of sale which is capable of being acted upon to seek for the relief of specific performance. However, insofar as the findings with respect to readiness and willingness is concerned, the same requires the interference of this Court, since the Lower Appellate Court did not deal with the evidence available on record and assign proper reasons to come to a conclusion that the plaintiff was ready and willing to perform his part of the contract and accordingly the said findings are set aside. For this limited purpose, the matter is remanded back to the file of the Lower Appellate Court and the Lower Appellate Court is directed to hear both the sides only on this issue and shall pass final judgment within the time stipulated by this Court.

17. In the result, this Second appeal is partly allowed. The matter is remanded back to the file of the IInd Additional District Judge, Ranipet. The learned Judge shall fix a date for final arguments in the appeal and the arguments shall be confined only to the issue of readiness and willingness. The final judgment shall be passed on or before 30.06.2022. After the final judgment is passed, a compliance report shall be sent to this Court.

18. The Registry is directed to immediately send back the original records to the IInd Additional District Judge, Ranipet. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar



To

1. The II Additional District and Sessions Judge,
Ranipet, Vellore.

2. The Sub-Court Ranipet,
Vellore District.

Copy To:-

1. The Section Officer
VR Section, High Court
Madras.

2. The Section Officer,
Judicial Posting Section,
High Court, Madras.

(To take necessary following action
to monitor the compliance report)

+1cc to Mr.T.R.Rajaraman, Advocate, S.R.No.21537
+1cc to Mr.K.Mohanamurali, Advocate, S.R.No. 21502

SA.No.168 of 2014

SSV(CO)
GN(27/05/2022)