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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.11.2021
Delivered on : 04.02.2022

C O R A M

THE HONOURABLE MRS JUSTICE S. KANNAMMAL

S.A.No. 998 of 2019
and
C.M.P.No. 21460 of 2019

K.Narayanaraju .. Appellant/Appellant/Defendant

Versus

Pachaiammal .. Respondent/Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 02.02.2019 made in A.S.No.8 of 2015 on the file of Principal District Judge, Tiruvallur, confirming the judgment and decree dated 17.07.2009 in O.S.No.28 of 2007 on the file of Subordinate Judge, Tiruvallur.

For Appellant ... Mr.A.R.Suresh
For Respondent ... Mr.Adeesh Anto
for Mr.N.Mahendran

J U D G M E N T

This Second Appeal has been preferred to set aside the judgment and decree dated 02.02.2019 made in A.S.No.8 of 2015 on the file of the learned Principal District Judge, Tiruvallur, confirming the judgment and decree dated 17.07.2009 in O.S.No.28 of 2007 on the file of Subordinate Judge, Tiruvallur.

2. The case of the plaintiff before the Court below in nutshell is as follows:-

The appellant/defendant is the owner of the suit schedule property and he agreed to sell the property to the respondent/plaintiff for a valid consideration of Rs.1,20,000/-, for which, he has received a sum of Rs.70,000/- as advance and agreed to receive the balance sale consideration of Rs.50,000/- within a period of six months and thereby executed the



registered sale agreement on 27.09.2006. It is the case of the plaintiff in spite of several oral demands and also by registered notice dated 08.02.2007 and 15.03.2007 made by the plaintiff to the defendant to receive the balance sale consideration and to execute the sale deed, the defendant was evading to execute the sale deed. The plaintiff is always readiness and willingness to pay the balance sale consideration and to get the sale deed executed by the defendant. But the appellant/defendant did not come forward to receive the balance sale consideration and to execute the sale deed. Hence, the respondent/plaintiff filed the suit in O.S.No.28 of 2007 before the learned Subordinate Judge, Tiruvallur, seeking for a direction to the defendant to execute and register the sale deed in favour of the plaintiff with regard to the suit schedule property and to deliver the vacant possession of property.

3. The contention of the defendant before the Trial Court is that he never agreed to sell the property and he is not the owner of the properties and it is a joint family properties and he has no independent right to sell the properties. The defendant was having financial dealings with the son of the plaintiff. Since he is a Government Teacher, he is lending money for exorbitant interest in the name of his mother, who is the plaintiff. Even though the defendant paid the money borrowed to the son of the plaintiff, in order to extract money, the plaintiff's son induced the plaintiff to execute the sale agreement for the interest alone. When the suit properties are more than Rs.25,00,000/-, no person could execute it for a very lesser value, as projected by the plaintiff.

4. The Trial Court, on going through the pleadings, framed the following issues:

(i) Whether the defendant was willing to sell the suit property for a sale consideration of Rs.1,20,000/- by accepting the initial payment of Rs.70,000/- and made the sale agreement?

(ii) Whether for the debt incurred by the plaintiff, the sale agreement was obtained?

(iii) Whether the plaintiff is entitled for specific performance? and

(iv) for what other relief?

5. During the course of trial, the plaintiff examined herself as PW1, one Munusamy was examined as P.W.2 and one Arumugam was examined as P.W.3 and Exs.A1 to A8 were marked on the side of the plaintiff. On the side of the defendant, the defendant examined himself as D.W.1, one Krishnareddy was



examined as D.W.2 and one Govindasamy was examined as D.W.3 and Exs.B1 to B7 were marked.

6. The Trial Court, on consideration of the pleadings and on appreciation of oral and documentary evidence, found that the plaintiff was entitled for the specific performance as she prayed for and the plaintiff is directed to deposit the balance sale consideration within a period of one month. On such deposit of the balance sale consideration, the defendant is directed to execute the sale deed within a period of two months from the date of such deposit made by the plaintiff and the possession should also be handed over to the plaintiff. Aggrieved over the same, the appellant/defendant filed A.S.No.8 of 2015.

7. The First Appellate Court, on going through the grounds of appeals, formulated the following points for determination: -

- (i) Whether the Sale Agreement dated 20.07.2006 is valid and enforceable?
- (ii) Whether the plaintiff is always ready and willing to perform the contract?
- (iii) Whether the Sale Agreement was executed as security for the loan transaction as alleged by the appellant/defendant?
- (iv) Whether the appellant is entitled to the relief as prayed for?

8. Accordingly, the First Appellate Court dismissed the appeal filed by the defendant thereby confirming the judgment and decree passed by the trial Court.

9. It was also submitted by the learned counsel for the respondent/plaintiff before the Lower Appellate Court that the plaintiff/Decree Holder had been filed an E.P.No.60 of 2011 under Order 21 Rule 35 of CPC., before the Sub Ordinate Judge, Tiruttani, and the sale deed was executed in favour of the plaintiff by the Court. Aggrieved by the dismissal order of the Appeal Suit, the defendant has been preferred before this Court with the present Second Appeal.

10. When the Second Appeal was admitted, this Court framed the following substantial questions of law:-

- 1. Whether the Courts below were right in coming to a conclusion that the suit agreement was not intended to be a security for a loan transaction, particularly in view of Ex.B3, evidencing to the cancellation of



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the agreement between the very same parties in respect of the same properties?

2. Whether the plaintiff was ready and willing to perform the contract?

11. This Court heard the submissions made by the learned Senior Counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of the respondent.

12. The learned Counsel for the appellant would raise the following grounds:

(i) The appellant/defendant has not executed any agreement as alleged in the plaint. The transaction as alleged is only for the borrowal of amount as loan. As security for the same only, the registration was made. The appellant has produced his evidence, which are available and thereby shifted the burden to the plaintiff and hence, it is for the plaintiff to prove her case. The lower Court failed to appreciate the fact that the plaintiff has not proved her case.

(ii) The market value of the property is Rs.25,00,000/- at the time of execution of the alleged agreement of sale. There is no necessity for the appellant to execute the alleged agreement of sale for a minimum value when the original value fetches more.

(iii) The evidence adduced by P.W.2 is untrustworthy, which cannot be relied upon. To disprove the case of the plaintiff, D.W.2 has categorically deposed that the instrument registered on 27.09.2006 is only a mortgage and not an agreement. By using the innocence of the plaintiff, the nomenclature of the instrument is made as agreement of sale.

13. To support his contentions, the learned counsel appearing on behalf of the appellant relied on various judgments of the Hon'ble Supreme Court as well as this Court.

(i) Muthamizh Selvi v. Lakshmanan, dated 01.03.2017 in S.A.(MD).No.469 fo 2011

(ii) Rajammal and others v. M.Senbagam, dated 11.11.2016 in S.A.No.135 of 2015.

(iii) Lakshamma v. Rathinamma reported in 2011 (5) CTC 543

(iv) T.Kamireddi Sattiaraju v. Kandamuri Boolaeswari reported in 2007 (1) L.W. 309.



14. Heard the learned counsel for the appellant and perused the entire materials on record.

15. The respondent herein had filed the main suit in O.S.No.28 of 2007 for specific performance based on the Sale Agreement, dated 27.09.2006 executed by the appellant/defendant agreeing to sell the suit schedule mentioned properties for Rs.1,20,000/- to the respondent/plaintiff after receiving an advance of Rs.70,000/- (Rupees Seventy Thousand Only). It is a registered Sale Agreement. It was agreed to receive the balance amount of Rs.50,000/- (Rupees Fifty Thousand Only) within a period of six months.

16. It is the case of the respondent/plaintiff that, in spite of several oral demands and also by registered notices, the defendant was evading to execute the sale deed and hence he filed the suit. In support of his submissions, the learned counsel for the respondent/plaintiff has relied on the following judgments:-

(i) Hero Vinoth (Minor) v. Seshammal reported in (2006) 5 SCC .

(ii) Gurdev Kaur and Others v. Kaki and Others reported in (2007) 1 SCC 546.

(iii) M.Sekar v. P. Madeshwaran reported in 2014 (1) CTC 165 (Mad.)

17. The contention of the appellant/defendant in his written statement is that he never agreed to sell the schedule mentioned property since it is a joint family property and he has no independent right to sell the properties. It is the further contention that he was having financial dealings with the son of the respondent, by name, Murugesan who is a Government Teacher and since he is a Government Servant, he used to transact the financial business in the name of his mother, the respondent herein. The appellant had executed numerous pro-notes and he has paid the pro-notes amount and the said Murugesan induced to execute the alleged Sale Agreement for the interest alone and the same is not supported by valid sale consideration and the market value of the properties is more than Rs.25,00,000/- (Rupees Twenty Five Lakh Only). In the mediation, the respondent/plaintiff promised to take lawful interest. Hence, reply was not sent. It is further stated that on earlier occasions, the appellant/defendant cancelled the registered Sale Agreement and the same would prove that the appellant / defendant is in the habit of cancelling the Sale Agreement as security for the loan given to him.



18. The trial Court, after considering the oral and documentary evidence decreed the suit. The First Appeal preferred by the appellant/defendant was dismissed, against which, this second appeal is filed by the defendant.

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19. Ex.A1 is admitted by the appellant/defendant. But, according to him, Ex.A1-Sale Agreement, dated 27.09.2006 was executed by him in connection with the money transactions between him and the son of the respondent/plaintiff, by name, Murugesan.

20. The learned counsel for the appellant/defendant contended that the appellant had many financial transactions with the said Murugesan and the said Murugesan is a money lender and used to charge exorbitant interest. Though the appellant/defendant had paid the principal amount, the said Murugesan induced to execute the Sale Agreement for the interest alone. In order to prove that the appellant had financial transaction with the respondent's son Murugesan, he cancelled pro-notes in favour of one Deivayani and one Thayammal, which were produced and marked as Exs.B1 and B2. The trial Court has rightly observed that, it is not proved by the appellant/defendant that Ex.B1 and Ex.B2 were executed only on behalf of the respondent.

21. The learned counsel for the appellant/defendant contended that Ex.B3-Sale Agreement was executed in favour of the respondent/plaintiff in a money transaction and the same was cancelled on 27.09.2006. The cancelled Sale Agreement, was marked as Ex.A8 on the side of respondent/plaintiff.

22. It is the contention on the side of appellant/defendant that in view of Ex.B3 cancellation of Sale Agreement, the Court below ought to have come to the conclusion that the Sale Agreement was intended to be a security for the loan transaction. There is no dispute that the Sale Agreement (Ex.B3) was executed and cancelled by Ex.A8 on 27.09.2006. If Ex.A1-Sale Agreement was intended to be executed for the purpose of interest amount alone, the appellant ought to have replied for the notices (Ex.A2 and A4) sent by the plaintiff's counsel. Though the respondent/plaintiff had sent Ex.A2-Notice, the defendant sent a reply notice (Ex.A7) only on 04.05.2007. It is not disputed by the appellant/defendant about handing over of the original sale deeds (Ex.A5 and Ex.A6) of the suit properties to the respondent/plaintiff.



23. The appellant/defendant has not put forth his case before the Court below what was the amount he borrowed from the respondent/plaintiff, for which, Ex.A1 was executed and it is also not established about the alleged fact of repayment of the principal amount. The Court below has rightly observed in its judgment with regard to the above. It is for the appellant/defendant to prove that Ex.A1 was executed only for the interest amount, but literally failed to prove the same.

24. The appellant herein had contended that the suit properties does not belong to him and the said properties are joint family properties, whereas the Court below has rightly observed that the appellant/defendant is the absolute owner of the suit property as per Ex.A5. The Court below has also observed that the appellant/defendant herein has not established his contention that the value of the suit property is more than Rs.25,00,000/-.

25. The respondent/plaintiff herein had sent the legal notices (Ex.A2 and Ex.A4) dated 08.02.2007 and 05.03.2007 requesting the appellant/defendant to execute the sale deed as per the suit sale agreement (Ex.A1). But the appellant has not replied to the above said legal notices immediately and only on 04.05.2007, he sent the reply notice. The legal notices (Ex.A2 and Ex.A4) sent by the respondent/plaintiff herein itself have proved his readiness and willingness in performing his part of the contract. The Courts below has also rightly observed the same. Therefore, the above substantial questions of law Nos.1 and 2 are answered in favour of the respondent/plaintiff.

26. The judgments relied on by the learned counsel for the appellant/defendant are distinguishable on facts and the judgments relied on by the learned counsel for the respondent/plaintiff are squarely applicable to the case on hand.

27. In the result, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(I)

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Sub Assistant Registrar

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To

1. The Principal District Judge,
Tiruvallur.

2. The Subordinate Judge,
Tiruvallur.

3. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.A.R.Suresh, Advocate SR.No.7093

+1cc to Mr.K.Mahendra, Advocate SR.No.7120

S.A.No.998 of 2019

AJS (CO)
GN(18/03/2022)