

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No.816 of 2014

and

M.P.No.1 of 2014

1. P.C.Venugopal (died)
2. V.Radhakrishnan
3. Tmt.Anitha
- 4.V.Neelamegam

....Appellants

**Appellants 2 to 4 B/R as LR's of the deceased 1st Appellant
viz, P.C.Venugopal vide Court order dated 01.10.2021
made in CMP.No.15403 of 2021 in S.A.No.816 of 2014**

Vs.

1. E.Sankar
2. E.Silambarasan

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and decree dated 24.03.2014 made in A.S.No.8 of 2013 on the file of II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District reversing the Judgement and Decree dated 12.03.2012 made in O.S.No.63 of 2004 on the file of the Subordinate Judge at Ranipet.

For Appellants : Mr.S.Mukunth

For Respondents : Mr.A.Gowthaman

JUDGMENT

The above Second Appeal arises against the Judgment and decree dated 24.03.2014 made in A.S.No.8 of 2013 on the file of II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District reversing the Judgement and Decree dated 12.03.2012 made in O.S.No.63 of 2004 on the file of the Subordinate Judge at Ranipet.

2. The defendant in the suit is the appellant in the above second appeal. The respondents herein is the plaintiffs in the suit.

3. The defendant contested the suit in [O.S.No.63](#) of 2004 on the file of the Subordinate Judge, Ranipet, Vellore District filed by the 1st plaintiff/Ekambaram for the relief of specific performance directing him to execute the sale deed and other consequential relief. The said suit was partly allowed directing the defendant to pay a sum of Rs.90,000/- to the plaintiffs together with interest @ 9% from the date of 21.01.98 till the date of decree and thereafter at 6% till the date of realization and the suit was partly

dismissed as far as the relief of specific performance. Aggrieved over the said findings, the plaintiffs have preferred an appeal during the pendency of proceedings the 1st plaintiff/Ekambaram died leaving behind plaintiffs 2 and 3 as his legal heirs have preferred an Appeal in A.S.No.8 of 2013 on the file of the II Additional District and Sessions Judge, Vellore at Ranipet, wherein, the Lower Appellate Judge allowed the appeal, thereby suit was decreed as prayed for. Challenging the said finding, the defendant has preferred this Second Appeal.

4. For the sake of convenience, the parties are referred to as described before the trial Court:-

The defendant is the absolute owner of the suit property and he entered into a sale agreement with the 1st plaintiff on 22.01.2001 agreeing to sell the suit property for a sale consideration of Rs.1.6 lakhs and received an amount of Rs.1.5 lakhs as advance and remaining balance amount of Rs.10,000/- shall be paid within 3 years. The 1st plaintiff died on 04.09.2008 and the plaintiffs 2 & 3 are added as his legal heirs. Though the plaintiffs ready and willing to pay the balance sale consideration of Rs.10,000/- and to have the sale deed executed in their favour. But the

defendant has evaded to perform his part of contract. Hence, the 1st plaintiff issued a legal notice and the same was also avoided by the defendant. Hence the suit.

5. The defendant denied the allegations, as per his defence to meet out his farm work, he borrowed a sum of Rs.90,000/- from the 1st plaintiff agreeing to repay the same within 3 years with interest at 36% and executed a promissory note, after 3 years the 1st plaintiff insisted the defendant to pay a sum of Rs.1.6 lakhs towards the repayment of the above said amount of Rs.90,000/- with interest. Since the defendant could not pay the said amount, he was forced to execute a registered mortgage deed in favour of the 1st plaintiff mortgaging the schedule mentioned property towards payment of the above said sum of Rs.1.6 lakhs. The defendant executed a registered mortgage deed. When the defendant received summons in the suit, he believe that the 1st plaintiff could have filed this suit under the mortgage deed executed by him. He did not receive the plaint copy with the suit summons. Hence, the defendant sent a legal notice to the 1st plaintiff under a registered sale agreement for specific performance. The defendant never intended to sell the property and hence he refused to execute the sale

agreement. Hence, the plaintiffs had created the forged sale agreement by fraudulently obtained signature from the defendant.

6. On hearing both sides, the trial Court had framed three issues and concluded that the sale agreement was obtained by the 1st plaintiff by misrepresentation. So, they are not entitled for the relief of specific performance and the defendant to pay a sum of Rs.90,000/- to the plaintiffs together interest @ 9% from the date of 21.01.98 till the date of decree and thereafter @ 6% till the date of realization.

7. Aggrieved over the findings, the plaintiffs have preferred an appeal in A.S.No.8 of 2013 on the file of the II Additional District and Sessions Judge, Ranipet, Vellore District. On hearing both sides, the Lower Appellate Judge concluded that the sale of agreement was proved by the plaintiffs witnesses PW2 and PW3. Accordingly, the appeal was allowed by set aside the trial Court findings and the defendant was directed to execute sale deed in favour of the plaintiffs at their expenses, in respect of the suit properties as per the suit agreement dated 22.01.2001 after receiving the balance of sale consideration of Rs.10,000/- and to deliver the possession of the suit

properties to the plaintiffs.

8. Aggrieved over the said finding of the Lower Appellate Court, the defendant has preferred this second appeal and the same was admitted on the following substantial questions of law are formulated.

1) Is the lower appellate court justified in decreeing the suit for specific performance when the respondents have failed to prove the readiness and willingness to perform the sale agreement dated 22.01.2001 as contemplated under Sec.16(c) of Specific Relief Act?

2) Is the lower appellate court justified in decreeing the suit for specific performance overlooking the evidence of P.W.2 who categorically admits that the respondents father had lent a sum of Rs.1,50,000/- to the appellant which fact only probabalises the case of that appellant that Ex.A1 (sale agreement) was intended to be security for the loan obtained by the appellant?

3) Is the lower appellate court justified in the discretion exercising under Sec.20 more particularly when the respondents father is guilty of laches in sending the first legal notice Ex.A2 after a period of 3 years from the date of sale agreement claiming execution of sale deed?

9. Heard Mr.S.Mukunth, learned counsel for the appellants and

Mr.A.Gowthaman, learned counsel appearing for the respondents.

10. The learned counsel for the appellants/defendants submitted that the plaintiff bound to prove this case more particularly, he is ready and willing to perform his part of contract with material evidence but he failed before the trial Court. In spite of that the Lower Appellate Judge erroneously decreed the suit as if the plaintiff was proved his readiness and willingness. He also contended that the witnesses of the plaintiffs not stated that the advance amount was paid on the date of agreement but it was not properly appreciated by the Courts below. Accordingly, he prayed to allow the second appeal.

11. But the counsel for the plaintiffs/respondents submitted that after the agreement within 3 years, the plaintiff was also readiness and willingness to perform his part of contract by paying the remaining balance of Rs.10,000/- but the defendant has evaded to perform his part of the contract. Hence, he immediately filed a suit within a stipulated time and also prove their case oral evidence and execution of Ex.A1 sale agreement is proved through the attesor, PW2. The advance amount of Rs.1,50,000/-

was spoken by PW2 and the same was rightly appreciated by the Lower Appellate Judge.

12. By way of reply, the appellant/defendant contended that for family necessity, he borrowed a loan from the father of PW1 viz Ekambaram for a loan sum of Rs.90,000/- and agreed to repay the same with interest within 3 years, as he was unable to pay the amount, but he was forced to execute a mortgage deed and signed all the documents. After receipt of the notice, he came to know that by misrepresenting under the guise of mortgage deed, 1st plaintiff obtained alleged the sale agreement but he never intended to sell the property, indeed he is ready to repay the loan amount with interest. With regard to the loan transaction, the evidence of PW2 stated that the defendant had already borrowed a sum of Rs.30,000/- from the 1st plaintiff. To that effect he deposed as follows (PW 2):-

" பிரதிவாதி வேணுகோபால் இறந்துபோன ஏகாம்பரத்திற்கு ரூ.1,50,000 பாக்கி, அக்ரிமெண்ட் எழுதிய அன்றேதான் ஏகாம்பரம் ரூ.1,50,000 கொடுத்தார். வேணுகோபால் ஏகாம்பரத்திடம் அக்ரிமெண்ட்டுக்கு முன்பாகவே ரூ.30,000 கடன் பெற்றிருந்தார். அந்த கடன் தொகையினை ரூ.30,000 போக அக்ரிமெண்ட் தேதியினை ஏகாம்பரம் ரூ.1,20,000 வேணுகோபாலுக்கு கொடுத்தார். "

13. Before the alleged agreement, there was a loan transaction

between the 1st plaintiff/ Ekambaram and the defendant is proved same through evidence of PW2. But the counsel for the respondents/plaintiffs submits that the defendant not approached the Court with clean hands that he suppressing the relating facts that with regard to the payment of loan transaction. The following authority relied by the learned counsel for the respondent/plaintiffs reported in ***(2015) 1 Supreme Court Cases 705, in Zarina Siddiqui vs A.Ramalingam Alias R.Amarnathan paragraph No.24 as follows:-***

"24.It is well settled that remedy for specific performance is an equitable remedy. The court while granting decree of specific performance exercises its discretionary jurisdiction. Section 20 of the Specific Relief Act Specifically provides that the Court's discretion to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with sound and reasonable judicial principles."

Further, the learned counsel for the respondents/plaintiffs argued that the defendant knowing fully execute the sale agreement, but he falsely contend before the Court that he executed only mortgage deed itself proves that the defendant suppressed the real facts, so he is bound to execute the sale deed in respect of the suit property.

14 (a) To support his contention, the learned counsel for the

defendant relied the Judgment of the case in ***Pappammal @ T.Pappa vs P.Ramasamy*** reported in **2012 (4) CTC 100**

"Specific Relief Act, 1963 (47 of 1963), Sections 14 & 20 --- When relief of Specific Performance cannot be granted --- Discretion of Court --- Agreement for Sale of land or money lending transaction --- Document purporting to be Agreement of Sale of land for total sale consideration of Rs.40,000/-. Containing endorsement of payment of Rs.30,000/- as advance and for balance of Rs.10,000/- time period of five years granted --- Moreover, no steps taken by Respondent for more than five years from date of Agreement of Sale. To enforce Agreement for Sale, even after Appellant refused to execute Sale Deed --- From Evidence Adduced that the Respondent was waiting for Appellant to repay loan of Rs.30,000/- mentioned as advance in Agreement of Sale --- Conduct of Respondent, held, proves that he did not intend to enforce Agreement of Sale, as if was given as security and not intended to be acted upon as Agreement of Sale --- Judgment and decree of Lower Courts, thus, set aside --- Appeal allowed."

(b) The another Judgment relied by the learned counsel for the appellant in the case of ***Vallithai and Others vs Arulraj*** reported in **2007 5 MLJ 222**, paragraph 17 is extracted hereunder:-

"17. It is the plaintiff's case that the defendant agreed to sell the property to him for a sum of Rs.35,000/- and he had paid a sum of Rs.30,000/- to the defendants as advance sale consideration and he had promised to pay the balance amount of Rs.5,000/- to the defendant within a period of two years.

The point which has to be noted here is that when the plaintiff was in a position to pay Rs.30,000/- towards advance sale consideration as a single payment to the defendant, there could have been no necessity for the plaintiff to wait for two years to pay the balance sale consideration of Rs.5,000/- to the defendant."

15. On considering the both side submissions and on a perusal of the records, it reveals that on the side of the plaintiffs, three witnesses had been examined and the documents were marked as Exs.A1 to A3, the PW1 who is the son of the plaintiff but his evidence is not acceptable for the reason that at the time of agreement he was minor then he became major, as per his evidence, at that time of agreement his father paid a sum of Rs.1.50,000/- as advance and the document was executed, but the witnesses of the plaintiff PW2 deposed that already the defendant borrowed a sum of Rs.30,000/- from the 1st plaintiff out of total consideration of Rs.1,50,000/-, the said loan amount was deducted and the balance amount of Rs.1,20,000/- was paid advance to the defendant. Hence with regard to payment of advance evidence of PW 2 is inconsistent and not cogent.

16. Further more, as per the terms of sale agreement within 3 years, the balance sale consideration of Rs.10,000/- is to be paid by the 1st plaintiff but at the end of 3 years, he issued a notice calling upon the defendant to execute the sale deed by receiving the meagre amount of Rs.10,000/- to be paid by the 1st plaintiff.

17. Encounter the same, the learned counsel for the defendant submit that even assuming that it is the agreement of sale, the plaintiff has not proved his readiness and willingness with regard to his part of the agreement. Hence, the plaintiff is not entitled to any relief as prayed for. On perusal of the plaintiffs evidence, there is no reason offered by plaintiff as why he has not taken steps to get sale deed executed by paying megre amount of Rs.10,000/- and what necessitated him to wait till the end of three years pending.

18. As discussed above, even assuming that the agreement of sale is valid one and the 1st plaintiff has not proved his continuous readiness and willingness to execute his part of agreement till filing of suit. It is seen that the plaintiff and the defendant agreed each other with regard to the payment

of the advance amount but there is no reason offered for in-ordinate delay on the part of the plaintiff to pay a sum of Rs.10,000/- when he is able to pay the entire amount. Furthermore, the evidence of PWs about receipt of advance also not cogent and inconsistent with each other, thus plaintiff also failed to establish that he paid Rs.1,50,000/- as advance on the date of agreement. There is no doubt the relief of the specific performance which is an equatable relief, but primarily the burden is on the plaintiff to prove his case with sufficient material evidence, but he failed. The Lower Appellate Judge also not appreciated the facts and law, and allowed the appeal in favour of the plaintiff which is improper. Thus, the findings of the Lower Appellate Court are not sustainable. The authorities relied by the appellant/defendant support his contention. Accordingly, substantial question of law are answered.

19. On seeing the conduct of the plaintiff as well as the facts and circumstances of the case, and on a perusal of records, the Court may independently analyse that there was a loan transaction between the plaintiffs and the defendant and as per the defendant contention, he borrowed a sum of Rs.90,000/- from the 1st plaintiff in the year 2001 and he

agreed to repay the same with interest within 3 years but he failed to repay the amount. Therefore, the sale agreement came into force . Hence, by relying upon the ratio laid down in the Judgment in the case of *Tejram vs Patirambhau reported in (1997) 9 SCC 634*, this Court concludes that there was loan transaction between the parties. Accordingly, the defendant is directed to repay the advance amount of **Rs.1.20,000/-** with interest at the rate of 6% from the date of agreement till the date of realization. With regard relief of specific performance suit is dismissed.

20. With the above directions, the second appeal is partly allowed and the findings of the Lower Appellate Judge is set aside and suit is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

01.09.2022

Index :Yes/No

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To

1. The II Additional District and Sessions, Ranipet, Vellore.
2. The Subordinate Judge, Ranipet, Vellore District.
3. The Section Officer,
V.R,Section

T.V.THAMILSELVI, J.

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