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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.10.2021

PRONOUNCED ON : 04.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

SECOND APPEAL NO.957 OF 2019

G.Arjunan

.. Appellant/1st Defendant

Vs

1. P.Dhanam

2. Manoj

3. Pappathi @ Kuppulakshmi

.. Respondents/
Plaintiff & Defendants 2 & 3

Prayer: Second Appeal is filed against the judgment and decree, dated 23.04.2019, made in A.S.No.44 of 2018 and A.S.No.6 of 2019 both on the file of the Principal District Judge, Namakkal, reversing the judgment and decree, dated 16.03.2018, in O.S.No.91 of 2013 passed by the Subordinate Judge, Tiruchengode.

For Appellant : Mr.S.Subbiah,
Senior Counsel,
for M/s.Elizabeth Ravi

For Respondent 1 : Mr.N.Manokaran

For Respondents 2 & 3 : No appearance

JUDGMENT

This Second Appeal is preferred against the judgment and decree, dated 23.04.2019, made in A.S.Nos.44 of 2018 and 6 of 2019 both on the file of the Principal District Judge, Namakkal, reversing the judgment and decree, dated 16.03.2018, in O.S.No.91 of 2013 passed by the Subordinate Judge, Tiruchengode.



2. First defendant before the trial Court is the appellant herein and the plaintiff is the first respondent.

3. The brief facts necessary for disposal of this Second Appeal are as follows:

3.1. It is stated in the plaint that the suit property belongs to the father of the 1st defendant and the 3rd defendant by virtue of a sale deed, dated 02.09.1976. On 23.02.2009, the father of the 1st defendant agreed to sell the suit property for a total sale consideration of Rs.10,00,000/- to the plaintiff and on the same day, the father of the 1st defendant along with the 1st defendant and on behalf of his minor son 2nd defendant entered into a sale agreement with the plaintiff and accordingly, they received a sum of Rs.9,50,000/- as an advance and the sale agreement is registered before the Tiruchengode Sub Registrar Office. The period of contract is 1 ½ years, within which period, the plaintiff has to pay the remaining sale consideration and on fulfilment of the balance sale consideration, the sale should get registered. It is the case of the plaintiff that, in the meantime, the father of the 1st defendant died and the third defendant, who is the daughter of the deceased, got impleaded. When the plaintiff is ready and willing to perform his part of contract and the plaintiff approached the 1st defendant for executing the sale deed in her favour, the defendants refused to register the sale and accordingly, a legal notice, dated 15.07.2013, was issued by the plaintiff asking the defendants to execute the sale deed in her favour. Even after receipt of the said notice, the defendants did not come forward to execute the sale deed and hence, the plaintiff filed a suit for specific performance and to execute the sale deed with regard to the suit property.

3.2. It is the case of the defendants in the written statement that the suit property originally belongs to the father of the defendants. There was a case pending between the 1st defendant and the plaintiff and her son with regard to return of cheque. The defendants denied the case of the plaintiff that the suit property was purchased by her on a total consideration of Rs.10,00,000/- and paid a sum of Rs.9,50,000/- and on the remaining sale consideration of Rs.50,000/-, the sale will be executed in favour of the plaintiff. It is the case of the defendants that under threat and coercion, the signature of the 1st defendant was obtained, which was later forged and concocted as sale agreement. With regard to the same, the first defendant preferred a complaint before the Tiruchengode Police Station. However, the police has not taken any action. The cases with regard to the dishonour of cheques were pending before the



Judicial Magistrate Court, Sankari. Therefore, the question of sale consideration for a sum of Rs.9,50,000/- does not arise and the sale is concocted one and the suit is barred by limitation and hence the plaintiff is not entitled for any relief. It is their further case that neither the father of the defendants nor the defendants received any amount towards sale and had not executed any sale agreement in favour of the plaintiff.

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

- (i) Whether the sale agreement dated 23.02.2009 is true and valid one?
- (ii) Whether the plaintiff is entitled for decree as prayed for?
- (iii) Is it true that the alleged sale agreement dated 23.02.2009 not binding on the 2nd defendant?
- (iv) Whether the plaintiff is entitled for the decree as prayed for?
- (v) What other relief, the plaintiff is entitled for?

5. During the course of trial, the plaintiff examined herself as PW1 and one R.K.Natesan was examined as P.W.-2 and marked Exs.A1 to A9. On the side of the defendants, the 1st defendant is examined as D.W.-1 and marked Exs.B1 to B10.

6. The Trial Court, on consideration of the pleadings and on appreciation of oral and documentary evidence, found that the plaintiff was not entitled for specific performance as she prayed for and she is entitled to return the advance amount of Rs.9,50,000/- with 7% interest per annum from the date of filing of the suit till the date of judgment and decree and thereafter till the realisation 6% interest per annum and the suit is decreed accordingly with costs.

7. Aggrieved over the judgment and decree, the plaintiff filed A.S.No.6/2019 with regard to the rejection of the main relief of specific performance and the defendants filed A.S.No.44/2018 with regard to the grant of return of advance amount with 7% interest even though the plaintiff has not sought for the said relief.

8. The first appellate Court, on going through the grounds of appeals, formulated the following points for determination:

- (i) Whether the plaintiff was always ready and willing to perform her part of the contract?
- (ii) Whether Ex.A-1 sale agreement dated 23.02.2009 is compulsorily a registered one?
- (iii) Whether time is essence of contract?
- (iv) Whether the suit is hit by limitation?



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- (v) Whether the granting of alternative relief to the plaintiff is a justifiable one?
- (vi) Whether the appeal A.S.No.6/2019 filed by the plaintiff can be allowed?
- (vii) Whether the appeal A.S.No.44/2018 filed by the 1st defendant can be allowed?

9. The first appellate Court allowed the appeal filed by the plaintiff and dismissed the appeal filed by the 1st defendant. The suit was decreed and the defendants were directed to execute the sale deed as per agreement, dated 23.02.2009, by receiving the balance sale consideration of Rs.50,000/-, by granting one month's time to the plaintiff for paying the balance amount of Rs.50,000/-.

10. Aggrieved over the dismissal of the Appeal Suit in A.S.No.44 of 2018, the 1st defendant is before this Court with this second appeal.

11. This Second Appeal is admitted on the following substantial questions of law :

1. Whether the lower appellate Court was right in concluding that the plaintiff was always ready and willing to perform her part of the contract, overlooking the fact that the plaintiff had admitted that she had not made a demand for execution of the sale deed within the sufficiently long period of 1 ½ years contemplated under the agreement ?

2. Whether the lower appellate Court was right in concluding that the sale agreement has been properly registered, in the absence of compliance with the provisions of Section 32-A of the Registration Act?

12. Learned Senior Counsel for the appellant would submit that the the document Ex.A-1, sale agreement, does not have either the photograph of the deceased Ganapathy, who is the father of the appellant/1st defendant, or the first respondent/plaintiff and hence, the document, on the face of it, is suspicious and that when there is a specific provision contained in a statute under Section 32-A, by way of an amendment to the Registration Act, which came into force as early as on 24.09.2001 vide amendment No.48 of 2001, the lower appellate Court has given undue importance to the oral evidence of the first respondent to the effect that there was no practice of affixing the photographs of the executants or the persons presenting the document at the time of registration. He would further submit that the lower appellate Court has not considered the circumstances under which the said agreement, dated 23.02.2009, was executed by the appellant, his deceased father



and also the second respondent herein. According to him, when the first respondent had allegedly paid a sum of Rs.9,50,000/-, the non-proof of such payment would disentitle her from getting the relief of specific performance and that as per the recital, the agreement being a commercial one, time is the essence of the contract, and hence, the first respondent, in not paying the amount before the period of 18 months from the date of agreement, would not be entitled for any relief of specific performance. Finally, he would submit that payment of a sum of Rs.9,50,000/- as advance amount leaving a small amount of Rs.50,000/- to complete the transaction and grant of time of 18 months under the agreement Ex.A-1 for making the small amount create a serious suspicion regarding the nature of transaction and when the agreement itself creates a suspicion, the relief of specific performance granted to the first respondent by the lower appellate Court is illegal. Accordingly, he prayed for setting aside the judgment of the lower appellate Court, insofar as it relates to the grant of specific performance. To support his contentions, the learned Senior Counsel relied on various judgments of the Hon'ble Supreme Court as well as this Court.

13. Conversely, learned counsel for the first respondent/plaintiff would submit that the sale agreement, Ex.A-1, is a registered document and hence it is true and valid. He would further submit that the first respondent has already paid Rs.9,50,000/- to the appellant towards the transaction under the sale agreement and she is ready and willing to perform her part of contract by paying the balance consideration of Rs.50,000/-, but it is the appellant, that is avoiding the contract. According to him, since the document is a registered one, there could not be any coercion to obtain the signature of the appellant in the instrument. He would also submit that time is not the essence of contract in case of sale of immovable property, as observed by the Hon'ble Supreme Court in Chand Rani v. Kamal Rani, 1993 (1) SCC 519. Accordingly, he prayed for dismissal of the appeal.

14. This Court has heard the submissions made by the learned Senior counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of the first respondent.

15. The first respondent/plaintiff filed a suit for specific performance based on a sale agreement executed by S.Ganapathi, along with his son G.Arjunan, the appellant herein, and his grandson, Manoj, the second respondent herein. According to the first respondent, of the sale consideration of Rs.10,00,000/-, the said Ganapathi, the appellant and his son received Rs.9,50,000/- as advance and the balance consideration of Rs.50,000/- was to be paid within a period of one-and-a half years and thereafter the sale was to be executed.



16. As stated earlier, the trial Court, holding that time was the essence of contract and the plaintiff had not taken any action within the time prescribed in the agreement, ordered refund of the amount.

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17. Both the plaintiff and the first defendant in the suit filed appeals against the order of the trial Court before the first appellate Court in A.S.No.6 of 2019 and A.S.No.44 of 2018 respectively. The first appellate Court allowed the appeal in A.S.No.6 of 2019, filed by the plaintiff, by granting specific performance, and dismissed the appeal in A.S.No.44 of 2018, filed by the first defendant.

18. In this Second Appeal, this Court is limited to decide the substantial questions of law, that are framed at the time of admission of the appeal.

19. On the first substantial question of law, learned Senior Counsel for the appellant submitted that the lower appellate Court erroneously concluded that the first respondent/plaintiff was always ready and willing to perform her part of the contract, overlooking the fact that she had admitted that she had not made a demand for execution of the sale deed within the sufficiently long period of one-and-a-half years, as contemplated under the agreement.

20. In the above connection, it is to be stated that the first respondent/plaintiff, though had averred in the plaint that she was always ready and willing to perform her part of contract repeatedly, in her cross-examination, made a clear admission that she had not taken any steps to execute the sale deed within the said period of one-and-a-half years. She also made an admission that she had not taken any steps in writing to execute the sale deed during the lifetime of Ganapathy, father of the appellant. Her evidence as P.W.1 in cross-examination is extracted hereunder :

“வா.சா.ஆ.1ல் கிரையத் தொகை ரூ.10லட்சம் பேசப்பட்டு முன் தொகையாக ரூ.9 லட்சத்து 50 ஆயிரம் கொடுக்கப்பட்டு பாக்கித் தொகை ரூ.50 ஆயிரத்தை 1 1/2 வருடத்தில் நாங்கள் செலுத்தி கிரையம் முடித்துக் கொள்ள வேண்டும் என எழுதப்பட்டது. அதில் சொல்லியுள்ள 1 1/2 ஆண்டு காலத்தில் கிரையத்தை முடித்துக் கொள்ள நடவடிக்கை ஏதும் எடுத்தீர்களா என்றால் எடுக்கவில்லை. 1ம் பிவாதியின் தந்தையார் கணபதி உயிருடன் இருந்த வரை கிரையத்தை முடிக்க எழுத்து மூலமாக நடவடிக்கை ஏதும் எடுத்தீர்களா என்றால் எடுக்கவில்லை.”

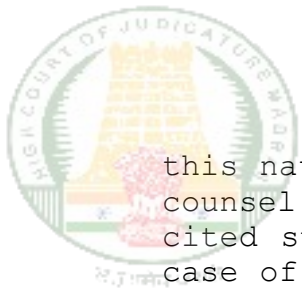


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21. In the considered opinion of this Court, the lower appellate Court, without considering the above clear and categorical admission of the first respondent/plaintiff, erroneously concluded that the first respondent/plaintiff was always ready and willing to perform her part of the contract, merely based on the repeated averments of her in the plaint. The decision of the Hon'ble Supreme Court, relied upon by the learned Senior Counsel for the appellant, in C.S.Venkatesh v. A.S.C.Murthy, 2020 (3) SCC 280, is squarely applicable to the present case. In paragraph 16 of the said decision, the Apex Court has observed that the Court may infer from the facts and circumstances as to whether the plaintiff is always ready and willing to perform his/her part of the contract. In paragraph 20, the Supreme Court has extracted paragraph 30 of its earlier decision in Umabai v. Nilkanth Dhondiba Chavan, 2005 (6) SCC 243, as under :

"30. It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff- respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16 (c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the plaintiff-respondents must be judged having regard to the entirety of the pleadings as also the evidences brought on records".

22. In view of the categorical admission made by the plaintiff in her cross-examination, coupled with the above mentioned ruling of the Hon'ble Supreme Court, this substantial question of law is answered in favour of the appellant, thereby holding that the first respondent/plaintiff is not entitled for specific performance, but she is entitled to only refund of advance amount, as held by the trial Court. This is also coupled with the fact that while the Sale Agreement is dated 23.02.2009, the notice, sent by the plaintiff to the defendants, asking them to execute the sale deed by receiving balance consideration of Rs.50,000/-, was dated 15.07.2013, which was beyond one-and-a-half years of the agreement, whereby, it could very well be inferred that the first respondent/plaintiff was not ready and willing to perform her part of the contract within the stipulated period of one-and-a-half years from 23.02.2009, the date of Sale Agreement. Therefore, the principle - time is the essence of the contract - will definitely apply to the cases of



this nature. In fact, in the decision relied upon by the learned counsel for the first respondent in the case of Chand Rani, cited supra, though the Hon'ble Supreme Court held that in the case of sale of immovable property there is no presumption as to time being the essence of the contract, it was also held therein that when the document stipulates a particular time frame, it must necessarily be adhered to. Further, the Supreme Court dismissed the said case, holding that the plaintiff was never ready and willing to perform his part of the contract. Therefore, the said decision is not of any help to the first respondent.

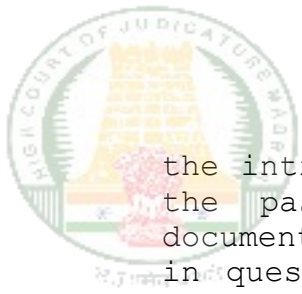
23. Coming to the second substantial question of law as to whether the lower appellate Court was right in concluding that the sale agreement has been properly registered, in the absence of compliance with the provisions of Section 32A of the Registration Act, it is necessary to refer to the said Section 32A, which reads as below :

''32A. Compulsory affixing of photograph, etc.-
Every person presenting any document at the proper registration office under section 32 shall affix his passport size photograph and fingerprints to the document :

Provided that where such document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document.''

24. The above Section 32A in the Registration Act was introduced by way of an amendment by Act 48 of 2001 with effect from 24.09.2001, which envisages that where a document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document. This provision was evidently inserted to prevent impersonation of all the parties to the transaction and fraud.

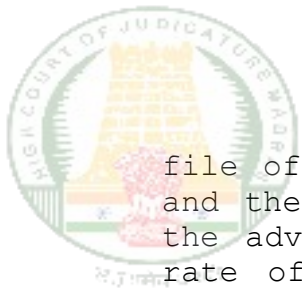
25. Keeping the above enactment in mind, if we look at the present case, the Sale Agreement in question was registered on 23.02.2009, which was much after the introduction of the said amendment in Section 32A, on 24.09.2001. On scrutiny of the said document, what is seen is that of the four executants to the document viz., three sellers (joint) and one purchaser, only one passport size photograph of one of the sellers is affixed and the passport photographs of the remaining three persons, including the purchaser, namely, first respondent/plaintiff, are not affixed. Since the present transaction took place much after



the introduction of the said amendment, it is mandatory to affix the passport size photographs of all the parties to the document. However, as already stated just earlier, the document in question sans the said requirement. Therefore, it cannot be said that Ex.A-1, Sale Agreement, has been properly registered. When the provision makes it imperative as to the affixation of passport size photographs of all the parties to the document, this Court is at a loss to understand how the registering authority, without verifying as to the fulfilment of the said requirement, blindly proceed to register the document. When the intent of the Legislature in inserting the said provision 32-A in the Registration Act is to prevent impersonation of the parties to the transaction and fraud, the conduct of the authorities in ignoring the said provision is to be highly deprecated. This is very unfortunate. Also, it is significant to note that just because it has been held hereinabove that the document herein has not been properly registered, the transaction of the document cannot be doubted or ignored, as, in this case, the appellant/defendant has categorically admitted the signatures of his father and himself in the sale agreement and, in addition, he admitted the passport size photograph of his father also in the document. His only contention is that their signatures in the document were obtained by coercion. Were the said contention true, he would have very well defended the same by producing sufficient proof, which is, admittedly, not done. In this regard, his only stand is that he filed a police complaint, which, as could be seen by this Court, was after four years, which, by no stretch of imagination, can be accepted.

26. Because of the dereliction and lackadaisical attitude of the revenue officials in not ensuring the compliance of the requirement of Section 32A of the Registration Act, the parties to the document/contract cannot be put to disarray. This issue requires much attention at the hands of the revenue authorities. Therefore, in order to not to recur such incidents any further, this Court directs the Inspector General of Registration, Chennai, to issue strict instructions to the authorities attached to his Department throughout the State of Tamil Nadu to ensure strict compliance of the said provision without fail, and also see that any non-compliance thereof by the officials will attract severe punishment, thereby not to give an iota of scope to open a floodgate of litigations on such ground and also to avoid one party becoming a victim at the hands of another.

27. Accordingly, this Second Appeal is allowed, setting aside the judgment and decree, dated 23.04.2019, passed in A.S.Nos.6 of 2019 and 44 of 2018 on the file of Principal District Court, Namakkal, and confirming the judgment and decree, dated 16.03.2018, passed in O.S.No.91 of 2013 on the



file of Subordinate Court, Tiruchengode. As such, the appellant and the respondents 2 and 3 / defendants are directed to repay the advance amount of Rs.9,50,000/- along with interest at the rate of 7% per annum, as ordered by the trial Court, to the first respondent / plaintiff within a period of two months from the date of receipt of a copy of this order. In case the said amount is not paid by the appellant and the respondents 2 and 3 to the first respondent as stated above, the order of the first appellate Court operates and the Sale Deed shall be executed at once. No costs. Consequently, the connected C.M.P.Nos.20411 of 2019 and 20965 of 2019 are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

rr/dixit

To

1. The Principal District Judge, Namakkal.
2. The Subordinate Judge, Tiruchengode.
3. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai.

+1cc to M/s.Elizabeth Ravi, Advocate, S.R.No.7823

+2ccs to M/s.N.Manokaran, Advocate, S.R.No.7244

S.A.No.957 of 2019

PA(CO)
RLP(01/07/2022)