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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.07.2022
Pronounced on	25.08.2022

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

A.S.No.164 of 2017

Jayaraman ... Appellant

Vs.

Arikrishnan ... Respondent

Prayer :- Appeal filed under Section 96 read with Order XLI Rule 1 of the Civil Procedure Code praying to set aside the Judgement and Decree dated 06.02.2017 made in OS.No.56 of 2010 on file of the Principal District Court, Puducherry.

For Appellant : Mr.Mitraneshaa
for M/S.V.Raghavachari

For Respondent : Mr.L.O.M Magesh

JUDGEMENT

The Appeal has been preferred challenging the judgment of the learned Principal District Judge, dated 06.02.2017 made in OS.No.56 of 2010.

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2.The appellant is the defendant, against whom, the respondent/plaintiff has filed the suit for specific performance. The said suit was decreed on 06.02.2017. Aggrieved over that this Appeal has been preferred.

3. The Short Facts of the Case, as contained in the plaint are as follows:

The defendant is the owner of the suit property; he agreed to sell the suit property in favour of the plaintiff and executed a sale agreement on 25.06.2007. As per the sale agreement, the sale price was fixed at Rs.21,00,000/- and on the date of the sale agreement itself, the defendant received Rs.20,00,000/- as advance. For receiving the balance sale consideration of Rs.1,00,000/- and executing the sale deed nine months' time was agreed.

3.1. Despite the plaintiff was ready and willing to pay the balance sale consideration of Rs.1,00,000/-, the defendant failed

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to perform his part of the contract by receiving the same and executing the sale deed. However, at request of the defendant, a further six months time was extended on 22.03.2008. On the same day itself, the defendant received an additional part sale consideration of Rs.75,000/- and due endorsement was made on the back page of the sale agreement itself. Since the defendant evaded to execute the sale deed under some pretext or the other, the plaintiff issued a legal notice on 25.04.2009 calling upon the defendant to receive the balance sale consideration of Rs.25,000/- and to execute the sale deed. The said notice was returned with the endorsement 'not claimed'. After issuance of the notice, the defendant handed over the original title deeds to the plaintiff, but, evaded to execute the sale deed. Hence, the plaintiff has filed the suit for specific performance.

3.2 The defendant filed a written statement by contenting as hereunder:

The defendant did not agree to sell the suit property as stated by the plaintiff; the value of the property would be not less

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than Rs. 1 crore and in the year 2007 itself it was worth about Rs.60,00,000/- The defendant had borrowed a sum of Rs.20,00,000/- and Rs.5,00,000/- respectively from the plaintiff on 25.06.2007 for purchasing a land and for developing the same into house plots. For the said loan, the plaintiff insisted the defendant to deposit two original title deeds in his favour. Hoping that he would redeem the title deeds, he had given his title deeds pertaining to the suit property as collateral security for the loan availed by him. The plaintiff has also got two agreements of sale from the son of the defendant namely Mr.Karunakaran in the year 2007 for taking the additional loan of Rs.5,00,000/- and Rs.3,00,000/-. In total, the defendant had borrowed a sum of Rs.25,00,000/-. The plaintiff is doing money lending business and is in the habit of demanding execution of sale agreements from his borrowers the defendant never received Rs.75,000/- on 22.03.2008 as alleged by the plaintiff. The defendant was forced to sign at the back of the sale agreement after the expiry of nine months. The defendant was paying interest for the loan amount. When the defendant defaulted to pay interest, the plaintiff had

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filed this suit in OS.No.77 of 2010 on the file of I Additional Sub Court, Cuddalore through his son for specific performance by suppressing all the material facts. The defendant is ready to repay the loan availed by him with interest and the suit shall be dismissed.

3.3. On the basis of the above pleadings, the learned trial Judge framed the following three issues:

> *"1.Whether the plaintiff is entitled for a relief of specific performance of contract?*
> *2.Whether the plaintiff is entitled to get back the advance amount paid, if any?*
> *3.To what relief?"*

3.4. During the course of the trial, on the side of the plaintiff, the plaintiff examined himself as PW.1 and Ex.A1 to Ex.A3 were marked. On the side of the defendant, two witnesses were examined as DW.1 (defendant) and DW.2 and five documents were marked as Ex.B1 to Ex.B5 and one document was marked as Ex.X.1 through DW.2.

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3.5. After conclusion of the trial and on considering the evidence available on record, the learned trial Judge had chosen to decree the suit and granted the relief of specific performance. Aggrieved over that, this appeal has been preferred.

4. Heard the submissions made by either side learned counsel and perused the material available on record.

5. The learned counsel for the appellant/defendant submitted that despite the defendant was paying interest for the loan amount availed by him, the learned trial judge did not consider the said fact, and granted the relief of specific performance; the worth of the property is far more than the amount stated in the sale agreement Ex.A1; the defendant's witness DW.2, who is the bank manager stated about passing off the money to the plaintiff's account and that was not considered; the stamp paper bought for the sale agreement was not in name of the plaintiff, but in the name of one Ms.Susila, for which, the plaintiff did not give proper explanation; the trial Court did not

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frame any issues on readiness and willingness on the part of plaintiff; without deciding the same, the relief for specific performance was granted and hence, the decree of the trial Court may be set aside.

6. Per contra, the learned counsel for the respondent/ plaintiff submitted that the defendant himself admitted about the execution of the sale agreement and receipt of a major portion of the sale consideration including Rs.75,000/- on 22.03.2008; the defendant did not take any steps to cancel the sale agreement, despite the plaintiff had sent the legal notice demanding the execution of the sale deed; the evidence of the bank manager was in no way helpful to the case of the defendant; when the contract between two parties was reduced into writing and when the written agreement was marked as an evidence, no oral evidence can be permitted in order to prove the contract except by production of the written agreement. If the execution of the agreement is not denied by the defendant, the presumption will be in favour of the plaintiff.; the learned trial Judge had rightly

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considered the evidence available on record and chosen to decree the suit; despite the issue with regard to readiness and willingness was not framed, the trial Court has dealt the same in its judgement.

7. In support of the above contentions the learned counsel for the respondent cited the following decisions:

Sl. No	Citations submitted by the appellant's counsel	Reported in
1	S.Sakivel (dead) by Lrs Vs. M.Venugopal Pillai and others	(2000) 7 SCC 104
2	P.S.Ranakrishna Reddy Vs. M.K.Bhagyalakshmi and another	(2007) 10 SCC 231
3	Tamilnadu Electricity Board & another Vs. N.Raju Reddiar & another	1996 (II) CTC 193
4	Chokkamal and 3 otheres Vs. K.Balraj	2008 (5) CTC 690
5	Sugani (MST) Vs. Rameshwar Das and another	(2006) 11 SCC 587

8. Point for consideration:

(i) Whether the sale agreement dated 25.06.2007 is valid and enforceable?

(ii) Whether the plaintiff had proved the readiness and willingness? and

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(iii) Whether the judgment of the trial Court in granting the relief of specific performance is fair and proper?

9.There is no dispute about the execution of the sale agreement dated 25.06.2007. By virtue of the sale agreement dated 25.06.2007, the suit property is said to have been agreed to be sold to the respondent/plaintiff for a valuable consideration of Rs.21,00,000/-. On the date of the sale agreement itself, substantial sale consideration of Rs.20,00,000/- was received by the appellant. Though the appellant/defendant did not deny the execution of the sale agreement and the receipt of the sale consideration of Rs.20,00,000/- on the date of the sale agreement, he denied his intention in executing the sale agreement. According to the appellant, the sale agreement was executed only by way of security for the loan amounts availed by him and his son for the purpose of land promotion.

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10. The appellant was in the habit of paying interest to the plaintiff for the loan amount availed by him, for which, he examined DW.2- Bank manager. It is a settled proposition of law that when the terms of a contract were reduced into writing, the said contract has to be proved only by way of producing the sale agreement and not by way of any oral evidence. When the execution of the written document is admitted by the parties, no oral evidence is permissible to prove its content. As per Sections 91 and 92 of the Indian Evidence Act when a party to the written agreement admits its execution, then that will exclude the oral evidence and the presumption about its genuineness will be in favour of the plaintiff.

11. Even though the appellant did not dispute the execution of the sale agreement, his contention is that the sale agreement was not executed with an intention of selling the suit property, but only as a security for the loan amount availed by him from the respondent/plaintiff. When contrary intention to execute the written agreement is pleaded by the appellant and it is alleged

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that the sale agreement was executed as a collateral security, then the burden is upon the defendant to prove the same. As stated already the initial presumption will be in favour of the respondent/plaintiff; in view of the benefit accrued to him under Sections 91 and 92 of the Indian Evidence Act. The burden of rebut the initial presumption would be on the shoulders of the appellant/defendant. The rebuttal evidence, however need not be direct evidence, but it can also be through the improbabilities or the *lacuna* in the evidence of the plaintiff as well.

12. In the case on hand, the contention of the appellant is that he had executed the sale agreement only by way of security and he did not have serious intention of selling his property in favour of the respondent/plaintiff at any point of time. One of the strange circumstances, which may help the appellant is the nine long months' time that was agreed to settle a meagre amount of Rs.1,00,000/- for getting the sale deed executed. Even though the respondent/plaintiff had paid the major sale consideration of Rs.20,00,000/- on the date of execution of the sale agreement

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itself, it is unnatural to see that nine months' time was agreed to settle the meagre balance of Rs.1,00,000/-.

13. Even after the expiry of the nine months, it was alleged that on 22.03.2008, it was mutually agreed between the parties to extend the time for a further period of six months for performance of the contract and on that day, the respondent had paid the further partial sale consideration of Rs.75,000/- to the appellant. The learned trial Judge placed reliance on the oral evidence to the plaintiff, who examined himself as PW.1. The plaintiff stated in his evidence that he had executed the sale agreement, which is a registered one. He denied the second payment of Rs.75,000/- on 22.03.2008. However, he did not deny his signature affixed on the endorsement for receipt of Rs.75,000/-. Whatever may be the payments, no explanation was available from the side of the respondent/plaintiff to show the reasons, for which, the sale was being postponed. Any buyer, who had settled almost the entire sale consideration, will not wait nor extend the time to execute the sale deed at the whims and

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fancies of the seller.

14. But, in the case on hand, it is seen that the initial time for executing the sale agreement was fixed at nine months and thereafter, it was lavishly extended to another six months. Further, the appellant/defendant could establish through DW.2 that there were certain other transactions between himself and the respondent. Even though certain payments were said to have been made to the respondent and it was claimed as the interest paid by the appellant to the respondent for the loan amount availed by him, no explanation was given by the respondent/ plaintiff for receiving the said sum. One more doubtful circumstance is the name, in which, the stamp paper was purchased for the purpose of writing the sale agreement. The stamp paper was purchased neither in the name of the appellant/ defendant nor in the name of the respondent/plaintiff. But, it is seen that the stamp paper stood in the name of one Ms.Susila. So, the categorical contention of the appellant/defendant is that the document (EX.A1) was executed only by way of security and

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not with any intention to execute the sale deed in favour of the respondent in respect of the suit property.

15. That being the case, the third party's name found in the stamp paper for the agreement (Ex.A1)would go to the advantage of the appellant/defendant by creating doubts about the intention. The title deeds of the appellant were handed over to the respondent even before the execution of the sale agreement and this kind of practice is being adopted only in those transactions where the loans were obtained by the borrower. When the plaintiff is better placed to get the sale deed itself executed, he did not opt to do the same. Instead, he extended the time on the alleged request of the appellant and satisfied with the entrustment of the title deeds.

16. Despite the respondent/plaintiff claims that he was ready and willing, he did not prove his willingness throughout the nine months' period, which was agreed at the first instance. Even though the major sale consideration was paid and the balance is

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only a meagre sum of Rs.1,00,000/-, the respondent /plaintiff had not produced any documents to show that he was all along ready to pay the balance sum and get the sale deed executed. At the risk of the repetition, it is reiterated that a further extension of six months was agreed to at the expiry of the first nine months. Prior to the said extension, the respondent/ plaintiff did not choose to send any legal notice calling upon the appellant/defendant to execute the sale deed. Such lethargy and indifference on the part of the respondent/plaintiff was established from the facts proved. The circumstances surrounding the case, would only show that the plaintiff did not have any serious intention for getting the sale deed executed by the appellant/defendant.

17. One of the essential ingredients to get the relief of specific performance is proof of readiness and willingness. Though readiness refers to the capability of the plaintiff to pay the sale consideration, willingness will prove his status of mind. In the case on hand, the conduct of the plaintiff would only show

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that there is indifference and lack of seriousness. As stated already, the rebuttal proof on the side of the appellant/defendant need not always be direct, but can also from the improbabilities surrounding the case of the respondent/plaintiff.

18. The above stated facts and circumstances would act as rebuttal proof in support of the appellant. Even the suit was also filed during the year 2010 after the expiry of extension of six months' time. So, the conduct of the plaintiff would only show that he was giving a long rope to the appellant/defendant to enable the appellant to pay the contract amount availed by him from the plaintiff. Since the relief of specific performance is an equitable remedy, the conduct of the parties plays a significant role. The conduct of the plaintiff, as narrated above, does not entitle him to grant the relief of specific performance. Hence, I feel that the decree of the learned Principal District Judge, Puducherry made in OS.No.56 of 2010, should be set aside. As there is a proof of payment of Rs.20,75,000/- to the appellant, I feel that the respondent/plaintiff should be granted with an

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alternate remedy of refund of advance money. Even though the plaintiff did not seek for alternate relief, in the interest of justice, I feel that the same should be granted.

In the result, the Appeal is **partly allowed.** The Judgement and Decree dated 06.02.2017 made in OS.No. 56 of 2010 on file of the Principal District Judge, Puducherry, **is modified** to the extent that the respondent/plaintiff is entitled to get refund of the advance money of Rs. 20,75,000/- together with interest at the rate of 7.5 % from per annum from the date of sale agreement till the date of decree and thereafter at the rate of 6% from the date of decree and realisation. The defendant/appellant shall refund the above amount to the plaintiff/respondent within a period of four weeks from the date of receipt of copy of this judgement. No costs.

25.08.2022

Index : Yes/No
Internet : Yes/No
Speaking/ Non Speaking.
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R.N.MANJULA, J.

jrs

To

The Principal District Judge, Puducherry

Pre-delivery Judgement in
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