IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NO.493 OF 2017
AND
CMP NO.11997 OF 2017

A.Shankar

... Appellant/
Respondent/Defendant

VS.

M.Veeraragavan

... Respondent/
Appellant/Plaintiff

PRAYER:

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 10.06.2015 passed in A.S.No.27 of 2012 by the learned Principal District Judge, Kancheepuram at Chengalpattu, reversing the judgment and decree dated 04.06.2012 passed in O.S.No.244 of 2007 by the learned Additional Subordinate Judge of Chengalpattu.

For Appellant : Mr.S.S.Swaminathan

For Respondent : Mr.A.G.Rajan

J U D G M E N T

The defendant is the appellant in the Second Appeal.

2.The plaintiff filed a Suit for specific performance to execute the registered Sale Deed as agreed in the sale agreement. The defendant's mother purchased the Suit schedule property by virtue of a registered Sale Deed from one Elumalai Naicker, dated 16.03.1964. Thereafter, the defendant's mother executed a registered Settlement Deed on 30.01.1997 bequeathing the same in his favour. The defendant put up a R.C.C. roof building measuring an extent of 500 Sq.ft after obtaining loan from the Chengalpattu Co-operative Housing Society Ltd., on 25.07.1997 by virtue of a registered Mortgage Deed bearing Document No.2412/1997, registered on 01.08.1997. He could not repay the loan due to his financial circumstances. Hence the defendant approached the plaintiff stating that there is a balance of Rs.53,000/- plus interest. He offered to sell the property for a sum of Rs.1,50,000/-. In order to meet immediate expenses, he received a sum of Rs.20,000/- and requested the plaintiff to discharge the loan in full or part by part in the name of the plaintiff from the month of August 2002. The plaintiff agreed to the same and paid a sum of Rs.20,000/- and agreed to get conveyance of the property after discharge of the loan. The defendant handed over possession of the Suit schedule property along with the title deeds. The plaintiff celebrated Grahapravasam on 13.09.2002. Prior to the sale agreement in March 2002, the defendant received a sum of Rs.53,000/- and remitted a sum of Rs.51,542/- in the name of the defendant. Accordingly, after deducting the said sum of Rs.53,000/- and Rs.20,000/, the balance sale consideration remains Rs.77,000/- which the plaintiff remitted to the Society on 19.06.2002, 23.12.2002, 12.03.2003, 24.03.2003, 13.09.2003, 17.12.2003, 16.09.2004, 20.12.2004 and 18.01.2005. Thus, the plaintiff has paid a sum of Rs.98,460/- for the balance amount of Rs.77,000/- on the date of the agreement. The Secretary of the Society executed necessary deed of discharge dated 14.03.2007 and the same was registered as Document No.3641/2007. After the discharge of the mortgage deed on 18.01.2005, the plaintiff continuously demanded the defendant to come forward and execute the sale deed in his favour. But the defendant was evading the same. After getting the discharge of mortgage deed registered on 14.03.2007, the plaintiff issued a legal notice on 26.06.2007 to the defendant to come and execute and register the sale deed as per the agreement. On 06.07.2007, the defendant has replied the notice with untenable allegations. Immediately, he filed a suit for specific performance.

3.In the written statement, the defendant denied the averments made in the plaint. It was stated that the defendant approached the plaintiff for the purpose of loan to the tune of Rs.1,50,000/- to meet out his needs. The plaintiff undertook to pay a sum of Rs.20,000/- to meet out his urgent need and further undertook to pay the monthly installment to the Society regularly until the discharge of the loan and also to live in the suit property and to adjust the rentals towards interest of the loan amount of Rs.1,50,000/-. The defendant stated that he will repay the loan amount of Rs.1,50,000/- after three years and on payment of the said sum, the plaintiff should vacate the premises. Accordingly, the possession of the property was handed over to the plaintiff and the plaintiff had obtained number of signatures in stamp papers and blank papers from the defendant and promised to return the same at the time of discharge of the loan amount. The plaintiff paid the monthly installments to the Society in the name of the defendant. The original title deeds were received by the defendant from the Society. He offered to pay Rs.1,50,000/- within a short time. But the plaintiff has directed the defendant to hand over the title deeds as security apart from the documents obtained viz loan documents with signatures obtained in stamp papers and blank papers. There is no dispute between the plaintiff and the defendant and therefore, he handed over all the title deeds obtained from the Society on discharge of their loan. During May 2005, the defendant arranged for a sum of Rs.1,50,000/- and offered the same to the plaintiff and requested him to return back the title deeds and loan documents obtained from him. But the plaintiff required the premises for a further period of two years and that he was trying to purchase a house property in the same village. As soon as the property was purchased, the plaintiff undertook to receive money and hand over the title deeds, loan documents and also possession in the property to him. Since the plaintiff helped the defendant, he allowed him to continue in possession of the property. But all of a sudden, the plaintiff caused a legal notice to the defendant mentioning that the defendant has executed a sale agreement and other things. The defendant was shocked by the notice and came to know that he has already played fraud in the year 2002 with the evil intention to get the property under some documents. The plaintiff has no intention to vacate the premises. The defendant has not executed the sale agreement in favour of the plaintiff on 08.08.2002 and that he has no intention to sell the property to the plaintiff or any other third parties. He need the property for his own purpose and even as per the notice. The suit is time barred on the basis of the sale agreement and it is not enforceable. The plaintiff had cheated the defendant by way of false documents. The loan amount of Rs.1,50,000/- will not bear any interest since the property was rented out to the plaintiff and the rent was adjusted towards interest for the loan amount till date. The defendant issued a suitable reply notice on 06.07.2007. The value of the property is not Rs.1,50,000/- as alleged by the plaintiff. The plaintiff has created the sale agreement and prepared it using the blank signed stamp papers. He has prepared the sale agreement in such a way that it gives life to the same. Therefore, he is not entitled to any relief and the plaintiff is duty bound to return all the papers and title deeds on receipt of the principal. Therefore, the suit is liable to be dismissed.

4.The Trial Court framed appropriate issues and dismissed the suit. On appeal by the plaintiff, the First Appellate Court reversed the findings of the Trial Court and decreed the suit with cost. Aggrieved over the same, the present Second Appeal has been preferred by the defendant.

5.Heard the submissions made on either side and perused the materials available on record.

6.From a reading of the written statement and the evidence of D.W.1, it is noted that the defendant had admittedly borrowed a sum of Rs.1,50,000/- and handed over the title deeds and other documents and the possession of the property is with the plaintiff. The plaintiff conducted Grahapravesam on 13.09.2002, which is evidenced by Ex.A2. Ex.A3 is the original of the settlement deed and Ex.A4 is the patta issued in favour of the defendant. Exs.A5 and A14 are the payments made by the plaintiff in the name of the defendant. Ex.A15 is the discharge receipt executed by the Society. All these documents in original are in the custody of the plaintiff. The defendant also admits the fact that he has handed over the original title deeds and other documents and that the plaintiff had discharged the loan obtained by him through mortgage of the property and on discharge of the same, they were handed over to the plaintiff. The dispute arose only after the obtaining the discharge receipt from the Society on 14.03.2007.

7.According to the plaintiff, the defendant agreed to sell the property after discharge of the loan to the Society and that they have entered into a sale agreement with such terms and conditions on 08.08.2002. On the other hand, the defendant would contend that he has not executed any sale agreement on 08.08.2002 and that it was created by the plaintiff using the blank signed stamp papers and blank papers. A perusal of the Ex.A1 does not show any interpolation, but it appears to be natural. But the Trial Court had found that the ink in the stamp paper and other blank papers differ and therefore, the sale agreement cannot be relied on. Other than this, there is no evidence to disbelieve the sale agreement. Even though the defendant would state that he had handed over the originals of the title deeds and loan documents to the plaintiff, he has not come out with any specific details as to that what was the loan document and when was it given and what was the interest agreed to be paid.

8.In fact, during the arguments, the learned counsel for the appellant / defendant would deny the receipt of a sum of Rs.1,50,000/- from the plaintiff himself. On the other hand, during cross examination of the defendant as D.W.1, it is elicited that the defendant borrowed a sum of Rs.1,50,000/-. There is some contradictory statement in the deposition and the written statement. In the written statement, the defendant would state that the rentals shall be adjusted towards the interest payable to the loan. But in his deposition, he would state the rentals were adjustable to the interest payable to the Society.

9.It is well settled that the plea of fraud shall be specific and it shall be proved by evidence. But in the instant case, even though it is stated that the blank signed papers were used to create the sale agreement, no further proof to prove that he has handed over the blank signed papers to the plaintiff. Further, as per the statement of the defendant, he agreed to repay the loan of Rs.1,50,000/- and on payment of the same, the plaintiff shall hand over possession of the property along with the title deeds and loan documents. Admittedly, the loan was discharged on 18.01.2005. The discharge receipt was registered on 14.03.2007. But the plaintiff had not shown that he had taken any steps to repay the loan amount till he received the legal notice from the plaintiff on 26.06.2007. Even though it was stated that he attempted to pay the principal amount of Rs.1,50,000/- and a further statement that he will deposit the amount in the Court, he has not done so till date to prove his bonafides.

10.In so far as the statement that there was an arrangement to pay the monthly installments and that after three years, he will pay back Rs.1,50,000/- to the plaintiff is concerned, there is a contradiction. As per the version of the defendant, he has received only Rs.20,000/ and that the plaintiff will pay the balance loan amount and on discharge of the loan, he will give back Rs.1,50,000/-. In this, a new theory of relationship between parties has been introduced. But, there is no iota of proof to show that the parties were related and that it was an arrangement on the basis of the said relationship. On the other hand, Exs.A5 to A14 goes to show that the plaintiff has paid not only the monthly installments, but also the principal and interest due to the Society at random. He discharged the loan by paying lump sum amounts which were adjusted towards the principal and interest by the Society. Therefore, the statement of the defendant that there was an arrangement to pay the monthly installments by the plaintiff towards discharge of loan and to get back that money does not appear to be true.

11.It also discloses the fact that the amount of Rs.1,50,000/- was paid to the defendant during 2002. If the version of the defendant is to be accepted, he borrowed a sum of Rs.80,000/- from the Society and remitted installments and there was a balance loan amount of Rs.53,000/- plus interest was payable on the date of borrowal. For payment of Rs.53,000/- + interest, the defendant need not wait to discharge the loan. On borrowing Rs.1,50,000/-, he can immediately settle the loan and could have repaid it at a later point of time. But the arrangement was that the plaintiff has to discharge the loan in installments by making part payments to the Society. Therefore, the statement that he received a sum of Rs.1,50,000/- as loan and requested the plaintiff to discharge the loan does not go together. It may be true to state that the defendant had agreed to sell the property on discharge of the loan by the plaintiff and received the balance sale consideration after deducting the loan amount. If it is a loan transaction, the plaintiff need not remit more than what was lent to the defendant. From Exs.A5 to A14, it is noted that the plaintiff has paid a sum of Rs.98,460/- to the Society in the name of the defendant. Whereas, the balance amount on the date of borrowal was only Rs.77,000/-. Apart from this, it is admitted that the defendant has received a sum of Rs.20,000/-. In either way, the defendant need not pay more than the sale price of Rs.1,50,000/- or will not agree to pay a sum more than Rs.35,000/- in excess of the loan amount received, after adjusting the rentals towards interest.

12.The sale agreement appears to be natural and there is no dispute with regard to the signatures found in the sale agreement. The execution of the same and payment of Rs.20,000/- on the date of agreement all stood proved by evidence of P.W.1 and P.W.2. The evidence of P.W.2 was not discredited by the defendant during cross examination. Therefore, it is clear that the sale agreement stands proved. Once the sale agreement stands proved, the defendant is bound to act in accordance with the agreement. The conduct of Grahapravesam is also not denied by the defendant in his written statement and on the other hand, it is averred that the plaintiff conducted Grahapravesam. No borrower will permit the creditor to perform Grahapravesm that too when it is claimed that they are cousins. Therefore, the appellant has not made out any case for interfering with the judgment of the First Appellate Court. No question of law much less any substantial question of law arise to entertain the above Second Appeal. Hence, this Court is of the considered opinion that the Second Appeal merits no consideration and accordingly, stands dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

To

1. The Principal District Judge
   Kancheepuram at Chengalpattu.

2. The Additional Subordinate Judge
   Chengalpattu.

Copy To

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

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.1408
+1cc to Mr.A.G.Rajan, Advocate, S.R.No.1846

SA NO.493 OF 2017

SRII(CO)
PM/09/06/2022