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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.02.2022
Pronounced on : 14.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

A.S.No. 920 of 2018

C.Ravichandran ... Appellant/Plaintiff
Vs
Subbulakshmi ... Respondent/Defendants

PRAYER: Appeal filed under Order 41 Rule 1 read with Section 96 of CPC, against the Judgment and Decree dated 18.04.2016 made in O.S.No. 160 of 2012 on the file of the learned I Additional District and Sessions Judge, Tiruppur.

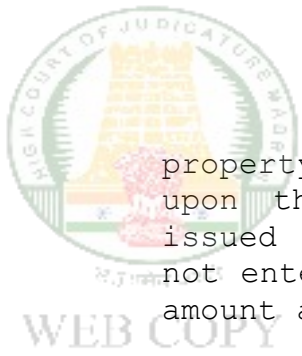
For Appellant : Mr. N.Manokaran

For Respondent : Ms. D.Chitra Maragatham

O R D E R

The plaintiff in O.S.No. 160 of 2012 on the file of the First Additional District and Sessions Court, Tiruppur, is the appellant herein.

2. O.S.No. 160 of 2012 had been filed seeking specific performance of an agreement of sale dated 12.09.2012 whereby the defendant had agreed to convey the property to which she was the absolute owner, namely, land and building at Tirupur in old Ward No.13, New No. 17 to the plaintiff for a total consideration of Rs.10/- lakhs. The agreement of sale was not registered. The plaintiff claimed that he had paid an advance of Rs.8/- lakhs towards part sale consideration at the time when the agreement was entered into and he had undertaken to pay the balance sale consideration of Rs.2/- lakhs within a period of 75 days and that it was covenanted that, on receipt of the said amount, the defendant should come forward to execute the sale deed. It was stated that the defendant had handed over the original title documents to the plaintiff. The plaintiff further claimed that he was always ready and willing to perform his part of the contract. Since the defendant attempted to alienate the



property, the plaintiff issued notice dated 27.10.2012 calling upon the defendant to execute the sale deed. The defendant issued a reply on 09.11.2012 wherein she claimed that she had not entered into any agreement and that she had not received any amount as alleged.

3. Since the defendant did not come forward to perform her part of the agreement, the suit was filed seeking specific performance and also permanent injunction restraining the defendant from dealing with the property. An alternate relief to refund the advance sale consideration with interest was also sought.

4. The defendant filed a written statement claiming that she had never agreed to sell the property to the plaintiff and that she had never entered into an agreement of sale for such purpose. She also denied that she received Rs.8/- lakhs as part sale consideration. She further stated that the plaintiff was a stranger and that he had somehow obtained her signatures in blank papers and had used them to fill up an agreement of sale.

5. The defendant also filed an additional written statement wherein she had stated that on 12.09.2012 her son-in-law informed that she must go over to the police station and there, under duress, she was forced to sign several papers and that those papers have been used to fill in the agreement of sale. It must be pointed out that the additional written statement had been filed by a new counsel, who had entered appearance on behalf of the defendant.

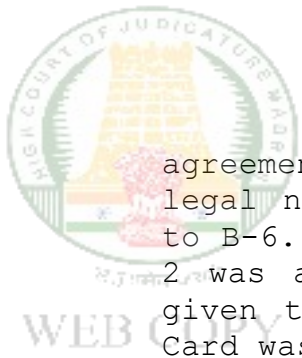
6. On the basis of the above pleadings, the trial Court framed the following issues:-

"(i) Whether the plaintiff is entitled for specific performance as prayed for?

(ii) Whether the plaintiff is entitled for injunction as prayed for?

(iii) To what other reliefs to the plaintiff?"

7. During trial, two witnesses were examined on behalf of the plaintiff, namely, the plaintiff himself as PW-1 and PW-2, Krishnamurthy, who was one of the witnesses to the agreement. On the side of the defendant, five witnesses were examined. DW-1 was the defendant, and DW3 was a witness to the agreement of sale. The plaintiff marked Exs. A-1 to A-5 which included the



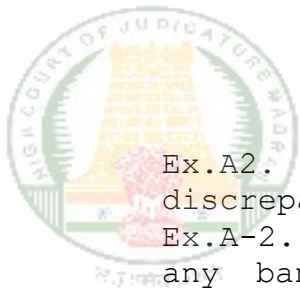
agreement of sale dated 12.09.2012 as Ex.A-2, the exchange of legal notices as Exs.A-3 to A-5. The defendant marked Exs.B-1 to B-6. Ex.B-1 was another copy of the agreement of sale; Ex.B-2 was a copy of the FIR and Ex.B-3 was a copy of the letter given to the Inspector of Police. Ex.X-1, copy of the Family Card was also marked.

8.On consideration of the pleadings and oral and documentary evidence, the learned First Additional District Judge, Tiruppur, dismissed the suit.

9.With respect to the first issue, namely, whether the plaintiff was entitled for specific performance, the learned District Judge observed that the defendant had stated that the plaintiff was a total stranger. It was further observed that the son of the defendant had been arrested by the Inspector of Police, Perundurai, on 12.09.2012 in the morning and had been taken for enquiry. The defendant was informed about that particular fact and the learned District Judge held as a fact that the defendant had to sign various papers before the Inspector of Police and that those papers had been used to fill in the agreement of sale. The learned District Judge also took note of the evidence of the defendant that she was an illiterate and that she could not read and write. The First Additional District Judge therefore held that the burden lay on the plaintiff to prove execution of the agreement of sale Ex.A-1.

10. It was further observed that the plaintiff during his cross examination, had stated that he did not own any property at Tiruppur and does not have any employment at Tiruppur and that none of his relatives are also staying at Tiruppur. The learned District Judge therefore doubted the reason given for purchasing a property at Tiruppur. The learned First Additional District Judge also observed that the plaintiff was not able to identify the defendant in Court and also held that the evidence of PW-2 was inconsistent and could not be relied upon.

11. On the other hand, the learned District Judge relied on the evidence of DW-3, who stated that the defendant was forced and coerced to sign the agreement of sale in the police station. It was also observed that DW-3 had stated that he had signed as witness only as directed by the Inspector of Police, Perundurai. The learned District Judge also justified non filing of any complaint on this issue by stating that normally civilians would not lodge complaints against the police. The learned District Judge also found fault with the plaintiff in not examining an Advocate S.Manian to prove the execution of



Ex.A2. The learned District Judge also found that there were discrepancies between Ex.A-2 and B-1 which was a xerox copy of Ex.A-2. It was also observed that the plaintiff does not have any bank account, was not an income tax assessee and was employed as tractor driver and was carrying on business in buying and selling tractors. There was no evidence to show that he had necessary funds to pay the advance sale consideration of Rs.8/- lakhs. The learned District Judge also observed that DW-4 an independent witness had spoken that the defendant was taken to the police station in a car and that one of the persons among the four persons in the car was in uniform.

12. Finally, the learned First Additional District Judge held that the plaintiff did not come to Court with clean hands and that therefore, he was not entitled for the relief sought. The learned District Judge dismissed the suit without answering issue Nos. 2 and 3.

13. Questioning the aforesaid reasons in the Judgement, the plaintiff has filed the present First Appeal.

14. Let me refer to the appellant and the respondent as plaintiff and defendant for sake of convenience.

15. Heard arguments advanced by Mr. N.Manokaran, learned counsel for the appellant/plaintiff and Ms. D.Chitra Maragatham, learned counsel for the respondent/defendant.

16. It is the contention of Mr.N.Manokaran that the trial Court should have examined the pleadings of the case and a perusal of the written statement first filed would show that there has been no denial of the execution of the agreement and therefore under Order VIII Rule 5 of the CPC, it should be taken that the defendant had actually admitted to the agreement. It was pointed out by the learned counsel that the conclusion of the learned District Judge that the defendant was taken to the police and the agreement was signed in the police station was on the basis of evidence for which there were no pleadings. The learned counsel also pointed out the reply notice issued on behalf of the defendant which was the earliest statement made on behalf of the defendant wherein she had again not stated anything about coercion said to have been exercised in the police station. There was only a bald denial that the agreement was not entered into.

17. The learned counsel also pointed out that the defendant had lodged the First Information Report only on



04.04.2015 much after the suit had been instituted. It was therefore urged that the defence of the defendant being false should not have been considered and should not have been the basis for the conclusion reached. Mr.N.Manokaran, learned counsel therefore insisted that the Judgment under Appeal should be set aside.

18. Ms. D.Chitra Maragatham, learned counsel for the respondent/defendant however contended that the learned District Judge had given clear reasons for non suiting the plaintiff. The learned counsel pointed out that the plaintiff had not proved the agreement and also pointed out that the learned District Judge had observed that the plaintiff was not a resident of Tiruppur and had no relatives at Tiruppur and therefore, there was no necessity to purchase a property at Tiruppur. The learned counsel also stated that the agreement had not been established to have been entered into voluntarily by the parties and there was no consensus add idiem. The learned First Additional District Judge was justified in interfering with the agreement of sale and denying the specific performance. The learned counsel was insistent on the fact that the Judgment under appeal does not require any interference.

19. I have carefully considered the arguments advanced and perused the relevant records.

20. The points which arise for consideration under order 41 Rule 31 CPC are as follows:-

(1) Whether the agreement of sale had been entered into with consensus add idiem or whether the defendant had been forced to sign, blank papers, at the police station, which were later used to fill up the agreement?

(2) If the agreement is held to be proved in manner known to law whether the plaintiff was ready and willing to perform his part of the agreement.

(3) Whether evidence adduced far beyond the pleadings can be looked into and relied on by the Court.

21. The plaintiff had instituted the suit in O.S.No. 160 of 2012 claiming that he and the defendant had entered into an agreement of sale on 12.09.2012 whereby the defendant had agreed to convey the property aforementioned for total consideration of Rs.10/- lakhs. The plaintiff claimed that by way of advance a sum of Rs.8/- lakhs had been paid on the date of agreement of



sale. The agreement of sale Ex.A-2 had been witnessed by PW-2 and DW-3. During his cross examination, DW-3 admitted his signature in the agreement of sale Ex.A-1. He however gave an explanation that the said signature was signed in the police station under duress and coercion.

22. It is the further case of the defendant herself that she had been called over to the police station and had been forced to sign in blank papers.

23. These facts were stated by the defendant in the reply notice Ex.A-5 dated 09.11.2012. The explanation as to why these facts were not stated in the reply notice first issued or in the written statement first filed given by the learned counsel was that there was a change of counsel and then these facts were elucidated and therefore pleaded.

24. It must be kept in mind that facts remain constant even if counsels change. The facts are stated only by the litigants and they cannot waive or add facts already stated.

25. In the earlier reply notice Ex.A-5 which is the first document wherein the defendant had stated her stand, there was no whisper about being taken over to the police station and being forced to sign blank papers. In the written statement first filed again there was no such averment. These averments find place in the additional written statement. But issues have not been framed as to whether the agreement itself is valid and was entered into with consensus add idiem or was forced on the defendant. Without such issue being framed, the learned First Additional District Judge had examined all these aspects and had given a finding that the agreement is not valid. The entire process stands vitiated. The Judgment under appeal contains so many presumptions. The learned District Judge had drawn a presumption that it was not necessary for the plaintiff to purchase a house at Tiruppur since he did not have relatives there and did not own property or business there. The learned District Judge also wondered how the plaintiff was able to pay the advance of Rs.8/- lakhs when he claimed that he was a tractor driver and he was in the business of buying and selling tractors. These are all issues which have been discussed without any pleadings. Quite unfortunately oral evidence had also been recorded which were not supported by necessary pleadings. The entire focus of the learned District Judge appears to be to non suit the plaintiff and to emphasise the fact that the defendant is an illiterate lady. The written statement was filed in English and in the verification it had



been stated that it was read over and explained in Tamil. It is indeed strange that the defendant did not in the first instance, come forward to state about being forced to put signatures in blank papers at the police station. The defence appears to have improved by the entry of a new Advocate on behalf of the defendant.

26. In (2020) 10 SCC 729 [Biraji and Another Vs. Surya Pratap and Ors.], the Hon'ble Supreme Court held as follows:-

"..... It is fairly well settled that in absence of pleading, any amount of evidence will not help the party....."

27. In 1995 5 SCC 612 [Abubakar Abdul Inamdar v Harun Abdul Indamdar and Ors], the Hon'ble Supreme Court held as follows:-

".....but no amount of proof can substitute pleadings which are the foundation of the claim of a litigating party"

28. In (2010) 10 SCC 141 [Alka Gupta Vs. Narender Kumar Gupta], the Hon'ble Supreme Court held as follows:-

"IV. A suit cannot be dismissed without trial merely because the court feels dissatisfied with the conduct of the plaintiff

27. The Code of Civil Procedure is nothing but an exhaustive compilation-cum-enumeration of the principles of natural justice with reference to a proceeding in a court of law. The entire object of the Code is to ensure that an adjudication is conducted by a court of law with appropriate opportunities at appropriate stages. A civil proceeding governed by the Code will have to be proceeded with and decided in accordance with law and the provisions of the Code, and not on the whims of the court. There are no short-cuts in the trial of suits, unless they are provided by law. A civil suit has to be decided after framing issues and trial permitting the parties to lead evidence on the issues, except in cases where the Code or any other law makes an exception or provides any exemption."

29. It would only be appropriate that the entire Judgment is set aside and the parties are relegated back to the



trial Court with a direction to the learned First Additional District Court at Tiruppur to re-frame the issues by adding additional issues and rehear the parties on the issues so re-framed. Therefore the issues to be framed are as follows:-

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"(1) Whether the agreement was entered into with consensus add idiem or was coercion exercised on the defendant?;

(2) Whether the plaintiff was ready and willing to execute his part of the agreement?;

(3) Whether an unregistered agreement of sale is admissible;

(4) Whether it would serve the ends of justice to grant specific performance of the agreement or to grant alternate relief."

30. If further issues also arise, I would leave it to the wisdom of the learned First Additional District Judge to re-examine the entire pleadings, namely, the plaint, the written statement and the additional written statement and then recast the issues and thereafter on the basis of the evidence already recorded, render a Judgment after giving opportunity to both the learned counsels for the plaintiff and the defendant, to advance further arguments. There need not be any opportunity to let in additional evidence since the evidence has already travelled for beyond the pleadings in this case.

31. Order 41 Rule 23 CPC, is as follows:-

"23. Remand of case by Appellate Court.—Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, or where the Appellate Court, in reversing or setting aside the decree under appeal considers it necessary in the interests of justice to remand the case, the Appellate Court may, if it thinks fit, by order remand the case, and further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which



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directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand. "

32. Order 41 Rule 23A CPC, is as follows:-

"23-A. Remand in other Cases.- Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and re-trial is considered necessary, the Appellate Court shall have the same powers as it has under Rule 23. "

33. I have been presented with precedents by both the learned counsels for the appellant/plaintiff and the respondent/defendant.

34. The learned counsel for the appellant/plaintiff first relied on Sughar Singh Vs. Hari Singh (Dead) through LRs. and Ors., [AIR 2021 SC 5581] wherein the Hon'ble Supreme Court had held as follows:-

"The plaintiff cannot be punished by refusing the relief of specific performance despite the fact that the execution of the agreement to sell in his favour has been established and proved and that he is found to be always ready and willing to perform his part of the contract. Not to grant the decree of specific performance despite the execution of the agreement to sell is proved; part sale consideration is proved and the plaintiff is always ready and willing to perform his part of the contract would encourage the dishonesty. In such a situation, the balance should tilt in favour of the plaintiff rather than in favour of the defendant - executant of the agreement to sell, while exercising the discretion judiciously. "



35. Reliance was also made on (2013) 2 SCC 606 [Gian Chand and Brothers Vs. Rattan Lal Alias Rattan Singh], wherein the Hon'ble Supreme Court had considered Order 8 Rules 3, 4 and 5 CPC, it had been held as follows:-

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"24. Rule 4 stipulates that a defendant must not evasively answer the point of substance. It is alleged that if he receives a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received, and that if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances. Rule 5 deals with specific denial and clearly lays down that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted against him.

25. We have referred to the aforesaid Rules of pleading only to highlight that in the written statement, there was absolutely evasive denial. We are not proceeding to state whether there was admission or not, but where there is total evasive denial and an attempt has been made to make out a case in adducing the evidence that he was not aware whether the signatures were taken or not, it is not permissible. In this context, we may profitably refer to a two-Judge Bench decision in Sushil Kumar v. Rakesh Kumar [(2003) 8 SCC 673] wherein, while dealing with the pleadings of election case, this Court has held thus: -

"73. In our opinion, the approach of the High Court was not correct. It failed to apply the legal principles as contained in Order 8 Rule 3 and 5 of the Code of Civil Procedure. The High Court had also not analysed the evidence adduced on behalf of the appellant in this behalf in detail but merely rejected the same summarily stating that vague statements had been made by some witnesses. Once it is held that the statements made in paragraph 18 of the election



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petition have not been specifically denied or disputed in the written statement, the allegations made therein would be deemed to have been admitted, and, thus, no evidence contrary thereto or inconsistent therewith could have been permitted to be laid." We may state with profit that in the said case, reliance was placed on *Badat and Co. v. East India Trading Co.* (AIR 1964 SC 538)."

36. Even in the instant case, the written statement filed in the first instance was only one of bald denial and later further facts were pleaded.

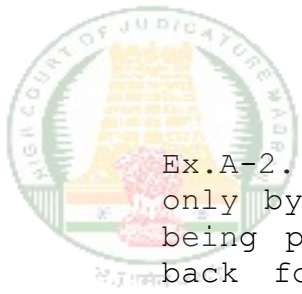
37. The learned counsel for the respondent/defendant also relied on *Thirumalai Vadivu Ammal (died) and Ors. Vs. Muthammal and Anr.*, 1999 (II) CTC 275" wherein a learned Single Judge of this Court had declared a settlement deed as void since it was held on appreciation of evidence that the plaintiff was ignorant of the contents of the document and that she never intended to sign any settlement deed. The Doctrine of non est factum was stated by the learned Single Judge.

38. On the same principle, the learned counsel for the respondent also relied on *Minor Palanivelu and 2 Ors. Vs. Sadasiva Padayachi (died) and 7 Ors.*, 2000 (II) CTC 486 and *S.S.M. Soundappan and 5 others Vs. K.G.Balakrishnan and 14 others*, 1997 (II) CTC 385.

39. The learned counsel also relied on *V.P.Murugesan Vs. P.Sheik Mideen*, 2016-2-L.W. 107, wherein a learned Single Judge had stated that evidence can be let in even if it runs contrary to a written document since the proviso to Section 92 of the Evidence Act provides that any fact may be proved either to invalid document and in this case, this proposition was relied on to prove the fact that the agreement of sale is invalid owing to the defendant was coerced to sign it in a police station.

40. One further fact which the trial Court will have to take note of is that, the respondent had lodged a First Information Report, marked as Ex.B-2 on 04.04.2015 much after the alleged coercion to sign blank papers and the said First Information Report had also been subsequently closed.

41. The learned trial Judge may also examine Ex.A-2 agreement of sale in juxtaposition with Ex.B-1 copy of the agreement of sale to determine whether the alleged discrepancies between the two documents are material to affect the validity of



Ex.A-2. These are issues which can be examined and re-examined only by the Trial Court and in the absence of even issues not being properly framed and answered, I would remand the matter back for fresh appreciation of the evidence recorded. The issues which should be additionally framed have also been indicated by me.

42. A direction is issued to the learned First Additional District Court to re-admit the suit in its original number in the Registrar of Civil suits and to proceed to determine the suit on the basis of the evidence already recorded during the trial which should be the evidence even while adjudicating the issues after remand.

43. The Registry is directed to forward the entire records back to the learned First Additional District Court, Tiruppur and the learned First Additional District Court, is directed to render a final Judgment as expeditiously as possible.

44. This First Appeal is allowed and the Judgment and Decree of the learned trial Court is set aside. The case is remanded back to the First Additional District Court, Tiruppur to render a finding on the issues already framed as stated above and on any other issue which arise on the basis of the pleadings. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vsg

To:

1. First Additional District Court,
Tiruppur.

Copy To

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

+1cc to Mr.Chitra Maragatham, Advocate SR.No.9303

+1cc to Mr.N.Manoharan, Advocate SR.No.9362

A.S.No. 920 of 2018

CNR(CO)

GN(04/03/2022)