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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.04.2022

Pronounced on : 26.04.2022

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

AS.No.640 of 2018

and

C.M.P.No.17220 of 2018

Perumayee ...Appellant/Defendant

Vs

Madheswaran ...Respondent/Plaintiff

Appeal Suit filed under Section 96 of CPC to set aside the judgment and decree dated 13.08.2018 in O.S.No.15 of 2014 on the file of the Sessions (Fast Track Mahila) Court, Namakkal.

For Appellant .. Mr.T.Dhanyakumar

For Respondent .. Mr.B.Kumar, Senior Counsel,
For Mr.S.Senthil

JUDGMENT

The defendant in O.S.No.15 of 2014 on the file of the Sessions (Fast Track Mahila) Court at Namakkal, is the appellant herein.

2.O.S.No.15 of 2014 had been filed by the respondent herein, seeking specific performance of an Agreement of Sale with respect to the vacant land totally measuring 2.73 acres, situated in S.No.504/1A to an extent of 1.95 acres and in S.No.504/2A to an extent of 0.78 acres at Rasipuram in Namakkal District.

3.The said suit came up for consideration before the Fast Track Mahila Court, Namakkal and by judgment dated 30.08.2018, the suit was decreed with costs and one month time was granted to the defendant to perform the agreement and execute the sale deed, failing which, the Court shall execute the sale deed. The plaintiff was directed to pay the balance sale consideration of Rs.10,00,000/-. Questioning that particular judgment and decree, the defendant has filed the present Appeal.



O.S.No.15 of 2014:-

4.The plaintiff / Madheswaran had filed the suit for specific performance with respect to land totally measuring 2.73 acres in Rasipuram, Namakkal District, pursuant to an agreement dated 10.06.2013 with the defendant. The total consideration was fixed at Rs.15,00,000/- and an advance of Rs.5,00,000/- had been paid. The period for completion of the agreement was eleven months, which ran till 09.05.2014.

5.The property originally belonged to the husband of the defendant who had purchased it by sale deed dated 20.02.1974. He died on 20.12.2009. The son and daughter had released their 2/3rd share by release deed dated 23.07.2010 in favour of the defendant. The defendant then entered into an agreement with the plaintiff on 10.06.2013 to convey the said lands. It was stated that on or about three months from the date of agreement the defendant had issued a legal notice on 30.09.2013 claiming that she was an illiterate and that she had entered into the agreement thinking it was the loan agreement and that she was prepared to return back the advance amount. A reply was issued on 10.12.2013 by the plaintiff. He also stated that the defendant should come to the Sub-Registrar office on 23.12.2013 to execute the sale deed. It was also stated that the defendant produced the original title deeds. It was stated that since there was refusal to perform the terms of the agreement, specific performance must be directed by the Court.

6.The defendant filed a written statement denying that she agreed to sell the suit property and had executed an agreement of sale on 10.06.2013 by receiving the advance of Rs.5,00,000/-. She stated that the defendant sought a loan of Rs.5,00,000/- from one Manimaran and he wanted the original documents to be given and also documents to be executed for advancing the said loan. In good faith, the original documents were handed over to Manimaran. The defendant executed two documents in favour of Manimaran and a person came along with him and registered the same on 11.06.2013. After five months, when the defendant sought return of the title deeds, Manimaran informed that he had become the owner of the suit property. When the defendant took out an Encumbrance Certificate, she came to know that Manimaran and the plaintiff had cheated her. It was stated that a Power of Attorney had been created in favour of Manimaran and an Agreement of Sale had been created in favour of the plaintiff. The defendant claimed that she did not know the plaintiff. She cancelled the Power of Attorney on 05.09.2013. She then issued a legal notice on 30.09.2013. She sought for cancellation of the agreement. It was claimed that the properties were far more valuable and there was no necessity for the defendant to sell the suit property at such a low price. She disputed the statement that the plaintiff was waiting in the Sub-Registrar Office for her to execute the sale deed. She denied the entire claim. She claimed that the suit should be dismissed.



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7. On the basis of the pleadings, the following issues were framed:-

"(i) Whether the defendant had received an advance of Rs.5,00,000/- on 10.06.2013 and had executed an agreement of sale?

(ii) Whether the agreement of sale was prepared fraudulently and whether the defendant only wanted to obtain a loan of Rs.5,00,000/- from Manimaran?

(iii) Whether the plaintiffs were entitled for specific performance of the agreement?

(iv) Whether to what other reliefs are the plaintiffs entitled to?"

8. During the trial, the plaintiff examined himself as PW-1 and examined an independent witness as PW-2. The defendant examined herself as DW-1 and examined another witness as DW-2. The plaintiff marked Exs.A1 to A6. Ex.A1 was the Agreement of Sale dated 10.06.2013. Ex.A2 was the Sale Deed in favour of the husband of the defendant. Ex.A3 was the Release Deed executed by the son and daughter of the defendant. Exs.A4 and A5 were exchange of notices. The defendant marked Exs.B1 to B4. Ex.B1 was the reply notice issued by the plaintiff dated 10.12.2013. Ex.B2 was the registration copy of the Agreement of Sale. Ex.B3 was the Registration copy of the Power of Attorney in favour of Manimaran and Ex.B4 was the guideline value of the suit property.

9. On consideration of the pleadings and the evidence, the learned Trial Judge discussed the issues and observed that as a fact DW-2, Periyasamy, son of the defendant had also signed Ex.A1 / Agreement of Sale as one of the witnesses. It was also observed that DW-2 was a graduate and therefore, it cannot be accepted that the Agreement of Sale was obtained surreptitiously. The learned Trial Judge also observed that DW-1, the defendant during cross-examination, denied every suggestion as a routine. She even stated that she did not know the contents of Ex.A4, the notice issued on her behalf by her Advocate. She claimed that she did not know about the nature of the case filed by the plaintiff. She even denied her left thumb impression in Ex.A1. The learned Trial Judge therefore, observed that she denied every suggestion purposely. It was observed that DW-2 / son of the defendant had admitted that he and his mother / defendant had signed the document in the Sub-Registrar office as stated by Manimaran. His evidence that he was aware of the notice and that he always signs a document only after reading a same and that he signed Ex.A1 were taken note by the learned Trial Judge. His statement that the defendant affixed her left thumb impression in Ex.A1 was also noted. The learned Trial Judge, therefore stated that it cannot be presumed or even held that Ex.A1 had been prepared fraudulently or in any surreptitious manner as above. The Trial Judge held that the agreement has to be specifically performed and accordingly decreed the suit.



10. Questioning that judgment, the defendant had filed the present Appeal.

11. Heard arguments advanced by Mr. T. Dhanyakumar, learned counsel for the appellant and Mr. B. Kumar, learned Senior Counsel for Mr. S. Senthil, learned counsel for the respondent.

12. For the sake of convenience the parties would be referred as plaintiff and the defendant.

13. Mr. T. Dhanyakumar, learned counsel for the appellant pointed out the pleadings and the contents in the Advocate notice in Ex. A4 and stated that the defendant never had any intention to convey the property to the plaintiff who was a stranger. She wanted loan of Rs. 5,00,000/- and had approached one Manimaran who stated that the title deeds will have to be given and that documents will have to be executed. Placing trust she handed over the title deeds. She never knew that an Agreement of Sale had been prepared and that on the same date a Power of Attorney had also been prepared. Coming to know all these facts, the learned counsel pointed out that the defendant had issued Ex. A4 notice stating that she being an illiterate had been misled into signing the Agreement of Sale and expressed readiness to return back the advance amount. The learned counsel further pointed out that she had also cancelled the Power of Attorney executed in favour of Manimaran. The learned counsel pointed out the guideline value in Ex. B4 and stated that the property is sought to be usurped for a far lesser price by the plaintiff. The learned counsel stated that the judgment under question requires to be revisited and urged that this Court should set aside the judgment and dismiss the suit.

14. Mr. B. Kumar, learned Senior Counsel on the other hand stated that Ex. A1, agreement dated 10.06.2013 is a registered document. The learned Senior Counsel also stated that the defendant had handed over the title deeds of the property. Further her son DW-2 had also attested the agreement as a witness. During his examination, he had admitted not only his signature but also the fact that the defendant had affixed her left thumb impression on the agreement at the time of registration. The learned Senior Counsel therefore stated that the Trial Judge had correctly come to the conclusion that the denials by the defendant were not bonafide and had rejected such denials. The learned Senior Counsel stated that even if it is to be taken that the value of the property requires to be readjusted such an exercise can be undertaken but pointed out that the commitment in the Agreement of Sale will have to be performed and that the Trial Court had correctly decreed the suit.

15. I have carefully considered the arguments advanced and the materials on record.



16. The points for consideration are as follows:

(i) Whether the allegations of being misled into entering into the agreement, pleaded by the defendant can be countenanced on the basis of the available records?

(ii) Whether the Trial Court Judgment suffers owing to non-framing of an issue relating to readiness and willingness?

(iii) Whether the adequacy of consideration can be examined when there had been consensus ad idem between the parties in the Agreement of Sale?

(iv) Whether the specific performance of the agreement has to be directed?

The Points Answered:

17. The suit had been filed on the basis of a registered Agreement of Sale dated 10.06.2013 entered into between the plaintiff and the defendant which had been marked as Ex.A1. The agreement is registered and the registered copy had been produced as Ex.B2. The terms of the agreement are simple and straight forward. A vacant land total measuring 2.73 acres over which the defendant is the absolute owner had been agreed to be sold for total consideration of Rs.15,00,000/-. An advance of Rs.5,00,000/- is said to have been paid. One of the witnesses to the agreement was the son of the defendant who was examined as DW-2. The defendant has however stated that she wanted a loan of Rs.5,00,000/- and consequently, she had approached one Manimaran who had sought title deeds of the properties and stated that documents will have to be executed. She accordingly had handed over the title deeds of the documents and had also executed documents.

18. On 30.09.2013 about three months and twenty days later she had issued an Advocate notice claiming that being an illiterate lady, she had been misled into signing Ex.A1 which she thought was a loan agreement and that she was willing to return the advance amount. She claimed that she was a victim of fraud. During her cross-examination, as noted by the Trial Judge she denied the fact of even entering into the agreement. She denied the fact of affixing her left thumb impression in the agreement. She denied knowledge of contents of the notice Ex.A4, issued on her behalf. She denied every fact and every suggestion put to her. The learned Trial Judge therefore had good reason to state that she was not trust worthy as a witness and therefore rejected her denials.

19. Even if this Court were to take a stand that the claim of the defendant that she had been misled by Manimaran who wanted documents to be executed to advance loan is correct, a perusal of the records show that there are no materials available to substantiate that particular claim. Every civil Court is vested with the powers under the Code of Civil Procedure to summon witnesses, to produce documents, to issue interrogatories and to subject witnesses to depose under oath and test such deposition under cross-examination.



20. In the instant case, the defendant who had put up a claim of loan being advanced by Manimaran, should have issued summons to the Manimaran calling upon him to graze the witness box and should have questioned the circumstances which prevailed at the time when she allegedly sought loan from him. He may have spoken adverse to her, but still, that exercise should have been undertaken by her. When she had not consciously chosen even to issue summons, it can be in a round about manner taken, that he had not been issued with summons as a witness only because produced that witness or that if summoned, he would have spoken adverse to her claims. Therefore, under illustration (g) of 114 of the Evidence Act, 1872, a strong presumption can be drawn that the claim made by the defendant about loan being sought from Manimaran is not a true plea.

21. I hold that the claim of the defendant will also have to be rejected on the basis of the evidence of DW-2, her own son who was a graduate and who affirmed his signature in Ex.A1 and also affirmed that the defendant had affixed her left thumb impression in Ex.A1. Further, the said agreement is a registered agreement. One of the witnesses to the agreement the son of the defendant had been examined as DW-2. He affirmed signing the agreement as a witness. He further affirmed that DW-1 had affixed her left thumb impression. In the face of such evidence coming from the mouth of a witness for the defendant, it has to be held that the agreement had been entered into by the parties with knowledge of its contents.

22. Further the due process of registration, gives rise to strong presumption that an official act had been done in manner approved by law. DW-1 had denied affixing her left thumb impression in the agreement. This denial in the witness box will have to be examined in conjunction with Ex.A4 wherein, she had admitted the agreement but claimed that she had been misled entering into it. This also has to be contrasted with the evidence of DW-2, who affirmed that DW-1 had indeed affixed her left thumb impression in Ex.A1. DW-1 had claimed that the document was entered into on the belief that it was a loan agreement. But the basic fact that the agreement was entered into was affirmed by her. In the witness box, however she denied executing the agreement itself. It is for the defendant to reconcile these contradictory statement. She went step further when she denied even the contents of Ex.A4, notice issued on her behalf.

23. The learned Trial Judge who recorded the evidence had very specifically stated that an overall assessment of the cross-examination shows "that the defendants purposely denied several facts for which she has knowledge". This observation by the learned Trial Judge who had the benefit of viewing the demeanor of the witness has to be given due credence by this court. Mere denial, would not advance the case of the



defendant. Mere denial in this particular case is damaging to the case of the defendant, particularly, because DW-2 himself had contradicted such denials and affirmed her signatures and left thumb impression in the agreement. Thus, the only one conclusion that can be arrived is that the agreement had been entered into lawfully and has to be affirmed.

24. In the result, Point No.1 has to be answered that the allegation by the defendant that she had been misled into entering into the agreement has to be rejected.

25. The learned Trial Judge had not framed an issue on readiness and willingness, but the said fact has to be examined on the touch stone whether the parties knew that the central and core issue which they were agitating was the virus of the agreement. That had been held against the defendant. It only follows that the defendant had not raised the ground that the plaintiff was never ready and willing to purchase that property. If that stand is to be taken by the defendant then primarily the defendant will have to agree to the agreement and then state that even though the agreement is valid and binding on her, in view of the fact that the plaintiff had not come forward with a plea of readiness and willingness, the agreement should not be put into effect.

26. Therefore, failure to frame an issue on readiness and willingness would not affect the case of the plaintiff since the stand of the defendant denying the agreement has been found to be false. The defendant's stand of denial would further indicate that she cannot risk putting up defense that the plaintiff was not ready and willing. Viewed from any angle, I hold that no irregularity had been caused by not framing that particular issue of readiness and willingness. The point No.2 is answered accordingly.

27. The other aspect is about the consideration reflected in the agreement. A perusal of Ex.B4 shows that the guideline value reflects that one acre to be Rs.30 lakhs and this would indicate that 2.73 acres can be around atleast Rs.75 lakhs. The agreement was for Rs.15,00,000/-. The learned Senior Counsel for the plaintiff, however, brought to the notice of this Court a copy of the Tamil Nadu Gazette issued on 09.06.2017, wherein, the Government had issued a circular bearing No.25735/C1/2017 dated 08.06.2017, issued by the Inspector General of Registration, stating that the guideline value, owing to necessity mentioned therein, had been reduced by 33 per cent. This would, according to the learned Senior Counsel indicate that the guideline value is inflated and if the Government Gazette is taken into consideration the guideline value will have to be reduced by 33 percentage which would mean that the total value would be between Rs.50,00,000/- to Rs.60,00,000/-.



28. When the matter was heard for the second time, the learned Senior Counsel for the plaintiff stated that the plaintiff is ready to partake additional consideration, but the learned counsel for the defendant stated that the defendant was not willing to take up the offer. I would let the matter rest at that. The issue of adequacy cannot be agitated any further, and it is only appropriate that this Court not impose its views on the parties to the agreement. The point No.3 is answered accordingly.

29. Since it has been found that the agreement had been entered into lawfully and had been registered, specific performance is directed on the terms of the agreement as it stands. I hold that failure to frame an issue on readiness and willingness is not fatal to the judgment under Appeal and I would further hold that the issue of consideration should be left to the wisdom of the parties and it is not for this Court to direct the parties to enter upon fresh terms of agreement or impose terms on the agreement already entered into.

30. Once the above facts have been established, it automatically follows that the agreement having been entered into lawfully places an obligation on the defendant to perform the agreement. In this connection, reference can be made to *Sughar Singh V. Hari Singh (Dead) Through Lrs. and Others* reported in 2021 SCC OnLine SC 975, wherein, the Hon'ble Supreme Court at paragraph Nos.46 and 47 had stated as follows:

"46. Now, so far as the finding recorded by the High Court and the observations made by the High court on Section 20 of the Act and the observation that even if the agreement is found to be duly executed and the plaintiff is found to be ready and willing to perform his part of the Agreement, grant of decree of specific performance is not automatic and it is a discretionary relief is concerned, the same cannot be accepted and/or approved. In such a case, many a times it would be giving a premium to the dishonest conduct on the part of the defendant/executant of the agreement to sell. Even the discretion under Section 20 of the Act is required to be exercised judiciously, soundly and reasonably. 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



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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.

47. For the aforesaid, even amendment to the Specific Relief Act, 1963 by which section 10(a) has been inserted, though may not be applicable retrospectively but can be a guide on the discretionary relief. Now the legislature has also thought it to insert Section 10(a) and now the specific performance is no longer a discretionary relief. As such the question whether the said provision would be applicable retrospectively or not and/or should be made applicable to all pending proceedings including appeals is kept open. However, at the same time, as observed hereinabove, the same can be a guide."

31.The analysis of the facts reveal that the parties had entered into an agreement / Ex.A1. The plaintiff had stated that he had called upon the defendant to perform the agreement and that the defendant had not come forward to perform the agreement and that therefore the plaintiff had filed the suit seeking specific performance. In view of the finding that the agreement had been lawfully entered into, specific performance has to be directed. The Trial Court has also directed specific performance of the agreement. The finding and the reasons thereof does not warrant any interference. The point No.4 is answered that specific performance has to be directed of the agreement / Ex.A1 / Ex.B2 dated 10.06.2013.

32.The Trial Court had directed that the plaintiff should pay the balance sale consideration of Rs.10,00,000/- within a period of two months. After that, one month time is granted for execution of the Sale Deed, failing which, the Trial Court shall execute the Sale Deed in favour of the plaintiff. The directions issued are affirmed.

33.In the result, the Appeal Suit is dismissed with costs. The judgment and decree of the Trial Court in O.S.No.15 of 2014 dated 13.08.2018 is upheld. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar



smv

To

The Court of Sessions
(Fast Track Mahila Court),
Namakkal.

+1cc to Mr.T.Dhanyakumar, Advocate SR. No. 28736
+1cc to Mr.S.Senthil, Advocate SR. No. 28929

A.S.No.640 of 2018

AJS (CO)
PR (29/06/2022)