



A.S. (MD) No.81 of 2007

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :24.06.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S(MD)No.81 of 2007

and

M.P(MD)No.1 of 2007

1.M.Govindasamy(died)

2.G.Ramesh

3.G.Vennila

4.G.Pushpavathi

:Appellants/Defendants

.Vs.

1.N.Muthusamy(died)

2.G.Manivannan

3.Nallammal

4.Premalatha

5.Janarthanan



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6. Kallammal : Respondents/Plaintiffs

(Fourth appellant and second respondent are brought on record as legal representatives of the deceased first appellant vide order of this Court made in C.M.P(MD)No.1505 to 1508 of 2017 in A.S(MD)No.81 of 2007, dated 9.3.2022)

(Respondents 3 to 6 are brought on record as legal representatives of the deceased first respondent vide order of this Court made in C.M.P(MD)Nos.1505 to 1508 of 2017 in A.S.(MD)No.81 of 2007, dated 9.3.2022)

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, 1908 against the judgment and decree made in O.S.No.54 of 2004, dated 31.3.2007, on the file of District Judge, Karur.

For Appellants : Mr.s.Madhavan

For Respondent-1 : Died

For Respondent-2 : Dismissed for default

For Respondents : Mr.R.Devaraj
3 to 6



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JUDGMENT

The Appeal Suit is directed against the judgment and decree made in O.S.No.54 of 2004, dated 31.3.2007, on the file of District Judge, Karur.

2.The appellants 1 to 3 are the defendants and the deceased first respondent was the plaintiff in O.S.No.54 of 2004, on the file of District Judge, Karur. The respondents/Plaintiffs filed a suit for specific performance against the appellants/defendants. After trial, the trial Court found that the respondents/plaintiffs are entitled to get the relief of specific performance and decreed the suit. Challenging the said judgment and decree passed by the trial Court, the present appeal suit has been filed.

3.The brief facts of the plaint reads as follows:

The appellants 1 to 3 herein are the defendants. The first



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defendant is the father of the second and third defendants. As per the partition deed, dated 3.9.1987, the suit properties belongs to the defendants. The defendants in the suit agreed to sell the suit properties to the plaintiff for a sale consideration of Rs.7 lakhs and received a sum of Rs.2 lakhs as advance. The time for execution of sale deed is fixed as two years and a sale agreement was entered into between them on the same date. On the date of sale agreement itself, the original documents such as partition deed, original patta and Encumbrance Certificate were handed over to the plaintiff. Though the plaintiff is ready and willing to pay the balance sale consideration of Rs.5 lakhs, the defendants had delayed the same one way or other. On 13.11.2005, the plaintiff had sent a legal notice to the defendants to receive the balance sale consideration and to register the sale deed in respect of the suit property. Though the notice was received by the defendants, they did not come forward to execute the same. Thereafter the defendants 1 and 2 sent a reply notice with false averments. It is not true to say that the sale agreement was executed as defendants have failed to pay the mortgaged amount for the plaintiffs' brother Selvaraj and



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plaintiff's wife Nallammal. It is not true to say that no advance amount was received as per the sale agreement and it was executed on compulsion. It is not true to say that the market value of the suit property is more than that of Rs.18 lakhs. It is not correct to say that the sale agreement was never executed. The plaintiff has sent a rejoinder to the reply notice of the defendants. There is no connection between the mortgage deed and the sale agreement. Hence the Plaintiff has filed the suit seeking for the relief of specific performance.

4.The brief facts of the written statement filed by the first defendant, which was adopted by the second defendant, reads as under:

The averments contained in the plaint are not true. It is not true to say that the defendants have agreed to sell the suit property to the plaintiff and has executed a sale agreement to sell the suit property for Rs.7 lakhs and received a sum of Rs.2 lakhs as advance amount from the plaintiff. The sale agreement was executed by the defendants on



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compulsion made by the plaintiff. It is not true to say that the defendants have handed over the original documents of sale to the plaintiff on the date of sale agreement. It is not true to say that the plaintiff is ready and willing to perform his part of contract in respect of the sale of suit property. The defendants have sent a reply notice with true facts to the legal notice sent by the plaintiff. On 30.1.2000, the defendants have mortgaged the suit property to the plaintiff's brother Selvaraj for Rs.1.5 lakhs and the said amount was paid only by the plaintiff. The interest towards the same was paid by the defendants. Whiles, as the plaintiff has threatened the defendants to repay the mortgaged amount or otherwise they will take legal action against them and hence the defendants on the said compulsion has executed the sale agreement and it was not executed with an intention to sell the suit property and that no advance amount was received. The suit property is the only residential house of the defendants. The value of the suit property is more than Rs.18 lakhs There is no cause of action to file the suit. The suit was not properly valued and proper court fee was not paid. The description of the suit property is not correct. Hence prayed for



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dismissal of the suit.

5. On the basis of the above pleadings, the trial Court has framed the following issues:

1. Whether the plaintiff is entitled for the relief of specific performance?
2. Whether the suit filed by the plaintiff is maintainable?
3. Whether the plaintiff has the cause of action to file the suit?
4. Whether the suit is properly valued and proper Court fee was paid?
5. To what other relief the plaintiff is entitled to?

6. In order to substantiate the case of the parties, during trial on the side of the plaintiff, two witness were examined as P.W.1 and P.W.2 and Ex.A1 to A18 were marked. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and four documents were



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marked as Ex.B1 to Ex.B4. After trial, and upon hearing the arguments advanced on either side, the suit is decreed as prayed with costs with a direction to execute the sale deed within two months.

7.Challenging the same, the defendants have failed the present appeal suit before this Court. During the pendency of the appeal, first appellant died and since appellants 2 and 3 are already on record, fourth appellant and second respondent were impleaded in the appeal and also the sole respondent in the appeal also died, for which, respondents 3 to 6 were impleaded.

8.The learned counsel for the appellants would submit that the property is worth of Rs.18 lakhs, whereas, in the sale agreement it is mentioned as Rs.7 lakhs and received advance of Rs.2 lakhs on 24.11.2000. He would further submit that it is not a sale agreement and there is a loan transaction and for the said loan transaction, the deceased first respondent has obtained the document and therefore out of coercion and undue



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influence, he obtained the sale agreement. Actually the appellants are not intended to sell the property and that the sale agreement was not executed by agreeing to sell the property, except they have signed in the document. He would further submit it is a document executed only for security purpose in order to repay the mortgage amount and that the learned trial Judge has failed to appreciate the pleadings, both oral and document in a proper perspective and has given a finding invoking Section 92 of the Indian Evidence Act by which the parties to the document is prevented from adducing oral evidence against the content of the document/recital of the documents and Section 92 of the Indian Evidence Act reads as under:

"92.Exclusion of evidence of oral agreement—

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in



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interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms."

9.The learned counsel for the appellants placed reliance in support of the above contention, which are as follows:

(1)Parvinder Singh .vs. Renu Gautam and others reported in 2004-4-L.W.53.

(2)Mrs.Pappammal @ T.Pappa .vs. Mr.P.Ramasamy reported in 2012-4-L.W.435

Therefore the finding given by the trial Judge is erroneous.

10.The learned counsel for the respondents/plaintiffs would submit that once the party had admitted and signed the document, moreover, it is a registered document, the genuineness of the document cannot be questioned and cannot adduce oral evidence as against the recital of



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the documents as contemplated under Section 92 of the Indian Evidence Act. Though defendants pleaded coercion, it means the execution of the document is admitted and therefore it is for the defendants to prove as to whether the document was obtained by coercion or undue influence. Therefore having not stated that the document was obtained by coercion when the document is executed before the Registrar in the Office of the Registrar and the appellants cannot say that under coercion or undue influence they have executed the document. Therefore, the trial Court has rightly invoked Section 92 of the Indian Evidence Act and decreed the suit. Further he would submit that though the appellants examined one person to speak about the real value of the suit property, he is not the competent person to speak about the same and therefore his evidence cannot be accepted for proving the worth of the property.

11. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



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12. Admittedly, the appellants 1 to 3 are the defendants and the deceased first respondent was the plaintiff in the said suit and though the sale agreement dated 24.11.2000 is admitted, however, the case of the appellants-defendants is that they have not executed the sale agreement with a real intention to sell the suit property and the same has been executed only for collateral purpose/security purpose in order to repay the mortgaged money. Admittedly, there was a loan transaction between the wife of the respondent and the appellants and also the brother of the respondent and there was a loan transaction and also mortgage deed in the month of January 2000, whereas, the sale agreement came into existence in the month of November 2000. Admittedly, there is no recital about the earlier loan transaction between the wife of the respondent and brother of the respondent and that there was a strange relationship between the husband and wife and also brother and there was no talking terms. Only in the month of January, the wife paid advance money on the mortgage and in the month of May, the husband intend to purchase the property and executed the sale agreement in which they should have mentioned about the balance



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to be paid to the wife and there is no mention about the loan obtained by the appellants and the sale consideration would be subject to the discharge of the mortgage. Absolutely in the sale agreement, there is no recital about the loan transaction/mortgage between the wife of the respondent and the brother of the respondent with the appellants. Admittedly, the properties covered in the sale agreement and mortgage are one and the same. Therefore in these circumstances, even a prudent man would not enter into a sale agreement and he should have got the encumbrance certificate and verify as to whether any other debt or encumbrance attached to the property if he wanted to purchase the property. Therefore in the absence of the same, invoking Section 92 of the Evidence Act is not applicable to the present case. A perusal of the judgements relied on by the appellants would clearly show that in all the cases, it cannot be stated that no evidence can be let in as against the documents/recitals produced by them. If situation warrants, they can explain it. The Proviso(1) to Section 92 of the Indian Evidence Act is very clear in that aspect. Therefore in these circumstances this Court is of the view that the respondents/plaintiffs have not approached the Court with



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clean hands. Therefore this Court finds that the sale agreement is not a genuine one and it is not executed with an intention to sell the suit property as contended by the learned counsel for the appellants and the sale agreement has been executed only for security purpose in order to discharge the mortgaged debt. As the appellate Court is a fact finding, this Court finds that these respondents have not proved their case with cogent evidence. Therefore in these circumstances, this Court finds that the trial Court has failed to appreciate the entire oral and documentary evidence and therefore, in these circumstances, the finding rendered by the trial Court warrants interference and the judgment and decree of the trial Court are liable to be set aside.

13.In the light of the above, the appeal suit is allowed and the judgment and decree made in O.S.No.54 of 2004, dated 31.3.2007, on the file of District Judge, Karur are set aside. Considering the facts and circumstances of the case, there is no order as to costs. However, it is represented that during the pendency of the appeal, the respondents have



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deposited the balance sale consideration mentioned in the sale agreement.

Therefore, the respondents are permitted to withdraw the same with accrued interest, if it has been deposited in an interest bearing deposit.

Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No

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Internet: Yes/No

vsn

To

1. The District Judge,
Karur.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

vsn

JUDGMENT MADE IN

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