



A.S. (MD) No.274 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S. (MD) No.274 of 2009

and

M.P. (MD) No.1 of 2009

Mrs.S.Kungumayee

... Appellant/Plaintiff

Vs.

1.Mrs.S.Chellammal

2.Mrs.K.Thangaveerammal

... Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 r/w Order 41 Rule 1 of the Civil Procedure Code, 1908 against the judgment and decree of the learned Additional District Court (Fast Track Court) Dindigul, dated 16.07.2009 in O.S.No.83 of 2008.

For Appellants : Mr.Anand Chandrasekar
for M/s.Sarvabhauman Associates

For Respondents : Mr.T.Lajapathy Roy



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J U D G M E N T

This Appeal Suit has been preferred challenging the judgment and decree of the learned Additional District Court (Fast Track Court) Dindigul, dated 16.07.2009 made in O.S.No.83 of 2008.

2. The plaintiff is the appellant in the above said appeal. The respondents are the defendants. The appellant herein filed a suit against the respondents in O.S.No.83 of 2008, on the file of the Fast Track Court (Additional District Court), Dindigul for specific performance and for an alternative relief of refund of the advance amount. The trial Court disallowed the main relief of specific performance and partly decreed the suit only for a sum of Rs.2,00,000/- along with interest at the rate of 12% p.a., from 04.10.2007 till the date of payment of the said amount. Now, challenging the said judgment of dismissal of the main relief for specific performance and also partly decreed the suit for paying the advance amount, the plaintiff has filed the present appeal before this Court.



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3. According to the case of the plaintiff as per the plaint, the suit property situated in Kombaipatti Village, Palani Taluk, Dindigul District. The suit properties are in enjoyment of the defendants as per the sale deed, dated 05.09.2007. The defendants have agreed to sell the suit properties to the plaintiff and accordingly, sale price was fixed at Rs.7,00,000/- and the time for sale was fixed at one year and a sum of Rs.6,00,000/- was received as advance amount and in this respect, a sale agreement was entered into between them on 04.10.2007, failing which, the plaintiff shall get the sale confirmed through Court and on the date of sale agreement, the defendants have handed over the copy of the sale deed to the plaintiff. The plaintiff is ready and willing to perform her part of contract. However, the defendants failed to fulfil their part of contract after receiving the balance sale consideration. Therefore, the plaintiff sent a legal notice on 07.06.2008 which was received by the second defendant on 12.06.2008 and on 17.06.2008, the defendants sent a reply notice with false averments. Further, the plaintiff came to know that the defendants tried to give the suit properties in Othi to third parties. The defendants have delayed the act of



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specific performance and they have no right to sell the suit properties to third parties. Hence the plaintiff has filed a suit for specific performance to direct the defendants to perform their part of contract on receiving the balance sale consideration of Rs.1,00,000/- or in alternative, to repay the advance amount of Rs.6,00,000/- with 12% interest per annum and for permanent injunction restraining the defendants from giving in sale or by Othi, the suit properties to the third parties.

4. The defendants resisted the suit by filing a written statement stating that the suit is bad both on law and on facts. In fact, the defendants have borrowed a sum of Rs.2,00,000/- from the plaintiff and for that purpose, they have handed over the stamp papers and unfilled promissory notes to them. Further, the defendants have repaid the said amount of Rs.2,00,000/- along with interest from 19.12.2007 to 26.01.2008 to the tune of Rs.1,72,000/- and has also in possession of the diary evidencing the receipt of the same. From the above said amount of Rs.1,72,000/-, if the interest of Rs.20,000/- was deducted, the defendants have paid Rs.



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1,52,000/- towards principal and they have to pay remaining amount of Rs. 48,000/- towards the principal amount and they are also ready for payment of the same. The defendants are not ready and willing to sell the suit property to the plaintiff and they have received only a loan amount for the day to day expenses. The promissory notes, stamp papers were given only as a security to the loan amount and not for the sale of the property. Moreover, the copy of the sale deed was given to the plaintiff only for security purpose. Further there was a sale agreement between the defendants and one Muthuchamy of Ayakudi Village and on 05.09.2007, out of total sale consideration of Rs.3,00,000/-, they have received Rs.2,00,000/- as advance amount and had agreed to perform their part of contract by receiving balance sale consideration of Rs.1,00,000/- before the Sub-Registrar Chithirapatti by way of sale. Further the sale agreement between the plaintiff and Muthuchamy on 05.09.2007 is prior to the alleged sale agreement of plaintiff, dated 04.10.2007. Knowing all these things, the plaintiff has fabricated the sale agreement with the stamp papers and promissory note received by the defendants. Further, the defendants are



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ready to repay the loan amount of Rs.48,000/- and on receipt of the same, the plaintiff has to hand over the unfilled stamp papers and promissory note to the defendants. The plaintiff has no cause of action to file the suit and the Court fees paid is not correct and hence the suit has to be dismissed with costs.

5. On the basis of the above pleadings, the learned trial Judge framed the following issues for consideration:

- (i) Whether the sale agreement dated 04.10.2007 is true?*
- (ii) Whether the sale agreement executed on receipt of valuable consideration?*
- (iii) Whether the plaintiff is entitled to get the relief of specific performance?*
- (iii) To what other reliefs the plaintiff is entitled to? ?*

6. In order to substantiate the claim of the plaintiff, on the side of the plaintiff, four witnesses were examined as PW1 and PW4 and Exs.A1 and A5 were marked. On the side of the defendants, one witness was examined as D.W.1 and two documents were marked as Ex.D1 to Ex.D5.



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7. After completing the trial and on hearing of arguments advanced on either side, the learned trial Judge had partly decreed the suit as stated above.

8. The learned counsel appearing for the appellant would submit that the respondents have entered into a sale agreement with the appellant on 04.10.2007 and on the same day, they fixed the sale consideration for Rs.7,00,000/-. Out of Rs.7,00,000/-, she has paid a sum of Rs.6,00,000/- as advance amount towards the sale consideration and time period was also fixed as one year for paying the balance sale consideration and for executing the sale deed. The plaintiff is always ready and willing to perform her part of contract. The defendants evaded to perform their part of contract. Therefore, the plaintiff had issued a notice on 07.06.2008. The second defendant received the said notice on 12.06.2008 and the first defendant did not receive the notice. However, they sent a reply notice on 17.06.2008, denying the execution of sale agreement with false averments.



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Therefore, the plaintiff was constrained to file a suit for specific performance.

9.The learned counsel for the appellant further stated that the defendants have admitted the signature and also not denied that they handed over the sale deed, dated 05.09.2007. The appellant fairly conceded that the trial Court has rightly appreciated the facts and circumstances. Since the appellant has paid a sum of Rs.6,00,000/- out of total sale consideration of Rs.7,00,000/-, but there is no specific reason for postponing by one year for paying meagre amount of Rs.1,00,000/-. Therefore, he has not challenged the disallowing portion of the main relief of specific performance. However, the learned counsel for the appellant would submit that in order to prove the advance amount paid to the respondents, the plaintiff was examined as P.W.1 and had reiterated the averments made in the plaint and also marked 5 documents. Apart from that, she also examined the witnesses to the agreement and also the scribe of the agreement. All of them have categorically spoken about the execution of the sale agreement and the



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advance amount of Rs.6,00,000/- paid to the respondents. The respondents have not established the fact that they borrowed a sum of Rs.2,00,000/- and even out of Rs.2,00,000/- they have repaid a sum of Rs.1,72,000/- to the appellant. So in the absence of establishment of borrowal of Rs.2,00,000/- and repayment of Rs.1,72,000/-, the trial Court has given a finding that they received only Rs.2,00,000/- and disbelieved the portion of repayment of Rs. 1,72,000/-. Therefore, the trial Court ought to have come to the conclusion that once it has given a finding that the main relief of specific performance is not entitled, however, has given a finding that the agreement is only obtained for the security purpose and the content of the sale agreement was proved through the appellant as well as the witness to the agreement and scribe. But he has not given any reason to disbelieve the words of the witnesses, therefore, ought to have given a alternative relief of refund of entire advance amount of Rs.6,00,000/-. For disallowing the refund of entire advance amount, is not acceptable, therefore, the appeal has to be allowed at least for the relief of refund of Rs.6,00,000/-.



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10. The learned counsel appearing for the respondents would submit that the respondents never executed a sale agreement and they purchased the property, even one month prior to the sale and the value of the property is less than Rs.3,00,000/-. Even earlier, they also entered into a sale agreement for a sum of Rs.3,00,000/-. Therefore, it is not believable that the respondents have entered into a sale agreement for a sum of Rs. 7,00,000/- and out of which, a sum of Rs.6,00,000/- was received. Further, he would submit that the trial Court has rightly appreciated the evidence and disbelieved the genuineness of the agreement and existence of the sale agreement. However, believed that the transaction was only loan transaction and even the appellant admitted the hand-book Ex.P1, the worth of the property is only Rs.3,00,000/-. It is not highly unbelievable that the defendants have received a sum of Rs.6,00,000/- and the property worth about Rs.3,00,000/-. Therefore, the trial Court has rightly appreciated the entire evidence and only believed that the transaction is only a loan transaction and the borrowal is Rs.2,00,000/-. Though the appellant admitted Ex.P1 and the trial Court ought to have decreed the suit only for



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balance amount of Rs.48,000/-, but, however, the respondents have not filed any cross-objection.

11. Heard the learned counsel appearing for the appellant, the learned counsel appearing for the respondents, perused the pleadings, issues framed by the trial Court, oral and documentary evidence adduced and produced by both parties.

12. The case of the appellant is that the suit property belongs to the respondents and they purchased the property under the sale deed, dated 05.09.2007 and they entered into a sale agreement on 04.10.2007 with the appellant, but on the same day, they also handed over the sale deed, dated 05.09.2007 and they agreed to execute the sale deed within a year on receipt of balance sale consideration of Rs.1,00,000/-. Even the appellant is ready and willing to perform her part of contract and however, the respondents evaded to execute the sale deed by receiving the balance sale consideration.



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13. The case of the respondents is that there is no necessity to sell the property and to enter into a sale agreement with the appellant because the property was purchased only on 05.09.2007 under a registered sale deed. They have borrowed a sum of Rs.2,00,000/- as loan amount from the appellant, for which, they have given blank signed papers for security purpose and making use of the blank papers, she created a sale agreement and filed the suit. Therefore, she is not entitled to the discretionary relief of specific performance and prayed for dismissal of the appeal.

14. A reading of the pleadings would show that there was a transaction between the appellant and the respondents. The only question is whether the transaction between the appellant and the respondents are sale transaction or loan transaction. Though the reading of the plaint shows that it is a sale agreement and transaction is for purchasing the property of the respondents, whereas, the case of the respondents is that it is only a loan transaction. It is settled proposition of law that the relief for specific performance is purely discretionary power of the Court and the Court has to



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see the conduct of the parties from the day one to the end of the suit and also the other circumstances. Admittedly, the suit property was purchased by the respondents only on 05.09.2007 for a sum of Rs.2,92,000/- and admittedly there was a sale agreement. As admitted by the learned counsel for the appellant, she has not even verified the Encumbrance Certificate since the sale agreement is a registered sale agreement. A prudent man who purchase the property worth about Rs.7,00,000/-, naturally, would verify the encumbrance from the Registration Department and after satisfying that the properties are free from Encumbrance, then only they entered into an agreement and pay a huge sum of Rs.6,00,000/-. Even the case of the appellant is that soon after the agreement and before concluding the contract or before purchasing the property, the appellant has to see the Encumbrance and found that there was no Encumbrance and therefore, the conduct of the appellant would go to show that it is against the normal course of a prudent man. Therefore, under these circumstances, findings of the trial Court that the transaction between the appellant and the respondents is not a sale agreement and the findings of the trial Court is



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coupled with the pleadings and evidence this Court has come to the conclusion that the transaction between the appellant and the respondents is not the sale transaction. Now, the Court has come to the conclusion that the appellant is not entitled for the main relief of Specific Performance. Therefore, the appellant has specifically sought for an alternative relief of return of the advance amount.

15. Now, the only question is that whether the advance amount paid is Rs.6,00,000/- as stated by the appellant or the loan of Rs.2,00,000/- borrowed by the respondents from the appellant, as pleaded by them. The respondents have admitted the signature found in Ex.A1 and stated that they put the signature in the blank papers, but not in the sale agreement and there was no sale transaction between the appellant and the respondents. From the evidence, the trial Court also came to the conclusion that it is not a sale agreement. Therefore, now, it is to be decided as to whether the appellant paid a sum of Rs.6,00,000/- as loan or as stated by the respondents that they received Rs.2,00,000/-. Though the learned counsel for the



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appellant would submit that the sale deed of the appellant is only mentioned as Rs.2,92,000/- less than Rs.3,00,000/-, but however, it might be only a guideline value for the purpose registering the documents and the property might worth about more than that. But, however, the respondents would submit that the properties worth about only Rs.3,00,000/- and therefore, within a short period, it cannot double the amount and they never received a sum of Rs.6,00,000/- and received only a sum of Rs.2,00,000/-, even for which repaid a sum of Rs.1,72,000/- and both the principal and interest and they have to repay only the balance amount. Though the appellant examined P.W.1 to P.W.4, the witnesses 2 & 3 are the witnesses to the agreement and the fourth witness is the scribe, but once the Court disbelieved that it is not an agreement and came to the conclusion that the money was given for security purpose and they have not given as advance for sale agreement and they have given only a signed blank stamp papers.

16. Apart from that, except examining P.W.1 to P.W.4, the appellant has not produced any other documents to show that they paid Rs.



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6,00,000/- either they should have produced any documents to show like bank transaction or any mode of transaction for Rs.6,00,000/- on the particular date either loan or sale consideration. But the appellant has not produced any other documents except Ex.A1 and Ex.A1 was stoutly denied by the respondents. The main contention of the learned counsel for the respondents that they signed only blank papers for security purpose. Both the witnesses are known persons of the appellant. Normally, one witness would be on the side of the vendor and another witness would be on the side of the purchaser, whereas, in this case, both the witnesses and scribe are known persons of the appellant. Therefore, in the absence of any other proof or transaction to show that the appellant had paid Rs.6,00,000/- on that day and the Court also disbelieved the same. This Court also appreciate that once the respondents denied the content of Ex.A1, we cannot take the evidence of P.Ws.1 to 4 as in favour of the appellant. Unless the appellant produced some other documents that the appellant paid a sum of Rs. 6,00,000/- on the day to the respondents in the absence of documents, the appellant has not proved that on the date of execution of Ex.A1 and he paid



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Rs.6,00,000/- and the appellant stated that he received a sum of Rs. 2,00,000/- and repaid a sum of Rs.1,72,000/-. Therefore, the trial Court disbelieved the version of both the appellant and the respondents. The respondents admitted that they borrowed a sum of Rs.2,00,000/- from the appellant and he has not established that he repaid the said amount. Therefore, the trial Court rightly held that the transaction is only a loan transaction and not a sale agreement and also considering the facts and circumstances, the trial Court has also disbelieved the sale consideration of Rs.6,00,000/- and this Court is also a fact-finding Court to re-appreciate the entire evidence and came to the conclusion that there was a loan transaction between the appellant and the respondents for the said loan, the appellant has received the sale deed for security purpose from the respondents and also got the signature in the blank stamp papers for repayment of the loan borrowed from the appellant and since the respondents did not repay the loan amount, the appellant make use of the blank papers and filled on her own way and used as sale agreement.



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17. Therefore, this Court finds that there is no sale agreement between the appellant and the respondents and it is only for loan transaction and therefore, since the respondents have not proved the discharge or partial discharge, therefore the respondents are liable to pay the admitted loan amount of Rs.2,00,000/- with interest. Therefore, this Court does not find any merit in the appeal and it has to be dismissed and accordingly dismissed. The respondents are directed to pay a sum of Rs.2,00,000/- with interest as directed by the trial Court within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

16.06.2022

Index : Yes / No

Speaking Order : Yes / No

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To

1.The Additional District Court

(Fast Track Court),

Dindigul.

2. The Section Officer,

VR Section,

Madurai Bench of Madras High Court,

Madurai.



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P.VELMURUGAN, J.

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