



A.S. (MD) No.57 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :22.07.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S. (MD) No.57 of 2013

and

M.P(MD)No.2 of 2013

Muppudathi Nadar

... Appellant/Defendant

-Vs-

Boopal Pandian

... Respondent/Plaintiff

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, against the judgment and decree, dated 19.04.2012 made in O.S.No.39 of 2008, on the file of the III Additional District Sessions Judge, Tirunelveli.

For Appellant : Mr.T.R.Jeyapalam

For Respondent : Mr.D.Navathambi



A.S. (MD) No.57 of 2013

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J U D G M E N T

The appellant herein is the defendant. The respondent/plaintiff filed a suit in O.S.No.39 of 2008, before the III Additional District Sessions Judge, Tirunelveli for specific performance.

2. The trial Court after trial, decreed the suit as prayed for. Challenging the said judgment and decree, the defendant has filed this appeal.

3. Brief facts to the case of the plaintiff, as per the plaint, is that the plaint schedule property belongs to the defendant under a registered Will, dated 05.05.1987 and he is possession and enjoyment of the same. The defendant agreed to sell the property to the plaintiff herein. Hence, they have entered into a sale agreement dated 26.11.2007 and sale consideration was fixed at Rs.13,65,000/- and accordingly, a sum of Rs.1,00,000/- was paid as advance and they also agreed to pay the balance sale consideration



A.S. (MD) No.57 of 2013

of Rs.12,65,000/- on or before 26.12.2007 and to execute the sale deed on such payment. They have also agreed that if there is any encumbrance over the suit schedule property the defendant has to rectify the same. After the sale agreement, the plaintiff came to know that the defendant has borrowed a sum of Rs.4,00,000/- from one Sivagnanam and for security purpose the defendant had executed a mortgage deed in favour of him. When the same was questioned by the plaintiff, the defendant has accepted the same. However, they have also agreed to conclude the sale as per the sale agreement entered between them. Subsequently, the defendant has received a sum of Rs.4,65,000/- from the plaintiff to clear his debts regarding mortgage and other expenditures and has also made an endorsement to that effect in the sale agreement. Since the defendant has not redeemed the said mortgage, the plaintiff was unable to get the sale deed executed on or before 26.12.2007. The plaintiff was always ready and willing to perform his part of contract as per the sale agreement. Out of total sale consideration of Rs. 13,65,000/- the plaintiff has already paid a sum of Rs.5,65,000/- and the plaintiff repeatedly requested the defendant to redeem the mortgage by



A.S. (MD) No.57 of 2013

receiving the balance sale consideration of Rs.8,00,000/- and to get the sale deed executed in favour of him. Hence, the defendant has sent a notice with false allegations to the plaintiff and to the higher police officials. The plaintiff has also sent a reply to the said notice on 06.02.2008. The sale agreement entered between them was still subsisting. The plaintiff has denied the defence of defendant that the sale agreement dated 26.11.2007 got expired and it is against law. The plaintiff requested the defendant to conclude the sale agreement dated 26.11.2007 on or before 15.02.2008 in his reply notice dated 06.02.2008. However, the defendant has not taken any steps to execute the sale deed. Hence, the plaintiff has filed a suit for specific performance.

4. The defendant resisted the suit by filing written statement and stating that the suit filed by the plaintiff was a false one and it is against law. The defendant denied the fact that he has agreed to sell the suit schedule property to the plaintiff and he had no occasion to sell the same. The value of the suit property is approximately Rs.40,00,000/-. The fact that the



A.S. (MD) No.57 of 2013

defendant has agreed to sell the suit property at Rs.13,65,000/- is a false one and no sale agreement was entered between them. Actually on 26.11.2007 the defendant has requested a sum of Rs.1,00,000/- for his urgent needs and for that, the plaintiff has demanded interest at Rs.3/- per Rs.100/-. The sale agreement said to have been executed is a false one as the worth of the suit property is Rs.40,00,000/- for which the sale agreement was entered only for Rs.13,65,000/-. The defendant denied the execution of the sale agreement and has also denied the signature in the said alleged agreement. . The sale agreement was a forged one created by the plaintiff and his henchman. The plaintiff has not refuted the averments in the notice sent by the defendant. Though the plaintiff has demanded interest at Rs.3.00/- per Rs.100/- however, the defendant has repaid the same at the rate of Rs.5/- per Rs.100/-. The plaintiff has not returned the agreement while borrowing Rs. 1,00,000/- from the plaintiff, for some reason or other. Further, the plaintiff has threatened the defendant to sign in blank stamped papers and to get rid of the same the plaintiff has sent a complaint to Pavoorchatram Police Station and thereafter, demanding a sum of Rs.8,65,000/- from the



A.S. (MD) No.57 of 2013

defendant. The plaintiff is a money lender for exorbitant interest. The plaintiff was in the habit of demanding blank stamped papers from the borrowers and thereafter, grab their properties using the said documents. Hence, the defendant has sent a legal notice to the plaintiff and also to the Superintendent of Police, Tirunelveli. On receiving the same, the plaintiff in order to grab the suit property has filed the present suit. The fact that the defendant received a sum of Rs.4,00,000/- from one Sivagnanam and executed a mortgage deed in favour of him was false. The defendant has denied all the other averments made in the plaint and prayed for dismissal of the suit.

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

- (I) Whether the sale agreement dated 26.11.2007 was executed by the defendant to the real intention to sell the suit property to the plaintiff?*
- (ii) Whether it is true that the sale agreement was executed only for security purpose for the money*



A.S. (MD) No.57 of 2013

borrowed by the defendant from the plaintiff?

(iii) Whether the defendant has received a sum of Rs. 4,65,000/- on 05.12.2007 from the plaintiff?

(iv) Whether the plaintiff is entitled to the relief of specific performance as prayed for?

(v) To what other relief the plaintiff is entitled to?

6. In order to substantiate the case, on the side of the plaintiff, three witnesses were examined as PW1 to PW3 and 8 documents were marked as Ex.A1 to Ex.A8. On the side of the defendant, two witnesses were examined as D.W.1 and D.W.2 and 7 documents were marked as Ex.B1 to Ex.B7.

7. After completing the trial and on hearing of arguments advanced on either side, the learned trial Judge, considered the evidence available on record, decreed the suit.

8. The learned counsel appearing for the appellant would submit that the suit property originally belonged to the appellant and he borrowed a



A.S. (MD) No.57 of 2013

sum of Rs.1,00,000/- from the respondent since the respondent is a financier, who used to collect the exorbitant interest. Due to finance needs, the appellant received a sum of Rs.1,00,000/- and as he was insisted by the respondent, he executed Ex.A1 agreement as if he has agreed to sell the suit property to him for a sum of Rs.13,65,000/-. The alleged agreement was executed only as a security purpose and hence, it is a sham and nominal and unenforceable. Even otherwise, as per the agreement, time for performance of contract is one month from the date of agreement namely 26.11.2007, which expires on 26.12.2007 and even after expiry of the said time, the respondent kept quit and therefore, the respondent deemed to have abandoned the transaction. The respondent kept quit till the expiry of period mentioned in the sale agreement and thereafter, issued legal notice to the appellant on 06.02.2008.

9. Thereafter, the suit was filed on 30.03.2008. Even assuming that the agreement is genuine and valid, the respondent was not ready and willing to perform his part of contract i.e., the reason as to why the appellant



A.S. (MD) No.57 of 2013

kept quit even after the expiry of the said agreement. As per Section 16(c) of the Specific Relief Act, it is mandatory that the respondent should always ready and willing to perform his part of contract. In the absence of the same, he is not entitled to get the discretionary relief of specific performance. Further, the respondent/plaintiff has also given a criminal complaint before the Inspector of Police, Pavoorchatram Police station and they summoned the appellant/defendant and his wife and forcibly they got the statement that the appellant received money and executed an agreement and they are not fulfilling their agreement. Initially, the said Inspector was not examined. Though he was summoned, he was not present, therefore, a specific direction was given to the Inspector of Police and the matter came up to this Court and later on only he was examined. If at all the agreement is genuine and he was ready and willing to perform his part of contract within the stipulated time, the appellant did not come forward to perform his part of contract he should have issued the notice and filed the suit. The respondent neither issued the notice nor filed the suit, but he approached the police and filed a complaint. This fact has been suppressed by the respondent even in



A.S. (MD) No.57 of 2013

his plaint and also in the proof affidavit. Therefore, the respondent has not come to the Court with clean hands.

10. Further, it is submitted that it is a settled proposition of law that the person, who approached the Court to get the discretionary relief, should approach the Court with clean hands, otherwise, he is not entitled to get the relief. In this case, documents clearly show that as per the agreement, dated 26.11.2007, it has to be performed within one month i.e., on or before 26.12.2007. The respondent gave the police complaint before the Inspector of Police, Pavoorchatram Police Station on 17.01.2008 and also the appellant and the respondent were summoned and the police obtained the statement. Since the police obtained the statement forcibly, the respondent issued notice on 28.01.2008 and thereafter, the appellant sent the reply notice on 06.02.2008. Thereafter, the respondent filed the suit on 30.03.2008, which clearly shows the conduct of the respondent. Since the document Ex.A1 so called agreement, for sale, was executed only for the security purpose and the said agreement is sham and nominal and



A.S. (MD) No.57 of 2013

enforceable. The respondent approached the police and tried to get the money. The respondent is a un-scrupulous money lender and using his muscle power and money power, he would have obtained the signature from the borrower in the blank paper. The properties worth about Rs.40,00,000/-. A prudent man would not give a such valuable property for consideration of Rs.13,65,000/- and also the respondent had created a forged document and stated that on the back side of Ex.A1 the appellant endorsed that he received a sum of Rs.4,65,000/- which is also false. The respondent also aware of Ex.A8 dated 31.12.2002, however, he did not choose to file the suit immediately. After the sale agreement, the respondent/plaintiff came to know that the appellant/defendant has borrowed a sum of Rs.4,00,000/- from one Sivagnanam and for security purpose, the defendant had executed a mortgage deed in favour of him. When the same was questioned by the plaintiff, the defendant has accepted the same. The said Sivagnanam was not examined to prove the mortgage deed executed by the appellant. The trial Court failed to appreciate the entire evidence and they proceeded with the case on the basis of the



A.S. (MD) No.57 of 2013

admission made by the appellant that the signature in Ex.A1 was admitted and it was given as a security purpose for the loan. The trial Court has failed to consider the fact that the appellant never intended to sell the properties and failed to appreciate the conduct of the respondent, erroneously granted the discretionary relief of specific performance. Therefore, the judgment and decree passed by the trial Court are liable to be dismissed and the appeal has to be allowed.

11. The learned counsel appearing for the respondent would submit that the suit property belongs to the appellant. The appellant entered into the sale agreement in favour of the respondent on 26.11.2007 for the sale consideration of Rs.13,65,000/- and on the same day, he received a sum of Rs.1,00,000/- as an advance. The time fixed for execution of the sale deed was one month, which falls on 26.12.2007. Though the respondent was ready and willing to perform his part of contract by paying balance consideration, the appellant did not come forward to comply with the same. In addition to that, the appellant mortgaged the said property to one



A.S. (MD) No.57 of 2013

Sivagnanam for a sum of Rs.4,00,000/- and in order to redeem the said mortgage, the appellant received a sum of Rs.4,65,000/- from the respondent. Totally, the appellant had received a sum of Rs.5,65,000/- as advance for sale consideration and the appellant failed to execute the sale deed by receiving the balance sale consideration. Since the appellant threatened the wife of the respondent, therefore, he prepared the police complaint and though he admitted before the police, subsequently, in order to get over the statement given before the police, the appellant sent a legal notice on 28.01.2008 for which, the respondent suitably replied. After receiving the notice, the respondent came to the conclusion that the appellant will not execute the sale deed, hence, he filed the suit on 30.03.2008. The respondent was always ready and willing to perform his part of contract. Though the appellant has executed Ex.A1 agreement, he has admitted the execution, also signature and also the receipt of Rs. 1,00,000/-, however, the appellant later turned his version that the agreement was executed only for security purpose, which is nominal document and unenforceable. It is settled proposition of law that the person



A.S. (MD) No.57 of 2013

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once accepted the execution and admitted the signature, the initial burden has been shifted to the appellant and it is for him to discharge the onus. Such oral evidence is barred under Section 92 of the Indian Evidence Act. Since the appellant admitted the execution of Ex.A1 and the signature in the agreement and has not denied regarding the receipt of Rs.4,65,000/- from the respondent, the conduct of the appellant clearly shows that he has not approached the Court with clean hands and he has suppressed the material facts and even he received the money from the respondent to redeem the mortgage and also he has failed to execute the sale deed as per the sale agreement. The appellant himself has admitted that the respondent is a financier and has not denied the financial capacity of the respondent and further, though the appellant has stated that the property value is worth about Rs.40,00,000/-, there is no evidence regarding the worth of the property and in order to evade from the execution of the sale deed, the appellant has made all the false statement in the legal notice as well as in the written statement and it is contrary to the Ex.A1 agreement. Therefore, the appellant once admitted the execution and the respondent also proved the



A.S. (MD) No.57 of 2013

genuineness of the agreement and he is ready and willing to perform his part of contract,, the trial Court has rightly appreciated the entire evidence and also taking into consideration of the conduct of the appellant, rightly granted the relief of specific performance and there is no merit in the appeal and hence, the appeal is liable to be dismissed.

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

13. Admittedly, the suit properties belongs to the appellant and there was an agreement under Ex.A1, which shows that both the appellant and respondent executed a sale agreement on 26.11.2007. On the same day, a sum of Rs.1,00,000/- was paid to the appellant and the time stipulated for the execution of agreement is 26.12.2007. According to the appellant, the said agreement was not genuine and the appellant had borrowed a sum of



A.S. (MD) No.57 of 2013

Rs.1,00,000/-,for which, the respondent demanded a sum of Rs.3/- interest per hundred rupees and the appellant had executed the said agreement only as a security purpose and the said agreement is nominal and unenforceable. According to the respondent, the appellant entered into the sale agreement with respondent on 26.11.2007 for a sum of Rs.13,65,000/- and on the same day, a sum of Rs.1,00,000/- was paid as an advance and the respondent has to pay the balance sale consideration on or before 26.11.2007, the appellant has to receive the same and execute the sale deed.

14. A careful perusal of the agreement Ex.A1 and reading of the written statement filed by the appellant that even prior to the legal notice sent by the appellant on 28.01.2008, the appellant has not denied the execution, he has admitted Ex.A1, but however, he has stated that he has not executed for selling his property. The said alleged agreement was executed only as a security. Therefore, even in the notice and in the written statement he has admitted the signature and execution of the agreement. Therefore, the onus of proof has been shifted to the appellant. It is for the appellant to



A.S. (MD) No.57 of 2013

discharge his onus. Further, the appellant has also admitted that he received a sum of Rs.4,65,000/- but during the cross-examination he has admitted that he has not repaid the said amount to the respondent. Since it is a suit for specific performance, seeking relief in the suit is discretionary relief, therefore, the person, who approached the Court, has to come to the Court with clean hands and without suppressing the material facts.

15. A reading of the entire materials would show that the respondent filed a complaint before the Inspector of Police, Pavoorchatram police Station on 17.01.2008 itself and the police summoned both parties and recorded their statements. It is a settled proposition of law that the statement made before the police is not admissible in evidence. Further, it is clear that if the person entered into an agreement if the other party failed to perform his part of contract, he can sent the legal notice and called him to come and execute the sale deed by receiving balance sale consideration. Whereas, in this case, the respondent neither sent the legal notice nor approached the appellant and he straightaway filed the complaint before the



A.S. (MD) No.57 of 2013

Pavoorchatram police station on 17.01.2008, thereafter, he filed a suit on 30.03.2008. In the meanwhile, the appellant has sent a legal notice on 21.08.2008 for which, the respondent sent reply notice on 06.02.2008. A reading of the averment in the plaint shows that the respondent has not disclosed the fact regarding the complaint made before the police. Though the respondent has admitted that he has not verify the encumbrance certificate, later on he has stated that, after the agreement he came to know about the mortgage by the appellant with the one Sivagnanam.

16. The respondent further stated that in order to redeem the mortgage by the appellant, he paid another sum of Rs.4,65,000/- and the appellant has received the same and made an endorsement in the reverse side of the agreement Ex.A1. Though the appellant initially disputing the same, but subsequently, he has admitted that he received the said sum of Rs.4,65,000/- and also not repaid the same. Further, even assuming that the agreement is genuine and the appellant executed the said agreement for selling the property still the respondent has to prove that he was always



A.S. (MD) No.57 of 2013

ready and willing to perform his part of contract from the inception of agreement, dated 26.11.2007 and till the date of filing the suit, when the appellant received a sum of Rs.4,65,000/- on 26.11.2007 and made an endorsement, subsequently, he has not executed the sale deed, the respondent could have sent the notice calling upon the appellant to come and execute the sale deed by paying balance sale consideration. But without doing the same, he straightaway approached the police and gave the complaint and forcibly obtained the statement from the appellant that he has to pay a sum of Rs.3,00,000/- in addition to Rs.5,65,000/-, which clearly shows that the conduct of the respondent is not to get the property but to get more money. Though the appellant has stated that the respondent is the money lender and he lend the money for exorbitant interest, the appellant has not specifically denied the same.

17. Therefore, this Court finds that the respondent has not approached the Court with clean hands and he has also suppressed the material facts. While granting discretionary relief, the Court has to see the



A.S. (MD) No.57 of 2013

conduct of the parties. In this case, the conduct of both parties are not all that good and however, the person, who approached the Court for getting the discretionary remedy, should disclose all the facts without suppressing any material facts and approach the Court with clean hands. Further, the respondent has not also established that he was always ready and willing to perform his part of contract. Though the appellant denied the agreement that it was not executed for the purpose of selling the property and it was executed only as a security for the loan obtained from the respondent, however, this Court already finds that the respondent has not approached the Court with clean hands and he is not entitled to get the discretionary relief of specific performance. The trial Court, failed to appreciate the material evidence and also the conduct of the respondent, erroneously granted the discretionary remedy, which warrants interference of this Court.

18. Since the first appellate Court is a fact finding Court it has to re-appreciate the entire materials and give an independent finding. Accordingly, this Court has gone into the entire material facts including the



A.S. (MD) No.57 of 2013

pleadings, oral and documentary evidence finds that both the parties are not approaching the Court with clean hands. A person, who has approached the Court for getting the discretionary relief, must come with clean hands and should not suppress the material facts. This Court finds that the conduct of the respondent not all genuine and therefore, he is not entitled to get the discretionary relief of specific performance. However, the appellant admitted that the receipt of Rs.5,65,000/- ie., Rs.1,00,000/- on the date of agreement and Rs.4,65,000/- on 26.11.2007 and also he has admitted that he has not repaid the said money and he has enjoyed with the money from 2007. If at all the appellant not entered into the sale agreement and only he received the money as a loan, atleast after filing the complaint and sending legal notice, he could have returned that money by way of Demand Draft or other mode. Either at the time of filing the suit or soon after receiving the suit summons from the trial Court, he has not done the same since he admitted the receipt of Rs.5,65,000/-, he is liable to repay the same with reasonable interest.



A.S. (MD) No.57 of 2013

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19. In the result, the appeal is allowed and the judgment and decree passed by the trial Court is set aside and the appellant is directed to pay a sum of Rs.5,65,000/- to the respondent along with interest at the rate of 12% per annum within a period of one month, if the amount is already not deposited. The respondent is permitted to withdraw the deposited amount, if any. If the amount is deposited in interest bearing deposit, the respondent is entitled to get the accrued interest. No costs. Consequently, connected miscellaneous petition is closed.

22.07.2022

Index : Yes / No

Speaking Order : Yes / No

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A.S. (MD) No.57 of 2013

To

1. The III Additional District Sessions Judge,
Tirunelveli.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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A.S. (MD) No.57 of 2013

P.VELMURUGAN, J.

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A.S. (MD) No.57 of 2013

22.07.2022