



S.A(MD).No.132 of 2011

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2022

CORAM: JUSTICE N.SESHASAYEE

S.A(MD).No.132 of 2011
and M.P(MD).No.1 of 2011

S.Rajendran

... Appellant/Appellant/Defendant

Vs

S.Murugan

... Respondent/Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 13.04.2010 passed in A.S.No.107 of 2006 by the Subordinate Court, Thoothukudi as confirmed by the judgment and decree dated 20.06.2006 passed in O.S.No.150 of 2004 by the District Munsif Court, Srivaikundam.

For Appellant : Mr.S.Selva Aditya
For Respondent : Mr.R.T.Arivukumar

JUDGMENT

The defendant in O.S.No.150 of 2004 on the file of the District Munsif, Srivaikundam, having suffered a decree for specific performance successively both before the trial court, and in his first appeal in A.S.No.



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107 of 2006 on the file of the Sub Court, Thoothukudi, has preferred this appeal.

2. The plaintiff herein comes with a straightforward case:

- That on 31.05.2002, vide Ex.A3-sale agreement, the defendant had agreed to sell three items of wet agricultural land having a combined extent of about three acres to the plaintiff for a total consideration of Rs.62,000/-, that he had paid an advance of Rs.50,000/-, and that the agreement stipulated one year time for performance of mutual contractual obligation, and that on 30.05.2003, the plaintiff issued Ex.A4-suit notice to which the defendant responded with his Ex.B1-reply dated 17.10.2003. Couple of days prior to the date of reply notice of the defendant, the plaintiff has laid the suit.

3. The defence taken by the defendant in his written statement is that earlier, the defendant had borrowed a sum of Rs.50,000/- from the plaintiff and at that time he had left with the plaintiff two signed blank stamp papers and two signed blank sheets and by utilizing one set left with the plaintiff, he had manufactured Ex.A3-sale agreement. This apart, he also has pleaded that the plaintiff is not ready and willing to perform his part of contract.



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The very fact that the total consideration fixed for three acres of wet agricultural land at Rs.62,000/- itself would indicate that the document is manufactured as its value has no relevance to the then prevailing market price.

4. The dispute went to trial, and for the plaintiff he examined himself as P.W.1 and also examined the attesor as P.W.2 and produced Ex.A1 to Ex.A5. For the defendant, he examined himself as D.W.1 and produced Ex.B1 and Ex.B2. On appreciation of evidence, the trial court decreed the suit, which later came to be confirmed by the first appellate Court. Hence, this second appeal by the defendant.

5. This appeal was admitted on 04.09.2012 for considering the following substantial question of law:

“Whether the Courts below are correct in law in holding a sale deed executed on 25.08.2003 is affected by lis pendens whereas the suit was filed only in October 3?”

6. After hearing the learned counsel briefly, this Court framed the additional substantial question of law:



2. *Were the Courts below in error in overlooking the want of readiness and willingness on the part of the plaintiff to perform his part of the contract.*

7. The learned counsel for the appellant/defendant put forth the following contentions:

- That the suit properties at the relevant time when the sale agreement was alleged to have been made was worth more than the stated consideration of Rs.62,000/-. The principal defence taken out by the defendant that Ex.A.4-sale agreement was intended to be acted upon only as a security-document for a loan obtained by the defendant, and in this context the Courts below ought to have considered certain relevant circumstances:
- That for a total consideration of Rs.62,000/-, the plaintiff had paid Rs.50,000/- as advance. It is intriguing that on the same date on which Ex.A.3 was executed, the plaintiff also alleges that he has advanced a sum of Rs.35,000/- to the same defendant, which is the subject matter in S.A(MD).No.1096 of 2011. If on the same date he had the entire Rs.85,000/- with him, he could have very well purchased the entire property paying the total consideration on the



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very date on which he had advanced the amount in terms of his case involved in S.A.(MD)1096 of 2011. The defendant has made a candid statement admitting his need for money, and that he had borrowed a sum of Rs.50,000/- from the plaintiff and this implies that a person in need for money would only be interested in getting the maximum, and need not have to settle for two options - of entering into an agreement of sale and also pursue the option to borrow amounts on the same date.

- Secondly, when he had all the money on the same day he need not have stipulated one year period for completing the same. This is intriguing. In a suit for specific performance the plaintiff should come clean on all scores, and he cannot lean on any short comings of the defendant's case, for equity benefits he who approaches the Court with the fairest of hands, but not this plaintiff.
- While Ex.A.3 has granted one year time for performance of the contract, it needs to be underscored that the plaintiff has issued notice on the last day on which the one year term expired and then waited for another five months to institute the suit. In between he has not established his readiness and willingness to perform his part of the contract. In this regard, the Courts below have not even



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framed necessary issues. It is true that the defendant has not pleaded want of readiness and willingness on the part of the plaintiff since that would go counter to the principal defence. Having treated Ex.A.3 as sale agreement and not as a security-document for a loan as pleaded by the defendant, the duty is on the Court to satisfy itself that the plaintiff has qualified himself to secure a decree for specific performance on proving his readiness and willingness in terms of Section 16(c) of the Specific Relief Act.

- The defendant has pleaded that he had sold the property to a third party and such third party has not been impleaded and hence, the suit is incapable of being sustained to bind the third party.

8. Per contra, the learned counsel appearing for the respondent/plaintiff would argue that the defendant finds himself on a wobbling plane, that he at one level pleads that Ex.A.3 is only a security document for a loan and at another level he also contends that the plaintiff has not established his readiness and willingness to perform his part of the contract. Secondly, the learned counsel argued that for the suit notice issued vide Ex.A.4, dated 30.05.2003, the defendant has chosen to issue a reply notice only on



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17.10.2003. This document is marked as Ext.B.1. By the time the suit has already been laid and was two days old and was pending with the Registry of the Court. This time difference between the suit and notice and the reply is intriguing and it is evident that the defendant was taking his time to strategize his defence and this now stands exposed. If only Ex.A.3 were intended to be acted as a security-document as is pleaded by the defendant in his written statement, then any person who finds himself in a situation such as the defendant would have responded instantly, and here the conduct of the defendant is not in consonance with the ordinary course of human conduct.

9. This Court had the advantage of considering the other appeal in SA(MD). No.1096 of 2011 along with the present appeal. That appeal arises out of a suit for recovery of money alleged to have been advanced by the same plaintiff to the very same defendant, and the defence taken by the defendant in both the suits provide a connecting line between the two. Ideally both the suits should have tried jointly, but it was not done. However, this Court had the advantage of hearing the SA(MD) 1096 of 2011 along with the present appeal. Now, having been informed of the materials pertaining to SA (MD) 1096 of 2011, this Court finds it difficult to ignore certain facts and



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consequences that throws out of that case in SA(MD).No.1096 of 2011, more particularly the date on which the transactions in both the suits (including the one involved in the present appeal) and also the sum transacted. After all, when the Court is exposed to the conduct of the parties vis-a-vis the two transactions said to have taken place on the same date, it cannot blind fold itself to the consequences that one leaves on the other. When the parties put the Court to trial, the Court may need to look to the materials made available before it for arriving at a certain just conclusion. It is underscored that this court has disposed of SA(MD)1096 of 2011 vide a separate judgement today.

10. This Court is impressed with the argument of the learned counsel for the appellant on the need for defendant to enter into Ext.A-3 agreement for a sum of Rs.68,000/- on 31.05.2002 and also to advance Rs.35,000/- on the same day to the same defendant. The latter mentioned loan transaction, to repeat is the subject matter of the litigation in SA(MD) 1096 of 2011. Now turning to Ext.A.3 document, the plaintiff claimed that he had paid an advance of Rs.50,000/- and the balance that is required to be paid as per his case is Rs.18,000/-. And, he did not have the entire balance money to pay on the same day. Any reasonable man of ordinary prudence would have conducted very differently in circumstances such as this. If only what the



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plaintiff contends were to approximate the conduct of that invisible reasonable man who guides the Courts all the time, then he could have purchased the suit property involved in this case on 31.05.2002 itself, and would have advanced only the balance amount of Rs.17,000/- to the defendant if the latter was still in need of any additional sum. This conduct of the plaintiff is most intriguing, and this is not adequately explained. In equity jurisdiction, the Court would be keenly evaluate if the conduct of the plaintiff is beyond all blames. It is true the conduct of the defendant also seems to match the conduct of the plaintiff, but then to come clean for obtaining a decree in equity jurisdiction the burden is principally on the plaintiff.

11. It is now in the context of above said aspect of the case, this Court now proceeds to deal with the other aspects. It is true that the defendant had made a statement in the written statement that he had already sold the suit property on a specified date to a specific individual, and his name too was given. It immediately required that the plaintiff ascertained his fact and impleaded the third party purchaser of the defendant. Assuming if the decree is granted, could it be executed if only the statement of the defendant about his sale to the third party as disclosed in his written statement were



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true? Therefore, the plaintiff has created problems not only on his right to get remedy in substantial law but also has complicated his pursuit to a decree in ignoring the procedural compliance as well.

12. To conclude this Court suspect the very Ext.A-1 on which the plaintiff has founded his cause of action for the suit. There are untied loose ends to it. In fine, the Second Appeal is allowed, and accordingly, the judgment and decree dated 13.04.2010 passed in A.S.No.107 of 2006 by the Subordinate Court, Thoothukudi is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

Internet: Yes/No

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To

- 1.The Subordinate Judge, Thoothukudi.
- 2.The District Munsif, Srivaikundam.



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3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court,

Madurai.

N.SESHASAYEE, J.,

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