



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.02.2022

DELIVERED ON : 28.02.2022

CORAM

THE HONOURABLE MS.JUSTICER.N.MANJULA

A.S. (MD) .No.273 of 2021

and C.M.P (MD)No.9219 of 2021

Pal Ashokkumar

.. Appellant/ Defendant

Vs.

Pandian

.. Respondent/Plaintiff

Prayer : This Appeal Suit is filed under Section 96 r/w Order 41, Rule 1 & 2 of C.P.C of the Civil Procedure Code, to set aside the judgment and decree passed in O.S.No.30 of 2018 dated 24.09.2020 on the file of the Principal District Court, Tirunelveli.

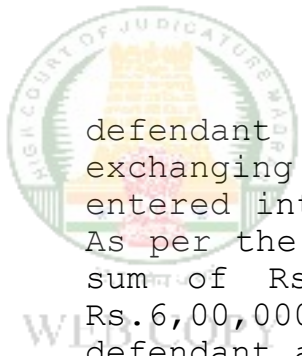
For Appellant : Mr.H.Arumugam

For Respondent : Mr.M.Ramadurai

J U D G M E N T

This Appeal is preferred against the judgment and decree passed by the Principal District Court, Tirunelveli, made in O.S.No.30 of 2018, dated 24.09.2020.

2. The appellant is the defendant in the suit. The respondent/plaintiff has filed the suit for the relief of recovery of possession in accordance with the agreement dated 07.04.2017. The plaintiff is the owner of the suit property. During the month of August 2010 the plaintiff agreed to sell the suit property to the defendant for a sale consideration of Rs.14,00,000/- and the plaintiff received a partial sale consideration of Rs.13,00,000/- from the defendant. The defendant had also paid the remaining sum of Rs.1,00,000/- also by way of Demand Draft. Since the entire sale consideration was paid, the plaintiff permitted the defendant to live in the suit property. Despite the plaintiff was demanding the defendant to get the sale deed executed, the defendant delayed the process by stating that he had no money for registration. During the month of August 2016, the defendant approached the plaintiff and requested to return the sale price. The plaintiff replied that he cannot give back the sale price immediately and told the defendant that he should pay a rent of Rs.4,000/- per month. Despite the



defendant agreed to pay the rent, he failed to do so. After exchanging legal notices between themselves, a new agreement was entered into between the plaintiff and the defendant on 07.04.2017. As per the terms of the above agreement, the plaintiff had to pay a sum of Rs.15,000/- on 07.04.2017, Rs.6,00,000/- on 22.05.2017, Rs.6,00,000/- on 22.06.2017 and Rs.7,00,000/- on 22.07.2017 to the defendant and after getting the entire payment, the defendant should surrender the vacant possession of the suit property to the plaintiff. As per the above agreement, the defendant received a sum of Rs.12,50,000/- from the plaintiff. In the meanwhile, the defendant has filed the suit in O.S.No.16 of 2017 before the District Munsif Court, Cheranmagadevi. After sending legal notice, the plaintiff was always ready and willing to give the balance amount of Rs.7,00,000/-. Since the defendant refused to receive the balance amount of Rs.7,00,000/- as per the agreement and hand over the possession of the suit property, the plaintiff has filed this suit for the relief of recovery possession.

3. The appellant/defendant contested the suit by stating that the agreement dated 07.04.2017 is not true. After paying the sale consideration of Rs.14,00,000/- in the month of August 2010 itself, the defendant persuaded the plaintiff to execute the sale deed; but the plaintiff refused to execute the sale deed by stating that he would execute the sale deed after settling the loan amount borrowed by him in respect of the suit property. The defendant resided in the suit property from 2010 onwards by paying property tax, electricity charges, water charges and telephone charges etc. On 29.09.2016, the plaintiff sent a notice containing false averments that the defendant was residing in the suit property as a tenant on monthly rent of Rs.4,000/- per month. He called upon the defendant to vacate the suit property. The plaintiff's averments are contrary to his own legal notice. So, the defendant sent a reply notice on 03.07.2016; thereafter a compromise was held between the plaintiff and the defendant; and an agreement dated 07.04.2017 was entered into between themselves and thereafter the plaintiff gave a demand draft for Rs.12,00,000/- to the defendant and agreed to pay interest at Rs.21,000/- per year from the year 2010. So the plaintiff has to pay Rs.16,80,000/- as interest and pay Rs.2,00,000/- towards the remaining principal amount; on 19.07.2017, the defendant sent a legal notice to the plaintiff and demanded the above amount for which the plaintiff sent reply notice with false averments. If the plaintiff settles the above amount, the defendant is ready to vacate the suit property.

4. On the basis of the above said pleadings, the learned trial judge framed the following issues:-

- Whether the plaintiff is entitled for recovery of possession of suit property in terms of agreement dated 07.04.2017 as prayed for?



- Whether defendant is entitled to claim Rs.18,80,000/- from the plaintiff to handover possession of suit properties?
- What other relief the plaintiff is entitled to?

5. During the course of trial, on the side of the plaintiff, the plaintiff was examined himself as P.W.1 and seven documents were marked as Ex.A1 to EX.A7. On the side of the defendant, the defendant was examined himself as D.W.1 and 10 documents were marked as Ex.B1 to B10.

6. On conclusion of trial and considering the evidence available on record, the learned trial judge has decreed the suit and granted the relief to the respondent/plaintiff as prayed for. Aggrieved over that, the defendant has preferred this appeal.

7. The learned counsel for the appellant submitted that the appellant was defrauded by the plaintiff, who had evaded to execute the sale deed in favour of the defendant; despite the defendant paid the entire sale consideration in the month of August 2010 itself, the plaintiff did not execute any sale deed; but he sent a legal notice with false averments; the agreement dated 07.04.2017 was entered into between the parties under some prescribed circumstances; as per the same, plaintiff is liable to pay interest for the sale consideration received by him in the month of August 2010; since the trial Judge omitted to appreciate the lack of equity on the side of the respondent/plaintiff, the appeal should be allowed.

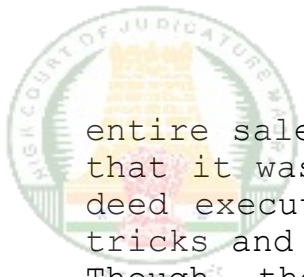
8. The learned counsel for the respondent/plaintiff submitted that the understanding about the payment can only be in accordance with Ex.A1 agreement dated 07.04.2017; the defendant did not deny the execution of Ex.A1; though the defendant claimed interest and other amounts due, he has not filed any counter claim by paying the due Court fee; the learned trial judge has rightly appreciated the evidence on record and granted the relief as prayed for.

9. On the basis of the mutual submission made by the parties, I feel that the following points have to be considered for deciding this appeal:-

(i) Whether the defendant is barred by the terms of the agreement dated 07.04.2017?

(ii) Whether the trial Court has rightly granted the relief as prayed by the plaintiff ?

10. On the basis of the material available on record, the respondent/plaintiff has admitted that in the year 2010 he agreed to sell away the suit property to the appellant for a valuable sale consideration of Rs.14,00,000/- and the defendant also paid the



entire sale consideration. When the respondent/plaintiff had alleged that it was the defendant, who did not come forward to get the sale deed executed, the defendant has alleged that the plaintiff played tricks and evaded to execute the sale deed on some pretext or other. Though the defendant paid the entire sale consideration of Rs.14,00,000/, the appellant/defendant had not filed any suit to get the remedy for specific performance.

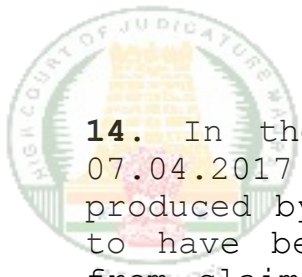
11. However, subsequent to the dispute arose between the appellant/defendant and the respondent/plaintiff, both of them negotiated between themselves and arrived at some understanding. The understanding was reduced into writing in the form of an agreement dated 07.04.2017. The said agreement is marked as Ex.A3. As per its terms, the appellant/defendant had agreed to purchase peace by way of getting a sum of Rs.19,50,000/- from the respondent/plaintiff as per the following schedule:-

Number of installments	Date	Amounts
1.	07.04.2017	Rs.50,000/-
2.	22.05.2017	Rs.6,00,000/-
3.	22.06.2017	Rs.6,00,000/-
4.	22.07.2017	Rs.7,00,000/-

12. After receiving the entire payment as per the above schedule, the appellant defendant is bound to vacate the suit property and hand over the possession to the respondent/plaintiff. Even, according to the appellant/defendant, he received the payment of Rs.12,00,000/- as per the agreement. Subsequent to that, the appellant claimed that the respondent/plaintiff should pay interest at the rate of Rs.1.50/- per 100 for the sale amount of Rs.14,00,000/-. It is claimed by the defendant that the plaintiff had agreed to pay the interest on above said terms. Ex.A3 agreement does not stipulate any such term. Neither any new agreement was entered into between the appellant and the respondent towards the claim for interest. While so, it is needless to state that the appellant /defendant who is a signatory for Ex.A3 sale agreement is bound to abide by its terms.

13. As per Section 91 of the Evidence Act, when the terms of a contract is reduced into writing, it can be proved by production of the very document. Section 92 of the Indian Evidence Act is extracted hereunder:-

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



14. In the case in hand, the execution of the agreement dated 07.04.2017 was not denied. The original agreement itself was produced by the respondent/plaintiff and hence the terms are deemed to have been proved. Hence, the appellant/defendant is estopped from claiming any other interpretation to Ex.A3 by way of raising contentions contrary to its terms.

15. Ex.A3 sale agreement contains the endorsement for the receipt of the total a sum of Rs.12,00,000/- as on 24.06.2017 by the defendant from the plaintiff. Hence the respondents/plaintiff is liable to pay only a balance of Rs.7,00,000/- and on receipt of the same, the defendant/appellant is bound to vacate the suit property and hand over the possession of the same to the plaintiff. Despite it is claimed by the respondents/plaintiff that he had already paid Rs.50,000/- on the date of agreement(Ex.A3) itself, no endorsement is made to that effect. Hence the learned trial judge has rendered the finding that the respondents/plaintiff has to pay a sum of Rs.7,50,000/- to the defendant.

16. The respondent/plaintiff has been all along ready and willing to pay the said amount and recover the possession of the suit property from the defendant. The learned trial Judge had rightly appreciated the evidentiary value of EX.A3 agreement and granted the relief of recovery of possession as prayed for. In my considered view, the judgment of the trial Court does not suffer from any factual or legal infirmity and it does not warrant any interference. Thus the points 1 and 2 are answered against the appellant.

17. In the result, this Appeal Suit is dismissed and the judgment and decree passed in O.S.No.30 of 2018 dated 24.09.2020 on the file of the Principal District Court, Tirunelveli is confirmed with cost. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To,

1. The Principal District Court,
Tirunelveli.



2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-9385[F] dated 01/03/2022)

+2 CC to M/s.M.SUBASH BABU, Advocate (SR-9379[F] dated 01/03/2022)

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