BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2022

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S. (MD) No. 3 of 2019

G.Aruldoss ... Appellant/Defendant

Vs.

Dhobidass ... Respondent/Plaintiff

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, 1908 against the judgment and decree of the learned III Additional District Judge, Thanjavur at Pattukottai dated 31.10.2018 in O.S. No. 57 of 2010.

For Appellant : Mr.S.Manohar

For Respondent : Mr.A.Arumugam Senior counsel for Mr.C.Padmaraj

J U D G M E N T

This Appeal Suit has been preferred challenging the judgment and decree of the learned III Additional District Judge, Thanjavur, dated 31.10.2018 made in O.S. 57 of 2010.

2.The appellant is the defendant; the respondent / plaintiff has filed a suit for specific performance on the basis of a sale agreement dated 09.04.2009; as per the case of the plaintiff, the sale agreement was entered into between the plaintiff and the defendant for selling the suit property for a sale consideration of Rs.11,13,250/- (Rupees Eleven Lakhs Thirteen Thousand Two Hundred and Fifty only); on the date of sale agreement itself, a sum of Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand only) was paid as an earnest money and it was agreed that the balance amount of Rs.3,63,250/- (Rupees Three Lakhs Sixty Three Thousand Two Hundred and Fifty only) should be paid within one year and get the sale deed executed; after the sale consideration, the portion of the suit property was handed over to the plaintiff and the 2nd item of the suit property which was in possession of the defendant was agreed to be handed over to the plaintiff at the time of executing the sale deed; as per the agreement, the plaintiff was ready and willing to pay the balance sale consideration and get the sale deed executed; when the plaintiff demanded the defendant to execute the sale deed after receiving the balance sale consideration, he demanded a sum of Rs.2,00,000/- over and above the sale price and refused to perform his part of contract as per the sale agreement; the plaintiff sent a legal notice on 15.03.2010 and the defendant did not send any reply after receiving the same; thereafter, the plaintiff has filed a suit for specific performance.

3.The defendant resisted the suit by stating that the sale agreement is a forged one; the defendant availed a loan of Rs.4,00,000/- (Rupees Four Lakhs only) from the plaintiff and for which, he had given signed unfilled stamp papers and singed black cheque as security to the plaintiff; by making use of those stamp papers, the plaintiff has created this sale agreement.

4.Insolvency Petition has been filed in I.P. No. 1 of 2010 and in which, the defendant is one of the respondents; just in order to grab the suit property, the sale agreement has been created; even if the sale agreement is admitted to be true, the plaintiff was not ready and willing to pay the balance sale consideration to get the sale deed executed; in view of the same, the plaintiff is liable to lose a sum of Rs.2,00,000/- (Rupees Two Lakhs only) from the sale advance and he is entitled to claim only a sum of Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand only); since the sale agreement is a created one, there is no cause of action and the suit should be dismissed.

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

(i) தாவா கிரைய ஒப்பந்தம் உண்மையானதா, செல்லத்தக்கதா, நடைமுறைபடுத்தக்கூடியதா?
(ii) தாவா ஒப்பந்தத்தின்படி வாதிக்கு ஏற்றதை ஆற்றுக பரிகாரம் கிடைக்கத்தக்கதா?
(iii) வாதிக்கு ரூ.7.50.000/–மும் அதற்கான வட்டித் தொகை மட்டும் கிடைக்கத்தக்கதா?
(iv) இந்த பிரதிவாதி வாதியிடம் ரூ.4.00.000/– பெற்றுக்கொண்டு அதற்கு ஆதரவாக பூர்த்தி செய்யாத ஸ்டாம்ப் மட்டும் ஒட்டப்பட்ட பேப்பர்களிலும், பிராமிசரி நோட்டுக்களையும் கொடுத்தார் என்பது உண்மையா?

6.During the course of trial, on the side of the plaintiff, three witnesses were examined as PW1 to PW3 and Exs.A1 to A5 were marked. On the side of the defendant, three witnesses were examined as DW1 to DW3 and Exs.B1 to B31 were marked. At the conclusion of the trial, the learned Judge decreed the suit for the relief of specific performance. Aggrieved over the same, the defendant has preferred the Appeal Suit.

7.The learned counsel for the appellant submitted that even though the sale agreement is said to have been entered between them, which is an unregistered one and hence it not admissible in evidence; there is no necessity for the appellant to execute any sale agreement in favour of the defendant; the appellant had only availed loan from the respondent, for which, he had to hand over certain signed unfilled stamp papers; the respondent has misused all those stamp papers and created the sale agreement; the defendant has settled the portion of the suit property in favour of his brother and son by virtue of Exs.B2 and B3, dated 05.10.2009 and 22.06.2009 respectively. The stamp paper, in which, the Ex.A1 - sale agreement is written, is not found to have been purchased from the stamp vendor whose name is found therein; the learned trial Judge has given undue weight to the evidence of PW1 to PW3, who are the interesting witnesses; the learned trial Judge without considering the evidence available on record, dismissed the suit; information obtained from Ex.B30 would show that Ex.A1 - sale agreement is not prepared by the respondent / plaintiff, as how stated by him; Ex.A1 is not admissible as per the Indian Stamp Act, 1899 and Section 17 of the Registration Act, 1908; the plaintiff at any cost, is not entitled to the relief of specific performance; Ex.A1 - sale agreement was a fabricated document which has been created to defraud the defendant.

8.The learned counsel for the respondent submitted that as per Section 49 of the Registration Act, if the sale agreement was not registered, it can be received as evidence in a suit for specific performance; Ex.B30 is only an information and that cannot be treated as an evidence before the Court; the respondent was all along ready and willing to perform his part of contract but the defendant alone did not come forward to execute the sale deed; the appellant is bound by the agreement executed by him and hence, he cannot escape from executing the sale deed under some pretext or other; even though, the appellant had executed some documents subsequent to the sale agreement, that will not bind the interest of the plaintiff; the signature in the Ex.A1 - sale agreement is not disputed; though it is claimed by the appellant that he had availed a loan only, he did not produce any document to show that he repaid the loan amount or interest; the learned trial Judge appreciated the evidence in a proper perspective and does not require any interference.

9.Points for consideration:-

"Whether the relief of specific performance granted by the learned trial Judge is fair and proper?"

10. The suit is based on an unregistered promissory note Ex.A1 - sale agreement, dated 09.04.2009. Though the appellant claimed that it is a concocted document making use of his signed empty stamp papers, he did not claim that the signature is not his signature. As per Section 91 of the Indian Evidence Act, whenever the terms of contract is reduced into writing, the same can be proved by the production of the same. After producing Ex.A1 - sale agreement, the initial burden about the execution of the contract would get discharged by the plaintiff. Since the appellant / defendant denied the intention of the execution of Ex.A1 - sale agreement, the burden would be upon him to prove the same. However, it is claimed by the appellant that the sale agreement ought to have been registered as per Section 17 of the Registration Act and failed to register the same would disqualify Ex.A1 - sale agreement from receiving the same as evidence.

11. The learned counsel for the respondent submitted that in Section 49 of the Act, it has been mentioned specifically that an unregistered sale agreement can be received as evidence in a suit for specific performance. But the case in hand, the respondent / plaintiff has sought the relief of specific performance along with recovery of possession. The recitals of sale agreement would state that the possession of the suit property has been given to him subsequent to the sale agreement. It is the case of the respondent / plaintiff that in Item No.2 of the suit property, the appellant was residing and it was agreed between the parties that the possession of the same would be given to the respondent after the sale deed executed. So this would only show that the suit is not filed for the relief of specific performance but also for the relief of recovery of possession.

12. It is submitted by the learned counsel for the respondent that the relief of recovery of possession impliedly included in the relief of specific performance and hence, the suit has to be considered as a suit for specific performance and so, the unregistered sale agreement can be accepted as an evidence. In this context, the attention of this Court is drawn to the decisions of this Court reported in *2017 (5) CTC 33* and *S.A. (MD) Nos. 343 to 345 of 2014.*

13. In the said judgment reported in *S.A. (MD) Nos. 343 to 345 of 2014* is held as under:

> "37. ..... Therefore, merely because in the plaint it has been stated that they have taken possession as part performance of the contract, it cannot be stated that these documents are inadmissible in evidence and it by Section 17(1)(A) of the Registration Act. It is only a oral agreement between the parties, which has been admitted by both sides, which culminated into advance receipts. Therefore, it cannot be stated that these documents will fall within the ambit of Section 53(A) of the Transfer of Property Act to claim protection. Section 49 of the Registration Act makes it very clear that an unregistered document affecting immovable property and required by the Registration Act or the Transfer of Property Act to be registered may be received as evidence of contract in a suit for specific performance"

14. However, the learned counsel for the appellant invited the attention of this Court to the judgment of the Hon'ble Division Bench of this Court held in the case of **G.Kandasamy vs. Jagadeswari** reported in **2019 (4) CTC 681**. In the said judgment, it is held that proviso to Section 49 of the Registration Act, 1908 would come to the rescue of the plaintiff in a limited way to get the relief of refund alone. In the said judgment, it is held as under:

> "**90.** In our view, the Trial Court was correct in not ordering Specific Performance even though the Appellants have shown readiness and willingness to perform their obligation under the respective Agreement, dated 15.04.2005 vide Ex.A1 by deposing the balance Sale Consideration to the credit of the respective Suits.
> 91. We are of the view that Proviso to Section 49 of the Registration Act, 1908 comes to the rescue of the Appellant / Plaintiff in a limited way to order refund of the amounts paid by them and for awarding a reasonable Compensation to them for the amounts invested by them with the Respondents / Defendants.
> 92. Therefore, question to be answered is to what Compensation the Appellants / Plaintiffs are entitled to other than the relief by way of Specific Performance."

15. It is made clear that the plaintiff who had risked in getting an unregistered sale agreement would only be eligible to get the relief of refund of advance amount even though his readiness and willingness to perform the contract is proved. In other words, the receipt of the sale agreement is received in a suit for specific performance based on sale agreement could be only as a proof to show the payment of advance amount and for which the appellant is entitled to get the refund.

16. In the case in hand, the sale agreement is an unregistered one. The appellant did not dispute the signature in Ex.A1 - sale agreement, even though he claimed that the sale agreement was created by making use of the signed stamp papers given to the respondent / plaintiff.

17. On a perusal of Ex.A1 - sale agreement, it is seen that the stamp papers were purchased on 01.04.2009 and the sale agreement was made on 09.04.2009. As per the written statement of the defendant, it is stated that he had availed a sum of Rs.4,00,000/- (Rupees Four Lakhs only) as loan from the respondent in the year 2004 and for which, he had handed over some blank cheques and signed in an unregistered stamp papers on 21.01.2006. Ex.A1 would show that it has been purchased on 01.04.2009 in the name of the appellant himself. The appellant has also produced Ex.B30 information obtained from the District Registrar, Pattukottai. Even in the said information, it is stated that the stamp papers were sold only on 01.04.2009, though the name of the stamp vendor is seen to be different, the date of selling the stamp paper was only on 01.04.2009. So on the face of it, Ex.A1 - sale agreement would show that the stamp papers was purchased on 01.04.2009 and not on 21.01.2006, so the sale agreement is proved to be true even though it is an unregistered one.

18. The learned trial Judge is correct in appreciating the evidence on record regarding the finding that the sale agreement is proved to be genuine. Since Ex.A1 – sale agreement does not meet the essential requirements of registration, that can be treated only as a document evidencing the money transaction worth of Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand only). So it is false for the appellant to state that he had availed only a sum of Rs.4,00,000/- (Rupees Four Lakhs only) as loan. The terms of contract is reduced into writing, in which, it is specifically stated that a sum of Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand only) has been paid to the appellant. The above recital and affixing his signature in Ex.A1 – sale agreement would only show that the appellant has received a sum of Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand only) as alleged in Ex.A1. Even though the respondent / plaintiff could prove his readiness and willingness to perform the contract, in view of the non-registration of sale agreement, he is eligible to get the alternate relief of refund of advance money only. The learned trial Judge had overlooked the significance of registration of sale agreement before granting the relief of specific performance. So the limited scope under Section 49 of the Registration Act for admitting of Ex.A1 – sale agreement would only qualify the respondent / plaintiff to get the relief of refund of advance money of Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand only) with compensation in terms of interest. To this effect, the judgment of the decree of the learned trial Judge requires modification. **Thus the point is answered.**

In the result, this Appeal Suit is partly allowed and the judgment and decree in O.S. No. 57 of 2010, on the file of the III Additional District Court, Thanjavur, at Pattukottai, dated 31.10.2018 is hereby modified to the effect that the plaintiff is entitled to get the relief of refund of advance money of Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand only) together with interest at the rate of 7.5% per annum from the date of the agreement till the date of the decree and thereafter, 6% per annum from the date of the decree till the date of realization. The plaintiff is also entitled to get the charge on the suit property for the decree amount in accordance with Section 55 Clause (6) of the Transfer of Property Act, 1882. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

The III Additional District Judge,
Thanjavur @ Pattukottai,

Copy to

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

+1 CC to M/s.C.PADMARAJ, Advocate (SR-19491[F] dated 19/04/2022)
+1 CC to M/s.S.MANOHAR, Advocate (SR-19689[F] dated 20/04/2022)

A.S. (MD) No. 3 of 2019
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RS (01.06.2022) 7P-6C