



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: **28.02.2022**

CORAM

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

A.S (MD) .No.215 of 2020

and C.M.P(MD)No.390 of 2022

A.Venkatesan ... Appellant/Defendant

Vs.

1.B.Nagalakshmi

2.K.B.Balaprakash

3.B.Balamurugan

4.B.Kavitha

5.A.Senthilkumar ... Respondents/Plaintiffs

Prayer : This Appeal Suit is filed under Section 96 of the Civil Procedure Code against the judgment and decree dated 12.03.2020 made in O.S.No.9 of 2018 on the file of the court of Principal District Judge and Sessions Judge (FAC), Theni.

For Appellant :Mr.A.Arumugam for

Mr.H.Thayumanaswamy

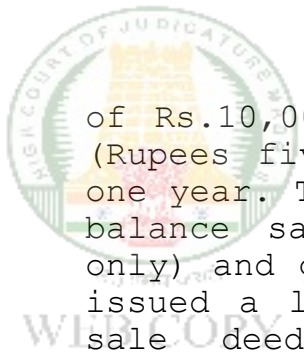
For Respondents : Mr.G.Prabhu Rajadurai

for Mr.C.Susikumar

J U D G M E N T

This Appeal Suit has been preferred challenging the judgment and decree of the learned Principal District and Sessions Judge dated 12.03.2020 in O.S.No.09 of 2018.

2. The appellant is the defendant. The respondents/plaintiffs have filed the suit for specific performance on the basis of the sale agreement dated 28.03.2017. The suit property was owned by the defendant by virtue of a partition deed dated 23.10.2016. On 28.03.2017, the defendant entered into a sale agreement with the plaintiffs for selling the suit property for a sale consideration of Rs.15,00,000/- (Rupees fifteen lakhs only). On the date of sale agreement itself, the plaintiffs paid a partial sale consideration



of Rs.10,00,000/-. The balance sale consideration of Rs.5,00,000/- (Rupees five lakhs only) was agreed to be paid within a period of one year. The plaintiffs were all along ready and willing to pay the balance sale consideration of Rs.5,00,000/- (Rupees five lakhs only) and get the sale deed executed. On 05.12.2017, the plaintiffs issued a legal notice to the defendant asking him to execute the sale deed by receiving the balance sale consideration of Rs.5,00,000/- (Rupees five lakhs only). Since the defendant had evaded to execute the sale by receiving balance sale consideration, the plaintiffs have filed the suit for specific performance.

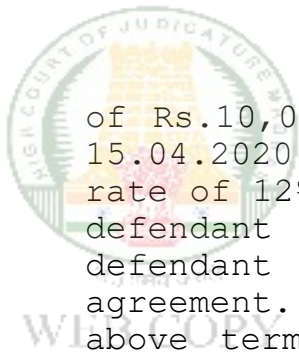
3. The defendant contested the suit by alleging that the defendant borrowed a sum of Rs.3,76,000/- (Rupees three lakhs and seventy six thousand only) on 31.03.2017 from the plaintiffs and the sale agreement was executed only by way of security for the said loan; The defendant did not receive Rs.10,00,000/- (Rupees ten lakhs only) as partial sale consideration as stated by the plaintiffs. Since the plaintiffs have suppressed the material facts, the suit of the plaintiffs should be dismissed.

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

- 1.** Whether the defendant had borrowed money as simple loan from plaintiffs?
- 2.** Whether the plaintiffs are ready and willing to pay the balance consideration of Rs.5,00,000/- to the defendant as per the agreement dated 28.03.2018?
- 3.** Whether the plaintiffs are entitled for specific performance in respect of sale agreement?
- 4.** Whether the plaintiffs are also entitled for permanent injunction?
- 5.** To what other reliefs as the plaintiffs are entitled for?

5. During the course of trial, on the side of the plaintiffs, the second plaintiff, was examined as P.W.1 and four documents were marked as Ex.A.1 to Ex.A.4. On the side of the defendant, the defendant was examined as D.W.1 and one document was marked as Ex.B.1.

6. However, during the pendency of the proceedings, the parties had agreed to settle the dispute between themselves thorough conciliation. P.W.1 and D.W.1 have deposed evidence to this effect. According to the terms of compromise and as it appears from the evidence of P.W.1 that the defendant should refund the sale advance



of Rs.10,00,000/- (Rupees ten lakhs only) within two months before 15.04.2020 and further he agreed to pay interest on the same at the rate of 12% interest from 28.03.2017. It was further agreed by the defendant that in case of non-payment of the said amount, the defendant would execute the sale deed in accordance with the sale agreement. The defendant also deposed evidence by endorsing the above terms. By incorporating the terms of compromise, the trial court decreed the suit as under: `

1. The defendant is directed to pay a sum of Rs.10,00,000/- with 12% interest per annum from the date of agreement Ex.A.2 (28.03.2017) on or before 15.04.2020.

2. On the failure to comply with the clause No.1 within the period stipulated therein the defendant is directed to execute the sale deed as per Ex.A.2 agreement dated 28.03.2017 after receiving the balance consideration of Rs.5,00,000/- within 3 months (lying in the deposit of this court)

3.If the defendant fails to comply with the clause No.1 within the period stipulated plaintiff is entitled to get the sale deed executed as per Ex.A.2 and if the defendant complies clause No.1 the plaintiff is entitled to withdraw the sum of Rs.5,00,000/- lying in the deposit of this court with accrued interest if any.

4. Since the entire dispute between the parties are settled and disposed by way of officer mediation, the entire court fee paid by the plaintiff is hereby directed to be refunded.

5. No costs.

7. Having agreed to the terms of compromise and allowed the suit to be decreed in terms of the said compromise, now the defendant has preferred this appeal by challenging the judgment and decree of the trial court.

8. The learned counsel for the appellant submitted that the defendant agreed to the terms without knowing that it is impossible to perform and hence it is void; In fact, the plaintiff has prayed the relief of refund of the advance money in alternate to his prayer for specific performance; But in the decree specific performance has been granted in alternate to the refund of the advance amount; granting an alternate relief to an alternate relief is not legal; since the defendant was made as a party, to an agreement which was impossible to perform, the defendant has the right to challenge the same, even though it is a compromise decree. In view of the impossible and illegal nature of the decree of the trial court, it has to be set aside.



9. The learned counsel for the respondent/plaintiff submitted that the terms of compromise as it appears from the decree would show that the terms are very much executable; there is no illegality attached to the above said terms; since the matter has been settled in conciliation between the parties and the decree has been passed in terms of compromise, the decree becomes final and the defendant has no right to file an appeal.

10. Considering the rival submissions of the parties, it appears to this Court that the following points for consideration are relevant to decide this Appeal Suit:

i) Whether the decree passed on compromise on conciliation between the parties by the trial court has any terms, which is illegal or impossible?

ii) Whether the appellant has got the right to appeal the decree passed on the basis of the compromise?

11. It is seen from the judgment of the learned trial Judge that during the course of the proceedings, the appellant/defendant had admitted the execution of the sale agreement; after conciliation the parties themselves have arrived at a consensus by stating that the defendant should refund the advance amount of Rs.10,00,000/- (Rupees ten lakhs only) within two months before 15.04.2020 along with interest at the rate of 12% from 28.03.2017; if the defendant fails to refund the same as stated above, he should receive the balance sale consideration and execute the sale deed in favour of the plaintiff.

12. As agreed, the defendant did not refund the sale consideration within two months from 15.04.2020. Since the defendant had failed to refund the advance amount of Rs.10,00,000/- (Rupees ten lakhs only), execution proceedings have been initiated. Thereafter the plaintiffs had deposited the balance sale consideration as per the terms of compromise decree. As per Section 89 C.P.C , the disputes can be resolved through Alternate Dispute Resolution methods. If the dispute is settled through ADR methods, the decree shall become final and it is not appealable. Since the impugned decree has been passed based on the conciliation held between the parties and the parties have also agreed to the terms, the appellant/defendant can not come and say that the terms are illegal and they are not executable. As I find no misunderstanding or mistake of fact while arriving at the terms and there is no illegality found in the decree for compromise, no appeal can be filed against the same.

<https://hccservices.courts.mysir.net/> This Appeal Suit is dismissed and the judgment of the



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learned Principal District and Sessions Judge (FAC), Theni. dated 12.03.2020, made in O.S.No.09 of 2018 is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

CM

To

1.The Principal District Judge and Sessions Judge (FAC),
Theni.

2.The Section Office,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-9291[F] dated
01/03/2022)

A.S (MD) .No.215 of 2018
and C.M.P (MD) No.390 of 2018
28.02.2022

SVS (CO)
KB (23.03.2022) 5P 5C