



A.S.(MD)No.20 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.10.2022

PRONOUNCED ON:15.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.20 of 2014

and

M.P.(MD) No.1 of 2014

A.Philomi Grasal

: Appellant / Defendant

Vs.

K.M.Udayappan

: Respondent / Plaintiff

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree, dated 18.09.2013, made in O.S.No.106 of 2011, on the file of II Additional District Judge, Trichirappalli.

For Appellant : Mr.S.Anand Chandrasekar
for Mr.G.Mohan Kumar

For Respondent :Mr.K.S.Vamsidhar



A.S.(MD)No.20 of 2014

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JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S.No.106 of 2011, dated 18.09.2013, on the file of II Additional District Court of Tiruchirappalli.

2. The gist of the plaint is as follows:

(a) The defendant is the owner of the suit property, which is a house property. The defendant had agreed to sell the suit property and the plaintiff had agreed to purchase the suit property for Rs.15,00,000/-. Both of them entered into a registered sale agreement dated 03.05.2010. The plaintiff has paid Rs.7,00,000/- as advance. The plaintiff has agreed to pay the balance sale price of Rs.8,00,000/- within a year from the date of agreement. The defendant, at the time of sale agreement, delivered the originals of title deeds relating to the suit property to the plaintiff.

(b) The plaintiff has always been ready willing to pay the balance sale price and to get the sale deed executed. Since the defendant has been delaying and dodging, the plaintiff was forced to issue a legal notice



A.S.(MD)No.20 of 2014

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dated 07.10.2010 to the defendant calling upon him to receive the balance amount and to execute a sale deed in his favour. The notice sent through registered post with acknowledgment due was returned un-served with an endorsement “not found” and the notice sent through courier service was served. Despite the receipt of the legal notice, the defendant has neither complied with the notice demand, nor sent any reply. Hence, the plaintiff is constrained to file the above suit, claiming the relief of specific performance of the agreement or in alternative to refund the advance amount with interest.

3. The defence pleaded by the defendant is as follows:

The defendant approached the plaintiff for financial help for her daughter's marriage and the plaintiff had agreed to give loan on mortgaging the suit property. The defendant, being an illiterate lady, had trusted the plaintiff and obtained a hand loan of Rs.5,00,000/- for which, she was taken to the Registrar's office by the plaintiff in his vehicle and obtained her left thumb impression in some documents. The defendant does not know what was written in it and the plaintiff did not read out the contents to her. When the defendant got a copy of the document through Court, she was shocked and fell ill. The defendant is ready to settle the



A.S.(MD)No.20 of 2014

actual loan amount of Rs.5,00,000/- with nominal interest to be imposed by the trial Court. The actual value of the mortgaged property comes around Rs.60,00,000/- and the plaintiff has been trying to grab the property by cheating. Hence, the suit is liable to be dismissed.

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

(1) Whether the plaintiff is entitled to the decree of specific performance?

(2) Whether the sale agreement was intended only as a loan document through scribed and registered as sale agreement?

(3) To what relief?

5. During trial, the plaintiff has examined himself as P.W.1 and exhibited 15 documents as Exs.A.1 to A.15. The defendant has examined herself as D.W.1 and her daughter Tmt.Philomi Selvamani as D.W.2 and exhibited three documents as Exs.B.1 to B.3.

6. The trial Judge, upon consideration of the oral and documentary evidence and on hearing the arguments of both sides, has passed the



A.S.(MD)No.20 of 2014

WEB COPY

impugned judgment dated 18.09.2013, granting the relief of specific performance as prayed for, giving two months' time for the plaintiff to deposit the balance sale price and two months' for the defendant to execute the sale deed and get it registered, from the date of deposit. Aggrieved by the Judgment and Decree of the trial Court, the defendant has preferred the present Appeal Suit.

7. In the Appeal Suit, the appellant/defendant has raised the following grounds:

(a) The Judgment and Decree of the trial Court are erroneous, contrary to the law and facts and probabilities of the case;

(b) The trial Court failed to see that the defendant is an illiterate widow and the suit sale agreement has been created fraudulently by the plaintiff under the guise of creating a mortgage deed;

(c) The trial Court has also failed to see that the defendant was not aware of the contents of the agreement and she had signed the said document under the impression that she has executed a mortgage deed in favour of the plaintiff;

(d) The trial Court failed to see that as per the recitals in the suit sale agreement, no original document was handed over to the plaintiff at



A.S.(MD)No.20 of 2014

the time of sale agreement, but the plaintiff has produced the documents pertaining to the property as if they were handed over at the time of suit sale agreement;

(e) The trial Court failed to see that neither the defendant nor her daughter was permitted to read the contents of the document;

(f) The trial Court erred in holding that since the suit sale agreement is registered, the burden would be upon the defendant to prove the invalidity of the agreement and also erred in wrongly casting the burden upon the defendant;

(g) The trial Court erred in not properly appreciating the evidence of the plaintiff which would categorically establish that the transaction is only a loan transaction and the document executed by the defendant is only a mortgage deed and not a sale agreement;

(h) The trial Court failed to see that the value of the property was much more higher than Rs.15,00,000/-;

(i) The trial Court failed to see that since the plaintiff has prayed for alternative remedy of recovery of money, the same would establish that the transaction is a loan transaction and also failed to see that fixing of one year period for the execution of the sale deed and issuance of notice after eight months from the date of sale agreement would establish



A.S.(MD)No.20 of 2014

that the transaction is only a loan transaction; and hence, the Appeal Suit is to be allowed by setting aside the Decree and Judgment passed by III Additional District Judge, Trichirappalli.

8. The points that arose for consideration are;

(1) Whether the trial Court erred in deciding that Ex.A.1 sale agreement is proved, despite showing that there existed loan transaction between the parties and the plaintiff has produced the documents pertaining to the property, but the same does not find place in the sale agreement?;

(2) Whether the trial Court erred in deciding that the sale agreement is proved, despite showing that the defendant was not aware of the contents of the sale agreement and she had signed in the said document under the impression that she has executed a mortgaged deed in favour of the plaintiff?;

(3) Whether the appellant/defendant has proved that Ex.A.1 – sale agreement was intended only as a loan document?;

(4) Whether the respondent/plaintiff has proved his continuous readiness and willingness to perform his part of contract?;

(5) Whether the Appeal is to be allowed?;



A.S.(MD)No.20 of 2014

WEB COPY

(6) Whether the respondent/plaintiff is entitled to get the relief of specific performance as claimed by him?; and

(7) To what relief, the parties are entitled?

9. For the sake of convenience and brevity, the parties will be referred as per their status and ranking in the trial Court.

Points 1 to 7:

10. The plaintiff has laid the above suit claiming the relief of specific performance of the agreement dated 03.05.2010 alleged to have been executed by the defendant in favour of the plaintiff. Admittedly, the suit property, which is a house property, is owned by the defendant. The case of the plaintiff is that the defendant has agreed to sell the property to the plaintiff for Rs.15,00,000/-, that both the plaintiff and the defendant have agreed for payment of Rs.7,00,000/- as advance and to give the remaining sale price of Rs.8,00,000/- within one year period, that they have entered into a sale agreement dated 03.05.2010 under Ex.A.1 incorporating the said terms, that the plaintiff has always been ready and willing to pay the balance sale price and to get the sale deed executed, that though the plaintiff had demanded the defendant to receive the



A.S.(MD)No.20 of 2014

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balance sale price and to execute the sale deed, the defendant has been postponing the same on some pretext or the other, that the plaintiff has then sent a legal notice dated 07.01.2010 under Ex.A.2 demanding the defendant to receive the balance sale price and execute the sale deed, but the defendant having received the notice sent through courier, has neither sent any reply nor came forward to perform their part of contract and that therefore, the plaintiff with no other option, has filed the above suit.

11. The defence of the defendant is that she has never agreed to sell the suit property to the plaintiff, that the defendant had taken a loan of Rs.5,00,000/- from the plaintiff and at that time, the plaintiff had taken the defendant to the Registrar's office and obtained her left thumb impression in some documents and that she does not know what was written in the said documents and the plaintiff did not read out the same to her.

12. The defendant has entered into the witness box and reiterated the contentions raised in the written statement. In the written statement, the defendant has alleged that she had taken a loan of Rs.5,00,000/- from the plaintiff, but before the trial Court, she would say that she had



A.S.(MD)No.20 of 2014

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demanded the loan of Rs.6,00,000/- and the plaintiff had informed her that he would write the loan amount as Rs.7,00,000/-. In the written statement, she has alleged that the value of the mortgaged property is around Rs.60,00,000/-, but in the evidence, she would say that the value is Rupees One Crore. In the written statement as well as in the evidence, the specific contention of the defendant is that she had only taken a loan by mortgaging the suit property and executed a document therefor and not as sale agreement.

13. It is pertinent to note that the defendant, after examining herself, she has chosen to examine her daughter as D.W.2 and she has filed a lengthy chief examination affidavit running upto five pages, wherein D.W.2 had taken several new versions and pleas, which were not at all taken by her mother. In the chief affidavit, D.W.2 would say that they had demanded Rs.4,00,000/- urgently to clear the debts borrowed for the marriage of her sister's daughter A.J.Vincy, that their tenant Parvathy had introduced the plaintiff, who is her relative and that after seeing the original documents and by observing that the value would be above Rs.65,00,000/-, agreed to give a loan of Rs.4,00,000/-, that on 03.05.2010, the plaintiff had brought a draft loan document and the



A.S.(MD)No.20 of 2014

WEB COPY

defendant, after perusing the same, had returned the same to the plaintiff, that the plaintiff had taken Rs.10,000/- from the defendant for document and registration expenses at about 02.00p.m., on that day, that subsequently, he came at about 05.00p.m., and hurriedly taken them to Registrar office and without giving any opportunity to go through the document, had taken the left thumb impression of the defendant, that the plaintiff had handed over Rs.3,60,000/- by retaining Rsr.40,000/- towards interest and commission payable to the said Parvathy and that the complaint to the Police Officials were of no avail.

14. It is pertinent to note that any amount of pleadings without evidence and any amount of evidence without pleadings are of no use. In the present case, as already pointed out, the new pleas and the defence taken by D.W.2 in her chief examination affidavit were neither pleaded in the written statement nor spoken by D.W.1. According to D.W2, though they have demanded a loan amount of Rs.4,00,000/-, the plaintiff has paid Rs.3,60,000/-. As already pointed out, the defendant in the written statement has alleged that she had taken a loan of Rs.5,00,000/-, but in her evidence has stated that she had demanded a loan of Rs.6,00,000/-.



A.S.(MD)No.20 of 2014

WEB COPY

15. It is pertinent to note that the defendant has not specifically disputed her left thumb impression found in Ex.A.1 – sale agreement. It is also not in dispute that the defendant's daughter D.W.2 and the defendant's husband had subscribed their signatures as witnesses to the said agreement. During cross-examination, D.W.2 would say that they had shown some other document and hence she had not perused Ex.A.1. Though D.W.2 in her evidence would say that they are going to examine the said Parvathy as witness, subsequently, they have not chosen to examine her.

16. As already pointed out, D.W.2 in her chief examination affidavit would raise serious allegations against the plaintiff, that he had taken them at 05.00p.m., and that the registration was completed between 05.00 to 05.30 hours. It is evident from Ex.A.1 that the document was produced and registered between 04.00p.m., and 05.00p.m., on 03.05.2010. As rightly contended by the learned Counsel for the plaintiff, the contention of D.W.2 that they were taken to the Registrar office hurriedly by 05.00p.m., on that day, is proved to be false.



A.S.(MD)No.20 of 2014

WEB COPY

17. At this juncture, it is necessary to refer the following decisions relied on by the learned Counsel for the defendant;

(i) ***K.Varadhan Vs. Pattammal (died) and four others [1992-2-LW-209]***

“ Contract Act, Sections 15 to 18 and Evidence Act, Sections 101 and 102 – Non est factum – Suit by a woman alleging that she was illiterate and that the defendant has played fraud upon her and exercised undue influence, misrepresentation and coercion.

Onus upon the defendant to show that there has been no fraud, undue influence or coercion, not on the plaintiff to prove the misrepresentation or fraud.”

(ii) ***Girish Kumar H.Jain Vs. Rani Mary [2010(5) CTC 40]***

“43.In Ex.A.2-Sale Agreement dated 10.7.1995, two witnesses 1.V.Murugan and 2.Ambalal are mentioned and as required under [Section 68](#) of the Indian Evidence Act atleast one attesting witness and to have been examined to prove the execution of the document by the Respondent/Defendant. Unfortunately, the Appellant/Plaintiff has not examined any one of the two witnesses mentioned in Ex.A. 2-Agreement of Sale dated 10.7.1995 and no convincing and acceptable explanation has been projected on the side



WEB COPY



A.S.(MD)No.20 of 2014

of the Appellant/Plaintiff in regard to the non-examination. Therefore, it is candidly clear that Ex.A.2-Sale Agreement dated 10.7.1995 has not been proved on the side of the Appellant/Plaintiff in the manner known to law. Also when it is the specific stand of the Respondent/Defendant that in her evidence as D.W.1 that she does not know to write and read then when the contents of Exs.A.2 and A.3 are in English language then in these documents there is no averment or mentioning that the contents of these documents in English have been read over to her in Tamil etc. Especially when the Respondent/Defendant (D.W.1) is an illiterate woman and has affixed her thumb impression only in the documents filed before the Trial Court then a heavy burden is caused on the Appellant/Plaintiff to prove that the Respondent/Defendant had affixed a thumb impression after knowing the contents of the document and the consequences arising thereto.

44.One cannot brush aside an important fact that the Appellant/Plaintiff (P.W.1) is running a Finance Company and a scrutiny of Ex.A.2-Agreement of Sale dated 10.7.1995 refers to the time limit of the three years for execution and registration of the sale deed etc. The position of the Appellant/Plaintiff as a man of means will also create an adverse circumstance against him to show as to why a three years period has been affixed for the completion of the sale in the considered opinion of this Court.



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A.S.(MD)No.20 of 2014

45. *On a careful consideration of the entire facts and circumstances of the case and the available material oral and documentary evidence on record, suffice it for this Court to point out that the Appellant/Plaintiff, in the present case on hand, has not proved to the satisfaction of this Court that the Respondent/Defendant has executed the Ex.A.2-Sale Agreement dated 10.7.1995 by affixing her thumb impression after knowing full well the contents of the same in Tamil (especially when she does not know to write and read as per her evidence before the Trial Court) and in this regard, the Appellant/Plaintiff has miserably failed and therefore, Ex.A.2-Sale Agreement dated 10.7.1995 is an invalid document in the eye of law and the name of the Respondent/Defendant typed later on in Exs.A.2-Sale Agreement and Ex.A.3-General Power of Attorney dated 10.7.1995 [after erasing the earlier letters typed] create a suspicion/cloud as to the genuineness of the document in the mind of this Court and in this aspect also the Plaintiff has not offered any acceptable and satisfactory explanation. In short, these aspects are certainly an unfavourable circumstances against the Appellant/Plaintiff as opined by this Court. Therefore, the Appellant/Plaintiff is not entitled to the relief of mandatory injunction in directing the Respondent/Defendant to execute a sale deed in respect of the schedule mentioned property etc. and the*



A.S.(MD)No.20 of 2014

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point Nos.2 and 3 are answered against the Appellant/Plaintiff.”

18. The plaintiff in the first decision case and the defendant in the second decision case were illiterates and have affixed their thumb impressions in the documents in question and while the documents are being attacked, the learned Judges of this Court have held that a heavy burden is caused on the other side to prove that the illiterate parties had affixed thumb impression, after knowing the contents of the document and the consequences arising thereto. The above decisions cannot be made applicable to the case on hand, for the simple reason that the defendant was accompanied by her daughter and her husband to the Registrar Office and they had signed as witnesses in the document in question. It is pertinent to note that the defendant's daughter - D.W.2 is a Lecturer in a College and the defendant's husband is a retired Railway Employee.

19. As rightly contended by the learned Counsel for the plaintiff, considering the contradictions between the written statement and the chief examination affidavit of D.W.2, it is very much clear that the



A.S.(MD)No.20 of 2014

defendant has not come with definite and clear defence. The plaintiff as P.W.1 would reiterate the plaint contentions with regard to the execution of Ex.A.1 – sale agreement and other attending factual aspects. Though P.W.1 was cross-examined, his evidence with regard to the execution of Ex.A.1 was not at all shaken and nothing was elicited in their favour. Considering the above, the finding of the learned trial Judge that Ex.A.1 is the sale agreement pertaining to the sale of suit property and it is not a loan transaction, cannot be found fault with.

20. Though the defendant showed the value of the property at Rs.60,00,000/- in the written statement and Rupees One Crore in her evidence, as rightly observed by the trial court, she has not produced any evidence to substantiate the same.

21. As already pointed out, the total sale consideration agreed between the parties is Rs.15,00,000/- and in which, Rs.7,00,000/- has already been received. It is evident from the records that the plaintiff has sent a legal notice dated 07.10.2010 to the defendant demanding her to receive the balance sale price and to get the sale deed executed and despite the receipt of the legal notice, the defendant has neither sent any



A.S.(MD)No.20 of 2014

WEB COPY

reply nor complied with the notice demand. The plaintiff has specifically pleaded that he has been ready and willing to perform his part of the contract and in the evidence before the trial Court, P.W.1 would reiterate the same.

22. As rightly contended by the learned Counsel for the plaintiff, the defendant has nowhere challenged the plaintiff's readiness and willingness to pay the balance sale price and get the sale deed executed. Hence, this Court is in entire agreement with the finding of the trial Court that the plaintiff has proved his continuous readiness and willingness to perform his part of contract. As already pointed out, the period of performance agreed between the parties is one year and admittedly, the plaintiff has sent the legal notice on 07.10.2010, well before the expiry of the period fixed for performance. Hence, this Court concludes that the Appeal Suit is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court decides that the parties are to be directed to bare their own costs and the above points are answered accordingly.



A.S.(MD)No.20 of 2014

WEB COPY

23. In the result, the Appeal Suit is dismissed and the Judgment and Decree dated 18.09.2013, passed by II Additional District Judge, Trichirappalli, in O.S.No.106 of 2011, is confirmed. Consequently, the connected Miscellaneous Petition is dismissed. The parties are directed to bear their own costs.

15 .11.2022

Index : Yes : No

Internet : Yes : No

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To

1.II Additional District Court, Trichirappalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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A.S.(MD)No.20 of 2014

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

A.S.(MD)No.20 of 2014

15.11.2022