



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : **01.03.2022**

DELIVERED ON : **08.03.2022**

CORAM

THE HONOURABLE MS. JUSTICE **R.N.MANJULA**

A.S (MD) .No.161 of 2016

and C.M.P(MD)No.10388 of 2016

1.M.Perumal

2.P.Sumalatha @ Uma Maheswari ... Appellants/Defendants

Vs.

K.Chowdri Kesavan ... Respondent/Plaintiff

Prayer : This Appeal Suit is filed under Section 96 of the Civil Procedure Code against the judgment and decree dated 20.11.2014 made in O.S.No.29 of 2012 on the file of the Additional District cum Sessions Judge, Theni, Campt at Periyakulam.

For Appellants : Mr.V.Janakiramulu

For Respondent : Mr.J.Anandakumar

for Mr.A.K.Manickam

J U D G M E N T

This Appeal Suit has been preferred challenging the judgment and decree of the learned Additional District cum Sessions Judge, Theni, dated 20.11.2014 passed in O.S.No.29 of 2012. The appellants are the defendants.

2. The respondent/plaintiff has filed the suit for specific performance basing upon the sale agreement dated 16.02.2012 entered into between himself and the appellants/defendants in respect of the suit property for a valuable sale consideration of Rs.15,00,000/- (Rupees fifteen lakhs only). Time for performance of contract is agreed at three months; as agreed, the plaintiff was all along ready and willing to perform his part of contract; but, the defendants evaded to execute the sale deed by receiving the balance sale consideration; on 14.05.2012, the plaintiff gave a legal notice to the defendant by calling upon him to go to the Sub Registrar Office on 15.05.2012 and get the sale deed executed after receiving the balance sale consideration; but, the defendants came in person and requested the plaintiff that they would execute the sale agreement after two months and for which, the plaintiff also accepted; as agreed, the defendant did not execute the sale deed and hence the plaintiff has filed the suit for specific performance.



3.The defendants contested the suit by contending that the sale agreement was not executed with an intention to sell the suit property; but it has been executed only as a security for a loan of Rs.4,00,000/- (Rupees four lakhs only) availed by the defendants from the plaintiff; It was assured by the plaintiff that after the loan amount was repaid, he would cancel the agreement; to that effect, an unregistered mortgage deed was also executed on the same day; further, the plaintiff was not ready and willing to perform his part of contract; on 14.05.2012, after receiving the telegraphic notice sent by the plaintiff, the first defendant needed to go out of station; after he returned on 16.05.2012, the defendants went and enquired the plaintiff; the plaintiff told that notice was issued by mistake and it was sufficient that the defendants paid Rs.4,00,000/- (Rupees four lakhs only) loan; he also assured to cancel the sale agreement after the loan amount was repaid to him; only because of that, the defendants did not send any reply notice; the plaintiff was ready and willing to perform his part of contract; due to the above reasons, the suit should be dismissed.

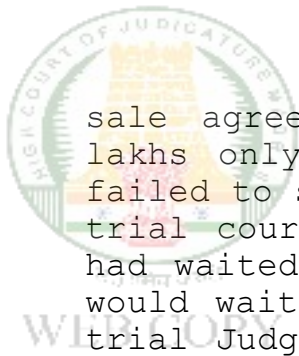
4. On the basis of the above pleadings of the respective parties, the learned trial Judge has framed the following issues:

1. வாதியிடம் பிரதிவாதிகள் 16.02.2012-ம் தேதியில் குடும்பம் மற்றும் வியாபாரத்திற்காக ரூபாய் 4,00,000/- கடனாகப் பெற்று வாதி தொழிலுக்காக மற்றவர்களிடம் கடன் வாங்குவதற்கு வாதியாக பதிவு கிரைய அக்கிரமெண்ட் ஏற்படுத்திக்கொண்டார்கள் என்பது சரியா?
2. வாதி கோரியுள்ளபடி ஏற்றதை ஆற்றுதல் பரிகாரம் பெறத்தக்கவரா?
3. வாதி பெறத்தக்க வேறு பரிகாரங்கள் எவை?

5. During the course of trial, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Ex.A.1 to Ex.A.6 were marked. On the side of the defendants, one witness was examined as D.W.1 and one document was marked as Ex.B.1.

6. At the conclusion of the trial and after considering the materials available on record, the learned trial Judge has decreed the suit as prayed for. Aggrieved over that, the defendants have preferred this Appeal Suit.

7. During the course of arguments, the learned counsel for the appellants/ defendants submitted that the learned trial Judge has not properly appreciated the production of Ex.B.1, Undertaking Letter given by the respondent/plaintiff that he would cancel the



sale agreement if the loan amount of Rs.4,00,000/- (Rupees four lakhs only) was repaid to him by the defendants; the trial court failed to see Ex.B.1 is a vital document to adjudicate the suit; the trial court has omitted to note the conduct of the plaintiff, who had waited until the last day and sent a telegram stating that he would wait at the Registration Office; the judgment of the learned trial Judge is illogical and improper and hence it has to be set aside.

8. The learned counsel for the respondent/plaintiff submitted that the appellants/defendants did not deny the execution of the sale agreement; though the defendants have stated that the sale agreement has been executed only by way of security, the said fact was not proved; the respondent/plaintiff has proved before the court about the execution of the sale agreement and also his readiness and willingness to perform his part of contract; hence it is right for the trial Judge to decree the suit.

9. 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:

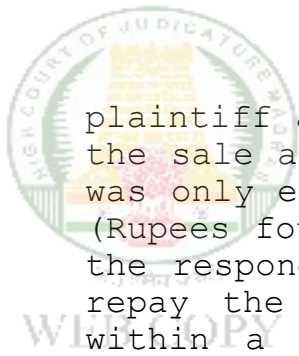
i) Whether the finding of the trial Judge that the sale agreement is true and valid is correct?

ii) Whether it is right for the trial Judge to hold that the plaintiff was ready and willing to perform his part of contract?

iii) Whether the appeal has to be allowed or not?

10. The fact that the defendants had executed the sale agreement dated 16.02.2012 was not denied. The sale agreement was a registered one, but the contention of the defendants is that the sale agreement was not executed with the intention to sell the suit property, but it was executed only by way of security to the loan amount availed by him from the plaintiff. The date of the sale agreement is 16.02.2012 and the total sale consideration was agreed at Rs.15,00,000/- (Rupees fifteen lakhs only) and as per the sale agreement, the respondent/plaintiff has paid a sum of Rs.8,50,000/- (Rupees eight lakhs and fifty thousand only) on the date of the sale agreement itself. Three months time has been agreed between the parties to pay the balance sale consideration and get the sale deed executed.

11. It is the specific contention of the appellants/defendants that on the very same day when the sale agreement was executed, another mortgage deed was executed by the defendants in favour of the



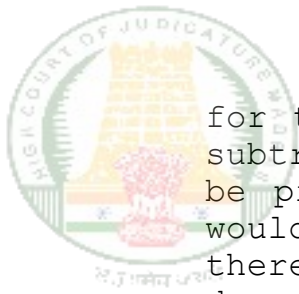
plaintiff and in which, it has been agreed between the parties that the sale agreement dated 16.02.2012 was sham and nominal one and it was only executed by way of security for the loan of Rs.4,00,000/- (Rupees four lakhs only) availed by the appellants/ defendants from the respondent/plaintiff. The appellants/ defendants have agreed to repay the loan amount of Rs.4,00,000/- (Rupees four lakhs only) within a period of one month and the respondent/plaintiff also agreed to cancel the sale agreement dated 16.02.2012 after the loan amount was paid to him. It is difficult to believe that after having executed a registered sale agreement on the same day, the parties had executed an unregistered mortgage deed. Though it is alleged by the appellants/defendants that the sale agreement was executed as a sham and nominal document, in Ex.A.1-sale agreement no recital about any pending loan is found.

12. The respondent/plaintiff has stoutly denied the genuineness of Ex.B.1 document. In fact, he denied his very signature found in Ex.B.1. Even if Ex.B.1 document is considered as a mortgage deed, it is not admissible in evidence as per Section 17 of the Registration Act.

13. It is claimed by the respondent/plaintiff that he did not affix his signature in Ex.B.1. The appellants/defendants have filed a petition to send the signature in Ex.B.1 along with the admitted signature of the plaintiff to the handwriting expert in order to get an opinion from the expert. Since the said petition was dismissed by the trial court, the defendants have challenged the same before this Court by way of filing a revision petition and the same was also dismissed. When a contract is reduced into writing and if its execution is also admitted, the terms of contract are deemed to be proved by the very production of the document.

14. As per sec.92 of the Act, when the terms of a contract was proved by producing the document, that would exclude the oral evidence. But any fact that would invalidate the document or prove any other extraneous circumstances as mentioned in the provisos to sec.91, to that extent oral evidence is permissible. However, the burden of disproving the contents of the document would be the responsibility of the person who pleads the contrary. For the purpose of convenience the import of sec.92 is extracted as under:

92. Exclusion of evidence of oral agreement. -- 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: Proviso (1). -- Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 1 [want or failure] of consideration, or mistake in fact or law. Proviso (2). -- The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document. Proviso (3). --The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved. Proviso (4). --The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents. Proviso (5). -- Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract. Proviso (6). -- Any fact may be proved which shows in what manner the language of a document is related to existing facts.

15. Since the appellants/defendants did not deny their signature on Ex.A.1 and admitted its execution, as parties to the said agreement, they are bound to its terms. As per the agreement, the appellants/defendants have received an earnest money of Rs.8,50,000/- (Rupees eight lakhs and fifty thousand only) on the date of executing the sale agreement itself. The learned trial Judge has properly appreciated the evidence on record and recorded the finding that Ex.A.1 sale agreement is an acceptable one.

16. Further contention of the appellants/defendants is that the respondent/ plaintiff was not at all ready to perform his part of contract. It is the specific case of the plaintiff that they were repeatedly demanding to receive the balance sale consideration and get the sale deed executed. The respondent/ plaintiff sent a telegram on 14.05.2012 by calling upon the defendants to come to the Registration Office on 15.05.2012 to get the balance sale consideration and to execute the sale deed. But the



appellants/defendants did not choose to send any reply notice to Ex.A.2. The appellants/defendants did not go to the Registration Office in order to receive the balance sale consideration from the respondent/plaintiff and get the sale deed executed. With an after thought, the appellants/ defendants had chosen to send a notice on 06.02.2013 when the suit was pending.

17. During the examination of the plaintiff, he has stated that as a proof for his presence at the Registration Office on 15.05.2012, he had attested a document registered on the said day. However the said document is not produced to show the same. So it is submitted by the learned counsel for the appellants/defendants that the respondent/plaintiff has not proved that he was present at the Registration Office on 15.05.2012. Not every person like the plaintiff, who might present at the Registration Office should stand as a witness for any document in order to prove his/her presence and thus prove his readiness and willingness. It can be proved through the conduct of the plaintiff himself. The telegram dated 14.05.2012 which called upon the defendants to perform his part of his contract was issued within three months time. Immediately thereafter, the suit was also filed.

18. Three months short time fixed for performing the contract would also show that the sale agreement is realistic. Only after the suit was filed, the appellants/ defendants had chosen to send a legal notice to the plaintiff i.e on 15.02.2013. In the context of the facts proved before the court and also considering the conduct of the parties, it is correct for the trial Judge to arrive at a conclusion that the plaintiff has also proved his readiness and willingness as pleaded by him.

19. The learned counsel for the appellants/defendants has cited the decision of this Court made in **M.Jayaprakash Narayan Vs. Santhammal and 3 others** reported **2018 (1) CTC 701** in support of his contention that only by establishing the signature on the sale agreement the contents can not be deemed to have been proved.

20. The findings in respect of the genuineness of the sale agreement would depend on the proof of different circumstances of each case. As stated already, if a written agreement is produced before the court, as per Section 91 of Indian Evidence Act, the very production of the document would prove its contents. Since the appellants/defendants asserted that it was executed for some other purpose other than what is mentioned therein, the burden would shift on the defendants to prove the same. The appellants/defendants did not prove any contrary intention for executing Ex.A.1 sale agreement. Hence, the above citation can only be seen in its own



context and the facts of that case.

21. Since the evidence on record prove the genuineness of Ex.A.1 sale agreement and its intention, it is right for the trial Judge to record a finding in favour of the plaintiff. **Thus point No.1 is answered.**

22. As elaborated above, the respondent/plaintiff has proved his readiness and willingness by sending a notice within a period of three months and filed a suit before the expiry of three months. The financial capability of the respondent/plaintiff was not questioned by the appellants/defendants and hence his readiness need not be doubted. Since the respondent/plaintiff initiated legal proceedings also in time, it is right for the trial Judge to record a finding in favour of the plaintiff in respect of his readiness and willingness as well. **Thus, point No.2 is answered.**

23. Since the respondent/plaintiff has proved all essential elements for getting the decree for specific performance, the trial Judge has rightly decreed the suit. Hence, in my opinion, the judgment and decree of the trial court does not suffer from any factual or legal infirmities.

In the result, this Appeal Suit is dismissed and the judgment of the learned Additional District-cum-Sessions Judge, Theni, Camp at Periyakulam. 20.11.2014 made in O.S.No. 29 of 2012 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

CM

To

1.The Additional District cum Sessions Judge,
Theni, Camp at Periyakulam.

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

<https://hcservices.ecourts.gov.in/hcservices/>



+1 CC to M/s.V.JANAKIRAMULU, Advocate (SR-11286[F] dated 10/03/2022)

+1 CC to M/s.A.K.MANICKAM, Advocate (SR-10893[F] dated 09/03/2022)

WEB COPY

A.S(MD) .No.161 of 2016
and C.M.P (MD) No.10388 of 2016
08.03.2022

SS (CO)
KB (22.04.2022) 8P 6C