



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.02.2022

DELIVERED ON : 03.03.2022

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

A.S(MD) .No.185 of 2018

and C.M.P(MD)No.11127 of 2018

S.Govindarajan ... Appellant/Defendant

Vs.

P.Natarajan ... Respondent/Plaintiff

Prayer : This Appeal Suit is filed under Section 96 of the Civil Procedure Code r/w Order 41 Rules 1 and 2 of C.P.C, against the judgment and decree passed in O.S.No.80 of 2014 on the file of the Principal District Court, Dindigul, dated 22.08.2017

For Appellant : Mr.N.Sathish Babu

For Respondent : Mr.S.Elangovan

J U D G M E N T

This Appeal Suit has been preferred challenging the judgment and decree of the learned Principal District Judge, Dindigul, dated 22.08.2017 in O.S.No.18 of 2014. The appellant is the defendant.

2. The plaintiff has filed the suit for specific performance based upon a registered sale agreement dated 18.09.2012 executed between the plaintiff and the defendant for a sale consideration of Rs.12,00,000/- (Rupees twelve lakhs only) in respect of the suit property. It is alleged that a sum of Rs.10,00,000/- (Rupees ten lakhs only) was paid as an advance amount on the date of the sale agreement itself and two years time period was agreed for paying the balance sale consideration of Rs.2,00,000/- (Rupees two lakhs only) and get the sale deed registered. The plaintiff was all along ready and willing to perform his part of contract by paying the balance amount of Rs.2,00,000/- (Rupees two lakhs only); on 13.07.2014, he issued a legal notice calling upon the defendant to receive the balance sale consideration and execute the sale deed, since the defendant refused to execute the sale deed in accordance with the terms of the sale agreement he has filed this suit for specific performance.



3. The defendant contested the suit by alleging that the sale agreement was not executed with an intention to convey the suit property. Despite a sum of Rs.10,00,000/- (Rupees ten lakhs only) was paid as an advance on the date of the sale agreement, the plaintiff demanded the defendant to return the said amount subsequently by stating that he was not interested in purchasing the suit property. However, the plaintiff agreed to consider the said amount as loan and demanded the defendant to return the same with interest. Even after the defendant paid back the amount, the plaintiff refused to cancel the sale agreement and filed the suit by suppressing the real facts.

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

1. Whether the sale agreement dated 18.09.2012 alleged to have been entered into between the plaintiff and the defendant is true, valid and legal?
2. Whether the defendant had executed the suit sale agreement dated 18.09.2012 as security for the loan transaction?
3. Whether the plaintiff has been ready and willing to pay the balance sale price and get the sale deed executed and registered?
4. Whether the plaintiff is entitled to the relief of specific performance?
5. To what other relief the plaintiff is entitled?

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 defendant, three witnesses were examined as D.W.1 and D.W.3 and four documents were marked as Ex.B.1 and Ex.B.4.

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 defendant has preferred this Appeal Suit.

7. During the course of arguments, the learned counsel for the appellant submitted that the learned trial Judge has not properly appreciated the evidence on record and disbelieved the contentions of the defendant; no sale consideration was received by the defendant and hence, it is wrong on the part of the court to come to the conclusion that a sum of Rs.10,00,000/- (Rupees ten lakhs only) was received by the



appellant/ defendant on the date of sale agreement itself and hence, the appeal should be allowed.

8. The learned counsel for the respondent/plaintiff submitted that the appellant/defendant has admitted the execution of Ex.A.1 sale agreement and also passing of sale consideration in his written statement itself; hence he is estopped from saying that he did not receive a sum of Rs.10,00,000/- (Rupees ten lakhs only) on the date of the sale agreement; since the sale agreement is a registered one and it is produced before the court, the contents of the document should be deemed to have been proved; since the appellant/defendant did not prove the contrary, 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 sale agreement dated 18.09.2012 is true and valid?

ii) Whether the judgement and decree of the trial court is factually and legally correct?

10. On a perusal of the pleadings of the respective parties and especially in the written statement itself, it is seen that the appellant/defendant has admitted the execution of the sale deed dated 18.09.2012. Further he has also admitted that a sum of Rs.10,00,000/- (Rupees ten lakhs only) was paid on the date of the sale agreement itself. The registered sale deed has been produced as Ex.A.1.

11. When the terms of contract has been reduced into writing and the same can be proved by producing the original document itself. In the case in hand, the respondent/plaintiff has produced Ex.A.1 sale agreement in accordance with sec.91 of the Evidence Act. As per sec.92 of the Act, if the terms of such contract was proved by production of the very document, oral evidence about the terms of contract should be excluded. However, any fact that would invalidate the document or prove any other extraneous circumstances as mentioned in the provisos to sec.92, 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

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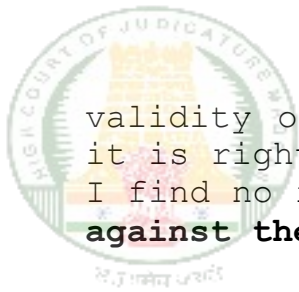


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terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, 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.

12. Despite it is submitted by the appellant/defendant that the sum of Rs.10,00,000/- which was given on the date of sale agreement was subsequently treated as a loan, since the plaintiff was not interested in purchasing the suit property, the same was not proved. No new agreement has been executed between the parties by superseding the Ex.A1 agreement. Even the defendant's witness D.W.2 has asserted the terms of contract as found in Ex.A.1. Though it is claimed by the appellant/defendant that D.W.2 is the son of the plaintiff and hence, he had deposed the evidence in his favour, it is seen from the evidence on record that D.W.2 was not treated hostile. In fact, it is the appellant/defendant, who called D.W.2, to depose evidence. Since the plaintiff has successfully proved the

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validity of Ex.A1 and its terms and his readiness and willingness, it is right for the trial court to decree the suit as prayed for and I find no reason for interference. **Thus, points 1 and 2 are answered against the appellant.**

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In the result, this Appeal Suit is dismissed and the judgment of the learned Principal District Court, Dindigul, dated 22.08.2017, made in O.S.No.80 of 2014 is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

CM

To

1.The Principal District Judge, Dindigul.

2.The Section Office,

VR Section,

Madurai Bench of Madras High Court,

Madurai.

+1 CC to M/s.S.ELANGO VAN, Advocate (SR-9827[F] dated 03/03/2022)

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03.03.2022

SP(CO)

KB(23.03.2022) 5P 5C