



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : **21.03.2022**

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

A.S (MD) .No.214 of 2018

and C.M.P(MD)No.12418 of 2018

Ammapilli Ammal ... Appellant/Defendant
Vs.

S.Pathumuthu ... Respondent/Plaintiff

Prayer : This Appeal Suit is filed under Section 96 of the Civil Procedure Code against the judgment and decree dated 17.09.2018 passed in O.S.No.50 of 2011 on the file of the Principal District Judge, Madurai.

For Appellant : Mr.T.K.Gopalan

For Respondent : Mr.G.Prabhu Rajadurai

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, Madurai dated 17.09.2018 made in O.S.No.50 of 2011.

2. The appellant is the defendant in the suit. The respondent/plaintiff has filed the suit for specific performance on the basis of a sale agreement dated 22.03.2010. According to the plaintiff, on 22.03.2010, the defendant has agreed to sell the suit property to the plaintiff for a sale consideration of Rs.18,00,000/- (Rupees eighteen lakhs only); on the date of sale agreement itself a sum of Rs.3,00,000/- (Rupees three lakhs only) has been paid as advance; the time for performance of contract was six months; subsequent to the sale agreement, the plaintiff has made several payments as under:

Date of payment	Amount paid
24.03.2010	Rs.5 lakhs
03.04.2010	Rs.5 lakhs
24.05.2010	Rs. 5 lakhs

Despite receiving the entire sale consideration, the defendant has not come forward to execute the sale deed; the defendant requested the plaintiff to wait for some time by stating that she would shift shortly to a new house, which was being constructed by her; the defendant was protracting to execute the sale deed; after sending a



pre-litigation notice on 08.04.2011 and got it returned as 'left', the plaintiff has filed the suit for specific performance.

3. The defendant has contested the suit by stating that the sale agreement was not executed by her and she was misguided by her own brother and took her to the plaintiff by stating that the plaintiff would give her the required loan amount; though the brother assured to get Rs.5,00,000/- (Rupees five lakhs only) as loan, on 22.03.2010, she was given with only a sum of Rs.3,00,000/- (Rupees three lakhs only) as loan; having believed that she was made to sign on the mortgage deed, she affixed her signature; but she came to know later that fraud was committed on her by her own brother and the impugned sale agreement has been executed .

4. In the written statement, it is stated that the suit property does not belong to the defendant she has purchased only five cents and it is false to state that the property described under Ex.A.1 sale agreement was agreed to be sold by her in favour of the plaintiff; since the plaintiff has not come with clean hands, the suit has to be dismissed.

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

i) Whether the suit sale agreement is executed for the purpose of sale or is the one which is executed for the purpose of loan transaction?

ii) Whether the plaintiff is ready and willing to perform her part of contract?

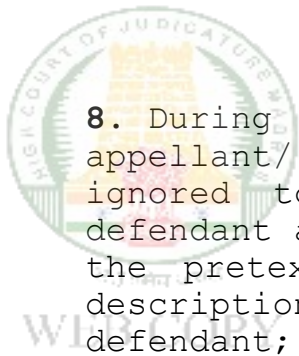
iii) Whether there is dispute as to the identity of the property?

iv) Whether the plaintiff is entitled to the relief of specific performance?

v) To what relief, the plaintiff is entitled?

6. During the course of trial, on the side of the plaintiff, four witnesses were examined as P.W.1 and P.W.4 and twenty six documents were marked as Ex.A.1 to Ex.A.26. On the side of the defendant, the defendant alone was examined as D.W.1 and no documents were marked.

7. At the conclusion of the trial and after considering the materials available on record, the learned trial Judge decreed the suit by granting the relief of specific performance. Aggrieved over that, the defendant has preferred this Appeal Suit.



8. During the course of arguments, the learned counsel for the appellant/ defendant submitted that the learned trial Judge had ignored to take into consideration of the illiteracy of the defendant and her age and that she was cheated by her own brother on the pretext of obtaining loan for her from the plaintiff; the description of property does not tally with the title deed of the defendant; even the execution of the sale agreement is true because of the wrong description of the property no executable decree can be passed; it is the plaintiff, who had actually approached the court with unclean hands; even if the court considers that he is entitled to a decree, that could only be for refund of money and not for a decree for specific performance; the market value of the property was many times increased than what was actually agreed by virtue of Ex.A.1 sale agreement; the above fact was omitted to be considered by the learned trial Judge and hence, the appeal should be allowed.

9. By insisting the above arguments, the learned counsel for the appellant/defendant has placed reliance on the following citations:

???In **Kashiram Vs. Mithulal** reported in **AIR 2013 Madhya Pradesh page 119**

???In **P.Sankar Vs. Sundaramoorthy** reported in **2020 (1) MLJ 651**

???In **Vallithai and others Vs. ARulraj** reported in **2007 (5) MLJ 222**

???The judgment of this Court passed in **S.ANo.1598 of 2010**

???In **Rajeswari Vs.T.Kannan** reported in **(2020) 2 MLJ 339**

10. The learned counsel for the respondent/plaintiff submitted that the sale agreement is very much true and the defendant herself has not denied her signature; the fact that the sale agreement was executed as security for the loan availed by her from the plaintiff is false and the same was not proved; the evidence of D.W.1 would show that she had suppressed the material facts and told falsehood; in fact, with the partial sale consideration she got from the plaintiff, she had discharged the loan pending with Madura Hindu Permanent Fund Limited; she has utilized the sale amount also for purchasing a house on her own on 15.07.2010; just because the sale agreement was true and the defendant has received the entire sale consideration, she has handed over the title deeds to the plaintiff; but later, by some afterthought and by colluding with her brother, she refused to execute the sale deed; though the defendant has stated in her evidence that her brother had colluded with the plaintiff and got Ex.A.1 without her consent, the fact remains that her brother stood as a witness for Ex.A.25 sale deed, through which, she had purchased a house property subsequent to the sale agreement; the learned trial Judge has properly appreciated the evidence on record and has chosen to pass a decree in favour of the plaintiff; there is no dispute as to the identity of the property, which was



agreed to be sold; the defendant was aware of the property owned by her through Ex.A.9, which is a subject matter of the sale agreement and hence, there is no problem in executing the decree for specific performance and hence, the appeal should be dismissed.

11. Considering the rival submissions made by the learned counsels, I feel that the following points for consideration are relevant to decide this Appeal Suit:

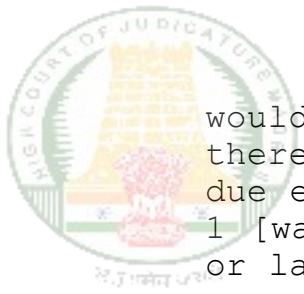
i) Whether the defendant has proved that Ex.A.1 sale agreement was a fraudulent one?

ii) Whether the judgment and decree passed by the learned trial Judge is fair and proper?

iii) Whether the decree for specific performance passed by the learned trial Judge is executable?

12. The fact that the plaintiff and the defendant are known to each other is not denied. Even the appellant/defendant did not deny her signature in Ex.A.1 sale agreement and her only contention is that on the pretext of obtaining loan for her, her brother took her to the respondent/plaintiff and managed to get the sale agreement from her. She has further stated that she was made to believe that she has signed only in mortgage deed and the plaintiff in collusion with her brother, had obtained Ex.A.1 sale agreement. Ex.A.1 sale agreement is a registered sale agreement. The defendant did not deny the execution, but, she denied only her intention to execute Ex.A.1. As per Section 91 of the Indian Evidence Act, when the terms of contract are reduced into writing, the proof of the contract cannot be anything else other than the production of the very agreement. In compliance with Section 91 of the Indian Evidence Act, the respondent/plaintiff has produced Ex.A.1 sale agreement. As per Section 92 of the Indian Evidence Act, when the written contract is produced before the court, that itself would serve as evidence to prove the contract and no oral evidence is permissible. Under certain exceptional circumstances as seen in proviso to Section 92 of the Evidence Act would permit, oral evidence is permissible. For the purpose of convenience the import of Sec.92 is extracted as under:

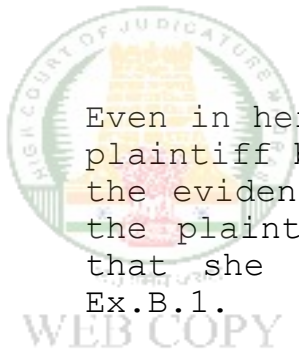
92. Exclusion of evidence of oral agreement. -- When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted,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

13. The appellant/defendant has placed her case under the first proviso to Section 92 of the Indian Evidence Act by claiming that Ex.A.1 sale agreement was a fraudulent one since execution is not denied but fraud is pleaded. It is needless to state that burden is on the appellant/ defendant to prove that the sale agreement was a fraudulent one. The fact that the defendant has received money in three occasions as stated supra is not denied. But she has stated that she was made to believe that she signed in a mortgage deed. Excepting the defendant, no other witness was examined on her side and hence, the court has to look into the evidence of D.W.1 and the cross examination of P.W.1 in order to appreciate whether any fraud has been committed in getting Ex.A.1 sale agreement executed.

14. The learned counsel for the respondent/plaintiff has drawn the attention of the court about the various suppression of facts made by the defendant in her evidence. The defendant was examined as D.W.1 and has stated in her evidence that on the date of sale agreement, she was given with Rs.3,00,000/- (Rupees three lakhs only) by the plaintiff, which she believed as a loan. However, she has stated that she has not paid any interest to the loan amount.



Even in her evidence, she has stated that her brother led her to the plaintiff by stating that he would obtain loan on some interest. But the evidence of P.W.1 would show that she has not paid interest to the plaintiff until the suit was filed. The plaintiff has proved that she has paid the entire sale consideration as agreed vide Ex.B.1.

15. It is the evidence of D.W.1 that she had taken that she was not in taking terms with, since he had played fraud on her by making her to execute Ex.A.1 sale agreement. Her specific evidence is that she stopped talking to him from March 2010. But it was proved by the respondent/ plaintiff that her own brother stood as a witness in Ex.A.25 sale deed.

16. It is the contention of the respondent that she had utilized the sale consideration received from the plaintiff for the purpose of discharging her loan and also to purchase property vide Ex.A.25 sale deed. It is seen in Ex.A.25 sale deed that the appellant/defendant has purchased the property on 15.07.2010 and in which, her brother had affixed his signature as a witness. D.W.1 has admitted that she has utilized Rs.3,00,000/- (Rupees three lakhs only) advance amount to discharge her loan lying with Madura Hindu Permanent Fund Limited. The plaintiff has produced the registered receipt for discharging the above loan through Ex.A.17. Though it is claimed by the appellant/defendant that she had executed Ex.A.1 by believing that it was only a mortgage deed, the fact remains that all the title deeds including the receipt for discharging the loan was handed over to the plaintiff and those documents were in the custody of the plaintiff and they were produced before the court. It was submitted by the learned counsel for the respondent/plaintiff that the appellant has got some other properties bequeathed to her by a Will and only to have convenient enjoyment of some other properties allotted to her, she had purchased the house described under Ex.A.25 sale deed by utilizing the sale consideration paid by her.

17. The learned counsel for the appellant/ defendant submitted that the defendant is an aged illiterate woman and her evidence denying her entitlement to some of the properties cannot be taken serious that she was telling falsehood. Though being an illiterate aged woman, the appellant/defendant may not be knowing about the technicalities of the properties etc., she would have been aware about her relationship with her own brother. She has consciously stated in her evidence that she severed her relationship with her brother because he had played fraud on her by being instrumental in getting Ex.A.1 sale agreement executed by her. But the fact remains that her brother had affixed his signature in Ex.A.25 sale deed and acted as a witness. These facts cannot be denied to be within the knowledge of the appellant/defendant and this would go to show that

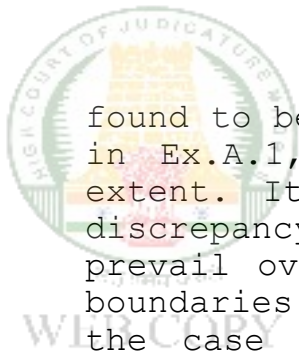


the appellant/defendant had chosen to tell lies before the court just in order to avoid from suffering a decree for specific performance. The cumulative reading of evidence on record would only show that Ex.A.1 sale agreement was executed by the appellant/defendant by knowing pretty well that it is a sale agreement only. The appellant/ defendant has not paid any interest for the earnest money by knowing well it was not a loan, but, only an advance on the basis of the sale agreement. Since the appellant/defendant has not proved anything contrary to the intention that has been said in Ex.A.1 sale agreement and no fraud was also proved by her, it is right for the learned trial Judge to hold that the sale agreement is true and valid one.

18. In view of the above appreciation, the judgment of this Court reported in **2020 (2) MLJ 339 (in the case of Rajeswari Vs.T.Kannan)** is not applicable to the facts of this case. Another citation referred by the appellant/defendant in **Vallithai and others Vs. Arulraj** reported in **2007 (5) MLJ 222** is also not applicable, as the plaintiff in that case has not proved any dirt or falsehood on the part of the defendant. But in the present case, the plaintiff has proved that the sale agreement is executed for the purpose of sale. **Thus, point No.1 is answered against the appellant/defendant.**

19. The next submission made by the learned counsel for the appellant/ defendant is that even in the context of accepting the sale agreement Ex.A.1 is true and valid one, because of the wrong description of properties made in Ex.A.1, sale agreement no executable decree can be passed by the court for the relief of specific performance. Even if it is passed so, it cannot be an executable decree. By insisting the above submission, the learned counsel for the appellant/defendant relied on the judgment in the case **Kasiram Vs. Mithulal** reported in **AIR2013 MP**

20. With regard to the facts involved in the case stated supra, the vendee in her cross examination gave description, which is not suiting to the description made in the sale agreement. In the case in hand, the appellant/defendant is conscious of the property, which she wanted to sell in favour of the plaintiff and only because of that she had handed over the original title deed of the property. Ex.A.9 is a title deed of the defendant and that has been produced from the custody of the plaintiff during the course of the trial. Ex.A.17 is a registered discharge receipt for the loan obtained by her for constructing a house in the property purchased by her vide Ex.A.9. There is no quarrel on these facts. It is submitted by the respondent/plaintiff that there is no dispute as to the property which was agreed to be sold in his favour even though there is a slight difference in describing the property details Ex.A.1 sale agreement. It is submitted that if the property on the ground is



found to be less than what was shown in the particulars of property in Ex.A.1, he is ready to get the sale deed executed to that extent. It is settled preposition of law that whenever there is discrepancy in the extent of the property, the boundaries will prevail over. In the case in hand, there is no dispute about the boundaries and that would indicate the property. From the facts of the case involved in the judgment of the case in **P.Sankar Vs. Sundaramoorthy** reported in **2020 (1) MLJ 651**, it is seen that the defendant was not the owner of the property for which an agreement was executed. The above case has to be seen in the context of its own facts and the same is not applicable to the facts of this case.

21. In another judgment held by this Court in S.A.No.1598 of 2001, it is seen that an agreement was executed in respect of 'A' schedule property and the suit was filed in respect of 'B'schedule property which was wrong *per se*. So the facts of the above suit is not applicable to the facts of this case. Since the evidence on record would show that there is *consensus-ad-idem* in respect of the property which was agreed to be sold on the basis of the recitals of the boundaries made in Ex.A.1 sale agreement and also in terms of Ex.A.9 sale deed, which has been handed over by the defendant at the time of getting the entire sale consideration. So there is no difficulty in executing the decree passed for specific performance. In case of any difficulty it is upto the parties to seek the help of the commissioner to visit the suit property and file a report about the identity and description of the suit property and accordingly the property can be described in the sale deed.

22. The learned counsel for the appellant/defendant has also submitted that value of the property has become manifold than what was agreed in Ex.A.1 sale agreement. The present value of the property cannot be taken into account for the grant of relief of specific performance. Admittedly, the sale agreement was of the year 2010 and the respondent/plaintiff has also proved that the sale price was not below the guideline value existed at that time. The guideline value of the property as claimed by the defendant during the relevant time is found only as an exaggeration.

23. Even if it is considered that the agreed sale amount was less, that cannot be the only criteria to deny the relief of specific performance. Even though the relief of specific performance is a discretionary relief, the conduct of the party is very much relevant when deciding the entitlement of relief of specific performance. The defendant continued to dodge from executing the sale deed by colluding with her brother and setting up a new case by stating that she had executed a sale agreement by telling that it is only a security for a loan. It has been pointed out already that the defendant utilized the sale consideration to discharge her loan



in respect of the suit property and that she had also purchased a new property by utilizing. Having got the entire sale price and utilised it to its best advantage, a party cannot be allowed to take a different stand and cause irreparable loss to other party by taking advantage of Section 20 of the Specific Relief Act.

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24. Even while evaluating the convenience and the principle of equity, the respondent/plaintiff stands in a better position than the appellant/ defendant and hence, the trial court is right in granting the relief of specific performance. In my considered view, I do not find any factual or legal infirmity in the judgment of the learned trial Judge warranting interference.

In the result, this Appeal Suit is dismissed and the judgment and decree dated 17.09.2018 passed by the Principal District Judge, Madurai, in O.S.No.50 of 2011 is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

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To

The Principal District Judge,
Madurai.

COPY TO:-

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

+1 CC to M/s.T.K.GOPALAN, Advocate (SR-13234[F] dated 21/03/2022)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-13419[F]

dated 22/03/2022)

Judgment in

A.S(MD).No.214 of 2018

and C.M.P(MD)No.12418 of 2018

21.03.2022

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