



A.S. (MD) No. 225 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2022

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

**A.S. (MD) No. 225 of 2019
and
C.M.P. (MD) No. 12126 of 2019**

1. G.Ramasamy

2. R.Ponnuthai (died)

... Appellants / Defendants

Vs.

N.Murugasamy

... Respondent / Plaintiff

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, 1908 against the judgment and decree of the learned Additional District Judge (Fast Tract Court), Palani, dated 13.08.2019 in O.S. No. 81 of 2016.

For Appellants : Mr.D.Venkatesh

For Respondent : Mr.M.Saravanan
for Mr.R.Subramanian



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J U D G M E N T

This Appeal has been preferred challenging the judgment and decree of the learned Additional District Judge (Fast Tract Court), Palani, dated 13.08.2019 made in O.S. No. 81 of 2016.

2. The appellants are the defendants; the respondent / plaintiff filed a suit for specific performance on the basis of the sale agreement, dated 10.03.2015; as per the case of the plaintiff, on 10.03.2015, an agreement was entered into between the plaintiff and the defendants and the suit property belonged to the defendants for a sale consideration of Rs.11,00,000/- (Rupees Eleven Lakhs only); on the same date itself, they entered into a registered sale agreement; the part sale consideration of Rs.10,00,000/- (Rupees Ten Lakhs only) was paid by the plaintiff to the defendants; in order to pay the remaining sum of Rs.1,00,000/- (Rupees One Lakh only), 1 ½ years time limit was fixed; despite the plaintiff was ready and willing to perform his part of contract and get the sale deed executed,



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the defendants did not come forward to perform their part of contract; on 24.06.2016, the plaintiff issued a legal notice calling upon the defendants to receive the balance sale consideration of Rs.1,00,000/- (Rupees One Lakh only) and get the sale deed executed; after receiving the said notice, the defendants sent a reply notice with false and frivolous allegations; thereafter, the plaintiff has filed the suit for the relief of specific performance with an alternate relief of advance amount.

3. The defendants resisted the suit by contesting that the sale agreement was not executed with an intention to sell the suit property, but that has been executed as a security for a loan amount of Rs.10,00,000/- (Rupees Ten Lakhs only) availed by the defendants from the plaintiff; the plaintiff is a Financier and the defendants have availed the loan for the purpose of their business; they have been paying the interest regularly; just in order to grab the property from the defendants, the plaintiff has filed a suit for specific performance.



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

(i) வாதி வழக்குரையில் கோரியவாறு ஏற்றதை ஆற்றுதல் பரிகாரம் பெறுவதற்கு அருகதை உடையவரா?

(ii) வாதி வழக்குரையில் கோரியவாறு நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பெறுவதற்கு அருகதை உடையவரா?

(iii) வாதி வழக்குரையில் கோரிய மாற்று பரிகாரமான ரூ.10,00,0000/- வட்டியுடன் பெறுவதற்கு அருகதை உடையவரா?

(iv) வாதிக்கு கிடைக்கத்தக்க இதர பரிகாரம் யாது?

5. During the course of trial, on the side of the plaintiff, two witnesses were examined as PW1 and PW2 and Exs.A1 to A5 were marked. On the side of the defendants, one witness was examined as DW1 and Exs.B1 to B3 were marked. On conclusion of the trial, the learned Judge, considered the



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evidence available on record and decreed the suit for the relief of specific performance. Aggrieved over that, the defendants have preferred this Appeal Suit.

6. The learned counsel for the appellants argued that the learned trial Judge has overlooked the fact that the agreement was executed only with an intention to offer security for a loan availed by the appellants from the respondent; the fact that the unusual long period of 1 ½ years was agreed to pay a small remainder of Rs.1,00,000/- (Rupees One Lakh only) would show the contrary intention for Ex.A1 – sale agreement; the learned trial Judge has not framed any issues with regard to readiness and willingness to render a finding on that the worth of the property is more than Rs. 30,00,000/- (Rupees Thirty Lakhs only) and no one would agree to sell the same for a very low sum of Rs.11,00,000/- (Rupees Eleven Lakhs only); under such circumstances, the learned trial Judge ought not to have granted the decree for specific performance and it should be reversed.



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7. The learned counsel for the respondent submitted that he did not deny the execution of the agreement and received a sum of Rs.10,00,000/- (Rupees Ten Lakhs only); though it is alleged that the sale agreement was executed only with an intention for security for a loan amount, the said fact was not proved before the Court; the appellants accepted that they have been introduced by their own relative, one Latchumana Samy to the plaintiff; but the said Latchumana Samy who was examined as PW2 did not support the case of the defendants; the sale deed of the defendants was of the year 2015 and in the said sale deed, the value of the property is shown as Rs.2,00,000/- (Rupees Two Lakhs only); the sale agreement was executed in the year 2011; the sale agreement was entered into between them in the year 2015 and the sale consideration was fixed as fairly at Rs.11,00,000/- (Rupees Eleven Lakhs only) and there is no question of fixing the low price for the property; the respondent had issued the legal notice on 24.06.2016 itself and that would show that he was ready to perform his part of contract even before the expiry of agreed time limit and thereafter, he has filed the suit as well; so, the plaintiff has proved the readiness and willingness on his part to



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get the sale deed executed and hence, the learned trial Judge right in decreeing the suit for specific performance.

8. Point for consideration:-

“Whether the judgment and decree of the trial Court in decreeing the suit for the relief of specific performance is fair and proper?”

9. The fact that the appellants and the respondent are known to each other is not disputed. However, the fact that on 10.03.2015, a sale agreement was entered into between the appellants and the respondent in respect of the suit property for a sale consideration of Rs.11,00,000/- (Rupees Eleven Lakhs only) was also not denied. The one and only contention of the appellants is that Ex.A1 – sale agreement contains the nomenclature which was executed by way of security for a loan amount of Rs.10,00,000/- (Rupees Ten Lakhs only) availed by the appellants from the respondent. Though it is claimed by the appellants that a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as seen



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in Ex.A1 was availed by them as loan from the respondent and they were in the habit of paying the interest for the same, no document is produced to substantiate the same. Neither PW2 - Latchumana Samy through whom the appellants got introduced to the respondent had supported the contention of the appellants. But however it is seen that unduly long period of 1 ½ years was agreed between the parties for the payment of an insignificant remainder, i.e., Rs.1,00,000/- (Rupees One Lakh only).

10. From the course of the argument, the learned counsel for the respondent submitted that the agreement was genuine and the long period was agreed because of the obligation cost upon on the appellants to evict the tenants in the suit property; but apparently, the said fact was not mentioned in the sale agreement; it has been already observed that the appellants failed to produce any proof to show that they were in the habit of paying the interest on the alleged loan of Rs.10,00,000/- (Rupees Ten Lakhs only). Had Ex.A1 was a true sale agreement, the plaintiff's witness PW2 - Latchumana Samy would have acted only as a mediator for selling the property. But his evidence



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would show that he had introduced the appellants to the respondent and he had attested the sale agreement. Though it is imperative on the part of the appellants to plea that the sale agreement was executed by way of security to offer positive evidence to prove the same, it is also equally obligatory on the part of the respondent to prove the intention of the sale agreement.

11. The conduct of both the parties appeared to be suspicious with regard to the terms of the agreement. When the respondent / plaintiff could pay major sale consideration of Rs.10,00,000/- (Rupees Ten Lakhs), he had bargained 1 ½ years time to pay the negligible small balance of Rs.1,00,000/- (Rupees One Lakh only) without stating any reason. Even though the respondent / plaintiff had proved that he was ready and willing to pay the remaining sum of Rs.1,00,000/- (Rupees One Lakh only) within a period of 1 ½ years, the fact remains that the intention for getting Ex.A1 – sale agreement shrouds with doubts. Since the conduct of both parties is not clear and the terms of the sale agreement were not explicit as to why an unduly long period was



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fixed, I feel that the respondent / plaintiff is entitled to get the alternate relief of refund of the advance amount. The learned trial Judge, without considering the conduct of the parties and the adverse circumstances surrounding in Ex.A1 – sale agreement, has proceeded to grant the relief of specific performance. In view of the above stated reasons, I feel that the judgment and decree of the trial Court needs modification and it has to be modified for granting alternate relief of refund of advance amount. **Thus, the point is answered.**

In the result, this Appeal Suit is partly allowed and the judgment and decree of the trial Court in O.S. No. 81 of 2016 on the file of the Additional District Court (Fast Track Court), Palani, dated 13.08.2019, is hereby modified to the effect that the suit is decreed in respect of the alternate relief of refund of advance amount of Rs.10,00,000/- (Rupees Ten Lakhs only) along with the interest at the rate of 12% per annum from the date of agreement till the date of filing of the suit and at the rate of 7.5% per annum from the date of suit till the date of decree and at the rate of 6% per annum from the date of



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decree till the date of realization with cost. The plaintiff is also entitled to get the charge on the suit property for the decree amount. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No

Speaking Order : Yes / No

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To

1. The Additional District Court (Fast Track Court),
Palani.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.N.MANJULA, J.

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