



A.S.Nos.116 and 215 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:27.04.2023

Delivered on: 07.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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&

M.P.No.1 of 2013

R.Balamanikandan

.. Appellant in both the cases

Vs.

S.Shanthi

.. Respondent in both the cases

Common Prayer:- Appeal Suits filed under Or.41 R.1 r/w Sec. 96 of Code of Civil Procedure against the judgment and decree dated 30.11.2012 made in O.S.Nos.78 and 539 of 2007 on the file of the I Additional District Judge, Coimbatore.

For Appellant : Mr.S.Parthasarathy, Senior Counsel
for
Mr.S.Anand Venkatesh (in both AS)

For Respondent : Mr.Sathish Parasaran, Senior Counsel
for
Mr.S.V.Pravin Rathinam (in both AS)



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COMMON JUDGMENT

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(Judgment of the Court was made by P.B.BALAJI,J.)

The common factor in both these first appeals is an alleged agreement of sale dated 30.08.2006. It is alleged by the plaintiff in O.S.No.539 of 2007 before the District Judge, Coimbatore that he had entered into an agreement of sale on 30.08.2006 to purchase the suit property viz., measuring an extent of 4 Acres and 50 cents for a total sale consideration of Rs.99,00,000/-.

2. It is the case of the plaintiff in O.S.No.539 of 2007 that he had paid an advance of Rs.25,00,000/- on the date of the agreement of sale and that three months time was fixed for completing the sale transaction. It is his further case that on 19.09.2006 a further sum of Rs.25,00,000/- was paid by her in cash and the same was received by the defendant and that the defendant acknowledged the same, by making an endorsement on the reverse of the first page of the sale agreement and the parties agreed to extend the time by a further period of three months. It is the further case of the plaintiff that on the very next day i.e., 20.09.2006 a further sum of Rs.15,00,000/- was paid by him by way of cheque to the defendant. It is



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also alleged that in October 2006, the plaintiff was put in possession in the suit property. As the defendant did not come forward to honour the agreement of sale, the plaintiff was constrained to issue a lawyer's notice on 09.01.2007.

3. The defendant issued a reply notice on 23.01.2007 denying the very execution of the agreement of sale. It is also stated that the plaintiff was ready and willing to perform his part of the contract and that the defendant with ulterior motives and suppressing material facts filed a suit in O.S.No.78 of 2007 on the file of the I Additional District Judge, Coimbatore for a declaration that the sale agreement dated 30.08.2006 is void, unenforceable, inoperative and invalid and for a consequential permanent injunction to restrain the plaintiff herein from disturbing or interfering with her peaceful possession. In this backdrop, the said O.S.No. 539 of 2007 came to be filed seeking a relief of specific performance of the agreement of sale dated 30.08.2006.

4. Before getting into the defence set up by the defendant, it would be relevant to extract briefly the pleadings in the earlier suit viz., O.S.No.78



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of 2007. In the said suit, the role is reversed. The owner of the property i.e., the alleged vendor filed the said suit alleging that she never entered into any agreement of sale with the defendant and that she never received any amounts as advances as alleged by the defendant and that only a sum of Rs.15,00,000/- was received by her as a loan facility on 20.09.2006. It is the further case of the plaintiff in the said suit that at the time of availing the said loan of Rs.15,00,000/-, the plaintiff and her husband signed in blank papers and bond papers, both on the front and back sides of several papers, separately and also jointly and that these papers and bond papers have been misused to bring about the alleged agreement of sale. It is also contended that the husband of the plaintiff signed only as a guarantor. On receipt of the notice dated 09.01.2007, from the defendant, the plaintiff was shocked to be put on notice about a bilateral agreement of sale as if the plaintiff had agreed to sell her property for a consideration of Rs.99,00,000/- and that advances were also made in pursuance of the said agreement of sale. The plaintiff also contended that there is no question of willingness and readiness coming into play at all since the transaction was nothing but a loan transaction, that too only for a sum of Rs.15,00,000/-. The plaintiff ultimately prayed for a relief of declaration to set at nought



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the alleged agreement of sale about which she was put on notice for the first time only through the lawyer's notice dated 09.01.2007.

5. In answer to the said suit the defendant i.e., the plaintiff in O.S.No.539 of 2007 denied the allegations made in the plaint and stated that the agreement of sale was valid and genuine and that all payments as set out in the lawyer's notice were factual and it was only the plaintiff who has come to Court with a false and reckless case.

6. In answer to the plaint in O.S.No.539 of 2007, the defendant i.e., the owner of the property filed a detailed written statement which was more or less the same version taken by her in the plaint in O.S.No.78 of 2007. In short the agreement of sale was denied, all the payments said to have been made as advances for purchase of property was totally denied and it was stated that only a sum of Rs.15,00,000/- was received by her by way of a loan. The suit for specific performance was therefore sought to be dismissed.

7. The Trial Court tried both the suits in common and evidence was



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recorded in O.S.No.539 of 2007. The plaintiff examined himself as P.W.1 and examined P.Ws.2 to 5 to prove his case. Exs.A1 to 32 were marked on the side of the plaintiff. On the side of the defendant, the defendant examined herself as D.W.1 and her husband was examined as D.W.3. An independent witness was examined as D.W.2. Exs.B1 to B6 were marked on the side of the defendant.

8. The learned Trial Judge framed issues in both the suits and at the time of delivering the judgment the issues were recast and the following issues were framed:

1. Whether the agreement dated 30.08.2006 is genuine?
2. Whether the endorsement dated 19.09.2006 is genuine?
3. Whether the plaintiff has paid a sum of Rs.50 lakhs as indicated in the sale agreement as well as in the endorsement in the agreement?
4. Whether the plaintiff was put in possession of the suit property?
5. Whether the plaintiff is ready and willing to perform his part of the contract?
6. Whether the plaintiff is entitled to specific enforcement of the contract and for permanent injunction?



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7. Whether O.S.78/2007 is property valued?

9. Whether the plaintiff in O.S.78/2007 (defendant in O.S.539/2007) is entitled to have the sale agreement dated 30.08.2006 declared as void etc., and for reliefs of injunctions?

10. The Trial Court found that the agreement was not a agreement of sale and infact went to the extent of holding that the agreement was not a genuine agreement the alleged endorsement made acknowledging the receipt of Rs.25,00,000/- by way of cash on the reverse side of the first page of the alleged agreement of sale was also not genuine and therefore the Trial Court did not choose to dwell into detail with regard to the aspect of readiness and willingness on the part of the plaintiff. The learned Trial Judge also found that the plaintiff was not put in possession of the suit property as alleged by him and ultimately held that the plaintiff was not entitled to the equitable and discretionary relief of specific performance. Simultaneously, the learned District Judge decreed the suit in O.S.No.78 of 2007 and held that alleged agreement of sale was null and void and the plaintiff in the said suit was entitled to the consequential relief of



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permanent injunction.

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11. Aggrieved by the findings of the learned Trial Judge in both the suits, the agreement holder i.e., the plaintiff in O.S.No.539 of 2007 and the defendant in O.S.No.78 of 2007 is before this Court.

12. The main grounds of attack on the common judgment and decree are as follows:

The learned Trial Judge erred in entertaining attending circumstances when direct evidence in the form of Exs.A1 and ExA-1(A) were very much before the Trial Court.

2. The Trial Court failed to see that witnesses were examined to prove due execution of Ex.A1 and also endorsement Ex.A-1(A).

3. When the signatures on the agreement of sale were admittedly to be those of the defendant and her husband, the Trial Court failed to see that the onus was only on them to prove that the transaction was a loan transaction.

4. The Trial Court has failed to appreciate the oral evidence of P.W.2 who was a person well acquainted with the defendant and her husband and



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had no enmity towards him.

5. The Trial Court has failed to also appreciate that the scribe of the alleged agreement of sale was also a person who was well known to the defendant and her husband.

6. The Trial Court failed to see that by her own admissions the defendant had established that there was no necessity for her to borrow money, that too by signing in blank papers.

7. The Trial Court failed to see that the plaintiff had proved his financial capacity and readiness and willingness to conclude the sale transaction.

13. Heard Mr.S.Parthasarathy, learned Senior Counsel for Mr.S.Anand Venkatesh appearing for the the appellant in both Appeals and Mr.Sathish Parasaran, learned Senior Counsel for Mr.S.V.Pravin Rathinam appearing for the respondent in both the cases.

14. This Court has perused the entire oral and documentary evidence available on record, besides also considered the arguments advanced by the learned Senior Counsel on either side.



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15. Having heard the Senior Counsel appearing for the plaintiff and defendant, this Court formulates the following points to be decided in the above appeals:

1. Whether the agreement of sale dated 30.08.2006 is a valid and genuine agreement of sale?

2. Whether the plaintiff was put in possession of the suit property in pursuance of the said agreement of sale?

3. Whether the plaintiff has established his readiness and willingness to perform his obligations under the said agreement of sale ?

3. Whether the plaintiff was entitled to the discretionary relief of specific performance?

4. Whether the plaintiff is entitled to any other relief?

Point 1

16. In so far as the validity and genuineness of the agreement of sale, it is the specific case of the defendant that she never intended to sell the suit property and that she had only signed only blank papers at the time of availing loan of Rs.15,00,000/- which was paid by the plaintiff by way of cheque and that such papers were alone utilized to bring about the agreement of sale dated 30.08.2006. When such a defence is specifically



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set up, the burden is certainly on the plaintiff, as an agreement holder to establish that there was indeed a valid agreement of sale between him and the defendant. This factum would even precede the requirement of the plaintiff to establish that he was always ready and willing to perform his part of the agreement of sale in terms of Sec.16(c) of the Specific Relief Act.

17. It is strenuously contended and argued by the learned Senior Counsel Mr.S.Parthasarathy that the sale agreement itself acknowledges receipt of advance of Rs.25,00,000/-. and the endorsement on the reverse of the agreement of sale acknowledges receipt of a further sum of Rs.25,00,000/-. It is also brought to our notice that defendant has admitted in her notice that she was a woman of substantial means and therefore had absolutely no necessity to borrow any money, that too a very paltry sum of Rs.15,00,000/- from the plaintiff and in such circumstances the version of the defendant ought to be totally disbelieved and the case of the plaintiff has to be accepted in toto. This Court is unable to accept this limb of argument put forth by the learned Senior counsel for the plaintiff. Even successful businessman tend to avail financial assistance for meeting day



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to day business requirements. Loans are also availed of for availing tax benefits. Therefore, merely because the defendant was a successful business woman to say that she would not borrow money at all is an argument which cannot be accepted especially in the absence of any specific evidence let in by the plaintiff to show that under absolutely no circumstances whatsoever, the defendant would have opted to borrow a sum of Rs.15,00,000/-. Admittedly, two payments of Rs.25,00,000/- each were paid by way of cash. Merely because the signatures in the documents were admitted, it does not absolve the plaintiff from establishing the factum of payment of the said sum of Rs.50,00,000/-. More so, in the light of the specific denial of receipt of such amounts by the defendant, the burden is certainly on the plaintiff to establish that payment of Rs.15,00,000/- by way of two instalments of Rs.25,00,000/- each. There is no difficulty with regard to third payment of Rs.50,00,000/- which is by way of cheque. The receipt of said sum of Rs.15,00,000/- is admitted by the defendant, though the transaction according to the defendant is a loan transaction, whereas according to the plaintiff it is an advance for purchase of the suit property. P.W.2, is said to have attested both the agreement of sale as well as the endorsement Ex.A-1(A) and Ex.A1. It has come out in



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evidence that P.W.2 was running a competing business as that of the husband of the defendant. Therefore, his evidence cannot be taken as gospel truth as there is all likelihood that to settle scores with his competitor in business, he could have given evidence against the defendant and in favour of the plaintiff. The other documents which have been filed to prove the payment of Rs.50,00,000/- are Exs.A11 and A12 which are a cash book and ledger respectively. This Court has perused the original cash book as well as ledger. The entries do not appear to have been made in the ordinary course of business. Infact, this Court also finds that even the accounts have not been finalized and totals are noted in pencil. Moreover, the acknowledgement for filing the I.T returns for the assessment year 2007-2008 has been marked as Exs.A25 in order to corroborate entries in Ex.A11 and A12.

18. However, this Court finds, as rightly pointed by the learned Senior Counsel for the respondent that said returns itself came to be filed belatedly in the year 2010. This is much after filing of the suit only. Therefore, absolutely no credence can be given to the said Income Tax returns. Moreover, it can be seen that the plaintiff has indicated in his



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returns to the Income Tax department that his business is “goldsmith” as well as “money lending”. This actually gives rise to the presumption that the case pleaded by the defendant that she borrowed money from the plaintiff can only be true. But for the documents discussed herein above, the plaintiff has not been able to substantiate his case that a sum of Rs.50,00,000/- was paid towards advance sale consideration for purchase of the suit property.

19. No doubt some inconsistencies in the evidence of the defendant were highlighted by the Senior counsel for the plaintiff with regard to D.W.1 not mentioning about her husband signing some of the pages in the agreement of sale. However, this Court finds that none of these affect the Court of the matter in actual controversy.

20. Court also feels that such inconsistencies do not dilute the defence set up by the defendant. The burden is entirely on the plaintiff in a suit for specific performance to firstly establish that there was a valid sale agreement and secondly, the plaintiff was always ready and willing to perform all the essential terms of the said agreement of sale. Out of the



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total sale consideration of Rs.99,00,000/- it is alleged that a substantial sum of Rs.65,00,000/- has been paid as advance. Out of the said Rs.65,00,000/-, a sum of Rs.50,00,000/- is said to have been paid in cash. It is trite position that such huge amounts cannot be paid by way of cash. In any event there is no acceptable evidence adduced on the side of the plaintiff to establish that such huge payments to the tune of Rs.25,00,000/- each, on two occasions were made to the defendant. This Court has also seen the original agreement of sale and the endorsement on the reverse side of the first page. Ex.A1 agreement has been printed and generated from a computer and the plaintiff's signature in each of the pages of Ex.A1 agreement do not seem to align with the serial number appearing against his signature as (2). Moreover, there was no necessity for making payment of Rs.25,00,000/- in cash on 19.09.2006 and make a further payment of Rs.15,00,000/- by way of cheque on the very next day. The conduct of the parties does not appear to be probable or to have taken place in the ordinary and natural course of business in a sale transaction. Even in the endorsement Ex.A-1(A) the last two lines extending the time period for completion of sale transaction for further three months appears to be inserted and there is also irregular spacing between the signatures of the



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parties to the endorsement and those that of the witnesses thereto. All these only lead this Court to the conclusion that the alleged agreement of sale appears to be fabricated and brought about using the available signed papers issued by the defendant and her husband to the plaintiff. The learned Trial Judge has discussed the oral and documentary evidence available on record in great detail and has rightly come to the conclusion that alleged agreement of sale dated 30.08.2006 cannot be termed as a genuine sale transaction. This Court does not find any ground for interfering with such a finding which is based on reasons and also on available oral and documentary evidence. Point 1 is answered accordingly.

Point 2:

21. Plaintiff claims to have been put in possession of the suit property in furtherance of the sale agreement dated 30.08.2006, sometime in October 2006. In this backdrop, the exchange of notices between the parties assumes relevance. In the first notice issued by the plaintiff to the defendant on 09.01.2007, the plaintiff has categorically stated that the defendant is in possession of the suit property. In response to the said notice, by way of a reply notice dated 23.01.2007, the defendant has also



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confirmed that she is in possession of the suit property. To the said reply notice a rejoinder was issued on 17.02.2007 by the plaintiff. The rejoinder notice was issued by the plaintiff wherein also the possession of the defendant was categorically confirmed while denying the allegations that the plaintiff was trying to dispossess the defendant by attempting trespass. Strangely, when the suit came to be filed in O.S.No.539 of 2007, the plaintiff for the first time improves his case by claiming that the defendant put the plaintiff in possession of the suit property since the plaintiff had paid more than 65% of the total sale consideration and that the plaintiff has been in possession of the suit property on and from October 2006. The defendant has categorically denied the said allegation and self serving claim of the plaintiff that the plaintiff was in possession of the suit property besides also seeking a relief of a permanent injunction to restrain the plaintiff in her suit in O.S.No.78 of 2007, from interfering with her peaceful possession and enjoyment. The very plea of the plaintiff that he was put in possession of the suit property in October 2006 falls to the ground wholly on the mere reference to his admitted correspondence with the defendant as discussed above. The learned Trial Judge has rightly found that the plaintiff was never put in possession of the suit property and



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no interference is warranted in this regard. Point 2 is answered accordingly.

Point 3:

23. No doubt this Court has held that the plaintiff has not been able to establish the truth, validity and genuineness of the agreement of sale dated 30.08.2006. In any event being a suit for specific performance, this Court also finds that the plaintiff has miserably failed to establish readiness and willingness on his part. At the outset, this Court finds that as soon as the first notice was issued by the plaintiff on 09.01.2007, the defendant issued a reply denying the very factum of execution of the agreement of sale itself. This was followed up with a suit by the defendant in O.S.No.78 of 2007 which came to be filed on 02.02.2007. Even the time according to the plaintiff which was agreed to between the parties was only three months from 30.08.2006. Despite all these, the plaintiff came to Court with his suit for specific performance only on 30.05.2007. It is settled law that in a suit for specific performance the plaintiff should not only plead but also establish that he was, at all relevant points of time, 'ready and willing' to perform all the essential terms of the agreement of sale. This certainly



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includes proof of payment of the amounts which are either contemplated under the agreement of sale or recorded in the agreement of sale. This Court has already found that the substantial payment of sum of Rs.50,00,000/- under the agreement of sale has been has not been proved by the plaintiff. This also would account to a failure on the part of the plaintiff and would only show absence of readiness and willingness on his part. Even otherwise, from the various dates and circumstances narrated herein above, by no stretch of imagination, it can be said that the plaintiff was always ready and willing to perform his part of the contract. Point 3 is answered accordingly.

Point 4:

24. Though normally this Court would not permit or grant a relief in the absence of a specific prayer in the suit, considering that a sum of Rs.15,00,000/- was admittedly received by the defendant, as loan as per her own version, and the said amount has been deposited to the credit of O.S.No.539 of 2007 in District FDR Transaction No.2732401001431, this Court feels that it would be fair and equitable to hold that the plaintiff would be entitled to refund of the said amount of Rs.15,00,000/- in Court deposit together with all accrued interest if any. It is also seen that the said



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sum of Rs.15,00,000/- has been deposited only on 29.07.2010. Even according to the defendant she borrowed the said money of Rs.15,00,000/- on 20.09.2006. In the interest of justice and in the peculiar circumstances of the case, this Court directs that the defendant shall be liable to pay interest at the rate of 12% per annum on the said sum of Rs.15,00,000/- for the period 20.09.2006 to 29.07.2010 in addition to the liberty being granted to the plaintiff to seek withdrawal of the sum of Rs.15,00,000/- together with accrued interest lying to the credit of O.S.No.539 of 2007 on the file of the I Additional District Judge, Coimbatore.

With the above observations and directions, both the First Appeals stands dismissed. No costs.

(S.S.S.R.J) & (P.B.B.J)
07 .06.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
To

1.The I Additional District Judge,
Coimbatore.

2.The Section Officer
VR Section, High Court, Madras



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S.S.SUNDAR, J.,
and
P.B.BALAJI, J
kpr

Pre-delivery judgment in
A.S.Nos.116 and 215 of 2013

07.06.2023