IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.7 of 2016

Mohammed Ghouse ... Appellant

Vs

1. M.Kaliyamurthy
2. Chandravalli ... Respondents

Prayer:- This Appeal Suit has been filed, under Section 96 of CPC, against the judgement and decree, dated, 24.07.2015, made in OS.No.3 of 2011, by the II Additional District Court, Chidambaram.

For Appellant : Mr.R.Gururaj

For Respondents : Mr.A.Muthukumar

JUDGEMENT

(Judgement of the Court was made by S.S.SUNDAR, J.)

1. This Appeal Suit has been filed, by the Plaintiff in OS.No.3 of 2011, against the judgement and decree, dated, 24.07.2015, made therein, by the II Additional District Court, Chidambaram.
2. The Appellant herein filed the above suit for specific performance of a sale agreement, dated 04.04.2008, in respect of the suit property, to an extent of 40 cents out of 91 cents in S.No.160/2, in Melbhuvanagiri Village, Chidambaram District.

3. The case of the Appellant is that the Defendants have executed the agreement of sale, dated 04.04.2008, in respect of the suit property, for a sale consideration of Rs.25,00,000/- and a sum of Rs.1,00,000/- as advance, was paid by the Plaintiff to the Defendants. It was also stated by the Plaintiff that a further sum of Rs.17,00,000/- was paid as per the directions of the Defendants. It was further stated that time is not the essence of the contract and that the Appellant was always ready and willing to perform his part of the contract. The alternative prayer in the suit is for refund of the advance amount that was paid by the Plaintiff to the Defendants towards sale consideration.

4. The suit was resisted by the Defendants, by filing a written statement. It is the case of the Defendants that the suit sale agreement is not a sale transaction, but it was just executed at the instance of the Plaintiff as a security for the loan, which the Plaintiff promised to advance to the Defendants. It is also the case of the Defendants that they suffered a decree in the hands of one Senthil Finance, who has obtained mortgage in respect of the suit property. It is further stated that the Defendants wanted to save the property for themselves and that therefore, they approached the Plaintiff, who insisted the Defendants to execute the agreement with regard to their properties. It was the further case of the Defendants that an agreement dated 24.01.2008, was executed in favour of the Plaintiff with regard to their several properties, including the suit property and on the same day, the Plaintiff also took a Power of Attorney deed from the

Defendants. It is further stated that the Plaintiff took the signature of the Defendants on 04.04.2008 under the pretext of being a security. The Plaintiff told the Defendant that sale proceeds, which would be realised, under the Power would be adjusted towards the loan amount. It is admitted that the Plaintiff paid a sum of Rs.17,00,000/- to Senthil Finance towards discharge of the loan advanced to the Defendants by the said private Financier. However, it is the specific case of the Defendants that the Plaintiff, on the strength of the Power of Attorney deed, have executed five sale deeds for a total consideration of Rs.11,50,000/- and later received a sum of Rs.7,00,000/- in favour of the Plaintiff's wife, as she was the one who paid by way of a cheque to Senthil Finance. It was the further case of the Defendants that the Plaintiff sold three more plots invoking the Power of Attorney deed and that the actual sale consideration was more than that was stated in the document. It was contended by the Defendants that the amount that was paid by the Plaintiff was already settled and that therefore, the suit for specific performance cannot be sustained.

5. Finding that the suit sale agreement is the agreement in relation to the loan transaction, the Trial Court dismissed the suit for specific performance. With regard to the alternative prayer for recovery of a sum of Rs.18,00,000/- said to have been paid under the agreement, the Trial Court held that the amount of Rs.18,00,000/- was not paid as sale consideration, but it was paid as agreed at the time of execution of the previous agreement and the Power of Attorney deed. Since the Plaintiff himself has admitted during the course of

the evidence that he has sold eight plots on the basis of the Power of Attorney deed and that the amount originally paid by the Plaintiff was not as part of the sale consideration, the suit for alternative prayer for recovery of the money was also rejected. However, the Trial Court decreed the suit for a sum of Rs.1,00,000/- based on the admission of the Defendants. Aggrieved by the judgement and decree of the Trial Court, dated 24.07.2015, the above appeal is filed by the Plaintiff.

6. This Court heard the learned counsel on either side and perused the materials available on record.

7. The learned counsel for the Appellant has raised several grounds. Though the findings of the Trial Court are based on appreciation of the pleadings, documents and the entire evidence, the learned counsel has not referred to any document or evidence in support of his arguments, which are in tune with the grounds of appeal. Except stating that the judgement and decree of the Trial Court are contrary to records, the learned counsel is unable to demonstrate before this Court as to how the findings of the Trial Court are perverse. The argument of the Appellant's counsel is not for specific performance, but for refund of a sum of Rs.18,00,000/-, which was paid as further advance under the suit agreement Ex.A1.

8. Based on the facts admitted, the Trial Court has found that the Plaintiff has not paid a sum of Rs.17,00,000/- as further advance pursuant to the sale agreement. The suit for specific performance is on the basis of an agreement said to have been executed by the Defendants in favour of the Plaintiff on

04.04.2008. The Trial Court has categorically found that the agreement is not a bona fide sale transaction, but it was executed at the instance of the Plaintiff as a security for the loan transaction. That being so, the Plaintiff's alternative prayer for recovery of a sum of Rs.17,00,000/- based on the agreement is not sustainable, when it is proved that the payment that was made by the Plaintiff on behalf of the Defendants was on the basis of different transaction. In the course of evidence, the Plaintiff has admitted the sale of eight plots on the strength of the Power of Attorney deed executed by the Defendants in favour of the Plaintiff. It is admitted that by Ex.B1 sale agreement for a sum of Rs.18 lakhs was executed as a security for loan transaction and the said agreement was cancelled under Ex.B2 dated 04.01.2009. Ex.A1 is prior to Ex.B1 and hence, it is not a bona fide sale agreement. When the Plaintiff admitted appropriation of sale proceeds out of sale deeds as Power of Attorney of the Defendants and obtained multiple sale agreements in respect of same properties, the Trial Court is perfectly right in holding that the payments admitted by the Defendants are not paid towards sale consideration for suit agreement, but as promised by the Plaintiff to discharge the loan. When the Plaintiff admitted receipt of substantial amount by selling plots of the Defendants on the basis of Power of Attorney Agent and it is stated that the Plaintiff having received more money than what was paid by the Plaintiff to discharge the mortgage, the suit for refund of money as if the payments were made under the suit agreement is not maintainable. Having regard to the fact that the Plaintiff has come forward with a new cause of action, which is entirely different from his plea in the plaint, this Court is unable to entertain this appeal. The Trial Court, while categorically dismissing the suit for specific performance, granted a money decree for a sum of Rs.1,00,000/-, creating a charge over the property. The learned counsel for the Respondents submitted that the amount, as per the decree, has already been deposited by the Respondents. It is seen that a sum of Rs.2,26,707/- is deposited by the Defendants towards the satisfaction of the decree. Since the question as to whether the amount allegedly deposited by the Defendants would satisfy the decree, is not an issue before this Court, this Court is not inclined to express any opinion on the satisfaction of the decree as such. However, having regard to the findings of the Trial Court and the admitted facts, this Court is of the view that this Court finds no other valid grounds to sustain this appeal.

9. In the result, this appeal is dismissed. No costs.

(S.S.S.R.J.) & (A.A.N..J.)
19.01.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

S.S.SUNDAR, J.
and
A.A.NAKKIRAN, J.

Srcm

To

1. II Additional District Court, Chidambaram
2. The Record Keeper, VR Section, Madras High Court

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