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AS No.222 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-02-2023

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**

**AS No.222 of 2019**

**And**

**CMP No.8472 of 2019**

1.Vadivel

2.Tamilselvi

3.Gokulraj

4.Pratap

5.Minor Kamaraj

Represented by next friend father  
first respondent Mr.Vadivel

.. Appellants

vs.

A.K.S.Maniyan

.. Respondent



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**PRAYER** : This Appeal Suit is filed under Section 96 read with Order XLI, Rule 1 of the Civil Procedure Code against the judgment and decree dated 11.09.2018 passed by the learned II Additional District Judge at Salem in OS No.190 of 2009.

For Appellants : Mr.S.Kalyanaraman

For Respondent : No Appearance

### **J U D G M E N T**

The present Appeal Suit has been instituted against the judgment and decree dated 11.09.2018 passed by the learned II Additional District Judge at Salem in OS No.190 of 2009.

2. The appellants are the defendants and the respondent is the plaintiff in the suit.

3. The respondent/plaintiff instituted the suit for specific performance.



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4. The suit property originally belonged to the first defendant's mother Tmt.Lakshmiammal. She had settled the same in favour of the first defendant by virtue of a registered Gift Settlement Deed dated 02.03.2000. The first defendant had executed the Gift Settlement Deed in favour of the second defendant in respect of 22 cents with specific boundaries by virtue of a registered Settlement Deed dated 16.03.2000.

5. The defendants 1 and 2 intended to alienate the suit property and accordingly, they have agreed to sell the entire 50 cents of the suit property in favour of the plaintiff and executed a registered Sale Agreement on 22.09.2008 for a sum of Rs.5 lakhs and received Rs.1 lakh as advance on the same day and the time of completion of the sale was fixed as one year.

6. The defendants agreed to sell the suit property since they had mortgaged their property with Salem Junction Cooperative Building Society under a Mortgage Deed on 03.05.2000 and with Nedunchalai Nagar



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Cooperative Housing Society under a registered Mortgage Deed dated 04.09.2000.

7. The plaintiff was always ready and willing to perform his part of contract after paying the sale consideration. The plaintiff also demanded the defendants to perform their part of contract several times. But they simply dodged. Thus the plaintiff instituted suit for specific performance.

8. The defendants denied the plaint averments as false. The defendants 1 and 2 intended to alienate the suit schedule property at any point of time. It is true that the defendants borrowed a sum of Rs.4,70,000/- for constructing a terraced house in the suit property. They have spent more than Rs.7 lakhs for the said construction. In order to discharge the said loan amount, the defendants borrowed a sum of Rs.1 lakh from the plaintiff and executed a nominal Sale Agreement.



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9. The property is worth more than Rs.55 lakhs. As the suit Sale Agreement is only a nominal Sale Agreement and it was executed only as security for the loan and therefore, the question of readiness and willingness on the part of the plaintiff did not arise all. The defendants have not issued any legal notice on 27.12.2008 as alleged in the plaint. In fact the defendants have no intention to sell the suit property because they constructed a terraced house by spending more than Rs.7 lakhs.

10. The defendants borrowed a sum of Rs.2,50,000/- on 03.05.2000 from Salem Junction Cooperative Building Society and they further borrowed a sum of Rs.2,20,000/- from Nedunchalai Nagar Cooperative House Building Society on 04.09.2000. They have also borrowed loan from third parties. The extent of property covered under the Sale Agreement was 50 cents. The value of the land is Rs.25 lakhs and the value of the terraced house is Rs.10 lakhs. On the date of the Sale Agreement, the loan amount due was Rs.7,50,000/-.



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11. The defendants state that in April 2009, they had discharged the loan dues and the original Sale Agreement as promised by the plaintiff was not returned back to them. The plaintiff had intentionally retained the Sale Agreement with a view to grab some more money from the defendants and thereafter instituted the suit for specific performance.

12. Based on the pleadings, the Trial Court framed the following issues:-

- (1) Whether the Sale Agreement was executed only for the loan purpose as stated by the defendants ?
- (2) Whether the plaintiff is entitled to get the relief of specific performance as prayed for ?
- (3) Whether the plaintiff is entitled to get the relief of permanent injunction as prayed for ?
- (4) To what other relief ?



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13. On the side of the plaintiff, PWs-1 to 4 were examined and Exs.A-1 to A-10 were marked. On the side of the defendants DWs-1 to 3 were examined and Exs.B-1 to B-4 were marked.

14. Regarding Issue No.1, whether the Sale Agreement was executed only for the loan purpose as stated by the defendants ?, the Trial Court found that there is no dispute with regard to the title to the suit property. The defendants admitted the execution and registration of Sale Agreement under Ex.A-1 document. Their only contention was that the suit Sale Agreement was executed towards security for the loan amount borrowed by the defendants from the plaintiff. However, the defendants have not filed any document to show that they repaid the amount so borrowed from the plaintiff with interest.

15. The first defendant had not entered into the witness box and let in evidence about the alleged borrowal of loan and repayment of the same. The defendants, however, admitted the signature in the suit Sale



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Agreement and once the signature is admitted, then the suit Sale Agreement is proved as valid. The Trial Court made a finding that DW-1 also did not speak anything about the borrowal of loan amount.

16. The Trial Court found that in the written statement, the defendants have stated that the suit Sale Agreement was executed by them only towards security for the amount of loan borrowed from the plaintiff. However, they failed to establish the same. Thus Issue No.1 was answered in favour of the plaintiff.

17. Regarding Issue No.2, the Trial Court found that the defendants failed to prove their defence that the Sale Agreement was executed only towards security for the amount of loan amount borrowed from the plaintiff. That apart, the plaintiff has also deposited the balance sale consideration to the Trial Court. Thus the Trial Court held that the plaintiff has proved his claim and therefore, he is entitled for the relief of specific performance as prayed for. Consequently, Issue No.3 for grant of



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permanent injunction was also answered in favour of the plaintiff.

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18. The Trial Court passed decree in favour of the plaintiff for granting the relief of specific performance and the defendants are directed to execute the Sale Deed in favour of the plaintiff in respect of the suit schedule property as per the terms and conditions of the Sale Agreement dated 22.09.2008 within two months. Permanent injunction not to alienate the suit schedule property against the defendants was also granted.

19. The findings of the Trial Court reveal that the defendants had not established that the suit Sale Agreement was executed in lieu of the loan amount and as a security. However, the Trial Court ought to have considered the fact that the subject property, which is the subject matter of the suit Sale Agreement and its extent is about 50 cents, situate at the outskirts of Salem City.



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20. No prudent man will agree to sell the extent of 50 cents nearby Salem City for a total sale consideration of Rs.5 lakhs. The suit Sale Agreement was entered into between the plaintiff and the defendants on 22.09.2008 and during the relevant point of time, the property value in and around Salem City was sky-rocketing. Therefore, proving the suit Sale Agreement is one aspect. The probability of agreeing for such sale by the defendants is another aspect, which is to be considered by the Trial Court. Thus the Trial Court failed to look into those aspects. The Realtors in the present day circumstances are attempting to exploit people in many ways.

21. The Real Estate Crimes are increasing day by day on account of high value of immovable properties across the country. Thus the value of the property, the manner in which the terms and conditions are agreed between the parties are also play a pivotal role in forming an opinion whether the parties have intended to sell the property or not.



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22. It is not as if the relief can be granted in the event of proving the suit Sale Agreement by the plaintiff. If at all such suit Sale Agreement is executed, the likelihood of injustice is to be caused to the defendants, is also to be taken into consideration based on the mitigating factors, including the value of the land, sale consideration etc.

23. In the present case, as rightly found by the Trial Court, the plaintiff had proved the suit Sale Agreement and the signature in the suit Sale Agreement was also admitted by the defendants. Thus the Trial Court has not committed any error in its finding that the suit Sale Agreement was proved by the plaintiff. The advance amount of Rs.1 lakh was also received by the defendant. However, it is insufficient to form an opinion that the plaintiff is entitled for the relief of specific performance.

24. The relief of specific performance is the discretionary relief to be granted by the Trial Court by considering the mitigating factors and the likelihood of the prejudices to be caused to either of the parties. Therefore,



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by exercising the power of discretion in the matter of grant of relief of specific performance, the Court has to ascertain whether the terms and conditions agreed are justifiable or otherwise.

25. In the present case, the land to an extent of 50 cents nearby Salem City was agreed to be sold for a sum of Rs.5 lakhs and Rs.1 lakh was paid by way of advance. No prudent man will agree to sell his property for such a meagre sum and therefore, this Court is of the considered opinion that the Trial Court has exercised its discretion for grant of relief of specific performance without taking note of these factors, which all are wider.

26. In the present case, perusal of the findings would reveal that the Sale Agreement was established. However, the sale consideration raises a serious doubt in the minds of the Court that no person will agree to sell his property to an extent of 50 cents nearby Salem City for a sum of Rs.5 lakhs and the said suspicion goes in favour of the appellants and consequently they are entitled to succeed.



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27. Accordingly, the judgment and decree dated 11.09.2018 passed by the learned II Additional District Judge at Salem in OS No.190 of 2009 is set aside. Consequently, AS No.222 of 2019 is allowed. However, there shall be no order as to costs. The connected miscellaneous petition is closed.

**16-02-2023**

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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To

The II Additional District Judge,  
Salem.



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**S.M.SUBRAMANIAM, J.**

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