



AS No.74 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-02-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AS No.74 of 2022

And

CMP No.2867 of 2022

S.Damodaran

.. Appellant

vs.

N.S.Vinod Kumar

.. Respondent

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 23.12.2021 passed by the learned II Additional District and Sessions Judge, Thiruvallur @ Poonamallee in OS No.15 of 2017.

For Appellant : Ms.V.Jayalakshmi

For Respondent : Mr.B.Gandhi

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JUDGMENT

The present Appeal Suit has been instituted against the judgment and decree dated 23.12.2021 passed by the learned II Additional District and Sessions Judge, Thiruvallur @ Poonamallee in OS No.15 of 2017.

2. The appellant is the defendant and the respondent is the plaintiff in the suit.

3. The respondent/plaintiff instituted a suit for specific performance directing the defendant to receive the balance sale consideration of Rs.1 lakh and execute the Sale Deed for a sum of Rs.11 lakhs in respect of the suit schedule property in favour of the plaintiff as per the Sale Agreement dated 21.01.2016.



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4. The plaintiff has stated that the defendant is the absolute owner of the suit property. The defendant entered into Sale Agreement on 21.01.2016 with the plaintiff to sell the suit property for a total sale consideration of Rs.11 lakhs and received the advance amount of Rs.10 lakhs by cash in the presence of witnesses signed at the time of execution of the Sale Agreement. The Sale Agreement has been duly registered as document No.628 of 2016 at the Office of the Sub Registrar, Avadi, Chennai-54.

5. It was agreed to complete the sale, within a period of one year from the date of agreement. The plaintiff was ready and willing to perform his part of contract by paying the balance sale consideration of Rs.1 lakh. The plaintiff requested the defendant to fulfill his part of contract and the defendant was evading, which resulted in issuance of notice and institution of the suit for specific performance.



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6. The defendant filed written statement denying the plaintiff averments. The defendant had stated that the plaintiff made an attempt to grab the valuable property belongs to the defendant. The defendant is the absolute owner of the suit schedule property. An Agreement for Sale dated 21.01.2016 had been entered into with the plaintiff also was denied.

7. It is contended by the defendant that the plaintiff is the leading Financier in Avadi area and for urgent financial commitments, the defendant borrowed a sum of Rs.11 lakhs in the month of October 2015 from the plaintiff. The defendant is a Rice Merchant. The plaintiff was receiving 36% interest, which was calculated per month Rs.30,000/- for the amount of Rs.10 lakhs. The defendant had paid interest for about 11 months and thereafter, he paid the borrowed amount of Rs.10 lakhs by way of Demand Draft dated 14.11.2016 drawn on City Union Bank Limited in favour of the plaintiff. Therefore, the suit is not maintainable and the same is to be rejected.



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8. The defendant further stated that he had paid the interest without any default and approached the plaintiff in the month of January 2016. However, the plaintiff without the knowledge and consent of the defendant, registered the Sale Agreement dated 21.01.2016. The defendant further stated that the plaintiff had advanced Rs.10 lakhs to the defendant and during the relevant point of time, he was financially in a bad condition and thus he could not dictate terms. The defendant had stated that the suit Sale Agreement was executed under the conditions of fraud, coercion and undue influence.

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

(1) Whether the Agreement for Sale dated 21.01.2016 is true and valid ?

(2) Whether the plaintiff is entitled for relief of specific performance as against the defendant ?



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(3) Whether the plaintiff is entitled for permanent injunction as against the change of ownership ?

(4) Whether the plaintiff is entitled for the relief of alternative relief of Rs.10,00,000/- with future interest at 12% is liable to be pay to the plaintiff by the defendant ?

(5) To what other relief ?

10. On the side the plaintiff, the plaintiff himself was examined as PW-1 witness and Exs.A-1 to A-17 were marked as documents. On the side of the defendant, the defendant himself was examined as DW-1 witness and one Tmt.Meenakshi was examined as DW-2 as witness and Ex.B-1 document was marked.

11. The original registered Sale Agreement dated 21.01.2016 between the plaintiff and the respondent was marked as Ex.A-1. Original registered Sale Deed in favour of the defendant dated 19.12.2007 is marked as Ex.A-2 document. Original parental document purchased by



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Tmt.Kalyanaiammal sold by Mr.N.Varadarajan dated 09.06.1981 is marked as Ex.A-3 document. Copy of notice by the plaintiff to the District Registrar dated 15.11.2016 is marked as Ex.A-4 document. Copy of notice by the plaintiff to the defendant is marked as Ex.A-5 document. Returned RPAD cover is marked as Ex.A-6 document. Registered Post with Acknowledgement Due to Sub Registrar by the plaintiff dated 15.12.2016 is marked as Ex.A-7 document. Photo copy of Voter ID of the defendant is marked as Ex.A-8 document. Property Tax Receipts (2 in Nos.) in the name of the defendant is marked as Ex.A-9 document. Xerox copy of Pan Card of the defendant is marked as Ex.A-10 document. Xerox copy of Ration Card of the defendant is marked as Ex.A-11 document. Original XIX Anumpantham issued by the Tahsildar Sriperumbudur dated 09.02.1962 in favour of Tmt.Rajeswari wife of Mr.Deenadayalu is marked as Ex.A-12 document. Reply notice by the defendant to the plaintiff through Advocate is marked as Ex.A-13 document. Plaintiff's reply notice to defendant's Advocate dated 27.12.2016 is marked as Ex.A-14 document. Returned cover addressed to the defendant is marked as Ex.A-15 document. Original



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Promissory Note executed by the defendant in favour of the plaintiff dated 09.10.2016 is marked as Ex.A-16 document. Xerox copy of Encumbrance Certificate dated 01.07.2014 is marked as Ex.A-17 document. Xerox copy of Demand Draft in the name of the defendant for Rs.10 lakhs drawn on City Union Bank Ltd., Chennai dated 14.11.2016 is marked as Ex.B-1 document.

12. Regarding Issue No.1, the Trial Court made a finding that the defendant had not denied the fact that he received the sale consideration to the tune of Rs.10 lakhs at the time of execution of the Sale Agreement, which was duly registered. When the defendant has stated so, the Trial Court has not considered the other statement of the defendant that he had no knowledge and the suit Sale Agreement was registered under the coercion and fraud.

13. The defendant approached the plaintiff and borrowed a sum of Rs.10 lakhs in the month of October 2015 at the rate of 36% interest per month. There is no proper evidence adduced to disbelieve the suit Sale



Agreement under Ex.A-1 document and the defendant could not establish any fraud, coercion or undue influence. While registering the suit Sale Agreement, fraud, coercion or undue influence is to be proved by person, who raises such grounds.

14. In the absence of any acceptable evidence, such pleadings cannot be considered by the Trial Court based on the mere statement in the pleadings. No such attempt was taken by the defendant to establish coercion or fraud. Thus the Trial Court arrived a conclusion that Ex.A-1 document dated 21.01.2016 is true and valid.

15. Regarding Issue Nos.2 and 3, the Trial Court considered the Demand Draft drawn on City Union Bank Limited for Rs.10 lakhs by the defendant to the plaintiff in Ex.B-1 document.

16. The evidence of PW-1 shows that on the strength of Ex.B-1



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document, the defendant demanded the original documents and the same was refused by the plaintiff. On 15.11.2016 i.e., after Ex.B-1 document, the plaintiff issued notice to the defendant, requesting him to execute the Sale Deed after receiving the sale consideration. PW-1 admits that the suit properties would fetch the value of nearly Rs.75 lakhs. Thus the Trial Court had drew an inference that the suit property is the valuable immovable property and the amount agreed between the parties in the suit Sale Agreement is not matching with the sale consideration agreed between the parties in Ex.A-1 document.

17. The place where the suit property situate is the fast developing area and near to Chennai Corporation area. Thus the properties would have been escalated and the sale consideration for the suit property is far below the market value, which was prevailing during the relevant point of time.

18. Considering the above factum, the Trial Court found that



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the evidence of DW-1 corroborated by the DW-2. The suit property was not handed over to the plaintiff despite the fact that the major part of sale consideration as per him was paid to the defendant. The reason for not taking possession of the suit schedule property has not been explained before the Trial Court. Thus, the Trial Court on the ground of suspicion arrived a conclusion that the suit Sale Agreement was executed in lieu of the amount borrowed by the defendant from the plaintiff and the defendant had not intended to sell the valuable property for a meagre sale consideration of Rs.11 lakhs.

19. When the intention of the parties are established and when the Trial Court found that it is the loan transaction for which the suit Sale Agreement was registered as security, considered and granted the alternate relief for refund of the advance amount received by the defendant from the plaintiff.

20. Regarding Ex.B-1 document relied on by the defendant that



he has repaid the advance amount of Rs.10 lakhs, the Trial Court found that the defendant had not proved the same by adducing any acceptable evidence that he has returned the advance amount of Rs.10 lakhs as mentioned in the suit Sale Agreement. The payment of interest as alleged to be paid by the defendant to the plaintiff, has also not been proved by the plaintiff before the Trial Court.

21. The overall perusal of the entire evidence, it is found that it is the money transaction between the plaintiff and the defendant and the Ex.A-1 document was executed in lieu of security to the loan amount borrowed by the defendant from the plaintiff. The evidence of plaintiff was found to be contradictory. At the same time, the defendant also had failed to prove that he paid the interest for the borrowed amount to the plaintiff. The notice issued by the plaintiff under Ex.A-5 was not received by the defendant.

22. This being the factum established before the Trial Court,



the Trial Court has declined to grant the relief of specific performance and consequently granted the alternate relief by directing the defendant to repay the advance amount of Rs.10 lakhs together with interest to the plaintiff.

23. The relief of specific performance is a discretionary relief. Inequality if any likely to be caused is also to be taken into consideration, while granting the relief of specific performance.

24. In the present case, the suit Sale Agreement Ex.A-1 document was not disputed between the parties. Passing on the advance sale consideration of Rs.10 lakhs was also admitted between the parties. However, the Trial Court considered that the value of the suit mentioned property is about Rs.75 lakhs during the relevant point of time and therefore, the defendant had not intended to sell the suit mentioned property.

25. The Trial Court further considered the contradictory



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statements made by the plaintiff and found that there is a financial transaction between the plaintiff and the defendant and the defendant, being Rice Merchant, was borrowing money from the plaintiff for his business needs.

26. This being the factum considered and the alternate relief of refund of advance amount has been ordered by the Trial Court, this Court is not inclined to interfere with the findings of the Trial Court, which is sound enough and is in consonance with the established principles.

27. The appellant/defendant is directed to refund the advance amount along with interest as directed by the Trial Court in its judgement and decree, within a period of three months from the date of receipt of a copy of this judgment.

28. Accordingly, the judgment and decree dated 23.12.2021



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passed by the learned II Additional District and Sessions Judge, Thiruvallur

@ Poonamallee in OS No.15 of 2017 stands confirmed and consequently,

the present Appeal Suit is dismissed. However, there shall be no order as to

costs. The connected miscellaneous petition is also dismissed.

23-02-2023

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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To

The II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.

S.M.SUBRAMANIAM, J.

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