



S.A.No.824 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

CORAM :

THE HONOURABLE Ms.JUSTICE P.T.ASHA

S.A.No.824 of 2023

and

C.M.P.No.26086 of 2023

S.Jeyanthi

...Appellant

Vs.

R.Natarajan

... Respondent

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 20.09.2022 made in A.S.No.3 of 2021 on the file of the Principal District Court, Thiruvarur confirming the judgment and decree dated 10.03.2021 made in O.S.No.45 of 2017 on the file of the Sub Court, Thiruvarur.

For Appellant : Mr.C.Harish



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J U D G M E N T

The unsuccessful defendant before the Courts below has filed the second appeal and the parties are referred to in the same ranking as before the trial Court.

2. The plaintiff has filed the suit O.S.No.45 of 2017 on the file of the Subordinate Court, Thiruvarur, for specific performance of an agreement of sale or in the alternative for refund of sale consideration. The plaintiff would submit that under a sale agreement dated 13.06.2016, the defendant had agreed to sell the suit property to the plaintiff for a sale consideration of Rs.10,00,000/-. The defendant had received a sum of Rs.5,00,000/- on the date of the agreement and had agreed to receive the balance sale consideration within a period of six months from the date of the sale agreement. The defendant had agreed to execute the sale deed either in the name of the plaintiff or his nominee. The plaintiff would submit that he was always ready and willing to perform his



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part of the contract. However, the defendant did not come forward to execute the sale deed. Therefore, the plaintiff had issued a legal notice dated 08.12.2016 expressing his readiness and willingness to proceed with execution of the sale. Despite receipt of the legal notice, the defendant did not come forward to either send the reply or execute the sale deed. The plaintiff has filed lodgment schedule for the balance sale consideration of Rs.5,00,000/-

3. The plaintiff would submit that there is another cheque case pending between the parties, which is totally unrelated to the issue on hand. If the Court comes to the conclusion that the plaintiff is not entitled to the relief of specific performance, then in the alternative, the plaintiff may be granted a decree for the sum of Rs.5,00,000/- with future interest @ 12% per annum from 13.06.2016 till date with the charge on the suit property.

4.The defendant had filed a written statement *inter-alia* denying the fact that she had agreed to sell the property to the



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plaintiff. On the contrary, it is her case that the sale agreement was executed as a security for the loan obtained by her. The defendant would submit that she had borrowed a sum of Rs.4,00,000/- from the plaintiff and as a security for the above borrowal, the plaintiff had got executed the agreement of sale for Rs.5,00,000/-. Rs.1,00,000/- constituted the interest for the sum of Rs.4,00,000/- and Rs.4,00,000/- was the loan amount. Since the defendant had delayed the repayment of the interest, the plaintiff has come forward with the present suit. The defendant would submit that she is ready to re-pay the amount with appropriate interest. Therefore, she sought to have the suit dismissed.

5. The learned Subordinate Judge had framed the following issues:

- 1. Is it true that the sale agreement dated 13.06.2016 is true and legally valid?*
- 2. Whether the plaintiff is entitled for the relief of specific performance of contract as prayed for?*



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3. *Whether the plaintiff is entitled for alternative relief as prayed for?and*

4. *To what other relief the plaintiff is entitled for?*

6. The plaintiff had examined himself as P.W1 and marked Exs.A1 to A3. The defendants have neither adduced evidence nor marked documents. Ultimately, by judgment and decree dated 10.03.2021, the learned Subordinate Judge was pleased to decree the suit for specific performance. Aggrieved by the said judgment and decree, the defendant had filed A.S.No.3 of 2021 on the file of the Principal District Court, Thiruvarur. The learned Principal District Judge, by her judgment and decree dated 20.09.2022, was pleased to dismiss the appeal. Aggrieved by the same, the plaintiff is before this Court.

7. Heard the learned counsel for the appellant and perused the materials available on record.



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8. The execution of the agreement of sale-Ex.A1 is admitted by both the parties. While the plaintiff would say that it is intended as an agreement of sale, as the parties have negotiated to purchase the suit property, the defendant would submit that the agreement of sale was executed as a security for the loan amount. The defendant has also not been able to prove the same. The defendant would fairly concede that she has not repaid the money. This coupled with the fact that within the six month period as stipulated in the sale agreement, the plaintiff had issued a legal notice demanding the defendant to execute the sale deed and the same not having been responded to, it only goes to prove that the plaintiff was ready to execute the sale deed in respect of the suit property. The plaintiff has also deposited the balance sale consideration into Court. Therefore, the plaintiff has proved his continuous readiness and willingness to proceed with the same. The defendant, who has come forward with the case that the agreement of sale has been executed as a security for the loan, has failed to prove the same. The Courts below have considered the evidence on record and decreed the suit



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concurrently. I see no reason to interfere with the concurrent judgement and decree. Accordingly, the second appeal is dismissed.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No

Internet:Yes/No

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To

1. The Principal District Court, Thiruvarur
2. The Sub Court, Thiruvarur.
3. The Section Officer, V.R.Section, Section, High Court.



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P.T.ASHA.J

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