



S.A.No.1127 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.12.2023

Delivered on : 22.12.2023

CORAM :

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

S.A.No.1127 of 2011

1. K.G.Seetharaman (died)

2. Revathi

3. Jaganthi

4. Shankar

5. Ganesh Kumar

...Appellants

(Appellants 2 to 5 brought on record as LR of the deceased 1st Appellant vee Court order dated 09.04.2021 made in CMP No.18983, 18984 and 18987 of 2019)

Vs.

K.M.Murugesan

...Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree of the Subordinate Judge at Harur dated 06.06.2011 in A.S.No.7 of 2010 reversing the judgment and decree of the District Munsif Court at Harur, dated 06.11.2023 in O.S.No.453 of 2004 .



S.A.No.1127 of 2011

For Appellants : Mr.P.Valliappan,
Senior Counsel for
Mr.G.RM.Palaniappan

For Respondents : No appearance

J U D G M E N T

The instant second appeal has been filed at the instance of the plaintiff. The appellants 2 to 5 are the legal heirs of deceased first appellant. The respondent herein was the defendant before the trial Court. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

The brief facts which give rise to this second appeal are as follows:

2.The first plaintiff and defendant entered into a sale agreement on 12.03.2001. According to the sale agreement, the plaintiff has agreed to purchase the suit property for a total sale consideration of Rs.55,000/- and on the date of the agreement, a sum of Rs.50,000/- was paid as advance and there was only Rs.5,000/- due. The time for performance was originally fixed as one year. The plaintiff has been all along ready and willing to perform his part of the contract and the plaintiff requested the defendant to



S.A.No.1127 of 2011

execute the sale deed. But the defendant asked for extension of time and he has also made an endorsement on the reverse of the agreement seeking for an extension upto 10.09.2004. It is the further case of the plaintiff that even prior to the expiry of last extension, the plaintiff has issued a legal notice on 01.09.2004 requesting the defendant to execute the sale deed. However, the defendant did not come forward to execute the sale deed. Hence, the plaintiff filed a suit for specific performance.

3. The said suit was resisted by the defendant by contending that, he borrowed only a sum of Rs.50,000/- from the plaintiff and the registered sale agreement came into existence only as a security for the loan transaction. The defendant admits one endorsement made on the reverse side of the agreement. However, he disputes the endorsements made on 12.09.2002, 10.03.2003, 10.09.2003 and 10.03.2004. According to the defendant, those endorsements are fabricated by the plaintiff. Hence, the defendant prays for dismissal of the suit.

Evidence and documents:



S.A.No.1127 of 2011

4. Before the trial Court, both plaintiff and defendant examined three witnesses as PW1 to PW3, and DW1 to DW3 respectively. On the side of the plaintiff, 9 documents have been marked as Exs.A1 to A9 and on the side of the defendant, no documents have been marked.

Finding of both the Courts below:

5. Having considered the oral and documentary evidence, the trial Court has decreed the suit directing the defendant to execute the sale deed on receiving the remaining sale consideration. Aggrieved over the same, the defendant preferred an appeal before the first Appellate Court. The first Appellate Court reversed the finding on the premise that the sale agreement Ex.A1 was executed only as a security to the loan transaction and has ultimately allowed the appeal by dismissing the suit for specific performance. Aggrieved by the said judgment, plaintiff has preferred the present second appeal.

Substantial questions of law:

6. At the time of admission of this second appeal, this Court has



formulated the following substantial questions of law:

WEB COPY

“a). When the execution of Ex.A1-registered agreement of sale dated 12.03.2001 was admitted by the respondent and the appellant had established his continuous readiness & willingness to perform his part of the contract through Exs.A2 to A3 and the oral testimony of Pws 2 and 3, is the Lower Appellate Court correct in law in non-suiting the appellant on flimsy grounds?

b) When the execution of Ex.A1-registered sale agreement is admitted, but the respondent pleads it is only a loan transaction, is not the burden upon the respondent to establish so?

c) Whether the Lower Appellate Court is correct in law in not considering the admissions made by DW1 particularly when the admission of the opposite party is the best evidence in law?

d) When the respondent had taken steps to compare his signatures in Exs.A2 to A7 by an expert and though permission was granted by the Court, the respondent failed to take further steps, is the Lower Appellate Court correct in law in not in not drawing adverse inference against the respondent and rejecting Exs.A2 to A7?

e) Whether the Lower Appellate Court is correct in law in declining the relief of specific performance on the ground that



only a small portion of the sale consideration remained to be paid, when such position is not envisaged under law?

f) Is the Lower Appellate Court correct in law in ignoring the oral testimony of Pws 2 and 3?

g) Whether the Lower Appellate Court is correct in law in holding that the appellant was not ready and willing to perform is part of the contract, on a mis-appreciation of the evidence on record?

h) Whether the Lower Appellate Court is correct in law in disbelieving a registered agreement of sale, in contravention of the provisions of Section 92 of the Evidence Act, 1872”

Submissions on both sides:

7. The learned Senior counsel appearing on behalf of the appellants vehemently contended that when there is a registered sale agreement it is attached with a presumption under Section 60 of the Registration Act, 1908. It is the further contention of the learned Senior counsel that the defendant though pleads for loan transaction, he has not substantiated his defence and therefore, the plaintiff is entitled for the relief of specific performance. The learned Senior Counsel would also submit that extension of time was not at the instance of the plaintiff and it was only at the instance of the defendant



S.A.No.1127 of 2011

and therefore, the sympathy shown by the plaintiff towards the defendant cannot allowed to be taken as advantage by the defendant to deny the agreement. The learned Senior counsel relied on following judgments to substantiate that the registered agreement has to be given due recognition by directing the parties to execute the sale agreement. The judgments relied on by the learned Senior counsel are as follows:

<i>Sl.No.</i>	<i>Date of Judgment</i>	<i>Name of the case</i>	<i>Citation</i>
1	20.02.2007	P.S.Ramakrishna Reddy Vs. M.K.Bhagyalakshmi	AIR 2007 SC 1256
2	28.03.2007	<i>Rajeswari and Others Vs. K.M.Kumarasamy and Others</i>	2007 4 MLJ 442
3	19.04.2012	M.Sekar Vs. P.Madeshwaran	2014 (1) CTC 165
4	18.12.2012	Nanjappa Gounder and another Vs. Ashok Kumar	2013 (3) CTC 746
5	23.08.2016	R.Shanmugam and another Vs. V.Manoharan	2016 (6) CTC 53
6	03.02.2017	R.Jothi Vs.N.Neelavathi	2017(1) MWN (Civil) 489
7	07.04.2017	Parvathi Vs. Gowri Meena	2017(3) CTC 657
8	04.04.2018	M.Subramaniam (Died) and others Vs.I.Abiranjil Ammal	2018(3) MWN (Civil) 162
9	09.07.2018	Vijaya and ors. Vs. R.Sankar Narayanan	2019 (1) CTC 471
10	26.10.2021	Sughar Singh Vs. Hari Singh (Dead) through LRs. and Ors.	AIR 2021 SC 5581

8. However, in all fairness, learned Senior counsel has also relied on



S.A.No.1127 of 2011

the following judgments which was contrary to the above proposition:

<i>Sl.No.</i>	<i>Date of Judgment</i>	<i>Name of the case</i>	<i>Citation</i>
1	29.03.2012	Pappammal @ T.Pappa Vs.P.Ramasamy	2012 (4) CTC 100
2	29.03.2012	J.Baskaran Vs. T.Pappa	2012 (3) MWN (Civil) 342
3	30.09.2013	C.Madeshwaran Vs. K.C.Ramesh	2013 (6) CTC 71
4	05.11.2015	V.P.Murugesan Vs.P.Shiek Mideen	2016 (1) MWN (Civil) 35
5	02.01.2017	P.Vaidyanathan Vs. K.Sundaram	2017 (1) MWN (Civil) 187
6	03.01.2020	D.Lakshmi and Ors. Vs. R.Naresh Kumar	2020 (3) CTC 547

9. Despite the respondent's name printed in the cause list, no one appeared before this Court.

10. This Court has given its anxious consideration to the submissions of learned Senior counsel for the appellants.

Analysis of the submissions:

11. Before we delve into the facts of the case, this Court deems it appropriate to refer to some of the judgments relied on by the learned Senior counsel to substantiate his contention that the registered sale agreement must



S.A.No.1127 of 2011

be given due recognition and they are as follows:

WEB COPY

i) In the case of ***M.Sekar Vs. P.Madeshwaran*** reported in ***2014(1) CTC 165***, the learned single Judge of this Court has held that the documentary evidence cannot be impeached by oral evidence except in abnormal circumstances.

ii) the learned Senior counsel has also relied on a judgment of Hon'ble Supreme Court in ***P.S.Ramakrishna Reddy Vs. MK Bhagyalakshmi*** reported in ***AIR 2007 Supreme Court 1256*** and would contend that when the agreement is proved, the question of putting forth the defence of loan transaction does not arise.

iii) the learned Senior counsel relied on a judgment of this Court in the case of ***Rajeswari and Others Vs. K.M.Kumarasamy and Others*** reported in ***2007 4 MLJ 442*** and would contend that when there is no evidence to show the loan transaction, then by relying Section 92 of the Evidence Act, sale Agreement is to be believed and to be enforced.

iv) The next judgment relied upon by the learned Senior counsel is in the case of ***R.Jothi Vs. N.Neelavathi*** reported in ***2017 (1) MWN (Civil) 489*** and submitted that when the defence of coercion and undue influence is not



S.A.No.1127 of 2011

proved, then the plaintiff's readiness and willingness has to be inferred.

WEB COPY

12.The learned Senior counsel drew the attention of this Court to the amendment made in the Specific Relief Act and also the judgment of the Hon'ble Supreme Court in the case of ***Sughar Singh vs. Hari Singh (Dead) Through LRs. & Ors.*** reported in ***AIR 2021 Supreme Court 5581*** and contended that while dealing with the sale agreement, the Court must be conscious about the agreement made in the Specific Relief Act and therefore, while exercising discretion, the Court must keep in mind with the amendment made in the Specific Relief Act. Based on the above ruling, the learned Senior counsel would submit that, in the case on hand the defendant has not substantiated his loan transaction, therefore by virtue of the registered sale agreement by invoking Section 60 of the Registration Act, there is a presumption attached to that. Therefore, learned Senior Counsel prayed to decree the suit as prayed for.

13. However, in all fairness, learned Senior counsel drew the attention of this Court to a judgment of this Court in ***J.Baskaran Vs. T.Pappa***



reported in **2012 (2) MWN (Civil) 342** wherein it has been held that the Court is expected to take care to see that the process of the Court should not be used as instrument of oppression giving an unfair advantage to the plaintiff. The relevant paragraphs are paragraph 31 and 32, which read as follows:

“31. In the judgment reported in Laxman...(2010) 7 S.C.C. 717

(supra) the Hon'ble Supreme Court held as follows:-

'1. It will also be useful to refer to the provisions of [Section 20](#) of the Act which vests the Court with a wide discretion either to decree the suit for specific performance or to decline the same. Reference in this regard can also be made to the case of [Bal Krishna v. Bhagwan Das](#) [(2008) 12 SCC 145], where this Court held as under :-

13.The compliance with the requirement of [Section 16\(c\)](#) is mandatory and in the absence of proof of the same that the plaintiff has been ready and willing to perform his part of the contract suit cannot succeed. The first requirement is that he must aver in plaint and thereafter prove those averments made in the plaint. The plaintiff's readiness and willingness must be in accordance with the terms of the agreement. The readiness and willingness of the plaintiff to perform the essential part of the contract would be required to be demonstrated by him from the institution of the suit till it is culminated into decree of the court.

14. It is also settled by various decisions of this Court that by virtue of [Section 20](#) of the Act, the relief for specific performance lies in the discretion of the court and the court is not bound to grant such relief merely



WEB COPY



S.A.No.1127 of 2011

because it is lawful to do so. The exercise of the discretion to order specific performance would require the court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the court would take into consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee. In other words, the court's discretion to grant specific performance is not exercised if the contract is not equal and fair, although the contract is not void." Similar view was taken by this Court in the case of [Mohammadia Cooperative Building Society Ltd. v. Lakshmi Srinivasa Cooperative Building Society Ltd.](#) & Ors. [(2008) 7 SCC 310], where the Court reiterated the principle that jurisdiction of the Court to grant specific performance is discretionary and role of the plaintiff is one of the most important factor to be taken into consideration. We may also notice that in the case of P.V. Joseph's son [Mathew v. N. Kuruvila's Son](#) [AIR 1987 SC 2328], this Court further cautioned that while exercising discretionary jurisdiction in terms of [Section 20](#) of the Act, the Court should meticulously consider all facts and circumstances of the case. The Court is expected to take care to see that the process of the Court is not used as an instrument of oppression giving an unfair advantage to the plaintiff as opposed to the defendant in the suit.

32. In the judgment reported in (2007) 6 M.L.J. 1505 S.C., in the case of [[Banshilal Soni Vs. Kastoor Chand Begani](#)], it has been held by the Hon'ble Supreme Court that if there was no demand or notice for nearly 20 months, after the execution of the sale agreement, it cannot be stated that the person was ready and willing to perform his part of the contract."



S.A.No.1127 of 2011

WEB COPY

14. The learned Senior counsel has also brought to the knowledge of this Court to the judgment in the case of ***R.Jothi Vs.N.Neelavathi*** reported in ***2017 (1) MWN (Civil) 489*** wherein the parties to the agreement can take a defence as per the proviso to Section 92 of the Indian Evidence Act.

15. From the above ratios, what would emerge is that even if any sale agreement was entered into by way of a registered document, still parties to the agreement is entitled to invoke the provision of Section 92 of Indian Evidence Act and plead a different transaction. While appreciating the facts of this case, keeping in mind with the above proposition, what would emerge in the case on hand is, in spite of sale agreement Ex.A1, the defendant is setting up a defence of loan transaction.

16. In this regard, this Court deems it appropriate to refer to the admission made in the cross-examination by PW2, who was the scribe to Ex.A1 agreement and the same reads as follows:



“கடன் வாங்கும் விற்பனை ஒப்பந்தம் எழுதி
கொடுக்கும் பழக்கம் இருக்கிறது என்றால் சரிதான்.”

(Extracted as it is)

17. Therefore what was pleaded by the defendant is not unknown to anybody and it is commonly prevailing in the area where the plaintiff and defendant resides. Therefore, keeping in mind with the above admission, we must look at the defence put forth by the defendant.

18. The first Appellate Court has elaborately dealt with all these aspects and has found that when a substantial sale consideration of Rs.50,000/- was paid on 12.03.2001 itself, fixing the one year period for paying the remaining sale consideration can be a factor to demonstrate the loan transaction in support of the defendant's case. The first Appellate Court has also gone into the aspect of extension of time alleged to have been granted by the defendant for the performance of agreement. It is pertinent to mention here that when extension of time was granted by the defendant on four occasions, the balance amount remains to be paid was only meagre Rs.5,000/-. Therefore, such extensions have to be considered as a factor in favour of the defendant.



S.A.No.1127 of 2011

WEB COPY

19. In the instant case, if really the plaintiff was ready and willing to perform his part of the contract and if really the Ex.A1 came into existence for purchase of suit property and when the Ex.A1 agreement contains default clause, the plaintiff would have issued a notice within a period of one year calling upon the defendant to execute the sale deed. This Court is of the view that the loan transaction which has been pleaded by the defendant has to be proved by one way or the other. Here by applying the preponderance of probability, fixing one year as the period for paying the paltry sum of Rs.5,000/- and extension of time for another two years after the expiry of one year as stated in the sale agreement, and to crown it all, with the admission made by PW2 about the practice prevalent in the area where the parties are residing, would all cumulatively project a case of a loan transaction.

20. Therefore, this Court is of the firm view that the finding of fact recorded by the first Appellate Court cannot be termed as perverse, and apart from that as held in *J.Baksar's* case the Court should not be used as



S.A.No.1127 of 2011

instrument of oppression. Therefore, the finding of fact recorded by the first Appellate Court that Ex.A1 agreement is as a security for a loan transaction cannot be termed as a perverse finding. Further the mere registration will not be a harbinger of truth and not a factor for imperviousness of suspicion.

21. Therefore, this Court is of the firm view that, in view of the above detailed discussion, all the substantial questions of law are to be answered in favour of the respondent/defendant. As such the second appeal is liable to be dismissed.

22. However, this Court has arrived at a conclusion that the registered sale agreement was executed only as a security for a loan transaction. The defendant also admitted in the written statement that he had borrowed a sum of Rs.50,000/- from the plaintiff. Therefore, in the interest of justice and to avoid unlawful enrichment, this Court deems it appropriate to direct the defendant to pay the borrowed sum of Rs.50,000/- to the plaintiff with interest at the rate of 12% per annum from the date of agreement till filing of the suit, and thereafter at the rate of 7.5% per annum till realisation of the amount.



S.A.No.1127 of 2011

23. In the result, the Second Appeal is dismissed. However, the defendant is directed to pay a sum of Rs.50,000/- to the plaintiff together with interest at the rate of 12% per annum from the date of agreement till filing of the suit, and thereafter at the rate of 7.5% per annum till realisation of the amount. There shall be no order as to costs.

22.12.2023

Internet : Yes

Index: Yes

Speaking order/Non-speaking order

gpa

To

1. The Subordinate Judge at Harur
2. The District Munsif Court at Harur
3. The Section Officer, V.R.Section, High Court, Madras.



WEB COPY



S.A.No.1127 of 2011

C.KUMARAPPAN,J

gpa

Pre-delivery Judgment in
S.A.No.1127 of 2011

22.12.2023