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SA.No.549 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.549 of 2011

1. A.K.Abbas
2. A.Yarab

... Appellants

- Vs -

1. S.C.John Basha
2. Sabirabi
3. Rafi
4. Sabi
5. Kaleel John
6. Ali John

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 07.04.2010 made in A.S.No.26 of 2009 on the file of the Principal District Court, Salem reversing the Judgment and decree dated 8-10-2007 made in O.S.No.285 of 2005 on the file of the Principal Sub Court, Salem.

For Appellants : Mr.T.Muruga Manickam
Senior Counsel
for Ms.Zeenath Begum

For Respondents : R1, R3 to R6-No Appearance



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JUDGMENT

The instant Second Appeal has been filed at the instance of the plaintiffs. The respondents herein are the defendants before the Trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3. The brief facts, which give rise to the instant Second Appeal is that, the defendants 1 to 6 are the absolute owners of the suit property and they have entered into a registered Sale Agreement with the 2nd plaintiff on 19.10.2004 agreeing to sell the property on or before 30.04.2005. The sale consideration was fixed as Rs.3,50,000/- and on the date of agreement, the defendants received an advance of Rs.3,00,000/- from the 2nd plaintiff. The defendants agreed to execute the Sale deed either in favour of the 2nd plaintiff or the person to be named by the 2nd plaintiff. The time for execution of the sale deed was on or before 30.04.2005. Subsequently, the 2nd plaintiff, on the strength of the Sale Agreement dated 19.10.2004 entered into an Agreement of Sale with the 1st defendant on 26.10.2004. The 2nd plaintiff agreed to get the sale deed within the stipulated time on or before 30.04.2005. In spite of the fact that the first plaintiff was ready and willing, the defendants 1 to 6 delayed the execution of the sale deed. Hence, the first plaintiff issued legal



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notice to the defendants on 19.07.2005 and also 20.08.2005. The defendants 1 and 2 have sent a reply on 31.08.2005, with untenable pleas. The plaintiffs further submit that the defendants 1 to 6 have already submitted their original title deeds and parent documents with the plaintiffs. Hence, the plaintiffs came forward with the suit for specific performance.

4. The said suit was resisted by the defendants 1 & 2 by denying the allegations made in the plaint. It was also pleaded that the defendants 1 and 2 have never intended to sell the suit property. According to the defendants 1 and 2, they had borrowed a sum of Rs.2,50,000/- from the 1st plaintiff in the year 2001 and by way of a security for the loan availed by the defendants 1 and 2, they had to sign the registered Deed styled as an Agreement for Sale on 27.12.2001. The first plaintiff is the co-brother of the 2nd plaintiff. Since the first plaintiff pressed for repayment of the loan of the defendants 1 and 2, an understanding was made between the plaintiffs and that the 2nd plaintiff, then the 2nd plaintiff had voluntarily come forward to pay the loan amount to the first plaintiff on behalf of the defendants 1 and 2. In view of the same, the defendants 1 and 2 had signed a registered Deed dated 19.10.2004 after cancellation of the nominal registered Agreement dated 27.12.2001. It is the submission of the defendants that the alleged Agreement is nothing, but a



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security for the loan transaction. It is further submitted by the defendants that the 2nd plaintiff had received a sum of Rs.60,000/- from the defendants 1 and 2 on 17.03.2006 and also given receipt for the part payment made by the defendants towards their liability with the 2nd plaintiff. The defendant further disputes the ready and willingness of the plaintiffs. Therefore, these defendants submit that the suit is misconceived and not maintainable. Hence, prayed to dismiss the same.

Evidence, Documents and Finding of the both the Court below:-

5. Before the Trial Court, the plaintiffs examined 3 witnesses as PW1 to PW3 and marked as many as 17 documents as Exs.A1 to A17. On behalf of the defendants, 11 documents have been marked as Exs.B1 to B11 and one witness has been examined as DW1.

6. The Trial Court, after having considered the oral and documentary evidence, believed the case of the plaintiff and decreed the suit for specific performance. Aggrieved with the said order, when the defendants 1 and 2 preferred an appeal, the First Appellate Court found that the plaintiffs did not approach the Court with the clean hands and found that they are not entitled for the discretionary relief of specific performance. Hence, dismissed the suit.



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Aggrieved with the same, the plaintiffs are before this Court.

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Submission of either side counsel:-

7. The learned Senior Counsel appearing on behalf of the appellants would submit that the plaintiffs have proved their ready and willingness, and also proved the execution of Ex.A5-Sale Agreement. It is the further submission of the learned Senior Counsel that the loan transaction that was admitted by PW1 is all together a different transaction and has no nexus with the sale agreement dated 19.10.2004. Therefore, the learned Senior Counsel would contend that, when the execution of the Sale Agreement is proved and when the readiness and willingness was established, the Court ought to have decreed the suit. It was also the submission of the learned Senior Counsel that the findings recorded by the First Appellate Court is without support of any oral and documentary evidence. Hence, prayed to interfere with the same.

8. There is no representation on behalf of the respondents.

9. I have given my anxious consideration to the submissions made by the learned Senior Counsel on behalf of the appellants.

Analysis of the submissions:-



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10. Here, both the Court below have arrived at a conclusion that the defendants had executed a registered Sale Agreement on 19.10.2004 under Ex.A5. According to the plaintiffs, the defendant agreed to sell the property. Whereas, the defendants put forth the defence that the Sale Agreement is a security for the loan that has been borrowed by the defendants during 2001. The First Appellate Court, while analysing the defence, has found that the 2nd plaintiff has admitted the receipt of Rs.60,000/- from the defendants. However, the 2nd plaintiff has explained that apart from handing over of Rs.3,00,000/- to the defendants as an advance for suit sale agreement, he also paid a sum of Rs.3,25,000/- as a personal loan and that Ex.B1 is the receipt evidencing the receipt of portion of the personal loan for the total amount of Rs.3,25,000/- availed by the defendants.

11. It is pertinent to mention here that the case of the defendants is all along is that Ex.A5-Sale Agreement is a security for a loan transaction. However, the plaintiffs contended that Ex.A5-Sale Agreement came into existence only with the consensus *ad idem* to sell the suit property. It is pertinent to mention here that the defence of loan transaction, has been taken even in the reply notice-Ex.A17 issued by the defendants. Therefore, if really the plaintiffs had any other transaction with the defendants other than sale



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agreement, that too a loan transaction, it is expected from the plaintiffs to plead such vital fact in their plaint.

12. In our case, such factum was introduced during cross examination of plaintiff's witnesses, when he was confronted with Ex.B1-receipt. Therefore, when the plaintiffs did not plead about separate loan transaction with the defendant, the finding of the First Appellate Court as to the reliance of the defendant's case cannot be held perverse. The First Appellate Court has gone into this aspect elaborately and in view of the absence of pleading by the plaintiffs, it has doubted the veracity of the evidence of PW2 and PW3 and eventually arrived at a conclusion that the case propounded by the defendants is probable and ultimately declined to grant the relief of specific performance.

13. From the above narration, it is very much clear that the plaintiffs have not approached the Court with true facts. It is expected from the plaintiffs that too when they approach the Court to have the relief under equity, they must state all the facts truthfully. Here, the plaintiffs have not stated as to the loan transaction and have not approached the Court with clean hands.

14. It is further pertinent to mention here that unless the finding of fact



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recorded by the First Appellate Court is perverse, under Section 100 of CPC, this Court cannot interfere upon the decision of the First Appellate Court, being the last Court of facts, since because there is a possibility for yet another view. This Court is of the firm view that the First Appellate Court, upon the re-appreciation of evidence and after considering the materials on record, has arrived at a right conclusion that the plaintiffs are not entitled for a relief of specific performance. Further, this Court could not find any ground to deviate from the above said well merited finding. Thus, no substantial question of law arising in this matter.

15. In the result, this Second Appeal is dismissed. There shall be no order as to costs.

13.12.2023

kmi

Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No

To

1. The Principal Sub Court,
Salem.
2. The Principal District Court,
Salem.



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C.KUMARAPPAN, J

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