



A.S.No.363 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

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S.Vadivelu

... Appellant

Versus

P.Sharmiladevi

... Respondent

Appeal Suit filed Under Section 96 of the Code of Civil Procedure, praying to set aside the Judgment and decree in O.S.No.195 of 2013, dated 28.02.2018 on the file of the Mahila Court, Cuddalore.

For Appellant : Mr. N. Suresh

For Respondent : Mr. N. Damodaran

ORDER

The appellant has filed this appeal to set aside the Judgement and decree in O.S.No.195 of 2013, dated 28.02.2018 on the file of the Mahila Court, Cuddalore.



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2. Heard Mr. N. Suresh, learned counsel for the appellant and Mr. N. Damodaran, learned Counsel for the respondent and perused the materials available on record.

3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

4. The appellant herein is the defendant in O.S.No.195 of 2013. The said suit was filed by the plaintiff / respondent herein claiming relief of specific performance. The suit was contested by the defendant stating that he never intended to sell the property and he executed the sale agreement only as a security for loan transaction. But the learned trial Judge decreed the suit holding that the defendant has not adduced any contra evidence against the recitals of Ex.P.1 sale agreement. Aggrieved over the same the defendant has preferred this Appeal.

5. The brief facts of the case as follows:

According to the plaintiff, the suit property belongs to the defendant absolutely and he offered to sell the property by entering into sale agreement on 05.03.2012, for a sum of Rs.10,50,000/-. On the same day she



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paid Rs.10 lakhs as a part amount and for remaining sum of Rs.50,000/-, six months time was fixed to execute the sale deed by the defendant. Hence, the defendant evaded to perform his obligations, hence, the plaintiff issued notice on 01.06.2013. At request of the defendant time extension deed was executed by extending the time by another three months, within which the defendant has to execute the sale deed but he was not ready to perform his part of the agreement. Hence, notice was issued on 03.09.2013 and the same was returned. hence the plaintiff filed the suit by directing the defendant to execute the sale deed by receiving the balance sale consideration or alternatively prayed to refund a sum of Rs.10 lakhs with interest at 12 %. p.a., from the date of plaint till the date of decree.

6. The defendant resisted the claim of the plaintiff by stating that he never offered to sell the property to her. In fact her husband Prakash was a money lender from whom, during the month of May 2011, he borrowed a loan for a sum of Rs.6,00,000/- (Rupees Six Lakhs only) and at the instance of the plaintiff's husband / Prakash, he executed a sale agreement on 04.05.2011 as a security for the said loan transaction. Thereafter, he paid 16 months interest for the said loan amount, but suddenly plaintiff insisted to pay the entire amount which he was not able to pay. To avoid the other legal



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consequences the said Prakash immediately insisted the defendant to execute the sale agreement in favour of his wife / plaintiff herein for a huge amount of Rs.10 lakhs. Accordingly the present suit Sale agreement came into force, on the same day itself, and the sale agreement in the name of plaintiff's husband was cancelled. In fact, sale consideration of Rs.10 lakhs was not received on the date of Ex.P.1, - suit sale agreement, it is a continuous transaction pertaining to the earlier loan borrowed during the year 2011. Thus, the defendant totally denied the plaintiff's claim and prayed to dismiss the suit.

7. Before the trial Court, five issues were framed, which reads as follows:

- “i. Whether the suit agreement dated 05.12.2012 was executed by the defendant to sell the suit property?*
- ii. Whether the plaintiff was always ready and willing to perform her part of contract?*
- iii. Whether the plaintiff is entitled to the relief of specific performace of contract?*
- iv. Whether the plaintiff is entitled to the alternative relief of return of advance amount as alleged in the plaint?*
- v. To what other reliefs, the plaintiff is entitled?”*



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8. To prove their respective case, on the side of the plaintiff, P.W.1 to P.W.5 were examined and Ex.P1 to Ex.P8 were marked. On the side of the defendant D.W.1 & D.W.2 were examined, but no documents were marked. Considering the oral and documentary evidence the learned trial Judge held that Ex.P1- sale agreement was admitted by the defendant and the execution of the agreement was also proved by the plaintiff's witnesses P.W.1 to P.W.5 (plaintiff's husband) and from the evidence of those witnesses, the learned trial Judge held that the sale agreement was executed on the date of Ex.A.1 and the earlier agreement between the husband of the plaintiff was cancelled. To that effect the writer of the said document was also examined as P.W.4, through whom the plaintiff is able to establish that the suit agreement was executed by the defendant with an intention to sell his property. On the other hand, the defendant has not proved that it was executed as a security for the loan transaction, thereby the suit was decreed. Aggrieved over the same, now the defendant has preferred this appeal.

9. The learned counsel for the defendant/appellant submitted that the learned trial Judge failed to take note of the fact that present suit agreement was in continuation of the earlier agreement dated 04.05.2011, between the plaintiff's husband Prakash from whom the defendant borrowed a loan for a



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sum of Rs.6,00,000/- (Rupees Six Lakhs only). As security for the transaction, the earlier agreement as well as the present suit agreement came into force and the same was proved by the defendant through the evidence of P.W.5 as well as cancellation of earlier sale agreement marked as Ex.P7 and cancellation of sale agreement marked as Ex.P8. In spite of same the learned trial Judge decreed the suit in favour of the plaintiff as such it is totally unfair and liable to be set aside.

10. Further, he contended that, the plaintiff has not approached the Court with true facts and he suppressed the loan transaction between her husband and the defendant. The defendant narrated all the circumstances about the earlier loan transaction in his written statement which was not specifically denied by the plaintiff by filling reply statement and this itself would probabalise the defence taken by the defendant. In spite of the same, the learned trial Judge, without properly appreciating those facts decreed the suit in favour of the plaintiff. Hence, he prays to set aside the entire findings of the learned trial Judge.

11. Further, the learned counsel for the defendant also submits that the defendant is entitled to adduce evidence that he never intended to execute the



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sale agreement and it was executed for some other purpose namely as security of loan transaction and such plea would fall within the exception under Section 92 of Evidence Act. Accordingly, he relied the following authorities, (i) The Division Bench Judgment of this Court in Kamireddi Sattairaju Vs Kandamurai Boolaeswari reported in 2007 (1) MLJ page 499, (ii) Judgment of Hon'ble Supreme Court reported in Ishwar Das Jain Vs Shonlal reported in AIR 2000 Supreme Court 426, (iii) Judgment of this Court in Papammal @ T.Pappa Vs.P.Ramasamy reported in 2012(4) CTC 100.

12. Per Contra, the learned counsel for the plaintiffs submits that as per the offer made by the defendant, the plaintiff entered into sale agreement and paid a sum of Rs.10 lakhs as part of the sale consideration on 05.03.2012, and time was fixed for 6 months, within which period the defendant was not ready to receive the balance amount. Notice was issued on 03.06.2013, thereafter time extension agreement was executed and both the documents were proved by the plaintiff by examining the attester of the document and the same was rightly appreciated by the learned trial Judge which needs no interference. Further he would submit that the plaintiff proved his readiness and willingness, and by considering the same the learned trial Judge rightly



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decreed the suit and prayed to dismiss the appeal as having no merits.

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13. Points to be considered are as follows:

"i. Whether the plaintiff is entitled for the relief of specific performance as she prayed or Ex.P1 executed as a continuous transaction between and the plaintiff's husband and the defendant?

ii. Whether the plaintiff is entitled for the relief of equitable remedy of specific performance?"

14. The property belongs to the defendant is admitted. The signature in Ex.P1- Sale agreement is also admitted by the defendant. But he contended that it was executed as a security for the loan transaction. The plaintiff was examined as P.W.1 and her husband was examined as P.W.5. P.W.1 deposed that a sum of Rs.10,50,000/- was fixed as sale consideration and she paid Rs.10 lakhs advance to the defendant, who agreed to execute the sale deed within 6 months by receiving balance consideration to Rs.50,000/- (Rupees Fifty Thousand only) and the said sale agreement was marked as Ex.P1 on the side of the plaintiff.



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15. Per contra, defendant examined himself as D.W.1 and admits the signature in Ex.P1- sale agreement, but contend that he was never intended to sell the property to the plaintiff. He also submits that he had borrowed a loan of Rs.6 lakhs from the husband of the plaintiff (PW5) and at his compulsion as a security for the loan transaction, he had executed the sale agreement in favour of the plaintiff's husband on 04.05.2011. Thereafter, he paid interest for the said loan for a period of 16 months, but suddenly plaintiff's husband demanded to pay the entire loan amount which he could not arrange. So at the compulsion of the plaintiff's husband again he executed fresh sale agreement in the name of plaintiff without receiving any amount on that day and the sale agreement stands in the name of plaintiff's husband was cancelled on the same date. The sale agreement stands in the name of plaintiff's husband and cancellation of sale agreement were marked as Ex.P7 and Ex.P8 on the side of the plaintiff.

16. The learned counsel of the plaintiff submitted that, suit sale agreement is totally an independent transaction and the agreement with the husband was cancelled is totally different transaction and it is not a part of the same transaction as claimed by the defendant. As rightly pointed out by the learned counsel for the defendant, at the time of filing the suit, plaintiff



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not stated any thing about the earlier agreement between her husband and the defendant herein, in respect of sale of the property. She did not file the reply statement by denying the allegation made by the defendant in the written statement, with regard to the earlier loan transaction with her husband, under Order VIII of CPC which it requires, specific, denial of the plaintiff.

17. But as discussed above, the plaintiff has not filed the reply statement denying the allegation made by the defendant in the written statement nor assigned any reason thereof. In such circumstances this Court is entitled to draw an adverse inference against the plaintiff. During trial, the husband of the plaintiff was examined as P.W.5 As per the attester of Ex.P1 sale agreement, the sale agreement stands in the name of P.W.5 was cancelled on the same day, and the suit sale agreement was came into force. The earlier sale agreement with the plaintiff's husband was marked as Ex.P7. In that document Sale Consideration was fixed only as Rs.6,50,000/- (Rupees Six lakhs Fifty Thousand only) for the same property in the year 2011. The said agreement was cancelled in the year 2012 and suit agreement was executed for the same property for Rs.10,50,000/-. As discussed above already there was a sale agreement with her husband for a sum of Rs.6,50,000/- and even as per the contention of P.W.5 defendant was not able to comply with the



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terms of earlier agreement and he cancelled the said agreement. If the sale agreement was in favour of her husband, there is no necessity for the plaintiff to purchase the property from the defendant. The Plaintiff was also aware of the cancellation of the earlier agreement with her husband because both the documents were executed on the same day. An ordinary prudent man would not enter into such a agreement as it is was not possible to implement, when the earlier agreement with her husband was cancelled for same property and thereafter his wife enter into agreement with the same vendor for higher amount as such is totally unbelievable one. P.W.2 is the witnesses of the alleged sale agreement- Ex.P1. As per the evidence of P.W.1 to P.W.5 they paid a sale consideration of Rs.10 lakhs to the defendant is also not acceptable for the aforesaid reasons. As per the plaintiffs evidence, the defendant demanded more amount, hence the earlier agreement was cancelled, and subsequent suit agreement was executed for higher amount than the earlier agreement. Therefore, the conduct of the plaintiff shows that she has not approached the Court with clean hands.

18. If really she intended to purchase the property she ought to have narrated all the facts with regard to the earlier transactions between her husband and the defendant, because cancellation of the earlier sale agreement



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as well as the execution of the suit agreement was performed on the same day itself. Thus the plaintiff was aware of all the facts but not disclosed it in the plaint which itself shows that she has not approached the Court with clean hands. To avail the discretionary relief of specific performance the plaintiff has to prove that she approached the Court with clean hands but she failed. The learned trial Judge did not take note of all the facts and as such the judgment of the trial Court is legally not sustainable.

19. Thus it is clear that the defendant established that he never intended to execute the sale agreement to sell the property but it was executed for some other purpose.

20. At the time of filing of the written statement itself the defendant categorically stated that the said agreement was part of the loan transaction with plaintiff's husband, narrated the earlier loan transaction with plaintiff's husband as well as execution of sale agreement in favour of plaintiff's husband, the cancellation of the said agreement on the date of Ex.P1 suit agreement but it was not denied by the plaintiff by filing reply statement. So the facts and circumstances clearly establish that the suit agreement was not executed by the defendant with intention to sell his property. On the other



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hand, it was executed as a security for the loan transaction with plaintiff's husband and the same was proved through Ex.P7 & Ex.P8 and as per the evidence of P.W.5. But the learned trial Judge failed to appreciate those facts and circumstances.

21. To avail the equitable relief under Specific Relief Act, the plaintiff must approach the Court with clean hands. As discussed above the plaintiff has suppressed the facts and at the instance of her husband she obtained Ex.P1 sale agreement, therefore the agreement under Ex.P1 is not true one. Hence, she is not entitled for the relief of Specific Performance. Accordingly, the findings of the learned trial Judge is set aside. However, the defendant admits that he borrowed a loan of Rs.6 lakhs and the same was deposited on 24.08.2016 itself in the trial Court. Therefore, the defendant is directed to pay the sum of Rs.6 lakhs with interest at the rate of 12% from the date of borrowal i.e. from May 2011 till the date of realisation. When the agreement itself is held to be false one, there is no necessity for this Court to decide whether the plaintiff was ready and willing to perform her part of the agreement. Accordingly, the issues are answered.



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22. In the result, the appeal is allowed and the Judgment and decree of the learned Judge, Mahila Court, Cuddalore in O.S.No.195 of 2013, dated 28.02.2018 is hereby set aside. The appellant / defendant is directed to pay a sum of Rs.6 lakhs with interest at 12% from the date of borrowal namely May 2011, till the date of deposit on 24.08.2016. If the amount was already deposited by the appellant / defendant, the respondent / plaintiff is entitled to withdrawn the same with accrued interest, in the manner known to law, on proper identification and on filling appropriate affidavit in this regard. No costs.

04.10.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation:Yes/No

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To

1. The Mahila Court, Cuddalore.
2. The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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