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AS No.192 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-02-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AS No.192 of 2022

And

CMP Nos.7038 and 7039 of 2022

Sivasankaran

.. Appellant

vs.

1.Saravanan

2.Rathnasami

.. Respondents

PRAYER : This Appeal Suit is filed under Section 96 r/w Order XLI, Rule 1 of the Civil Procedure Code against the judgment and decree dated 04.01.2022 passed by the Special Court for Trial Cases under SC/ST (PoA)-cum-Principal District Judge at Cuddalore in OS No.74 of 2019.

For Appellant : Mr.D.Ravichander

For Respondents : Mr.R.Nalliappan for
Ms.N.Premalatha



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For Respondent-3 : Not Ready in Notice

For Respondent-4 : Mr.S.Janarthanam

J U D G M E N T

The present Appeal Suit has been instituted against the judgment and decree dated 04.01.2022 passed by the Special Court for Trial Cases under SC/ST (PoA)-cum-Principal District Judge at Cuddalore in OS No.74 of 2019.

2.The appellant is the defendant and the respondents are plaintiffs in the suit.

3. The respondents herein instituted the suit for specific performance based on the Sale Agreement dated 20.09.2018.

4. The plaint averments reveal that the defendant is the owner of the suit property. The defendant offered to sell the suit property for a sale



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consideration of Rs.21 lakhs and received a sum of Rs.20 lakhs on 20.09.2018 as advance and registered an Agreement in favour of the plaintiffs on the file of the Joint I Sub Registrar Office vide document No.2899 of 2018.

5. As per the terms of the Agreement, the period to perform the contract was six months i.e., from 20.09.2018 to 19.03.2019. If the plaintiffs fail to pay the balance amount of Rs.1 lakh within six months and register the Sale Deed, they have to loose the advance amount of Rs.20 lakhs. If the defendant fails to execute the Sale Deed within the time limit stipulated, the plaintiffs are at liberty to file a suit for specific performance of contract and deposit the balance amount in the Court.

6. At the time of execution of the Sale Agreement, the defendant has deposited the original parent deed to the plaintiffs. The plaintiffs state that they were ready and willing to perform their part of contract by paying the balance amount of Rs.1 lakh and get the Sale Deed



executed, but the defendant did not execute the Sale Deed with an ulterior motive. The plaintiffs made several demands, which were went in vain and subsequently issue a legal notice through the defendant's counsel on 16.03.2019.

7. The defendant denied the plaint averments through his written statement. The defendant states that he executed the registered Sale Agreement on 20.09.2018 in favour of the plaintiffs. The defendant received money from the plaintiffs only for interest. For the said loan amount, the defendant executed the Sale Agreement as security in favour of the plaintiffs.

8. The defendant paid interest every month to the plaintiffs and also settled the principal amount in the month of February 2019 before the Panchayatars. Despite the fact that the plaintiffs received the said principal amount and interest, but they failed to cancel the registered Sale Agreement.

9. The defendant states that the first witness in the Sale



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Agreement Mr.Periyasamy, who is the father of the second plaintiff Mr.Rathinasamy and the second witness Mr.Mariappan in the Sale Agreement is the friend of the second plaintiff Mr.Rathinasamy.

10. In the year 2017, the plaintiffs and the defendant executed the registered Sale Agreement for an amount of Rs.20 lakhs vide document No.480 of 2017 and the same has been cancelled on 20.03.2018 vide document No.798 of 2018. On the same day, the plaintiffs and the defendant executed registered Sale Agreement for the said amount of Rs.20 lakhs vide document No.799 of 2018 and the same has been cancelled on 20.09.2018 vide document No.2898 of 2018. The defendant executed another registered Sale Agreement dated 20.09.2018 for an amount of Rs.20 lakhs vide document No.2899 of 2018.

11. Based on the pleadings between the parties, the Trial Court framed the following issues:-

(1) Whether the defendant executed a Sale Agreement on



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20.09.2018 in favour of the plaintiffs for the schedule property ?

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(2) Whether the defendant executed the Sale Agreement for the amount received from the plaintiffs for borrowed amount ?

(3) Whether the defendant paid the borrowed amount with interest to the plaintiffs ?

(4) Whether the plaintiffs are entitled for Sale Deed from the defendant for the sale property ?

(5) Whether the plaintiffs are entitled for Rs.20 lakhs with interest at the rate of 12% from the defendant ?

(6) Any other relief is entitled by the plaintiff ?

12. On the side of the plaintiffs, PW-1 and PW-2 were examined and Exs.A-1 to A-4 were marked as documents. No witness was examined on the side of the defendant and no document was marked.

13. With reference to Issue Nos.1 and 2 regarding the execution of Sale Agreement dated 20.09.2018 in favour of the plaintiffs and the



advance amount paid as per the Sale Agreement, the Trial Court considered the document Ex.A-1 and the other document Ex.A-2, which is also a registered Sale Deed.

14. The findings of the Trial Court reveals that as per the defendant before execution of the document Ex.A-1 Sale Agreement, based on which the suit has been instituted to the other two Sale Agreements were made one by one and those two Sale Agreements were cancelled subsequently.

15. The plaintiffs have stated that the earlier two Sale Agreements were cancelled at the request of the defendant one after another and finally Ex.A-1 Sale Agreement was executed. The Trial Court further considered the deposition in the cross-examination of PW-1, wherein he has admitted the execution of the Sale Agreement in the year 2017 and its cancellation.



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16. During the cross-examination, PW-1 has further admitted that the suggestion as correct which was put on the defendant side that the total sale consideration amount was Rs.30 lakhs and advance amount was Rs.20 lakhs in the old Sale Agreement. Even according to the contentions made in the written statement, the earlier two Sale Agreements were made for an amount of Rs.20 lakhs only. While-so, the said Sale Agreement was entered into for a sale consideration of Rs.21 lakhs.

17. After recording the above deposition of PW-1 during cross-examination, the Trial Court made a finding that the defendant had admitted the execution of Ex.A-1 Sale Agreement and receipt of amount. Further the defendant has not even replied to the demand notice issued by the plaintiffs. That apart, the defendant had not chosen to get into the witness box to support his contentions.

18. Therefore, the Trial Court arrived a conclusion that the



defendant has failed to prove any of his contra contentions made against the claim of the plaintiffs in the plaint. Thus accordingly concluded that Ex.A-1 Sale Agreement was executed by the defendant in favour of the plaintiffs and it was not for the amount of loan borrowed from the plaintiffs.

19. In the context of Issue Nos.1 and 2, the learned counsel for the appellant mainly relied on the cross-examination of PW-1 and made a submission that when the two previous Sale Agreements entered into between the plaintiffs and the defendant were categorically admitted by the PW-1 and those Sale Agreements were cancelled with the consent of the parties and for higher amount, the Trial Court failed to consider the discrepancies and the nature of several loan transactions between the parties. The earlier two Sale Agreements were also pertaining to suit schedule property and different amounts have been mentioned in those two Sale Agreements and in the suit Sale Agreement. While-so, there is every reason to believe that the defendant, at no circumstances, intended to sell the suit schedule property to the plaintiffs and he has executed the Sale Agreement



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in lieu of the loan amount borrowed as security.

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20. The Trial Court mainly proceeded on the basis that the defendant has not chosen to get into the witness box. When the defendant has not deposed before the Trial Court regarding the earlier two Sale Agreements, which were cancelled, the Trial Court concluded that the defendant has not established his case.

21. The plaintiffs have to prove their case at the first instance. If at all the case of the plaintiffs is established, then alone the burden to be shifted on the defendant. When the plaintiffs themselves admitted that there were two earlier Sale Agreements entered into between the plaintiffs and the defendant and the said Sale Agreements were cancelled with the consent and the amounts in the said Sale Agreements and the suit Sale Agreement are not one and the same, the Trial Court ought to have considered those discrepancies, which is in favour of the defendant. The nature of the previous Sale Agreements and the suit Sale Agreement reveal that the



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defendant has not intended to sell the property but executed the Sale Agreement as a security for the loan obtained by him from the plaintiffs.

22. Thus the Trial Court has committed an error in not appreciating the earlier two Sale Agreements entered into between the plaintiffs and the defendant and relied on the conduct of the defendant having not chosen to get into the witness box and formed a final opinion.

23. This Court is of the considered opinion that such an approach is contrary to the principles in view of the fact that the plaintiffs have to first prove their case and in the present case, the plaintiffs have admitted the fact regarding the earlier two Sale Agreements and the different amounts in those Sale Agreements would reveal that the defendant at no circumstances has intended to sell his property. Accordingly, issue Nos.1 and 2 are answered against the plaintiffs.

24. Regarding Issue Nos.3 and 4, the Trial Court found that the



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defendant failed to prove any of the amount paid to the plaintiffs after execution of the Ex.A-1 Sale Agreement, since Issue Nos.1 and 2 are answered in favour of the plaintiffs and the Trial Court arrived a conclusion that it is not loan transaction and the defendant intended to sell the suit schedule property, concluded that the plaintiffs are entitled for the relief of specific performance and accordingly, granted the relief by directing the plaintiffs to deposit the balance amount and to execute the Sale Deed in favour of the plaintiffs.

25. In view of the fact that Issue Nos.1 and 2 have now been decided in favour of defendant, the plaintiffs are not entitled for the relief of specific performance. However, the plaintiffs are entitled for the refund of the advance amount as per the suit Sale Agreement Ex.A-1 document.

26. It is not in dispute between the parties that the defendant received the sum of Rs.20 lakhs from the plaintiffs and the said amount is to be refunded by the defendant to the plaintiffs along with interest at the rate



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of 6% per annum. Thus the plaintiffs are entitled for the alternate relief of refund of advance amount of Rs.20 lakhs along with interest at the rate of 6% per annum from the date of suit Sale Agreement Ex.A-1 document till the date of realisation, on or before 31st May 2023. Till such time, the advance amount of Rs.20 lakhs along with interest has been settled in favour of the plaintiffs, the plaintiffs are directed not to alienate the suit schedule property.

27. The learned counsel for the defendant made a submission that the plaintiffs have no objection for return of original documents filed by the plaintiffs in the suit before the Trial Court, which is to be made after realisation of the advance amount as stated above.

28. Accordingly, the judgment and decree dated 04.01.2022 passed by the Special Court for Trial Cases under SC/ST (PoA)-cum-Principal District Judge at Cuddalore in OS No.74 of 2019 stands set aside and consequently, the present Appeal Suit No.192 of 2022 is allowed in



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part. However, there shall be no order as to costs. Consequently, the
connected miscellaneous petitions are closed.

15-02-2023

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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To

The Special Court for Trial Cases under SC/ST (PoA)-
cum-Principal District Judge,
Cuddalore.



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S.M.SUBRAMANIAM, J.

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