



A.S.No.567 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.567 of 2022

and

C.M.P.No.21452 of 2022

Murugavel

..Appellant

Vs.

Nagarkani

..Respondent

Appeal filed under Order 41 Rule 1 read with Section 96 of C.P.C., praying to set aside the Decree and Judgment of the learned Principal District Judge, Villupuram, passed in O.S.No.133 of 2018 dated 14.06.2021.

For Appellant

: Mr.J.Raja Kalifulla
Senior counsel
For Mr.S.V.Karthikeyan

For Respondent

: Mr.V.Raghavachari
Senior counsel
For Mrs.V.Srimathi



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JUDGMENT

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The Appeal Suit has been filed to set aside the Decree and Judgment dated 14.06.2021 passed by the Principal District Judge, Villupuram made in O.S.No.133 of 2018.

2. The appellant is the plaintiff, instituted a suit for Specific Performance, which was partly decreed to the extent of refund of the advance amount paid by the plaintiff to the defendant through the suit sale agreement, Ex.A1 document. In respect of the relief of Specific Performance, the suit was dismissed. Thus, the appellant has chosen to prefer the present appeal suit.

3. The plaint averment states that the defendant is the owner of the suit mentioned property and he agreed to sell the same for a consideration of Rs.23,00,000/- in favour of the plaintiff. On 22.09.2016, a sale agreement was executed between the plaintiff and the defendant and the defendant had received the advance amount of Rs.21,00,000/- from the plaintiff. The suit sale agreement deed was registered on the file of the Sub-Registrar, Ulundurpet as Document No.2891 of 2016. The plaintiff had to pay the



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balance sale consideration of Rs.2,00,000/- within a period of two years from the date of agreement and take the sale deed in his favour at his own cost free from all encumbrance.

4. Pursuant to the sale agreement dated 22.09.2016, the plaintiff states that he was always ready and willing to perform his part of contract and demanded for execution of sale as per the terms of agreement by receiving the balance sale consideration. But the defendant evaded execution, which resulted in institution of the suit for Specific Performance after issuing a legal notice on 01.09.2018.

5. The defendant denied the plaint averments in his written statement. The defendant states that due to his financial crisis, he borrowed a loan of Rs.9,00,000/- from one Mr.Rajaram for his family expenses and the said Mr.Rajaram asked the defendant to execute the sale agreement in favour of him for the loan transaction, by fixing the interest at the rate of 4% per month and further, assured to cancel the sale agreement at the time of settlement of the said loan amount.



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6. The defendant executed a sale agreement deed in favour of the said

Mr.Rajaram on 29.09.2014 and received a sum of Rs.9,00,000/- as a loan.

Later on, due to his family situation, he was not in a position to settle the Principal amount with interest. The said Mr.Rajaram approached the defendant to repay the Principal amount along with the interest or otherwise demanded for the renewal of sale agreement. The defendant states that he cancelled the earlier agreement dated 29.09.2014 and thereafter, executed the suit sale agreement on 22.09.2016. Only based on the instructions given by the said Mr.Rajaram, the defendant executed the suit sale agreement deed in favour of the plaintiff, who is none other than the brother of his wife. The defendant borrowed a sum of Rs.9,00,000/- and executed a sale agreement deed in favour of the plaintiff. The defendant has no need to borrow a sum of Rs..21,00,000/- from the plaintiff and contended that the plaintiff had no financial capacity to pay a sum of Rs.21,00,000/- to the defendant at that point of time.

7. The defendant states that Mr.Rajaram was doing money lending business and he used to get sale agreement deeds at the time of lending money to others. He filed several suits before various Courts for the loan



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amount given by him. The defendant executed the sale agreement only for the loan transaction and therefore, the time limit was fixed as two years for completion of sale as per the agreement. The plaintiff never called the defendant in person or through phone for execution of sale agreement. The defendant states that he was ready to repay the loan amount of Rs.9,00,000/- along with interest and he on several occasions, promised the plaintiff to repay the loan amount. But the plaintiff in order to grab the property from the defendant instituted the suit with false allegations. The defendant further stated that the value of the suit property was approximately estimated at Rs.3 Crores. Thus, the suit is to be dismissed.

8. Based on the pleadings, the trial Court framed the following issues:

- 1. Whether the plaintiff is entitled for Specific Performance as prayed for?*
- 2. Whether the plaintiff is entitled for alternative prayer as prayed for?*
- 3. Whether the defendant got only loan from plaintiff as alleged by defendant?*
- 4. To what other relief?*



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9. With reference to the issues regarding the relief of Specific Performance at Issue No.1, the trial Court made a finding that the plaintiff proved Ex.A1, suit sale agreement. It was not disputed by the defendant. Sale agreement with the defendant was executed on 22.09.2016 and the sale price was fixed at Rs.23,00,000/- and an advance amount of Rs.21,00,000/- was received by the defendant, which was also admitted. Registered Sale deed was executed. The plaintiff issued legal notice on 01.09.2018 and the deposition of P.W.1 regarding the suit sale agreement, passing the advance amount as stated in the suit sale agreement were reiterated in the deposition of P.W.2 and P.W.3. As per the suit sale agreement, Ex.A1, the defendant agreed to purchase the suit property for a sum of Rs.23,00,000/- and for the same, the defendant had received an advance amount of Rs.21,00,000/-. Balance Rs.2,00,000/- was agreed to be paid within a period of two years and the time for completion of contract was two years.

10. In the above context, the trial Court considered the documents and evidences and made a finding that the plaintiff in his pleadings, clearly stated that he was ready and willing to perform his part of contract and he proved that he was ready and willing to perform his part of contract.



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However, the defendant has stated in his written statement that the property is worth about Rs.3 Crores, but the plaintiff has not stated or let in evidence that the property is not worth about Rs.3 Crores. The date of agreement was on 22.09.2016, but the suit was instituted on 20.09.2018.

11. The trial Court drew an inference that period of two years fixed for completion of sale in respect of the payment of Rs.2,00,000/- balance sale consideration is improbable and the time gap of two years pave way for presumption that the amount of advance was received for the payment of loan transaction and the defendant had not intended to sell the suit mentioned property.

12. The trial Court found that the defendant has specifically stated in his written statement that the suit property is worth about Rs.3 Crores, but this part of statement was not denied by the plaintiff through any oral evidences. There is a huge difference of market price coupled with the delay in institution of the suit on the part of the plaintiff and reason for such a long delay for fulfilling the balance sale consideration of Rs.2,00,000/- was also not explained to the satisfaction of the trial Court.



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13. The trial Court further made a finding that the suit property is to an extent of 2 acre 61 cents, situated on the National Highways and therefore, the property would naturally fetch more value than that of the agreed sale price of Rs.23,00,000/-. The trial Court drew factual inferences in these aspects and declined the relief of specific performance of contract. However, the trial Court considered the alternate relief for refund of the advance amount of Rs.21,00,000/- to the plaintiff with interest at the rate of 9% per annum from the date of plaint till the date of realisation.

14. The learned Senior counsel appearing on behalf of the appellant mainly contended that the suit sale agreement, Ex.A1 document was proved by the plaintiff beyond any pale of doubt. The advance amount of Rs.21,00,000/- passed on by the plaintiff to the defendant was also proved, which was admitted by the defendant and fixation of time limit is the prerogative of the parties. In the present case, the defendant orally informed the plaintiff that he was doing a business in Bombay and therefore, two years time limit is to be fixed for the purpose of execution of sale deed and for payment of balance consideration of Rs.2,00,000/-. Thus, the two years time limit was fixed at the instance of the defendant and the said time limit



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agreed between the parties cannot be a bar for grant of specific relief by the Court and thus, the trial Court has committed an error in declining the relief of specific performance in the present case.

15. The trial Court has further committed an error in recording that the plaintiff was not ready and willing to pay the balance sale consideration of Rs.2,00,000/-. In fact, the plaintiff deposited the said amount of Rs.2,00,000/- and its receipt to prove the same had been filed along with the appeal suit. The value of the property recorded by the trial Court is a presumption and as per the market value, the property is about Rs.6,00,000/- (Rupees Six Lakhs only) per acre and therefore, the presumption by the trial Court cannot be a ground to reject the relief of Specific Performance.

16. The learned Senior counsel for the appellant relied on Order VIII Rule 1A of C.P.C., by stating that it is the duty of the defendant to produce document to establish that the value of the suit property, which was about Rs.3 Crores. In the present case, the defendant miserably failed to establish his statement in the written statement that the property was worth about



Rs.3 Crores. Thus, mere statement in the written statement that the property during the relevant point of time was about Rs.3 Crores cannot be taken as a shield against the plaintiff.

17. The learned Senior counsel for the appellant contended that there was no delay in instituting the suit and on completion of two years as agreed between the parties, the suit was instituted within the time limit prescribed and thus, the finding in this regard by the trial Court is perverse.

18. The learned Senior counsel for the appellant relied on the following judgments:

(a) In the case of ***N.B.Namazi Vs. Central Chinmaya Mission Trust, by its Trustee, Mrs.Leela Nambiar***, reported in ***AIR 1988 Madras 84***, wherein the Hon'ble High Court of Madras observed as follows:

“19. On a consideration of all the above we hold that the delay in this case cannot be put against the plaintiff-respondent so as to deny it the right of specific performance merely on the ground that such a relief is discretionary.

21. In Satyanarayana v. Yelloji Rao¹, it has been categorically stated that mere delay is not sufficient to deny specific performance unless there is a waiver or abandonment. But in this case, there was



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no waiver at all at any point of time : nor had the plaintiff-respondent abandoned its right. On the contrary, it is the other way about. If there was nothing to suggest in the conduct of the plaintiff-respondent implying an abandonment, the contract will have to be enforced. Therefore, we are unable to agree with the contention of Mr. Habibullah Badsha that because of the failure to obtain exemption in the first instance, the contract had fallen to the ground. The plaintiff-respondent has been trying its level best to obtain the exemption from payment of stamp duty notwithstanding its failure to obtain it in the first instance which was because of the language of Ex.P1 and P3, to which we have already made a reference.

24. Though a copy of the draft sale deed was agreed to be sent, nothing was done in pursuance of the same. However, ultimately, the exemption was obtained in 1981, but, by then, as we observed above the defendant-appellant taking advantage of the increase in prices wanted to resile from the contract. Therefore, it became necessary on the part of the plaintiff respondent to file the suit. This shows the readiness and willingness of the plaintiff to complete the sale transaction. It is worthwhile to remember that out of the sale consideration of Rs. 3,20,000, if the respondent-plaintiff had paid Rs. 2,70,000, it cannot ever be contended that there was any lack of readiness or willingness on the part of the respondent plaintiff. Therefore, we should hold that the respondent-plaintiff was always ready and willing to complete the sale transaction.”

(b) In the case of ***R.Lakshmikantham Vs. Devaraji***, reported in



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(2019) 8 SCC 62, wherein the Apex Court held as follows:

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“12. The High Court also went into error in stating that the value of the property was Rs 10 lakhs at the time of the sale agreement. PW 1 in his cross-examination admitted that it was Rs 10 lakhs on the date when PW 1 was cross-examined. The value of the property on the date of the sale agreement was only Rs 6 lakhs, and it was open for the parties to negotiate the said price upwards or downwards, which was what the parties did in the facts of the present case. Nothing can, therefore, be derived from the erroneous assumption that a valuable property had been sold at a throwaway price.”

(c) The Hon'ble Supreme Court of India in the case of ***P.Daivasigamani Vs. S.Sambandan***, reported in **2022 SCC OnLine SC 1391**, considered the scope of Section 20 of the Specific Relief Act (Pre-amendment) and the same is extracted hereunder:

*“19. Section 20 of the Specific Relief Act (Pre-amendment), which confers discretion on the court to exercise jurisdiction to decree of specific performance, states that this exercise should not be arbitrary, but guided by sound and reasonable judicial principles. Interpreting and elucidating on Section 20 of the Specific Relief Act (Pre-amendment) and factors to be considered, this Court in *Kamal Kumar v. Premlata Joshi*⁶ has also referred to Sections 16(c), 22, 23 and 24 of the Specific*



Relief Act and forms 47/48 of Appendix A to C of the Civil Procedure Code, 1908, to summarise:

“7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance are:

7.1 First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property;

7.2 Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract;

7.3 Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;

7.4 Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff;

7.5 Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds.

8. In our opinion, the aforementioned questions are part of the statutory requirements [See Sections 16(c), 20, 21, 22, 23 of the



Specific Relief Act, 1963 and the Forms 47/48 of Appendix A to C of the Code of Civil Procedure]. These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts.”

20. Sub-section (2) to Section 20 of the Specific Relief Act (Pre-amendment) lists some of the principles that the court should take into consideration while exercising discretion. The factors to be considered while exercising discretion include hardship to the defendant/seller which he did not foresee, hardship to the plaintiff/purchaser in case of non-performance, or whether the contract, even when not void, was entered under the circumstances that make the enforcement of specific performance inequitable, or whether the plaintiff has done substantial acts or suffered losses as a consequence of the contract, and the conduct of the parties, including that of the defendant/seller and other circumstances under which the contract was entered are such that they give an unfair advantage over the defendant/seller. The court should examine whether the plaintiff/purchaser had, in fact, performed his part of the contract, and if so, how and to what extent, and in what manner he has performed, and whether such performance was



in conformity with the terms of the contract. The status of the parties, and whether the plaintiff/purchaser is a speculator in the property, who buys and sells properties, and whether his conduct reflects an attempt to gain on account of the rise in the price of the property, hoping that the delay in payment of full consideration would go to his advantage, will be a relevant consideration⁷. Incapacity of the defendant/seller and whether the plaintiff/purchaser is operating in property trade, or as a financier or middleman and the defendant/seller is a typical property owner, may also affect the exercise of discretion. In cases where the defendant/seller claims that he was gullible and nescient, who got caught by entering into the agreement to sell, facts like whether the sale consideration is lower than the market price and the terms and conditions settled are unfavourable, should be given due weightage. Sometimes the defendant/seller, post the agreement to sell, in consultation with elders or family members, wishes to back out because the decision to sell was a folly, unwise, or a result of trickery. In such cases, the conduct of the defendant/seller would be of consequence. The defendant/seller would be well advised to immediately and without delay write to the plaintiff/purchaser reneging the agreement to sell and enclose a cheque for the amount received. His offer to pay or payment of interest or damages would be an added factor as the intending purchaser would then be entitled to look for another property.”



(d) In the case of ***Gian Chand and brothers and another Vs.***

Rattan Lal alias Rattan Singh, reported in (2013) 2 SCC 606, wherein the

Apex Court considered the principles as follows:

“18. It is well-settled principle of law that a person who asserts a particular fact is required to affirmatively establish it. In Anil Rishi v. Gurbaksh Singh [(2006) 5 SCC 558] (SCC p. 561, para 9), it has been held that the burden of proving the facts rests on the party who substantially asserts the affirmative issues and not the party who denies it and the said principle may not be universal in its application and there may be an exception thereto. The purpose of referring to the same is that if the plaintiff asserts that the defendant had acknowledged the signature, it is obligatory on his part to substantiate the same. But the question would be what would be the consequence in a situation where the signatures are proven and there is an evasive reply in the written statement and what should be construed as substantiating the assertion made by the plaintiff.

19. In Krishna Mohan Kul v. Pratima Maity [(2004) 9 SCC 468] it has been ruled thus : (SCC p. 474, para 12)

“12. ... When fraud, misrepresentation or undue influence is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation.”

20. In Shashi Kumar Banerjee v. Subodh Kumar Banerjee [AIR 1964 SC 529] a Constitution Bench of this Court, while dealing with a mode of proof of a will under the Succession Act, 1925 observed that where the caveator alleges undue



influence, fraud and coercion, the onus is on him to prove the same.

21. In A. Raghavamma v. A. Chenchamma [AIR 1964 SC 136], while making a distinction between burden of proof and onus of proof, a three-Judge Bench opined thus : (AIR p. 143, para 12)

“12. ... There is an essential distinction between burden of proof and onus of proof : burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. The burden of proof in the present case undoubtedly lies upon the plaintiff to establish the factum of adoption and that of partition. The said circumstances do not alter the incidence of the burden of proof. Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence.”

22. The present case is not one such case where the plaintiffs have chosen not to adduce any evidence. They have examined witnesses, proven entries in the books of accounts and also proven the acknowledgments duly signed by the defendant. The defendant, on the contrary, except making a bald denial of the averments, had not stated anything else. That apart, nothing was put to the witnesses in the cross-examination when the documents were exhibited. He only came with a specious plea in his evidence which was not pleaded. Thus, we have no hesitation in holding that the High Court has fallen into error in holding that it was obligatory on the part of the plaintiffs to examine the handwriting expert to prove the signatures. The finding that the plaintiffs had failed to discharge the burden is absolutely misconceived in the facts of the case.”



(e) In the case of *Mademsetty Satyanararyana Vs. G.Yelloji Rao and*

others, reported in *(1965) 2 SCR 221*, wherein the Apex Court considered the scope of the Limitation Act and held that mere delay cannot be a ground for refusing the relief of specific performance.

19. The learned Senior counsel for the appellant contended that there is no delay in instituting the suit for specific performance. When the parties in the agreement agreed for the completion of sale within a period of two years, there cannot be any delay as found by the trial Court and thus, the point of delay considered by the trial Court is not in consonance with the principles laid down by the Apex Court.

20. The learned Senior counsel appearing on behalf of the respondent strenuously objected the said contentions by stating that the point of delay is to be considered with reference to the factualities established between the parties. The fact remains that 91% of the sale consideration as alleged by the plaintiff had been paid by him to the defendant and Rs.2,00,000/- was to be paid as per the terms of the suit sale agreement.

21. Question arises, why time limit of two years had been fixed for



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completion of sale, despite the fact that the plaintiff has stated that he had already paid a sum of Rs.21,00,000/- to the defendant pursuant to the suit sale agreement.

22. The factual aspects admitted between the parties establishes a serious doubt and therefore, the trial Court has rightly drawn the factual inference that the advance amount was paid towards loan transaction and the plaintiff had not intended to purchase nor the defendant was willing to sell the property. Thus, it was a loan transaction between the parties and the factual inference drawn by the trial Court is the probable circumstance, which was established by the defendant and which all are self-evident and thus, the appeal is to be rejected. It is contended that the quality of evidence was weighed by the trial Court in a right perspective and thus, the appeal is devoid of merits. The defendant had handed over the documents pertaining to the suit mentioned property, which would also reveal that the defendant had not intended to sell the valuable property for a meagre amount of Rs.23,00,000/- .

23. The learned Senior counsel for the respondent reiterated by stating



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that as per the valuation report of the approved Engineers, the property would fetch for a sum of Rs.6 Crores as of now. Therefore, the statement of the defendant in his written statement that the property was worth about Rs.3 Crores at the time of entering into a suit sale agreement was believed by the trial Court and thus, the appeal is to be rejected.



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24. It is contended that the defendant in his written statement has specifically stated that the property was worth about Rs.3 Crores. However, the appellant/plaintiff had not disputed the said statement specifically nor any evidence has been produced for the purpose of rebutting the said contentions.

25. That apart, the trial Court was very much aware of the market price during the relevant point of time and taking all the mitigating factors in a practical way, it formed an opinion that the suit sale agreement was not intended for the sale of the property, but it was a loan transaction.

26. In support of the contentions, the judgment of the Madras High Court in the case of ***Luisa @ Luvisa [Died] & another Vs. Prakasam Ammal*** reported in ***2022-5-L.W.274***, wherein the Hon'ble High Court of Madras made the following findings:

“(15)When it is specifically pleaded by the defendant that the value of the suit property at the time of Sale Agreement is more than Rs.5 lakhs, the respondent/plaintiff has not come forward during her chief examination denying the value of the property at the time of suit Agreement. Though the Sale Agreement is not required to be registered when the Agreement was executed, the



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same has been registered. It is the usual practice of financiers who obtain Sale Agreement as a security for loan transaction to insist registration of the Sale Agreement at the cost of the owner. The defendant in her written statement has given some more information about the circumstances under which the defendant's husband approached the plaintiff for loan and the disbursement of the amount as stated in the Sale Agreement. Though the respondent/plaintiff denied the suggestions put to her, she has admitted that she has an independent house of her own and her house is located just ten houses from the suit property. She has spoken to the fact that the parties agreed for a consideration of Rs.2 lakhs and a sum of Rs.1.5 lakhs was handed over to the seller and that the Sale Agreement was prepared by referring to the contents of a Release Deed dated 17.04.1996. During cross-examination, PW2 admits that he knew about the payment of advance amount and the total sale consideration only from the parties. He has also stated as follows:

"தாவா சொத்து எங்குள்ளது என்று எனக்கு தெரியாது. சொத்து விவரத்தை தாவா சொத்திற்கு ரூபாய் 2,00,000/= மதிப்பு காட்டியது அவர்கள் சொல்லி தான் எழுதப்பட்டது. அக்ரிமெண்ட் தேதியில் சொத்தின் மதிப்பு ரூ.10 லட்சம் என்றால் எனக்கு தெரியாது. பொதுவாக அக்ரிமெண்ட் பாகக்கித்தொகை செலுத்த பொதுவாக 2 மாதம் அல்லது 6 மாதம் என்று போடுவார்கள். ஆனால் தாவா அக்ரிமெண்ட்டில் பாகக்கித்தொகை செலுத்த 3 வருடம் கால அவகாசம் கொடுக்கப்பட்டுள்ளது. பாகக்கித்தொகை ரூபாய் 50 ஆயிரம் தான். ஏன் அவ்வளவு கால அவகாசம்



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கொடுக்கப்பட்டுள்ளதென்று அதில் எழுதவில்லை."

(22)As pointed out earlier, 75% of the Sale Consideration was paid under Ex.A1 and for the balance of Rs.50,000/- [25%], three years period was given. This Court has already found that there was no acceptable explanation as to why three years period was specified in the Sale Agreement for paying just 25% of the total sale consideration. It is stated by the respondent/plaintiff that money was borrowed for the medical expenses of the defendant's husband."

27. Considering the arguments as advanced between the respective learned Senior counsel appearing on behalf of the parties to the *lis*, it is not in dispute between the parties that the suit sale agreement was entered into between the plaintiff and the defendant, which was registered. The defendant had not disputed the receipt of an advance amount of Rs.21,00,000/- from the appellant/plaintiff. Further it is not in dispute that the suit sale agreement was entered into between the parties on 22.09.2016 and time for completion of contract was fixed as two years. Since there is no serious doubt between the parties regarding the execution of suit sale agreement, Ex.A1 document and receipt of part consideration of Rs.21,00,000/- and time limit of two years fixed, this Court has to examine



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the other part of the doubts raised between the parties to arrive a conclusion, whether the suit sale agreement was executed with an intention to sell the suit mentioned property or for the purpose of loan transaction.

28. The trial Court made a categorical finding that the delay of two years for completion of contract raises a serious doubt, since the appellant/plaintiff had paid a sum of Rs.21,00,000/-, which is 91% of the agreed sale consideration. In respect of Rs.2,00,000/-, the parties fixed the time limit of two years, which raises a serious doubt and taking into consideration the probabilities and the other pleadings, the trial Court formed an opinion that the suit sale agreement was intended for loan transaction and not for the sale of property. The huge difference of market price coupled with the delay in filing the suit was taken into consideration by the trial Court. This Court is of an opinion that Rs.3 Crores as stated by the defendant may not be an accurate price. However, certainly it cannot be Rs.23,00,000/- as rightly pointed out by the trial Court. Extent of property is 2 acres and 61 cents in the National Highways between Villupuram and Ulundurpet. Therefore, the findings in this regard by the trial Court cannot be brushed aside merely on the ground that the actual value of the property



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is not Rs.3 Crores as contended by the appellant/plaintiff.

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29. The learned Senior counsel for the respondent brought to the notice of this Court that as of now, the value of the property is about Rs.6 Crores.

30. May that as it be. In either way, no prudent man will agree to sell his property, extending 2 acres and 61 cents for Rs.23,00,000/-, more specifically, when the property situates in the National Highways between Villupuram and Ulundurpet. Therefore, the trial Court drew an inference that the suit sale agreement was executed for a loan transaction and the defendant had not intended to sell the property.

31. Regarding the judgments relied on by the appellant, no doubt, the suit was instituted within the period of three years and not hit by the limitation. However, the trial Court has raised a serious doubt regarding the period of two years agreed between the parties for completion of sale, more specifically, when the balance sale consideration of Rs.2,00,000/- alone was to be paid. That being the doubt raised, this Court do not find any infirmity or perversity in respect of the factual inferences drawn by the trial Court,



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which is undoubtedly based on the overall facts and circumstances established between the parties.

32. As rightly found by the trial Court, the suit sale agreement was proved and part sale consideration passed on to the defendant was also proved beyond any doubt. However, the period of two years agreed between the parties to pay the balance sale consideration of Rs.2,00,000/- coupled with the huge difference of marked price, created a serious doubt in the mind of the trial Court, which was raised by the defendant in his written statement, but was not specifically rebutted by the plaintiff either through the documents or through oral evidences.

33. This being the factum established, the trial Court has rightly granted the alternate relief of refund of the advance amount of Rs.21,00,000/- to the plaintiff with interest at the rate of 9% per annum from the date of plaint till the date of realisation and this Court is not inclined to interfere with the said findings in the judgment.



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34. The learned Senior counsel for the appellant made a submission that excess Court fee has been paid.

35. In such an event, the appellant is at liberty to approach the trial Court seeking refund of Court fee by establishing the fact that he paid excess Court fee.

36. Accordingly, the Decree and Judgment dated 14.06.2021 passed in O.S.No.133 of 2018 by the Principal District Judge, Villupuram stands confirmed and the Appeal Suit in A.S.No.567 of 2022 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.02.2023

Index : Yes
Speaking order
Neutral Citation: Yes
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To

The Principal District Judge,
Villupuram.



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A.S.No.567 of 2022

S.M.SUBRAMANIAM, J.

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20.02.2023