



A.S.No. 223 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

A.S.No. 223 of 2021

Jayanthi

... Appellant

Vs.

Murugan

... Respondent

PRAYER: Appeal Suit filed under Section 96 r/w Order 41 Rule 1 of Civil Procedure Code against the Decree and Judgement of the Learned II Additional District Judge at Puducherry dated 19.03.2020 in O.S. No. 60 of 2015 in so far as it relates to the refund of loan money by the Appellant herein to the Respondent.

For Appellant : Mr. S. Subramaniam

For Respondent : Mr. S. Vadivel



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JUDGMENT

The defendant in O.S.No.60 of 2015 has filed the Appeal suit challenging the Judgment and Decree dated 19.03.2020, granting a relief of refund of money with interest, without there being a claim in a suit for specific performance.

2. For the sake of convenience, the parties will be addressed with the same rank assigned in the suit.

3. The case of the plaintiff is under :

i) The plaintiff entered into an agreement of sale on 27.09.2012 with the defendant for the purchase of the suit property which belongs to the defendant for a sale consideration of Rs.11,14,000/- by paying an advance amount of Rs 5,00,000/- . The sale agreement was registered in document No.5401/2012 and time for performance of the contract was fixed as 11 months.

(ii) The defendant had also received an additional amount of Rs 1 lakh on 01.01.2013 and another 1 lakh on 16.05.2013, thereby extended the



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time for execution of sale deed orally and endorsed the same. However, the defendant has not executed the sale deed or provided necessary title deeds despite receiving advances.

(iii) The plaintiff issued a legal notice on 26.02.2015, and the defendant having acknowledged the same on 28.02.2015 has not come forward to execute the sale deed.

(iv) The plaintiff has therefore filed the suit to direct the defendant to execute and register the sale deed in favour of the plaintiff after receiving the balance sale consideration of Rs. Rs.4,14,000/-, along with a permanent injunction restraining the defendant from indulging in any actions that might encumber or alienate the property.

4. The defendant had filed a written statement wherein the defendant has stated that :-

(i) The defendant is a house wife and her husband is running a private concern in the name and style of Laksha Mobile Car Washing. The defendant and her husband had availed a loan of Rs.5 lakhs at an interest rate of 36% per annum to help meet the expenses of their elder daughter Saranya's marriage in September 2012. The defendant further availed an additional loan



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of Rs.2 lakhs on two separate occasions for which the defendant requested a reduction of interest rate from 36% to 30%, which the plaintiff agreed to.

(ii) In February 2014, the defendant and her husband paid Rs.2 lakhs towards their outstanding debt. Subsequently, due to financial difficulties they could not pay the monthly interest from December 2014 onwards.

(iii) The plaintiff, then issued a notice to the defendant and the defendant acknowledged the same and requested time until August 2015 to repay the outstanding amount.

(iv) The sale agreement, dated 27.09.2012, was not intended for selling the property but was executed as a security for the loan. It was the plaintiff who insisted on executing a sale agreement instead of a mortgage deed due to lower registration and stamp duty fees and the suit is liable to be dismissed.

5. On the above pleadings, the Trial court had framed the following issues :-

1. Whether plaintiff is entitled for a decree of specific performance as per sale agreement dated 27.09.2012?
2. Whether time is the essence of contract?
3. Whether the plaintiff is entitled for permanent



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injunction as prayed for?

4. Whether sale agreement is executed as security for borrowal of amount?

5. To what other relief plaintiff is entitled to?

6. Before the trial Court, the plaintiff examined himself as PW.1 and marked eight documents as Exs A1 to A8 i.e., Ex.A1 is the Sale agreement executed by the defendant in favor of the plaintiff dated 27.09.2012; Ex.A2 is the Legal notice dated 26.02.2015 issued by the plaintiff to the defendant; Ex.A3 is the Copy of the reply notice given by the defendant dated 07.03.2015; Ex.A4 is the Attested photocopy of the ration card of the plaintiff; Ex.A5 is the Attested photocopy of the election identity card of the plaintiff; Ex.A6 is the Attested photocopy of the Aadhar card of the plaintiff; Ex.A7 is the Acknowledgment card; Ex.A8 is the Sale deed in the name of the defendant dated 27.03.2006. On the defendant's side, the defendant has examined herself as DW1 and DW.2 Vimalpathy, DW.3 Arokiaraj, DW.4 Sudhakar, and DW.5 Balaji were also examined and marked six documents as Exs B1 to B6 i.e., Ex.B1 is the Diary (marked through cross-examination); Ex.B2 is the Marriage invitation (marked through DW.1); Ex.B3 is the Statement of Account of Soudakarane DA (marked through DW.2); Ex.B4 is the Photocopy of Cheque



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No.277870 with encashment details (marked through DW.2); Ex.B5 and Ex.B6 are the Indian Savings Bank details of the plaintiff (marked through DW.3). Additionally, during cross-examination of DW.4, the following exhibits of plaintiff's were marked: Ex.A9, Cheque No.522597 in the original, dated 15.03.2013, and Ex.A10, Cheque No.522598 in the original, dated 17.03.2013. DW.4 also marked Ex.X1, Photocopy of Axis Bank Demand Draft No.035419, and Ex.X2, a letter confirming Axis Bank Demand Draft No.035419, marked through DW.5.

7. On considering the oral and documentary evidence, the trial Court, by Judgement and Decree in O.S.No.60 of 2015 dated 19.03.2020, while dismissing the suit in respect of the claim of specific performance, decreed the suit for refund of the loan amount of Rs.7 lakhs with interest at 12% per annum from the date of agreement till the date of decree and 6% per annum from the date of decree till the date of realization and with costs. Aggrieved against the same, the defendant has come up with the present Appeal Suit.

8. Learned counsel for the appellant, Mr. S. Subramaniam, submitted



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that, the trial Court having disbelieved the plaintiff's case has held that Ex A1 is not an agreement of sale and it is only executed for the purpose of loan transaction and thereby rightly rejected the claim of specific performance. However the trial Court ought not to have directed the appellant/plaintiff to refund the so called advance amount, without a specific prayer being sought for and without there being any amendment made in the plaint. In support of his contention the learned counsel for the Appellant relied on the judgement of Hon'ble Supreme Court in *Desh Raj vs Rohtash Singh* reported in (2023) 3 SCC 714.

9. The learned counsel for the appellant/defendant further submitted that even if the trial Court holds that the transaction was indeed a loan, then the plaintiff's claim would automatically be time-barred since there was no prior plea or suit filed for the return of money.

10. Learned counsel for the respondent, Mr. S. Vadivel, submitted that, the Trial court has rightly directed to refund the amount of Rs.7 lakhs with interest thereon on the ground of equity.

11. Heard the learned counsel appearing for the parties and perused



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the materials available on record including Judgment and Decree of the court below.

12. The present Appeal has been filed by the defendant against the refund of loan money, however, the plaintiff has not preferred any cross appeal so far. The records have been received and with the consent of counsel for both parties, the Appeal Suit is taken up for final hearing itself.

13. Points for consideration in this Appeal Suit are:-

1. Whether the decree granted by the Trial court without any specific prayer for the alternate relief of refund of money at the time of filing the suit is valid in law ?
2. Whether the decree granted by the Trial court suo moto for refund of money without there being any amendment made in the plaint is valid in law?

14. The suit is filed by the plaintiff for the relief of specific performance and permanent injunction based on the sale agreement (Ex.A1) executed by him with the defendant. The defendant had contended that the agreement was executed only as security for a loan transaction and not for the



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sale of the property. The trial court, disbelieving the plaintiff's case, had dismissed the suit in respect of specific performance, however, it directed a refund of the amount, even though there was no prayer for an alternative remedy and no amendment was made in the plaint seeking a refund of advance money/earnest money. It is the contention of the appellant counsel that the Trial court ought not to have directed to refund the so called advance amount without there being a specific prayer for the alternative remedy, especially when such claim is time barred.

15. A perusal of the judgment rendered by the court below and the oral and documentary evidence adduced by the parties would disclose that the Trial Court had gone into the genuineness of the agreement of sale, Ex.A1 produced by the plaintiff to find out as to whether it was intended for purchase of the suit property as claimed by the plaintiff or it was only executed as a security towards loan transaction as contended by the defendant.

16. On appreciating the facts that though the alleged agreement of sale was entered on 27.9.2012 and time for conclusion of contract was fixed as 11



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months, however, legal notice, Ex.A2 was issued by the plaintiff on 26.2.2015 and the suit was filed on 27.4.2015, the Trial Court had inferred the intention of the plaintiff through his conduct. The Trial Court has also observed that the evidence of PW.1 would reveal that he is not aware of the four boundaries, survey number of the suit property, the village in which the suit property is situated, which would go to show that even without any knowledge of the property, Ex.A1 was entered between the plaintiff and the defendant which certainly raises doubt as to whether the parties to the contract have intended to act upon the document.

17. While Ex.A1 agreement of sale pleaded by the plaintiff is surrounded by suspicion, Ex.B2 marriage certificate produced by the defendant in proof of her daughter's marriage having been conducted within one month proximate to the date of Ex.A1 agreement of sale and the entries found in Ex.B1 diary evidencing payment of interest made by the defendant, which have also been admitted by the plaintiff, would probabilise the case of the defendant that it was only a loan transaction and Ex.A1 agreement of sale was not intended to be acted upon. While these aspects have been rightly appreciated by the Trial Court to reject the claim of specific performance, this court is of the view that



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the Trial Court had erred in granting the relief of refund of money paid by the plaintiff without there being a prayer for the same or any amendment in that regard at a later stage.

18. In this regard it is useful to refer the case of Apex Court in ***Desh Raj vs Rohtash Singh*** reported in (2023) 3 SCC 714 :-

"The plaintiff in his suit for specific performance of a contract is not only entitled to seek specific performance of the contract for the transfer of immovable property but he can also seek alternative relief(s) including the refund of any earnest money, provided that such a relief has been specifically incorporated in the plaint. The court, however, has been vested with wide judicial discretion to permit the plaintiff to amend the plaint even at a later stage of the proceedings and seek the alternative relief of refund of the earnest money. The litmus test appears to be that unless a plaintiff specifically seeks the refund of the earnest money at the time of filing of the suit or by way of amendment, no such relief can be granted to him. The prayer clause is a sine qua non for grant of decree of refund of earnest money.. In the absence of such a



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prayer, it is difficult to accept that the courts would suo-moto grant the refund of earnest money irrespective of the fact as to whether Section 22(2) of SRA Act is to be construed directory or mandatory in nature."

19. In view of the above judgement, the court cannot suo moto decree for refund of earnest money irrespective of the fact whether Section 22(2) of The Specific Relief Act, 1963 is to be construed as directory or mandatory. In the instant case admittedly, the plaintiff has not originally filed any prayer seeking alternate relief for refund of earnest money, subsequently also there is no prayer made to amend the plaint. The question to be answered in this Appeal Suit is as to whether a discretionary relief of refund of earnest or advance money can, suo moto be ordered by the trial Court, without there being a prayer for an alternative relief in the plaint or without there being any amendment in the plaint at a later stage. If the amount involved in the suit has to be treated as loan and a claim of refund of the same has to be maintained, the suit has to be filed within limitation, which has not been done in the instant case.

20. On going through the oral and documentary evidences adduced by



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both parties, this court is of the view that the trial Court, having rightly disbelieved the execution of sale agreement (Ex A1) for the purpose of sale and having rejected the claim for specific performance ought not to have ordered for refund of amount without a specific prayer for the alternate relief.

21. Accordingly, the appeal is allowed. The Judgement and Decree directing to refund is set aside. The amount shall be returned to the defendant within a period of two weeks from the date of receipt of a copy of this judgment. No costs.

05.09.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No

mpa/ssk

To

1. The II Additional District Judge at Puducherry
2. The Section Officer, VR Section, High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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