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S.A.No.1061 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.01.2023

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THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.1061 of 2022

and

C.M.P.No.22739 of 2022

Venkatesan

...Appellant

Vs.

Dhanasekar

...Respondent

Prayer :-

This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree made in AS.No.1 of 2021 on the file of the III Additional District Court, Kallakurichi dated 24.11.2021 confirming the judgment and decree made in OS.No.204 of 2014 on the file of the Additional Subordinate Judge's Court, Kallakurichi dated 27.11.2020.

For Appellant : Mr.A.E.Ravichandran

JUDGMENT

This second appeal is directed as against the judgment and



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decree made in AS.No.1 of 2021 on the file of the III Additional District Court, Kallakurichi dated 24.11.2021 confirming the judgment and decree made in OS.No.204 of 2014 on the file of the Additional Subordinate Judge's Court, Kallakurichi dated 27.11.2020, thereby allowed the suit for specific performance.

2. The respondent is the plaintiff and the appellant is the second defendant. The respondent filed suit for specific performance. The case of the respondent is that the defendants agreed to sell the suit property for total consideration of Rs.4,00,000/- and received a sum of Rs.3,00,000/- as an advance on 05.07.2013 and executed agreement for sale. As per the agreement, within a period of one year, the respondent has to pay the balance sale consideration and on receipt of the same, the appellant has to execute the sale deed in his favour. However, the defendants failed to execute the sale deed. Hence the suit.

3. The appellant and another resisted the same by way of filing written statement and stated that the agreement for sale was executed only on borrowal of loan amount. They had no intention to sell the suit property.

Only on compulsion, the agreement for sale was executed on borrowal of



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loan. In fact on receipt of the pre-suit notice, they had replied by way of reply notice dated 04.07.2014.

4. On the side of the respondent, the respondent had examined PW1 and PW2 and marked Ex.P1 to Ex.P4. On the side of the appellant, he had examined DW1 and marked Ex.D1. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit. Aggrieved over the judgment and decree of the trial Court, the second defendant preferred an appeal suit in AS.No.1 of 2021 before the III Additional District Court, Kallakurichi. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgment and decree passed by the trial Court. Challenging the same, the second defendant has come forward with the present second appeal.

5. The learned counsel for the appellant has raised the following substantial questions of law:

a) When the plaintiff has not proved the readiness and willingness under Section 16(c)



from the date of execution of sale agreement dated 05.07.2013, is he entitled for the discretionary relief of specific performance?

b) Whether the appellant proved, during the cross examination of PW's 1 & 2, that Ex.A1 sale agreement is a sham and nominal document, not to be acted upon and the same is not a bar under Sections 91 & 92 of Evidence Act, were the courts below right in granting the relief of specific performance?

c) Whether the findings of the Courts below, on facts, are perverse, vitiated by non-consideration of relevant evidence and misleading of evidence and the same is liable to be set aside by this Hon'ble Court?

d) Where the sale agreement Ex.A1 is disputed by the appellant and the attesting witness PW2 does not know about the property details, were the courts below right in relying on Ex.A1 and decreeing the suit, when the plaintiff has not discharged his burden and proved Ex.A1?

6. The learned counsel for the appellant would submit that the respondent failed to prove the essential elements as contemplated under Section 16 (c) of the Specific Relief Act. He failed to prove his readiness



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and willingness before the trial court by any means of evidence. Ex.A1 is a sham and nominal document and not to be acted upon since it was executed only for the purpose of security for the loan of Rs.1,50,000/- obtained from the respondent. Therefore, the appellant had no intention to sell the suit property since it is a dwelling house. No prudent man would execute agreement for sale for total sale consideration of Rs.4,00,000/-, whereas the value of the suit property was around Rs.20,00,000/- at the time of agreement for sale. The respondent had examined PW2 who had signed as a witness to Ex.A1. In fact PW1 and PW2 categorically admitted that they were not aware of the description of the property and value of the property, which clearly shows that Ex.A1 was not executed with intention to sell the suit property.

7. Heard, Mr.A.E.Ravichandran, the learned counsel appearing for the appellant and this Court considered the rival submission made by the learned counsel for the appellant.

8. On perusal of records, revealed that the appellant and another had executed agreement for sale which was marked as Ex.A1. Accordingly, the total sale consideration was agreed by the parties to the tune of



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Rs.4,00,000/- and on the date of agreement, the appellant received a sum of

Rs.3,00,000/-. The period fixed under Ex.A1 was one year. Though the

respondent was willing to pay the balance sale consideration for execution

of sale deed, the appellant failed to come forward to receive the balance

sale consideration and to execute the sale deed. Therefore, the respondent

caused legal notice, which was marked as Ex.A2. It was returned and the

returned cover was marked as Ex.A4. Though it was returned, the appellant

issued reply notice, which was marked as Ex.D1 dated 04.07.2014.

Whereas on 04.07.2014, the respondent filed suit for specific performance.

Therefore, there was no chance to have knowledge about the reply notice by

the respondent at the time of filing of the suit. Admittedly, Ex.A1 was a

registered one. It is not the case of the appellant that they never executed

any agreement and denied the very execution of the agreement for sale.

Whereas, they had taken stand that it was executed only for the purpose of

security at the time of borrowal of loan to the tune of Rs.1,50,000/-. But the

appellant failed to substantiate the same by any oral or material evidence.

9. As such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and decreed the suit. Accordingly, this Court is



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of the considered opinion that no substantial questions of law involved in this appeal.

10. In view of above, this Second Appeal is dismissed and the judgment and decree made in AS.No.1 of 2021 on the file of the III Additional District Court, Kallakurichi dated 24.11.2021 confirming the judgment and decree made in OS.No.204 of 2014 on the file of the Additional Subordinate Judge's Court, Kallakurichi dated 27.11.2020 is confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

04.01.2023

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order

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To

- 1.The III Additional District Court,
Kallakurichi
- 2.The Additional Subordinate Judge's Court,
Kallakurichi
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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