



AS No.433 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-02-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AS No.433 of 2019

Saraswathi

.. Appellant

vs.

Pandurangan

.. Respondent

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 30.01.2019 passed by the learned Additional District Judge, Fast Track Court at Villupuram in OS No.79 of 2014.

For Appellant : Mr.D.Dhanasekaram

For Respondent : Mr.D.Ravichander



AS No.433 of 2019

WEB COPY

JUDGMENT

The present Appeal Suit has been instituted against the judgment and decree dated 30.01.2019 passed by the learned Additional District Judge, Fast Track Court at Villupuram in OS No.79 of 2014.

2. The appellant is the plaintiff and the respondent is the defendant in the suit.

3. The appellant/plaintiff instituted suit for specific performance.

4. The suit property belonged to the defendant and the defendant agreed to sell the suit property to the plaintiff for a sale consideration of Rs.12 lakhs on 25.04.2013. On the same day, the plaintiff paid a sum of Rs.2 lakhs towards advance fixing the date of execution of Sale Deed within a period of 18 months. The plaintiff was ready and willing to perform her part of contract by paying the balance sale consideration. However, the



AS No.433 of 2019

defendant was not ready to execute his portion of the contract and thus the plaintiff issued legal notice and thereafter instituted the suit for specific performance.

5. The defendant denied the plaint averments and has stated that the plaintiff and her family members are money lenders. They advance loans at high rates of interest on the security of immovable properties.

6. The plaintiff is in the habit of advancing loans against the agreements for sale of immovable properties in the locality. The plaintiff never intended to purchase the suit schedule property nor the defendant ever agreed to sell the suit schedule property to the plaintiff.

7. There was no consensus ad idem for completion of sale on the suit schedule property between the plaintiff and the defendant to sell the property. One Mr.Manimaran son of the plaintiff was also doing money lending business. The defendant borrowed a sum of Rs.4 lakhs from the



AS No.433 of 2019

plaintiff. The plaintiff obtained an Agreement for Sale in respect of another shop at Rs.4,90,000/- on 16.11.2007 in the name of her son Mr.Manimaran.

The defendant paid interest at the rate of 36% per annum alone to the plaintiff. Thus the defendant could not repay the principal sum of Rs.4 lakhs.

8. The plaintiff cancelled the Agreement of Sale dated 16.11.2007 and obtained another Sale Agreement in the name of her son for Rs.4,90,000/-. The defendant had paid Rs.2 lakhs and interest on Rs.4 lakhs. The said Mr.Manimaran cancelled the Sale agreement on 12.10.2010.

9. The defendant denied the averments in the plaint in entirety by stating that the plaintiff was the money lender and in lieu of the loan amount borrowed, the defendant executed the suit Sale Agreement and at no point of time, there was an intention to sell the suit schedule property.



10. Based on the pleadings, the Trial Court framed the following

issues:-

(1) Whether the suit Sale Agreement dated 25.04.2013 is true as alleged by the plaintiff ?

(2) Whether the Sale Agreement is executed in favour of plaintiff or her son as security for the loan availed by the defendant ?

(3) Whether the plaintiff is entitled for decree of specific performance or alternatively for recovery of advance amount with interest ?

(4) To what other relief the plaintiff is entitled for ?

11. On the side of the plaintiff PWs-1 to 3 were examined as witnesses and Exs.A1 to A-4 were marked as documents. On the side of the defendant DWs-1 and 2 were examined as witnesses and Exs.B-1 to B-5 were marked as documents.

12. Regarding issue Nos.1 and 2, whether the suit Sale Agreement is truly executed in favour of the plaintiff or her son as security to the loan



AS No.433 of 2019

amount, the suit Sale Agreement was executed towards security for the loan amount borrowed.

13. The Trial Court made a finding that the plaintiff admitted that the plaintiff had entered the Sale Agreement for some other shop on 16.07.2007. The said Sale Agreement was also marked as Ex.B-2. However, the plaintiff do not remember the sale consideration of Rs.4,90,000/- and Rs.4 lakhs was paid as an advance amount.

14. The plaintiff did not remember whether the defendant refunded the amount or not. However, the suit Sale Agreement was cancelled on 12.10.2009 as per Ex.B-1 document and thus Ex.B-2 Sale Agreement was cancelled by an Agreement under Ex.B-1 document by the plaintiff. The plaintiff admits that his son Mr.Manimaran entered into Sale Agreement with the defendant on 12.10.2009 for the said sale consideration of Rs.4,90,000/- and Rs.4 lakhs was paid as an advance amount. Her son Mr.Manimaran cancelled the said Sale Agreement on 15.09.2011 as per



Ex.B-3 document.

WEB COPY

15. The Trial Court further made a finding that the plaintiff had not verified the title, encumbrance to the property, but the suit schedule property was intended for sale consideration. The plaintiff ought to have verified the title, documents, including the Encumbrance Certificate, Patta etc. However, in the present case, no such verification was done by the plaintiff at the time of signing the suit Sale Agreement. Consequently, the Trial Court drew an inference that the parties had not intended to sell the suit schedule property for the agreed sale consideration of Rs.12 lakhs.

16. That apart, the plaintiff and her son was having the habit of entering into Sale Agreement as security for the loan and on realisation of the loan amount, cancelled such Sale Agreement. Such instances were also established by the defendant by referring the earlier Sale Agreement entered into between the defendant and the son of the plaintiff. The said transactions are established through Exs.B-1 to B-5 documents.



WEB COPY

17. The Trial Court analysing the conduct of the plaintiff and the defendant, drew an inference that the parties have not intended to be acted upon the suit Sale Agreement under Ex.A-1 document and accordingly, answered Issue Nos.1 and 2 in favour of the defendant.

18. With reference to Issue Nos.3 and 4, the Trial Court found that since the relief of specific performance was not granted in favour of the plaintiff, directed the defendant to pay the advance amount received by the defendant from the plaintiff along with interest.

19. Beyond the findings of the Trial Court, the suit schedule property described in the plaint would reveal that the extent of property proposed to be sold through suit Sale Agreement situate at Tindivanam and the extent of property is about 53.13 cents and therefore the sale consideration as per suit Sale Agreement also would pave way to form an opinion that the parties had not intended to sell the property.



WEB COPY

20. No prudent man would agree to sell half acre of land for a sum of Rs.12 lakhs and in this regard, this Court is of an opinion that the plaintiff is not entitled for the relief of specific performance, but entitled for the alternate relief to refund the advance amount paid to the defendant.

21. Thus the Trial Court has approached the issues in right perspectives and considered the documents and evidences and inferred that there was no intention for completion of the sale of the suit schedule property and consequently agreed to alternate the relief.

22. This Court do not find any infirmity or perversity in respect of the findings as well as the conclusion arrived by the Trial Court in rejecting the relief of specific performance and granting the alternate relief of refund of advance amount with interest.



AS No.433 of 2019

23. Accordingly, the judgment and decree dated 30.01.2019 passed by the learned Additional District Judge, Fast Track Court at Villupuram in OS No.79 of 2014 stands confirmed and consequently AS No.433 of 2019 is dismissed. However, there shall be no order as to costs.

16-02-2023

Speaking Order/Non-Speaking Order.
Neutral Citation : Yes/No.
Internet : Yes/No.
Index: Yes/No.
Svn



AS No.433 of 2019

To

WEB COM

The Additional District Judge,
Fast Track Court,
Villupuram.



WEB COPY



AS No.433 of 2019

S.M.SUBRAMANIAM, J.

Svn

AS No.433 of 2019

16-02-2023

12/12