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S.A.No.200 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.200 of 2017

1.S.Ramaiyah (Died)

2.Arul Anand

3.Vetriselvi

4.Bharathi

5.Uma

6.Rama

... Appellants

(A2 to A6 are bring on record as LR's of the deceased A1 vide Court order dated 30.10.2023 made in C.M.P.Nos.24694, 24697 and 24698 of 2023 in S.A.No.200 of 2017)

VS.

R.Jayaseelan

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to allow the second appeal with costs by setting aside the Judgment and Decree dated 14.10.2014 made in A.S.No.45 of 2013 of the Principal District Judge, Cuddalore, which allowed the Appeal and modified the Judgment and Decree dated 13.03.2012 made in O.S.No.239 of 2002 of the II Additional Subordinate Judge, Cuddalore.



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For Appellants : Mr.M.Ravi

For Respondent : No Appearance

J U D G E M E N T

The plaintiff in the suit for specific performance is the appellant. The suit for specific performance filed by the appellant was decreed by the Trial Court and on appeal filed by the respondent/defendant, the First Appellate Court reversed the findings of the Trial Court and allowed the appeal by granting alternative relief of return of advance amount. The suit was dismissed in respect of main relief of specific performance. Aggrieved by the same, the appellant has come by way of this second appeal.

2. According to the appellant/plaintiff, the suit property belongs to the respondent and he entered into a sale agreement on 22.09.1999 for sale of suit property to appellant for sale consideration of Rs.5,00,000/-. On the date of agreement itself, a sum of Rs.15,000/- was paid by the appellant to the respondent. The remaining amount of Rs.4,85,000/- shall be paid by the appellant within a period of three years to the respondent and the sale



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transaction shall be completed. It was averred by the appellant that he had been ready and willing to perform his part of the contract from the inception.

On 29.10.1999, the appellant paid a sum of Rs.2,00,000/- to the respondent and after having received the same, he made an endorsement in the back side of sale agreement to that effect. On 17.08.2000, the balance amount of Rs.2,85,000/- was paid by the appellant to the respondent and an endorsement was also made in the back side of the sale agreement to that effect. Finally, the appellant issued a notice on 09.09.2002 calling upon the respondent to come before the Sub Registrar Office, Vadalur and complete the sale transaction. The said notice was returned and hence, the appellant was constrained to file a suit for specific performance with alternative relief for recovery of advance amount.

3. The respondent/defendant filed a written statement and denied the averment in the plaint as if, he entered into a sale agreement with the appellant. It was specific case of the respondent that he approached the appellant for financial help with a request for loan of Rs.5,00,000/-. The appellant, who arranged the loan for the respondent got the sale agreement executed in his favour as a security for proper repayment of the loan



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amount. It was also averred by the respondent that he received only Rs.15,000/- from the appellant and he never had any intention to enter into sale agreement. It was also averred that a sum of Rs.15,000/- received by him from the appellant was also repaid. The averment of the appellant as if, he paid a sum of Rs.2,00,000/- on 29.10.1999 and Rs.2,85,000/- on 17.08.2000 were all denied by the respondent. His signature in the alleged endorsements in suit sale agreement were also denied as forgery. It was also averred by the respondent that his sister Rajakumari and one Amuthavalli filed suits for partition in O.S.No.231 of 1999 and O.S.No.114 of 1986 respectively on the file of the Sub Court, Cuddalore and the property covered by the suit sale agreement were also included in the plaint schedule in the said partition suit. The appellant's son Arul Anand was also made as a party as he purchased some of the properties included in the said suit. It was averred that the appellant utilising the document executed by him as a security pressurised the respondent to safeguard the interest of the plaintiff in the partition suits. On these pleadings, the respondent sought for dismissal of the suit.



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4. The Trial Court on appreciation of oral and documentary evidences

available on record, came to the conclusion that appellant was entitled to relief of specific performance of the suit sale agreement and consequently, decreed the suit. Aggrieved by the same, the respondent preferred an appeal in A.S.No.45 of 2013 on the file of the Principal District Judge, Cuddalore. The First Appellate Court came to the conclusion that when the partition suit filed by sister of respondent was pending in O.S.No.114 of 1986, the respondent was not entitled to sell the subject matter of the partition suit by entering into a sale agreement and consequently, reversed the findings of the Trial Court with regard to the main relief of specific performance and granted an alternative relief of return of advance amount. Aggrieved by the same, the appellant has come by way of this second appeal.

5. At the time of admission, the following substantial question of law was framed by this Court:-

“Whether the Court below erred in law by observing that the suit is hit by the principle of Lis-pendence, when the plaintiff and others in OS.No.114/1986 on the file of the II Additional Sub Judge, Cuddalore, have been declared only



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fractional undivided shares as per Ex.B1 in the properties and not declared as absolute owners?”

6. The learned counsel appearing for the appellant submitted that under Ex.B1-judgement passed in O.S.No.114 of 1986 and O.S.No.231 of 1999, the plaintiffs therein were declared to be entitled to only fractional share in the suit property and they were not declared as absolute owners. In such circumstances, the Court below erred in law in observing that the suit sale agreement is hit by doctrine of *lis pendens*.

7. The suit for specific performance filed by the appellant was resisted by the respondent on the ground that the suit sale agreement was executed not as an agreement of sale but as a security for proper repayment of loan of Rs.15,000/- received by him. The suit was also resisted by the respondent that suit property was subject matter of partition suit filed by one Amuthavalli in O.S.No.114 of 1986 and partition suit filed by his sister in O.S.No.231 of 1999. The judgement delivered by the Sub Court, Cuddalore in O.S.No.114 of 1986 and O.S.No.231 of 1999 was marked as Ex.B1. The judgement in the said suits was pronounced by the Court below on



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23.11.1999. Therefore, it is clear that when suit sale agreement was entered into between the parties, the suit for partition in O.S.No.114 of 1986 filed by one Amuthavalli was very much pending. It is also observed by the Courts below that appellant was not a party to the said suits. It is also seen from the pleadings of the parties that son of the appellant namely one Arul Anand was arrayed as one of the parties in the partition suit in O.S.No.231 of 1999 pending on the date of agreement as he purchased a portion of the property, which was subject matter of the said suit. In these circumstances, it cannot be said that the appellant was not aware of the pendency of the partition suit between respondent and his sister. Therefore, it is clear that respondent was not absolute owner of the entire property in respect of which suit sale agreement was entered into. At the most, he could have only fraction of the share in the subject matter of the agreement. However, the suit sale agreement had been entered into for conveying the entire suit property fixing the sale consideration as Rs.5,00,000/-. The First Appellate Court taking into consideration the suit sale agreement was entered into pending suit, refused to exercise its discretion in favour of the appellant/plaintiff and declined the discretionary relief of specific performance. The First Appellate Court directed the respondent/defendant to pay back the entire sale



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consideration, which he received under the suit sale agreement.

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8. In view of partition decree passed under Ex.B1, the respondent can only convey a fraction of the share in the subject matter of the agreement in favour of the appellant. The suit sale agreement is in respect of a larger property. The same was entered into pending partition suit. The son of appellant who purchased portion of subject matter of partition suit was made as a party in partition suit. Hence, appellant knowingly purchased litigation by entering into suit sale agreement. The decree for return of advance amount received by the respondent will balance the rights of both the parties. Taking into consideration the totality of the circumstances, the First Appellate Court rightly refused to exercise the discretion in favour of the appellant and declined decree for specific performance. Hence, I am not inclined to interfere with the judgement and decree passed by the First Appellate Court in declining the decree for specific performance. The substantial question of law framed at the time of admission is answered accordingly and the Second Appeal is dismissed by confirming the judgement and decree passed the Court below.

In Nutshell:-



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WEB COPY (i) The Second Appeal is dismissed.

(ii) In the facts and circumstances of the case, there will be no order as to costs.

06.11.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm

To

- 1.The Principal District Judge,
Cuddalore.
- 2.The II Additional Subordinate Judge,
Cuddalore.



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S.SOUNTHAR, J.

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