



S.A.No.327 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.11.2023

PRONOUNCED ON : 28.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.327 of 2017

and

C.M.P.Nos.7803 and 10917 of 2017

K.Velusamy

... Appellant

Vs

C.Easwaran

... Respondent

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree dated 19.01.2017 made in A.S.No.17 of 2016 on the file of the learned First Additional District Court, Erode confirming the judgment and decree dated 19.08.2015 made in O.S. No.160 of 2011 on the file of the learned I Additional Sub Court, Erode.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.T.M.Hariharan



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J U D G M E N T

The unsuccessful defendant in the suit for specific performance is the appellant. The respondent/plaintiff filed a suit for specific performance with prayer for alternative relief of return of advance amount. The suit was decreed in respect of the main relief granting specific performance. The appeal filed by the unsuccessful defendant was also dismissed. Hence, the appellant/defendant has come up by way of this second appeal.

2. According to the respondent/plaintiff, he entered into a registered Sale Agreement on 30.01.2008 agreeing to purchase the property covered by the agreement from appellant/defendant for a sale consideration of Rs.2,30,000/-. The respondent paid an advance amount of Rs.2,10,000/- on the date of agreement itself and agreed to pay the balance amount of Rs.20,000/- within a period of three years time (on or before 30.01.2011). It was also averred by the respondent that appellant also executed a General Power of Attorney on the very same date in favour of respondent's wife authorising her to execute the Sale Deed in respect of the suit property in



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favour of respondent in furtherance of the Suit Sale Agreement. The respondent also claimed that he was always ready and willing to perform his part of the contract as per the terms of agreement and requested the appellant on several occasions about his intention to get the sale deed executed after tendering the balance sale consideration. But the appellant has been postponing the execution of the sale deed by giving lame excuses. It was further averred that as the respondent found some unusual activity on the part of the appellant, he verified with the records pertaining to the suit property with the District Registrar Office at Erode and found that the appellant had cancelled the General Power of Attorney executed in favour of the respondent's wife on 13.01.2011. Hence, the respondent issued a telegram on 27.01.2011 expressing his readiness and willingness to complete the sale transaction. The respondent also issued a legal notice expressing his readiness and willingness on 27.01.2011 itself and calling upon the appellant to execute the sale deed as per the Suit Sale Agreement within 24 hours from the date of receipt of the notice. However, appellant caused a notice on 26.01.2011 with false and untenable allegations as if, the



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Suit Sale Agreement and General Power of Attorney were executed as a security for loan transaction. Therefore, the respondent/plaintiff was constrained to file a suit for above said relief.

3. The appellant herein filed a written statement and raised a defence that the Suit Sale Agreement was not executed with intention to sell the suit property. However, the same was executed as a security for the amount borrowed by the appellant/defendant from the respondent/plaintiff. It was specifically pleaded by the appellant that he borrowed a sum of Rs.40,000/- from the respondent during February - 2005 and as per the request of the respondent, he executed a Sale Agreement in favour of respondent's wife and also executed a General Power of Attorney in his favour on 10.03.2005. It was also averred by the appellant that he had been paying interest for the said sum regularly and after sometime due to loss in his transport business, he requested the respondent to pay a further sum of Rs.3,00,000/- in addition to the amount already borrowed, agreeing to pay interest at the rate of 24% per annum. Since the agreed interest was very high, the appellant



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requested the respondent to reduce the rate of interest and accordingly, the respondent agreed to receive monthly interest of Rs.6,500/- per month and as per his request, a fresh Suit Sale Agreement was executed in his favour and a fresh General Power of Attorney was also executed in favour of respondent's wife. In view of the execution of fresh Suit Sale Agreement and General Power of Attorney, the earlier Sale Agreement and General Power of Attorney dated 10.03.2005 were cancelled on 30.01.2008. It was also averred by the appellant that he paid the entire principal sum together with interest on 29.12.2010 and after payment of the same, he requested the respondent to cancel the Suit Sale Agreement and General Power of Attorney and return the blank cheques and blank promissory notes handed over to him. As the respondent failed to accede for the said request and proclaimed that he would alienate the property by virtue of the power in favour of his wife, appellant cancelled the General Power of Deed in favour of respondent's wife on 11.01.2011 and issued a notice to respondent mentioning the cancellation of power of attorney and other facts. On these pleadings, the appellant sought for dismissal of the suit.



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4. Before the Trial Court, the respondent/plaintiff was examined as PW.1 and attesor to the Suit Sale Agreement was examined as PW.2. On behalf of the respondent, 11 documents were marked as Exs.A1 to A11. On behalf of the appellant, he was examined as DW.1 and 7 documents were marked on his side as Exs.B1 to B7.

5. The Trial Court on appreciation of oral and documentary evidences available on record, came to the conclusion that Suit Sale Agreement relied on by the respondent was a genuine document and appellant failed to prove the loan transaction pleaded by him and consequently, granted a decree for specific performance. Aggrieved by the same, the appellant preferred an first appeal in A.S.No.17 of 2016 on the file of the I Additional District Judge, Erode. The First Appellate Court confirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the concurrent judgment, the unsuccessful defendant has come up by way of this second appeal.



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6. This Court, at the time of admission formulated the following substantial questions of law:-

“(1) Whether the findings of the Courts below are vitiated by failure to consider the defence plea which is corroborated through Ex.B1 to B4 for establishing that Ex.A1 is not intended to be an agreement of sale but it is only a security for loan transaction?”

“(2) Whether the Courts below are right in law in decreeing the Suit without adverting to the personal bar under Sections 16 (c) and 20 (3) of the Specific Relief Act, 1963 even assuming, but without admitting the agreement under Ex.A1 is intended for sale?”

7. The learned counsel appearing for the appellant submitted that even before the sale transaction, there was a Sale Agreement between the appellant and respondent's wife in respect of the very same property under Ex.B1 whereunder, appellant agreed to purchase the very same property for sale consideration of Rs.2,20,000/-. Under the earlier agreement, the advance amount was mentioned as Rs.2,00,000/-. The time stipulated for



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completion of sale transaction was two years. On the very same date of earlier agreement, a General Power of Attorney was executed in respect of the very same property in favour of the respondent. Those two documents dated 10.03.2005 were marked as Exs.B1 and B2. When there was an Sale Agreement in respect of very same suit property under Ex.B1, absolutely there was no necessity for the respondent to get another Sale Agreement in his favour. Therefore, the learned counsel submitted that existence of earlier Sale Agreement in favour of the respondent's wife and Power Deed in his own favour clearly probalilise the defence that Suit Sale Agreement is only a security for loan transaction. The learned counsel further submitted that even assuming the Suit Sale Agreement is held to be proved, the time limit of three years stipulated under the agreement is quite long and appellant failed to prove his continuous readiness and willingness from the agreement to the date of filing of the suit and consequently, the decree for specific performance granted by the Courts below are liable to be set aside.



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8. In support of his contention, the learned counsel appearing for the appellant relied on the following judgments:-

(i) *Shenbagam and others vs. K.K.Rathinavel* reported in **2022 SCC Online SC 71**.

(ii) *Jayakantham vs. Abaykumar* reported in **(2017) 5 SCC 178**.

(iii) *J.P.Builders vs. A.Ramadas Rao* reported in **(2011) 1 SCC 429**.

(iv) *M.Jayaprakash Narayanan vs. Santhammal and others* reported in **2018 (1) CTC 701**.

(v) *Kamireddi Sattiaraju and others vs. Kandamuri Boolaeswari* reported in **2007 (3) LW 580 = 2007 (1) MLJ 499**.

(vi) *P.Sampoornam and others vs. L.T.Somasundaram and others* reported in **(2008) 2 CTC 382**.

(vii) *J.Baskaran vs. T. Pappa* reported in **2012 (2) MWN (Civil) 342**.

(viii) *Pappammal @ T. Pappa vs. P.Ramasamy* reported in **2012 (4) CTC 100**.

(ix) *Petchiammal vs. R.Perumal and another* (order made in S.A. (MD) No.195 of 2015 dated 18.12.2019)



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9. The learned counsel appearing for the respondent by taking this Court to the evidence of PW.1 and PW.2 and the findings of the Courts below contended that on appreciation of evidence available on record, both the Courts below came to a factual conclusion that the Suit Sale Agreement was a genuine document and hence, the same requires no interference by this Court. The learned counsel further submitted that though appellant pleaded that he repaid the entire loan amount received by him from the respondent, he failed to lead any evidence in support of the said plea. Therefore, it is his contention that having failed to prove the repayment of loan amount, the appellant is not entitled to claim that Suit Sale Agreement is only a security for alleged loan transaction. In support of his contention, the learned counsel appearing for the respondent relied on the following judgments:-

(i) ***Motilal Jain vs. Ramdasi*** reported in ***(2000) 6 SCC 420***.

(ii) ***P.Daivasigamani vs. S.Sambandan*** reported in ***(2022) 14 SCC 793***.



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10. The Suit Sale Agreement said to have been entered into on 30.01.2008. As per the terms of agreement, the agreed sale consideration was Rs.2,30,000/-. The respondent said to have paid an advance amount of Rs.2,10,000/- on the date of agreement itself. For the remaining balance amount of Rs.20,000/-, a long time limit of three years was fixed under the terms of agreement. The time limit of three years fixed in the terms of agreement for payment of paltry sum of Rs.20,000/- is quite unnatural and shaking the conscious of this Court. It is bounden duty of the respondent/plaintiff to explain the fixation of three years time limit for payment of balance sale consideration of Rs.20,000/-.

11. The learned counsel appearing for the respondent attempted to explain the same by referring to the evidence of PW.1 that the appellant requested fixation of long time as he wanted time to remove the lorry scraps stored in the subject matter of the Sale Agreement. However, in Ex.A1-Suit Sale Agreement, no reason is given for fixing long time limit of 3 years. Even in the legal notice issued by the respondent dated 27.01.2011 marked



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as Ex.A5, the respondent/plaintiff failed to mention the said reason for fixation of long time limit for completing the sale transaction. In the legal notice, it was averred by the respondent that he was ready and willing from the inception and inspite of his readiness and willingness, the appellant postponed the execution of the sale deed by giving lame excuse. Even in the plaint filed by the respondent, he has not mentioned the above said reason for fixation of three years time limit for completing the sale transaction. In the plaint averment also the respondent had stated that appellant postponed the completion of the sale transaction by giving lame excuse. Therefore, the three years time limit fixed for payment of paltry sum of Rs.20,000/- is unnatural on the face of the Suit Sale Agreement and the respondent failed to give any plausible explanation for fixation of such a long period.

12. It is also seen from the records even before Ex.A1-Sale Agreement and Ex.A2-General Power of Attorney, there was yet another Sale Agreement between the appellant and wife of the respondent under Ex.B1 dated 10.03.2005. Likewise, on the very same date, the appellant also



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executed a Power of Attorney in the name of the respondent. As per the terms of earlier agreement under Ex.B1, the total sale consideration was Rs.2,20,000/- and an advance of Rs.2,00,000/- was paid. The time limit fixed for performance of the agreement was two years. When there was an agreement of sale with wife of the respondent in respect of very same property, absolutely there is no necessity for the appellant to enter into Sale Agreement with respondent herein, three years thereafter under Ex.A1.

13. It is also pertinent to mention that on the date of Ex.A1, earlier Sale Agreement between the appellant and respondent's wife and earlier Power of Attorney in favour of respondent were cancelled under Exs.B3 and B4. The respondent is unable to explain the reason for execution of present Suit Sale Agreement in his name cancelling the earlier agreement in the name of his wife. If the parties wanted to extend the time fixed in the earlier agreement, they could have simply made an endorsement in the earlier agreement itself and extended the same. What was the necessity to cancel the earlier agreement entered into with wife of the respondent was not at all



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explained by the respondent.

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14. The learned counsel for the appellant placed much reliance on Ex.B7-letter written by appellant in favour of respondent agreeing to pay Rs.3,53,000/- on or before 29th December, 2010. The said letter was marked through cross examination of PW.1. The respondent herein as PW.1 clearly admitted that he had written the wordings in Ex.B7-letter. The said document goes a long way in explaining the transaction between the appellant and respondent was nothing but a loan transaction. Though the respondent denied the suggestion that he requested the appellant to execute a letter as per wordings in Ex.B7, he admitted Ex.B7 was written by him and he could not re-collect for what purpose he had written Ex.B7.

15. A perusal of Ex.B7 would suggest the wordings in the said document is in the nature of appellant agreeing to pay Rs.3,53,000/- to respondent on or before 29th December, 2010. Though the Courts below based on the evidence of PW.1 and attester to Ex.A1 namely PW.2 came to



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the conclusion that the execution of Suit Sale Agreement was proved by respondent, various attendant circumstances referred above were not considered by the Courts below. The following attendant circumstances, supports the plea raised by the appellant that Suit Sale Agreement was executed as a security for loan transaction.

(a) The long time limit of three years stipulated in the Suit Sale Agreement for payment of small amount of Rs.20,000/- is inherently unnatural and the same was not explained satisfactorily by the respondent. Such a stipulation in the agreement raises a suspicion that agreement could have been executed for loan transaction.

(b) The respondent is unable to explain the reasons for execution of earlier Sale Agreement in the name of his wife and Power Deed in his favour. A comparison of terms of agreement in the earlier Sale Agreement-Ex.B1 and terms of present Suit Sale Agreement Ex.A1 would make it clear that in both the agreements more than 90% of the



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sale consideration was paid and only for a payment of 10% of the sale consideration, long period of two years and three years were stipulated.

- (c) Ex.B7-letter in the nature of appellant agreeing to pay Rs.3,53,000/- to respondent on or before 29th December, 2010 was admitted by respondent when he was in witness box and he could not explain the circumstances under which it was prepared by him. The Courts below while upholding the validity of Ex.A1-Sale Agreement failed to take into consider the impact of Exs.B1 to B4, B7 and the stipulation of long time limit for payment of small amount etc.

16. It is settled law that the relief of specific performance was discretionary one as per the law that stood on the date of Suit Sale Agreement. The relief of specific performance need not be granted merely because it is lawful to do so. The Court while exercising its discretion must take into consideration the totality of the circumstances leading to the



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execution of the Sale Agreement and come to the conclusion that it would be equitable to order specific performance of the Sale Agreement. The person, who seeks equitable remedy of specific performance must establish he is entitled to equity.

17. In the case on hand, various circumstances discussed above creates a serious doubt about the intention of the parties to enter into a Sale Agreement. The documentary evidence available on record especially Exs.B1 to B4 and B7 coupled with long time of three years stipulated for payment of mere 10% of the sale consideration, supports the defence of the appellant that the Suit Sale Agreement was not intended to be treated as Sale Agreement but it was executed only as a security for loan transaction. Hence, the conclusion reached by the Courts below that respondent was entitled to equitable right of specific performance is liable to be interfered with. Accordingly, the question of law No.1 framed at the time of admission is answered in favour of the appellant and against the respondent.



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18. As far as the readiness and willingness of the respondent is concerned, the respondent paid 90% of the sale consideration on the date of agreement itself and there is no explanation available on record why the respondent waited for three years for payment of remaining Rs.20,000/-. Though it was submitted by the learned counsel for the appellant that long period of three years was agreed at the request of the appellant to remove his belongings from the suit property, three years period for removing the belongings of the appellant from the suit property is not acceptable to this Court. No prudent person would agree to wait for three long years after paying 90% of the sale consideration. The evidence available on record would suggest that the first telegram of the respondent was sent only on 27.01.2011 nearly at the verge of expiry of three years period. There is no serious dispute with regard to the financial capacity of the respondent to pay balance amount of Rs.20,000/-. However, his willingness to complete the sale transaction needs to be proved based on his conduct throughout from the date of inception of the contract to the date of filing of the suit.



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19. In the case on hand, except the telegram and legal notice issued, just three days prior to the date of expiry of three years period stipulated under the agreement, there is no other evidence available on record to suggest that the respondent was willing to perform his part of the contract throughout and it was appellant, who was at fault. Hence, there is no difficulty in coming to the conclusion that the respondent was ready to perform his contract by virtue of his financial ability, however, I hold his willingness to complete the sale transaction was not at all proved in the present case. Hence, the question of law No.2 is also answered in favour of the appellant and against the respondent.

20. In *J.Baskaran vs. T. Pappa* reported in *2012 (2) MWN (Civil) 342* and *Pappammal @ T. Pappa vs. P.Ramasamy* reported in *2012 (4) CTC 100*, almost in a similar situation where 90% of the sale consideration was paid and unreasonably long period was fixed for payment of remaining 10% of the balance sale consideration, this Court came to the conclusion such agreement cannot be construed as Agreement of Sale, the relevant



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observation of this Court in **J.Baskaran** case cited supra, reads as follows:-

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*“22. Further, having regard to the sale consideration fixed, the advance paid and time fixed for payment of balance sale consideration, one can easily infer that Ex.A.2 could not have been intended to be acted upon as Agreement of Sale. In this context, the judgment reported in the case of **Tejram v. Patirambhau**, 1997 (9) SCC 634, is relevant. In that case, having regard to the similar set of facts, the Hon'ble Supreme Court held that the agreement in reality was only a money transaction and therefore, the Respondent was not entitled to the relief of specific performance. In that reported case, out of the sale consideration of Rs.50,000/-, Rs.48,000/- was received and one year time was given for payment of Rs.2,000/-. In such circumstances, it was held by the Hon'ble Supreme Court that it was only a loan transaction and cannot be construed as Agreement of Sale.”*

21. Likewise, in **Pappammal @ T. Pappa** case cited supra, this Court while considering similar situation observed as follows:-

“22. Further, having regard to the sale consideration fixed, the advance paid and time fixed for payment of balance



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*sale consideration, one can easily infer that Ex.A.2 could not have been intended to be acted upon as Agreement of Sale. In this context, the judgment reported in the case of **Tejram v. Patirambhau**, 1997 (9) SCC 634, is relevant. In that case, having regard to the similar set of facts, the Hon'ble Supreme Court held that the agreement in reality was only a money transaction and therefore, the Respondent was not entitled to the relief of Specific Performance. In that reported case, out of the sale consideration of Rs.50,000/-, Rs.48,000/- was received and one year time was given for payment of Rs.2,000/-. In such circumstances, it was held by the Hon'ble Supreme Court that it was only a loan transaction and cannot be construed as Agreement of Sale.*

23. In this case also, out of the total sale consideration of Rs.40,000/-, Rs.30,000/- was paid and for the payment of balance sum of Rs.10,000/- five year period was prescribed and therefore, in my opinion, Ex.A.2 was not intended to be an Agreement of Sale and it must have been executed only as security or as a loan transaction.

24. As stated supra, the Appellant had proved that she had dealing with the Vetri Murugan Finance, by marking



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Ex.B.2 series, and the brother-in-law of the Respondent was also one of the Directors of Vetri Murugan Finance Company and he has also filed the suit for Specific Performance of Agreement of Sale and therefore, the Appellant has proved that preponderance of probabilities would only lead to the conclusion that Ex.A.2 was not intended to be acted upon as Agreement of Sale and it was given only as security or as loan transaction.

25. The Courts below, without properly appreciating the consideration fixed, advance paid and the time fixed for payment of balance sale consideration, erred in holding that Ex.A.2 was intended to be acted upon as Agreement of Sale. According to me, the findings of the Courts below are perverse and is liable to be set aside. Hence, the substantial question of law No.1, is answered in favour of the Appellant.”

22. The law laid down by this Court in the above mentioned case laws are squarely applicable to the facts of the present case and hence, this Court has no hesitation in coming to the conclusion that findings of the Courts below that Suit Sale Agreement was intended to be treated as Sale



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Agreement is liable to be interfered with and the appellant by preponderance of probabilities proved his defence that Suit Sale Agreement was executed only as a security for loan transaction between the parties.

23. In view of the discussions made above, the judgment and decree passed by the Courts below are set aside and the second appeal is allowed. Both the Courts below came to the conclusion that the appellant failed to prove his plea of repayment of the amount borrowed by him from the respondent. As per the terms of Suit Sale Agreement, the appellant received an advance amount of Rs.2,10,000/- on the date of agreement itself. In view of the conclusion reached by this Court Suit Sale Agreement is only a security for loan transaction, the appellant is liable to repay the amount received by him under the Sale Agreement with interest. As per the admitted case of the appellant as pleaded in his written statement, he agreed to pay interest at the rate of 24% per annum for the amount lent by the respondent. This Court feels the interest at the rate of 24% is on higher side, therefore, in the facts and circumstances of the case, it would be appropriate to direct



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the appellant to pay interest at the rate of 12% per annum from the date of agreement namely 30.01.2008 to date of actual payment of amount to the respondent.

In Fine:-

- (a) The Second Appeal is Allowed by setting aside the judgment and decree passed by the Courts below.
- (b) The suit is dismissed in respect of main relief of specific performance.
- (c) The suit is decreed in respect of alternative prayer for recovery of advance amount.
- (d) The appellant is hereby directed to pay a sum of Rs.2,10,000/- to the respondent with interest at the rate of 12% per annum on such



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amount from the date of agreement (30.01.2008) to the date of actual payment.

(e) Consequently, the connected miscellaneous petitions are closed.

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

28.11.2023

Index : Yes
Speaking order : Yes
Neutral Citation : Yes
dm

To

1.The First Additional District Court,
Erode.

2.The I Additional Sub Court, Erode.



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S.SOUNTHAR, J.

dm

Pre-delivery judgement in
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28.11.2023