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S.A.No.53 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.02.2023

CORAM

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

S.A.No.53 of 2023

N.M.Thiyagarajan

....

Appellant

Vs

C.Muthukrishnan

....

Respondent

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 24.01.2020 passed in A.S.No.6 of 2018 on the file of the District Judge, Karaikal confirming the Judgment and Decree dated 20.07.2018 in O.S.No.44 of 2016 on the file of the Subordinate Judge, Karaikal.

For Appellant : Mr.K.Muthamil Raja

JUDGMENT

This Second Appeal has been filed as against the Judgment and Decree dated 24.01.2020 passed in A.S.No.6 of 2018 on the file of the District Judge, Karaikal confirming the Judgment and Decree dated 20.07.2018 in O.S.No.44 of 2016 on the file of the Subordinate Judge, Karaikal, thereby partly allowed the suit.



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2. The appellant is the plaintiff and the respondent is the defendant. The appellant filed a suit for specific performance. The case of the appellant is that the defendant agreed to sell the suit property in favour of the appellant for a total sale consideration of Rs.4,50,000/-. Accordingly, they entered into an agreement on 30.05.2013 and received a sum of Rs.4,00,000/- as advance and claimed for performing the part of the contract within a period of 30 days. However, on the request of the respondent further six months period was extended. Even thereafter the defendant did not come forward to complete the same, though the appellant is ready to pay the balance sale consideration. Hence, the suit for specific performance with an alternative prayer to return the advance amount.

3. Resisting the suit, the respondent filed a written statement stating that the alleged agreement for sale dated 30.05.2013 was executed only for security purpose for loan transaction. The respondent absolutely had no intention to sell his property. The appellant suppressing the fact that the respondent used to borrow money from the appellant every time, used it a registered sale agreement and imposing condition. The respondent claims that on 05.10.2010, an



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agreement for sale was executed by him and he borrowed a sum of Rs.1,00,000/-. The said agreement was also registered vide document No.3056. On 12.10.2010, the respondent repaid the said loan and cancelled the agreement registered vide document No.3194 of 2010. Again in the year 2011, the respondent borrowed a sum of Rs.7,00,000/- by executing a registered sale agreement and thereafter, he settled the amount with interest. Likewise, in the year 2013, the respondent borrowed a sum of Rs.4,00,000/- from the appellant and registered an agreement for sale on 30.05.2013. In fact, the respondent also paid interest at the rate of 3% per annum for the amount which was borrowed by him. Thereafter, the respondent failed to pay interest and as such, he issued notice to the respondent. In fact, the respondent had constructed a residential house in the suit property after obtaining approval from the Town Planning Department, Karaikal. Therefore, the suit for specific performance is not maintainable.

4. On the basis of the pleadings, the Trial Court framed the following issues :

(i) Whether the plaintiff is entitled for the relief of Specific Performance, as prayed for ?



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(ii) Whether the plaintiff is entitled for the alternative relief, as prayed for ?

(iii) Whether the alleged suit sale agreement is entered for mere money transaction ?

(iv) Whether there is no consensus of mind to enter into sale agreement ?

(v) To what relief, the parties are entitled for ?

5. On the side of the appellant, he had examined P.Ws. 1 to 3 and marked Exs.A1 to A15. On the side of the respondent, he had examined D.Ws. 1 & 2 and marked Exs.B1 to B14. The Court marked Ex.C1.

6. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the Trial Court dismissed the suit for specific performance and allowed an alternative prayer to refund the advance amount. Aggrieved by the same, the appellant preferred an appeal in A.S.No.6 of 2018 before the District Judge, Karaikal, and the same was also dismissed and the Judgment and Decree of the Trial Court was confirmed. Aggrieved by the same, the present second appeal.



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

(i) Whether a party to a registered sale agreement and subsequent endorsement thereon seeking extension of time stipulated in agreement for performance is entitled to take a plea that agreement was not intended for sale and thereby varying its terms ?

(ii) Whether findings of Courts below that suit sale agreement is only a security for loan transaction is vitiated by non consideration of material admission of respondent that he did not issue any reply to presuit notice of appellant seeking specific performance ?

8. The learned counsel for the appellant would submit that when the appellant filed a suit for specific performance on the registered agreement for sale, there is absolutely no ground to deny the specific performance by the Court below. Merely, because the earlier agreement for sale was registered and subsequently the same was cancelled, it cannot be concluded about the intention of the parties. The agreement for sale is marked as Ex.A1 and time stipulated for performing the part of the contract is fixed as within a period of 30 days only. Even thereafter, the respondent failed to perform his part of the contract,



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though the appellant was willing and ready to pay the balance sale consideration. In fact Exs.B1 to B4 were not related to the suit property alone and it included some other properties also. That apart, all the agreements for sale were mutually cancelled as such, Exs.B1 to B4 has nothing to do with the claim of the appellant.

9. A perusal of the records reveals that the appellant filed a suit for specific performance with alternative relief of return of sale amount at the time of agreement for sale on 13.05.2023. As per the said agreement, the total sale consideration was fixed at Rs.4,50,000/- and a sum of Rs.4,00,000/- was paid by the respondent. Even after extension of time was fixed for a period of six months to perform his part of the contract by the respondent, the respondent failed to come forward to execute the sale deed, on receipt of the balance sale consideration. The specific case of the respondent is that already on four occasions, while borrowing the loan from the appellant, he used to insist upon the respondent to execute the agreement for sale in respect of the suit property for returning the entire loan amount with interest and the appellant used to cancel the agreement for sale. All the agreements were cancelled and these agreements were marked as Exs.B1 to B4. It shows



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that the agreement for sale was executed for security at the time of availing loan.

10. That apart, the appellant was examined as P.W.1 and he deposed that at the time of entering into the agreement for sale, the respondent was constructing house in the suit property . Thereafter, he obtained electricity connection in his name and completed the entire construction. However, on perusal of Ex.A1 revealed that the suit property is vacant land and there was no construction in the suit land. No prudent man would construct house when he agreed to sell the said property in favour of the other person. Admittedly, the respondent constructed house and obtained electricity connection and he is living there. As per agreement for sale, there was no construction by the respondent. However, the respondent admitted the fact that he borrowed a sum of Rs.4,00,000/- from the appellant for the security purpose he executed an agreement for sale, which was marked as Ex.A1. Though he was able to pay interest till may 2016, thereafter, the respondent was not able to pay any interest and as such, the appellant caused legal notice and filed a suit for specific performance. Therefore, there is no dispute about the borrowal of the loan by the respondent. Hence, both the



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Courts below rightly decreed the suit in part and directed the respondent to return the advance amount with interest at the rate of 9% per annum till the realisation and dismissed the suit in respect of specific performance relief.

11. As such the Courts below have analyzed the evidences adduced by the parties, both the documentary and oral in detail, and by giving cogent reasons, concluded rightly and partly allowed the suit. Accordingly, this Court is of the considered opinion that no substantial question of law is involved in this appeal.

12. In view of above, this Second Appeal is dismissed and the Judgment and Decree dated 24.01.2020 passed in A.S.No.6 of 2018 on the file of the District Judge, Karaikal confirming the Judgment and Decree dated 20.07.2018 in O.S.No.44 of 2016 on the file of the Subordinate Judge, Karaikal are confirmed. There shall be no order as to costs.

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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes / No

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To

- 1.The District Judge, Karaikal.
- 2.The Subordinate Judge, Karaikal.



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G.K.ILANTHIRAIYAN, J.

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