



A.S.No.555 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

A.S.No.555 of 2017

K.N.Baskaran

... Appellant

VS.

T.Dasan (died)

1.Marimammal

2.Jothiammal

3.D.Mariappan

4.D.Murugesan

... Respondents

PRAYER: Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside the Judgment and Decree of the learned I Additional District and Sessions Judge, Tiruppur made in O.S.No.21 of 2014 dated 13.07.2017.

For Appellant : Mr.J.Franklin

For Respondents : Mr.R.Nalliyappan

J U D G E M E N T



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WEB COPY The unsuccessful plaintiff in a suit for specific performance is the appellant.

Plaint Averments:-

2 (a) According to the appellant/plaintiff, he entered into a Suit Sale Agreement with original 1st defendant for purchase of suit property on 09.02.2008. The appellant agreed to purchase the property covered under the agreement with an extent of 17.64 cents at the rate of Rs.34,000/- per cents totalling Rs.5,99,757/-. The appellant paid an advance amount of Rs.2,00,000/- on the date of agreement and balance amount had to be paid and sale transaction should be completed within a period of three months (i.e., on or before 08.05.2008). The possession of the suit property was also delivered to the appellant on the date of agreement.

2 (b) The appellant further averred that he had been ready and willing to perform his part of the contract right from the date of agreement. He repeatedly informed the respondent about his readiness and willingness in person as well as through other known persons but the original 1st defendant



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evaded the execution of sale deed. The appellant after intimating the original 1st defendant, waited in the office of the Sub Registrar on 08.05.2008, 28.05.2008 and 29.05.2008 but the defendants never turned up and all his efforts ended in vein.

2 (c) Therefore, the appellant was constrained to issue a legal notice dated 29.05.2008 to the original 1st defendant calling upon him to complete the sale transaction. The appellant also issued a telegram on 30.05.2008 informing the original 1st defendant about his readiness and willingness. Again, the appellant issued a second notice on 29.04.2009 to the original 1st defendant and the same was also not received by the original 1st defendant and hence, returned undelivered. In these circumstances, the appellant was constrained to file a suit for specific performance of the Suit Sale Agreement.

Averments found in the Written Statement:-

3. The original 1st defendant, who died pending suit, filed written statement and resisted the suit on the ground that Suit Sale Agreement was a security for loan transaction. According to him, he borrowed a sum of Rs.2,00,000/- on 09.02.2008 from the appellant agreeing to repay with



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interest at the rate of 20% per annum. At that point of time, he signed blank stamp paper as a security for proper repayment and the said paper could have been misused to file the suit. It was averred that after dismissal of the suit for default, original 1st defendant had executed the Settlement Deed in favour of his sons namely defendants 4 and 5. After death of original 1st defendant, the respondents herein were brought on record as his legal representatives and they also filed written statement reiterating the defence raised by the deceased 1st defendant.

Evidence Before the Trial Court:-

4. Before the Trial Court, the appellant/plaintiff was examined as PW.1 and attesor to the Suit Sale Agreement was examined as PW.2. On behalf of the appellant, 10 documents were marked as Exs.A1 to A10. On behalf of the respondents, the 4th respondent was examined as DW.1 and the 3rd respondent was examined as DW.2. No documentary evidence was let in by the respondents.

Findings of the Trial Court:-

5. The Trial Court on appreciation of oral and documentary evidence



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available on record, came to the conclusion that the Suit Sale Agreement was not really intended to be treated as Sale Agreement and hence, dismissed the suit. Aggrieved by the said findings, the unsuccessful plaintiff has come up by way of this appeal suit.

Submissions of the Learned Counsel appearing for the Appellant:-

6. The learned counsel appearing for the appellant submitted that the appellant/plaintiff proved due execution of Suit Sale Agreement by examining himself as PW.1 and attestor to the Suit Sale Agreement as PW.2 and therefore, the Trial Court ought to have found that Suit Sale Agreement is really intended as a Sale Agreement. The learned counsel further submitted that when pre-suit notices were issued to original 1st defendant calling upon him to execute the sale deed after receiving balance sale consideration, the same were returned to appellant as undelivered. Therefore, the said act of the original 1st defendant established his evil intention to avoid the contract. The learned counsel further submitted that pending suit, the appellant also deposited the entire balance sale consideration and hence, the Court below ought to have come to a conclusion that appellant proved his complete readiness and willingness to



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perform his part of the contract and consequently, ought to have granted decree for specific performance.

Submissions of the Learned Counsel appearing for the

Respondents:-

7. The learned counsel appearing for the respondents submitted that there are material contradictions in the evidence of PW.2 with regard to place where the sale price for the Suit Sale Agreement was finalised. The contradictions in the evidence of PW.2 creates serious doubt with regard to the credibility of his evidence. The learned counsel further submitted that the first pre-suit notice was issued by appellant on 29.05.2008 and the same said to have been returned. However, the appellant has not filed any suit for specific performance for nearly one year. Thereafter, he issued second notice on 29.04.2009 and finally the suit was filed on 15.06.2009. In the absence of any explanation on the part of the appellant why he had not filed suit for specific performance after return of first pre-suit notice clearly establishes that he failed to prove his readiness and willingness to perform his part of the contract.



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Points for Consideration:-

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8. On the basis of the submission made by the learned counsel appearing for either side and pleadings of the parties, the following points are arising for consideration in this appeal.

- (a) Whether due execution of Suit Sale Agreement has been proved.
- (b) Whether the appellant/plaintiff succeeded in proving his continuous readiness and willingness to perform his part of the agreement.

Points Nos.1 and 2:-

9 (a) The suit was resisted by the respondent mainly on the ground that Suit Sale Agreement was never intended to be treated as Sale Agreement. It was the specific case of the respondent that deceased 1st defendant borrowed a sum of Rs.2,00,000/- from the appellant and as a security for proper repayment of the said amount, he signed blank stamp paper and the same could have been misused by the appellant to file the present suit. Being a plaintiff in the suit, it is the duty of the appellant to prove due execution of Suit Sale Agreement. In order to discharge his burden, the appellant examined himself as PW.1 and attesor to the Suit Sale Agreement was examined as PW.2. The appellant in his evidence deposed in



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favour of his averment found in the plaint. When the attesor to the Suit Sale Agreement was examined as PW.2, in his proof affidavit, he had averred that on the evening of 08.02.2008, he went to plaintiff's house along with deceased 1st defendant and sale price was fixed at the rate of Rs.34,000/- per cent. However, during the cross examination, he denied the said averment found in the proof affidavit and deposed that sale price was fixed in the defendant's house but not in the house of the plaintiff/appellant. He also admitted that the said fact was not mentioned in his proof affidavit. He has also gone to the extent of saying that he has not verified whether the information given by him alone were typed in his proof affidavit. Therefore, PW.2 has given a go by to the averment found in the chief affidavit and there is also material contradiction with regard to the place in which the sale price was fixed. In these circumstances, the credibility of PW.2 is very much at stake. When PW.2's evidence is not acceptable to this Court due to his answers in the cross examination, the only evidence available on record to support the due execution of Sale Agreement is interested testimony of PW.1. Therefore, this Court comes to a conclusion that the appellant failed to prove due execution of Suit Sale Agreement by leading acceptable evidence.



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WEB COPY 9 (b) Apart from the failure of the appellant to prove due execution of

Suit Sale Agreement, he also failed to prove his readiness and willingness to perform his part of the contract from the date of agreement to the date of filing of suit. The Suit Sale Agreement said to have been executed on 09.02.2008. The agreed sale consideration was Rs.34,000/- per cent. The total extent agreed to be conveyed was 17.64 cents. Therefore, the total sale consideration comes to Rs.5,99,757/-. As per the terms of agreement, a sum of Rs.2,00,000/- said to have been paid as an advance on the date of agreement. The time for payment of balance sale consideration was fixed as three months. The said period expired on 08.05.2008. According to the appellant, he waited in Sub-Registrar Office on 08.05.2008, 28.05.2008 and 29.05.2008 and thereafter, issued pre-suit notice on 29.05.2008. The said pre-suit notice was returned undelivered. However, the appellant has not taken any steps to file a suit for specific performance immediately. He waited for nearly one year and thereafter, issued another notice on 29.04.2009 to the deceased 1st defendant. Even the second notice also appears to have been returned undelivered.



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9 (c) In such circumstances, the suit was filed by appellant only on

15.06.2009. When the appellant claimed that from the inception he has been intimating to the respondent expressing his readiness and willingness and his intimation was evaded by the respondent, he ought not to have waited for more than one year after return of his first notice. Absolutely, there is no plausible explanation on the part of the appellant, what made him to wait for more than one year after issuing first pre-suit notice. In the absence of any explanation for a period of more than one year from 29.05.2008 to 15.06.2009, the continuous readiness and willingness on the part of the appellant to perform his part of the contract is very much doubtful. Merely because, the appellant deposited balance sale consideration pending suit, it cannot be presumed that he has been ready and willing to perform his part of the contract from the inception to the date of filing of the suit. When first pre-suit notice is returned, no ordinary prudent person would wait for one year and then issue second notice. In such circumstances, this Court comes to a conclusion that the appellant not only failed to prove the due execution of Suit Sale Agreement, he also failed to prove his continuous readiness and willingness from the date of agreement to the date of filing of the suit. Hence, both the points for determination are answered against the appellants



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and in favour of the respondent.

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9 (d) In view of the discussions made earlier and answer to the points arising for consideration, I am not inclined to interfere with the findings of the Trial Court and accordingly, the appeal suit stands dismissed.

10. At this juncture, the learned counsel appearing for the appellant submitted that his client already deposited the balance sale consideration before the Trial Court and he may be permitted to withdraw the said amount in view of the dismissal of the appeal suit. It is made clear that appellant is at liberty to file appropriate application before the Trial Court for withdrawal of the amount deposited by him.

In Nutshell:-

- (i) The Appeal Suit is dismissed by confirming the judgement and decree passed by the Trial Court.
- (ii) The appellant is at liberty to file appropriate application before the Trial Court for withdrawal of the amount deposited.



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WEB COPY(iii) In the facts and circumstances of the case, there shall be no order
as to costs.

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



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To

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The I Additional District and Sessions Judge,
Tiruppur.



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S.SOUNTHAR, J.

dm

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