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S.A.No.795 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.795 of 2017

and

C.M.P.Nos.19915 and 19916 of 2017

K.Palanisamy

... Appellant

VS.

P.G.Raja

... Respondent

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 12.07.2017 passed in A.S.No.104 of 2015 on the file of Principal District Judge, Salem conforming the Judgment and Decree dated 28.10.2014 in O.S.No.628 of 2010 on the file of learned Subordinate Judge, Salem.

For Appellant : Mr.S.R.Rajagopal
Senior Advocate
for M/s.A.Kalaivanan

For Respondent : Mr.K.Moorthy



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J U D G E M E N T

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The unsuccessful plaintiff in the suit for specific performance is the appellant. The suit filed by the appellant/plaintiff was decreed by the Trial Court. Aggrieved by the same, the respondent preferred an appeal and the First Appellate Court reversed the findings of the Trial Court and dismissed the suit in respect of main relief of specific performance. However, the First Appellate Court granted a decree for alternative relief of refund of advance amount of Rs.1,00,000/- together with interest at the rate of 12% per annum. Aggrieved by the dismissal of the suit in respect of the main relief, the appellant/plaintiff has come up by way of this second appeal.

2. According to the appellant/plaintiff, the respondent/defendant is the owner of the suit property and he entered into a Sale Agreement with him on 07.01.2009 for purchase of the suit property for a sale consideration of Rs.2,10,000/-. On the date of agreement itself, the appellant paid a sum of Rs.1,00,000/- as advance to the respondent. The balance amount shall be paid within a period of 2 years and the sale transaction should be completed. It is also pleaded by the appellant that 3 months after the sale agreement, he



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approached the respondent expressing his readiness and willingness to perform his part of the contract. However, even after expiry of sale agreement period, the defendant started construction of a house with the permission of the appellant. It was further averred that the respondent orally promised to execute a Sale Deed in favour of the appellant for vacant site as well as the house constructed by him. As appellant also agreed for the same, the respondent orally demanded the appellant to give another sum of Rs.1,00,000/- as sale price and the appellant paid Rs.1,00,000/- to respondent on 10.02.2010. The respondent completed construction of the house during September-2010. The appellant approached the respondent with balance sale price and expressed his readiness and willingness to get sale deed executed, the respondent evaded his request. Therefore, the appellant was constrained to file suit for specific performance.

3. The respondent herein filed a written statement and denied the Sale Agreement between the him and appellant. The respondent also denied receipt of Rs.1,00,000/- from the appellant as advance. It was averred by the respondent that in order to meet the wedding expenses of his daughter, he approached the appellant for a loan of Rs.1,00,000/- and for the amount



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borrowed by him, the appellant got the Suit Sale Agreement executed as security. The respondent also denied subsequent oral agreement pleaded by the appellant for conveying the house constructed in the vacant site. It was also averred by the respondent that the time limit of two years fixed in the agreement was too long and therefore, the transaction should be treated as a loan transaction. It was also alleged by the respondent that he repaid the loan amount to the tune of Rs.55,000/- and the remaining amount to be paid by him was only Rs.45,000/-. On these pleadings, the respondent sought for dismissal of the suit.

4. Before the Trial Court, the appellant/plaintiff was examined as PW.1. The Attestor to the Suit Sale Agreement was examined as PW.2. One another witness was examined as PW.3. On behalf of the appellant, 4 documents were marked as Exs.A1 to A4. The respondent/defendant was examined as DW.1 and yet another witness was examined as DW.2. On behalf of the respondent, 14 documents were marked as Exs.B1 to B14.

5. The Trial Court on appreciation of oral and documentary evidences available on record, came to the conclusion that the appellant was entitled to



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specific performance and granted a decree. Aggrieved by the same, the respondent preferred an appeal in A.S.No.104 of 2015 on the file of the Principal District Judge, Salem. The First Appellate Court reversed the findings of the Trial Court and dismissed the suit as far as main relief of specific performance is concerned. However, the First Appellate Court granted alternative relief of refund of advance amount. Aggrieved by the dismissal of the suit regarding the main relief of specific performance, the appellant has come by way of this second appeal.

6. The learned Senior Counsel appearing for the appellant submitted that under Section 92 of the Indian Evidence Act, 1872 a party to the contract can only plead that the same was not acted upon and it was only a sham document. The person taking such a defence must lead evidence to prove the same and in the case on hand, the respondent failed to prove that he never entered into a Sale Agreement and Suit Sale Agreement was executed only as a security purpose for loan transaction. The learned Senior Counsel further submitted that in the absence of specific plea by the respondent denying the readiness and willingness of the appellant, the First Appellate Court erred in coming to the conclusion that the appellant failed



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to prove his readiness and willingness to perform his part of the contract.

The learned Senior Counsel further submitted that the final conclusion reached by the First Appellate Court that appellant was not entitled to specific performance of Suit Sale Agreement was vitiated by perversity.

7. It is seen from the records that Ex.A1-Sale Agreement was entered into on 07.01.2009. The agreed sale consideration was Rs.2,10,000/- and an amount of Rs.1,00,000/- was paid on 07.01.2009 itself and for payment of balance sale consideration, a long time limit of two years was fixed. It is also seen that the subject matter of the Suit Sale Agreement was purchased by the respondent only on the date of agreement namely 07.01.2009 under Ex.B3. As per the recital in Ex.B3, the respondent purchased the suit property for a sale consideration of Rs.2,06,500/-. When appellant was examined as PW.1, he clearly admitted that at the time of purchase of suit property, the respondent was not possessed of sufficient funds and hence, he borrowed amount from him and got the sale deed executed in his favour. Therefore, it is clear on the date of agreement, the respondent borrowed amount from the appellant and executed Suit Sale Agreement. The said admission of PW.1 probalilise the defence of the respondent.



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8. Further, as per the admitted case of the appellant subsequent to Suit Sale Agreement, the respondent started constructions of house in the subject matter of the Sale Agreement. No prudent person, who entered into a Sale Agreement would spend money and put up constructions in the subject matter of the agreement. The appellant pleaded that subsequent to Suit Sale Agreement, there was oral agreement between the parties to convey the constructed house also along with vacant site in respect of which the Sale Agreement was entered into. However, the appellant failed to lead any acceptable evidence to prove such oral agreement to convey the vacant site along with newly constructed house.

9. It was also pleaded by the appellant that the respondent obtained permission from him and put up construction and however, there is no acceptable evidence to prove such oral permission. The First Appellate Court on appreciation of evidence available on record, came to the conclusion that appellant failed to prove alleged subsequent agreement and payment of Rs.1,00,000/- in pursuance of the said oral agreement for construction of house. The First Appellate Court is also correct in coming to the conclusion that no prudent agreement holder would permit the



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agreement vendors to put up construction in the suit property subsequent to the agreement. The construction put up by the respondent subsequent to the agreement, in the absence of proof for oral agreement and permission pleaded by the appellant, goes a long way in probabilising the defence raised by the respondent that Suit Sale Agreement was not intended to be treated as a Sale Agreement but it was only a security for loan transaction. Therefore, the First Appellate Court came to the factual conclusion that Suit Sale Agreement was not treated as a Sale Agreement and it was only a security for loan transaction and the said factual findings is based on totality of the circumstances as narrated above. I do not find any perversity in the conclusions reached by First Appellate Court and consequently, there is no room for this Court to exercise its power under Section 100 of the Civil Procedure Code, in the absence of any substantial question of law arising for consideration. Accordingly. the Second Appeal is dismissed by confirming the judgement and decree passed by the First Appellate Court.

In Nutshell:-

(i) The Second Appeal stands dismissed.



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(ii) Consequently, the connected civil miscellaneous petitions are closed.

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

08.11.2023

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

To

1.The Principal District Judge, Salem.

2.The Subordinate Judge, Salem.



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S.SOUNTHAR, J.

dm

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