



S.A.No.361 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.361 of 2020

and

C.M.P.No.7347 of 2020

G.Vasanthi

... Appellant

VS.

N.Durai

... Respondent

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 15.03.2017 made in A.S.No.98 of 2007 on the file of V Addl. District and Sessions Court at Coimbatore confirming the judgment and decree dated 14.07.2006 made in O.S.No.497 of 1998 on the file of I Additional Sub Court, Coimbatore.

For Appellant : Mr.P.Tamilavel

For Respondent : Mr.P.Dineshkumar



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J U D G E M E N T

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The defendant, who suffered in a decree for specific performance is the appellant. The respondent filed a suit for specific performance of Sale Agreement dated 13.01.1997. The Trial Court granted decree for specific performance. The appeal filed by the appellant was also dismissed. Aggrieved by the concurrent findings, the appellant is before this Court.

2. According to the respondent, he entered into a sale agreement with the appellant on 13.01.1997 for purchase of the property covered under the agreement for a sale consideration of Rs.3,00,000/-. On the date of agreement itself, the respondent paid a sum of Rs.1,00,000/- and it was agreed the balance amount has to be paid within a period of one year. Thereafter, at the request of the appellant, a further sum of Rs.1,50,000/- was paid by respondent on 15.04.1997 and the appellant also issued a receipt for having received the said sum and handed over the original title deed to the respondent. It was also averred by the respondent that a long period of one year was fixed to enable the appellant, who was running a press in the premises to shift her business and handover the possession. It



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was also averred that respondent had been ready and willing to perform his part of the contract and the appellant evaded the oral request made by the respondent to shift the business and perform her part of the contract. Therefore, the respondent issued a pre-suit notice on 11.12.1997 calling upon the appellant to execute the sale deed. After receipt of the notice, the appellant has come up with a different story repudiating the agreement itself. Hence, the respondent was constrained to file a suit for specific performance and possession.

3. The appellant/defendant filed a written statement denying the very execution of the Suit Sale Agreement. It was her case that the appellant borrowed a sum of Rs.20,000/- from respondent and his partner Vasanthamani and at the time of borrowing, she signed certain blank stamp papers and blank bond papers at the request of the respondent. It was specific case of the appellant that the blank stamp papers and blank bond papers signed by the appellant could have been used by the respondent for creating the suit agreement. The appellant also denied the receipt of any advance amount and further advance amount under the agreement. The appellant disputed the financial capacity of the respondent to make payment



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of advance of such huge sum under the agreement. The appellant also averred that she did not know the respondent and she never expressed her intention to sell the subject matter of the agreement. On these pleadings, the appellant sought for dismissal of the suit.

4. Before the Trial Court, the respondent was examined as PW.1 and two attestors to Ex.A1-Sale Agreement had been examined as PW.2 and PW.3. On behalf of the respondent, 5 documents were marked as Exs.A1 to A5. The appellant was examined as DW.1 and her husband was examined as DW.2. On behalf of the appellant, 4 documents were marked as Exs.D1 to D4.

5. The Trial Court on appreciation of oral and documentary evidences available on record, came to the conclusion that the appellant executed the Suit Sale Agreement with intention to sell the subject matter of the agreement and consequently, granted a decree for specific performance. Aggrieved by the same, the appellant herein filed an appeal in A.S.No.98 of 2007 on the file of the V Additional District and Sessions Court, Coimbatore and the same was dismissed. Challenging the said judgment and



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decree, the appellant has come up by way of this second appeal.

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6. The learned counsel appearing for the appellant tried to assail the judgments of the Courts below on the ground that even prior to issue of the pre-suit notice by the respondent, appellant issued a notice on 27.11.1997 under Ex.B1 expressing her desire to discharge the loan amount and called upon the respondent to return the signed stamp papers. The learned counsel further submitted that the respondent managed to return the said notice unserved. Thereafter, issued a pre-suit notice and filed the present suit. Therefore, it is the submission of the learned counsel appearing for the appellant that failure of the respondent to issue any reply to the notice of the appellant would go a long way in proving her case that the suit promissory note was concocted by the respondent. The learned counsel further submitted that when the respondent's financial capacity is specifically disputed by the appellant in the written statement, in the absence of any acceptable evidence, the Courts below ought not to have come to the conclusion that respondent proved his readiness and willingness to perform his part of the contract.



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7. The Suit Sale Agreement has been marked by the respondent as

Ex.A1. In support of the Suit Sale Agreement, the respondent examined herself as PW.1 and two persons, who attested the Sale Agreement had been examined as PW.2 and PW.3. The Courts below on appreciation of the evidence of PW.2 and PW.3 found nothing had been elucidated in the cross examination so as to discredit their evidence. Therefore, based on the evidence of attestors to the Suit Sale Agreement, the Courts below came to the conclusion that Ex.A1, Suit Sale Agreement has been proved. Further, the Courts below also doubted the evidence of appellant as DW.1 by pointing out discrepancy in her oral evidence with the pleadings raised by her. Therefore, the findings rendered by the Courts below that execution of Suit Sale Agreement is duly proved by the respondent is based on legal evidence and same requires no interference by this Court.

8. It is true that the appellant issued a notice to respondent on 27.11.1997 even prior to the pre-suit notice by the respondent. However, as seen from Ex.B2, notice issued by the appellant was returned unserved. In the absence of any concrete evidence to show that respondent manage to return the same unserved with the knowledge of contents of the notice, it



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cannot be presumed that respondent deliberately returned the notice. The appellant, who was examined as DW.1 clearly admitted that she had acquaintance with the respondent for the past 14 years. However, in the averment found in the written statement, it was mentioned that the appellant had no prior acquaintance with the respondent. In such circumstances, the defence raised by the appellant is highly doubtful and both the Courts below on proper appreciation of both oral and documentary evidences came to the conclusion that execution of Suit Sale Agreement was properly proved by the respondent. It is also noted by the Courts below that the appellant as DW.1 admitted the financial capacity of the respondent, though the same was denied by her in the written statement. In such circumstances, the conclusion reached by the Courts below that the respondent proved his readiness and willingness is also acceptable to this Court. As per the terms of agreement, one year time was fixed for performance of the agreement. The said period was due to expire on 12.01.1998. However, a pre-suit notice was issued by the respondent well prior to the expiry of suit sale agreement. Therefore, the findings of the Trial Court that readiness and willingness of the respondent was duly proved, also requires no interference by this Court.



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9. In view of the discussions made earlier, I do not find any substantial question of law arising for consideration in this second appeal and consequently, the second appeal is dismissed.

In Nutshell:-

(i) The Second Appeal is dismissed.

(ii) Consequently, the connected civil miscellaneous petition is closed.

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

20.10.2023

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



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To

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- 1.The V Addl. District and Sessions Court,
Coimbatore.
- 2.The I Additional Sub Court,
Coimbatore.



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S.SOUNTHAR, J.

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