



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S(MD)NOs.139 and 140 of 2013

and

M.P(MD)No.2 and 2 of 2013

A.S(MD)Nos.139 and 140 of 2013

R.Sankar

:Appellant/Defendant
in both appeal suits

.VS.

B.Arunachalam

:Respondent/Plaintiff
in both appeal suits

COMMON PRAYER: Appeal Suits filed under Section 96 of the Civil Procedure Code against the judgments and decrees made in O.S.No.90 of 2009, dated 01.11.2011 and O.S.No.46 of 2011, on the file of the Additional District Court, Fast Track Court No.I, Tirunelveli.

For Appellant
in both appeals

:Mr.V.Meenakshisundaram

For Respondent
in both appeals

:Mr.H.Arumugam

COMMON JUDGMENT

These two Appeal Suits are arising out of the common



judgment made in O.S.No. 90 of 2009, and O.S.No.46 of 2011, dated 01.11.2011 on the file of the Additional District Court, Fast Track Court No.I, Tirunelveli.

2.A.S.No.139 of 2013 is filed against the judgment and decree made in O.S.No.90 of 2009 filed by the plaintiff for the relief of specific performance by receiving the balance sale consideration of Rs.50,000/- and in alternative, to refund the total sale consideration of Rs.13 lakhs with interest to the plaintiff, wherein, A.S.No.140 of 2012 is filed against the judgment and decree made in O.S.No.46 of 2011 for the relief of specific performance by receiving the balance sale consideration of Rs. 25,000/- by the defendant or in the alternative to refund the advance amount of Rs.1 lakh with interest to the plaintiff.

3.As both the appeal suits are arising out of a common judgment, this Court is inclined to dispose of both these appeal suits by way of this common judgment.

4.The brief facts leading to the filing of A.S(MD)No.139 of 2013 is as follows:

In respect of the house property, the defendant executed a



registered sale agreement on 12.08.2008 to sell the property for a total sale consideration of Rs.9 lakhs and received a sum of Rs. 8,50,000/- in advance. It is agreed between the parties that the sale shall be completed within a period of six months from the date of sale agreement. After sale agreement, it came to light that there is some discrepancy in the title of the defendant. Therefore, subsequently negotiation carried on between the plaintiff and the defendant and the defendant agreed to sell the property for a total sale consideration of Rs.13,50,000/- and the amount already received as advance to the tune of Rs.8,50,000/- on 12.08.2008 is agreed to be adjusted towards the sale consideration and a sale agreement was entered between the parties on 5.10.2008 and the plaintiff has also paid another sum of Rs.4,50,000/- towards advance amount on the same date. Accordingly, in the said sale agreement, the sale consideration of Rs.13 lakhs is paid. One of the condition in the agreement is that the property should be delivered to the plaintiff by receiving the balance sale consideration of Rs.50,000/-.The plaintiff is ready and willing to perform his part of contract, however, the defendant has evaded to perform his part of contract in respect of his obligations. Hence the suit has been filed to enforce the contract executed between the plaintiff and defendant.



5. In the written statement, it is the contention of the defendant that the defendant's brother one Nagarajan had borrowed loans from usurious money lenders to the tune of Rs.6 lakhs and the said Nagarajan was in the clutches of the money lenders and the whole family was in turmoil and they wanted to bail him out of that situation. In that context, the plaintiff, who is the close friend of the defendant family, who is also dealing with money lending business and real estate business, voluntarily came forward to help the defendant family and he had agreed to give Rs.6 lakhs for helping the family of the defendant. The plaintiff was in a dominant position in that situation and the family members have directed that the mother and Nagarajan to release their rights over the entire family property in favour of the defendant and the defendant also executed a power of attorney in favour of one Murugan, besides an agreement of sale. It is the contention that the document is a result of loan transaction and the defendant has never intended to sell the property and borrowed only Rs.6 lakhs and not Rs.13 lakhs as alleged by the plaintiff. Hence he disputes the execution of the sale agreement.

6. In O.S.No.46 of 2011 filed for specific performance of the contract, dated 12.08.2008, it is the case of the plaintiff that the defendant has agreed to sell the property to a total sale



consideration of Rs.1,25,000/- and received a sum of Rs.1 lakh as advance amount and executed a registered sale agreement, dated 12.08.2008 and it is agreed between the parties that the sale shall be completed within a period of six months. The defendant has also to deliver the original title deeds to the plaintiff in respect of the suit schedule properties. The plaintiff is always ready and willing to perform his part of contract but the defendant is not ready to perform his part of obligations. Therefore, the plaintiff sent a legal notice on 15.09.2009 calling upon the defendant to receive the balance sale consideration of Rs.25,000/- and complete the sale agreement and he has also informed that both the plaintiff and defendant should present at the office of the Sub-Registrar at 10.00 a.m for registration. However, the defendant did not execute the sale deed as agreed between them. The Plaintiff is always ready and willing to perform his part of contract.

7.In the written statement, it is the contention of the defendant that his brother Nagarajan had obtained loan from the usurious money lenders and fall in the debt trap to the tune of Rs.6 lakhs. In order to release him from the clutches of money lenders, the defendant's family came forward to help him. At that point of time, the plaintiff, being a friend of the defendant family came forward to help the defendant's family and he had agreed to give



Rs.6 lakhs for helping the family of the defendant. The plaintiff was in a dominant position in that situation and the family members directed the mother and Nagarajan to release their rights over the entire family property in favour of the defendant also defendant executed a power of attorney in favour of one Murugan besides an agreement of sale. It is the contention that the document is a result of loan transaction and the defendant has never intended to sell the property and borrowed only Rs.6 lakhs and not Rs.13 lakhs as alleged by the plaintiff. Hence he disputes the sale agreement.

8. Based on the pleadings of the above two suits, the trial Court has framed the following issues:

In O.S.No.90 of 2009, the issues are:

1. Whether the sale agreement, dated 12.08.2008 is executed with an intention to sell the property in question?

2. Whether the plaintiff has paid the further sale consideration on 5.10.2008?

3. Whether the plaintiff was entitled to the relief of specific



performance as sought for or in alternative, is entitled for the relief of refund of advance amount of Rs.13 lakhs?

In O.S.No.46 of 2011, the issues are:

1.Whether the sale agreement, dated 12.08.2008 is considered to be a valid one?

2.Whether the defendant who has received the sale consideration is intended to sell the suit schedule properties?

3.Whether the Plaintiff has paid a sum of Rs.4,50,000/- to the defendant on 5.10.2008?

4.Whether the plaintiff is entitled for the relief of specific performance in both the suits or in the alternative for the return of the advance amount?

5.To what other relief, the plaintiff is entitled to?

9.Both the suits are tried together by the trial Court and on the side of the plaintiff, P.W.1 and P.W.2 and Ex.A1 to Ex.A16 were marked. On the side of the defendants, D.W.1 to D.W.3 were



examined and Ex.B1 to Ex.B6 were marked. Besides, that Ex.C1 to Ex.C3 were also marked as Court documents.

10. Based on the evidence and materials available on record, the trial Court has partly allowed the suit in O.S.No.90 Of 2010 in respect of the relief of specific performance and by granting the relief of refund of money of Rs.13 lakhs with interest at 12% pa with costs and decreed the suit in O.S.No.46 of 2011 for the relief of specific performance and directed the defendant to execute the sale deed in respect of the suit schedule property to an extent of 0.22 ares within a period of two months. Aggrieved over the judgments and decrees in both the suits, the present two appeal suits came to be filed by the defendant.

11. It is the contention of the learned counsel for the appellant that the property in question originally belonged to the father of the appellant and after his lifetime, the same has been inherited by all his legal heirs including the mother and brother of the appellant. Since one of the brother of the appellant fell in debt trap with one of the money lenders, in order to relieve him from the clutches of the money lender, the family of the defendant wanted to bail him out of the same and at that relevant point of time, the plaintiff who is also doing money lending business and also real



estate business under the pretext of helping the family advanced a sum of Rs.6 lakhs as loan borrowed by Nagarajan, brother of the appellant. Hence it is his contention that a registered sale agreement came to be executed and the same is not intended to sell the properties. On the same day, various other documents have also been executed, one in respect of the release deed by all other family members in favour of the appellant and other is two power of attorney deeds executed in favour of the brother's son of the defendant. Hence according to him, the cumulative effect of all the above records clinchingly establish the fact that the entire transaction is nothing but a loan transaction. According to him, if really the purchaser namely, the respondent/plaintiff intends to purchase the property having paid substantial amount of total sale consideration on the day of sale agreement itself, there is no necessity to grant a further time of six months to complete the sale agreement. Further when all the family members were already present in the Registration Office, there was no need to get separate documents by them like release deeds and power of attorney deeds separately. That itself clearly shows that these documents are nothing but as a result of loan transaction between them. Hence it is his contention that the respondent was in a dominant position at the relevant point of time and the appellant was in adversity and he has fell in debt trap thereby many



documents came into existence on the same day. Hence all the documents executed on 12.08.2008, at the same time, in two different Registration Office clearly suggest the fact that these documents are nothing but came into existence only in the loan transaction. Hence the trial Court has considered all these aspects and granted the relief of specific performance in O.S.No.46 of 2011 similarly, the trial court has decreed the suit for the alternative relief of refund of advance amount of Rs.13 lakhs in O.S.No.90 of 2010 without appreciation of evidence. Hence it is his contention that the judgment of the trial Court is not on proper appreciation of evidence and law. Ex.A2 sale agreement, dated 5.10.2010 which is an unregistered document said to have superceded the registered document. All these facts clearly shows that all the documents have been obtained in the same day and utilized for the purpose of the case. Hence the alleged sale consideration and sale agreement are highly doubtful and improbable. Hence seeks to set aside both the decrees and judgment.

12.On the contrary, the learned counsel for the respondent would submit that only at the convenience of the parties, they have executed the documents. The defendant has received the sale consideration and only to relive the other family members, they executed the release deed in favour of the defendant. The evidence



of DW1 to D.W.3 clearly show that they are not illiterate and they have consciously signed the documents. Therefore, it is his contention that even before four months prior to the sale agreement, dated 12.08.2008, the family members have decided to release their share in favour of the defendant herein. These facts clearly prove the fact that the defendant has intended to sell the property and executed the registered agreement for sale and now the defendant cannot be permitted to plead that they are not aware of the terms of the registered documents and the evidence of the defendant clearly admit the execution of the documents and they are not illiterates and now they cannot take a different stand. It is therefore submitted that the trial Court has in fact considered the entire aspect and granted the relief of specific performance in one suit mainly on the ground that there is discrepancy in the door number and only on that ground, the relief of specific performance was rejected in that suit, however, the trial Court, after analyzing the entire evidence on record, come to the conclusion that all the documents have been executed only for the purpose of sale. Therefore submitted that the judgment of the trial Court does not require any interference and prays for dismissal of the appeals.

13. In the light of the above submission, now the point that arose for consideration in these appeals are as follows:



1. Whether the sale agreements, dated 12.08.2008 are not intended for the sale of the property and were the result of a loan transaction?

2. Whether the defendant having executed documents can plead a different transaction other than the written transaction?

3. Whether the plaintiff is ready and willing to perform his part of contract and hence, entitled for the relief of specific performance?

4. To what other reliefs, the parties are entitled to?

14. I perused the entire materials on record including the common judgment of the Court below.

15. As the two appeals are arising out of the common judgment and though two suits have been filed for specific performance on the basis of two different sale agreements executed on 12.08.2008 and 5.10.2008. O.S.No.90 of 2009 is filed only in respect of the house property and the trial Court has rejected the relief of specific performance on the basis that there is some discrepancy in the door number of the house property,



however, granted the alternative relief. O.S.No.46 of 2009 is filed for specific performance in respect of the agricultural land has been decreed by the trial Court. Challenging both the decrees and judgement of both the suits, the present appeal suits came to be filed. Both the suits have been filed based on the sale agreement dated 12.08.2008. There are two agreements in respect of two different properties.

16. In respect of the sale agreement relating to the house property, originally the sale agreement came into existence on 12.08.2008. It is agreed between the parties that the total sale consideration is around Rs.9 lakhs. It is also stated in the agreement that the substantial part of the total sale consideration ie., 8.5 lakhs has already been paid and the remaining Rs.50,000/- alone to be paid within a period of six months. Similarly Ex.A2 is another unregistered document said to have been executed on 5.10.2009, wherein, the parties have agreed to enhance the sale consideration to the tune of Rs.13.5 lakhs for the house property. According to the plaintiff on the terms of the contract on the date of sale agreement, considerable part of sale consideration was paid as advance under Ex.A1 ie., a sum of Rs.13 lakhs has already been paid towards sale consideration and the remaining sale consideration to be paid is Rs.50,000/- in respect of the house



property. Similarly, Ex.A13 is another sale consideration dated 12.08.2008 in respect of the agricultural properties, wherein also, substantial part of sale consideration is said to have been paid on the same day ie., R.1 lakh, out of Rs.1.25 lakhs and they have also agreed for the completion of the sale in another six months. It is relevant to note that when a purchaser if really intended to purchase the property in question, no prudent man having paid more than 95% of the total sale consideration on the date of sale agreement itself, will not agree for another six months to complete the entire formalities. These facts would clearly go against the normal human conduct of the parties. Therefore this conduct itself gives an inference that the agreements are not intended for sale of properties. This fact is further fortified by various other factors. It is relevant to note that on the date of sale agreement itself ie., on 12.08.2008 Ex.A1 and Ex.A13 and several other documents came into existence and registered on the same day. Ex.A12 and Ex.A14 are the release deeds in respect of the house property as well as the agricultural properties. Those documents are registered only in the same Registration Office at about 1.00 to 2.00 p.m., and the document number assigned in both the documents as Doc.Nos. 3814 and 3821 of 2018. Similarly, Ex.A1 and Ex.A13. Ex.A1 is registered in the same Registration Office and at the same time, Ex.A13 is the sale agreement in respect of the agricultural land



was registered in a different Registration Office at about 4 to 5.00 p.m., and the document number assigned is Doc.No.3824. It is also to be noted that in respect of both the properties, power of attorney was also registered on the same day and the same is marked as Ex.B5 and Ex.B6 and this will make it clear that the power of attorneys have been executed by the parties in favour of one Murugan, who is none other than the plaintiff's brother's son. It is also to be noted that when all the family members of the defendant is very much available to execute the power of attorney in the Registration Office, if really the parties are intended to sell the property, they could have very well executed the document for sale itself on that day. The very sale deeds itself could have been registered on the same day, whereas, getting separate release deeds from the family members on the same day in favour of the defendant and getting the sale agreements separately from the plaintiff besides getting the power of attorneys in favour of the plaintiff's brother's son on the same day clearly indicates that these transactions and sale agreements are not intended for the sale of the properties. Registering all the documents simultaneously at the same time in two different Registration Office clearly probalises the defense theory that those documents came into existence only in respect of loan transaction and only in order to clear the family debt of the defendant. Therefore, this Court is of the view that when



the defendant was able to establish that though the documents are executed by them and the same is not intended for sale and it is intended only for different transaction. It cannot be said that merely because of Section 92 of the Indian Evidence Act, they cannot take a contrary view. Under the proviso to Section 92 of the above Act permits the parties to show a different transaction altogether. When the probabilities brought on record clearly indicate that these transactions are not intended for sale and the documents came into existence in a different transaction, proviso to Section 92 will come into play and the defendant can very well plead a different transaction other than the terms entered in the contract. Such being the position, this Court after considering the cumulative effect of all the above documents, particularly, the release deeds executed by the family members of the defendant on the same day and substantial part of total sale consideration ie, more than 95% of the sale consideration said to have been paid on the same day and the sale agreement executed on the same day itself and giving another six months to complete the sale is against the normal human conduct. Yet another fact is execution of power of attorneys on the same day in favour of plaintiff's brother's son. When the power of attorneys were registered in favour of the plaintiff's brother's son, there is no need for the plaintiff to once again wait for some time to send formal notice seeking for specific



performance. In fact, if really he had intended to purchase the suit property, he could have registered the sale deeds straight-away on the strength of the power of attorney deeds. All these facts clearly show that the plaintiff is not intended to purchase the suit schedule properties and all the documents are emanating as a result of the loan transaction. Therefore merely on the basis of Section 92 of the Indian Evidence Act, it cannot be assumed that it is only a transaction intended for sale of the properties. Accordingly, these points are answered, as this Court finds that it is only a loan transaction, the question of readiness and willingness assumes insignificance. Therefore the plaintiff is not entitled to seek the relief of specific performance and further, the suits have been filed only after an year of the sale agreements. These facts clearly show that the plaintiff is never intended to purchase the properties and somehow or other filed the suits with delay. This Conduct also exhibits the fact that he has not shown his readiness and willingness. Accordingly, the plaintiff is not entitled for the relief of specific performance. Accordingly, the judgement and decree granted by the trial Court granting specific performance in O.S.No.46 of 2011 is hereby set aside.

17. Now it has to be seen whether the decree of the trial Court in O.S.No.90 of 2009 is to be interfered with.



18.It is the contention of the defendant that they have borrowed only a sum of Rs.6 lakhs and not Rs.13 lakhs as alleged by the plaintiff. Except mere submissions and pleadings, no materials whatsoever in the name of documents have been brought on record. On a perusal of the evidence brought by way of cross examination this Court only suggest that these documents came into existence only as a result of loan transaction and such materials are not sufficient to hold that only a sum of Rs.6 lakhs alone has been received. The defendant also admit in the evidence that they have executed the documents. Such being the position,when they admit the execution of the documents on the terms of the specific receipt of certain amounts, now they cannot go against the terms of the contract, particularly, in receipt of the amount. In such view of the matter, decree granting the alternative relief of refund of advance amount is maintained with interest rate reduced from 12% to 8%p.a. With the above direction, A.S(MD)No. 139 of 2013 is dismissed.

19.As far as the advance amount relating to O.S.No.46 of 2011 is concerned, the respondent Plaintiff is entitled to receive a sum of Rs.1 lakh paid as advance amount with interest at the rate of 8%p.a. Accordingly A.S(MD)No.140 of 2013 is partly allowed in respect of the alternative relief of refund of advance amount to the



tune of Rs.1 lakh.

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No costs. Consequently, connected Miscellaneous Petitions are closed.

17.04.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Additional District Judge,
Additional District Court/FTC NO.I,
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

vsn

COMMON JUDGMENT MADE IN
A.S(MD)NOs.139 and 140 of 2013
and
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17.04.2023