



S.A.No.481 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A(MD)No.481 of 2011

and

M.P(MD)No.1 of 2011

B.Senthil Kumar

...Appellant/Appellant/
Defendant

-Vs-

P.Kannan

...Respondent/Appellant/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 27.08.2009 made in A.S.No.35 of 2008 on the file of the learned Subordinate Judge, Uthamapalayam, reversing the judgment and decree, dated 23.08.2007 made in O.S.No.74 of 2006 on the file of the learned District Munsif, Uthamapalayam.

For Appellant : Mr.C.Jegannathan
For Respondent : Mr.R.Suriyanarayanan

J U D G M E N T



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Aggrieved by the common judgment and decree passed by the first appellate Court viz., the Sub-Court, Uthamapalayam, in A.S.Nos.25 and 35 of 2008, the defendant herein has preferred this second appeal.

2.Parties are referred to hereunder as per their litigative status and the ranking shown before the trial Court.

3.According to the plaintiff, the defendant having agreed to sell his property, executed a sale agreement on 18.04.2005, for sale consideration of Rs.80,000/- (Rupees Eighty Thousand only). The plaintiff paid an advance of Rs.70,000/- fixing the performance period as three years. The plaintiff agreed to pay the remaining sale consideration of Rs. 10,000/- within three years. The plaintiff further claims that he has been ready and willing to execute his part of contract. The defendant was evading to execute the sale deed. Therefore, the plaintiff caused to issue a legal notice on 19.12.2005. On receipt of the said legal notice, the defendant issued a reply notice dated 06.12.2006 with the false details.



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The plaintiff has deposited the remaining amount of Rs.10,000/- into the Court deposit and filed the suit for the relief of specific performance.

4.While admitting the execution of sale agreement, it was contended by the defendant that he did not execute the said document- Ex.A1 with the intention to execute the sale deed and it was executed only for the purpose of security for the loan amount of Rs.50,000/-, received on 05.04.2004. He would also claim that he borrowed a sum of Rs. 50,000/- and discharged the loan amount.

5.Based on the rival contentions, the trial Court framed the following issues:

(1)Whether the plaintiff is entitled for the relief of specific performance.

(2)Whether it is true that the plaintiff is ready and willing to sell the suit property.

(3)Whether it is true that the defendant's father and sister have the share in the suit property.



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(4)Whether it is true that the defendant has executed the sale agreement in respect of the plaintiff debt of Rs.50,000/- received from the plaintiff.

(5)To what other reliefs he is entitled.

6.At trial, on the plaintiff's side, the plaintiff has examined himself as P.W.1 and one Sankaran was examined as P.W.2. Exs.A1 to A4 were marked. Ex.A1, dated 18.04.2005 is the suit sale agreement. The settlement deed executed by the father of the defendant Paramasivam Pillai in favour of the defendant Senthilkumar, in respect of the suit property, dated 25.11.2004 is Ex.A4. On the defendant's side, the defendant has examined himself as D.W.1 and one Murugan was examined as D.W.2. Exs.B1 to B3 were marked.

7.The trial Court, after evaluating the evidence, has observed that for payment of Rs.10,000/-, three years period was fixed, which was not explained by the plaintiff. Based on the said reason, it was concluded that the defendant did not execute Ex.A1 document with the intention to



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execute the sale deed and denied the relief of specific performance, but return of advance amount of Rs.70,000/- was ordered to be paid by the defendant.

8. Aggrieved, both the parties preferred appeals before the Sub-Court, Uthamapalayam (A.S.Nos.25 and 35 of 2008). A common judgment was passed to the effect that the defendant has not stated on what date he repaid the debt amount and has not accepted the defendant's case and allowed the appeal by confirming the judgment and decree of the trial Court.

9. The learned counsel appearing for the appellant/defendant would strenuously argue that though the execution of sale agreement was admitted, the defendant executed Ex.A1 for security purpose for the loan amount of Rs.50,000/- received by him from the plaintiff on 05.04.2004. In fact, it is not a sale agreement intended to be acted upon.

10. Contending contra, the learned counsel appearing for the



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respondent/plaintiff would vehemently contend that the execution of sale agreement was admitted by the defendant and the first appellate Court has appreciated the oral and documentary evidence in a proper perspective, holding that the plaintiff has been ready and willing to perform his contract and granted the relief of specific performance in favour of the plaintiff, which is a well reasoned finding.

11.To buttress his argument, the following judgments were referred to:

(i) In ***Rajeswari and Others-Vs-K.M.Kumarasamy and Others***, reported in **(2007)4 MLJ 442**.

(ii) In ***Bhandari Construction Company-Vs-Narayan Gopal Upadhye***, reported in **(2007) 3 MLJ 467(SC)**.

12.The following substantial question of law arises for consideration:

Whether the first appellate Court was right in exercising its power under Section 20 of Specific Relief Act.



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13. The learned counsel appearing for the appellant/defendant drew the attention of this Court that for payment of poultry sum of Rs. 10,000/-, the period for performance was fixed as 3 years, is quite unreasonable and this was not taken note of by the first appellate Court. The said sale agreement was executed on 18.04.2005 for a sale consideration of Rs.80,000/-. While admitting the execution of the said sale agreement, the defendant contends that he received a loan amount of Rs. 50,000/- from the plaintiff and executed the sale agreement only for the purpose of security. The suit was filed on 20.03.2006 before the District Munsif Court, Uthamapalayam.

14. On a careful perusal of Ex.A1-Sale Agreement, the defendant, who is an ex-serviceman, entered into a sale agreement with the plaintiff on 18.04.2005 for a sale consideration of Rs.80,000/- and received a sum of Rs.70,000/- as an advance. It is a registered sale agreement.

15. All contracts must be made animo anima contahend:- which



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means an intention to be bound by contractual obligations and parol evidence is admissible to show that there was no animus, that a contract as embodied in a document was never intended to be acted upon but was made for some collateral purpose.

16. In the second appeal, this Court is not expected to reappraise the evidence, however, it is noticed that the trial Court and the First Appellate Court have omitted to appreciate the evidence of witnesses in a proper perspective when it was put-forth before the said Courts as to whether the sale agreement is intended to be acted upon as the sale agreement or it was only executed as a security for the loan transaction. In order to decide the issue, the details of oral evidence, period of agreement and the advance amount paid and the remaining purchase money to be paid or important factors.

17. The privy council in ***Tyagaraja Mudaliyar vs.Vedathanni***, reported in ***AIR 1936 PC 70***, it was held that the oral evidence in departure from the terms of a written deed is admissible to show that what is



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mentioned in the deed was not the real transaction between the parties, but it was something different.

18. The defendant while admitting the execution of the sale agreement, duly claimed that he received the loan of Rs.50,000/- and he did not intend to execute the sale deed and Ex.A1 is executed only for the purpose of security for the loan amount. Section 20 of the Specific Relief Act gives leverage to the Court to appreciate the evidence of the vendor in a proper perspective. As per Ex.A1, sale consideration is fixed at Rs. 80,000/-. The defendant, who is a ex-serviceman is stated to have received an amount of Rs.50,000/-. When the plaintiff had the capacity to pay Rs. 70,000/ for payment of poultry sum of Rs.10,000/- for execution of sale agreement fixing 3 years period for performance, is highly doubtful.

19.It is useful to refer to the observation of the Hon'ble Supreme Court in ***Tejram-Vs-Patirambhau***, reported in ***AIR 1997 Supreme Court 2702***, in a case of suit for specific performance, the money lender alleged



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to have parted with Rs.48,000/- as part consideration of agreement to sell the immovable property. Balance consideration of Rs.2,000/- was neither paid by him nor possession of property was taken by him. He kept quiet for three years and thereafter on the last date of limitation filed a suit for specific performance. In the said circumstance, the Hon'ble Supreme Court concluded that the agreement for sale document cannot be treated as a sale in truth and directed the appellant to pay a sum of Rs.48,000/- to the respondent without any interest.

20. As mentioned supra, for the payment of Rs.10,000/- fixing three years period for performing the contract, the defendant's stand that it was executed only for the purpose of security and without consensus ad-idem, he executed the document which is purported to be a sale agreement.

21. The relief claimed under Section 16c of the Specific Relief Act, is an equitable relief. The plaintiff is required to approach the Court with clean hands. From the evidence of D.W1, it is seen that the



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agreement for sale was not entered into, with the consensus ad-idem and it is a sham and nominal document and the defendant had never intended to act upon. The action of the plaintiff was doubtful and raises a strong doubt about the bonafides of the plaintiff. Therefore, the plaintiff is not entitled to the discretionary relief that was sought for. Based on the above said discussion, the substantial question of law is answered against the plaintiff.

22. In view of the aforesaid discussions, the Second Appeal stands allowed. The common judgment and decree passed by the first appellate Court in A.S.No.35 of 2008 stands set aside and the judgment and decree of the trial Court in O.S.No.74 of 2006 is confirmed. No costs. Consequently, connected miscellaneous petition stands closed.

22.12.2023

NCC:Yes/No

Index:Yes/No

Internet::Yes/No

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R. KALAIMATHI, J.,

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To

- 1.The Subordinate Judge,
Uthamapalayam.
- 2.The District Munsif,
Uthamapalayam.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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