



S.A(MD).No.763 of 2011

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A(MD).No.763 of 2011
and M.P(MD).No.1 of 2011

Santhanakrishnan(Died) ...Appellant/Appellant/Defendant

2.Kamala

3.Balamani

4.Chitra

5.Shanthi

6.Rajesh Kanna

7.Subbiah ...LRs of the deceased first appellant

*(*A2 to A7 are brought on record as LR's of the deceased sole appellant made in M.P(MD).No.1 of 2014 in S.A(MD).No.763 of 2011 vide order dated 17.02.2015*)*

-Vs-

P.Sukumar ... Respondent/Respondent/Plaintiff



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PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree dated 18.02.2011 made in A.S.No.216 of 2007 on the file of the Additional Subordinate Court, Dindigul, confirming the judgment and decree dated 29.06.2005 made in O.S.No.179 of 2004 on the file of the District Munsif cum Judicial Magistrate, Veda sandur.

For Appellants : M/s.J.Maria Roseline

For Respondent :Mr.T.R.Subramanian

JUDGMENT

Aggrieved by the concurrent findings of the trial Court as well as the First Appellate Court, the legal heirs of the deceased defendant has preferred this second appeal.

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

3. According to the plaintiff, the suit properties [3 in numbers] are the self-acquired properties of the defendant as he purchased the same as per the sale deed dated 05.03.1976. The defendant as the owner of the properties



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agreed to sell the same to the plaintiff for a sale consideration of Rs.99,000/- (Rupees Ninety Nine Thousand only) and executed a sale agreement on 16.10.1991 by receiving an advance amount of Rs.60,000/- (Rupees Sixty Thousand only) and handed over the possession to the plaintiff with title deeds. The plaintiff further claims that the performance period is fixed as 5 years from 16.10.1991. The plaintiff has been throughout willing and ready to perform his part of contract and ready to pay the balance sale price and get the sale deed executed from the defendant. The plaintiff all along has been demanding the defendant which was evaded by the defendant. The plaintiff issued a pre-suit notice on 04.10.1996 calling upon him to execute the sale deed after receiving the balance sale price from him. Since no response from the defendant, hence, the suit.

4. Whereas, the defendant would contend that he did not execute the sale agreement. The plaintiff approached him for a loan of Rs.60,000/- (Rupees Sixty Thousand only). It is only the plaintiff who stipulated that the defendant has to execute the sale agreement and it was agreed upon that the properties will be cultivated by the plaintiff and at the time of returning the amount, he would hand over the possession of the suit properties. Based on the said conditions, the



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defendant executed the document for security purpose only for receipt of loan.

The plaintiff is a money lender and for the loan advanced, he used to get the sale agreement even from the third parties. The defendant has further claimed that for an amount of Rs.99,000/-, the plaintiff need not fix five year time. Had it been a sale agreement, definitely the five year period would not have been fixed. The plaintiff has executed more than 50 sale agreements in the past 5-6 years before the Sub-Registrar Office, Vadamadurai. The defendant further claims that during Ex-A2 period itself, the cost of one acre was Rs.3,00,000/- (Rupees Three Lakhs only). The land is situated abutting Trichy-Dindigul National Highways and the defendant is ready to repay the loan amount of Rs.60,000/- (Rupees Sixty Thousand only).

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

(i) Whether the plaintiff is entitled for the relief of specific performance?

(ii) Whether the defendant had intention to sell the properties based on the sale agreement?

(iii) Whether the contention of the defendant that the sale agreement was entered into for security purpose is correct or



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(iv) What are all the other reliefs, the plaintiff is entitled to?

6. At trial, on the plaintiff's side, the plaintiff and one Arjunan have been examined as P.W.1 and P.W.2. Ex.A1 to Ex.A7 have been marked. On the defendant's side, the defendant has examined himself as D.W.1 and the first attesting witness in the suit sale agreement, Ayyakallai, was examined as D.W.2. D.W.3 to D.W.5 are the persons who have executed the sale agreements in favour of the plaintiff, Sugumar. Ex.B1 to Ex.B20 were marked.

7. The Trial Court concluded that as the defendant has admitted the signature found in Ex.A2 and the sale agreement was executed as security for the loan, was not found in the sale agreement and accepting the plaintiff's case, decreed the suit in favour of the plaintiff.

8. Aggrieved, the defendant preferred the first appeal before the Additional Sub-Court, Dindigul in A.S.No.216 of 2007. The First Appellate Court, after



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evaluating the evidence, held that as the plaintiff was willing to perform his part of contract and the defendant has also admitted the signature found in the sale agreement, the stand of the defendant that the sale agreement was executed for security purpose was not accepted and in line of the trial Court, the First Appellate Court also favoured the plaintiff and chose to dismiss the appeal.

9. Against the said concurrent findings, the defendant, who lost before both the trial as well as the First Appellate Court, has preferred this second appeal.

10. Ms.J.Maria Roseline, learned counsel appearing for the appellants would strenuously argue that though the defendant admitted the execution of the sale agreement, he never intended to sell his property for a meagre amount of Rs.99,000/- (Rupees Ninety Nine Thousand). She would also draw the attention of this Court that the extent of the suit properties is two acres and on the date of sale agreement itself, 1 acre of land costs about Rs.3,00,000/- (Rupees Three Lakhs only). She would stress upon the fact that the suit properties situate abutting Dindigul-Trichy National Highways and at present, the cost of the suit property per acre is above Rs.10,00,000/- (Rupees Ten Lakhs only). She would also contend that Ex.B4 to Ex.B22 registered sale



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agreements would demonstrate the fact that there is a practice prevailing in Vadamadurai Taluk that for security purpose, the sale agreement will be obtained from the vendors. One such instance is Ex.A2.

11.The learned counsel appearing for the appellants, M/s.J.Maria Roseline, referred to the following judgments in order to buttress her arguments:

*"(i) **Tejram Vs. Patirambhau** reported in **AIR 1997 SCC 2702** was referred to in order to contend that the sale agreement was entered into and an amount of Rs.48,000/- (Rupees Forty Eight Thousand only) was received by the vendor for balance consideration of Rs.2,000/-. After three years, the purchaser filed the suit, that too, on the last date of agreement and the Hon'ble Supreme Court concluded that the document purported to be sale agreement cannot be treated as a sale agreement in truth.*

*(ii) **Vallithai and others Vs. Arulraj** reported in **2007 5MLJ 222**, was referred to in order to contend that the evidence of the defendant disclosed that he did not execute any sale agreement and only mortgaged the property and there was no necessity for the defendant to sell the property worth about Rs.2,00,000/- for a*



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12. Per contra, Mr.T.R.Subramanian, the learned counsel appearing for the respondent would vehemently argue that the execution of sale agreement was admitted by the defendant and as the plaintiff is always willing and ready to perform his part of the contract and within the time the suit was laid, the trial Court as well as the first Appellate Court accepted the plaintiff's plea and decreed the suit.

13. The following substantial questions of law arise for consideration:

(i) Whether the larger time limit for executing the sale and a smaller balance consideration would show that the transaction is a loan transaction?

(ii) Whether the discretion available under Section 20 of the Specific Relief Act was not properly exercised by the trial Court as well as the First Appellate Court?



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14. As per Section 16(c) of the Specific Relief Act, the plaintiff has to plead and prove that he has been ready and willing to perform his part of the contract. The defendant has admitted the due execution of sale agreement [Ex.A2]. However, the defendant, while admitting the execution of sale agreement, would stoutly contend that he obtained loan of Rs.60,000/- (Rupees Sixty Thousand only) and only for security purpose, he executed a sale agreement.

15. As the execution of sale agreement is admitted by the defendant, now the crucial question as to whether as contended by the defendant, the sale agreement was executed for security purpose is to be seen. These details were not gone into both by the trial Court as well as the first Appellate Court.

16. The plaintiff has complied with the stipulations given in Section 16(c) of the Specific Relief Act as mentioned supra. Section 20 of the Specific Relief Act deals with the discretion as to decreeing the specific performance. Section 20 of the Specific Relief Act stipulates that if the terms of the contract give unfair advantage to the plaintiff or if the performance of the contract would involve hardship to the defendant, or if the contract is inequitable in nature, then the Court may refuse to grant the relief of specific performance.



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17. D.W.3 to D.W.5 have been examined to the effect that the plaintiff used to get the sale agreement executed even for advancing the loan and the vendors have filed the sale agreements executed by them.

18. The relief sought for under Section 16(c) of the Specific Relief Act is an equitable relief, for which, one should approach the Court with clean hands. The defendant has explained in detail about the fact that he did not execute the sale agreement with the intention to execute the sale deed and it was executed only for security purpose for the loan advanced to him. D.W.2, Ayyakallai is the first attesting witness in the suit sale agreement. He has deposed that in fact, the defendant approached him for the loan and he, in turn, took the defendant to the plaintiff and got the loan of Rs.60,000/- from the plaintiff. As per the demand of the plaintiff, the sale agreement was executed by receiving the loan amount of Rs.60,000/- by the defendant and he, in turn, handed over the possession of the suit properties to the plaintiff for interest for the said amount.

19. Therefore, there is an absence of consensus *ad idem* which is established through the examination of independent witness, D.W.2, Ayyakallai. Moreover, with regard to the terms of the agreement, it is easily discernible that



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for a property situated along the National Highway and the less amount of sale consideration also creates serious doubt about the veracity of the sale agreement. Admittedly, the sale consideration is Rs.99,000/-. The defendant has admitted to have received an amount of Rs.60,000/- from the plaintiff. For receiving a paltry amount of Rs.39,000/-, five year period fixed itself indicates the fact that the sale agreement is not intended to be acted upon as a sale agreement and this Court is of the firm view that it was executed only as a security for the loan transaction.

20. In ***Tejram Vs. Patirambhau*** reported in ***AIR 1997 SCC 2702***, wherein the substantial part of the sale consideration was acknowledged as an advance under the sale agreement and there was no explanation for giving a few years time for payment of the balance, the Hon'ble Apex Court concluded that the agreement for sale was not purported to be a sale in truth and held that giving unreasonably a longer time without proper reasons is a strong circumstance to indicate that the sale agreement is not a real and accepted one and held that the sale agreement was executed only as security for the loan transaction.

21. In ***Tyagaraja Mudaliyar vs. Vedathanni***, reported in ***AIR 1936 PC 70***, the Privy Council held that an oral evidence in departure from



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the terms of a written deed is admissible to show that what is mentioned in the deed was not the real transaction between the parties and it was something different.

22. In this case, the defendant has admitted to have received a loan amount of Rs.60,000/- from the plaintiff. Besides the same, he has taken hectic steps not only explaining the circumstances under which the agreement for sale came into existence can never be considered as a sale agreement. He has established the fact that he never intended to execute the sale agreement for the purpose of executing the sale deed.

23. For payment of Rs.39,000/-, fixing of five year period would amply demonstrate the fact that it was not intended to be acted upon as a sale agreement. The plaintiff himself has acceded in the plaint that on the date of execution of sale agreement, the suit properties were handed over to him in lieu of interest for the payment advanced.

24. Viewing from the aforesaid discussion, I have no hesitation to hold that the plaintiff has not approached the trial Court with clean hands and the sale agreement was executed only for security purpose and is not entitled to the relief of specific performance, ultimately, the plaintiff has to be non-suited.

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25. In the result, the substantial questions of law are answered against the plaintiff.

26. Based on the aforesaid discussion, the Second Appeal stands allowed. The suit in O.S.No.179 of 2004 on the file of the District Munsif Cum Judicial Magistrate, Veda sandur, stands dismissed. There is no order as to costs. Connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Additional Subordinate Court, Dindigul
- 2.The District Munsif cum Judicial Magistrate, Veda sandur
- 3.The Record Keeper,
V.R.Section, Madurai Bench of Madras High Court,Madurai.



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