



A.S.(MD)No.237 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.237 of 2021

and

C.M.P.(MD)Nos.8146 of 2021 and 11391 of 2022

N.Selvakumar

.. Appellant / Defendant

-Vs-

Khairunnnisa (also known as Hairunnisa)

... Respondent / Plaintiff

PRAYER: This Appeal Suit is filed under Section 96 of the Civil Procedure Code to set aside the judgment dated 23.01.2020 made in O.S.No.72 of 2018 on the file of the learned I Additional District Judge (PCR), Tiruchirappalli by allowing this appeal.

For Appellant : Mr.K.P.Narayanakumar
For Respondent : Mr.A.Arumugam
for M/s.Ajmal Associates

JUDGMENT

This appeal is directed against the decree and judgment dated 23.01.2020 made in O.S.No.72 of 2018 on the file of the learned I Additional District Judge (PCR), Tiruchirappalli, decreeing the suit for specific performance.



A.S.(MD)No.237 of 2021

2.For the sake of convenience, the parties are arrayed as per their rank before the trial Court.

3.The defendant is the owner of the suit property and he had agreed to sell the same to the plaintiff for a total sale consideration of Rs.11,00,000/- (Rupees Eleven Lakhs Only) and entered into a sale agreement dated 24.07.2017. The plaintiff had paid a sum of Rs.10,50,000/- (Rupees Ten Lakhs and Fifty Thousand Only) towards the sale consideration. It was agreed that within a period of six months, the sale should be completed. The plaintiff was ready and willing to perform her part of contract and all the title deeds were handed over to her by the defendant. However, the defendant was evading from executing the sale deed. Therefore, the plaintiff caused legal notice dated 26.12.2017 to the defendant. Though it was received by the defendant, no reply was sent by him. Hence, the suit was filed by the plaintiff.

4.Denying the agreement, it is the contention of the defendant that he has not received a sum of Rs.10,50,000/- towards the sale consideration. He had never executed the sale agreement in respect of the suit property. It is the further contention of the defendant that he had borrowed only a sum of Rs.2,00,000/-



A.S.(MD)No.237 of 2021

(Rupees Two Lakhs Only) from the plaintiff on 24.07.2017 to meet his emergency expenses and agreed to pay the same within a period of six months with interest at the rate of 24% per annum. At that time, the plaintiff insisted the defendant to execute the sale agreement as a surety for the above said loan, therefore, the agreement had been executed by the defendant and the same was not intended for sale, whereas it was executed in a loan transaction.

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

- “1. Whether the sale agreement dated 24.07.2017 is a valid one?;*
- 2. Whether the plaintiff is entitled to the relief of specific performance as prayed for?;*
- 3. Whether the plaintiff is ready and willing to perform the sale agreement?; and*
- 4. To what other reliefs to the parties?”*

6. In order to prove the case, on the side of the plaintiff, P.W.1 and P.W.2 were examined and Ex.A1 to Ex.A10 were marked and on the side of the defendant, D.W.1 was examined, however, no documents were marked.



A.S.(MD)No.237 of 2021

7. After analyzing the oral and documentary evidence, the trial Court had come to the conclusion that the agreement was executed only for the purpose of selling the property and negatived the plea of the defendant and decreed the suit.

8. Challenging the said decree and judgment, the present Appeal Suit has been filed by the defendant.

9. The main contention of the learned counsel for the appellant is that the trial Court had not appreciated the evidence properly. In the plaint pleadings itself, it is stated that prior to the agreement, a sum of Rs.10,50,000/- has been paid to the defendant in several installments in cash, whereas P.W.1 in her evidence had stated that only in two installments that sum was paid to the defendant. That itself clearly indicates that the agreement is executed in a loan transaction. It is the further contention of the appellant that the appellant had clearly pleaded in his defence that he had borrowed only a sum of Rs.2,00,000/-, for which he had executed the said agreement. That apart, it is submitted by the appellant that even assuming that the substantial payment is made on the date of agreement and there was no encumbrance over the property, the sale ought to have been registered then and there itself, but entering into an agreement by fixing six



A.S.(MD)No.237 of 2021

months time limit to complete the sale is highly improbable and the same creates serious doubt about the very contract itself.

10.It is the further contention of the appellant that the attesting witnesses are none other than the husband and son of the plaintiff. The value of the property is nearly Rs.70 lakhs, whereas the sale agreement is said to have been agreed to only Rs.11 lakhs. Further, the plaintiff had not produced any bank accounts to show that the amount paid to the defendant had been withdrawn from her account. All these facts had not been considered by the trial Court. Further, the plaintiff had not established her readiness and willingness to complete the sale. The balance sale consideration had not been deposited by the plaintiff before the Court. Such view of the matter, the readiness and willingness cannot be inferred merely on the basis of some registered document. At the most, the plaintiff is entitled only to the alternative relief of refund of advance amount with reasonable interest.

11.In support of his contention, he relied upon the following judgments:-

- (1)Ritu Saxena Vs. J.S.Grover and another** reported in **(2019) 9 SCC 132**; and
- (2) Abdullakoya Haji and others Vs. Rubis Tharayil and another**



A.S.(MD)No.237 of 2021

reported in **(2019) 17 SCC 216.**

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12.The learned counsel for the respondent would submit that the defendant had not established his contention that the agreement was executed only in a loan transaction. In his evidence itself, he had clearly admitted the execution of the agreement. The defendant is not a rustic man. He is able to understand the contents available in the document. Further, the entire evidence of the defendant clearly shows that the document had been executed with an intention to sell the suit property. No other circumstances whatsoever had been brought on record to prove his contention that the agreement was executed in a loan transaction. Therefore, once the execution of agreement and receipt of advance amount were admitted, there need not be any further evidence on the side of the plaintiff to prove the mode of payment of sale consideration, since the admission itself is the best evidence. Further, all the title deeds have been handed over to the plaintiff. This fact itself clearly indicates that the agreement had come into existence only for the purpose of selling the suit property. The trial Court, after analyzing the entire materials available on record, rightly decreed the suit. Therefore, the same does not warrant any interference by this Court.



A.S.(MD)No.237 of 2021

13.In the light of the above submissions, now the points that arise for consideration in this appeal are:

“1)Whether the suit sale agreement dated 24.07.2017 is not intended for sale of property and it is for the loan transaction?;

2)Whether the plaintiff was always ready and willing to perform her part of contract?; and

3)To what other reliefs the plaintiff is entitled to?”

14.On perusal of the entire pleadings, it is the specific case of the plaintiff that the defendant had executed an agreement for selling the suit property for a total sale consideration of Rs.11 lakhs. Till the date of agreement, a sum of Rs.10,50,000/- was paid and the remaining sum of Rs.50,000/- was agreed to be paid within a period of six months. It is the contention of the defendant that he had received only a sum of Rs.2 lakhs as loan and executed the contract. When Ex.A1, the registered contract and the evidence of D.W1, were carefully perused, it could be seen that the defendant had not only admitted the execution of the document, but also fact that he had completed 12th standard and he is capable of understanding the terms of the contract.



A.S.(MD)No.237 of 2021

15. Such being the position, the defendant, being capable of understanding the nature of the contract, executed the documents consciously, now he cannot state that the above terms are not agreed for sale, but for some other transactions. Once the terms of the contract are agreed and admitted, the defendant cannot go against the terms of the contract agreed and executed by him. As per Section 91 of the Evidence Act, it is not open to any party to lead evidence contrary to the terms of the contract or written agreement. No circumstances whatsoever had been brought on record for the purpose of contradicting or varying from the terms contained in the original contract. Therefore, once the persons consciously executed the contract and thereafter pleads that it is executed for some other transaction, the entire onus lies on the said person to show that other than the registered contract, there is some other arrangements between them.

16. Perusal of evidence of D.W1 reveals that he had admitted the execution of contract, but stated that he had only borrowed a sum of Rs.2 lakhs towards loan transaction. It is relevant to note that it is not the case of the defendant that he was dire need of fund at the relevant point of time and he could not mobilise the fund from anyone. The reason to borrow a sum of Rs.2 lakhs was not even pleaded in his entire written statement. Therefore, on mere pleadings



A.S.(MD)No.237 of 2021

without any evidence, the loan transaction cannot be inferred.

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17.Further, it is relevant to note that all the original documents had already been handed over to the plaintiff on the date of agreement ie., 24.07.2017. The legal notice was issued within a period of five months ie., on 26.12.2017 under Ex.A9, which is also acknowledged. However, no reply whatsoever was sent by the defendant. If really there was a loan transaction, at the moment when the legal notice was issued, the normal conduct of a person would be atleast to reply and repudiate the legal notice. However, he remained silent for the reasons best known to him. The suit was also immediately filed. Therefore, all these facts clearly indicate that the defence of the defendant that it is only a loan transaction is mere a denial of the registered agreement executed by him. The mode of reception of amount towards sale consideration was also found place in the agreement itself. Hence, admitting such things in his evidence, he cannot take any contrary stand to contend that he had received only a sum of Rs.2 lakhs.

18.It is also relevant to note that the plaintiff and the defendant are known to each other for several years and they are doing retail business. When the persons are known to each other for several years receiving amount by entering



A.S.(MD)No.237 of 2021

into oral contract followed by a written contract is quite normal in the society.

However, without any materials on record or valid reason to show that there was necessity to borrow a sum of Rs.2 lakhs, which resulted in sale agreement, merely on the basis of the pleading, the Court cannot infer that there is a different transaction other than the sale agreement. Accordingly, this Court holds that the defendant has not discharged the onus by establishing his stand that the agreement entered between the plaintiff and the defendant was only for the loan transaction.

19.As far as the readiness and willingness is concerned, the substantial consideration had already been paid by the plaintiff, which was evidenced in Ex.A1. In the evidence and cross-examination, D.W.1/defendant had admitted that he had received a sum of Rs.10,50,000/-. Once the registered document clearly establishes the payment of huge amount i.e., substantial portion of consideration, the contention of the defendant that he had received only a sum of Rs.2 lakhs cannot be countenanced. The defendant had also admitted that he only purchased the stamp papers and executed the documents. When all the contents of the document have been admitted by the defendant in his evidence, the Court has to necessarily hold that the contract between the parties will prevail over the mere pleadings of the parties. The plaintiff had paid substantial amount towards



A.S.(MD)No.237 of 2021

consideration and she had immediately sent a legal notice dated 26.12.2017.

Thereafter, the plaintiff filed a suit immediately on 07.04.2018, There is no much delay in filing the suit also. Therefore, the plaintiff had shown her readiness and willingness from the very inception and she was prompt in sending legal notice. Hence, this Court has to necessarily hold that the plaintiff was always ready and willing to get the sale deed registered in her name.

20.Though the learned counsel for the appellant had relied upon the judgments stated *supra* in respect of his submissions referred to above, on perusal of the same, it is made clear that in the above cases, on appreciation of evidence, the Apex Court had come to the conclusion that readiness and willingness has not been established, whereas in the present case, the substantial sale consideration had already been paid and the legal notice was issued on time and the suit was also filed without delay. Such view of the matter, all the above cases relied upon by the learned counsel for the appellant are not applicable to the facts of the present case.

21.Though it is the contention of the defendant that the value of the property is more than Rs.70 lakhs, no material whatsoever had been brought on record to show the value of the property is Rs.70 lakhs at the time of entering into



A.S.(MD)No.237 of 2021

a contract. Further, no materials whatsoever were placed on record to show that in the event of granting specific performance, he will be put into hardship. In the absence of any evidence or materials, the Court on the mere inference cannot come to the conclusion that there is a hardship to the defendant in the event of granting decree. Therefore, once the sale agreement is validly executed and admitted, the plaintiff is certainly entitled to the decree of specific performance.

22.In the result, the decree and judgment of the trial Court is hereby confirmed and the Appeal Suit is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

11.04.2023

Index : Yes/No
Internet : Yes/No
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To

- 1.The I additional District Court (PCR),
Tiruchirappalli.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

12/13



WEB COPY



A.S.(MD)No.237 of 2021

N.SATHISH KUMAR, J.

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Judgment made in
A.S.(MD)No.237 of 2021

11.04.2023