



A.S.(MD).No.192 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD).No.192 of 2015

S.Dhobidoss

... Appellant/Plaintiff

-Vs-

1.V.Sudharsanam (died)

2.S.Krishnakumar

3.S.Rajam

4.S.Birundha

RR3 and 4 are brought on record
as the LR's of deceased first respondent
vide Court order dated 19.11.2019 in
C.M.P.(MD).No.8632 of 2016 in
A.S.(MD).No.192 of 2015.

... Respondents/Defendants 1 and 2

PRAYER: Appeal Suit is filed under Section 96 of the Civil Procedure Code, against the decree and judgment passed by the learned III Additional District Judge, Thanjavur at Pattukottai, dated 23.06.2015 made in O.S.No.48 of 2012.

For Appellant : Mr.M.Muthu Kavitha

For Respondents : Mr.K.Balasundaram, Senior counsel
for Mr.R.Paranjothi



A.S.(MD).No.192 of 2015

WEB COPY

J U D G M E N T

Aggrieved over the dismissal of the suit in O.S.No.48 of 2012, dated 23.06.2015, by the III Additional District Judge, Thanjavur at Pattukottai, the present appeal came to be filed by the plaintiff.

2. The brief facts leading to the filing of this appeal are as follows:

For the convenience, the parties are arrayed as plaintiff and defendants.

The plaintiff and the first defendant are friends and the first defendant has permitted the plaintiff to enjoy 10 cents of land belonging to the first defendant. The first defendant also borrowed a sum of Rs.1,50,000/-, on 04.06.2009, by way of cheque and executed unregistered usufructuary mortgage deed in respect of S.No.79/10A and the period of mortgage is two years. After the lease, the plaintiff has to surrender the property, after receipt of the amount paid by him. The first defendant has also executed another consent deed dated 12.09.2011 for the said amount. Thereafter, the first defendant has also received another sum of Rs.16,50,000/- for urgent family expenses and executed a promissory note, in the presence of witnesses. Thereafter, on 02.02.2012, the first



A.S.(MD).No.192 of 2015

defendant orally agreed to sell the suit property to the plaintiff. However, later, the first defendant did not come forward to sell the property. Hence, the suit has been filed by the plaintiff.

3. It is the case of the defendants that originally, in the year 2009, when the plaintiff was asked to vacate the premises, the plaintiff has agreed to pay a sum of Rs.1,50,000/- as a mortgage amount. Accordingly, the first defendant has executed an unregistered mortgage deed and the plaintiff has put up a thatched shed. After two years period was over, as per the unregistered document, the plaintiff has also sought another two months time to vacate the premise/thatched shed. Thereafter, he has created the promissory note dated 12.12.2011 and also invited the theory for the alleged oral sale. Hence, they denied the entire aspects.

4. On the basis of the above pleadings, the trial Court has framed the following issues:-

- (i) Whether the first defendant orally agreed to sell the suit property to the plaintiff on 02.02.2012?
- (ii) Whether the plaintiff is entitled to specific performance?



A.S.(MD).No.192 of 2015

WEB COPY

(iii) Whether the first defendant has received a sum of Rs.16,50,000/- on 12.12.2011 and executed a promissory note?

(iv) To what other relief the plaintiff is entitled to?

5. On the side of the plaintiff, P.Ws.1 to 3 were examined and Exs.A1 to A10 were marked and on the side of the defendants, D.Ws.1 and 2 were examined and no document was marked.

6. The trial Court, on appreciation of evidence found that the promissory note has not been executed by the first defendant and there was no agreement to sell the suit property and dismissed the suit. Challenging the same, the present appeal came to be filed.

7. The only contention of the learned counsel appearing for the appellant/plaintiff is that the promissory note has been proved in the manner known to law. However, the trial Court has not properly appreciated the evidence of P.Ws.1 to 3. Therefore, it is his contention that the plaintiff is certainly entitled to specific performance as prayed for.



A.S.(MD).No.192 of 2015

WEB COPY

8. The learned counsel appearing for the respondents/defendants would contend that there was no valid consideration on the promissory note and hence, the trial Court has rightly rejected the case of the plaintiff. Therefore, he prayed for dismissal of this appeal.

9. In the light of the above submissions, now the points for consideration in this appeal are,

(i) Whether there was an oral contract between the plaintiff and the first defendant?

(ii) Whether the first defendant has executed the promissory note/Ex.A1 dated 12.12.2011 for valid consideration?

(iii) Whether the plaintiff is entitled to specific performance as prayed for?

10. I have perused the entire evidence. It is the case of the defendants that the plaintiff was originally a tenant from the year 1999. However, in the year 2009, there was an understanding between the parties that the plaintiff should pay



A.S.(MD).No.192 of 2015

WEB COPY

a sum of Rs.1,50,000/- and he has to continue in possession and executed an unregistered usufructuary mortgage deed on 12.09.2011, in respect of S.No. 79/10A and the period of mortgage is two years. After the lease period, the plaintiff has to surrender the property, after receipt of the amount paid by him. These facts have not been disputed by both sides in the evidence. However, the fact remains that having admitted those facts, the so called unregistered usufructuary mortgage deed has not been accepted by the plaintiff before the Court below. But, his evidence clearly indicate that the said arrangement to continue in possession agreed for a period of two years. Thereafter, this has been extended for another three months. In the mean while, the first defendant has received a sum of Rs.16,50,000/-, on 12.12.2011 and executed Ex.A1, promissory note and the same was in the presence of P.Ws.2 and 3. It is relevant to note that it is the specific case of the first defendant that he never executed the said promissory note and the same has been created with the help of P.Ws.2 and 3. It is the specific case of the plaintiff that after expiry of the usufructuary mortgage deed period, the first defendant has demanded a sum of Rs.16,50,000/- for family necessities, after 15 days of the earlier deed. In fact, his evidence further indicate that two years period agreed and the unregistered document expired only on



A.S.(MD).No.192 of 2015

WEB COPY

11.09.2013, but in his specific evidence to the effect that after expiry of that period, thereafter 15 days latter, the first defendant demanded a sum of Rs. 16,50,000/-. It is highly contradictory to his own evidence. In fact, if the first defendant has demanded the said amount 15 days after the unregistered mortgage deed expired, the promissory note should have been come into existence later, whereas, it has been come into existence only 12.12.2011 ie., very next day of the so called unregistered mortgage deed. Further, it is relevant to note that though P.Ws.2 and 3 have been examined to prove the signature of the first defendant in the pro-note, on perusal of the cross - examination of P.Ws.2 and 3, though they claimed to be very close to each other, P.W.2 showing ignorance, at the time of execution of the contract, whether the pro-note was prepared either by the plaintiff or other witnesses not spoken by P.W.2. Similarly, P.W.1 also not spoken about who has written the pro-note.

11. It is relevant to note that the plaintiff himself has just put up a thatched shed and he is not able to put up any pucca construction in the 10 cents land, which has been taken on lease from the year 1999. Therefore, the passing of consideration cannot be presumed merely on the basis of the evidence of P.Ws.2



A.S.(MD).No.192 of 2015

WEB COPY

and 3.

12. In such a view of the matter, the burden on the first defendant shifted against the plaintiff to prove the valid consideration. It has not been shown and established by the plaintiff. Further, it has to be noted that if really the entire amount has been paid for the sale of the suit property, the normal conduct of the human being is either to enter an agreement for sale or register the document for sale on the same day. However, getting a promissory note for the said huge amount said to have been paid to the sale consideration is against the normal human conduct, which is highly unbelievable. From this conduct, the Court can very well presume that the contention of the plaintiff is false one.

13. Considering all these aspects, this Court is of the view that on appreciation of evidence adduced on the side of the plaintiff, the plaintiff has not come to the Court with clean hands and he has not established the passing of consideration and oral agreement. Therefore, claiming the huge amount without proving the consideration itself is not acceptable. Accordingly, the judgment of the trial Court does not require any interference.



A.S.(MD).No.192 of 2015

WEB COPY

14. In the result, the Appeal Suit is dismissed. No costs.

03.04.2023

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To

- 1.The III Additional District Judge,
Thanjavur at Pattukottai.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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A.S.(MD).No.192 of 2015

N.SATHISH KUMAR,J.

akv

A.S.(MD).No.192 of 2015

03.04.2023