



S.A.(MD)No.108 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

S.A.(MD)No.108 of 2017

P.S.Periyasamy

... Appellant/Appellant/Plaintiff

-VS-

S.Saravanan

... Respondent/Respondent/
Defendant

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree dated 24.10.2016 made in A.S.No.24 of 2014 on the file of the Additional Sub Court, Karur confirming the judgment and decree dated 08.09.2011 made in O.S.No.698 of 2008 on the file of the Additional District Munsif Court, Karur.

For Appellant : Mr.P.Rajagopalan

For Respondent : Mr.K.Suresh

JUDGMENT

The present Second Appeal has been filed by the appellant under Section 100 of C.P.C, against the judgment and decree dated 24.10.2016



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made in A.S.No.24 of 2014 on the file of the Additional Sub Court, Karur confirming the judgment and decree dated 08.09.2011 made in O.S.No.698 of 2008 on the file of the Additional District Munsif Court, Karur.

2. The appellant herein is the plaintiff and the respondent herein is the defendant before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. The brief averments made in the plaint, are as follows:

The plaintiff submits that he has purchased the suit property under a registered sale deed, dated 22.11.1995. After that, he mortgage the said property with the defendant by virtue of simple mortgage deed, dated 12.03.2007 in document No.447/2007. Based upon the mortgage, he borrowed a sum of Rs.4,50,000/- (Rupees Four Lakhs and Fifty Thousand only) from the defendant. It is the submission of the plaintiff that he has duly repaid the principal and interest. After receipt of the principal and interest, the defendant has executed a stamp receipt on 09.09.2008 and has also returned



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the original registered simple mortgage deed, dated 12.03.2007 to the plaintiff. Though the original mortgage deed and the stamp receipt have been marked before the Court below, after signing of the stamp receipt, when the plaintiff has requested the defendant to register the same, he refused to do so. It is also the submission of the plaintiff that on 24.09.2008 when he lastly demanded the defendant to come to the Sub Register Office to register the said receipt, the defendant refused to come to the Registrar Office. Therefore, he came forward with the suit for mandatory injunction, directing the defendant to register the discharge receipt, dated 09.09.2008.

5. The brief averments of the written statement are as follows:

The defendant stoutly disputed the very receipt of the principal and interest of the mortgage amount. According to the defendant, he believed the words of the plaintiff and went to the plaintiff premises where the plaintiff has insisted the defendant to hand over the original deed and signed in the receipt for the payment of the principal and interest. Hence, believing the words of the plaintiff, he *bonafidely* handed over the document and signed in the receipt. It is the further submission of the defendant that after receipt of the original mortgage deed and also the original receipt, the plaintiff did not



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pay the principal amount and interest and has intimidated him to come to the Registrar Office. Suspecting the plaintiff's conduct, the defendant refused to do so, and also requested the plaintiff to return the original mortgage deed and signed receipts. But, the plaintiff refused to do so, and started threatening the defendant. Hence, he preferred a complaint before the Karur Police Station. He would further submit that the very framing of the suit is defective and that the plaintiff has not paid the proper Court fee. Hence, he prayed to dismiss the suit.

6. In his additional written statement, the defendant has also pleaded that the very suit is liable to be dismissed, in view of Sections 36 and 37 of the Registration Act.

7. Before the Court below, the plaintiff has examined three witnesses as P.W.1 to PW.3, and marked four documents as Ex.P.1 to P.4. The defendant himself has examined as D.W.1 and marked six documents as Ex.D.1 to Ex.D.6.



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8. After hearing both sides and based upon the oral and documentary evidence, the trial Court dismissed the suit with the finding that the very suit is not maintainable, in view of existence of equally efficacious relief under Section 36 of the Registration Act. However, the trial Court has found that the plaintiff has paid principal and interest of the mortgage dated 12.03.2007.

9. Aggrieved with the same, the plaintiff has preferred the first appeal in A.S.No.24 of 2014. However, the first appellate Court has also confirmed the finding of the trial Court. Aggrieved with the same, the plaintiff is before this Court by way of Second Appeal.

10. When the Second Appeal was admitted, on 27.09.2022, this Court has framed the following substantial questions of law:

“i. Whether the Courts below having given a finding that the appellant has discharged the loan amount and the respondent/ defendant has executed discharge receipt is correct in dismissing the suit on the ground that the appellant would have approached the registration authorities



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under Section 36 of the Registration Act ?

ii. Whether the suit for mandatory injunction as prayed for by the appellant / plaintiff is barred under Section 9 of the Civil Procedure Code?

iii. Whether the suit filed by the appellant / plaintiff is not maintainable in view of Section 36 of the Registration Act?.

11. The learned counsel for the plaintiff/appellant would contend that, when the Court below has come to a conclusion that the plaintiff has discharged the mortgage loan, the dismissal of the suit under Section 36 of the Registration Act is contrary to law. It is also the submission of the learned counsel for the appellant that Section 36 of the Registration Act could be invoked only when the document is being presented before the Registrar Office and would also submit that when the plaintiff has come forward with the comprehensive suit with the larger relief, the very remedy under Section 36 of the Registration Act will not be bar to the plaintiff.



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12. The learned counsel for the plaintiff would also submit that, when the defendant disputes the very receipt of the mortgage amount, there is a duty cast upon the plaintiff to prove the payment and seek for a direction to compel the defendant to come forward to the Registrar Office. Therefore, the learned counsel for the plaintiff would submit that such relief could only be obtained before the Civil Court. Therefore, contended that the concurrent finding recorded by the trial Court as well as the first appellate Court is erroneous and is liable to be set aside. He also relied upon the Hon'ble Supreme Court judgment reported in *AIR 1999 (SC) 2958 (Kalavakurti Venkata Subbaiah Vs. Bala Gurappagari Guruvi Reddi)* and this Court judgment reported in *(1982) 2 MLJ 41 (Ellammal Vs, Rangaswamy Koundar)*.

13. Per contra, the learned counsel appearing for the respondent/defendant would strenuously contend that the remedy under Section 36 of the Registration Act is a bar to the suit, and also would submit that the very prayer sought for by the plaintiff is contrary to the Specific Relief Act. The learned counsel for the defendant further submits that the proper relief would be a specific performance directing the defendant to register the discharge



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receipt and it is also the further submission of the learned counsel for the defendant that the very payment of Court fee is highly inadequate. Therefore, the learned counsel would submit that the finding of the trial Court as well as the first appellate Court is liable to be confirmed.

14. This Court has given it's anxious consideration to the submissions of the learned counsel on either side.

15. While coming to the substantial questions of law, this Court has to decide whether under Section 36 of the Registration Act is a bar to the instant suit. For ready reference, this Court deems it appropriate to extract Section 36 of the Registration Act as hereunder:

“36. Procedure where appearance of executant or witness is desired: - *If any person presenting any document for registration or claiming under any document, which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the [State Government]*



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directs in this behalf to issue a summons requiring him to appear at the registration office, either in person or by duly authorized agent, as in the summons may be mentioned, and at a time named therein.”

16. A plain reading of Section 36 of the Registration Act would only give rights to the party only when the document is presented before the Registrar Office. But, in this case, looking at the plaint pleadings, as well as the written statement of the defendant, the defendant has stoutly denied the very execution of disputed document qua and the receipt of the mortgage amount with interest. Therefore, there is a duty cast upon the plaintiff to prove before the Court of law that the mortgage amount has been fully discharged to the defendant, and that there was due execution of receipt. Therefore, such exercise could not be done before the Registrar Office. Apart from that it is useful to refer Section 35 (3) a, of Registration Act, the same would give power to registering authority to refuse the registration.

17. Therefore, this Court is of the view that the very remedy provided under Section 36 of the Registration Act is a limited remedy and here, the



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plaintiff wanted a larger relief of proving the discharge of mortgage debt and due execution of the discharge receipt. Therefore, this Court is of the firm view that Section 36 of the Registration Act cannot be construed as equally efficacious relief.

18. The word 'efficacious' means which would put the plaintiff in the same position in which he would have been, if he had not asked for relief for injunction. Here, the main contention put forth by the defendant is the existence of equally efficacious relief by way of the remedy provided under Section 36 of Registration Act. Section 36 of the Act comes under part of Registration Act under the caption “Of enforcing the appearance of executants and witnesses” in Part VII. However, part VI of the Registration Act deals about the presenting documents for registration as stated supra. The application of Section 36 of the Registration Act would fall on presentation of the documents. The presentation of the documents has been dealt on the part VI, in which Section 35 (3) (a) of the Registration Act has given an unfettered power to registering authority to refuse registration if any person denies its execution. For ready reference Section 35 (3) is extracted herein below:



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“(3) (a) If any person by whom the document purports to be executed denies its execution, or

(B) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(C) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead:

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

[Provided further that the [State Government] may, by notification in the [Official Gazette], declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.]”

19. If the look at the written statement filed by the defendant has only admitted his signature but dispute execution and has contended alleged intimidation made by the plaintiff. Therefore, even when the document



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presented before registering authority under Section 36 of Registration Act, in view of specific denial in execution of document, naturally under Section 35 (3) (a) of the Registration Act. The registering authority would have definitely refused registration therefore, the presentation of the document could only become redundant exercise. Therefore, this Court is of the view the remedy provided under Section 36 of Registration Act is not an equally efficacious relief. Therefore, the instant suit is maintainable.

20. Therefore, this Court holds that the very suit is not hit by Section 9 of the Civil Procedure Code.

21. The next point raised by the learned counsel for the defendant is that the very suit ought to have been filed for specific performance and not for a mandatory injunction. In this regard, this Court deems it appropriate to extract Section 39 of the Specific Relief Act which is extracted hereunder:

39. Mandatory Injunction,- When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion



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grant an injunction to prevent the breach complained of, and also to compel performance of the requisite Acts.

(Emphasis supplied by this Court)

22. On a harmonious reading of Section 39 of the Specific Relief Act, it gives right to the parties that when there exists a breach of an obligation, and when there is a requirement of compelling the performance of that requisite Act, then a suit under Section 39 of the Specific Relief Act for mandatory injunction is maintainable. Here, the plaintiff contends that since he discharged the mortgage deed, there is an obligation on the part of the defendant to register the discharge receipt. Therefore, he is entitled to compel the performance of requisite Acts of Registration of the receipt. Therefore, this Court is respectfully disagree with the submission made by the learned counsel for the defendant that the suit for the relief of mandatory injunction is not maintainable.

23. At this juncture, this Court would like to refer the full Bench judgment of the Hon'ble Allahabad High Court reported in ***AIR 1984 ALL 83 (Khawaz Bux vs. Mirza Mohammad Ismail)*** in paragraph Nos.5, 27 and 30



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are as follows:

5. When the appeal came up for hearing before the Full Bench, the plaintiff applied for amendment of the plaint. After hearing counsel the Bench permitted the plaint as well as the written statement to be amended. As a result of the amendment the plaintiff claimed the following reliefs:

"1. It may be declared that the vehicle No. UPG-4091 covered by the stage carriage permit No. 1116 belongs to him (the plaintiff);

2. A mandatory injunction may be issued directing the defendant Mirza Mohammad Ismail to execute necessary documents required to effectuate the transfer of permit No. 1116 in favour of the plaintiff.

.....

27. The agreement between the parties has been held by the court below to be genuine and valid. This finding has not been challenged. Clause 4 of the agreement specifically provides that the defendant shall make and sign any application for transfer of the above permit to the plaintiff without any objection and that if he does not do so this agreement shall be evidence of his consent for transfer under [Section 59 \(1\)](#) of the [Motor Vehicles Act](#). The



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*agreement represented a completed contract between the parties. The mention of the fact that permission under [Section 59](#) Motor Vehicles Act was required, did not make an incomplete or contingent contract. A similar position arose before the Supreme Court in [Mrs. Chandnee Vidya Vati Madden v. Dr. C.L. Katial](#), (AIR 1964 SC 978). There with reference to the Privy Council decision in *Motilal v. Nanhelal*, (AIR 1930 PC 287), the Supreme Court upheld the view that an agreement which provides that the seller will apply for permission to the relevant authority was not an incomplete or contingent contract and that the condition that he will apply for permission could be enforced. In that case the seller had made the requisite application but had subsequently-withdrawn it. The Supreme Court directed the defendant to make the necessary application within a month. Such an injunction could property be granted to the plaintiff-appellant.*

.....

30. In the result, the appeal is allow ed. The decree of the trial court is set aside. The suit is decreed for a declaration that vehicle UPG-4091 covered by stage carriage permit No. 1116 belongs to the plaintiff-appellant. A mandatory injunction is issued directing the defendant-respondent to forthwith execute the necessary documents required to effectuate the transfer of permit No. 1116 in



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favour of the plaintiff-appellant.

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24. Wherein the full Bench after referring the Supreme Court judgment has held that the mandatory injunction can be given to execute the necessary documents require to effectuate the transfer.

25. At this juncture, this Court deems it appropriate to discuss the judgment referred to by the defendant, wherein, the learned counsel for the defendant relied upon the judgment of the Allahabad High Court reported in ***AIR 2008 All 66 (Vijay Kumar Sharma vs. Devesh Behari Saxena)*** and also unreported judgment of this Court in ***C.R.P(PD) No.1149 of 2019 dated 07.12.2021 (Loganathan Vs.Srinivasan)***, through which the learned counsel would submit that the very suit for mandatory injunction is not maintainable. But, a harmonious reading the above two reported judgments, it is seen that those two cases are arising out of a sale agreement. Therefore, the same is not applicable to the facts of the present case.

26. The learned counsel for the plaintiff has also relied upon the judgment of this Court reported in ***1982 (2) MLJ 41 (Ellammal vs. Rangaswamy Koundar and others)*** wherein the learned single Judge of this



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Court has held that when a plaintiff seeks for a larger remedy provided under the Specific Relief Act, bar under Registration Act, will in no way affect the plaintiff to approach the civil Court. The learned Single Judge of this Court has relied upon the judgment in (*K.Veeran Ambalam Vs.Vellaiammal and others., P.N.Ramaswami, J.*) and it is held as follows:

“In *K.Veeran Ambalam Vs.Vellaiammal and others., P.N.Ramaswami, J.*, has, after an elaborate consideration of all the decisions rendered by this Court as well as other High Courts, ruled that the lesser remedy provided for u/s.77, Registration Act, cannot take away the larger remedy provided for under the Specific Relief Act, that the Registration Act, does not touch or affect the equitable jurisdiction possessed by the civil Courts to pass a decree for specific performance where circumstances exist entitling the plaintiff to such a decree, and that if the remedy u/s.77 of the Registration Act, is not available and even if available, is not effective and it is futile to initiate proceedings under the Registration act, the vendee may have his remedy for specific performance.



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27. The learned counsel for the appellant has also relied upon the another judgment reported in **1999 AIR (SC) 2958 (Kalavakurti Venkata Subbaiah Vs. Bala Gurappagari Guruvi Reddi)** wherein, it was held that the remedy under Section 77 of the Registration Act is not a bar to approach the Civil Court for the relief of specific performance, In which, the Hon'ble Supreme Court held that the application under Section 77 of the Registration Act would come only on the presentation of the documents. As rightly contended by the learned counsel for the appellant herein, the documents have not at all been presented is the presentation is of no use in view of Section 35 (3) (a) of the Registration Act and that the very payment towards the receipt is under challenge. Therefore, as rightly contended by the learned counsel for the plaintiff, this Court is of the view that the civil suit is the ultimate remedy for the plaintiff.

28. It is pertinent to mention here that both the trial Court as well as the first appellate Court has given a factual finding that the plaintiff has obtained the discharge receipt only after the payment of mortgage debt. As such the execution of the receipt is proved before the civil Court. Once the plaintiff has discharged mortgage, it is the obligation on the part of the defendant to



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register the receipt, otherwise, encumbrance upon the property would perpetually linger. Therefore, this Court is of the firm view that there is a substantial question of law arising in this matter and the same is answered in favour of the appellant.

29. In the result, the findings of the trial Court as well as the first appellate Court are ordered to be set aside and the suit is decreed as prayed for. Accordingly, this Second Appeal is **allowed**. There shall be no order as to costs.

22.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1.The Additional Sub Court,
Karur.

2. The Additional District Munsif Court,
Karur.



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