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A.S.No.358 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

A.S.No.358 of 2016
and
C.M.P.No.8024 of 2016

Shanmugam

... Appellant

-Vs-

Manimegalai

... Respondent

PRAYER: First Appeal filed under Section 96 and Order XLI Rule 1 of the Code of Civil Procedure, 1908, to set aside the judgment and decree passed in O.S.No.65 of 2011 dated 29.02.2016 on the file of the Principal District Court, Tiruvallur.

For appellant : Mr.B.Gopalakrishnan

For respondent : Mr.D.Daniel Ambrose

JUDGMENT

The defendant in a suit for specific performance is the appellant before this Court.



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2. The facts are briefly set out hereinbelow and the parties, for the ease of understanding, are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff would submit that the suit property belongs to the defendant, he having purchased it under a registered sale deed dated 21.06.2004. The defendant had purchased the same as a vacant site and thereafter, put up construction thereon. The plaintiff's mother *viz.*, K.Savithri was inducted as a tenant in the property under a lease agreement dated 07.07.2010.

2.2. Thereafter, the defendant offered to sell the entire property to the plaintiff for a sale consideration of Rs.21,00,000/- (Rupees Twenty One Lakhs only) and the plaintiff had also agreed to purchase the same. The agreement was reduced into writing on 10.11.2010 and a sum of Rs.12,00,000/- (Rupees Twelve Lakhs



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only) was paid as advance. The balance was agreed to be paid within a period of two months from the date of release of mortgage from the Central Bank of India.

2.3. It is also the case of the plaintiff that from and out of the advance money paid by her, the defendant had released the mortgage created in favour of Central Bank of India. Meanwhile, the plaintiff had also made arrangements with LIC Housing Finance Limited for a loan of Rs.10,00,000/- (Rupees Ten Lakhs only) for purchasing the suit property. Meanwhile, the defendant started postponing the sale under one pretext or the other. The plaintiff was willing to complete her part of the contract. The defendant had filed a caveat petition before the District Munsif Court at Tiruvottiyur, and the intent to cheat and defraud the plaintiff became evident.

2.4. Therefore, the plaintiff issued a legal notice dated 18.01.2011 calling upon the defendant to come forward to conclude



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the contract. The defendant sent a reply dated 01.02.2011 containing absolutely false statements and therefore, the plaintiff had come forward with the suit in O.S.No.65 of 2011 on the file of the Principal District Court, Tiruvallur.

2.5. The defendant had filed a written statement *inter alia* admitting that he had received a total sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) on various dates from the plaintiff. According to the defendant, the money was towards a loan amount and not a part of the sale consideration. The defendant would submit that as and when he was receiving the loan amount, the plaintiff used to obtain his signature in the blank non-judicial stamp papers and white papers. The agreement of sale has been fabricated using these signed blank papers. The defendant would submit that he has no intention to sell the property and no negotiation for the sale of property was held between the plaintiff and the defendant and therefore, the question of readiness and willingness does not arise. Therefore, the



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defendant sought to have the suit dismissed.

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2.6. Originally, after receiving notice, the defendant remained *ex parte* and an *ex parte* decree came to be passed on 15.12.2012. The plaintiff had deposited the entire balance sale consideration of Rs.9,00,000/- (Rupees Nine Lakhs only) into the Court on 18.01.2013. Thereafter, the defendant filed an application in I.A.No.73 of 2013 to set aside the *ex parte* decree which was allowed on 25.09.2014. The suit was thereafter proceeded with on merits.

TRIAL COURT:

3. The learned Trial Judge had framed the following issues.

“(i) Whether the plaintiff and defendant entered into an agreement of sale in respect of the suit schedule property on 10.11.2010?

(ii) Whether the plaintiff paid any consideration towards the sale agreement?



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- (iii) Whether there is any privity of contract between the plaintiff and the defendant?*
- (iv) Whether the plaintiff is ready and willing to pay the remaining sale consideration?*
- (v) To what relief, if any, the plaintiff is entitled to?"*

4. The plaintiff had examined herself as P.W.1 and marked Exs.A1 to A5. The defendant had examined himself as D.W.1 and marked Ex.B1 (series).

5. The learned Judge, on considering the evidence on record, came to the conclusion that Ex.A1- agreement of sale was intended only as agreement of sale and the contract between the two related to the purchase of the suit property. The passing of consideration was also proved and therefore, the learned Judge held that the plaintiff has proved her readiness and willingness. The learned Judge, therefore, decreed the suit.



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6. Challenging the same, the defendant is before this Court.

7. Heard the learned counsel on either side and perused the materials available on record.

POINTS FOR CONSIDERATION:

8. The points for consideration in the above appeal are as follows:

“(a) Whether Ex.A1 was intended to be an agreement of sale or as a security for a loan?

(b) Whether the plaintiff has proved her readiness and willingness?”

DISCUSSION:

9. The case of the plaintiff is that under Ex.A1, she had entered into an agreement with the defendant to purchase the suit property. At the time of the purchase, the property was mortgaged



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with the Central Bank of India. The recitals in Ex.A1 would clearly indicate that the sum of Rs.12,00,000/- (Rupees Twelve Lakhs only), which was paid as advance was to be used for clearing the loan that the defendant had availed from the Central Bank of India and on clearing the said loan, the defendant would proceed to execute the sale deed in favour of the plaintiff. It is also seen that this amount of Rs.12,00,000/- (Rupees Twelve Lakhs only) has been paid over a period of time by way of installments and the last of such installment being a sum of Rs.5,90,000/- (Rupees Five Lakhs Ninety Thousand only) was paid on the date on which the agreement of sale had been entered into.

10. Ex.A2 would also indicate that the plaintiff has taken steps to obtain necessary loan for purchasing the property. It is also seen that the plaintiff's mother is a tenant under the defendant. The defendant had executed the agreement of sale stating that he is the owner of the property.



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11. Ex.A4 reply notice would show that the defendant has pleaded that property is the family property and that he is not its exclusive owner. However these allegations have not been proved. The defendant who claims it is a loan has not proved repayment of the sum of Rs.12,00,000/- (Rupees Twelve Lakhs only). The defendant who has set up a plea contrary to the sale deed *viz.*, Ex.A1 was not able to prove these allegations. The defendant has also not been able to prove that the document is a fabricated one. Therefore, the defendant having failed to discharge the burden of proof, the claim of the plaintiff that she has entered into the agreement of sale has to necessarily be upheld particularly when execution and passing of consideration has been proved. It is also clear that it was not intended as security for the loan. The series of payments that have been made to the defendant over a period of six months will only prove the same.

12. That apart, the plaintiff has after the execution of Ex.A1,



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taken steps to obtain the housing loan which is evident from Ex.A2.

The above facts clearly shows that the plaintiff had entered into this agreement only for purchasing the property. Further, after the *ex parte* decree has been passed on 15.12.2012, the entire balance sale consideration of Rs.9,00,000/-(Rupees Nine Lakhs only) has been deposited by the plaintiff on 18.01.2013. This would go to prove the readiness and willingness of the plaintiff. The Trial Court has rightly decreed the suit and I see no reason to interfere with the same. Therefore, the points for consideration are answered against the defendant.

Accordingly, this first appeal is dismissed. Consequently, the connected C.M.P. stands closed. No costs.

24.04.2024

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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To

- 1.The Principal District Judge, Tiruvallur.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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