



A.S.No.553 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	: 27.03.2024
Pronounced on	:04.06.2024

Coram:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.553 of 2016
and
C.M.P.No.13970 of 2016

R. Kalaivani

..Appellant/defendant

/versus/

D. Vijayalakshmi

..Respondent/plaintiff

Appeal Suit has been filed under Section 96 of C.P.C., to set aside the judgment and decree passed in O.S.No.23 of 2014, dated 21.04.2016 on the file of the learned Principal District Judge, Puducherry and allow the above appeal.

For Appellant :Mr. T.R. Rajaraman
for Mr. V.V. Sairam

For Respondent :Mr.G.Rajan



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JUDGMENT

The defeated defendant is the appellant herein. The respondent/plaintiff filed a suit for specific performance in respect of the suit sale agreement [Ex.A1], dated 11.02.2015.

(i) The defendant is the absolute owner of the suit property by virtue of a registered sale deed dated 16.03.2000. It is pleaded by the plaintiff that, the defendant offered to sell the property and a written agreement for sale (Ex.A1) was executed on 23.02.2011. Sale consideration was fixed at Rs.5,10,000/-. On the same day, an amount of Rs.5,00,000/- was said to have been paid by the plaintiff. The time for execution of the sale deed is one year for payment of the balance amount of Rs.10,000/- and handing over all antecedents title deeds with respect to the suit schedule property.

(ii) The plaint further proceeds that on 05.02.2014, the defendant filed a complaint and the police have registered the case and subsequently, directed them to approach the Civil Court. The plaintiff issued a legal notice Ex.A3 calling upon the defendant to complete the sale transaction. On his failure, the plaintiff filed the suit in O.S.No.23 of 2014.



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2. The substance of the written statement, in brief, is that the defendant is doing real estate business and the plaintiff's husband Danasekaran is doing finance business. The defendant had received a sum of Rs.5,00,000/- from the plaintiff's husband on 26.09.2007 for his business purpose agreeing to repay with interest. On the request of the plaintiff's husband Danasekaran, the defendant's husband Manogar @ Ramamurthy executed the sale agreement on 26.09.2007 towards the security for the loan amount received by the defendant. The plaintiff's husband had also obtained blank stamp papers, promissory notes and cheque leaves from the defendant. Further, it had been stated that on 02.09.2007, the defendant's husband paid the entire loan amount of Rs.5,00,000/- along with interest at the rate of 72% (Rs.3,60,000/-) and cancelled the sale agreement on 02.09.2008. Subsequently, the defendant's husband approached the plaintiff's husband for the loan of Rs.5,00,000/- towards business expenses and the defendant's husband agreed to pay with interest at the rate of 72% per annum and at that time, the plaintiff's husband required the defendant to execute the sale agreement as security for the loan amount and accordingly, the defendant executed the sale



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agreement dated 08.12.2008. The plaintiff's husband received the entire interest amount and cancelled the sale agreement dated 08.12.2008 and obtained fresh sale agreement from the defendant on 08.12.2008, 08.02.2010 and 23.02.2011. Thereafter, the defendant's husband had executed the agreement of sale, dated 27.04.2009 in favour of the plaintiff on the insistence of the plaintiff towards the interest of the principal sum. The plaintiff's husband also obtained two promissory notes, dated 14.02.2010 and two cheques bearing Nos.913550 and 913551 drawn on UCO Bank, Puducherry Branch, from the defendant for a sum of Rs.2,25,000/- each and also obtained two indemnity bonds towards the interest amount due. It had been further stated that the defendant's husband demanded a total sum of Rs.17,00,000/- to discharge the loan borrowed by the defendant's husband for a sum of Rs.5,00,000/-. Therefore, the defendant gave a police complaint before the Station House Officer, Mudaliarpur Police Station, on 05.02.2014. The defendant went to the police station along with her husband and explained the details of mode of repayment of the loan amount borrowed by her husband. But, the police dropped the defendant's complaint.



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3. It is further specific case of the defendant in the written statement that the plaintiff's husband obtained two promissory notes dated 14.02.2010 and two cheques. In short, ExA1-agreement is never intended to be an agreement of sale. It is only executed as security for the loan transaction between the parties.

4. Before the trial Court, necessary issues have been framed and evidence has been let in. On behalf of the plaintiff, PW1 to PW-3 were examined and Ex.A1 to Ex.A5 were marked and on behalf of the defendant, DW-1 and DW-2 were examined and Ex.B1 to Ex.B18 were marked. On consideration of oral and documentary evidence, the learned Principal District Judge, Puducherry, has come to the conclusion that Ex.A1-sale agreement is enforceable in law and also held that, the plaintiff is ready and willing to perform his part of the contract. Accordingly, granted decree and hence, this appeal.

5. Challenging the rejection of the defence in the specific performance suit, the defendant has preferred this appeal.



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6. Heard Mr. T.R. Rajaraman, learned counsel appearing for the appellant/defendant and Mr. G. Rajan, learned counsel appearing for the respondent/plaintiff and records and citations have been perused.

7. After hearing both the parties, the following issues are framed for determination in this appeal.

(i) Whether Ex.A1-agreement of sale, dated 23.02.2011, is true and valid as pleaded by the plaintiff (or) is it only intended as a security for the loan as projected by the defendant?

(ii) Whether the respondent/plaintiff has proved passing of consideration of Rs.5,00,000/-, on 23.02.2011, when it was specifically denied by the defendant/appellant?

(iii) Whether the respondent/plaintiff is ready and willing to perform his part of the contract?

8. The plaintiff examined herself as PW-1. Ex.A1 is the original agreement of sale dated 23.02.2011. Ex.A2 is the report by the police dated 05.02.2014 to seek remedy before the Civil Court. Ex.A3 is the legal notice dated 15.02.2014. Ex.A4 is the acknowledgement. At this juncture, it



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remains to be stated that pre-suit notice under Ex.A3 was issued only after the complaint given by the defendant to the concerned police station regarding the suit sale agreement and it assumes significance.

9. The learned counsel appearing for the appellant/defendant, based upon Ex.B9 to Ex.B12, would contend that when the defendant has come forward with specific case of earlier sale agreements for the purpose of money advanced between the parties, the plaintiff has miserably failed to explain, why the plaintiff has chosen to cancel all the previous agreements for about five years namely, 2007 to 2011, which are being cancelled every annual and all are the photo copy of the husband of the plaintiff and the husband of the defendant.

10. On perusal of the chief and cross examination of PW-1 (Tmt.Vijayalakshmi) and DW-1(Tmt. Kalaivani), I find that the case of the appellant/defendant is that the husband of the plaintiff and the husband of the defendant are all close friends. While the husband of the defendant is doing real estate business, the husband of the plaintiff is doing finance business. Earlier, there were transactions between the parties and it is an



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usual practice between them to give security for the loan advanced and in such circumstances, Ex.B9, Ex.B10, Ex.B11, Ex.B12, Ex.B13 and Ex.B14 were said to have been executed between the parties. PW-1 in the witness box was confronted with Ex.B9 to Ex.B14 as well as Ex.B1 to Ex.B4.

11(a). Ex.B1 is the photo copy of the plaintiff's husband in the agreement of sale dated 26.09.2007; Ex.B2 is the photo copy of the defendant in the agreement of sale, dated 26.09.2007; Ex.B3 is the photo copy of the husband of the plaintiff in cancelling the sale agreement dated 02.09.2008 and so also, Ex.B4 is the photo copy of the defendant in cancelling the agreement of sale date 02.09.2008 and earlier four agreements of sale deed dated 08.12.2008; 08.01.2010; 14.02.2010; and 14.02.2009 and two pro-notes dated 14.02.2008 and 14.02.2010, which were placed before the Court with torn, re-fixed with the cellophane tape.

11(b). The evidence of DW-1 is that, after execution of the subsequent sale agreements as a security for the loan exchanged between the parties, the earlier sale agreement was torn and new sale agreement came into force. In this connection, the answer elucidated from the cross



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examination of PW-1, assumes significance as discussed infra.

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12(a). Ex.B8 is the notice issued to the defendant in respect of the money borrowed on the promissory note from the plaintiff. In short, the evidence of the defendant both in the written statements as well as during examination as DW1 is that, there were earlier transactions and the documents namely, Ex.B1 to Ex.B4 and Ex.B5 to Ex.B7 and Ex.B9 to Ex.B14 relates to the earlier transactions and on termination of the date, the same were torn.

12(b). The trial Court has observed that the husband of the defendant did not enter into the witness box to speak about the earlier transaction, is fatal. However, the admission of PW-1 is sufficient. While PW-1 admitted the photocopy of the plaintiff's husband under Ex.B1 and Ex.B2 and also identified the photocopy of her husband in another cancellation deed, she denied her signatures in yet another sale agreement dated 08.12.2008. The signatures in the previous sale agreement dated 08.12.2008 were marked as Ex.B5 (series) during the cross examination of PW-1.



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12(c). The plaintiff, to substantiate her case, also examined PW-2 (Mr. Rajendiraen), the document writer, who prepared Ex.A1-agreement. During his cross examination, he also identified the agreement of sale, dated 08.12.200,8 in which he had also signed at the end and his signature was marked as Ex.B9. Similarly, another signature in a document dated 08.02.2010 was marked as Ex.B10. In yet another document, dated 14.02.2010, his signature was marked as Ex.B11. In a further document, dated 14.02.2009, his signature was marked as Ex.B12. In a promissory note, dated 14.02.2009, his signature was marked as Ex.B13. In yet another promissory note, dated 14.02.2010, his signature was marked as Ex.B14, which goes to show that the plaintiff side evidence namely PW-2, who is the document writer (Mr.Rajendiran) has admitted that Ex.B9 to Ex.B14 were executed between the parties and hence, merely because PW-1 has chosen to deny the same, the version of this independent witness PW-2, who is the scribe of the sale agreement Ex.A1, and who admitted the existence of Ex.B9, Ex.B10, Ex.B11, Ex.B12, which are the documents relied on by the defendant that, they are all the earlier money transactions between the parties and those documents are produced as defence



evidence.

13. Hence, I find that the non-examination of the husband of the defendant is not fatal to the case of the defendant, in view of the admission made by PW-2, the independent witness, scribe of Ex.A1. Therefore, it is sufficient to hold that the documents namely, Ex.B9, Ex.B10, Ex.B11, Ex.B12, Ex.B13 and Ex.B14 are executed between the parties. Since PW-2 is not only an independent witness, but he is also the scribe of the document, the reason assigned by the trial Court that the non-examination of the defendant's husband in the witness box to speak about the documents pales insignificance, in view of the admission made by the scribe of those documents, who was examined on the side of the plaintiff.

14. Further more, it remains to be stated that with regard to passing of consideration under Ex.A1, the defendant both in his pleadings as well as in his evidence, has categorically deposed that, no amount has been passed under Ex.A1 and the sale agreement [Ex.A1] was executed only as a security for the loan transaction and on cancellation of the earlier sale agreements Exs.B9 to Ex.B12, Ex.A1 came into force.



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15(a). For the reasons stated in the preceding paragraph, this Court has rendered a categorical finding based upon the admission of PW-2 that those exhibits were proved by the scribe himself. Hence, the plea of non-passing of consideration having been raised in the written statement as well as in the evidence, the burden of passing of consideration under Ex.A1 remains significant and consequently falls upon the plaintiff/ respondent.

15(b). During the cross examination of DW-1, her stand was that she had withdrawn the money from Kombakkam Bank in Pondicherry and paid the advance amount in bundles of Rs.500/- rupees notes. Admittedly, she has not filed any document to show that the alleged withdrawal amount of Rs.5 lakhs from the said bank in and around the date of the agreement assumes significance and hence, when no document has been filed to show that the alleged source of income and the alleged source of fund for payment of advance amount of Rs.5 lakhs on the date of the agreement, on the above-stated circumstances, this Court has no hesitation to hold that the respondent/plaintiff failed to demonstrate passing of consideration under Ex.A1, and the same has caused serious doubt regarding true and



genuineness of the Ex.A1-suit sale agreement.

15(c). Hence, I find that the plaintiff has failed to show and demonstrate passing of consideration under Ex.A1, in view of shifting of burden and in view of the admission of PW-2 as stated supra.

16. Yet another point is that neither the husband of the plaintiff nor the husband of the defendant entered into the witness box. The relationship between the parties are admitted by the parties to the lis. The plaintiff's husband photograph was admitted by PW-1 in respect of Ex.B1, Ex.B3 and Ex.B6 so also admitted the photograph of the defendant in Ex.B2, Ex.B4 and Ex.B6. This goes to demonstrate that the defendant has successfully projected this case that there were earlier transactions between the parties, right from the year 2007, 2008, 2009 and 2010 and also two promissory notes (Exs.B13 and Ex.14) between the parties indicating that the money transaction was between the parties and subsequent cancellation of the registered agreement of sale, she has paid Rs.5 lakhs on the date of registration. This Court again reiterates that the admission of the scribe of those documents is the best piece of evidence who admitted his signature



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in those documents during his cross-examination.

17(a). Yet another point is that though the plaintiff states that he is ready and willing to perform his contract in respect of the sale agreement dated 23.02.2011, even after passing of three years, they have not issued any legal notice and Ex.A3 pre-suit legal notice was issued only on 14.02.2014. Moreover, since the defendant has filed a complaint before the Mudaliarpet Police Station and the police have closed the case, as it is a civil in nature on 05.02.2014, only after the police complaint lodged by the defendant on 05.02.2014, the said legal notice was issued.

17(b). The stand of the plaintiff is that she is always ready and willing to pay the balance sale consideration. According to her case, the sale consideration is Rs.5,10,000/- and she paid Rs.5,00,000/- on the date of registration. For the reasons stated supra, this Court holds that the evidence of PW-1 regarding the payment of the advance of Rs.5,00,000/- is doubtful and unbelievable.

17(c). Hence, Rs.10,000/- is said to have been the balance of the



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sale consideration and his readiness and willingness have become pale insignificance.

18. On comparison, the learned counsel for the appellant drew the attention of this Court to Ex.B9-sale agreement dated 08.12.2008; Ex.B10 dated 08.01.2010; Ex.B12, dated 14.02.2009; and the sale agreement on 26.09.2007 and 02.09.2008. The sale price is fixed at Rs.5,10,000/- and advance is Rs.5,00,000/-. Hence, though this is the singular fact, it may not be sufficient enough to infer the earlier sale agreements. However, considering the admission made by PW-2 in the cross examination, coupled with non-filing of any document to substantiate the alleged payment of Rs.5,00,000/- on the date of Ex.A1-agreement; and coupled with the sale consideration being the same in all these documents, I find that the contention of the appellant/defendant that Ex.A1 is only security for the loan and there was no intention to sell the suit property, appears to be just and fair and the plaintiff having failed to prove the nature of the documents coming into existence of the suit sale agreement and other circumstances, I hold that Ex.A1-the suit sale agreement is not legally enforceable and it is circumscribed with suspicion coming into existence of



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the document, especially, in view of Ex.B9, Ex.B10, Ex.B11, Ex.B12, Ex.P13 and Ex.B14 and hence, the relief of specific performance being discretionary relief, I am not inclined to concur with the judgment of the learned Principal District Judge, Puducherry and warrant interference with the decision.

19. For the reasons stated supra, all the points are answered in affirmative in favour of the appellant/defendant. Consequently, the decree and judgment passed in O.S.No. 23 of 2014 is liable to be set aside.

20. In the result, **this Appeal Suit is allowed.** The judgment and decree dated 21.04.2016 in O.S. No. 23 of 2014 passed by the learned Principal District Judge, Puducherry is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

04.06.2024

Index:yes/no
Speaking order/non speaking order
Neutral Citation:yes/no
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The Principal District Judge, Puducherry.

TMT.TEEKAA RAMAN,J.



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delivery judgment made in
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