



S.A.No.1226 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.02.2024

CORAM

THE HON'BLE MR. JUSTICE **G.ARUL MURUGAN**

S.A.No.1226 of 2006

1. V.Natarajan (died)
 2. Y.Nalini
 3. N.Kamalam
 4. A.P.Sakthivel
 5. P.Natarajan
 6. P.Sakunthala
- ... Appellants

(A2 & A3 are brought on records as LR's
of the deceased sole appellant viz,
Natarajan vide order court dated 13.08.2021
made inCMP.No.10733 of 2021 in
S.A.No.1226 of 2006 (AQJ))

(A4 to A6 are impleaded vide court dated
19.09.2022 made in CMP.No.17515 of 2016
in SA.No.1226 of 2006 (KRJ))

Vs.

V.Ramasamy

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 19.10.2005 made in AS.No.72 of 2005 on the file of the Principal District Judge, Coimbatore, allowing the appeal



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and reversing the judgment and decree dated 28.02.2005 made in OS.No.92 of 1999 on the file of Sub Court, Thiruppur.

For Appellants : Mr.N.Nissar Ahmed

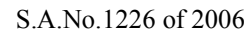
For Respondent : No Appearance

JUDGMENT

The defendant in the suit is the appellant before this Court. Pending appeal, the sole appellant died. Appellants 2 and 3 are substituted as legal heirs. Subsequently, 4 to 6, being the purchasers from the first appellant, were impleaded as Appellant 4 to 6. The plaintiff, who has filed the suit for specific performance is the respondent herein.

2. The appeal is preferred against the judgment and decree dated 19.10.2005 made in A.S. No.72 of 2005 on the file of Principal District Judge, Coimbatore, reversing the judgment and decree dated 28.02.2005 made in OS.No.92 of 1999 on the file of Sub Court, Thiruppur.

3. For the sake of convenience, the parties are referred to as per their ranking before the Trial court.



4. According to the plaintiff, he entered into a registered sale agreement dated 05.07.1996 with the defendant who had agreed to sell the suit property for a sale consideration of Rs.4,80,000/-. On the date of registered sale agreement itself, the plaintiff had paid an advance of Rs.4,50,000/- to the defendant and a period of one year was fixed for the performance of the agreement. The plaintiff who was always ready and willing to pay the balance sale consideration of Rs.30,000/- and contacted the defendant several times during the period of the agreement. However, since the defendant was evading to execute the sale deed, the plaintiff issued a legal notice on 1.7.1997. Since the defendant did not come forward to execute the sale deed or issued any reply, the plaintiff has filed the suit for specific performance of the agreement.

5. The defendant resisted the suit by filing the written statement stating that even though the agreement was executed by him in favour of the plaintiff, it was not intended for sale of the suit property, but for the purpose of some other transaction, and the recitals of the agreement itself



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will prove the same. The defendant averred that due to some financial difficulties, he approached the plaintiff who is the money lender. In fact, the defendant's requirement was about 18 lakhs, for which the defendant was prepared to secure the loan by mortgage. Since the plaintiff demanded only agreement of sale as a security for the amount, the defendant has executed three sale agreements dated 09.07.1996 in favour of the plaintiff's financial institution.

6. The defendant has contended that the agreement covers several properties worth more than Rs.10 lakhs and there was no need for the defendant to sell those properties for a meagre sum of Rs.4,80,000/-. Further, when the plaintiff claims to have paid the advance amount of Rs.4,50,000/-, there is no reason for fixing a period of one year for the payment of balance consideration of meagre amount of Rs.30,000/-. Hence, the defendant sought for dismissal of this second appeal.

Evidence and Documents:

7. During trial, the plaintiff examined himself as PW.1 and filed the sale agreement dated 05.07.1996 as Ex.A.1 and the legal notice in Ex.A.2.



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On the side of the defendant, the defendant examined himself as DW.1 and filed two sale agreements dated 06.07.1995 and 09.07.1996 in Ex.B1 and Ex.B2.

Findings of the Trial Court:

8. The Trial Court after analysing the evidences and documents dismissed the suit. The Trial Court found that the plaintiff had not examined any of the attestors to the agreement in Ex.A.1 to prove the sale agreement. It also found that the plaintiff is not a real estate dealer and the sale agreement has been executed for 23 plots. When the major portion of the sale consideration was paid, there was no reason for a period of one year fixed for the payment of the balance sale consideration of Rs.30,000/- alone. Further, even after issuing the legal notice, the plaintiff has waited for one year and nine months and only filed the suit in the year 1999. The Trial Court also found that for the same properties, sale agreements have been executed between the plaintiff and the defendant, on earlier occasions, which have been cancelled. Therefore, the Trial Court found that the plaintiff is a money lender, and the defendant has executed Ex.A.1 for security towards the loan amount.



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Further, the Trial Court found that since the agreement is executed in respect of several plots in an unapproved layout but no layout plan has been filed for the identification of the suit property.



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9. Aggrieved by the judgment and decree, the defendant filed appeal in AS.No.72 of 2005 on the file of Principal District Judge, Coimbatore. The Lower Appellate Court after reappraising the evidence allowed the appeal and decreed the suit for specific performance. The Lower Appellate Court came to the conclusion that Ex.A.1 is the registered instrument and the defendant has not produced any materials in respect of his defence. Further, since the defendant cannot let in any oral evidence contrary to the sale agreement in Ex.A.1, as per Section 92 of the Indian Evidence Act, the sale agreement stood proved. Aggrieved by the reversing judgment of the Lower Appellate Court, the defendant is before this Court on the appeal.

Substantial questions of law:

10. This court by order dated 07.12.2006 admitted the second appeal and framed the following substantial questions of law:

“1. Whether the lower Appellate Court erred in not seeing that the alleged sale agreement was only a security between the parties who had been indulging in such similar transactions?

2. Whether the lower Appellate Court went wrong in



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granting specific performance without seeing that the Respondent had been ready and willing and when the documents was not intended for sale and particularly when the Respondent does not carry on real estate business for having entered into an alleged sale agreement with regard to vast properties in the layout?”

Submission by the learned counsel for the Appellant:

11. The learned counsel for the appellant argued that the document in Ex.A.1 has been denied by the defendant as it has not been executed for the sale of the property but it has been executed by the security towards the loan available from the plaintiff. Further, the recitals of the document itself show that out of the sale consideration of Rs.4,80,000/-, when the plaintiff claims to have paid an advance amount of Rs.4,50,000/- even on the date of agreement itself, there was no reason for fixing the period of one year for the payment of balance sale consideration of Rs.30,000/- alone.

12. Further, even after the issuance of the legal notice in Ex.A.2,



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the plaintiff has not chosen to file the suit immediately but have waited for one year and nine months and have preferred the suit only in the year 1999 just before the expiry of limitation period. This conduct of the plaintiff itself shows that document in Ex.A.1 is not intended for the sale of suit property. The plaintiff, being the money lender has obtained the document from the defendant only as security. Further, the plaintiff was never ready and willing as contended by him. Further, when the defendant filed documents in Ex.B.1 and Ex.B.2, both are registered sale agreements executed by the defendant in favour of the plaintiff himself in respect of the same suit properties earlier and the agreements have been cancelled after the repayment of the loan amount. The Trial Court rightly took note of these documents and arrived at a conclusion that the plaintiff is a money lender and the defendant has the habit of receiving loan by executing registered sale agreement as security and the same were later cancelled. But, however the Lower Appellate Court erroneously against the document filed, observed that the defendant has not filed any document and allowed the appeal without considering the documents in Ex.B.1 and Ex.B.2 which are perverse.



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13. The learned counsel further contended that the Lower Appellate Court has mainly relied on Section 92 of the Indian Evidence Act and held that the defendant cannot act contrary to the agreement in Ex.A.1 and allowed the appeal. The Lower Appellate Court failed to take note of the Proviso under Section 92 of the Indian Evidence Act, “Where the parties can prove the fact which would invalidate any document for want of consideration”.

14. Further, even after the issuance of the legal notice in Ex.A.2, the plaintiff did not file the suit immediately but waited for one year and nine months and has filed the suit only in the year 1999 before the expiry of limitation period. The learned counsel by filing additional typed set of papers argued that four registered sale agreements were executed by the defendant on 09.07.1996, one in Ex.A1 in the present suit in favour of the defendant and the other three sale agreements in favour of M/s. T.V.R Chit Funds (P) Limited represented by the defendant herein. Along with the suit, three suits were filed in OS.Nos.93/99, 95/99 and 98/99 which were all dismissed and the First Appeal in AS.Nos.71/2005, 69/2005 and 70/2005 were allowed. As against the judgment and decree, the appeals in



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SA.Nos.651/2006, 1105/2006 and 1106/2006 were filed by the appellant.

Pending these appeals, M/s. T.V.R Chit Funds (P) Limited was wound up, and since the decrees could not be implemented by executing a sale deed in favour of non- existing company, those second appeals were closed by the orders of this Court. Only the present suit in which the sale agreement was executed in the name of the plaintiff was left out, which is covered in the above second appeal.

15. The learned counsel further contended that the execution of three other sale agreements in favour of the financial company of the plaintiff along with this agreement in Ex.A.1 will amply prove that the plaintiff, being a money lender, has taken the agreement as security for the loan advanced to the defendant. The learned counsel further contended that the judgment and decree passed by the Lower Appellate Court may be interfered with and sought for allowing this second appeal.

16. Even though the names of the learned counsel for the respondent were printed in the cause list, there is no appearance on the side of the respondent.



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Analysis:

17. According to the plaintiff, the registered sale agreement in Ex.A.1 dated 09.07.1996 was executed by the defendant agreeing to sell the suit properties which contains several plots for a total sale consideration of Rs.4,80,000/-. On the date of the agreement in Ex.A.1 itself, a sum of Rs.4,50,000/- was paid as advance, and a time period of one year was fixed for the payment of balance sale consideration of Rs.30,000/- to complete the sale. As per the agreement, the plaintiff was ready and willing to perform his part of the contract. Since the defendant evaded, he has issued a legal notice in Ex.A.2 on 01.07.1997 calling upon the defendant to execute the sale deed. Even though the defendant did not respond, the plaintiff waited for a period of one year and nine months and thereafter filed the suit only on 17.02.1999, before the expiry of limitation period of three years from the date of the agreement. The defendant has specifically pleaded that the plaintiff is a money lender and that he used to advance loans to the plaintiff and whenever the loan was received, the plaintiff used to get the registered sale agreement in respect of the properties as a security for the loan amount. The defendant has also filed



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documents in Ex.B.1 and Ex.B.2 and specifically the document in Ex.B.1 dated 06.07.1995 which is a registered agreement in Document no.4071/1995 executed by the defendant in favour of the plaintiff in respect of the same suit properties.



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18. On perusal of the agreement in Ex.B.1 it shows that almost 90% of the sale amount was paid as advance and for the balance sale consideration of meagre amount, a period of one year was fixed. Later, as the loan was repaid, the agreement was not acted upon and the same was cancelled. Thereafter, again a fresh sale agreement in Ex.A.1 was entered between the plaintiff and the defendant in respect of the same suit properties by fixing a sale consideration of Rs.4,80,000/- and it is shows that an amount of Rs.4,50,000/- has been paid as advance and for the payment of balance consideration of Rs.30,000/-, a period of one year was fixed. It is not explained in the sale agreement, as to why when the major portion of the sale consideration is paid, a time period of one year is fixed for the payment of balance sale consideration of Rs.30,000/- in completing the sale.

19. A perusal of the sale agreement in Ex.A.1 shows that the agreement has been executed for the conveyance of several plots in an unapproved layout. No plan of the layout has been filed to establish the identity of the suit properties. Further, when the defendant has specifically pleaded that the plaintiff is a money lender and the document



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in Ex.A.1 was executed as a security towards the loan transaction, and the defendant has also filed documents in Ex.B.1 and Ex.B.2 to substantiate his case that the defendant earlier executed a registered sale agreement in favour of the plaintiff himself for the very same suit properties and after the loan amounts were paid, it was cancelled, the plaintiff did not choose to examine the attestors of the agreement in Ex.A.1 to prove the sale agreement. The plaintiff did not take any steps to explain why, after paying a sum of Rs.4,50,000/- as advance, the time period of one year was fixed for the balance payment of Rs.30,000/-. The plaintiff has also not explained as to why even after the legal notice was issued in Ex.A.2 and the defendant remained silent, he has not immediately come forward with the suit for specific performance but rather waited for one year and nine months and filed the suit only prior to the expiry of period of limitation.

20. Where the plaintiff has come forward with the suit for specific performance, the plaintiff is bound to plead and prove his readiness and willingness from the date of agreement till the suit. Unless the plaintiff proves the same as per Section 16(c) of the Specific Relief Act, the plaintiff is not entitled to the discretionary relief under Section 20 of the



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Specific Relief Act. The fact that after the payment of advance of Rs.4,50,000/- a time period of one year was fixed for the balance payment of sale consideration for Rs.30,000/- and no reasons have been given in the agreement for such a long period fixed and further the non explanation of the plaintiff for the delay in filing the suit by one year and nine months after the issuance of the legal notices in Ex.A.2 shows the conduct of the plaintiff, that he is not ready and willing to perform his part of the contract.

21. Further the fact that four agreements have been executed by the defendant on the same day, one in favour of the plaintiff and other three in favour of the financial company represented by the defendant, all in respect to several plots, and further fact that the defendant had earlier executed the registered sale agreement in favour of the plaintiff for the very same suit property in Ex.B.1 and the same was cancelled after the repayment of the loan amount and the plaintiff has not asked for specific performance of the agreement would all go to show that the plaintiff is a money lender who has advanced the loan amount to the defendant as security towards loan transaction. The plaintiff also failed to prove the



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document in Ex.A.1 by examining the attestor.

22. The Trial Court has rightly found that the sale agreement in Ex.A.1 had not been proved or executed for the purpose of sale and the plaintiff has not proved his readiness and willingness. However, the Lower Appellate Court by ignoring the documents in Ex.B.1 and Ex.B.2, observed that the defendant had not filed any document in support of his claim and concluded that since it is a registered agreement, the sale agreement stands proved, which is not based on the material available on record and therefore perverse.

23. The Lower Appellate Court has mainly placed reliance on Section 92 of the Indian Evidence Act and arrived at a finding that since the agreement in Ex.A.1, is a registered instrument, the defendant cannot let in any oral evidence contrary to the document. The Lower Appellate Court has not taken note of the proviso and allowed the appeal. The Lower Appellate Court has failed to consider the proviso (1) of Section 92 of the Indian Evidence Act, where the parties are entitled to prove any fact which would invalidate any document such as fraud, want of execution, want of consideration etc that are contained therein, to



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establish the true nature of the transaction.

24. It is the specific case of the defendant that the document was executed only in respect of loan transaction as security and the defendant has filed document in Ex.B.1, which is also a registered agreement in respect of the same suit property between the plaintiff and the defendant which was not acted upon. Further, on perusal of the recitals of the sale agreement in Ex.A.1 itself, by giving a period of one year for the payment of Rs.30.000/- after the payment of Rs.4,50,000/- itself reveals the intention of the parties and the nature of the document. Therefore, the finding arrived at by the Lower Appellate Court that the sale agreement stands proved is contrary to the available materials and is perverse and liable to be interfered with.

25. Further, the fact that three other sale agreements have been entered into on the same day by the defendant in respect of the financial company of the plaintiff and in all three cases, the Lower Appellate Court has allowed the appeals and decreed the suit for specific performance, but however in all second appeals, since the financial company of the plaintiff was wound up, the second appeals were closed as the company is not in



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existence. All these factors would show that the plaintiff, being the money lender has advanced the loan amount in his personal capacity and also through financial company. Wherever the loan amount was issued, he has obtained registered sale agreements from the borrowers for the security of the loan amount. The defendant has rightly let in evidence by filing documents in Ex.B.1 and B2 and also from the very same document in Ex.A1 itself, it is evident that the document is not intended for sale of the suit properties. Further, the silence on the part of the plaintiff in waiting for a period of one year and nine months after the issuance of the sale notice and then filing the suit just before the expiry of period of limitation of three years shows the contact and real intention of the plaintiff. In such circumstances, the plaintiff is not entitled for the discretionary relief for the specific performance.

26. In view of the above findings, the substantial questions of law are answered in favour of the appellant and against the respondent. Therefore, the second appeal stands allowed and the judgment and decree of the Lower Appellate Court is set aside and the judgment and decree of the Trial Court stands restored. However, there is no order as to costs.



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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1.The Principal District Judge, Coimbatore.

2.The Sub Court, Thiruppur.



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G.ARUL MURUGAN.,J.

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