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SA.No.915 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.11.2023

PRONOUNCED ON : 11.01.2024

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.915 of 2009

and

MP.No.1 of 2009

1. V.Subramaniam (Deceased)
 2. S.Saraswathi
 3. D.Krishnaveni
 4. S.Sabarieswaran
- (Appellants 3 & 4 brought on record as LR's of the deceased 1st appellant vide order dated 03.08.2010 made in MP.1/2015

... Appellants/Defendant

- Vs -

N.Dhanalakshmi (Died)

1. T.Needhimani
S/o.Thambana Gounder
2. Minor N.Vignesh Needhi
3. Minor N.Mowleeshwar Needhi
4. Minor N.Narmadha Needhi

(R2 to R4 are declared as Major and their father T.Needhimani discharged from the guardianship vide order dated 15.09.2016 made in CMP.No.14868/2016)

... Respondents/Plaintiffs

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree of the I Additional District Court at Coimbatore dated 31.03.2009 in A.S.No.6 of 2007, confirming the judgment



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and decree of the Subordinate Judge's Court at Tirupur dated 2.9.2006 in O.S.No.537 of 2000.

For Appellants : Mr.S.Mukunth
Senior counsel
for M/s.Sarvabhauman Associates

For Respondents : Mr.N.Manokaran
for R1 to R4

JUDGMENT

The instant Second Appeal has been filed at the instance of the defendants and their legal representatives. The respondents herein are the plaintiff and her legal representatives.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3. The brief facts, which give rise to the instant second appeal is that; the defendants are the absolute owner of the suit property. The first plaintiff entered into a registered sale agreement with the defendants on 15.07.1999 agreeing to purchase the suit properties for a total sale consideration of Rs.1,50,000/- and on the date of the agreement, a sum of Rs.1,25,000/- was



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paid as an advance. The time for performance was fixed as two years and the balance sale consideration to be paid is Rs.25,000/-. According to the plaintiff, since June 2000, the plaintiff has been requesting the defendants to execute the sale deed. However, for one reason or the other, the defendants were evading to execute the sale deed. In the meanwhile, the defendants were attempting to alienate the suit property. Hence, the plaintiffs have come forward with the suit for specific performance and also for other reliefs.

4.(a) The said suit was resisted by the first defendant by contending that he is the small time vendor who sells Muruku in the old bus stand of Tiruppur for the past 20 years. He also stated that the alleged sale agreement dated 15.07.1999 is not at all a sale agreement and the same was executed only as a security for loan transaction. This defendant also disputes the ready and willingness of the plaintiff. It was further contended by the defendants that the plaintiff is a local financier and that he approached the plaintiff for a loan of Rs.30,000/-. In order to advance loan, the plaintiff demanded a sale agreement in their favour. Therefore, as per the demand made by the plaintiff, on 15.07.1999, a sale agreement was executed by the defendant as a security.



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(b) It was the further contention of the 2nd defendant that she being an illiterate woman, she did not know the contents of the sale agreement. It was the specific contention of the defendants that, on the date of the execution of the sale agreement, dated 15.07.1999, one Mr.Dhandapani, son of Mr.Ramasamy Udayar and another son Mr.Periasamy were present at the time of the execution of the sale agreement and also while borrowing the loan. This defendant further submits that on executing the sale agreement, the plaintiff has given a sum of Rs.27,000/- after deducting one month interest of Rs.3,000/-. It was further stated that the defendants approached the plaintiff on 15.08.1999 with a request to reduce the rate of interest from Rs.10/- per month for Rs.100/- , to Rs.3/- per month for Rs.100/-. However, the plaintiff refused to reduce the rate of interest, but intimidated the defendants either to pay the loan amount or to execute the sale deed after receipt of the balance amount of Rs.25,000/-. Thereafter, the plaintiff has kept quiet for some time, and latter came forward with a false suit for specific performance. It is the submission of the defendants that when the plaintiff has allegedly paid a substantial amount, fixing two years period to pay the remaining paltry sum of Rs.25,000/- would emphatically establish the loan transaction. Hence, prayed to dismiss the suit.



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Evidence, Documents and Finding of the both the Court below:-

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5. Before the Trial Court, the plaintiff has examined 2 witnesses as PW1 and PW2, and marked 7 documents as Exs.A1 to A7. On behalf of the defendants, 3 witnesses were examined as DW1 to DW3 and 3 documents have been marked as Exs.B1 to B3.

6. The Trial Court, after having considered the oral and documentary evidence, has disbelieved the case of the defendants and has found that the sale agreement dated 15.07.1999 was entered into only to sell the property. The Trial Court has further found that by virtue of Ex.B1-Sale Deed, one Mr.Jayaprakash [DW3] already obtained sale deed for a portion of property of an extent of 990 sq.ft, therefore, decreed the suit for specific performance, for the remaining extent available in the suit property.

7. Not satisfied with the above order, the defendants preferred an appeal before the First Appellate Court. However, the First Appellate Court concurred with the finding rendered by the Trial Court and ultimately, dismissed the appeal, confirming the decree and judgment of the Trial Court.



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8. Aggrieved with the said order, the defendants and their legal representatives are before this Court by way of this Second Appeal.

Substantial Question of Law:-

9. At the time of admission on 22.08.2016, this Court has formulated the following substantial question of law:-

“a) When the probabilities of the case in the light of Exs.A5 & A6 (Salary Certificates) shows that the transaction between the appellants and respondents is a loan transaction, are the Courts below correct in misappreciating the evidence and decreeing the suit for specific performance overlooking the very averment in the plaint which shows a meager amount is left as balance consideration to be complied after a longer duration?”

Submission of either side counsel:-

10. The learned Senior Counsel for the defendants/appellants would contend that the very nature of the sale agreement (Ex.A1) would exemplify the existence of the loan transaction. The learned Senior Counsel would also contend that for proving the loan transaction, it is sufficient to establish some significant factor so as to prove such transaction, and that such proof is not beyond reasonable doubt but only based up on the preponderance of



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probability. The learned Senior Counsel would also invite the attention of this Court in respect of Exs.A5 & A6, which are the Salary Certificates stands in the name of the defendants, and by relying the same would contend that, only because of the existence of loan transaction, the plaintiff obtained the Salary Certificates from the defendants. The learned Senior Counsel would further contend that the long duration of two years to pay remaining sale consideration of the paltry sum of Rs.25,000/- would also prove the case pleaded by the defendants. Thus, the learned Senior Counsel would submit that in spite of availability of abundant evidence to prove the loan transaction, both the Courts below have erred, and wrongly found that the Sale Agreement was true and binding between the parties. In support of the appellants' contention, the learned Senior Counsel relied upon the following judgments:-

1. ***Tejram Vs. Patirambhau*** reported in ***(1997) 9 SCC 634***
2. ***Mrs.Pappammal @ T.Pappa Vs. Mr.P.Ramasamy*** reported in ***2012-4-L.W.435.***

11. Per contra, the learned counsel for the plaintiff/respondents would contend that there is a finding of fact rendered by both the Court below that the sale agreement dated 15.07.1999 is true and that the case put forth by the



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defendants in respect of a loan transaction has not been established. The learned counsel would further contend that the findings of the both Court below are based upon the evidence and well merited. It was also contended by the learned counsel for the plaintiff that at the Second Appeal stage, the finding of fact recorded by the Trial Court cannot be interfered, unless there is a perversity of finding, misreading of evidence and wrong casting of burden. It is also the contention of the learned counsel for the plaintiff that the finding of fact recorded by the Trial Court is based on evidence and well merited. Therefore, would contend that the Second Appeal is liable to be dismissed. In support of his contention, he relied upon the following judgments:-

1. ***P.Daivasigamani Vs. S.Sambandan*** reported in **(2022) 14 SCC 793;**
2. ***D.Ananda Moorthy Vs. P.Chandrakala*** reported in **(2010) 5 MLJ 899;**
3. ***T.G.Pongiannan Vs.K.M.Natarajan and another*** reported in **2009 (6) CTC 301;**
4. ***M.Ramalingam (died) and others Vs. V.Subramanyam (died) and others*** reported in **(2003) 1 M.L.J 694;**
5. ***Sughar Singh Vs. Hari Singh (Dead) through L.Rs and Ors.,*** reported in **AIR 2021 SC 5581; and**
6. ***Madhukar Nivrutti Jagtap and Others Vs. Pramilaibai Chandulal Parandekar (Dead) through Legal Representatives and others*** reported in **(2020) 15 SCC 731.**



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12. I have given my anxious consideration to either side submissions.

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Analysis of the submissions:-

13. In this case, the defendants have categorically admitted the execution of a sale agreement under Ex.A1. However, their contention is that Ex.A1-Sale Agreement was executed only by way of a security. In this regard, it is appropriate to discuss the precedents submitted by the learned Senior Counsel appearing for the appellants. The learned Senior Counsel by relying upon *Tejram's* case [cited supra] would contend that issuance of notice seeking specific performance after the period of 3 years would exemplify the existence of a loan transaction. But on a close reading of the reported judgment, there was finding that the agreement holder was money lender. Further, in the said judgment, in spite of stipulation to pay the remaining sale consideration within a period of one year, he took three years. Only in that context, the Hon'ble Supreme Court held that issuance of notice demanding specific performance just a day before the completion of 3 years would be a factor to prove the existence of a loan transaction. But in the case on hand the fact remains otherwise and the plaintiff acted within the stipulated time. Therefore, the above ruling is not applicable to the present facts of this case.



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14. In **Pappammal's** case(cited supra), the learned Single Judge of this Court has held that if the time for performance was fixed as 5 years, then such agreement on the face of it would prove the existence of a loan transaction. But on close reading of the said reported judgment, the learned Single Judge of this Court has not held the existence of a loan transaction merely on the ground that there was 5 years period fixed, for getting the sale deed. Whereas, in the reported judgment, there were abundant evidence to show the plaintiff therein was doing finance business. Only in that context, the learned Judge of this Court has held that the fixing of longer performance period is one of the factor to decide the existence of loan transaction.

15.The learned Senior Counsel has also relied upon the judgment of the Hon'ble Supreme Court in **Smt.Gangabai Vs. Smt.Chhabubai** reported in **(1982) 1 SCC 4**, in respect of the applicability of Section 92 of The Indian Evidence Act. This Court absolutely has no grievance over the principles enunciated in the above precedents. Here, what is essential is that, though the defendants can set up a different transaction, while admitting the execution of some document, whether he discharged the burden to prove such a different transaction. Here, in the case on hand, both the Courts below have found that



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the defendants has not proved the existence of a different transaction qua the loan transaction.

16. At this juncture, the learned counsel for the respondents/plaintiffs would rely upon ***Daivasigamani***'s case(cited supra), which deals about the discretionary power of the Trial Court under Section 20 of the Specific Relief Act, and as to how such discretionary power is to be exercised, and what are all the material factor to be considered. The relevant paragraph of the said judgment is paragraphs 25 and 26 and the same read as follows:-

“25. Section 20 of the Specific Relief Act (pre-amendment), which confers discretion on the court to exercise jurisdiction to decree of specific performance, states that this exercise should not be arbitrary, but guided by sound and reasonable judicial principles. Interpreting and elucidating on Section 20 of the Specific Relief Act (pre-amendment) and factors to be considered, this Court in Kamal Kumar v. Premlata Joshi [Kamal Kumar v. Premlata Joshi, (2019) 3 SCC 704 : (2019) 2 SCC (Civ) 405] has also referred to Sections 16(c), 22, 23 and 24 of the Specific Relief Act and Forms 47/48 of Appendix A to C of the Civil Procedure Code, 1908, to summarise : (SCC pp. 705-706, paras 7-8)

“7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance are:

7.1. First, whether there exists a valid and concluded



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contract between the parties for sale/purchase of the suit property.

7.2. Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract.

7.3. Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract.

7.4. Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff.

7.5. Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money, etc. and, if so, on what grounds.

8. In our opinion, the aforementioned questions are part of the statutory requirements [see Sections 16(c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and Forms 47/48 of Appendix A to C of the Code of Civil Procedure]. These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts.



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26. Sub-section (2) to Section 20 of the Specific Relief Act (pre-amendment) lists some of the principles that the court should take into consideration while exercising discretion. The factors to be considered while exercising discretion include hardship to the defendant seller which he did not foresee, hardship to the plaintiff purchaser in case of non-performance, or whether the contract, even when not void, was entered under the circumstances that make the enforcement of specific performance inequitable, or whether the plaintiff has done substantial acts or suffered losses as a consequence of the contract, and the conduct of the parties, including that of the defendant seller and other circumstances under which the contract was entered are such that they give an unfair advantage over the defendant seller.”

17. The other case referred by the plaintiff/respondent's in **Ananda Moorthy's** case [cited supra], the relevant paragraph is paragraph 43 and the same reads as follows:-

“43. In the instant case the specific stand of the plaintiff is that Ex.A1 is a sale agreement. But the specific stand of the defendant is that Ex.A1 has come into existence as a security for the loan alleged to have been received by him from the husband of the plaintiff. Since the specific stand of the defendant is that Ex.A1 is not a sale agreement and the same has come into existence only as a security for the loan alleged to have been received by him from the husband of the plaintiff, the bar created under Sections 91 and 92 of the Indian Evidence Act is not applicable to the facts and circumstances of the present case.”



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18. The learned counsel also relied upon the Division Bench judgment of this Court in **Ramalingam's** case [cited supra], wherein it has been held that whenever a loan transaction is being pleaded, there is a bounden duty on the part of the parties to prove such factum before the Court.

19. The learned counsel for the respondents also relied upon the **Sughar Singh's** case [cited supra], which deals about the powers of the Court as to how a discretion is to be exercised.

20. Therefore, what emerges from the precedents submitted by either side, is whenever the defendant set up a loan transaction, the burden is upon him to prove such factum, and that the proof should be based upon the principles of preponderance of probability. In the case on hand, it is the specific contention of the defendants that on 15.07.1999, there was a sale agreement between the plaintiff and the defendants, and that such sale agreement was executed in the presence of one Mr.Dhandapani and Mr.Periasamy. The relevant portion of the written statement is extracted hereunder for ready reference:-



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*“7. One Dhandapani, son of Ramasamy Udayar and another Periasamy, son of Ramasamy Udayar Proprietor of Vasantha Fancy Centre at old bus stand, Tiruppur introduced the defendants with the plaintiff for availing the said loan and **on the day of registering the said sale agreement dated 15.7.99 the aforesaid persons were present and the plaintiff paid the amount of Rs.27,000- (Rs.twenty seven thousand only) (i.e.) loan amount of Rs.30000/- one month interest of Rs.3000/- has been deducted from that Rs.30000/-.**”*

21. The said Dhandapani referred to in the written statement was examined before the trial Court as DW2 to prove the alleged loan transaction. Even during the chief examination, he has categorically stated that he was not present while executing the Ex.A1-sale agreement. Further, during the cross examination, he has admitted as follows:-

“வாதி தாக்கல் செய்த கிரைய ஒப்பந்தப் பத்திரத்தில் நான் சாட்சி கையொப்பம் போடவில்லை. வாதி கிரைய ஒப்பந்தம் எத்தனை ரூபாய்க்கு எந்த தேதியில் போட்டார் என்று எனக்கு தெரியாது. கிரைய ஒப்பந்தம் எங்கு வைத்து தட்டச்சு செய்யப்பட்டது எங்கு வைத்து பதிவு செய்யப்பட்டது என்பது எனக்கு நேரடியாக தெரியாது.”

22. Therefore, the admissions made by DW2/Mr.Dhandapani is in total contravention to the written of the defendants. According to the written statement, the said Dhandapani was present while executing Ex.A1-sale agreement and he knew the nature of agreement and as to why such agreement



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came in to existence. But he pleaded ignorance of sale agreement and he stated that he do not know as to the execution of the said agreement. Therefore, this Court is of the firm view that there are no evidence to prove that the Ex.A1-sale agreement was executed as security for loan transaction.

23.As a matter of fact, before filing the suit for specific performance, the plaintiff has issued legal notice under Ex.A2, which appears to have returned with an endorsement as “not claimed” and the returned covers have been marked as Exs.A3 and A4. However, the first defendant in all fairness, has admitted that he has received such notice. The relevant admission is as under:-

“2000ல் வக்கீல் அறிவிப்பு வந்தது எனக்கு தெரியும். வக்கீல் அறிவிப்பு வந்ததை வாங்கிக்கொண்டேன். அதற்கு பதில் அறிவிப்பு அனுப்பினேன்.”

24. Therefore, through the above admission the defendant has taken a categorical defence that he has sent a reply after receiving the legal notice from the plaintiff. But the defendant did not submit any document to show the issuance of such reply notice to the plaintiff. Therefore, it is evident that in spite of receipt of notice during 2000, the defendant did not think fit to send reply and he took a defence of loan transaction at the first instance only in his written statement, which was filed in the month of December, 2002, almost



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after a period of two years. But, the plaintiff, by examining PW2, who was attesor to Ex.A1-Sale Agreement, has proved the due execution of the sale agreement.

25. At this juncture, the learned Senior Counsel for the appellants would rely upon Exs.A5 and A6 salary certificate and would contend that such salary certificates would sufficient to prove that only for granting the loan, such salary certificates was obtained from the defendants. But, this Court is not in a position to accept such contention. Because the salary certificate was filed before the Court while cross-examining the witness in the month of July, 2006. Whereas PW2, who was the attesor to Ex.A1-sale agreement, while examining in cross, has categorically admitted that the defendant has been selling burfi in Tiruppur bus stand. Furthermore, the salary certificate has been filed only during the cross examination of DW1. Therefore, such salary certificate will in no way tilt the case in favour of the defendants. Though the submission made by the learned Senior Counsel appearing on behalf of the appellant, even for argument sake, if lead to any different view other than the finding recorded by the Court below, cannot be a reason for this Court to take a different view under Section 100 of C.P.C., unless the finding of the both the Court below is



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perverse and such finding is without any evidence . In this regard, it is useful to refer the judgment of the Hon'ble Supreme Court in ***Hero Vinoth(Minor)-Vs-Seshammal***, reported in ***(2006)5 Supreme Court Cases 545***.

26. Thus this Court is of the firm view that the finding of fact recorded by both the Trial Court as well as the First Appellate Court that the loan transaction pleaded by the defendants has not been established, is well merited one and this Court could not find any ground to deviate from such finding. Though the sale agreement contains 2 years period for performance, mere fixing of two years period alone is not sufficient to hold that there exists a loan transaction. As discussed herein above, the defendants have miserably failed to prove such loan transaction. Therefore, this Court is of the firm view that there are no grounds to interfere with the well considered finding recorded by both the Courts below. Thus, in view of the above detailed discussion, the substantial question of law is answered in favour of the respondents.



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27. In the result, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected MP is also closed.

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Index : Yes

Speaking Order : Yes

NCC : Yes/No

To

1. The Sub Court,
Tiruppur.
2. The I Additional District Court,
Coimbatore.



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