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A.S.No.56 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

A.S.No.56 of 2023

Mohanambigai
Represented by Power of Attorney Agent
Gnanaraj

..Appellant

Vs.

Sathiya

..Respondent

Prayer: The Appeal Suit is filed under Section 96 of the Civil Procedure Code against the decree and judgment dated 31.10.2022 in O.S.No.111 of 2023 on the file of the Principal District Court, Puducherry.

For Appellant : Mr.R.Dilli Kumar

For Respondent : Mr.J.Kumaran



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JUDGMENT

*(Judgment of the Court was delivered by **J.NISHA BANU, J and R.KALAIMATHI, J**)*

The present Appeal Suit arises out of the decree and judgment dated 31.10.2022 in O.S.No.111 of 2013 on the file of the Principal District Court, Puducherry.

2. The defendant is the appellant herein. The plaintiff/respondent herein filed a suit for specific performance of an agreement of sale dated 06.12.2010 and to direct the defendant to transfer item Nos.1 to 3 of the suit properties in favour of the plaintiff by executing a registered sale deed for a sale consideration of Rs.30.00 lakhs after receiving the balance sale consideration of Rs.22.00 lakhs and to direct the defendant to deliver item Nos.1 to 3 of the suit properties to the plaintiff after execution and registration of sale deed and for permanent injunction.

3. The plaintiff and the defendant are friends for over 10 years. The defendant and her husband were in financial difficulties and offered to sell the suit properties in the month of November, 2010, for valid consideration of



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Rs.30.00 lakhs and entered into a sale agreement with the plaintiff on

06.12.2010 agreeing to sell the item Nos.1 to 3 of the suit properties within three months and received a sum of Rs.8.00 lakhs as advance amount. At the time of execution of sale agreement, the defendant handed over the original title deeds of item No.1 and promised to hand over the original title deeds of item Nos.2 and 3 at the time of registration of sale deed after payment of balance sale consideration of Rs.22.00 lakhs. The defendant also undertook to handover the Nil encumbrance certificate, patta and chitta adangals and other materials documents. The plaintiff was always ready and willing to pay the balance sale consideration and to register the sale deed. However, the defendant was evading to handover the original title deeds of item Nos.2 and 3 and other documents. Hence, the plaintiff issued a pre suit notice on 11.06.2011 demanding the defendant to come for the execution and registration of sale deed. The said notice was received by the defendant, who in turn replied to the notice on 14.07.2011 denying the execution of sale agreement. The defendant also stated that she had signed a blank stamp paper and handed it over to the plaintiff's husband, namely, Ramamoorthy, which is only frivolous and false statement. Since the defendant was not amenable to any mediation, the plaintiff was constrained to file a police complaint and in the police complaint, the defendant agreed to execute the sale deed. On 06.07.2013, the defendant tried



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to sell the properties to third parties. Hence, the plaintiff constrained to file the suit.

4. The defendant filed the written statement stating that the suit is not maintainable. She also stated that the husband of the plaintiff is known to the brother of defendant's husband and the defendant's husband introduced Ramamurthy and since the husband of defendant was in need of money, the said Ramamurthy suggested that the suit properties be mortgaged to raise the amount, but the husband of the defendant did not agree for such a proposal and suggested some informal way of getting a loan from his relative one Bakthavatchalam and in turn, the defendant has to execute an informal assurance deed and give Rs.20/- blank non-judicial stamp paper as security.

5. Accordingly, the defendant's husband executed the assurance letter and failed to return Rs.20/- blank non-judicial stamp paper. However, even after the discharge of the amount of Rs.8,10,001/- the plaintiff's husband with fraudulent and dishonest intention has made use of blank non-judicial stamp paper and created an agreement to purchase the schedule of property in the name of the plaintiff. After creating the aforesaid agreement to sell, the husband of the plaintiff has been disturbing the possession and enjoyment of



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the suit property with the help of his henchmen. Hence, the husband of the defendant made a complaint with Muthialpet Police Station on 24.08.2011 and the police directed them to resolve the dispute before the Court of law. The plaintiff issued a legal notice on 11.06.2011 which was duly replied on 15.07.2011. The defendant has categorically stated that she had no intention to sell the schedule mentioned property and had not received any advance amount from the plaintiff. The said Ramamurthy fabricated the blank stamp paper and handed over by S.Bakthavatchalam.

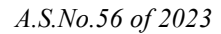
6. The trial Court after framing issues in the suit and after going into the averments in the plaint as well as in the written statement has come to a conclusion that the initial burden is on the plaintiff to prove that the suit property belongs to the defendant and the sale agreement was entered into between the plaintiff and the defendant categorically stating with regard to the sale price, advance amount paid and readiness and willingness on the part of the plaintiff to perform the contract. After going through the evidence let in and documents marked on behalf of both sides, the trial Court came to the conclusion that the sale agreement executed by the defendant in favour of the plaintiff by fixing the sale price and also payment of advance amount were admitted by the defendant by way of marking Ex.B34. It is established that the



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defendant was ready and willing to execute the sale agreement. Accordingly, the trial Court decreed the suit as prayed for. Aggrieved by the same, the present appeal has been filed.

7. The learned counsel for the appellant submitted that the trial Court has not considered the fact that the stamp papers used in Ex.A1 were given to Bakthavachalam as unfilled signed stamp papers and that the appellant has never executed any agreement in favour of the plaintiff and no documents were handed over to the plaintiff. It is also submitted that the agreement of sale dated 06.12.2010 marked as Ex.A1 itself is a fabricated document, which was misused by the said Bakthavachalam, the plaintiff and her husband Ramamurthy. The appellant availed loan from Bakthavachalam on 06.12.2010 and executed a Receipt dated 06.12.2010 marked as Ex.B2 wherein the plaintiff's husband stood as a witness and has also given signed blank stamp paper towards collateral security for the loan obtained by the appellant. After settling the loan amount, the said Bakthavachalam returned Ex.B2 to the appellant and has failed to return the signed unfilled blank stamp papers to the appellant herein instead handed over to the plaintiff's husband which was misused by the plaintiff and her husband Ramamurthy for fabricating the said document and creating a sale agreement, which is marked as Ex.A1 before the



8. The learned counsel for the appellant also contended that the market value of the single plot during the year 2010 is more than Rs.20,00,000/- whereas the suit schedule properties as a whole was valued at Rs.30,00,000/- as per the plaintiff, which would itself prove that the plaintiff has fabricated and created document in collusion with the said Bakthavachalam to grab the property. It is also contended that the trial Court has failed to consider the exhibits marked on the side of the defendants (Ex.B1 to Ex.B38), that apart the evidences of D.W.1 to D.W.5 were not considered. The trial Court has grossly erred in decreeing the suit as prayed for. Hence, the learned counsel for the appellant seeks interference of this Court.



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9. The learned counsel for the respondent/plaintiff submitted that the trial Court in paragraph No.36 of the judgment has categorically held that the perusal of the records reveals that though the plaintiff's side withdrawn the deposits marked under Exs.A7 to A10 before conclusion of trial filed application before the trial Court seeking permission to deposit the balance sale consideration and as ordered by this Court, deposited the balance sale price which is now lying in the Civil Court Deposit. Marking of Exs.A7 to A10 and the conduct of the plaintiff during the trial by making deposit of balance sale consideration clearly goes to show that the plaintiff is always ready and willing to perform the contract.

10. It is also submitted by the learned counsel for the respondent /plaintiff that the defendant did not come to the box. Only the Power Agent of the defendant was examined as D.W.1 through whom Ex.B1 to Ex.B38 were marked. It is also not the evidence of D.W.1 that he is having personal knowledge about the suit property as well as the suit documents marked on the side of plaintiff. Therefore, the learned counsel for the respondent/plaintiff submitted that the trial Court has rightly come to the conclusion that the plaintiff is not entitled to the relief of permanent injunction and has decreed the suit as prayed for.



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11. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials placed before this Court.

12. It is not in dispute that the sale agreement was executed by the defendant in favour of the plaintiff by fixing the sale price as Rs.30,00,000/- and also the payment of Rs.8,00,000/- as advance amount and the receipt of advance was also accepted by the defendant's side by way of marking Ex.B34. The plaintiff has also established the execution of sale agreement and also established her readiness and willingness by producing Exs.A7 to A10 and also confirmed by depositing the balance sale consideration before the Court and therefore, the plaintiff is entitled to the relief of specific performance and thereby, she is also entitled to recovery of possession. Even during the pendency of the suit, the plaintiff with the permission of the Court, deposited the balance sale consideration, which itself shows the conduct of the plaintiff that she is always ready and willing to perform the contract.



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13. Therefore, the learned trial Judge has rightly decreed the suit which needs no interference by this Court. Hence, this Appeal Suit is dismissed. No costs.

(J.N.B., J.) (R.K.M., J.)
19.09.2024

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To

The Principal District Court, Puducherry.

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