



*S.A.No.271 of 2020*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 04.07.2024**

CORAM

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**S.A.No.271 of 2020**

**and**

**C.M.P.No.7026 of 2020**

A.Sivanesan

.. Appellant

Vs.

Selvam

.. Respondent

**Prayer :** This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree, dated 04.11.2019, passed in A.S.No.34 of 2019 on the file of the learned Principal District Judge at Villupuram modifying the judgment and decree, dated 26.07.2018, passed in O.S.No.169 of 2015 on the file of the learned Principal Subordinate Judge at Villupuram.

For Appellant : Mr.C.Prakasam

For Respondent : Mr.S.Sabarish  
for Mr.S.Kingston Jerold



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**JUDGMENT**

The present Second Appeal arises against the judgment and decree of the Court of the learned Principal District Judge at Villupuram in A.S.No.34 of 2019, dated 04.11.2019, in reversing the judgment and decree of the Court of the learned Principal Subordinate Judge at Villupuram in O.S.No.169 of 2015, dated 26.07.2018.

2. For the sake of convenience, the parties will be referred to as per their rank in the suit.

3. O.S.No.169 of 2015 is a suit for specific performance of an agreement of sale.

4. The case of the plaintiff is that he had approached the defendant requesting the latter to alienate the suit schedule property in his favour for a sum of Rs.8,00,000/-. The defendant had received an advance amount of Rs.5,00,000/- on 14.07.2014, and the time for paying the balance amount of Rs.3,00,000/- was agreed to be 24 months from the date of execution of the sale agreement. The plaintiff pleads that the agreement was signed and duly registered on the same day. He would plead that he is ready and willing to



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convert the sale agreement into a sale deed and as the defendant was evading service, he issued a notice on 27.11.2014. Since no reply was received from the defendant, he filed a suit for specific performance or in the alternative for a refund of the advance amount of Rs.5,47,499/- together with an interest at the rate of 12 % from the date of suit till the date of realization.

5. On service of summons, the defendant entered appearance, and filed a detailed written statement.

6. The defendant would plead that the sale agreement was executed as a security for the Chit amount of Rs.1,50,000/- payable to the plaintiff, and a further sum of Rs.1,50,000/- to one Balamurugan/the cousin of the plaintiff, and another sum of Rs.2,00,000/- received through cheque by the defendant from the plaintiff. In all, he would state that he had received a sum of Rs.5,00,000/- but he would plead that the value of the property is around a sum of Rs.25,00,000/-. He would plead that the plaintiff is a money lender who used to enter into a sale agreement with his borrowers. He would state that he had also executed two promissory notes to the plaintiff which he has



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to return to him.

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7. He would plead that the suit property is the only house property in which the defendant is residing, and he had never intended to alienate the same. The written statement further pleads that the defendant had constructed a basement in the rear end of the house by spending a sum of Rs.7,00,000/-. He would also give an unconditional undertaking that he will pay a sum of Rs.5,00,000/- which he has received as debt from the plaintiff. Apart from that, he would state that on 18.03.2015, he had issued a reply notice which had been suppressed by the plaintiff in his plaint.

8. On the basis of these pleadings, the learned trial Judge framed the following issues :

“ 1) Whether the defendant received Rs.5,00,000/- from the plaintiff as sale advance amount as per the sale agreement and agreed to execute a sale deed in favour of the plaintiff after receiving the balance sale consideration of Rs.3,00,000/- from the plaintiff ?



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2) Whether the plaintiff is entitled to get the relief of return of advance amount as the alternative prayer for a sum of Rs.5,47,499/- ?

3) Whether the plaintiff is entitled to get the relief of permanent injunction ?

4) Is it true that the defendant has not executed any sale agreement in respect of the suit properties in favour of the plaintiff ?

5) Is it true that the defendant is ready to pay the sale advance amount of Rs.5,00,000/- to the plaintiff ?

6) To what other relief ? ”

9. On the side of the plaintiff, the plaintiff examined himself as P.W.1, and the attesting witnesses for the document as P.W.2 and P.W.3. Ex.A1 to Ex.A5 were marked on the side of the plaintiff. The defendant examined himself as D.W.1, and he marked Ex.B1 to Ex.B9. Of these documents, Ex.B1 to Ex.B3 were marked in the cross examination of the plaintiff.

10. On the basis of these pleadings and evidence, the learned trial Judge came to the conclusion that the agreement is true and genuine, and that the plaintiff is entitled to a decree for specific performance as he has



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shown his readiness and willingness.

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11. Aggrieved by the said judgment and decree, a regular appeal was preferred before the learned Principal District Judge at Villupuram.

12. The learned appellate Judge received the appeal as A.S.No.34 of 2019. She came to the conclusion, on the basis of Ex.B1 to Ex.B3, that the plaintiff has a habit of getting agreement of sale registered in his favour as a security for the money transaction he enters into with his borrowers. She would also point out that P.W.2 and P.W.3, who were examined by the plaintiff, had given up the case of the plaintiff, and had specifically stated that they did not know anything about the sale agreement.

13. On the basis of these findings, she came to the conclusion that the suit for specific performance ought to be dismissed but granted a decree for the return of advance amount as prayed for together with an interest at the rate of 9 % from the date of plaint till the date of decree, and thereafter, 6 % for the subsequent period. Against this reversal, the present Second Appeal has been presented before this Court.



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14. This appeal was admitted on the following substantial question of law :

“ Whether the lower appellate Court was right in concluding that Ex.A1 agreement was not intended to be the sale agreement in the absence of any evidence on the part of the defendant to prove the alleged Chit Transaction ? ”

15. Notice was ordered in the appeal and Mr.S.Kingston Jerold has entered appearance on behalf of the respondent.

16. Heard Mr.C.Prakasam, appearing on behalf of the appellant and Mr.S.Sabarish, for Mr.S.Kingston Jerold, appearing on behalf of the respondent.

17. The narration of the aforesaid facts would go to show that the plaintiff had been in a habit of getting sale agreements executed in his favour from the parties with whom he had money transactions. This is clear from



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the deposition that had been made by P.W.1 during his cross examination and the same is extracted here under :

“ 25.01.2016 தேதியில் சுகமார் என்பவருக்கு பணம் செலுத்தியவுடன் அவர் எழுதிக் கொடுத்த கிரய ஒப்பந்தத்தை ரத்து செய்து கொடுத்துள்ளேன் என்றால் சரிதான். விற்கிரய ஒப்பந்த ரத்து பத்திரம் சான்றிட்ட நகல் எக்சிபிட்.பி1 24.12.2014 தேதியில் பரமேஸ்வரி என்பவர் எழுதிக் கொடுத்த கிரய ஒப்பந்தத்தை ரத்து செய்துள்ளேன் என்றால் சரிதான். அந்த ரத்து பத்திர சான்றிட்ட நகல் எக்சிபிட் பி2 13.01.2016 தேதியில் ஆறுமுகம் எழுதிக் கொடுத்த கிரய ஒப்பந்தத்தை ரத்து செய்துள்ளேன். அந்த ரத்து செய்து பதிவு செய்த பத்திரம் சான்றிட்ட நகல் எக்சிபிட்.பி3.”

18. In a suit for specific performance, the plaintiff must not only prove that the agreement had been entered into, but also the existence and nature of the agreement must be proved beyond preponderance of probabilities. The specific case of the defendant is that he had executed the suit sale agreement as a security for the amount received by him. In order to substantiate his case, during the course of cross examination of the plaintiff, he had marked Ex.B1 to Ex.B3.



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19. Ex.B1 is an agreement of sale entered into between the plaintiff and one Sugumar. Ex.B2 is the cancellation of sale agreement entered into between the plaintiff and one Parameswari, and similarly, Ex.B3 is the cancellation of sale agreement entered into between the plaintiff and one Arumugam. These documents were admitted by the plaintiff when he was confronted with these documents during the course of his cross examination. This caused a huge doubt over the case of the plaintiff as to whether Ex.A1 is a true and genuine document.

20. Furthermore, the two witnesses, that the plaintiff had examined on his side, namely P.W.2 and P.W.3 in order to substantiate the sale agreement, have categorically stated that they did not sign in the sale agreement. The plaintiff had not taken any further steps in order to substantiate the same. Nevertheless, the trial Court came to the conclusion that as the plaintiff had deposited the amount on 23.02.2017, that proves the readiness and willingness of the plaintiff. The plaintiff, however, had not produced any evidence in order to substantiate the fact that he had the requisite amount of Rs.3,00,000/- between the period 14.07.2014 and



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13.07.2016.

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21. The fact that he had deposited the amount nine months later than the stipulated time to the credit of the suit does not mean that it points out the readiness and willingness during the period of transaction. Not even his bank account statement had been produced before the Court in order to show that he had sufficient funds to convert the agreement into sale deed during this period of transaction. Even if I were to come to the conclusion that the agreement is true and genuine, in both the Courts, the plaintiff had not proved his readiness and willingness and as well as on account of the finding that the plaintiff had a habit of getting sale agreements as a security for the loans extended by him, I am not in a position to reverse the decree of the learned Principal District Judge.

22. The fact that the defendant had not proved the Chit transaction does not mean that the sale agreement would become true. As a huge shadow has been cast over the nature of agreement, which remains unexplained, I am not in a position to come to the rescue of the plaintiff.



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Therefore, the substantial question of law framed by the appellant is answered accordingly.

23. Taking into consideration that the defendants had agreed to refund the advance amount of Rs.5,47,499/-, I am inclined to create a charge over the property till the amount is repaid to the plaintiff.

24. In fine, the judgment and decree of the learned Principal District Judge at Villupuram in A.S.No.34 of 2019, dated 04.11.2019, denying the decree for specific performance stands confirmed. There shall be a decree for return of advance amount of Rs.5,47,499/- together with an interest at the rate of 9 % from the date of plaint till the date of decree and 6 % thereafter.

25. There shall be a charge over the suit schedule mentioned property. In case, the defendant does not pay the amount mentioned in the previous paragraph, it is open to the plaintiff to enforce the charge by way of execution. From the judgment of the trial Court, it is clear that the plaintiff had deposited a sum of Rs.3,00,000/- to the credit of the suit. Therefore, the



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plaintiff will be entitled to take back the said amount on filing of an appropriate application for taking the payment out. On filing of such application, the defendant shall report that he has no objection to the same.

26. Accordingly, the Second Appeal stands dismissed. The connected Civil Miscellaneous Petition is closed.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

**V. LAKSHMINARAYANAN, J.**

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To

1.The learned Principal District Judge,  
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2.The learned Principal Subordinate Judge,  
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