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S.A.No.33 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 08.02.2024	Judgment Pronounced on .2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.33 of 2018
and C.M.P.No.504 of 2018

1.T.S.Subbaian
2.S.Gopal

.. Appellants

Vs.

T.R.Vasudevan

..Respondent

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 15.03.2017 passed in A.S.No.63 of 2014 on the file of the Principal District Judge, Coimbatore, confirming the judgment and decree dated 27.03.2013 made in O.S.No.25 of 2011 on the file of the II Additional Subordinate Judge, Coimbatore.

For Appellants : Mr.K.Myilsamy

For Respondent : Mr.S.Kadarkarai



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JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 15.03.2017, passed in A.S.No.63 of 2014 on the file of the Principal District Judge, Coimbatore, confirming the judgment and decree dated 27.03.2013, made in O.S.No.25 of 2011, on the file of the II Additional Subordinate Judge, Coimbatore.

2.The defendants who suffered a decree for money, arising under a Sale Agreement, are the appellants herein.

3.The parties are described as per their litigating status before the Trial Court.

4.The material facts that are necessary for deciding the above Second Appeal are as hereunder:

(a) The plaintiff sought for refund of advance of Rs.1,68,905/- together with interest at 18% per annum from the defendants, out of the execution of the sale agreement. The plaintiff's case was that, he had entered



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into an agreement on 26.12.2007, with the defendants, to purchase the property for total sale consideration of Rs.9,60,000/- and that on the date of execution of sale agreement, he had paid a sum of Rs. of Rs.50,000/- as advance. Three months time was mutually fixed by the parties, for enabling the plaintiff to pay the balance sale consideration and for the said Sale Deed to be executed in his name at his expense.

(b) According to the plaintiff, on 28.12.2007, he paid a further advance of Rs.50,000/- and again, Rs.10,000/-, which have also been acknowledged by the defendants on the reverse side of the stamp paper of the sale agreement. According to the plaintiff, though he was always ready and willing to perform the terms of the sale agreement, the defendant kept postponing the execution of the Sale Deed. The plaintiff executed a Lawyer's notice on 25.11.2009, calling upon the defendants and the daughter of the 1st defendant to come forward to receive the balance sale consideration and execute a Sale Deed in his favour. The defendants sent a reply notice denying the sale agreement dated 11.12.2009 and claiming that the transaction was only a money transaction.



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(c) Further, the 1st defendant also instigated his sisters to issue a legal notice on 26.04.2010, as if they had share in the property. According to the plaintiff, the notice was issued only to defeat the valuable rights of the defendants under the sale agreement. However, in view of the cloud on title, the plaintiff opted to seek for merely refund of the advance amount and therefore, filed the suit for recovery of money for a sum of Rs.1,68,905/-, together with interest (Rs.1,10,000/- advance paid by him on various dates together with interest).

5.The 2nd defendant filed a written statement and the same was adopted by the 1st defendant. According to the 2nd defendant, there was no sale agreement entered into as claimed by the plaintiff and according to the defendants, they only borrowed a sum of Rs.1,00,000/- from the plaintiff, agreeing to repay the same, together with interest at 12% per annum and at the time of borrowal of the said amount, the plaintiff had obtained signatures of the defendants in blank papers and also the original documents of the title relating to the suit property. According to the defendants, they had repaid the entire loan amount together with interest at 12% even in January 2010 i.e., after the said reply notice sent by the defendants to the plaintiff's counsel. The suit was therefore sought to be dismissed.



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6.The Trial Court decreed the suit as prayed for, as against which, the defendants preferred an appeal in A.S.No.63 of 2014. The First Appellate Court dismissed the appeal, confirming the judgment and decree of the Trial Court. Aggrieved by the concurrent findings, the defendants filed the above Second Appeal.

7.The above Second Appeal was admitted on 18.01.2018 on the following three substantial questions of law:

a) Is not the First Appellate Court wrong in decreeing the suit by holding that the Trial Court correctly identified the genuinity of suit sale agreement despite the Trial Court has pointed several inherent discrepancies in the agreement and also raised misgivings with respect to the nature of the transaction alleged in the agreement?

b) Whether the Appellate Court is correct in placing the burden of proof on the shoulder of the defendant when the circumstance under which the suit sale agreement Ex.A1 came to be executed itself is doubted by the Trial Court on the basis of material evidence.



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c) Is not the Appellate Court wrong in exercising the discretionary relief for refund of the alleged advance amount when the plaintiff is guilty of suppression of material facts?

8.I have heard Mr.K.Myilsamy, learned counsel for the appellants and Mr.S.Kadarkarai, learned counsel for the respondent and I have perused the entire materials placed before me.

9.The learned counsel for the appellants would place reliance on the decisions of this Court in *V.P.Murugesan Vs. P.Shiek Mideen* reported in **2015 (6) CTC 810** and also the decision of this Court in *T.P.Kandasamy and Others Vs. Vemba Gounder and Another* passed in **S.A.Nos.209 & 210 of 2011** and he would also place reliance on the decision of this Court in *S.K.Ramasamy and Another Vs. S.S.Chellakutti* reported in **(2016) 4 MLJ 17**.

10.Mr.K.Myilsamy, learned counsel for the appellants would primarily contend that when the plaintiff has not been able to establish the truth and genuineness of Ex.A1, Sale Agreement, he could not be entitled to a decree



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for refund of money paid under the disputed sale agreement. According to the learned counsel for the appellants, the burden was only on the plaintiff to establish the factum of a valid and executable agreement of sale between the plaintiff and the defendants. The learned counsel for the appellant, apart from relying on the ratio laid down in the above cases, would contend that the First Appellate Court had wrongly placed the burden of proof on the defendants' shoulders, when the plaintiff had miserably failed to establish the truth and genuineness of Ex.A1, Sale Agreement and he would therefore pray for the Second Appeal being allowed.

11.Per contra, Mr.S.Kadarkarai, learned counsel for the respondent would submit that the Courts below have held the agreement of sale to be genuine and mere pointing out discrepancies in some of the terms of the agreement would not diminish the value of the agreement between the parties and the factum of the advance amounts paid by the plaintiff to the defendants. The learned counsel for the respondent would further submit that when the defendants had taken a plea that they have repaid the loan, that too with interest, after exchange of legal notices, certainly the defendants had to establish such payment and their failure has been rightly taken note of by the Courts below in proceeding to decree the suit for refund of advance.



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12.The learned counsel for the respondent also placed reliance on the decision of this Court in ***Chilambuselve Vs. M/s.G.P.R.Power Solution (P) Ltd., Through Managing Director S.Gnaneswari and Director Regunathan, Chennai – 95***, passed in ***A.S.(MD).No.85 of 2022***. The learned counsel for the plaintiff therefore prayed for the Second Appeal being dismissed.

13.I have paid my cautious and careful consideration to the submissions advanced by the learned counsel on either side and I have also noticed the principles laid down by this Court in the various decisions on which reliance is placed on by the learned counsel on either side.

14.The agreement of sale in Ex.A1 is disputed by the defendants. It is their case that they only borrowed a sum of Rs.1,00,000/- and they never received Rs.1,10,000/- from the plaintiff, towards advance for the sale of the property. The main contention of the learned counsel for the appellants is that the cause of action pleaded in the plaint was purely based on refund of advance and therefore, the Courts below ought not to have proceeded to



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decreed the suit, when the appellants had clearly established that the said Ex.A1, Sale Agreement was not a sale agreement but only created by the plaintiff, by using blank signed papers given by the defendants, at the time of borrowal of Rs.1,00,000/- from the plaintiff.

15.The learned counsel for the appellants has placed heavy reliance on the decision rendered in ***V.P.Murugesan's*** case, referred herein supra. In the said decision, this Court has held that when the defendants had raised the plea that the said sale agreement is only a loan transaction, then the oral evidence can be adduced to prove that the sale agreement was manipulated and not intended to be acted upon and that there was no *consensus ad idem*. In the said case, this Court held that when the Court had found that the transaction was a loan transaction and not an agreement of sale, refund of advance cannot be ordered in the same suit and that, separate proceedings have to be initiated.

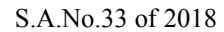
16.Per contra, learned counsel for the respondent has placed reliance on the decision of this Court in ***Chilambuselvi's*** case referred herein supra and in the said case, this Court has held that the suit for specific performance



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was dismissed on technical grounds and when the defendant had admitted the borrowal of a sum of Rs.5,00,000/- from the plaintiff, the judgment and decree passed by the Courts, directing refund of payment of advance was not unjustified or improper, as the Court had powers to mould relief on given set of facts.

17. Admittedly, in the present case, the respondent never filed a suit for specific performance and his stated case is only for refund of advance amount. The defendants have denied the agreement of sale. However, they have admitted the fact that they have borrowed a sum of Rs.1,00,000/- alone and not Rs.1,10,000/-. It is their further case that they have repaid the entire amount of Rs.1,00,000/- together with interest. Strangely, the defendants claimed to have repaid the said amount, subsequent to the exchange of notices through Lawyers. Such a version put forth by the defendants cannot be accepted, since at that time, the defendants had the able assistance of a lawyer and to casually state that the entire amount was settled and they do not have receipt for the said amount is totally unbelievable and is nothing but a figment of the defendants' imagination to plead discharge of the amount due and payable to the plaintiffs. Therefore, the defendants, having admitted



18. It is seen from Ex.A1, Sale Agreement, that the defendants have made endorsements on the reverse side of the stamp paper page. It is seen from the endorsements that both the defendants 1 and 2 have acknowledged receipt of a sum of Rs.50,000/- on 28.12.2007 and also further sum of Rs.10,000/-, which has been acknowledged by the 1st defendant. Thus, apart from Rs.50,000/-, acknowledgement under Ex.A1, Sale Agreement, the defendants have additionally admitted the receipt of a sum of Rs.60,000/-, in all Rs.1,10,000/-. Thus, the claim of the defendants that they borrowed a sum of Rs.1,00,000/- only and that the same has also been repaid is factually incorrect. The Courts below have rightly held that the plaintiff is entitled to refund of a sum of Rs.1,10,000/-, together with interest. I do not see any ground for interference, under Section 100 of Code of Civil Procedure. The substantial question of law is answered against the appellant.



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19.In fine, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

1. The Principal District Judge, Coimbatore
- 2.The II Additional Subordinate Judge, Coimbatore.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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P.B.BALAJI, J.

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Pre-delivery judgment made in

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