



C.S.No.392 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 03.07.2024	Judgment Pronounced on 12.07.2024
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CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

C.S.No.392 of 2015

Subhash Chand Jain

.. Plaintiff

/versus/

S.Chukki Bai

.. Defendant

Prayer: This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules r/w Order VII Rule 1 of the Code of Civil Procedure, prayed for a judgment and decree against the Defendant:-

I. For specific performance of the registered sale agreement No.1837 of 2012 dated 22.08.2012, in the office of the Sub Registrar, Ashok Nagar entered into between the plaintiff and defendant in respect of the suit property directing the defendant to execute and registered a sale added in favour of the plaintiff in respect of the suit property on a date to be fixed by this Court, and in default, directing the Assistant Registrar, Original Side of this Court to execute and register the Deed of Sale in respect of the suit



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property in favour of the plaintiff, and consequently directing the defendant to deliver the vacant physical possession of the suit property to the plaintiff; and

II. Awarding cost of the suit.

OR

In the alternative relief:

I. Directing the defendant to return the advance amount of Rs.1,50,000/- (Rupees One Crore Fifty Lakhs only) received by him from the plaintiff along with interest at the rate of 24% per annum from the date of plaint till the amount is realised in full;

II. Directing the defendant to pay damages that may be quantified by this Court toward compensation to the plaintiff; and

III. Awarding cost of the suit.

For Plaintiff : Mr.Shangar Murali
for Mr.M.V.Seshachari

For Defendant : Mr.R.Parthasarathy
Senior Counsel
for Mr.Rahul Balaji

JUDGMENT

The suit has been filed seeking relief of specific performance or in the alternative relief of refund of advance amount.



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2.The plaint in brief:

(i). The plaintiff entered into a registered agreement of sale with the defendant on 22.08.2012, bearing Registration No.1837 of 2012 for purchase of the suit property. The sale consideration was arrived at Rs.1,75,00,000/- and the defendant and her son, in order to clear pending loans and also mortgage on the property, requested the plaintiff for releasing Rs.1,50,00,000/- as advance. They also sought for two years time to vacate and hand over the possession of the property, citing the reason that such a long period would be required for them to recover the debts due from customers of the defendant's son and also find a suitable residential house for themselves. The plaintiff accepted for the demands of the defendant since the defendant's son was known to the plaintiff for more than 15 years.

(ii).In pursuance of the negotiations, the plaintiff issued three cheques; (i) Rs.25,00,000/- dated 20.06.2012 (ii) Rs.10,00,000/- dated 16.08.2012 and (iii) Rs.1,15,00,000/- dated 21.08.2012. According to the plaintiff, the said monies were advanced to enable the defendant to redeem the mortgage, which was also redeemed on 16.08.2012. Thereafter, the suit agreement was entered into and only a sum of Rs.25,00,000/- remained to be



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paid out of the total sale consideration.

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(iii).The plaintiff further states that in view of the substantial advance amounts paid by the plaintiff, the defendant handed over the original documents of title besides also executed a registered Power of Attorney in favour of the plaintiff's son on 24.08.2012. While things stood there, the defendant issued a letter on 16.12.2013, informing the plaintiff that the Power of Attorney executed by her in favour of the plaintiff's son was cancelled on 06.12.2003 and further claiming that the transaction was only a loan transaction and not a sale transaction. However, the defendant admitted the receipt of Rs.1,50,00,000/-. The plaintiff replied to the said registered letter issued by the defendant on 16.03.2014 along with a cheque dated 16.03.2014 for a sum of Rs.25,00,000/-, being the balance sale consideration. As there was no reply to the said notice, the plaintiff instituted the suit, expressing readiness and willingness.

3.The written statement of the defendant in brief:

The plaintiff is known to the family of the defendant and in order to tide over emergency financial need, the defendant borrowed a sum of Rs.1,50,00,000/- from the plaintiff. The Sale Agreement was executed since



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the loan amount was huge. The execution of the Power of Attorney is also admitted. According to the defendant, the defendant was paying interest up to October 2013 and could not pay interest thereafter. The plaintiff started threatening the defendant and hence, the defendant was forced to cancel the Power of Attorney dated 06.12.2013 and intimated the same to the plaintiff vide a letter dated 16.12.2013, wherein the defendant expressed her willingness to repay the loan amount of Rs.1,50,00,000/-. The defendant also caused a paper publication on 18.12.2013, informing the public that the Power of Attorney executed in favour of the plaintiff's son had been cancelled since the suit transaction was only a loan transaction and not a sale transaction. The defendant prayed for dismissal of the suit.

4. Based on the above pleadings, this Court, on 20.09.2019, framed the following seven issues:

“1. Whether the plaintiff is entitled to seek specific performance of the registered agreement for sale dated 22.08.2012?

2. Whether the plaintiff is entitled to seek an



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alternative relief praying for return of advance amount of Rs.1,50,00,000/-?

3.Whether the plaintiff is entitled to claim a refund with interest at the rate of 24% per annum?

4.Whether the defendant received the sum of Rs.1,50,00,000/- as an advance towards Agreement for sale or as a secured loan?

5.Whether the defendant is entitled to plead the suit transaction as a loan transaction in view of the bar under Section 92 of the Evidence Act?

6.Whether the Plaintiff is entitled to the cost of the suit?

7.Whether the plaintiff is entitled to any other relief?”

5.The plaintiff examined himself as P.W.1 and through him, Ex.P1 to Ex.P18 were marked and the power agent, son of the defendant was examined himself as D.W.1 and Ex.D1 to Ex.D4 were marked.

6.I have heard Mr.Shangar Murali, learned counsel for Mr.M.V.Seshachari learned counsel for the plaintiff and Mr.R.Parthasarathy, learned Senior Counse for the defendant.



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7.The learned counsel for the plaintiff would submit that the suit sale agreement is a registered sale agreement, the execution of which is not denied by the defendant. He would further contend that the defendant has admitted the receipt of the entire consideration of Rs.1,50,00,000/- and once the execution of the agreement, that too, a registered instrument is admitted, it is not open to the defendant to plead anything to the contrary. He would therefore submit that the terms of the sale agreement would be binding on the defendant. He would further submit that the defendant has not even pleaded in the written statement that the sale agreement was intended to be acted upon and that it was only a loan transaction. He would also submit that the plaintiff has not only pleaded readiness and willingness but also established the same in terms of Section 16(c) of the Specific Relief Act and would contend that reading Section 16(c) along with Section 20 of the Specific Relief Act, the plaintiff is entitled to the discretionary relief of specific performance.

8.The learned counsel for the plaintiff would further submit that when the plaintiff had sent the reply notice on 16.03.2014, the defendant did not even come forward to reply to the same, especially, when the plaintiff had



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also tendered the entire balance sale consideration along with the said communication dated 16.03.2014. He would also submit that though in the written statement the defendant states that interest was paid up to 2013, in the evidence, the defendant's son, who was examined as D.W.1, has tendered evidence that a sum of Rs.50,00,000/- has been paid in all and there is absolutely no proof to substantiate such payments and also as to whether such payment were towards principal or interest.

9.The learned counsel for the plaintiff would take me through the written statement and submit that there is no specific denial regarding readiness and willingness of the plaintiff and there is also no plea regarding the valuation of the property. He would also submit that no Engineer has been examined and the defendant cannot take inconsistent pleas, especially having not pleaded anything about the lack of readiness and willingness on the part of the plaintiff. He would also take me through the issues framed by this Court, where also there is no issue framed regarding readiness and willingness. He would further submit that the defendant has avoided the witness box and only the defendant's son has been examined and benefit of Section 120 of the Indian Evidence Act cannot be extended to the son of the



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defendant.

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10. With regard to Section 92 of the Indian Evidence Act, the learned counsel for the plaintiff would submit that being a registered agreement of sale, presumption should be drawn only in favour of the contract, unless there are specific pleadings as mandated under Order VI Rule 4 of the Code of Civil Procedure. According to the learned counsel for the plaintiff, the defendant has miserably failed to prove the actual intention of entering into the sale agreement and he would also take me through the evidence of D.W.1, where it is seen that D.W.1 has no grievance against the plaintiff.

11. Regarding readiness and willingness, the learned counsel for the plaintiff relied on the following decisions:

1. Motilal Jain Vs. Smt. Ramdasi Devi and Others
(AIR 2000 SC 2408).

2. Arikala Narasa Reddy Vs. Venkataram Reddy
Reddygiri and Another (2014 (5) SCC 312).

3. M. Venkataramana Hebbar (D) by L.Rs Vs.



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M.Rajagopal Hebbar & Others (2007 (6) SCC 401).

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In all the decisions, the Hon'ble Supreme Court has held that when there is no plea regarding readiness and willingness, no issue can be framed and no evidence can be let in.

12.Regarding Section 20 of the Specific Relief Act, regarding discretionary power of the Court under Section 20, he would rely on the decision of the Hon'ble Supreme Court in ***Prakash Chandra Vs. Narayan*** reported in ***2013 (3) SCC 204***, where the Hon'ble Supreme Court held that in a suit for specific performance, hardships would be a good defence only when the defendant pleads the same and also leads evidence in support of such defence.

13.In this regard, the learned counsel for the plaintiff would contend that though Ex.D1, valuation report has been filed to show the market value of the property as Rs.5,25,00,000/-, the learned counsel would submit author of the said report has not been examined to corroborate the document and even otherwise there is no pleading in the written statement regarding the said market value being much higher than the sale



consideration reflected in the agreement of sale. In this regard, he would further rely on the decision this Court in ***R.Sumathi and Others Vs. S.Ramuvel @ Mohamed Abdur Rahim and Others*** reported in **2023 (2) LW 905**, where this Court held that no amount of evidence can be considered in the absence of a foundation in the pleadings.

14.In support of the argument on Section 92 of the Indian Evidence Act, the learned counsel for the plaintiff would rely on the following decisions:

1.2013 (3) CTC 746 (Nanjappa Gounder and Another Vs. Ashok Kumar).

2.2014 (1) CTC 165 (M.Sekar Vs. P.Madeswaran).

3.2009 (4) LW 674 (Mannarsamy Naicker and Another Vs. Nagammal and Others).

4.2003 (6) SCC 595 (Roop Kumar Vs. Mohan Thedani).

5.AIR 2007 SC 2191 (Kamakshi Builders Vs. M/s.Ambedkar Educational Society and Others).

6. AIR 1982 SC 20 (Smt.Gangabai Vs. Chhabubai).



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7.2007 (10) SCC 231 (P.S.Ranakrishna Reddy

Vs. M.K.Bhagyalakshmi and Another).

8.2017 (1) MWN Civil 489 (R.Jothi Vs.

N.Neelavathi).

9.2023 (4) CTC 670 (SC) (Damodhar Narayan

Sawale Vs. Shri Tejrao Bajirao Mhaske and Others).

15.Per contra, Mr.Rahul Balaji, learned counsel for the defendant would submit that the parties were known to each other for the past about 15 years and in fact, it is admitted even by the plaintiff that the plaintiff and the defendant's son who was examined as D.W.1 were very close and they were well acquainted to each other and both their wives were from the same village. He would also submit that the poor financial condition of the defendant was also admitted by the plaintiff and from and out of the payments made by the plaintiff, substantial monies went only to clearing debts and also mortgage over the property. He would take me through the discharge receipt dated 16.08.2012 to evidence the fact that soon after the discharge and redemption of the property, the agreement of sale was registered on 22.08.2012. Even the Power of Attorney was two days only subsequent to the said agreement of sale and further, he would invite my



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attention to specific clauses in the registered agreement of sale which clearly indicate that it was not a normal sale agreement between a willing seller and the willing purchaser.

16. According to the learned counsel for the defendant, the terms of the sale agreement were very unusual since the substantial sale consideration of Rs.1,50,00,000/- had been paid as against Rs.1,75,00,000/- and for the payment of the balance of Rs.25,00,000/- alone, a two year period was contemplated. He would also state that there was no clauses for execution of the sale deed, that is time fixing the outer limit for completion of the transaction. He would further submit that it was the defendant who sent first communication on 16.12.2013 and even thereafter, the plaintiff has not been diligent in approaching the Court since his reply itself was three months later on 16.03.2014 and the suit came to be instituted much later on 27.04.2015 only.

17. The learned counsel would also submit that the plaintiff has miserably failed to prove readiness and willingness and in respect of the balance sale consideration of Rs.25,00,000/- also there is absolutely no



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evidence brought on record by the plaintiff and to specific questions put to him, he has clearly been evasive by saying that if the Court requires him to produce necessary documents to show availability of funds and also income tax receipts, he would do so. He would further submit that the conduct of the plaintiff is material in a suit for specific performance and same coupled with the unusual terms of the sale agreement would clearly establish that the suit transaction was only a loan transaction and not an intended sale agreement. He would therefore pray for dismissal of the suit.

18.Insofar as the alternative prayer is concerned, the learned counsel for the defendant would submit that as per the oral evidence of D.W.1, a sum of Rs.50,00,000/- have already been paid to the plaintiff and in any event, refund of the amounts can only be at a reasonable rate which is entirely at the discretion of the Court, for which he is agreeable.

19.In reply, the learned counsel for the plaintiff would submit that there is not even a pleading in the written statement that the plaintiff is a moneylender and regarding readiness and willingness, as already contended, he would submit that such a plea cannot be raised or argued by the defendant



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who was failed to plead about the absence of readiness and willingness on the part of the plaintiff. He would further take me through the written statement to substantiate his contention that the Power of Attorney was executed on 24.08.2012 and the same came to be cancelled only on 09.12.2013, close to 16 months after the date of execution and registration of the Power of Attorney and if really, the plaintiff had intended to knock away property of the defendant, nothing prevented the plaintiff from using the Power of Attorney and execute a Sale Deed. He would therefore contend that the entire transaction was based on trust and confidence, the parties had in each other and therefore, there is nothing much that the defendant can make out from the conduct of the plaintiff. Regarding the amount of Rs.50,00,000/- alleged to have been repaid, the learned counsel for the plaintiff would submit that absolutely no evidence is produced on the side of the defendant to establish any payment, much less the huge sum of Rs.50,00,000/- and in any event, he would submit that the evidence of D.W.1 runs contrary to the pleading in the written statement. He would therefore pray for the suit being decreed for specific performance as the plaintiff has complied with the mandate of Section 16(c) r/w Section 20 of the Specific Relief Act.

20.Issues 1, 4 and 5:



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These issues being intertwined, the same are taken up together.

The defendant does not deny the agreement of sale and the factum of its registration. It is his specific case that the agreement of sale was only a security for the loan transaction of Rs.1,50,00,000/-, that is the amount borrowed by the defendant from the plaintiff. Equally, the defendant also admits receipt of Rs.1,50,00,000/- and therefore, in view of the said admitted position between the parties, I take up the issue of Section 92 of the Indian Evidence Act first.

21. Even though, Mr. Shangarmurali, learned counsel for the plaintiff would vehemently contend that the defendant has not specifically pleaded that the suit sale agreement is not an intended sale agreement but only a loan transaction, I find from reading of the entire written statement as a whole that the specific defence raised to the suit for specific performance is that the plaintiff has sought to convert a loan transaction into an agreement of sale and thereby a fraudulent claim has been made against the defendant. Pleadings to this effect are available in paragraph No.4 of the written statement; last line of paragraph No.9 of the written statement; paragraph Nos.12 and 19. Therefore, I am unable to countenance the argument of the



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learned counsel for the plaintiff that the defendant has not specifically pleaded that the suit sale agreement was not intended to be acted upon as a sale agreement. Even though the defendant has not expressed in a specific manner, reading the written statement as a whole, it would clearly give an indication that the specific case of the defendant is that the suit sale agreement was entered into only as a security for loan transaction of Rs.1,50,00,000/-.

22.Coming to Section 92 of the Indian Evidence Act, the learned counsel for the plaintiff has relied on several decisions, all are which state that no oral evidence can be let in to contradict written and registered documents. However, the law is equally well settled that a person contesting the document can always claim it to be a sham and nominal document and was executed for a different purpose. Of course, the onus if such proof is on the party who speaks against the document. Here, admittedly, the defendant admits to the execution and registration of the suit sale agreement, Ex.P14 dated 22.08.2012. Now, it has to be tested whether the defendant has been successful in discharging the onus of proof on her to establish that the agreement of sale was only a sham and nominal document, in order to secure



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the loan transaction of Rs.1,50,00,000/-. In this regard, the agreement of sale in Ex.P14 assumes significance.

23.The parties have, under the said agreement, mentioned that the total sale consideration is Rs.1,75,00,000/-, out of which, payments to the tune of Rs.1,50,00,000/- are recorded. It is to be noted that the first payment of Rs.25,00,000/- is on 20.06.2012 well before the execution of the agreement of sale itself. Similarly, the second payment of Rs.10,00,000/- is on 16.08.2012, which is also prior to the agreement of sale. Even the third instalment of Rs.1,15,00,000/- is by a cheque dated 21.08.2012, one day prior to the registered agreement of sale. The parties at clause – 4 have agreed as follows:

“The balance sale consideration of Rs.25,00,000/- will be paid at the time of handing over the vacant possession of the schedule i.e., within 24 months from the date of signing of the agreement”.

24. Curiously, there is no clause which confirms the handing over of the original document of title by the defendant to the plaintiff. However, even in the plaint, the plaintiff admits that the original document of title have been handed over by the defendant to the plaintiff. Equally, there is no clause



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stipulating any time period for completion of the sale transaction, which is one of the important limbs of any sale agreement. The parties contracting for a sale of an immovable property would certainly fix an outer limit for completion of the sale transaction which culminates with execution and registration of the sale deed in favour of the agreement holder. Here, excepting for a statement that the possession will be handed over to the defendant within 24 months from the date of signing the agreement, I do not find any clause fixing time limit for execution and registration of the sale deed.

25. Admittedly, the possession of the property has not been handed over and two years time is agreed upon, for which the explanation offered by the plaintiff is that the defendant's son was doing business and he was suffering heavy losses and he had to recover monies due to him and also to find an alternate accommodation. The Power of Attorney executed within a period of two days does not also mention about the agreement of sale in favour of the plaintiff and in fact, on the contrary, gives an absolute and unbridled power to the plaintiff's son, S.Ameet Kumar to deal with the suit property.



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26.I find from Ex.P16 that it is the first communication after the execution of the sale agreement and the Power of Attorney, that too emanating from the defendant. In and by said letter, the defendant has stated that her son approached the plaintiff seeking a loan of Rs.1,50,00,000/- for his business purposes and the same was agreed to be repaid together with interest at 24% per annum and as a security for the said loan and for such limited purposes, the suit sale agreement in Ex.P14 was entered into between herself and the plaintiff fixing the sale consideration at Rs.1,75,00,000/-. The said communication also states that a sum of Rs.50,00,000/- has been paid towards interest up to October 2013 and from November 2013 onwards, the defendant's son was not able to pay any interest because of reasons beyond his control and adverse market conditions. The letter also further goes on to state that taking advantage of the default committed by the defendant's son, the plaintiff has been threatening the defendant's son with dire consequences and that steps would be taken to register the sale deed in terms of the suit sale agreement.

27.It is also specifically stated that the property is worth four times more than the loan availed by the defendant's son and the defendant has also



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expressed readiness and willingness to repay the loan amount within two years. She has ultimately terminated the agreement of sale dated 22.08.2012 and also informed the plaintiff that the Power of Attorney has been revoked on 09.12.2013 in Doc.No.3039 of 2013.

28.The above registered notice sent by the plaintiff has been admittedly received by the defendant. However, surprisingly, the defendant does not even choose to reply to the said notice up to 16.03.2014. In the said reply dated 16.03.2014, the plaintiff has contended that the transaction was only an agreement of sale and the plaintiff has always been ready and willing and to show his bonafide, he also enclosed a cheque for Rs.25,00,000/- dated 16.03.2014 favouring the defendant. He has denied the claim of the defendant that the transaction is a loan transaction and he has also denied receipt of any interest from the defendant. Further, the plaintiff has stated that he is ready and willing to pay the balance sale consideration within a week and have the sale deed executed, failing compliance of which, the plaintiff would be constrained to move the Court of law. The said reply was also admittedly received by the defendant on 17.03.2014. However, the defendant did not choose to send any reply to the said notice.



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29. In such circumstances, assessing the conduct of the plaintiff putting the plaintiff in the shoes of a prudent and reasonable purchaser, the normal conduct of the plaintiff would have been to rush to Court. Even, vide Ex.P16, the defendant has brought to the notice of the plaintiff that the sale agreement is terminated and the Power of Attorney in favour of the plaintiff's son has also been cancelled. When the defendant has parted with Rs.1,50,00,000/-, which is not a small sum by any means, if really, the transaction was a sale transaction, the normal course of conduct that the plaintiff would have adopted would have been to at least reply to the said notice immediately or straightaway approach the Court of law seeking the relief of specific performance.

30. The plaintiff has taken his own sweep time to reply to the said registered letter dated 16.12.2013 in Ex.P16 and only on 16.03.2014 by Ex.P17, the plaintiff chooses to deny the claims made by the defendant in Ex.P16. One further relevant circumstance is that, having stated in Ex.P17 that if the balance sale consideration is not received within a week, the plaintiff would be constrained to move the Court of law, and when the



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defendant despite receipt of the said reply, did not take any action, even then the plaintiff did not choose to institute the suit for specific performance. The plaintiff has waited for more than a year thereafter and only on 27.04.2015, 13 months after Ex.P17, the suit has been instituted. Therefore, the delay on the part of the plaintiff cannot be brushed aside and it assumes great significance in the context of the matter, especially when the defence pleaded is that the transaction was only a loan transaction. Further, as rightly contended by the learned counsel for the defendant, the terms of the agreement of sale are also quite unusual.

31.First and foremost, the agreement is silent about any outer limit fixed. Secondly, having parted with Rs.1,50,00,000/- no prudent purchaser would seek for two years time for payment of less than approximately 10% of the total sale consideration i.e., Rs.25,00,000/-, especially when the plaintiff/agreement holder was not even put in possession of the suit property.

32.No doubt, there is no plea with regard to readiness and willingness of the plaintiff with regard to the payment of the balance sale consideration. This issue certainly cannot be agitated by the defendant who



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has chosen not to plead any lack of readiness and willingness on the part of the plaintiff. However, it does not preclude the defendant from establishing from the available pleadings and evidence that the transaction was only a loan transaction and not a sale transaction as worded. In this regard, the learned counsel for the plaintiff would vehemently contend that the defendant has avoided the witness box and therefore, adverse inference should be drawn against the defendant.

33. Admittedly, the plaintiff and the defendant's son are closely acquainted with each other and it has come out in an evidence that it was only the defendant's son, who was dealing with the plaintiff throughout and he was personally acquainted with the facts and therefore, I do not see it as a negative factor to be put against the defendant in order to draw adverse inference for not entering the witness box. Equally, I do not find Sections 91 and 92 coming in the way of the defence raised by the defendant. The defendant is well within her right to establish that the document executed was a sale agreement and not intended to be acted upon as a sale agreement but was only a security for loan transaction. As already discussed, the abnormal and unusual terms of the sale agreement and the conduct of the plaintiff,



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especially, the lethargy shown by the plaintiff clearly establish that the suit sale transaction could not have been intended to be a sale agreement.

34.Though Mr.Shangar Murali, learned counsel rightly contended that the plea of readiness and willingness, in the absence of any pleading to the contra by the defendant, ought to be accepted in the light of the available pleadings and evidence and where the defendant has not shown any acceptable material regarding hardships thereby compelling the Court to exercise its discretion in favour of the plaintiff, I find that in a suit for specific performance, the relief is a personal bar to the plaintiff. Therefore, the paramount consideration should be the conduct of the plaintiff in a suit for specific performance more than the conduct of the defendant. In the case of ***R.Sadasivam and Others Vs. K.Subramanian and Others***, I had an occasion to be part of the Division Bench of this Court, where relying on the decision of the Hon'ble Supreme Court in ***Man Kaur Vs. Arthar Singh Sangha*** reported in ***2010 (6) CTC 652 : 2010(10) SCC 512***, we held that even in the absence of any evidence adduced by the defendant, the plaintiff ought to have necessarily established readiness and willingness and his conduct should be blemishless throughout before the Court can exercise its discretion in favour



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of the plaintiff. Section 16 of the Specific Performance Act runs as follows:

“Specific performance of a contract cannot be enforced in favour of a person;-

a) Who has obtained substituted performance of contract under Section 20; or

b) Who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

c) Who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

Explanation. -- For the purpose of clause (c),--

(i) Where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court;

(ii) The plaintiff must prove performance of, or readiness and willingness to perform, the contract



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according to its true construction.”

35. Here, even though there is no pleading with regard to readiness and willingness, while deciding the entitlement of the plaintiff to the relief of specific performance which is a discretionary relief, the manner in which the plaintiff has acted right from the date of execution of the sale agreement till the final disposal of the suit assumes great significance. I have already discussed the conduct with regard to the lethargy shown throughout by the plaintiff, viz., belated reply to the notice intimating the plaintiff about the cancellation of the Power of Attorney and termination of the agreement of sale and even then thereafter delay of 13 months in instituting the suit. The only reason assigned by the plaintiff for the delay is at paragraph No.9 of the plaint and the same is extracted hereunder for easy reference.

“9. The plaintiff respectfully submits that on receipt of the defendant's registered letter dated 16.12.2013 he approached the defendant and her son, Mr. Padam Chand Jain and enquired about the reason for sending the said letter. It was informed by them that the said letter was issued at the behest of one of the creditor of the defendant's son who wanted to purchase the suit



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property after adjusting the loan amount due to him from the defendant's son. However, both the defendant and her son agreed to resolve their dispute with the said creditor and promised to execute a registered sale deed as agreed by the defendant. But days alone rolled on the defendant had not come forward to perform her contract has agreed. Therefore the plaintiff was constrained to issue his lawyer's reply dated 16.03.2014 to the defendant expressing his readiness and willingness to purchase the suit property by enclosing a cheque bearing No.001131 dated 16.03.2014 for Rs.25,00,000/- (Rupees Twenty Five Lakhs only) drawn on City Union Bank Limited, Mount Road Branch, Chennai – 600 006 in favour of the defendant. The defendant received the said reply as well as the said cheque but no rejoinder was elicited so far. It is also learned that the defendant has not realised the amount mentioned in the cheque No.001131 dated 16.03.2014 issued in her favour for Rs.25,00,000/- (Rupees Twenty Five Lakhs only).”

36.Though in the plaint, the plaintiff attempts to cover up the delay by stating that the defendant and her son approached the plaintiff and promised to resolve the dispute and also execute a registered sale deed in favour of the plaintiff and because the defendant did not thereafter come



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forward, the plaintiff was constrained to issue a reply notice dated 16.03.2024. However, on perusal of Ex.P17, dated 16.03.2014, I do not find the said reason set out therein. The reason that the defendant and her son came and met the plaintiff and promised to settle the matter. No such case is set up at the earliest instance dated 16.03.2014. Therefore, the allegations in paragraph No.9 of the plaint are clearly made in order to cover up the delay and laches on the plaintiff's part. Even after Ex.P17 dated 16.03.2014, the plaintiff has slept over the matter until when he instituted the suit.

37. Therefore, firstly, the plaintiff has not established that Ex.P14, the agreement of sale was intended to be only an agreement for sale of the suit property by the defendant to the plaintiff. Secondly, the plaintiff is not entitled to the discretionary relief of specific performance for the primary reason that the suit sale agreement is not proved to be actually a suit sale agreement, but only a security for the loan transaction and the personal bar for the plaintiff is also not raised in the present case and the available evidence, both oral and documentary, clearly point otherwise, disentitling the plaintiff from the discretionary relief of specific performance. Therefore, issues 1, 4 and 5 are answered accordingly in favour of the defendant.



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38. Issues 2 and 3:

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Admittedly, the plaintiff has paid a sum of Rs.1,50,00,000/- and the defendant does not dispute the same. However, in the written statement, the defendant contends that the defendant has repaid a sum of Rs.50,00,000/- . In Ex.P16, the defendant again admits receipt of Rs.1,50,00,000/- towards loan and undertakes to repay the same together with interest at 24% per annum within a period of two years. The plaintiff has sought for an alternative relief by way of refund of the said sum of Rs.1,50,00,000/- in the event of the Court holding that the plaintiff is not entitled to the relief of specific performance.

39. In the light of the admitted facts, especially, the admission of the defendant that she has received Rs.1,50,00,000/- on the various dates as set out by the plaintiff and also having undertaken to repay the same together with interest at 24% per annum within a period of two years vide Ex.P16, the plaintiff is certainly entitled to the alternate relief of refund of Rs.1,50,00,000/-. Even though the defendant has pleaded repayment of Rs.50,00,000/-, there is absolutely no proof forthcoming to prove such payment of interest. Therefore, the plaintiff is entitled to the entire sum of



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Rs.1,50,00,000/- to be repaid together with interest at 24% per annum from the date of plaint till the date of decree and thereafter, together with interest at the rate of 6% per annum. The plaintiff is also entitled to costs since the defendant has had the benefit of the plaintiff's money for the past 11 years. These issues are also answered accordingly.

40.In fine, the suit is partly decreed and the relief of specific performance is disallowed and the suit is decreed insofar as the alternate relief of refund of Rs.1,50,00,000/-, together with interest at 24% per annum from the date of filing of the suit till the date of decree and thereafter, at 6% per annum, till the date of realization. The plaintiff is also be entitled to the costs of the suit.

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Index : Yes / No

Neutral Citation : Yes / No

List of Witness on the side of the plaintiff:

P.W.1 – Subhash Chand Jain



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List of Exhibits on the side of the plaintiff:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description</i>
1.	Ex.P1	Certified copy of the Sale Deed dated 04.03.1970 executed in favour of V.Manithambirar.
2.	Ex.P2	Certified copy of the Sale Deed dated 04.03.1970 executed in favour of T.V.Thirumal.
3.	Ex.P3	Certified copy of the Sale Deed dated 06.12.1979 executed in favour of the defendant. The original Sale Deed is handed over to the plaintiff by the defendant and the plaintiff having custody of the original.
4.	Ex.P4	Xerox copy of the extract from Permanent/Town Survey land register in respect of the suit property. (the learned counsel for the defendant states that is only a xerox copy and object for the marking)
5.	Ex.P5	Certified copy of the Mortgage Deed No.2229 of 2009 dated 14.09.2009 executed by the defendant in favour of B.Ratanchand and Mrs.R.Kushal Bai.
6.	Ex.P6	Xerox copy of Property Tax demand card in the name of defendant in respect of suit property. (The learned counsel for the defendant states that is only xerox copy and objects for the marking)
7.	Ex.P7	Xerox copy of the Encumbrance Certificate for the period 01.01.1975 to 03.12.1986. (The learned counsel for the defendant states that is only a xerox copy and objects for the marking)
8.	Ex.P8	Xerox copy of the Encumbrance Certificate for the period of 01.10.1987 to 31.10.1996. (The learned counsel for the defendant states that is only a xerox copy and objects for the marking)
9.	Ex.P9	Xerox copy of the Encumbrance Certificate for the period of 01.11.1996 to 11.12.2011. (The learned counsel for the defendant states that is only a xerox copy and objects



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		for the marking)
10.	Ex.P10	Xerox copy of the Encumbrance Certificate for the period of 01.01.1970 to 27.12.1974. (The learned counsel for the defendant states that is only a xerox copy and objects for the marking)
11.	Ex.P11	Xerox copy of the Encumbrance Certificate for the period of 01.12.2011 to 14.05.2012. (The learned counsel for the defendant states that is only a xerox copy and objects for the marking)
12.	Ex.P12	Certified copy of discharge receipt discharging the mortgage created by the defendant in favour of B.Ratanchand and Mrs.R.Kushal Bai. The original discharge certificate is handed over to the plaintiff by the defendant and the plaintiff having the same.
13.	Ex.P13	Xerox copy of the Electricity Consumption Card standing in the name of defendant. (The learned counsel for the defendant states that is only a xerox copy and objects for the marking)
14.	Ex.P14	Original registered sale agreement executed by the defendant in the plaintiff's favour dated 22.08.2012 vide Doc.No.1837 of 2012 on the file of SRO, Ashok Nagar, Chennai.
15.	Ex.P15	Certified copy of the registered General Power of Attorney executed by the defendant appointing Mr.S.Ameet Kumar as her agent.
16.	Ex.P16	Xerox copy of the letter dated 16.12.2013 sent by the defendant to the plaintiff. (The learned counsel for the defendant states that is only a xerox copy and objects for the marking)
17.	Ex.P17	Office copy of the reply to the legal notice dated 16.03.2014 issued on behalf of the defendant for the letter dated 16.12.2013. (The learned counsel for the defendant states that is only a xerox copy and objects for the marking)
18.	Ex.P18	Xerox copy of the track result showing the receipt of reply to the legal notice by the defendant. (The learned



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counsel for the defendant states that is only a xerox copy and objects for the marking)

List of Witness examined on the side of the Defendant:

D.W.1 : Padam Jain

List of exhibits marked on the side of the Defendant:

<i>Sl.Nos.</i>	<i>Exhibits</i>	<i>Description</i>
1.	Ex.D1	Photocopy of the Valuation Report dated 15.12.2011. (Original seen and returned)
2.	Ex.D2	Photocopy of Cancellation of General Power of Attorney dated 06.12.2013. (Original seen and returned)
3.	Ex.D3	Public Notice of aforesaid Cancellation of Deccan Chronicle (English) dated 18.12.2013.
4.	Ex.D4	Public Notice of aforesaid Cancellation in Dina Malar in Tamil dated 18.12.2013.

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P.B.BALAJI.J.



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