



S.A. No. 1048 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2024

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 1048 of 2012
and M.P. No. 1 of 2012

B.Venkatarama Chetty

...Appellant

Vs.

Annapoorani @ Usha

... Respondent

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 23.07.2012 made in A.S. No. 19 of 2010 on the file of the Principal District Court, Krishnagiri, reversing the judgment and decree dated 21.06.2010 made in O.S. No. 88 of 2006 on the file of the Principal Subordinate Court, Krishnagiri.

For Appellant : Ms.V.Srimathi

For Respondent : Mr.V.Nicholas

JUDGMENT

The appellant is the plaintiff, who has filed a suit for specific



performance against the defendant. The trial Court had decreed the suit and the first appeal preferred by the defendant, the first appellate Court had allowed the first appeal and reversed the judgment and thereby, dismissed the suit. Aggrieved over that, the plaintiff has preferred the second appeal.

2. The short facts pleaded in the plaint are as under:-

The plaintiff and the defendant have entered into a sale agreement in respect of the suit property on 18.07.2001 for a total sale consideration of Rs.2,00,000/-. On the date of sale agreement itself Rs.25,000/- was received in advance. The defendant agreed to receive the balance sale consideration within five years. On 02.11.2001, the defendant has paid a further part sale consideration of Rs.30,000/- and made an endorsement on the sale agreement itself. On 04.07.2002, the plaintiff has paid another sum of Rs.25,000/- and on 10.01.2004, he has paid a sum of Rs.70,000/- and totally the defendant has received a sum of Rs.1,50,000/- out of the total sale consideration of Rs.2,00,000/-.

2.2.The plaintiff was all along ready and willing to perform his part of contract. In fact, the plaintiff informed the defendant to receive the balance



sale consideration to execute the sale deed, but the defendant did not come forward.

2.3. After issuing a pre-litigation notice on 10.04.2006 calling upon the defendant to execute the sale deed, the plaintiff has filed the suit for specific performance.

3. The defendant resisted the suit he has filed his written statement :-

The sale agreement is a false one and the defendant did not receive any part sale consideration as alleged by the plaintiff. On 10.04.2006, the defendant went and met the plaintiff, after receiving his legal notice.

3.1. At that time, the plaintiff agreed to settle the loan. The sale agreement though appears to be so it is only a loan document. The plaintiff is involved in money transaction and he used to get such agreements from persons who avail loan from him as a security.

3.2. On 18.07.2001, the defendant and her husband asked Rs.25,000/- as loan from the plaintiff and after giving the loan, the plaintiff has got the



sale agreement of this nature as security. The sale agreement has no specified time limit. On 02.11.2001, the defendant has got Rs.30,000/- and for which he has made an endorsement on the fourth page of the sale agreement. On 04.07.2002, the plaintiff has made an another endorsement for Rs.25,000/- alleging that the interest on the amount advanced by him was due.

3.3. As the defendant was not able to repay the loan amount availed by her, the plaintiff had given a legal notice. Even when the defendant approached the plaintiff and inquired he had stated that the legal notice was issued to give pressure to the defendant to repay the loan and as per the negotiations between her and the plaintiff, he has agreed to give back the sale agreement if the defendant pays Rs.1,50,000/- in full quit. Only that the defendant did not give any reply notice. On 10.01.2004 the plaintiff did not receive any Rs.25,000/- as alleged by the plaintiff. The sale agreement dated 18.07.2001 has already been barred by limitation and the plaintiff has inserted five years time on his own whims. As the plaintiff is influential person and has got surplus money, he would have paid the entire sale consideration on 18.07.2001 itself and completed the sale transaction. Hence, the suit itself is frivolous one.



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4. On the basis of the above pleadings, the trial Court has framed the following issues:-

- “1. Whether the agreement to sale of property dated 18.07.2001 is true one?*
- 2. Whether the defendant received an advance amount of Rs.25,000/- is a true one?*
- 3. Whether the plaintiff was always ready and willing to perform his part of contract?*
- 4. Whether the plaintiff is entitled to a specific performance of agreement of sale as prayed for?*
- 5. To what relief the plaintiff is entitled?”*

5. During the course of trial, on the side of the plaintiff, three witnesses were examined as PW1 to PW3 and Exhibits A1 to A3 were marked and on the side of the defendant, the defendant examined himself as DW1 and one document was marked as Exhibit B1.

6. At the conclusion of the trial and after considering the materials available on record, the learned Trial Judge has decreed the suit and the first appeal preferred by the defendant challenging the said judgment was allowed



and thereby dismissed the suit. Aggrieved over that, the appellant has preferred the second appeal.

7. The learned counsel for the appellant submitted that the defendants never disagreed with the execution of the sale agreement, even though he has denied the purpose for which it has been executed. Only after the defendant's husband read the contention of the document to the defendant, she had affixed her signature after understanding the contents of the same. Had her intention was to treat the Exhibit A1 was a loan document, after receiving the legal notice the defendant would have gone to the police station to lodge a complaint as she was cheated by the plaintiff. The first appellate court had wrongly retained the burden on the plaintiff despite he has discharged his burden of proving the entitlement of his claim.

8. The learned counsel for the respondent submitted that in the written statement itself, she has given a reply as to why she has not chosen to send a reply to the legal notice. In the sale agreement, unusual period of five years time had been filled up later in different ink, which is a vital point to be noted. As the First Appellate Court has properly appreciated the binding nature of



Exhibit A1 and the materials in a comprehensive manner, this Court feels that the appeal filed by the plaintiff should be dismissed. The plaintiff has stated that a sum of Rs.70,000/- has been paid to the defendant on 10.01.2004. The plaintiff witness PW3 has given a contradictory evidence that the plaintiff had paid the Rs.70,000/- to the defendant on 04.01.2024. The plaintiff himself has admitted that he is involved in finance business and that the defendant has borrowed loan from him. So in all probabilities, the over all circumstances including the evidence of the defendant Ex.B1 would only prove that the sale agreement has been executed only as a security for the loan amount availed by the defendant from the plaintiff and not with any intention to sell the suit property.

9. By hearing the above submissions of both sides, I feel the following substantial question of law can be taken up as a substantial question of law:-

“(i) Whether the lower Appellate Court is justified in dismissing the suit for specific performance, when the appellant has clearly proved his readiness and willingness?”

“(ii) Whether the lower Appellate Court is justified in rejecting the suit presuming the sale agreement under Ex.A1 as loan transaction without any evidence and documents contrary to the



admission and of the defendant?

WEB COPY (iii) *Whether the lower Appellate Court is justified in ignoring Ex.A1, although the respondent admitted the agreement and whether such view of the lower Appellate Court is not against Sections 91 and 92 of the Indian Evidence Act?"*

10. The Ex.A1-Sale agreement is dated 18.07.2001 and on the same day itself a sum of Rs.75,000/- has been paid as an advance and the same has been admitted by the defendant. However, he has stated that the plaintiff has created the sale agreement only as a security for the loans availed by the defendant.

11. The plaintiff has admitted in his examination that he is doing business in finance. In fact, the defendant himself has produced Ex.B1 to show that he has received Rs.55,000/- as loan from the plaintiff and for which he has been paying interest at Rs.2,240/- per month and that is being acknowledged by the first defendant Ex.B1.

12. In fact the plaintiff has also stated that he has paid a sum of Rs.30,000/- on 02.11.2001 and Rs.25,000/- on 04.07.2002. It is claimed by



the defendant that they have availed a loan of Rs.25,000/- from the plaintiff on 18.07.2001 and that has been shown as the advance amount paid to the defendant in pursuant to the sale agreement dated 18.07.2001 Ex.B1. Though the defendant has denied the genuineness of the Ex.B1 sale agreement, the plaintiff claimed that the defendant cannot deny Ex.B1 sale agreement contrary to Section 92 of the Indian Evidence Act.

13. As per Section 92 of the Indian Evidence Act, the terms of the agreement has been reduced to writing and the same has to be proved only by production of the written agreement and not through oral evidence. Once the document is marked, the parties to the transaction are not entitled to let in any oral evidence contradicting to the terms of the agreement unless for any special reasons found under proviso 1 to 6 of Section 92 of the Indian Evidence Act.

14. In the instant case, the very contention of the defendant is that though the sale agreement has been executed as per Ex.A1, the intention was just to treat that as a security for the loans availed by the defendant from the plaintiff. Admittedly, the terms of Ex.A1 does not contain the above facts. In



fact, the understanding to consider the sale agreement as security is not found to be consistent with the terms written in the sale agreement. So the defendant has got a burden to prove those terms about which the Ex.A1 is silent but the proof of which would invalidate Ex.A1 as the intention was not to act upon it as per its terms.

15. The learned counsel for the appellant submitted that the defendant did not discharge the above burden and in fact, the defendant did not even examine her husband, who is also an attesting witness to Ex.A1. Though normally the rebuttal proof should be from and out of the evidence produced by the defendant, in certain circumstances the self-contradiction and weakness or the admissions in the plaintiff's evidence can also surface the rebuttal proof or circumstances. If the evidence available on record could bring out such vital contradictions, infirmities, admissions adverse to the case of the plaintiff and any other doubtful circumstances that can probabalize the defense of the defendants that the Ex.A1 has been executed as a security for the loan availed by the defendant and not with an intention to sell the suit property.



16. As stated already, the plaintiff has involved in the money lending business and he has also lent money to the defendant and he has first receipts for the interest collected from the defendant for the loan given to him. By producing the Ex.B1, the defendant had proved that he has been paying interest at Rs.2,240/- per month for a loan of Rs.55,000/- availed by him from the plaintiff. According to the defendant, only in view of that loan and other further loan availed by the defendant from the plaintiff, the sale agreement came into existence as a security. Apart from the admission of the plaintiff is that he is involving in money lending business and that he has lent money to the defendant also as evidenced by Ex.A1, there is yet another vital circumstance which will cause doubts over the intention behind the Ex.A1 sale agreement. As submitted by the learned counsel for the respondent that the time period for the sale agreement has been agreed at 5 years. But the word '5 years' has been inserted in a different ink and that will cause a doubt as to whether the said time period has been mentioned in the sale agreement at the time when the parties had affixed the signatures or it has been inserted subsequently.



17. The witnesses, who were present had attested the Ex.A1 sale agreement, have also given the evidence not in terms of Ex.A1. One of the attesting witness PW2 has stated that on the date of the agreement, the plaintiff has advanced Rs.25,000/- as part of the sale consideration. However, the sale agreement contains Rs.75,000/- as the advance money paid to the defendant. PW2 has further stated that there is a difference in ink in the words denoting 'the time for the agreement'. The other attesting witness, who was examined as PW3 has stated about the further payment of Rs.70,000/- paid by the plaintiff to the defendant and for which an endorsement has been made. Apart from the above payment, the plaintiff has alleged that he has already paid a part sale consideration of Rs.30,000/- on 02.11.2001, Rs.25,000/- on 04.07.2002 and Rs.70,000/- on 10.01.2004. Even on 10.01.2004 itself, the plaintiff is said to have paid total part sale consideration of Rs.1,50,000/-. Despite the payment of balance of Rs.50,000/-, the plaintiff has issued a legal notice only on 10.04.2006 by expressing his intention to pay the balance sale consideration and calling upon the defendant to execute the sale deed. As the plaintiff himself as a person, who is financially sound and he has paid atleast three fourth(3/4th) of the sale consideration already, it is difficult to believe that the plaintiff made to wait for another two years to send a legal notice for



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calling upon the defendant to receive the balance sale consideration of Rs.50,000/-. The defendant is seem to be in demand of money as he had already availed loan from the plaintiff. In such case, no reasonable person would agree to wait for 5 years to receive the sale consideration bit by bit and then execute the sale deed. So the natural circumstance that around the plaintiff's case would also earn a rebuttal in favour of the defendant. The pattern in which the payments said to have been given to the defendant and the unusual time period of 5 years has been inserted in the sale agreement would only show that the sale agreement is unnatural. So under the above doubtful circumstances clouding on the sale agreement will not entitle the plaintiff to get the equitable relief of specific performance.

18. Much stress was also made on the point that the first appellate court has shifted the burden on the plaintiff even when he had proved the sale agreement by production of Ex.A1 and that the defendant himself has admitted the execution.

19. Much stress has been made on the readiness and willingness on the part of the plaintiff to perform his part of contract. As a sale agreement itself



is proved to be a document executed only as a security to the transaction between the plaintiff and the defendant, no significance be attached to the readiness and willingness attached on the part of the plaintiff. The very fact that the sale agreement itself has been agreed for unusual period of 5 years would also show that the parties were not ready and willing to perform their terms of the agreement but their intention is to create a security for the loans given by the plaintiff to the defendant.

20. As the first appellate Court has thoroughly considered the above glaring infirmities and weakness in the evidence of the plaintiff and given it to the benefit of the defendant as rebuttal proof, it is the right to deny the relief of specific performance to the appellant /plaintiff. Hence, the substantial questions of law are answered against the appellant.

21. In the result, the second appeal is dismissed. The judgment and decree dated 23.07.2012 made in A.S. No. 19 of 2010 on the file of the Principal District Court, Krishnagiri is upheld. However, in the interest of justice, the first appellate Court could have granted the relief of refund of the amount paid by the plaintiff to the defendant as he had paid the Court-fee for



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an amount of Rs.2,00,000/-. No costs. Consequently, connected

Miscellaneous Petition is closed.

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Index : Yes

Speaking order : Yes

NCC : Yes

Maya

To

1. The Principal District Court, Krishnagiri,
2. The Principal Subordinate Court, Krishnagiri.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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R.N.MANJULA, J.

Maya

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