



S.A.No.1243 of 20..

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.11.2024

Coram:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

**S.A.No.1243 of 2012
and M.P.No.1 of 2012**

1.A.Pavunambal
2.Kala
3.Ezhilarasi
4.Sangeetha

...Appellants

Versus

1.Gurunathan
2.Chandran

...Respondents

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 25.11.2011 made in A.S.No.2 of 2011 on the file of Principal District and Sessions Judge, Ariyalur confirming the judgment and decree dated 29.08.2009 made in O.S.No.52 of 2005 on the file of the Subordinate Judge's Court, Ariyalur.

For Appellants	:	Mr.S.Frang Kelin for M/s.Sarvabhauman Associates
For Respondent – 1	:	Mr.R.Krishnaswamy
For Respondent – 2	:	No Appearance



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JUDGMENT

The appellants are the defendants 1, 3, 4 & 5 in the suit. The 1st respondent/plaintiff had filed the suit in O.S.No.52 of 2005 against the defendants 1 to 5 for specific performance. The trial Court had decreed the suit as prayed for. Challenging the judgment and decree passed by the trial Court, the appellants/defendants 1, 3, 4 & 5 had preferred a First Appeal in A.S.No.2 of 2011. However, the First Appellate Court has dismissed the First Appeal by confirming the judgment and decree of the trial Court. Aggrieved over the same, the appellants/defendants 1, 3, 4 & 5 have filed the present Second Appeal before this Court.

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

The 2nd defendant and his father one Annamalai agreed to sell the suit schedule property to the plaintiff for a sale price of Rs.1,25,000/- and entered into a Sale Agreement on 05.11.2001 and on the very same date, the said sale agreement was reduced into writing and registered. As per the said



sale agreement, the plaintiff paid a sum of Rs.1,15,000/- as advance and he also agreed to pay the balance amount of Rs.10,000/- within one year from the date of sale agreement. It was agreed that the 2nd defendant and his father Annamalai have to execute the sale deed only after receiving the balance sale consideration of Rs.10,000/- from the plaintiff. After the sale agreement, the said Annamalai had died on 04.01.2002, leaving behind his wife (1st defendant), son (2nd defendant) and daughters (defendants 3 to 5) as his legal heirs. The defendants 3 to 5 (daughters of deceased Annamalai) were married and living with their respective husband's families. After the death of said Annamalai, the defendants 1 & 2 alone have been in possession and enjoyment of the suit property. The plaintiff had approached the defendants several times and asked them to execute the sale deed in his favour after receiving the balance sale consideration. The defendants were responding by saying that they will execute the sale deed within a specific time. The 1st defendant (wife of the deceased Annamalai) was giving assurance to the plaintiff that the defendants 3 to 5 (daughters of the deceased Annamalai) have nothing to do with the suit property and she would execute the sale deed along with 2nd defendant (son of the deceased Annamalai) once he returned from Singapore. However, thereafter, there



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was no response from the defendants. Hence, the plaintiff had issued a legal notice to the 1st defendant, calling upon her to execute the sale deed along with her son and other legal heirs, in his favour, after receiving the balance amount of sale consideration. Even after the receipt of said legal notice, there was no reply from the 1st defendant. Subsequently, the plaintiff directly approached the 1st defendant and asked her to execute the sale deed along with her son and daughters. Again, the 1st defendant promised the plaintiff that she will execute the sale deed once her son (2nd defendant) returned from Singapore, but, she did not come forward to execute the sale deed. Hence, the plaintiff had filed the suit for specific performance.

3. The brief averments in the written statement of the 1st defendant are as under:

The sale agreement was not executed with an intention to execute a sale agreement, but, the same was executed only as a security for a loan amount of Rs.75,000/- borrowed by the 1st defendant's husband Annamalai. There is no purchaser and seller relationship between the 1st defendant and plaintiff. The defendants 4 & 5 (daughters of the deceased Annamalai) are also entitled to a share in the suit schedule property and they are not bound



by the sale agreement. So, they intend to file a separate suit for partition.

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

“(i) Whether the 1st defendant's husband Annamalai and 2nd defendant have entered into a Sale Agreement with the plaintiff on 05.11.2001 after receiving Rs.1,15,000/- as advance?

(ii) Whether the plaintiff is entitled to the relief of specific performance?

(iii) Whether the plaintiff is entitled to get cost of the suit?

(iv) To what relief?”

5. During the course of trial, plaintiff examined himself as P.W.1 and he also examined one Padmanabhan as P.W.2 and marked 3 documents viz., Exhibits A1 to A3 and on the side of the defendants, 1st defendant was examined herself as D.W.1 and she also examined two other witnesses viz., D.W.2 & D.W.3, but, no document was marked.

6. At the conclusion of the trial and considering the evidence available on record, the trial Court had decreed the suit as prayed for.



Aggrieved over the same, the defendants 1, 3, 4 & 5 had preferred a First Appeal, but, the First Appellate Court has dismissed the First Appeal by confirming the judgment and decree of the trial Court. Hence, the defendants 1, 3, 4 & 5 have filed the present Second Appeal by raising the following substantial questions of law:

“(i) Whether the Courts below are correct in law in decreeing the suit especially when the 1st respondent/plaintiff has failed to aver and prove his readiness and willingness?”

“(ii) Whether the Courts below are correct in law rejecting the defence that Ex.A1 was only a security for a loan by overlooking the conduct of the plaintiff?”

7. The learned counsel for the appellants submitted that the time is the essence of the contract and the plaintiff failed to pay the balance sale consideration, but, the same was not properly appreciated by the trial Court. He also submitted that the plaintiff did not prove his readiness and willingness to perform his part of contract and hence, the trial Court ought to have dismissed the suit. He further submitted that the 2nd defendant and his father late Annamalai never intended to execute the sale deed in favour of the plaintiff and the same was not properly appreciated by the Courts



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8. The learned counsel appearing for the 1st respondent submitted that the plaintiff is always been ready and willing to perform his part of contract and he has been approaching the defendants to have the sale deed executed, but, it was only the defendants who were adopting the delaying tactics. Hence, the trial Court has rightly appreciated the evidence on record and decreed the suit.

9. As submitted by the learned counsel for the appellants, the sale agreement does not show that the time is the essence of contract. Even though the plaintiff was ready and willing to pay the balance sale consideration and invited the defendants to execute the sale deed, the 2nd defendant dragged to execute the sale deed by stating that she could execute the sale deed only after her son (2nd defendant) returned from abroad. Out of the total sale consideration of Rs.1,25,000/-, the plaintiff has already paid Rs.1,15,000/- and he is also ready to pay the balance sale consideration of



Rs.10,000/-.

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10. It is seen that the plaintiff has been repeatedly asking the defendants to execute the sale deed in his favour, but, the reluctance was on the part of the defendants only. Hence, the trial Court has rightly decreed the suit as prayed for. Thus, the first substantial question of law is answered.

11. The fact that Ex.A1 (Sale Agreement) was executed by the 2nd defendant's father Annamalai and 2nd defendant in favour of the plaintiff has not been denied by the appellants, but, the only contention of the appellants is that Ex.A1 has not been executed with an intention to sell the suit property and the same has been executed only as a security for a money transaction between the parties. Since Ex.A1 is a document, through which, an agreement has been reduced into writing, the signatories of the said document are not entitled to raise a plea contrary to the conditions specified



therein.

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12. As per Section 91 of the Indian Evidence Act, 1872, if terms of contract have been reduced into writing, the document itself should be produced to prove the contract.

13. It is not the contention of the appellants that Ex.A1 (Sale Agreement) is a forged document. Once the plaintiff discharges his burden of proving the execution of Ex.A1 as a Sale Agreement, the burden would shift on the defendants to prove that Ex.A1 has been executed only as a security for a loan transaction.

14. The 2nd defendant who is one of the parties of the aforesaid document remained *ex-parte* and his father Annamalai, one of the signatories of the document also died. During the trial, 1st defendant has chosen to examine two attesting witnesses viz., Paramasivam (D.W.2) & Sundar (D.W.3). The witnesses D.W.2 & D.W.3 have stated in their evidence that Ex.A1 has been executed by the 2nd defendant's father



Annamalai and 2nd defendant, for a loan of Rs.75,000/- obtained by the said Annamalai.

15. In the absence of any evidence to prove that Ex.A1 has been executed only as a security for a loan transaction, it can be concluded that as alleged by the plaintiff, Ex.A1 has been executed as a Sale Agreement in respect of the sale of suit property. So, the second substantial question of law is answered against the appellants.

16. In view of the above, this Second Appeal is dismissed and the judgment and decree dated 25.11.2011 passed in A.S.No.2 of 2011 by the learned Principal District and Sessions Judge, Ariyalur is confirmed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order

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To

- 1.The Principal District and Sessions Judge,
Ariyalur.
- 2.The Subordinate Judge Court,
Ariyalur.



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R.N.MANJULA, J.

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