



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.02.2024

Pronounced on: 16.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.494 of 2018
and
C.M.P.No.13459 of 2018

R.Suresh

...Appellant

Vs.

N.Nasuruallah

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and the decree dated 21.08.2017 in A.S. No.4 of 2016 passed by the III Additional District and Sessions Court, Vellore at Thirupattur, confirming the judgment and the decree dated 18.06.2014, O.S. No.196 of 2004, passed by the Sub Court, Vaniyambadi, Vellore District.

For Appellant : Mr.R.Subramanian



S.A.No.494 of 2016

For Respondent : Mr.K.Umar

JUDGMENT

The unsuccessful plaintiff in a suit for specific performance under a registered sale agreement is the appellant before me.

2. The trial Court had initially accepted the case of the plaintiff and decreed the suit. However, on appeal, the First Appellate Court reversed the findings of the trial Court and proceeded to dismiss the suit. The present Second Appeal has been preferred as against the said reversal findings rendered by the First Appellate Court.

3. The parties are described as per their litigative status before the trial Court.

4. The plaintiff claims the relief of specific performance under a registered agreement of sale dated 19.03.2010. The agreement discloses that the parties have negotiated a sale consideration of Rs.1,40,000/- and on the date of the agreement, the defendant received an advance of



Rs.1,25,000/- and a period of 11 months was fixed for completion of the sale transaction. The plaintiff issued a lawyer's notice on 15.07.2011, calling upon the defendant to execute the sale deed on 29.07.2011. However, on receipt of the said notice, the defendant approached the plaintiff and requested two months time to execute the sale deed and on 29.07.2011, the plaintiff paid a further advance of Rs.5,000/- for which, the defendant made an endorsement on the reverse side of the agreement of sale in the presence of the witnesses. As the defendant did not come forward to execute the sale deed, despite lapse of two months, the plaintiff issued another lawyer's notice on 06.12.2011, as the defendant did not comply with the demands made by the plaintiff, the plaintiff was constrained to file a suit for specific performance.

5. The defendant filed a written statement resisting the suit on the ground that the plaintiff and his brother-in-law were in money lending business and in the course of such business, the defendant has borrowed a sum of Rs.50,000/- from the plaintiff. The plaintiff took advantage of the defendant's illiteracy and created a sale agreement, instead of a mortgage



deed for the amount of Rs.50,000/- borrowed by the defendant. It is the further specific case of the defendant that he issued a reply notice to the notice issued by the plaintiff on 06.12.2011 and that the plaintiff has suppressed the receipt of the said reply notice. The defendant has further stated that the sale agreement is not a bonafide sale transaction and in view of the value of the property increasing, the plaintiff has filed a suit to grab the property from the defendant. The defendant has also denied the endorsement on 29.07.2011 acknowledging the receipt of Rs.5,000/- towards further advance and also extending the time for completion of sale transaction by further two months. The defendant has further stated that he has received the notice dated 06.12.2011 on 17.12.2011 and he has issued a reply calling upon the plaintiff to cancel the sale agreement as the same was not a bonafide transaction.

6. Before the trial Court, the plaintiff examined himself as P.W.1 and one attesting witness to the endorsement as P.W.2 and the document writer as P.W.3 and Exs.A1 to Ex.A6 were marked on the side of the plaintiff. On the side of the defendant, the defendant himself examined as D.W.1 and one Shakila Begum was examined as D.W.2 and Exs.B1 to B3 were marked. A



copy of the Registered Sale Agreement was marked as Exhibit X1 viz., Court document. The trial Court, after evaluating the oral and documentary evidence adduced by the parties, found that the plaintiff was entitled to relief of the specific performance and proceeded to decree the suit.

7. On appeal filed by the defendant, the First Appellate Court reversed the findings of the trial Court and held that the plaintiff had failed to prove the genuineness of the Ex.A1, Sale Agreement and also Ex.A2 Endorsement besides readiness and willingness to perform his obligations under the sale transaction and allowed the appeal preferred by the defendant, thereby dismissing the suit for specific performance.

8. This Second Appeal, was admitted by this Court on 28.09.2018, framing the following substantial questions of law:-

"(1) When the defendant admitted execution of the agreement and contended that the plaintiff has created the sale agreement instead of mortgage deed, is not the lower appellate Court wrong in holding that the plaintiff has not proved execution of the agreement?"

(2) Is not the lower appellate Court wrong in holding that the plaintiff has not examined the attesting witness as required in Section 68 of the Evidence Act overlooking that it is applicable only to those documents which require



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mandatory attestation and agreement of sale is not one of such documents?

(3) Has not the lower appellate court omitted to see that the plaintiff has performed his part of the contract by making substantial payment demanding the defendant to come and execute the sale deed within the stipulated period and consequently is not the plaintiff entitle to specific performance as per Section 20 of specific Relief Act?"

9. I have heard Mr.R.Subramanian, learned counsel for the plaintiff and Mr.K.Umar, learned counsel for the respondent.

10. I have also gone through the pleadings of the parties, oral and documentary evidence adduced by them and also judgments of the Courts below.

11. The plaintiff claims specific performance under a registered sale agreement dated 19.03.2010. However, the defendant has set up a defence that he being an illiterate, the plaintiff has brought about the said agreement of sale instead of a mortgage deed in respect of Rs.50,000/- said to have been borrowed by the defendant from the plaintiff. The defendant has also denied the endorsement on 29.07.2011, after having received Rs.5,000/- as



further advance and seeking extension of time for concluding the transaction by two months.

12. Thus the moot question that arises for consideration in the present Second Appeal is as to whether the plaintiff has established the truth and genuineness of the agreement of sale as well as the endorsement. In this regard, the plaintiff has examined one of the witnesses to the endorsement dated 29.07.2011. P.W.2 has categorically stated in the chief examination that when the plaintiff paid money to the defendant, he was present and he has signed the endorsement dated 29.07.2011. He has also stated that the endorsement was written by Govindasamy, the document writer and that only after receiving the money, the defendant signed in the endorsement. He has also specifically stated that when the defendant signed the endorsement, he was present and Govindasamy and Mathivanan were also present. He has categorically denied the suggestions that he has not signed the endorsement on the reverse of one of the pages of the registered sale agreement and that he was giving false evidence only to support his brother-in-law, the plaintiff.



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13. P.W.3 -Mahendran, has stated that he is a document writer and that Ex.A1, sale agreement was prepared by him, only on the instructions of the plaintiff and the defendant. He has also stated that he saw the defendant receiving the money from the plaintiff and thereafter, signing the sale agreement in his presence. He has also further stated that only after the document was read out, the defendant signed the same and thereafter, the plaintiff signed the document. He has further stated that after the execution of the sale agreement by the plaintiff and the defendant, two witnesses signed and thereafter, he signed the document as the Scribe. He has been cross examined by the defendant and in his cross examination also, he has reiterated the fact that the document was written only on the instructions of both the plaintiff and the defendant. No suggestion has been put to P.W.3 that the agreement of sale was not read over or that the defendant signed the document after knowing the contents of the same, despite specific evidence let in by P.W.3 in chief examination. Even the defendant in his examination has not asserted that the signature found in the endorsement on the reverse of the agreement of sale is forged.



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14. Per contra, the evidence of P.W.2, clearly establishes that the endorsement was made by the defendant and there is no contra evidence let in by the defendant to show that his signature in the endorsement was forged or fabricated. The signature of the defendant in the endorsement order has been therefore, clearly established by the plaintiff through P.W.2. Similarly the execution of the sale agreement has also been clearly established through evidence of P.W.3.

15. The First Appellate Court, has proceeded to place reliance on Exhibits. B1, B2 and X1 which are totally unconnected to the suit sale agreement. Merely because, the plaintiff has entered into registered sale agreements with some other third parties, it would not lead to a presumption that Ex.A1 was only a loan transaction and not a sale agreement. The First Appellate Court has also held that because P.W.2 has stated that he did not see any identity proof of the defendant and he was not in a position to confirm whether the person who signed the endorsement was the defendant, the endorsement itself cannot be held to be unproved. The evidence of



P.W.2 has to be read as a whole and not in a truncated fashion. On an overall reading of the evidence, both chief as well as cross examination of P.W.2, it clearly establishes the fact that the defendant has signed the endorsement after receiving money from the plaintiff and not even a suggestion is put to P.W.2 that no money was paid to the defendant by the plaintiff as stated by him in his chief examination.

16. These apart, as rightly pointed out by the learned counsel for the appellant Mr.R.Subramanian, the conduct of the defendant also becomes relevant while considering the scope of Section 20 of the Specific Relief Act, 1963. Here, the defendant has outright denied not only the sale agreement but also the endorsement. This apart, surprisingly, the defendant also denied the fact that he did not sign at the Sub Registrar's Office at the time of registration of Ex.A1. The sale agreement has been duly registered before the Sub Registrar, Vaniyambadi and at the time of registration of the said document, the defendant's photograph has been affixed and his identity has already been confirmed by the Sub Registrar. Further, the defendant has also signed the registration endorsement on the reverse of the first page of



the agreement of sale. However, the defendant in his cross examination states that he has not even entered the Sub Registrar's Office and he has also stated that he has not signed the summons received from the Court or the written statement filed before the Court.

17. This apart, the defendant categorically claims that he has sent a reply notice to the plaintiff. However, the defendant has not been able to establish the said contention by producing proof of service of the said notice on the plaintiff. Thus, it is a clear case where the defendant has taken a false stand before the Court and in the light of his conduct, which has been rightly recorded by the trial Court, the stand taken by him in the written statement cannot be believed.

18. In fact, more important is the conduct of the plaintiff. It is seen that the plaintiff has established the truth and genuineness of the sale agreement Ex.A1 and the endorsement in Ex.A2 by examining P.W.3. The failure of the defendant to put even basic suggestions to the witnesses P.W.2 and P.W.3, only further complicates the case of the defendant. In fact, the



defendant, has in his evidence, categorically admitted to the facts that he has received a lawyer's notice dated 15.07.2011. However, in his pleadings, he has stated that he had not received the said notice. Thus the defendant is guilty of taking a contradictory and false stand before the Court of law. Once the agreement and endorsement are held to be genuine, not much can be made out from the fact that there has been a delay on the part of the plaintiff. Once, the plaintiff issued a notice and thereafter, the defendant has received a further advance Rs.5,000/- and also sought for extension of time by two months, thereupon, it cannot be said that the plaintiff was not ready and willing. Thereafter, the plaintiff has issued a second notice and filed a suit for specific performance without any further delay. The mere fact that the plaintiff has not been able to show that the advance of Rs.1,25,000/- was paid would not be a ground to non-suit the plaintiff, when the acknowledgment of the said sum of Rs.1,25,000/- is clearly mentioned in Ex.A1 sale agreement which is a duly registered document as well.

19. Further, though the defendant has stated that the property was worth much more even during the time of the execution of Ex.A1 sale agreement, he has not let in any evidence whatsoever to show that the sale



consideration reflected in the suit sale agreement was far below the prevailing market value of the suit property.

20. The First Appellate Court has relied on extraneous evidence viz., Exhibits B1, B2 and X1 which have absolutely, no connection to the suit sale agreement, Ex.A1 and has proceeded to reverse the well considered findings of the trial Court, based on totally unconnected materials. The trial Court has rightly taken note of the conduct of the defendant and also evidence of P.W.2 and P.W.3 and rightly came to the conclusion that once the plaintiff had proved the agreement of sale, the burden shifted to the defendant to prove that the same was brought about by a fraud played by the plaintiff.

21. Further, the trial Court has found that the defendant has not been able to establish the fraud pleaded by him and leave alone, proving that Ex.A1 was only a loan transaction, substantiating the same by providing materials to show that he had paid interest on the loan etc.,

22. The learned counsel for the respondent would place reliance on



the decision of the Hon'ble Division Bench in the case of ***K.Saminathan***

Vs. Pappathi @ Vembayee dated 31.10.2023, where the Division Bench of this Court has held that the plaintiff, in order to succeed in the suit for specific performance has to prove that there was a valid sale agreement and that he was always ready and willing to perform his part of the contract.

23. On going through the said judgment, I find that the evidence of the witnesses in the said case, did not inspire the confidence of the Court and the Hon'ble Division Bench held that no reliance could be placed on such evidence. The plaintiff was also non suited on the ground that having entered into an agreement for purchase of a property for a sum Rs.40,00,000/- in the year 2011, the plaintiff did not even find out whether there were any encumbrances and he had also not seen the original documents of title or ascertain the physical features of the property. Thus under such circumstances, the Hon'ble Division Bench held that the plaintiff had not discharged the burden of proving that there was a valid agreement. However, the facts of the present case are not so. As already discussed, by cross examining PW3, the plaintiff had discharged the burden of proof,



insofar as due execution of Ex.A1 sale agreement which is also a registered document.

24. The defendant has even gone to the extent of denying his own signature in the Sub Registrar Office at the time of registration of the said sale agreement. Thus, it is clear that the defendant has taken an extreme false stand in order to nonsuit the plaintiff and defeat the suit sale agreement. Even with regard to readiness and willingness, the trial Court has rightly found that when the defendant himself had sought for two months extension of time and received further advance of Rs.5,000/-. There is delay on the part of the plaintiff, the trial Court has discussed all these aspects and held that the conduct of the defendant in the present case would only go to the aid of the plaintiff and the plea of lack of readiness and willingness cannot be put against the plaintiff.

25. Further, as already discussed, the defendant has outright denied everything put to him and therefore, his evidence is not credible and the trial Court has rightly appreciated all these facts and circumstances in proceeding to decree the suit. The First Appellate Court has unfortunately lost sight of the crucial requisites in a suit for specific performance and by



placing reliance on totally unconnected documents, has chosen to reverse the well considered findings of the trial Court. Thus I am constrained to answer the substantial questions of the law in favour of the appellant and thereby, set aside the judgment and decree of the First Appellate Court and restore the judgment and decree of the trial Court.

26. The learned counsel for the appellant has also brought to my notice that the balance sale consideration was also deposited before the Court. In view of the Second Appeal being allowed, the defendant is directed to execute a registered sale deed in favour of the plaintiff within a period of four weeks from today, failing which, the plaintiff shall be at liberty to execute the decree in his favour in a manner known to law. Consequently, connected Miscellaneous Petition is closed. No costs.

16.02.2024

Index : Yes/No
Internet : Yes/No
rkp
To



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1. The III Additional District and Sessions Judge,
Vellore at Thirupattur
2. The Sub Judge, Vaniyambadi, Vellore District.

P.B.BALAJI, J,

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Pre-delivery Judgment in

S.A.No.494 of 2018

and

C.M.P.No.13459 of 2018



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S.A.No.494 of 2016

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