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S.A.No.1094 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.1094 of 2013

and

M.P.No.1 of 2013

P.V.Thavamani

...Plaintiff/Respondent/Appellant

Vs.

Kokila

... Defendant/Appellant/Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 02.04.2013 in A.S.No.8 of 2013 (A.S.No.51 of 2012) on the file of the Learned III Additional District Judge, Vellore at Thirupattur, reversing the Judgment and Decree dated 24.04.2012 in O.S.No.110 of 2009 on the file of the Subordinate Judge, Vaniyampadi, Vellore District.

For Appellant : Mr.Surya Senthil
for M/s Surana and Surana

For Respondent : Mr.Bala Ganesh



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JUDGMENT

WEB COPY The plaintiff in O.S.No.30 of 2007 on the file of the Sub Court, Thirupattur, is the appellant before me. The said suit was transferred from the file of the Sub Court, Thirupattur to the file of the Sub Court, Vaniyambadi, Vellore District and re-numbered as O.S.No.110 of 2009.

2.The suit is one for specific performance of an agreement of sale dated 25.04.2006. The learned Trial Judge by a Judgment dated 24.04.2012 decreed the suit. Aggrieved by the same, the defendant preferred an appeal in A.S.No.51 of 2012 on the file of the Principal District Judge, Vellore and subsequently the appeal was transferred to the file of the III Additional District Court, Vellore at Thirupattur and re-numbered as A.S.No.8 of 2013. In and by way of a Judgment dated 02.04.2013, the Appeal Suit was allowed, against which the present Second Appeal has been preferred.

3.This Court admitted the present Second Appeal on 14.02.2022 on the following substantial questions of law:-

a)Whether the lower Appellate Court was right in doubting the genuineness of Ex.A1 Sale Agreement which was duly proved by the plaintiff



by examining P.W.2 and P.W.3 without there being any substantial material to disregard the same ?

b) Whether the lower Appellate Court was right in assuming that Exhibits A4 and A5 which are the original title deeds was obtained by the plaintiff from the defendant's sister's husband without there being any pleading to that effect in the written statement ?

c) Whether the findings of the lower Appellate Court can be termed as perverse due to improper appreciation of the oral and documentary evidence available on record ?

4.Heard, Mr.Surya Senthil, learned counsel appearing on behalf of the appellant and Mr.Bala Ganesh, learned counsel appearing on behalf of the respondent.

5.For the sake of convenience, parties are referred to as plaintiff and defendant.

6.The case of the plaintiff is that he entered into an agreement of sale on 25.04.2006, which was marked as Ex.A1, with the defendant. The terms



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of the agreement is that the property which belongs to the defendant would be sold to the plaintiff for a sum of Rs.2,25,000/-. The defendant received a sum of Rs.2 Lakhs as advance on 25.04.2006 and the remaining amount of Rs.25,000/- would be paid within a period of 11 months. It was also agreed that in case, an amount of Rs.25,000/- is not paid within a period of 11 months, then the amount would be fortified. From 25.04.2006 till 08.03.2007 there has been a deathly silence maintained by the plaintiff. It was for the first time, i.e., on 09.03.2007, the plaintiff issued a notice through an Advocate, which was marked as Ex.A2. In the said notice, the plaintiff had called upon the defendant to appear before the Office of the Sub-Registrar on 14.03.2007, to execute the sale agreement.

7.On receipt of the notice, the defendant sent her reply on 16.03.2007 denying the agreement. Her specific stand is that it is a concocted one and therefore, the question of executing the sale deed does not arise. Before the Trial Court, the plaintiff examined himself as **P.W.1**, the witness to the document as **P.W.2** and the scribe as **P.W.3**. Similarly, the defendant examined herself as **D.W.1**, her husband as **D.W.2** and the other witness as **D.W.3**, in support of her case.



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8.Mr.Surya Senthil, learned counsel appearing on behalf of the appellant would invite my attention to the Judgment of the Trial Court and would vehemently contend that the Trial Judge appreciated the signatures of the defendant in the agreement and had come to a conclusion that the agreement had infact been executed by the defendant and that has been erroneously interfered with by the Judgment of the lower Appellate Court. He would further contend that once the lower appellate Court having come to the conclusion that the document had in fact been executed by the defendant, ought to have decreed the suit. He would further state that the plaintiff has proved his case in execution of agreement through **P.W.2** and the scribe **P.W.3**. In fine, as the argument I understand, since the signature has been proved, agreement has been proved. In the alternative he would also plead that in case, this Court is not inclined to grant the specific performance, the amount of Rs.2 lakhs which had been paid by the plaintiff to the defendant should be returned. He argues that the learned appellate Judge committed an error in not directing the defendant to refund the advance amount which had been paid by the plaintiff. The learned counsel further add that as to how the original of the title deeds that were available with the plaintiff had not been properly explained by the defendant. He



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would contend that the title deeds had been handed over to the plaintiff, which reflects that the property had been agreed to be sold by the defendant to the plaintiff.

9.Mr.Bala Ganesh, learned counsel appearing on behalf of the defendant in an attempt to torpedo these arguments would submit that at the earliest point of time, i.e., on 16.03.2007 the categorical case of the defendant was that the agreement is forged and concocted. He would also draw my attention to the fact that the date of stamp papers were on 23.11.1999 and 10.03.2000, whereas the agreement had been executed in the year 2006. He would further state that there is absolutely no transaction between the plaintiff and the defendant and therefore, the decree of the lower Appellate Court requires confirmation.

10.I have carefully considered the arguments made on either side. All the substantial questions of law are taken up together and answered as follows:-

One of the fundamental principles that has to be applied in a suit for specific performance is that the plaintiff must not only plead but also prove



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that he was ready and willing to have the sale agreement converted into a sale deed. These two are legal terminologies, in which, one means, the plaintiff has sufficient means and the other implies his intention or urgency to convert the sale agreement into a sale deed. As per Section 16 (c) of the Specific Relief Act, unless and until both the tests are satisfied, a suit for specific performance cannot be decreed. This is a condition precedent that has to be tried by the Court, while dealing with the suit.

11.A perusal of the Judgment of the learned Trial Judge shows that he had not even framed an issue, 'whether the plaintiff is ready and willing in order to convert the sale agreement into a sale deed'. The learned Trial Judge has proceeded on the fact that since the signature in **Ex.A-1** has been proved, the agreement has been proved and consequently decreed the suit. This approach is contrary to Section 16 (c) and hence perverse.

12.Both the Courts below, in this case have taken upon themselves to compare the signatures, in exercise of the powers vested with them, under Section 73 of the Indian Evidence Act. The lower Appellate Court also came to the conclusion that the signature found in **Ex.A-1** is the signature of the



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defendant, but had taken a diametrically different view, saying that the mere fact that the signature is found in the agreement does not mean the agreement stands proved. The lower Appellate Court also had come to the conclusion that the plaintiff had not proved the fact that he was possessed of sufficient funds, viz., of paying the balance of Rs.25,000/-.

13.It is here, I have to take note of the period that had lapsed between the date of alleged agreement and the date on which the Advocate notice had been issued. The agreement had been entered into as stated above on 25.04.2006, but the suit notice itself was issued only on 09.03.2007. There is absolutely no explanation from the plaintiff as to what was his conduct between the period from April 2006 to March 2007.

14.The argument of Mr.Suriya Senthil that as there were 11 months period available to the plaintiff, to exercise his option and the plaintiff did so within a period of 11 months. This does not appeal to me for the simple reason that the balance amount that had to be paid was a mere Rs.25,000/-. The factum that the plaintiff has not produced any evidence to show his financial capacity to repay the balance of the amount looms large. There is



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absolutely no evidence on the part of the plaintiff as to why he kept quiet for a period of nearly 11 months. The urgency that should have been shown by the plaintiff is lacking in the present case.

15. I need not trouble myself with the factum, 'whether the **Ex.A-1** had been signed by the defendant or not?', for which I premise my Judgment on the fundamental principles enunciated under the then Specific Relief Act, under Section 16(c). If the plaintiff has failed to aver and prove the readiness and willingness to execute the sale agreement, the suit has to fail.

16. This leaves out one other aspect which has to be dealt with by me, viz., the passing of the original document that belongs to the defendant, to the plaintiff. A reading of evidence of **P.W.1** and **D.W.1** shows that there was an existing business relationship for several years between the defendant's brother in law (sister's husband) and the plaintiff. It is also on record that the plaintiff was doing money lending business. Therefore, there is a possibility that the documents might have been handed over by the defendant's brother-in-law to the plaintiff, as security. This is the presumption, which the learned lower Appellate Judge had drawn.



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17. Sitting in Second Appeal, I am not inclined to reappreciate the evidence on whole. If two possible conclusions are plausible and the learned lower Appellate Court had taken one of the plausible conclusion, it is not open to me to interfere with it, in a Second Appeal. The lower Appellate Court having taken a view thus, the defendant's brother-in-law could have handed over the documents to the plaintiff, which I find as plausible in the present situation as the evidence discloses a long business relationship between them, I am not inclined to interfere with that finding of the lower Appellate Court.

18. In fine, the substantial questions of law are answered against the plaintiff and the Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.01.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking order / Non-speaking order

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To:

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1.The III Additional District Judge,
Vellore at Thirupattur

2.The Subordinate Judge,
Vaniyampadi, Vellore District.

3.The Section Officer
V.R.Section
High Court of Madras.



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V.LAKSHMINARAYANAN, J.

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