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S.A. No. 1176 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

S.A. No. 1176 of 2013 and
M.P.No.1 of 2013

Indira Gandhi

... Appellant

Versus

Vijaya

... Respondent

Prayer : Second Appeal filed under Section 100 of C.P.C., against the Judgment and decree of the Subordinate Court, Kallakurichi, dated 31.10.2011 made in A.S.No.91 of 2010 confirming the judgment and decree of the Third Additional District Munsif Court, Kallakurichi dated 23.04.2010 made in O.S.No.629 of 2006.

For Appellant : Mr. A. Arunbabu
for Mr. B. Jawahar

For Respondent : Mr. R. Kumaravel

J U D G M E N T

As against the concurrent findings of the Courts below, the appellant, who is the defendant in the original suit, has filed the above Second Appeal.

2. For the sake of convenience, the parties are referred to as per



the litigative status in the original suit.

3. The brief facts of the case are as follows:

(i) The plaintiff and the defendant entered into a registered sale agreement on 22.09.2004 for sale of the suit property situated in S.No. 184/2 in Emapper Village, Kallakurichi District to an extent of 0.00.5 ares including a thatched house, electricity connection etc. The total value of the said property was fixed at Rs.60,000/-. Out of this amount, Rs.50,000/- was paid on the date of the sale agreement i.e., on 22.09.2004. As per the Sale Agreement, the defendant was given a period of 2 years to execute the sale deed, during which time, the balance amount of Rs.10,000/- was to be paid by the plaintiff.

(ii) On 16.05.2006, the plaintiff issued a notice to the defendant requesting her to execute the sale deed. However, the defendant failed to perform her part as per the agreement, which prompted the plaintiff to file the suit on 01.09.2006.

(iii) The suit was filed with two main reliefs, which are as follows :

(a) to direct the defendant to execute and register the sale deed in favour of the plaintiff within a specified time and on her failure to do so,



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the Court may execute the sale deed on behalf of the defendant; and (b) to direct the defendant to surrender possession of the suit property to the plaintiff.

4. The defendant filed a written statement contending that it is only a money transaction between the plaintiff and the defendant. The defendant had allegedly borrowed a sum of Rs.25,000/- from the plaintiff for urgent expenses only as a security, the plaintiff obtained the sale agreement and it was formally registered. Relying upon the said agreement, for expropriating the property of the defendant, the plaintiff filed the above suit. Ultimately, she sought for dismissal of the suit.

5. After scrutinizing the plaint and the written statement, the Trial Court had initially framed two issues and thereafter re-framed four issues, which are as follows :

“i) Whether the agreement of sale dated 22.09.2004 is genuine and valid? and whether it is executed for a valid sale consideration?

ii) Whether the plaintiff was ready and willing to perform her part of the sale agreement?



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iii) Whether the plaintiff is entitled to the relief of Specific Performance ?

(iv) To what other relief the plaintiff is entitled? ”

6. Before the Trial Court, two witnesses were examined on behalf of the plaintiff as P.W.1 (plaintiff) & P.W.2 and Ex.P1 to Ex.P3 were marked. Ex.P1 is the registered sale agreement dated 22.09.2004, Ex.P2 is the legal notice issued by the plaintiff on 16.05.2006 to the defendant. Ex.P3 is the acknowledgement card dated 14.10.2006. On the side of the defendant, D.W.1 and D.W.2 were examined and no documents were marked.

7. While answering the first and second issues, the Trial Court considered the defence raised by the defendant that it was only a money dispute. The defendant obtained a sum of Rs.25,000/- from the plaintiff. To ensure the recovery of the same, a sum of Rs.50,000/- was written in the agreement and only to that extent, the above said agreement was entered and it was registered to facilitate the recovery of money. Vadiveu



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Achari represented the defendant in the suit as her power agent and he has signed in the Ex.P1 as one of the witnesses.

8. Before the Trial Court, D.W.1 and D.W.2 were examined. The defendant was not examined. Vadivelu Achari, the said power agent was examined as D.W.1. He is none other than brother of the defendant's husband. He had stated that the sale agreement was made for borrowal of money from the plaintiff by the defendant. He further stated that the defendant was not examined due to her ill-health, but he failed to provide a clear explanation for failure to examine herself as a witness. Additionally, D.W.2, who is the friend of the power agent was also examined. D.W.2 stated that Vadivelu Achari had borrowed a sum of Rs.25,000/- from the plaintiff and the present suit is related to the amount borrowed by Vadivelu Achari.

9. Contradictions in the deposition of D.W.1 and D.W.2 shows that they are interested witnesses. Consequently, the Trial Court disbelieved and rejected the defendant's case that the dispute was solely about a monetary issue between the plaintiff and the defendant, more specifically



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for a sum of Rs.25,000/-, the sale agreement was made as if Rs.50,000/- was given as sale consideration by the plaintiff with a two year period for execution of the sale deed on payment of the remaining balance of Rs.10,000/-. Though the sale agreement was disputed by the defendant, the Trial Court rejected the aforesaid contention of the defendant and concluded that the defendant had not marked any document to prove the payment of interest or to establish the existence of a monetary dispute between the parties.

10. Considering the aforementioned facts, the Trial Court answered the four issues and ruled in favour of the plaintiff and directed the plaintiff to execute the sale deed within a period of three months and also directed the plaintiff to pay the outstanding balance of Rs.10,000/- at the time of executing the sale deed by virtue of the agreement of sale dated 22.09.2004. Aggrieved by the judgment and decree passed in favour of the plaintiff by the Trial Court, the defendant filed an appeal in A.S.No.91 of 2010 before the Sub-Court, Kallakurichi.

11. Concurring with the findings of the Trial Court, the First



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Appellate Court rejected the defendant's grounds, taking into account the evidence of D.W.1, the defendant's power agent, who deposed that only with regard to the money transaction the said agreement was entered into between them but failed to produce any supporting evidence to prove the same. Being a power agent of the defendant, D.W.1 was unable to disclose the actual purpose for which the sale agreement was executed by the defendant. The First Appellate Court also disbelieved the evidence of D.W.2, the friend of D.W.1, who had stated in his cross-examination that D.W.1 had borrowed a sum of Rs.25,000/- from the plaintiff, but he cannot recall the exact date and month. Additionally, D.W.2 stated that D.W.1 had promised to him to repay a sum of Rs.10,000, which was allegedly borrowed earlier by D.W.1, and he further stated that the present case is related to the amount borrowed by D.W.1 from the plaintiff.

12. Considering the entire deposition with contradictory versions of D.W.1 and D.W.2, the First Appellate Court discredited the evidences examined on the side of defendant and concurred with the judgment of the Trial Court and dismissed the appeal.

13. It is seen that the sale agreement entered between the plaintiff



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and the defendant which was marked as Ex.P1, remained undisputed. The defendant did not produce any document to establish that the agreement was made for only a money transaction between them. In the absence of any documentary evidence produced before the Trial Court by the defendant, the evidence of D.W.1 did not inspire confidence as he is a close relative of the defendant's husband. Ultimately, the appeal filed by the defendant was dismissed by the First Appellate Court on the ground of lack of credible evidence on the side of the defendant. As against the order of dismissal, the defendant filed this second appeal before this Court.

14. While admitting the Second Appeal on 11.02.2014, the only substantial question of law framed for consideration is as follows: -

“Whether the Courts below committed an error of law in granting a decree for specific performance without considering the readiness and willingness of the plaintiff to perform his part of the obligation? ”

15. Learned counsel for the appellant/defendant would vehemently contend that the plaintiff had pleaded that she was ready and



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willing to perform her part of the obligation but her actions contradict this assertion. The plaintiff issued the legal notice dated 16.05.2006 which reveal a lack of genuine effort to perform her part of the agreement and it appears that it was issued only to overcome the shortage of time. Furthermore, the suit was instituted on 01.09.2006, which is almost on the verge of the limitation period. To overcome the limitation period, the suit was filed without any effort made by the plaintiff. This would show that she was never ready and willing to execute her part of the obligation, which is one of the main ingredients of the execution of the sale deed and prayed to allow the second appeal.

16. Learned counsel for the respondent/plaintiff would contend that the plaintiff was always ready and willing to perform her part of the agreement and reiterated the arguments made before the Courts below. Learned counsel for the respondent would contend that the suit is filed well within the limitation period and prayed for dismissal of the Second Appeal.

17. Heard the learned counsel for the appellant/defendant and the learned counsel appearing for the respondent/plaintiff and perused the materials available on record.



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18. Though the learned counsel for the appellant/defendant reiterated that it was only a money dispute, the defendant failed to provide any materials to show that there was a money dispute between the plaintiff and the defendant. The legal notice issued by the plaintiff dated 16.05.2006 seeking the defendant to execute and register the sale deed as per the sale agreement dated 22.09.2004 is genuine, in the absence of any acceptable reasons given by the defendant.

19. Even though, the learned counsel for the appellant/defendant has relied upon a Judgment of the Hon'ble Supreme Court of India, in ***Mayawanti Vs. Kaushalya Devi***, reported in ***(1990) 3 SCC (1)***, wherein it was held that the parties to the contract should have *consensus ad idem*.

The relevant portion is extracted hereunder:-

“ 18. The specific performance of a contract is the actual execution of the contract according to its stipulations and terms, and the courts direct the party in default to do the very thing which he contracted to do. The stipulations and terms of the contract have, therefore, to be



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certain and the parties must have been consensus ad idem. The burden of showing the stipulations and terms of the contract an that the minds were ad idem is, of course, on the plaintiff. If the stipulations and terms are uncertain, and the parties are not ad idem, there can be no specific performance, for there was no contract at all. Where there are negotiations, the court has to determine at what point, if at all, the parties have reached agreement. Negotiations thereafter would also be material if the agreement is rescinded.”

20. The dictum laid by the Hon'ble Supreme Court with regard to the applicability of Section 9 of the Specific Relief Act, 1963, in the aforesaid Judgment reads as follows:-

“ Section 9 of the Specific Relief Act says that except as otherwise provided in that Act where any relief is claimed under Chapter II of the Act in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts. In the instant case the defence of there having not been a contract for lack of



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consensus ad idem was available to the defendant.”

21. The above Judgment relied upon by the defendant with regard to the *consensus ad idem* is not applicable to this case, as the plaintiff and the defendant has agreed the execution of sale agreement, whereas the defence taken by the appellant/defendant before the Trial Court was that it was executed only for a money dispute. There is a factual contradiction in the stand taken by the evidences examined on the side of the defendant and further, no material evidence was marked by the defendant before the Trial Court to establish her case. In view of the same, the Judgment relied upon by the appellant/defendant does not stand in her favour.

22. Learned counsel for the appellant/defendant relied upon the judgment of the Hon'ble Supreme Court of India, in the case of ***Tejram Vs. Patirambhau*** reported in ***(1997) 9 SCC 634***, and contended that the notice was issued to the defendant to execute the sale deed just four months prior of date of expiry of two years mentioned in the agreement would show that the plaintiff approached this Court with unclean hands.



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23. Despite sincere efforts made by the learned counsel for the appellant/defendant to persuade this Court to look into the plaintiff's conduct in issuing the notice on 16.05.2006, at the verge of end of the limitation period, the same shall not be taken into consideration. To destroy the readiness and willingness of the plaintiff to perform her part of the agreement, the defendant has taken the ground that there is only a money dispute between them and therefore, the notice was issued at the verge of end of the limitation by the plaintiff. However, to substantiate the same, the defendant has not produced any material evidence to show that there exists a money dispute. D.W.1, who deposed before the Trial Court as Power Agent, was unable to express the exact intention of the defendant during execution of the sale of agreement and therefore, this Judgment relied upon by the learned counsel for the appellant/defendant is not helpful to thrash the readiness and willingness of the plaintiff. Thus, the substantial question of law raised by this Court is answered accordingly.

24. In view of the above, the findings of the Courts below need not be interfered with in the Second Appeal. The Second Appeal is dismissed by confirming the Judgment and Decree dated 31.10.2011 passed in



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A.S.No.91 of 2010 by the Sub-Court, Kallakurichi. No costs.

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Consequently, the connected miscellaneous petition is also closed.

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Index :Yes

Speaking Order

Neutral Case Citation : Yes

To:

1. The III-Additional District Munisf Court, Kallkurichi.
2. The Sub Court, Kallakurichi.
3. The Section Officer, V.R.Section, High Court of Madras.

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N.SENTHILKUMAR, J.

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