



S.A.No.633 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

S.A.No.633 of 2021 and
C.M.P.Nos.13120 of 2021 & 763 of 2024

Judgment reserved on 10.04.2024	Judgment pronounced on 19.06.2024
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Suchitra ... Appellant

Vs.

Devanathan ... Respondent

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 03.10.2019 made in A.S.No.69 of 2018 on the file of the Principal District Judge, Villupuram reversing the judgment and decree dated 02.07.2018 made in O.S.No.274 of 2011 on the file of the II Additional Subordinate Judge, Villupuram.

For Appellant : Mr.C.Munusamy

For Respondent : Mr.S.Senthilnathan



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J U D G M E N T

The defeated defendant is the appellant herein. The respondent/plaintiff filed a suit in O.S.No.274 of 2011 before the II Additional Subordinate Judge, Villupuram for specific performance of the suit sale agreement Ex.A1 with alternative relief of refund of the advance amount. After trial, the suit was dismissed and the hence, the respondent filed A.S No.69 of 2018 before the Principal District Judge, Villupuram. After trial, the said suit was decreed and hence the present Second Appeal.

2. Brief facts leading to filing of the Second Appeal is -

2(a) The suit property belongs to the appellant and she offered to sell the same to the respondent and the respondent having accepted the above offer on 07.07.2009, entered into sale agreement whereby the appellant herein agreed to sell the suit property for a sale consideration of Rs.2,10,000/- and received Rs.2,00,000/- as advance sale consideration and both the parties to the agreement agreed that the respondent shall pay the balance sale consideration of Rs.10,000/- within one year from the date of agreement. Since the amount of Rs.10,000/- was being short with the respondent, he was



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not able to pay the entire sale consideration on the date of agreement, therefore the sale agreement was entered and the remaining sale consideration was deferred. Then, the respondent approached the appellant twice in the year 2009 with the balance sale consideration in the month of November and December, but the appellant, for one or other reason, evaded to execute the sale deed by receiving the balance sale consideration. After pre-suit legal notice, the case has been filed with the main relief of specific performance or in the alternative, refund of advance sale consideration.

2(b) The appellant/landlady filed written statement alleging that it is only a loan transaction and she had received Rs.2 lakhs from the respondent as loan, that only after receipt of the legal notice, she came to know that sale agreement was registered and further contended that respondent/agreement holder was not ready and willing to perform his part of contract.

3. On the side of the respondent/plaintiff, he examined himself as PW1 and Exs.A1 to A6 were marked. On the side of the appellant/defendant, she examined herself as DW1 and no document was marked.



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4. Based upon the oral and documentary evidence, the Trial Court dismissed the suit, while the Appeal was allowed and hence the Second Appeal.

5. This Second Appeal was admitted by this Court on 31.08.2021 on the following substantial questions of law :

(i) Whether the First Appellate Court was right in allowing the suit granting decree for specific performance of contract of sale notwithstanding the fact that the respondent/plaintiff has chosen to wait for 2 years from the date of legal notice ?

(ii) Whether the First Appellate Court being the final court of fact is right in reversing the well considered judgment of the Trial Court, particularly in the absence of any reasoning to defer from the findings of the trial Court on all the issues ?

6. Heard the learned counsel appearing for the appellant as well as respondent and perused the materials available on record.



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WEB COPY 7. The following points arise for determination in this Second Appeal.

(i) Whether Ex.A1 is a sale agreement or loan sale agreement, as pleaded by the respondent or has been executed only for the loan transaction ?

(ii) Whether the order of the Lower Appellate Court is justifiable in law ?

(iii) Whether the respondent/plaintiff is ready and willing to perform his part of contract ?

8. It is seen from the records that the respondent / plaintiff has come with a specific case that the suit property belongs to the appellant and she offered to sell the same to the respondent and the respondent having accepted the above offer on 07.07.2009, entered into sale agreement whereby the appellant herein agreed to sell the suit property for the sale consideration and both the parties to the agreement agreed that the respondent shall pay the balance sale consideration of Rs.10,000/- within one year from the date of agreement. When the respondent approached the appellant twice in the year 2009 with the balance sale consideration, i.e. in the month of November and



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December, the appellant, by saying one or the other reason, evaded to execute the sale deed by receiving the balance sale consideration and the respondent was given to understand that the appellant herein made some attempts to alienate the suit property to some third parties, despite the respondent was ready and willing to perform his part of contract by tendering the balance sale consideration. Hence, on 25.01.2010, the respondent issued a legal notice calling upon the appellant to execute the sale deed and the appellant, after receipt of the said legal notice, issued a reply on her own on 03.12.2010 with false allegations.

9. Per contra, the appellant contended that for some urgent reason, the respondent tendered a sum of Rs.2,00,000/- as loan with interest at the rate of Rs.8,000/- per month and also denied readiness and willingness on the part of the respondent.

10(a) Perused Ex.A.1 – suit sale agreement which is a registered document and with regard to attestation and registration, the appellant, as DW1 has accepted that she went to the Sub Registrar Office and executed the



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sale agreement. In short, execution of sale agreement was admitted by the appellant/defendant however, she has taken a stand that Ex.A1 is not a sale agreement and it is a mortgage deed. In other words, she has challenged the nature and character of Ex.A1 and hence the burden shifts on the appellant/defendant to prove that Ex.A1 is not a sale agreement but is only a security for loan. In the written statement, the appellant/defendant never raised a plea that in the suit property, there is a house but in the loan agreement, it is shown as vacant site. Evidence of PW1 also goes to show that it is a vacant site. On the contrary, the sale deed executed in favour of the appellant shows that there is a house in the suit property. As per Ex.A4 which is a sale deed of the year 2001, the appellant had purchased the property with a house.

10(b) It remains to be stated that when the appellant raised a plea as to the nature and character of the document viz not that of a sale agreement, the burden lies on her. As per Section 92 of the Indian Evidence Act – instance of execution of oral evidence are dealt with. However, lending of oral evidence to impeach written sale agreement is permissible only to a limited extent as



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the sale agreement is manipulated and it was never intended to be acted upon to that limited extent. The appellant/landlady can lead oral evidence to prove that there was no due execution of Sale Agreement for want of consensus ad idem. The brother of the appellant was the attester of Ex.A1 – sale agreement. However, no possible explanation has been given by the appellant for non-examination of the attester of the said document also assumes significance.

10(c) It remains to be stated that fixation of time limit is within the wisdom of the party to the contract to fix the period of performance. But at the same time, the conduct of the parties in fixing the period for the performance can be taken as factor to find out the real transaction or controversy behind the sale agreement. The appellant, as DW1, has admitted in the cross examination that prior to filing of the suit, based upon Ex.A1, suit sale agreement, the respondent issued legal notice on 25.01.2010 – Ex.A2. Reply by the appellant A.3 is on 03.02.2010. Stand of the appellant in the reply statement is that it is only a money transaction and it is also specifically denied by the appellant as to the nature of the agreement of sale, assumes



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significance.

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10(d) Admittedly, no rejoinder has been issued by the respondent assumes significance. The suit has been filed two years after Ex.A3 also assumes significance on the above factual background. DW1/landlady accepted receipt of Rs.2 lakhs under Ex.A1. She has stated that she only sought loan from Devaraj and the said Devaraj introduced the respondent on the date of Ex.A1 and on the same day, the respondent gave Rs.2 lakhs to the appellant. In the cross examination, DW1 has admitted that on entering into the Sub Registrar's Office, she affixed left thumb impression and put signatures both in the identifying portion of the sale deed as well as in the ledger of the Sub Registrar's Officer. Hence, this Court finds that the appellant had not discharged her burden as to the nature and character of the Ex.A1 – sale agreement as projected by her.

11(a) The sale price under Ex.A1 is Rs.2,10,000/-. Agreement was entered into on 07.07.2009. The appellant has admitted receipt of Rs.2,00,000/- on the very same date of agreement. The balance of the amount



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that has to be paid is Rs.10,000/-. The said amount appears to be very meagre however, parties have agreed for the payment of balance amount within a period of one year. Legal notice was issued by the respondent and reply by the appellant was also given, as stated supra. Now, the question is whether the respondent was ready and willing to perform his part of contract ? Readiness indicates ready with money and willingness indicates intention of the party to complete the transaction. These are all twin statutory requirements for satisfying Section 16 (3) of the Specific Relief Act. Evidence of PW2 regarding readiness with money assumes significance.

11(b) Ex.A2-legal notice is dated 25.01.2010. Ex.A3 is the reply by the appellant dated 03.02.2010. The suit has been filed on 23.12.2011. For almost two years, the respondent / plaintiff has not taken any steps. In this regard, the balance amount payable by the appellant is only Rs.10,000/-. The respondent, as PW1 in his cross examination has stated as follows -

“ஒப்பந்தத்தின் மறு மாதமே நான் பிரதிவாதியை
கேட்டு அவர் வர மறுத்துவிட்டார். நான் அவ்வாறு
பிரதிவாதி மறுத்தவுடன் ஏன் நடவடிக்கை
எடுக்கவில்லை என்று சொன்னால், முிரதிவாதியை



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மீண்டும் மீண்டும் கேட்டுப்பார்த்து அவகாசம் கொடுக்க
காத்திருந்தேன்..... 03.02.2010 அன்று பிரதிவாதி
பதில் அறிவிப்பு அளித்தபிறகு ஏன் உடனடியாக வழக்கு
தாக்கல் செய்யவில்லை என்று சொன்னால்,
வழக்கறிஞரிடம் இந்த விவரத்தை நான் கூறினேன்,
அவர் உடனடியாக இந்த வழக்கை தாக்கல்
செய்யவில்லை.”

11(c) At this juncture, it remains to be stated that the appellant had refused the specific performance on the very next month of sale agreement. Two years after the reply notice by the appellant under Ex.A3, the respondent has not taken any steps. The explanation offered by him in the cross examination was that he was waiting. At this juncture, it remains to be stated that in the plaint, the respondent has come out with a specific case that as he was short of Rs.10,000/- to complete the sale transaction, he had entered into a sale agreement instead of sale deed whereas in the cross examination, he has offered an explanation that the respondent was not willing for execution of sale deed at once. Therefore, there is a contradiction in the evidence of PW1 with regard to completion of sale consideration.

11(d) Coming to the evidence of respondent/plaintiff as PW1, he does



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not possess money of Rs.10,000/- to complete the sale transaction so also there is no possible explanation much less any explanation for the delay in filing the suit for more than two years, even after refusal by the appellant, assumes significance. Hence, this Court finds that the respondent has not demonstrated his readiness and willingness to complete the sale transaction. Hence, for the above said reasons, this Court is of the considered view that the respondent was not ready and willing to perform his part of contract, in this absence of any explanation for the delay of more than two years, even after refusal by the appellant. This point is answered in favour of the appellant and against the respondent.

12. Regarding alternative relief of refund of advance amount, considering the case of the parties and admission to the receipt of Rs.2,00,000/- by the appellant under Ex.A1 and that she is still willing to repay the said amount, the said cause of action also not being barred by law of limitation, this Court is of the considered view that the relief, as sought by the respondent, in the interest of justice and to put an end to the dispute of the parties herein, the appellant shall be directed to repay the amount of



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Rs.2,00,000/- with interest at the rate of 9% from the date of Ex.A2 till the date of this judgment and shall be directed to pay the interest at the rate of 6% from the date of the judgment till the date of discharge of the debt.

13. Thus, this court finds that Ex.A1-sale agreement is an agreement for entering into an agreement of sale between the parties however, the respondent has not proved that he was ready and willing to perform his part of the contract. Having failed to do so, which is a statutory mandate under Section 16 (3) of the Specific Relief Act, the judgment of the Lower Appellate Court is liable to be set aside and that of the Trial Court has to be restored. Since DW1 has admitted receipt of Rs.2,00,000/-, necessarily he has to repay the said amount, as ordered by the Trial Court with interest @ 9% from the date of Ex.A2 till the date of this judgment and shall be directed to pay the interest at the rate of 6% from the date of the judgment till the date of discharge of the debt. Accordingly, the alternative relief is granted to the respondent. The substantial questions of law are answered in favour of the appellant.

14. In the result, **the Second Appeal is allowed** to the extent indicated



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above, setting aside the judgment and decree dated 03.10.2019 made in A.S.No.69 of 2018 on the file of the Principal District Judge, Villupuram and confirming the judgment and decree dated 02.07.2018 made in O.S.No.274 of 2011 on the file of the II Additional Subordinate Judge, Villupuram.. The main relief of specific performance stands refused and in the alternative, the refund of advance amount, as ordered by the Trial Court is confirmed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

19.06.2024

Index : Yes/No
Neutral Citation : Yes/No
rgr

To

1.The Principal District Judge,
Villupuram

2.The II Additional Subordinate Judge,
Villupuram.

3.The Section Officer
VR Section, High Court
Madras.



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RMT.TEEKAA RAMAN, J.

(igr)

**Judgment in
S.A.No.633 of 2021**

19.06.2024