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S.A. No. 825 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2024

CORAM

THE HON'BLE MR. JUSTICE V. LAKSHMINARAYANAN

Second Appeal No. 825 of 2013

&

M.P. No. 1 of 2013

Raghupathy

..Appellant

Vs.

1. Sekar

2. Viswanathan

(Set Exparte – no relief sought against
the 2nd respondent. Hence given up.)

..Respondents

Prayer: Second Appeal as against the judgment and decree dated
29.07.2011 made in A.S. No. 6 of 2011 on the file of the Subordinate Judge,
Panruti reversing the judgment and decree dated 29.04.2010 made in O.S.
No. 69 of 2001 on the file of the District Munsif Court, Panruti.

For Appellant :: Mr.C. Prabhakaran

For Respondents :: Ms.Nilaphar for R1

R2 given up



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J U D G M E N T

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The present second appeal arises out of the judgment and decree dated 29.07.2011 passed in A.S. No. 6 of 2011 by the Court of Subordinate Judge, Panruti reversing the judgment and decree dated 29.04.2010 rendered in O.S. No. 69 of 2001 by the Court of District Munsif, Panruti and thereby decreeing the suit for specific performance of an agreement of sale.

2. For the sake of convenience, the parties are referred to in the same rank as they were arrayed in the suit.

3. The 1st defendant appeals before me.

4. The case of the plaintiff is that the suit property belongs to the 1st defendant and he had agreed to alienate the property in favour of the plaintiff for a sum of Rs.25,000/-. The 1st defendant received a sum of Rs.20,000/- on 19.10.2000 and the time period for the payment of the balance amount of Rs.5000/- was one year. In other words, the time period for the payment of the balance amount expired on 18.10.2001. On



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05.03.2001, the plaintiff issued a suit notice calling upon the 1st defendant to come and execute the sale deed. Notice was also issued to the 2nd defendant, C. Viswanathan, bringing to his notice about the agreement between the plaintiff and the 1st defendant; that the 1st defendant was evading service of notice. The plaintiff pleaded that the sale made by the 1st defendant in favour of the 2nd defendant was not a valid one and called upon the 2nd defendant to come along with the 1st defendant to execute the sale deed in his favour.

5. The 1st defendant issued a reply notice after the presentation of the plaint on 17.03.2001. The stand of the 1st defendant was that there were money transactions between him and the plaintiff for several years. According to him, he never executed any agreement as alleged by the plaintiff. He would further state that there was an agreement of sale entered into between them on 03.12.1997, which was cancelled on 19.10.2000. The said sale covered two items of his property and the sale consideration was a sum of Rs.45,000/-. It was also alleged in the reply notice, which formed a part of the written statement, that the originals of the title deeds of the



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property were available with the plaintiff and on the date of cancellation, he had demanded the return of the same. Though the plaintiff promised to return the same by that evening or the next day, he failed to do so.

6. On the basis of these pleadings, the parties went to trial. The learned Trial Judge framed the following issues for the purpose of determination:

- "1. 19.10.2000 தேதியிட்ட கிரய ஒப்பந்தம் உண்மையானதா?
2. வாதிக்கு ஏற்றதை ஆற்றுக பரிகாரம் வழங்கத்தக்கதா?
3. வாதிக்கு என்ன பரிகாரம் வழங்கத்தக்கது?"

7. On the side of the plaintiff, P.W.s 1 to 3 were examined and Exhibits A1 to A7 were marked. On the side of the defendants, the 1st defendant alone was examined as D.W.1 and he marked Exhibits B1 to B4. The 2nd defendant was set ex parte.



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8. On the basis of the oral and documentary evidence, the learned Trial Judge came to the conclusion that the agreement dated 19.10.2000 had not been proved and dismissed the suit.

9. Aggrieved by the same, the plaintiff preferred an appeal suit before the learned Subordinate Judge at Panruti. The said appeal suit was taken on file as A.S. No. 6 of 2011. On consideration of the materials on record, the learned Appellate Judge came to a diametrically opposite conclusion and held that the agreement dated 19.10.2000 had been proved and thereby allowed the appeal suit as prayed for. Challenging the said judgment and decree, the present second appeal is presented before this Court.

10. On 10.12.2013, the second appeal was admitted on the following substantial questions of law:

"(a) Whether the relief could be granted in favour of the plaintiff who approached the court with unclean hands and suppression of facts?

(b) Whether the finding of the lower appellate court is



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correct in holding that the suit sale agreement Ex.A1 is proved and he is entitled for relief of specific performance which creates a suspicion based on Exs.B1 and B2?

(c) Whether the relief of specific performance can be granted though the evidence of P.Ws. 1 and 2 are contrary to each other which has been found by the lower appellate court itself?"

11. Mr.C.Prabhakaran, learned counsel for the appellant/1st defendant would firstly submit that the non-registration of the agreement dated 19.10.2000 would lead this Court to hold that an agreement was not at all entered into between the parties on that day. Further he would submit that the 1st defendant had signed blank papers to enable the plaintiff to cancel the agreement dated 03.12.1997 and those blank papers had been filled up and utilised for the purpose of filing the suit.

12. His second submission is that in a suit for specific performance, it is essential on the part of the plaintiff to prove that there was meeting of minds – *consensus ad idem* and the same having not been proved by the plaintiff, the very basis of the suit falls to the ground. Therefore, learned



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counsel for the appellant/1st defendant would press upon the point that there was no agreement of sale.

13. Ms. Nilaphar, learned counsel for the 1st respondent/plaintiff would contend that the plaintiff had not only examined himself to prove the agreement, but had also examined the attesting witness namely, one Amalorpavaraj as P.W.2 to prove the agreement. In order to show that the agreement was written in the presence of both parties, the plaintiff had examined P.W.3, the scribe of the document as well. The learned counsel would state that insofar as the financial capacity of the plaintiff is concerned, it was not questioned by the 1st defendant and apart from that, being a financier, the plaintiff was possessed of sufficient funds for the purpose of purchase of the property. Therefore, she would submit that the Lower Appellate Court had correctly appreciated the position of law and the judgment and decree of the Lower Appellate Court need not be interfered with by this Court.



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14. I have carefully analysed the oral and documentary evidence and heard the learned counsel on either side on the questions of law framed. They are taken up together and heard.

15. It is not in dispute that the plaintiff and the 1st defendant had entered into an agreement of sale on 03.12.1997 for a sum of Rs.45,000/- covering two items of properties. Out of the two items of properties covered under the said agreement, one item had been alienated by the 1st defendant in favour of one Krishnamoorthy on 30.09.2000. Nearly a month after the alienation of the said property, the first agreement of sale entered into between the parties had been cancelled on 19.10.2000. On the very same day, the suit agreement had been entered into. It is admitted by both parties that the plaintiff is a financier as well as a cashewnut merchant. Therefore, the ability of the plaintiff to pay is beyond cavil and the question of this Court probing into the financial capacity of the plaintiff does not arise.

16. A perusal of the agreement dated 19.10.2000 would show that



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the sale consideration was Rs.25,000/- and nearly 4/5th of the amount was paid on the same day, i.e., to say that a sum of Rs.20,000/- was paid on the date of agreement, leaving only a paltry sum of Rs.5000/- as balance. Being a financier, the plaintiff would not have required much time to pay this amount. However, the fact remains that the plaintiff had taken a year's time under the agreement for the payment of the balance sum of Rs.5000/- and for execution of the sale deed.

17. Besides, the parent document was available with the plaintiff and not with the 1st defendant. It is clear from Ex.A7, (it was not marked during the cross-examination of D.W.1 but during the chief examination of P.W.1) that the plaintiff was in possession of the title deeds allegedly under the agreement of sale. An agreement of sale continues to be in the realm of contract and at that stage, it is highly unusual for a person to hand over the original title deeds to the agreement holder, especially, when he is a financier.

18. In a suit for specific performance, even if an iota of doubt arises



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on the validity of the agreement, the Court should not exercise its discretion in favour of the plaintiff. In fact, the two circumstances, namely, the paltry balance amount payable by the plaintiff to the 1st defendant and the possession of original title deeds of the suit property by the plaintiff creates a considerable doubt as to whether there was an agreement at all or whether the agreement had been entered into as a security for repayment of Rs.20,000/-. Since this Court entertains a doubt with regard to the nature of the agreement between the parties, even assuming that the agreement is legal, by virtue of Section 20 of the Specific Relief Act, this Court is not inclined to exercise its discretion in favour of the plaintiff. It may not be out of place to point out that the discretion exercised by the Court below is also susceptible to correctional jurisdiction of this Court under Section 100 of the Code of Civil Procedure.

19. Insofar as the contention raised by Mr.C. Prabhakaran, learned counsel for the appellant/1st defendant that since the agreement dated 19.10.2000 had not been registered, the Court should not decree the suit for specific performance is concerned, the same is liable to be rejected outright.



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An agreement of sale, as pointed out earlier, is a contract between the parties. In fact, law does not prevent an oral contract for sale of immovable property. Under such circumstances, since agreement dated 03.12.1997 was cancelled and the suit agreement remained unregistered, I cannot come to the conclusion that it is fatal to the suit.

20. The other aspect which leads this Court to arrive at this conclusion is that the 1st defendant had purchased the property on 11.04.1995. The value of the property, as could be seen from Ex.A7 is Rs.23,800/- and it is highly illogical and unnatural that the very same property was dealt with for a sum of Rs.25,000/- six years thereafter. Therefore, I am of the view that the plaintiff has not proved his case for specific performance of the agreement dated 19.10.2000, but has proved that there was a loan transaction for a sum of Rs.20,000/-.

21. In the light of the above discussion, this Court comes to the conclusion that the agreement of sale has not been proved to be one relating to sale of property, but, at best, it can be treated only as a security for



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repayment of loan of Rs.20,000/- received by the plaintiff from the 1st defendant.

22. ***In the result, the second appeal stands partly allowed*** and the judgment and decree dated 29.07.2011 passed by the learned Subordinate Judge, Panruti, in A.S. No. 6 of 2011 are set aside and the judgment and decree granted by the learned District Munsif, Panruti, in O.S. No. 69 of 2001 dated 29.04.2010 are restored.

23. While dismissing the suit for specific performance, this Court grants a decree for return of Rs.20,000/- together with interest @ 12% per annum from 19.10.2000 till the date of repayment. As a measure of security for repayment, there shall be a charge over the property.

24. Considering the fact that the plaintiff and the 1st defendant are having financial relationship for a long time, I am not inclined to impose costs.



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25. At this stage, Ms.Nilaphar, learned counsel for the plaintiff points out that a sum of Rs.5,000/- had been deposited by her client after the judgment and decree of the Lower Appellate Court. Since the suit for specific performance is dismissed, the plaintiff will be entitled to withdraw the amount deposited by him, together with interest, if any, for which Mr.C. Prbahakaran has no objection. Connected M.P. is closed.

22.03.2024

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Index: Yes/No

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Neutral Citation: Yes/No

To

1. The Sub Court, Panruti
2. The District Munsif Court, Panruti.

V. LAKSHMINARAYANAN,J.



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