



S.A.No.980 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.No.980 of 2013

1.Chinnammal
2. Raja

.. Appellants

vs.

Perumal

..Respondent

Second Appeal filed under Section 100 of CPC against the judgment and decree passed in A.S.No.23 of 2011 dated 18.04.2012 on the file of the learned Sub-Judge, Dharmapuri in confirming the judgment and decree passed in O.S.No.281 of 2004 dated 09.02.2011 on the file of the learned District Munsif, Dharmapuri.

For Appellants : Mr.M.R.Jothimanian

For Respondent : Ms.Elizabeth Ravi
for Mr.P.Raja

JUDGMENT

The present second appeal arises against the judgment in A.S.No.23 of 2011 on the file of Sub-Judge, Dharmapuri dated 18.04.2012 confirming the judgment and decree of the Court of District Munsif at Dharmapuri in O.S.No.281 of 2004 dated 09.02.2011.



S.A.No.980 of 2013

2. The defendants appeal.

WEB COPY

3. The suit is one for specific performance of an agreement for sale under Ex.A1, dated 13.06.2002. By Ex.A1, it was agreed between the parties that a property to an extent of 2 acres and 32 cents will be sold for a sum of Rs.1,00,000/-. On the date of the transaction, namely 13.06.2002, a sum of Rs.90,000/- was paid and for the balance of Rs.10,000/-, time period of 2 years was granted. The suit notice was issued on 22.05.2004. As the defendants did not respond to the suit notice and came forward to execute the sale deed, the suit was presented on 09.06.2004.

4. The defendants on entering appearance, filed a statement that the property is worth more than Rs.10 lakhs per acre as it is a wet land and the suit agreement was one created for the purpose of loan transaction. They would state that they had borrowed a sum of Rs.60,000/- with interest at the rate of 36% per annum and they also executed a pronote to the said effect. Subsequently, they borrowed a further sum of Rs.1 lakh on two different dates. It is pleaded that in all, the defendants had borrowed a sum of Rs.1,10,000/- as loan. It was specifically pleaded that the agreement is a sham and nominal one. The parties went to trial on the aforesaid pleadings.



S.A.No.980 of 2013

5. The plaintiff Perumal examined himself as PW1 and filed the proof affidavit of one Madhesh. Since Madhesh did not turn up for further examination, the proof affidavit filed by Madhesh was eschewed and subsequently another person by name Rajannan was examined as PW2. The plaintiff marked four documents, namely Ex.A1, the suit agreement Ex.A2, the suit notice and Exs.A3 and A4, the acknowledgement cards. The second defendant examined himself as DW1 and one Mahendran was examined as DW2. No documents were filed on the side of the defendants.

6. The trial Court framed the following issues for consideration:-

“1. Whether the plaintiff is entitled to the relief of “specific performance” as prayed for?

2. Whether the suit agreement is executed as security for debt?

3. Whether the plaintiff is entitled to possession of suit property as prayed for?

4. Whether the sale agreement is nominal, sham and unenforceable in law?

5. To what other reliefs the parties are entitled?”



S.A.No.980 of 2013

7. Upon appreciation of oral and documentary evidence, the trial Court decreed the suit with costs. Aggrieved by the same, the defendants preferred a regular appeal to the lower Appellate Court which confirmed the judgment of the trial Court against which the present second appeal.

8. On 26.09.2013, this Court had ordered notice regarding admission and had granted interim stay of further proceedings.

9. Today, when the matter came up before me, Mr.M.R.Jothimanian suggested the following questions of law to be answered in the appeal:

“a) Whether the suit agreement is executed for debt security as per the contention of the respondent/plaintiff?

b) Whether the sale agreement in Ex.A1 is enforceable by the respondent/plaintiff in facts of case or in law?

c) Whether any proof for readiness and willingness as contended by the respondent/plaintiff except Ex.A3? Whether the Ex.A3 is only purpose for filing this suit?

d) Whether any witness examined, who were signed in the suit agreements?

e) Whether the Ex.A1 sale agreement is joint family property? If joint family property, which is executable in law as per the contention of the respondent/plaintiff?

f) Whether the courts below are considered the transactions between the appellant and respondent for debt that the Appellants herein clearly differentiate the case in which the transaction made



S.A.No.980 of 2013

only for debt and even when there is dispute raised by the appellants?

g) Whether the courts below are erred in decreed and confined the claim of the respondent/plaintiff as per the law that the plaintiff is entitled to the relief? ”

10. I feel this appeal should be heard on one substantial question of law, namely

“Whether the Courts below were correct in decreeing the suit for specific performance when the plaintiff has not proved his readiness and willingness as required under Section 16(c) of the Specific Relief Act?”

11. Heard Mr.M.R.Jothimanian, for the appellants and Ms.Elizabeth Ravi, for the respondent.

12. The narration of the aforesaid facts and the factum that the plaintiff had filed only four documents and had not established his readiness and willingness, i.e., financial capacity to purchase the property and the urgency that is necessary for an agreement holder to convert a sale agreement into a sale deed should have made the courts below to look against the plaintiff. It is a crucial fact that Ex.A1 was entered into on 13.06.2002 and the plaintiff did absolutely nothing till 22.05.2004 that is for a period of nearly 23 months. The plaintiff did not even move his little finger in order to establish that he was ready and willing to



S.A.No.980 of 2013

purchase the property. Apart from that, no evidence had been let in before the Court to show that he had the financial capacity to purchase the property. In addition, I can notice the fact that while the amount that had been said to have been paid under Ex.A1 is Rs.90,000/-, it is highly artificial that for the balance of Rs.10,000/- a purchaser will seek for a period of two years or 24 months. This leads only to the conclusion that after having paid Rs.90,000/-, the plaintiff had exhausted his funds and was not in a position to cough up remaining Rs.10,000/- to pay and get the sale deed. That will throw lot of light on the readiness of the plaintiff.

13. Ms.Elizabeth Ravi would vehemently contend that the factum that majority of the amount has been paid shows that the plaintiff has been ready and willing to get the sale agreement converted into a sale deed. She would submit that the amount of Rs.10,000/- is a paltry sum and there is no denial in the written statement.

14. As per Section 16(c) of the Specific Relief Act, 1963, it is the duty of the plaintiff to “*aver and prove*” that he was ready and willing. The fact that the balance amount is only Rs.10,000/- does not mean that since majority of the amount had been paid, the plaintiff can sit back and relax and take his own time for payment of balance. There is no evidence



S.A.No.980 of 2013

at all worth its name as to what the plaintiff did for 23 months. This lack of evidence and the specific plea of the defendants that they had borrowed a sum of Rs.1,10,000/- in installments of Rs.60,000/- and Rs.50,000/- shows that there has been loan transaction between the plaintiff and defendants.

15. As held by learned brother (Krishnan Ramaswamy.,J.) in the case of *Vijayalakshmi Vs. A.Ganesan and Others* reported in **2023 SCC OnLine Mad 5977** wherein a major portion of the sale consideration is paid and for the balance amount an artificial period of 2 or 3 years is fixed, the transaction reeks of a loan transaction. I would respectfully follow the view taken by my learned Brother. Therefore, the suit for specific performance would necessarily have to fail as readiness and willingness has not been exhibited by the plaintiff. Consequently the arguments of Ms.Elizabeth Ravi would have to be rejected and those of Mr.M.R.Jothimanian would necessarily have to get acceptance in the hands of this Court.

16. Having come to the conclusions that the plaintiff is not entitled for specific performance, does not put an end to the case. The second defendant has admitted that he has received a sum of Rs.1,10,000/- from the plaintiff and in his written statement has specifically stated that he is



S.A.No.980 of 2013

willing to refund a sum of Rs.2,50,000/-. Unfortunately, the second defendant has not brought forth either the pronote or the other documents in order to substantiate the amount said to have been paid under the loan transaction.

17. The plaintiff, having relied entirely upon Ex.A1, I cannot decree the suit for the amounts stated in the written statement but I can decree the suit only for the amount stated in the plaint. Consequently, the plaintiff will be entitled for a decree for refund of advance amount of Rs.90,000/- together with interest at the rate of 9% per annum from 13.06.2002 till the date of repayment. There shall be a charge over the suit schedule mentioned property for the aforesaid amount. In case the defendant defaults in payment of the aforesaid amount to the plaintiff, the plaintiff will be entitled to enforce the said charge.

18. Consequently, the substantial question of law is answered in favour of the appellants and against the respondent. The judgment and decree of the learned Subordinate Judge at Dharmapuri in A.S.No.23 of 2011 dated 18.04.2012 in confirming the judgment and decree in O.S.No.281 of 2004 dated 09.02.2011 is set aside and insofar as the relief of specific performance is concerned, will stand dismissed. There shall be decree for recovery of money of Rs.90,000/- together with interest at



S.A.No.980 of 2013

the rate of 9% per annum from 13.06.2002 till the date of repayment for which purpose there shall be a charge over the suit schedule mentioned property. The plaintiff will be entitled for costs in the second appeal.

31.01.2024

Index: Yes/No
Neutral Citation: Yes/No
gpa

To
1. The Sub-Judge, Dharmapuri
2. The District Munsif, Dharmapuri



WEB COPY



S.A.No.980 of 2013

V. LAKSHMINARAYANAN, J.

gpa

S.A.No.980 of 2013

31.01.2024