



S.A.No.717 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No. 717 of 2019

N. Chandrababu
Son of Late Narayanaswamy Gounder,
No.180, Othavadai Street,
Kammavanpettai Village,
Kammasamuthiram Madura,
Vellore Taluk, Vellore District.

.....Appellant

VS

Abdul Salam
Son of Abdulla Sahib,
Pillayar Koil Street,
Kammavanpettai Village,
Kammasamuthiram Madura,
Vellore Taluk, Vellore District.

.... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 02.03.2019 passed in A.S. No.28 of 2018, on the file of the Additional District Court (Fast Track Court), Vellore, upholding the decree and judgment dated 05.02.2018 passed in O.S.No.30 of 2013, on the file of the Principal Subordinate Court, Vellore.



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For Appellant : Mrs.V. Srimathi
For Respondent : Mrs. Hema Sampath, Senior Counsel
for Mr. B. Gopala Krishnan

JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal. The plaintiff has filed the suit in O.S.No.30/2013 before the Principal Sub-court, Vellore, for specific performance of contract in respect of the suit property. The respondent/defendant remained absent and was set *ex parte*. The learned trial court judge, dismissed the suit by observing that the transaction between the plaintiff and the defendant was a loan transaction and that the defendant should repay a sum of Rs.1,50,000/- to the plaintiff together with interest at the rate of 12% per annum from the date of agreement till the date of filing of the suit and thereafter 6% per annum till the date of realisation. This judgment was passed on 05.02.2018.



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2. Aggrieved over the decree and judgment passed by the trial court judge, the plaintiff filed an appeal in A.S. No.28/2018 before the Principal District Court, Vellore. The learned Principal District Judge, Vellore, after hearing the arguments of the plaintiff and the defendant upheld the findings recorded by the trial court judge by observing thus:

"7. It is admitted fact that this is the suit for specific performance on agreement of sale dated 05.10.2009 and the ex parte decree was passed by the lower trial court. Ex.A1 has disclosed that a sale consideration of Rs.2,00,000/- was arrayed between the parties for the purpose of entering into agreement of sale between the plaintiff and the defendant. Further the document would disclose that on the date of execution of document on 05.10.2009 a sum of Rs.1,50,000/- came to be paid by the plaintiff to the defendant and that the said amount being paid to the defendant was evidenced by the receipt of payment in the document itself. No separate receipt came to be filed for passing the consideration. Since the said Ex.A1 registered document which came to be registered before the S.R.O. this court of appeal is of the



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opinion to rely upon the document Ex.A1 is that of agreement of sale wherein parties have entered into bilateral agreement to perform the terms of agreement and that a sum of Rs.1,50,000/- to be paid by the plaintiff to the defendant towards advance amount and total sale consideration of payment and remaining balance sale consideration of Rs.50,000/- period of 3 years time was given in the agreement Ex.A1 which does not inspire the confidence to read Ex.A1 is an agreement for sale.

8. Having paid major sum of Rs.1,50,000/- and remaining balance amount of Rs.50,000/- and time lack fixed for 3 years to disclose the transaction though captioned agreement for sale it is true since it is a last transaction. Therefore this court of appeal is of the opinion that the lower trial court has clearly come out to the conclusion to provide the alternative remedy to the plaintiff and direct the defendant to pay a sum of Rs.1,50,000/- alongwith interest at the rate of 12% per annum from the date of agreement till date of filing of this suit and further directs to pay interest at the rate of 6% per annum on the next date of filing till the date of realisation with cost is found correct and it needs no interference.



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9. In the result, the appeal stands dismissed and the lower trial court decree and judgement passed by learned Principal Subordinate Judge, Vellore in O.S.30/2013 dated 05.02.2018 is hereby confirmed."

3. A bare perusal of the judgments passed by both the courts below shows that they are perverse. When the defendant has not filed his written statement stating that the transaction between him and the plaintiff is a loan transaction, the trial court had held that it is a loan transaction and the defendant should repay a sum of Rs.1,50,000/- to the plaintiff with interest. The first appellate court, without framing points for consideration, had simply, by a cryptic judgment, upheld the findings recorded by the trial court judge. Both the courts below had not adverted their attention to the other aspects of the case especially when the plaintiff in his plaint has contended that out of the total sale consideration of Rs.2,00,000/-, he paid a sum of Rs.1,50,000/- and that the balance consideration is only Rs.50,000/-. He has also issued a legal



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notice dated 02.08.2012 (Ex.A2) to the defendant. As already observed, the judgments and decrees passed by both the courts below are perverse and therefore, the same have to be set aside. The case has to be remitted back to the trial court for considering the same afresh after giving sufficient opportunity to both parties to put forth their respective contentions. The written statement of the defendant should be filed within two weeks from the date of receipt of a copy of this judgment. The trial court shall dispose of the suit within a period of six months.

4. In the result,

- i. the Second Appeal is allowed. No costs.
- ii. The decree and judgment dated 02.03.2019 passed in A.S. No.28 of 2018, on the file of the Additional District Court (Fast Track Court), Vellore, and the decree and judgment dated 05.02.2018 passed in O.S.No.30 of 2013, on the file of the Principal Subordinate Court, Vellore, are set aside.
- iii. The matter is remitted back to the trial court. The respondent/defendant shall file his written statement within two



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weeks from the date of receipt of a copy of this judgment and thereafter, the trial court judge, after giving reasonable opportunity to both parties to adduce evidence, shall dispose of the case within six months.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

1. The Additional District Judge (Fast Track Court), Vellore,
2. The Principal Subordinate Judge, Vellore.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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