



S.A.No.643 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.643 of 2014

A.Palaniappan

...

Appellant

Vs.

1.M/s.Giriram finance and Leasing
Pvt. Ltd.,
Rep.by its Managing Director,
R.Thangavel,

2.Saravanan

3.Manimekalai

4.Mahalingam

...

Respondents

PRAYER:- Second Appeal has been filed under Section 100 of CPC against the judgment and decree dated 14.02.2014 made in A.S.No.23 of 2012 on the file of the learned Sub Court, Bhavani confirming the judgment and decree dated 30.11.2004 made in O.S.No.401 of 2004 on the file of the learned Second Additional District Munsif Court, Bhavani.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.B.Ramkumar
No.1 for Mr.M.Narayanaswamy

Respondents 2 to 4 : Notice served

JUDGMENT



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The present second appeal arises out of the judgment and decree of the Court of the learned Subordinate Judge at Bhavani in A.S.No.23 of 2012 dated 14.02.2014 in confirming the judgment and decree of the Court of the learned Second Additional District Munsif at Bhavani in O.S.No.401 of 2004 dated 30.11.2004.

2. For the sake of convenience, the parties shall be referred to as per their ranks in the suit.

3.The plaintiff came forward with the suit for specific performance against the four defendants. It was his case that the first defendant and the defendants 2 to 4 form a Hindu Joint Family. On 07.11.1995, the first defendant, for himself and as a guardian for the defendants 2 to 4, had entered into an agreement of sale with the plaintiff. As per the terms of the agreement, the first defendant had agreed to sell the suit schedule mentioned property for a sum of Rs.65,000/-. On the date of the agreement itself, the plaintiff had paid a sum of Rs.50,000/- to the first defendant. The balance of Rs.15,000/- was to be paid within a period of one year. The plaintiff pleaded

that he was always ready and willing to pay the balance of Rs.15,000/- and



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get the sale deed executed. He would state that the plaintiff approached the first defendant on several dates, but the first defendant was evading the execution of the sale deed on one pretext or another. Finally, on 27.02.1998, a suit notice was issued by the plaintiff to the first defendant demanding execution of the sale deed on receipt of the balance amount of Rs.15,000/-. The first defendant evaded the notice. Therefore, the plaintiff, left with no other option, presented the suit before the learned Second Additional District Munsif, Bhavani.

4.On being served with the summons, the first defendant entered appearance and filed a detailed written statement. He would state that the agreement dated 07.11.1995 had been entered into between him and the plaintiff not for the purpose of sale but as a security for a loan transaction. He would state that he is living separately from his family members due to differences of opinion between himself and his wife. He would state that the suit properties are ancestral properties, in which, the first defendant and the defendants 2 to 4 have equal share. He would plead that he had approached the plaintiff's company for a loan of Rs.30,000/- for his urgent expenses.

The plaintiff's company refused to offer the loan unless and until the first



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defendant executed the suit agreement. Therefore, for his urgent necessity and without any alternative solution available to him, he borrowed a sum of Rs.30,000/- from the plaintiff's company and entered into an agreement of sale on 07.11.1995. His specific case is that the plaintiff is a Finance company and the borrowal of Rs.30,000/- is evidenced from the suit sale agreement. He would state that he is ready to refund a sum of Rs.30,000/- together with interest at 9% per annum, but not at 18% per annum as demanded by the plaintiff.

5.On the basis of these pleadings, the learned trial Judge framed the following issues:

“1.வாதி கோரிய ஏற்றதை ஆற்றுக
பரிகாரம் கிடைக்கத்தக்கதா?

2.வாதி கோரிய மாற்றுப் பரிகாரம்
கிடைக்கத்தக்கதா?

3.7.11.1995ல் ஏற்பட்ட கிரைய ஒப்பந்தம்
கடனுறுதிக்காக எழுதிக் கொடுக்கப்பட்டது
என்று 1ம் பிரதிவாதி கூறுவது உண்மையா?

4.வாதிக்கு வேறு என்ன பரிகாரம்
கிடைக்கத்தக்கது?



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கூடுதல் எழுவினா

5.தாவா கிரைய ஒப்பந்தம் பத்திரம் 2
முதல் 4 பிரதிவாதிகளைக் கட்டுப்படுத்துமா?

6.On behalf of the plaintiff, three witnesses were examined as PW1 to PW3 and Exs.A1 to A4 were marked. On the side of the defendants, no witness was examined and Exs.B1 to B4 were marked.

7.After considering the oral and documentary evidences let in before the learned Second Additional District Munsif, he came to a conclusion that the plaintiff has proved the sale agreement and therefore, decreed the suit as prayed for.

8.Aggrieved by the same, an appeal in A.S.No.23 of 2012 was preferred by the first defendant before the learned Subordinate Judge at Bhavani. The learned Subordinate Judge dismissed the appeal on 14.02.2014. Aggrieved by the same, the present second appeal has been presented before this Court.

9.Originally, this Court had ordered notice regarding an admission on 20.06.2014. Thereafter, the second appeal was admitted on 15.07.2020 on the following substantial questions of law;



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i. Whether the Courts below were right in decreeing the suit on the conclusion that the plaintiff was always ready and willing to perform its part of the contract overlooking the fact that the very suit notice Ex.A2 was issued after the expiry of the one year time fixed under the contract?

ii. Whether the Courts below were right in rejecting the claim of the defendant that the suit contract was not intended to be an agreement of sale, but the same was executed as Security for a loan transaction?

iii. Whether the Courts below were right in exercising the discretion vested in them under Section 20 of the Specific Relief Act, on the peculiar facts and circumstances of the case?

10.The questions of law being inextricably linked with one another, they are being clubbed together and I am disposing of the same by the following judgment.

11.On behalf of the appellant/1st defendant, I heard Mr.N.Manoharan and Mr.B.Ramkumar appeared for Mr.M.Narayanaswamy for the first



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respondent/plaintiff. Notice to the defendants 2 to 4 though were served, they did not enter appearance.

12.In a suit for specific performance, the condition precedent is that the plaintiff must be ready and willing to convert the sale agreement into the sale deed. Any delay on the part of the plaintiff is fatal to the relief. This is because in a suit for specific performance, there is a personal bar to grant a relief if the plaintiff does not prove that he was ready and willing. This is incorporated under Section 16 (c) of the Specific Relief Act. Furthermore, merely because the agreement is true and legal does not mean that the suit has to be decreed because in terms of Section 20 of the Act, the Court has the power to exercise its discretion on the basis of the surrounding circumstances of the case.

13.Applying the law to the facts on hand, it is not in dispute that on 07.11.1995 an agreement as projected by the plaintiff was entered into between the plaintiff and the first defendant. The period under the agreement was one year. However, though the plaintiff had paid a sum of Rs.50,000/- on 07.11.1995, no steps had been taken till 27.02.1998 to pay the balance amount. The time fixed under the agreement expired on 06.11.1996. The



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plaint itself discloses that prior to the expiry of one year, the plaintiff had approached the first defendant for getting the sale deed and that the first defendant was evading the same. This itself should have triggered the plaintiff to file a suit or take such steps like issuing a lawyer's notice calling upon the first defendant to execute the sale deed. No such steps were taken on the part of the plaintiff within the time fixed in the sale agreement. The suit notice itself was issued after a lapse of nearly 2 ½ years i.e. on 27.02.1998. This period from 08.11.1995 to 27.02.1998 remained unexplained in the plaint and in the evidence tendered before the Court. Thereafter, at least, the plaintiff should have shown some urgency in approaching the Court upon knowing that the first defendant was evading the agreement after the issuance of the suit notice on 27.02.1998. The plaintiff filed the suit only on 09.10.1998. This delay of eight months remained unexplained.

14. Therefore, cumulatively, I find that the plaintiff had not been “ready for getting the sale deed in its favour”. The position of law has been settled by the Supreme Court in ***Shenbagam and others Vs. KK Rathinavel (2022 SCC OnLine SC 71)***, which runs as follows:

“The foundation of a suit for specific performance lies in



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ascertaining whether the plaintiff has come to the court with clean hands and has, through his conduct, demonstrated that he has always been willing to perform the contract. There is a conspicuous absence in judgment of the trial court of any reference to evidence led by the respondent to indicate his willingness to perform the contract. The trial court merely adverted to “document produced on behalf of the plaintiff” and concluded that he had sufficient means to purchase the suit property. Apart from this observation, the judgment fails to analyse the terms of the agreement, the obligations of the parties and the conduct of the respondent or the appellant.”

15.If I were to apply the judgment of the Supreme Court to the facts of the present case, I have to come to a conclusion that the plaintiff has not been ready and willing. It is pertinent to point out that both the Courts below have not discussed this crucial aspect and that renders their judgments perverse and susceptible for interference at the hands of this Court under Section 100 of CPC.

16.In addition to this, recently my learned brother Judge *Krishnan Ramasamy* in *Vijayalakshmi Vs.A.Ganesan (died) and others 2023 SCC*



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OnLine Mad 5977 held as follows:

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“25. Both the parties have admitted the execution of Sale Agreement dated 21.05.1998 for a consideration of Rs.2,00,000/-. According to the deceased first respondent / plaintiff, he paid a sum of Rs.1,75,000/- as advance and for the payment of the balance of Rs. 25,000/- and execution of Sale Deed, at the request of the appellant / defendant, two and half years time was provided. No prudent person will wait for a period of two and half years for payment of sum of Rs.25,000/- when the deceased first respondent / plaintiff paid a sum of Rs.1,75,000/- as advance at the time of entering into the Agreement. When the deceased first respondent / plaintiff approaches the Court seeking equitable relief of specific performance, he has to clarify as to why such long period of two and half years was granted for payment of Rs.25,000/- and for execution of Sale Deed. However, there was not even a specific pleading in the plaint with regard to the reason for grant of two and half years time except for the provisions in the Agreement for grant of two and half years time limit. Under such circumstances, this Court is of the view that the time provided in the Sale Agreement is for the repayment of the hand loan alone and not for the execution of sale deed. Such presumption is possible under [Section 114](#) of the Indian Evidence Act, 1872,



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owing to the existence of the available facts in the present case.

17.This position of law makes it clear that where an unusually long period is given for paltry sum to be paid, the Court can presume that the agreement is a loan transaction. I would respectively follow the said judgment and apply to the facts of this case.

18.The Courts below seem to have swayed that it is a registered agreement and they failed to appreciate the two crucial aspects namely

- (i). the readiness and willingness not having been proved and
- (ii). the unusually long period of one year for payment of Rs.15,000/-.

Both these persuade me to hold that it was not an agreement of sale, but, only a loan transaction and even if I were to treat it as a sale agreement, the plaintiff has not been ready and willing to perform his part of the sale agreement and therefore, the second appeal has to succeed.

19.In the light of the above discussion, the relief of specific performance is denied. However, the plaintiff has made an alternative plea for recovery of the amount paid under the transaction of Rs.73,825/- together



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with interest 18% per annum. Since the agreement is a registered one and as

I have found it to be a loan transaction, I am inclined to decree the suit.

20.Insofar as the return of advance amount of Rs.73,825/- together with an interest at 9% per annum from 09.10.1998 till the date of repayment, the learned counsel for the plaintiff/1st respondent submitted that pending the appeal, the plaintiff had already got the sale deed executed in its favour. Therefore, the cost that has been incurred for the execution of the sale deed which includes registration as well as stamp charges shall also be borne by the first defendant.

21.Consequently, the second appeal is allowed and the judgment and decree of the learned Subordinate Judge at Bhavani in A.S.No.23 of 2012 dated 14.02.2014 in confirming the judgment and decree of the II Additional District Musnif at Bhavani in O.S.No.401 of 2004 dated 30.11.2004 is set aside. There shall be a decree for recovery of money as aforesaid. Till the money decree is satisfied, there shall be a charge over the property.

Index : Yes/No
Internet : Yes/No
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27.03.2024



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To

- 1.The Sub Court, Bhavani.
- 2.The Second Additional District Munsif Court, Bhavani.
- 3.The Section Officer, V.R.Section, High Court, Madras.

V.LAKSHMINARAYANAN,J

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