



S.A.No.994 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2024

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THE HONOURABLE MRS.JUSTICE N.MALA

S.A.No.994 of 2021

and

CMP.No.18612 of 2021

A.S.Murugan

...Appellant

Vs.

Sangeetha

...Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.21 of 2019 dated 25.01.2021 on the file of the Court of II Additional District Judge, Vellore at Ranipet in reversing the judgment and decree passed in O.S.No.264 of 2012 dated 28.11.2018 on the file of the Court of Subordinate Judge, Ranipet, Vellore District.

For Appellant : Mr.A.Muthukumar

For Respondent : M/s.Sarvabhauman Associates
Mr.K.Venkatasubban
Mr.Raakkesh for Sole respondent

JUDGMENT



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The second appeal arises out of judgment of the lower appellate court in reversing the judgment of the trial court in a suit for specific performance of contract filed by the plaintiff.

2. The unsuccessful defendant is the appellant in the Second Appeal. The parties will be referred as per their rank before the trial court.

3. The brief facts leading to filing of the second appeal are as follows:-

The plaintiff states that she entered into an agreement of sale of the suit property on 11.12.2009 with the defedant. The sale consideration was fixed as Rs.2,05,000/- and she paid an advance of Rs.1,95,000/- on the date of the sale Agreement. Time for performance of the contract was fixed at three years from the date of the Agreement. The plaintiff states that she approached the defendant on several occasions but it did not yield any positive results and therefore the plaintiff issued a notice on 26.10.2012. The plaintiff further states that she had sufficient means and was always ready and willing to perform her part of the contract and it was the defendant who was delaying the execution of the sale deed and therefore the plaintiff approached the Court for the relief of specific performance.



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4. The defendant filed written statement stating that the suit sale Agreement was only a loan transaction. The defendant further states that he had several money transactions with the plaintiff's husband. That on earlier occasions also, the defendant had entered into similar Agreements and that on repayment of the loan the agreements were cancelled. The defendant therefore states that the suit agreement was only a loan transaction and prayed for dismissal of the suit.

5. Before the trial Court the plaintiff examined herself as P.W1 and marked Ex.A1 to Ex.A3. The defendant marked Ex.B1 to Ex.B10 and examined himself as D.W1. The trial Court after framing the necessary issues, on the basis of the oral and documentary evidence held that the defendant had proved that the suit transaction was only a loan transaction and the sale agreement was executed only as a security for the loan. The trial court on the issue of readiness and willingness found that the plaintiff failed to prove that the plaintiff was ready and willing to perform her part of the contract. The trial court in any event found that the plaintiff was entitled to refund of the amount of Rs.1,95,000/- with interest @ 12% p.a. Aggrieved by the judgment and decree of the trial court the plaintiff filed an



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appeal in A.S.No.21 of 2019. The lower appellate court after framing necessary points for consideration held that the suit sale Agreement Ex.A1 was true and valid. The lower appellate court reversed the finding on readiness and willingness on its reasoning that the plaintiff having paid major part of the consideration of Rs.1,85,000/-, she would have no difficulty in paying the balance amount of Rs.10,000/-. The lower appellate court also reversed the finding of the trial court on the return of advance as it found that in the absence of prayer for alternative relief under Section 22 of the Specific Relief Act, the trial court erred in granting decree for refund of the amount. The lower appellate court therefore decreed the suit for specific performance. Aggrieved by the reversing judgment and decree of the lower appellate court, the defendant has filed the above Second Appeal.

6. At the time of admission of the Second Appeal, this Court framed the following substantial questions of law.

"i) When there are evidences to show that the suit sale agreement is not really a sale agreement, but a document created in support of the loan transaction, whether reversal of the finding of the Trial Court by the Appellate Court that the suit sale agreement is really a sale agreement and the plaintiff is entitled for the decree is correct?



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ii) When substantial part of the alleged sale consideration was paid, giving three years for paying the balance sale consideration of Rs.10,000/- and not taking any steps for paying balance sale consideration and execute the sale deed shows that the plaintiff was not ready and willing to perform her part of contract, the finding contra that plaintiff was ready and willing to perform her part of contract by the Appellate Court is whether correct and in accordance with law?"

7. The learned counsel for the appellant submitted that the lower appellate court erred in interfering with the well considered judgment of the trial court. The learned counsel further submitted that the suit transaction was not a sale transaction but only loan transaction. The learned counsel submitted that the lower appellate court erred in its finding on readiness and willingness. The learned counsel therefore prayed that the Second Appeal be allowed.

8. The learned counsel for the respondent submitted that the factual findings of facts of the lower appellate court were based on justifiable reasons and hence did not call for any interference in Second Appeal.



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9. Heard both the learned counsels and perused the records.

10. Both the substantial questions of law are taken up together.

11. The learned counsel for the respondent filed additional evidence before this court but I am not inclined to accept the same as no foundational pleadings are laid in the plaint for receipt of the same.

12. The undisputed facts are that the defendant as the owner of the suit property entered into a sale Agreement on 11.12.2009 with the plaintiff, for the sale of the suit property for a sale consideration of Rs.2,05,000/- and received an advance of Rs.1,95,000/- from the plaintiff on the same day. The time stipulated under the sale Agreement for completion of sale was three years. The plaintiff claims that she approached the defendant personally several times for completion of sale but as the same did not yield any result, she was forced to issue notice to the defendant on 26.10.2012 to register sale deed in her favour and subsequently filed the suit for specific performance. The defendant on the contrary, states that the suit sale Agreement was taken as security for the loan availed by him from the plaintiff.



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The defendant further states that plaintiff was not ever ready and willing to perform her part of the contract.

13. It is seen from the recitals of the sale Agreement Ex.A1 dated 11.12.2009 that sale consideration was fixed at Rs.2,05,000/- and an advance of Rs.1,95,000/- was paid by the plaintiff to the defendant on the same day. The time stipulated for completion of sale under the sale Agreement was three years. The defendant states that the suit transaction is only a loan transaction and the sale Agreement was executed as a security for the loan. The defendant relies on Ex.B2 & B3 to show that he had several loan transactions with the plaintiff's husband and on an earlier occasion, similar sale Agreement was executed as security for loan and on repayment the agreement was cancelled. Ex.B2 and Ex.B3 support the defendant's case that earlier similar agreement was entered into as security for loan and the same was subsequently cancelled on repayment. In the light of Ex.B2 and Ex.B3, the contention of the defendant that the suit transaction was only a loan transaction cannot be ruled out. That apart, it does not stand to reason as to why the title documents and possession were not taken over by the plaintiff even though more than 95% of the sale consideration was paid as advance. So also the condition



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in the sale Agreement, Ex.A1 as regards the time for performance defies logic, more so, when no special reasons were assigned for providing a long period of 3 years. Any prudent person who parted with more than 95% of the sale consideration would have insisted on possession and custody of original documents and a lesser period for performance. In this case, the fact that the plaintiff did not take possession of the property, custody of documents and the long period fixed for execution of the sale deed raises a doubt on the genuineness of the sale Agreement. The said facts coupled with Ex.B2 and Ex.B3 tilt the scales in favour of the defendant.

14. I am therefore of the view that the suit sale Agreement is not valid and the same was executed only as security for the loan availed by the defendant. I therefore find that the finding of the lower appellate court on this aspect cannot be sustained.

Readiness & Willingness:

15. The lower appellate court merely because major chunk of the sale consideration was paid found that the plaintiff was ready and willing to perform her part of the contract.



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16. The learned counsel for the respondent relied on the judgment of this court reported in **2022 (4) CTC 649** in support of his contention that when major portion of the sale consideration was paid and necessary averments were made on readiness and willingness to perform the contract, the plaintiff was entitled to the relief of specific performance. The reliance placed by the learned counsel for the plaintiff on the aforesaid judgments, on the fact of the present case, in my view are misplaced. Section 16(c) of the Specific Relief Act speaks of readiness and willingness. Whereas, readiness refers to the financial capacity of the person, willingness refers to the conduct of the person which has to be scrutinised in the light of the attendant circumstances. As already discussed Rs.10,000/- only was payable under the sale Agreement for completion of sale. The period stipulated under the contract for performance was three years. According to the plaintiff, as she approached the Court within three years, readiness and willingness on her part should be presumed. In my view, time limit stipulated under the Agreement is only upper limit for execution of the sale and the same cannot be taken as real time. It is pertinent to note here that even the suit notice was issued only on 26.10.2012 i.e 1 ½ months before the expiry of the 3 year period stipulated under the Agreement. There is absolutely no explanation by the plaintiff as to why she waited till the lag



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end for completion of sale, moreso, when she paid 95% of the sale consideration.

No prudent person would wait for three years to have the sale deed registered after paying 95% of the sale consideration. The plaintiff feebly tried to justify the delay by stating that she approached the defendant on several occasions personally for execution of the sale Deed but the defendant did not respond. There is absolutely no evidence to corroborate the said plea except the self serving averments of the plaintiff. It is trite that pleading without proof is of no effect. Therefore from the conduct of the plaintiff it is clear that she was not willing to have the sale deed executed in her favour.

17. The lower appellate court was carried away by the fact that only Rs.10,000/- was outstanding towards sale consideration. In my considered view readiness and willingness is not dependent merely on the meagreness of the balance sale consideration but also on the conduct of the party in having the sale completed. As discussed above the conduct of the plaintiff does not reflect her willingness and so the appellate court's finding on readiness and willingness cannot be sustained.



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18. For the aforesaid reasons both the substantial questions of law are answered against the plaintiff.

19. Having answered the substantial questions of law against the plaintiff, the only question that remains to be considered is the relief to be granted to the plaintiff. In the present case, it is seen that the plaintiff had not sought for the alternative relief under Section 22 of the Specific Relief Act for refund of the advance amount along with interest. Though the plaintiff did not plead for the alternative relief, the defendant before the trial court agreed to return the advance amount of Rs.1,95,000/- along with 12% interest p.a. and therefore the trial court passed a decree for return of advance amount with interest. The defendant did not prefer any appeal against that part of the decree which directed the return of advance amount with interest. In my view therefore, the plaintiff is entitled to the return of advance of Rs.1,95,000/- along with 12% interest p.a. as directed by the trial court._

20. In view of all the above discussions, Second Appeal is partly allowed with a direction to the appellant to return the advance amount of Rs.1,95,000/- with



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12% interest p.a. from the date of the sale Agreement till the date of realisation within a period of 12 weeks from the date of receipt of a copy of this judgment. No costs.

29.07.2024.

Index: Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dpq/dsn

To
1. The II Additional District Judge,
Vellore, Ranipet.

2. The Subordinate Judge,
Ranipet, Vellore District.



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N.MALA,J.

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