



S.A.No.380 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.380 of 2021

K.Natraj (Died)

1. Subramanian
2. Velusamy
3. Mahalingam
4. Rajamani
5. Uthraraj
6. Maheswari

... Appellants

Vs

M.Pappaiyan

... Respondent

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 26.04.2019 made in A.S.NO.74 of 2015 on the file of the Court of the Principal District Court, Coimbatore, reversing the judgment and decree dated 27.02.2015 made in O.S.No.157 of 2010 on the file of the Court of the Subordinate Court, Pollachi insofar as the same are against them.



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For Appellants : Mr.T.P.Manoharan, Senior Counsel
for Mr.T.M.Naveen

For Respondent: Mr.V.Subraanian
for M/s.Dass and Viswa Associates

JUDGMENT

The plaintiffs are the appellants before this Court challenging the judgment and decree passed by the learned Principal District Judge, Coimbatore in A.S.No.74 of 2015, in and by which the learned judge has reversed the judgment and decree passed by the learned Subordinate Judge, Pollachi in O.S.No.157 of 2010.

2. In order to appreciate the grievance of the appellants / plaintiffs, it is necessary to set out briefly the facts as stated in the pleadings with the parties being referred to in the same ranking as before the trial Court.



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3.The plaintiffs had filed the suit O.S.No.157 of 2010 for specific performance of an agreement of sale dated 23.03.2005 after receiving the balance sale consideration of Rs.1,84,820/-. It is the case of the plaintiffs that the suit property belonged to the defendant who had entered into an agreement of sale with the first plaintiff agreeing to sell the property for a total sale consideration of Rs.5,84,820/-. On the date of the agreement, the first plaintiff had paid a sum of Rs.4,00,000/- to the defendant as an advance and the agreement was reduced into writing on the very same day and registered as Document No.688 of 2005 before the Sub Registrar, Kinathukidavu. As per the agreement, the sale was to be completed within a period of one year, free from all encumbrances. The first plaintiff would submit that he was ready and willing to purchase the property and had on several occasions requested the defendant to execute the sale. However, the defendant was putting it off under one

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pretext or the other. Originally the suit was filed by the first plaintiff, K.Natarajan. After his demise, his legal heirs were brought on record as plaintiffs 2 to 7.

4.It is also the contention of the plaintiffs that earlier in respect of the very same property, the plaintiff had entered into an agreement of sale with the defendant on 15.12.2002 for the very same price. Since the defendant had committed a default, the first plaintiff had issued a legal notice to which the defendant had issued a reply notice. The defendant orally represented to the first plaintiff that, on account of certain family circumstances, he was unable to proceed with the agreement of sale on 15.12.2002. Therefore, the said agreement was cancelled and the advance amount was returned. However, since the first plaintiff was put in possession of the properties pursuant to the agreement dated 15.12.2002, the first plaintiff continued in possession of the property. Thereafter, in the year 2005, the defendant once again

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approached the first plaintiff and offered to sell the suit property for the very same price as quoted in the agreement of sale dated 15.12.2002. Therefore, the agreement of sale which is the subject matter of this suit came to be executed on 23.03.2005. The plaintiff would submit that whenever he approached the defendant to execute the sale deed, the defendant would represent that his brother, Mysamy had filed a suit before the District Munsif, Pollachi and that he would complete the sale as soon as the judgment is pronounced in the suit.

5.Since time was running out, the first plaintiff on 08.01.2006 approached the defendant and requested him to execute the sale by clearing all encumbrances over the property, namely the suit filed by his brother, Mysamy However, the defendant did not take steps to settle the issue. The plaintiffs would submit that he had made several improvements in the property from the year 2002 and the original title

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deeds of the property was also with the first plaintiff.

6. Since the defendant was not taking steps to have the sale deed registered in favour of the plaintiff, he issued a legal notice dated 20.01.2007 calling upon the defendant to execute the sale deed. The defendant had sent a reply on 29.01.2007 where he took a stand that he was ready and willing to execute the sale deed if a sum of Rs.3,48,820/- is paid. Since as per the agreement, the balance sale consideration was only a sum of Rs.1,84,820/-, the first plaintiff reiterated his readiness to pay the said balance sum of Rs.1,84,820/- alone and have the deed executed in his favour which was conveyed by the plaintiff to the defendant vide his rejoinder dated 02.02.2007. Therefore, left with no other alternative, the first plaintiff has filed the suit in question.



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7. Pending the suit, the first plaintiff had died and prior to his death, he had executed a Will bequeathing the property in question on the plaintiffs 2 to 7 and had also expressed his desire that the plaintiffs 2 to 7 would continue to prosecute the suit. Therefore, they have been impleaded as plaintiffs 2 to 7

8. The defendant had filed a written statement denying the fact that he had offered to sell the suit property to the plaintiff for a sum of Rs.5,84,820/- and that he had received a sum of Rs.4,00,000/- as advance. The averments made in the plaint regarding the earlier agreement and the return of the advance amount was also denied by the defendant. The said fact has to be proved by the plaintiff. In short, all the averments in the plaint was denied. The defendant would submit that he had purchased the suit property under two sale deeds in the year 1988. Thereafter, one of the brothers of the defendant had filed a suit before the District Munsif Court, Pollachi

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in O.S.No.287 of 1999 for partition including the family properties as well the properties purchased by the defendant stating that the suit properties were purchased from out of the joint family funds. As there was a litigation pending in respect of the suit properties and since the defendant also intended to do other business, he had taken a loan from the plaintiff and had executed a promissory note for a sum of Rs.1,50,000/- on 11.11.2001 agreeing to repay the same with interest. Thereafter, for the purpose of purchasing a vehicle, the defendant had borrowed money from one Chandrakumar of Odayakulam (Pollachi Taluk). The said Chandrakumar had paid the loan and insisted upon the defendant to execute an agreement of sale of a portion of the suit property and get it registered in his favour as a security. The plaintiff had also insisted upon the execution of an agreement of sale and accordingly, an agreement dated 15.10.2002 for a total sale consideration of Rs.5,84,820/- was prepared. The plaintiffs had stated in the agreement that a sum of Rs. 2,40,000/- was paid as advance.

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When this was questioned by the defendant, the plaintiffs had returned the promissory note executed by the defendant in favour of the plaintiffs stating that this advance amount (Rs.2,40,000) would include the loan of Rs.1,50,000/- plus interest accrued thereon, which had been borrowed by the defendant. Thereafter, the plaintiff realized that the encumbrance certificate was reflecting the agreement of sale entered into between the defendant and Chandrakumar and therefore, he demanded the defendant to execute a cancellation deed in the year 2005. Accordingly, on 16.03.2005, a registered cancellation deed was executed. Thereafter, within a week, the plaintiffs once again asked the defendant to execute an agreement of sale in his favour. On account of the same, the defendant had executed an agreement dated 23.03.2005. This document is a sham document and the plaintiffs' contention that the sum of Rs.4,00,000/- has been paid as advance is totally false. He would submit that there is no consensus *ad idem* between the parties to treat the agreement as an agreement for sale.

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He would further submit that the transaction between the plaintiffs and the defendant is purely a loan transaction and not an agreement of sale. Therefore, the defendant pleaded for the dismissal of the suit. He had also denied that the plaintiff was in possession of the suit property and would submit that it is only the defendant, who is in possession of the suit property.

9. The trial Court had framed the following issues:

1. வாதி ஏற்றதை ஆற்றுக பரிகாரம் பெற உரிமையுடையவரா?
2. வாதிக்கு கிடைக்கத்தக்க இதர பரிகாரங்கள் யாது?

10. The second plaintiff had examined himself as P.W1 and one Ramaraj as P.W2 and marked Exs.A1 to A18. On the side of the defendants, the defendant had examined himself as D.W1 and marked Exs.B1 to B11. The learned Judge on considering the evidence on record both documentary as well as oral held that to prove the

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execution of the agreement of sale, the plaintiff had examined himself as P.W1. He has clearly spoken about the earlier agreement in the year 2002 and the subsequent agreement which is the subject matter of the present suit. The defendant, who had pleaded that the transaction was a loan transaction, has not let in any evidence to prove the said contention. Ex.A3-Agreement of sale has also been witnessed by the defendant's father. The learned Judge also observed that in the reply notice dated 29.01.2007, the defendant has not refuted the sale agreement but has only stated that he is ready and willing to execute the sale deed provided the plaintiff is ready and willing to pay Rs.3,48,820/- which only goes to show that the parties had infact entered into an agreement of sale and not a loan transaction as contended by the defendant. That apart, the suit filed by the defendant's brother has been disposed of only on 09.07.2009 as evidenced by Ex.B11. Therefore, the learned Judge observed that the plea of the defendant that there was no readiness and willingness

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cannot be countenanced. Ultimately, the suit was decreed.

Challenging the same, the defendant had filed A.S.No.74 of 2015 on the file of the Principal District Court, Coimbatore. The learned Judge, by his judgment and decree dated 26.04.2019, had reversed the judgment and decree of the trial Court. The learned Judge held that Ex.A3 was not executed as a security for the loan transaction but was an agreement of sale. The learned Judge had also observed that the plaintiff had paid the sum of Rs.4,00,000/-, however, the learned Judge proceeded to dismiss the appeal on the ground that the value of the property had increased and therefore, the plaintiff is not entitled to a decree for specific performance on the same rate as in the agreement of sale and directed return of the advance amount of Rs.4,00,000/- to the plaintiffs 2 to 7 with interest @ 18% per annum. The refund has been ordered without the plaintiff praying for the alternative relief of refund. Challenging the same, the plaintiffs are before this Court. The defendants have not challenged the finding that Ex.A3 is not

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executed as a security for a loan but was intended to be an agreement of sale.

11. The second appeal had been admitted on the following substantial question of law:

"a) When the Trial Court found appellants/plaintiffs are entitled for the relief of Specific Performance of contract, whether the reversal of the said finding by the First Appellate Court, after recording a finding that sale agreement was proved by appellants, that appellants are not entitled for the relief of Specific Performance but entitled only for the relief of refund of advance amount, especially when there is no prayer for return of advance of amount was raised in the plaint can be sustained?"



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b) After the amendment of Section 10 and 20 of the Specific Relief Act 1963, Specific performance (Amendment) Act 2018 when there is no discretionary power available to the Courts whether ordering of return of advance amount, when there is no specific prayer for return of advance amount, by the Appellate Court can be sustained?"

12. Mr.T.P.Manoharan, learned senior counsel for Mr.T.M.Naveen, learned counsel for the appellants/plaintiffs, would submit that at the outset, the plaintiff has remitted the entire balance sale consideration after the decree of the trial Court. He would submit that the lower appellate Court, after holding that Ex.A3 is an Agreement of Sale and that the advance amount of Rs. 4,00,000/-, which was received by the defendant, has erroneously directed refund of the advance amount to the plaintiffs on the ground that the value of the property has now increased. It is to be noted that such a defense

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has not been taken by the defendant. Further, if the learned Judge had found that the value of the property is low, he could have suggested that the plaintiff should pay an enhanced amount. The refund of the advance amount with interest has been ordered without there being a prayer for the same. The defendant has not challenged the judgment and decree.

13. Per contra, Mr.V.Subramanian, learned counsel appearing for M/s.Dass and Viswa Associates, learned counsel for the respondent/defendant would submit that the plaintiff has not proved his readiness and willingness, though the agreement was entered into in the year 2005 and one year time has been granted for paying the balance sale consideration. Further, the agreement had not been extended beyond 2006. He would further submit that despite the reply notice dated 29.01.2007-Ex.A7, the plaintiff has not come forward to immediately file the suit. Therefore, it clearly proves that

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the plaintiff was not ready or willing to execute the agreement of sale.

He would submit that the appellate Court has rightly taken into account the fact that, on account of the delay on the part of the plaintiff, the price of the property had increased manifold and the lower appellate Court has considered equity while passing the judgment and no exception can be taken to the same.

14. Heard the learned counsel on either side and perused the materials available on record.

15. The lower appellate Court had clearly returned a finding that Ex.A3 was intended to be an agreement of sale and that the plaintiff has paid a sum of Rs.4,00,000/- as an advance. The only ground on which the learned Judge has refused to grant specific performance is that the value of the property has gone up and has directed refund of the advance amount without a prayer being made for the same. The

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defendant had not challenged these findings of the appellate Court.

Therefore, that the parties had entered into an agreement of sale and that the defendant has received the advance, stands unrefuted. The plaintiff has also submitted that the entire balance sale consideration has been paid. The lower appellate Court ought not to have rejected the prayer for specific performance, considering the fact that the agreement of sale was a valid agreement and that the plaintiff had paid nearly over 80% of the sale consideration. The lower appellate Court failed to appreciate that the request for enhancement of the sale consideration was never made by the defendant. On the contrary, it is his contention that the agreement was one of a loan transaction which contention remained unsubstantiated and has been rejected by the Courts below. It is submitted by the learned senior counsel for the plaintiffs that the plaintiffs had offered to pay a sum of Rs.3,50,000/- in addition to the amount which is now lying in an interest earning deposit. However, the respondent has rejected the said offer.

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Therefore, considering the fact that both the Courts have concurrently held that the plaintiffs has proved that the parties have entered into an agreement of sale and that the entire amount has now been paid by the appellants, the lower appellate Court has erred in rejecting the relief of specific performance and directing refund of advance only on the ground that the price of property had gone up without there being a pleading or evidence being let in by the defendants in this regard. The lower appellate Court has overlooked the amendment now brought into Section 10 and 22 of the Specific Relief Act, 1963 by the Amending Act of 2018. This newly amended sections clearly state that without a prayer to refund the same cannot be granted. The substantial questions of law are therefore answered in favour of the plaintiffs / appellants. In fine, the second appeal is allowed and the suit decreed. However, there shall no order as to costs.

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Index: Yes/No

Speaking order/non-speaking order
srn

To

1. The Principal District Court, Coimbatore
2. The Subordinate Court, Pollachi
3. The Section Officer, V.R.Section, High Court, Madras.

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P.T.ASHA, J.,

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