



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.01.2024	Pronounced on: 31.01.2024
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CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.500 of 2017
and
C.M.P.Nos.12149 & 12150 of 2017

Smt.Rajeswari

...Appellants

Vs.

1.P.Krishnammal
2.R.Balamurugan
3.Jayalakshmi
4.Vasuki

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree dated 04.04.2016 passed in A.S. No.10 of 2013 on the file of the Additional District and Sessions Court, Salem confirming the Judgment and Decree dated 20.01.2012 passed in O.S. No.90 of 2006 on the file of the Subordinate Court, Mettur.

For Appellant : Mr.S.S.Rajesh

For Respondents : Mr.R.Babu for R1 & R2



JUDGMENT

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The unsuccessful plaintiff in a suit for specific performance of an agreement of sale dated 19.01.2001 is the appellant before me.

2. The parties are described as per the litigative status before the trial Court.

3. The material facts that are necessary for deciding the above Second Appeal are as hereunder:

(i) The plaintiff claims to have entered into an agreement of sale with the defendants 1 & 2 on 19.01.2001, for a total sale consideration of Rs.4.75 lakhs. According to the plaintiff, even on the date of the agreement, a sum of Rs.4,00,000/- was paid as an advance and the agreement of sale was also duly registered before the Sub-Registrar, Mettur, on the same day, i.e., 19.01.2001.

(ii) The plaintiff's case is that a three year period was fixed for payment of the balance sale consideration of Rs.75,000/-. As the defendants 1 & 2 did not come forward to execute the sale deed and kept postponing the same, the plaintiff issued a lawyer's notice on 02.01.2006; a reply notice



was sent to the said notice on 16.01.2006 and thereafter, the plaintiff has approached the Court seeking relief of specific performance.

4. The second defendant has filed a written statement which is adopted by the first defendant. The suit was resisted by the defendants 1 and 2 on the ground that the agreement of sale was entered into only for purposes of offering a collateral security for a loan amount availed of by them, from the plaintiff. Moreover, on the same day of the agreement of sale, a power of attorney was also executed in favour of the plaintiff, authorising the plaintiff to administer the Company which was run under the name and style of "*Sri Sakthi Checmicals*", originally run by one Rajappan who died on 15.08.2004. In short, the defendants 1 and 2 contested the suit on the ground that the suit was nothing but a malafide attempt to grab the suit property.

5. Before the trial Court, the plaintiff examined herself as P.W.1, apart from two witnesses viz., Mariappan and Asokan as P.W.2 and P.W.3 who were witnesses to the sale agreement and the Assistant Sub-Registrar Office (SRO), Mettur respectively. The plaintiff marked Exhibits A1 to A17



on her side. The defendants 3 and 4 did not contest the suit and remained exparte. On the side of the defendants, the second defendant examined himself as D.W.1 and one Kumar Naicker as D.W.2, Exhibits B1 to B6 were marked. Exhibits X1 and X2 were marked as Court documents through D.W.2.

6. The trial Court accepted the contentions of the defendants and held that the plaintiff was not entitled to the relief of Specific Performance as the sale agreement Exhibit A1 dated 19.01.2001, was found to be not true and not intended to be acted upon.

7. The plaintiff, aggrieved by the said judgment and decree of the trial Court dismissing suit for specific performance preferred A.S. No.10 of 2013. The First Appellate Court, on independent assessment of the oral and documentary evidence confirmed the findings of the trial Court and dismissed the appeal.

8. The plaintiff, challenging the concurrent findings of the Court below has preferred the above Second Appeal, suggesting the following



substantial questions of law:

"(i) Whether the Courts below are right in dismissing the Suit thereby denying the legal right in executing and enforcing the Sale Agreement dated 19.01.2001 Ex.A1, that too when the Plaintiff has always being ready and willing to perform her part of the contract?.

(ii) Whether the Lower Courts are right in holding that the Exhibit A1 as executed by the Respondents is not true and was not intended to be acted upon as a sale Agreement, when the agreement and the terms contained therein are admitted?

(iii) Whether the Courts below are right in concluding that Ex.A1 is not mean to be a Sale Agreement when Ex.A2 is a notice through which the Defendant has been put on notice about the Readiness and Willingness of performing his part of the Contract?

(iv) Whether Lower Courts are right in holding that the Oral Evidence of a party can overrule the Terms and Conditions agreed by the Parties through a Written Contract which is also a duly registered instrument?"

9. I have heard Mr.S.S.Rajesh, learned counsel for the appellant and Mr.R.Babu, learned counsel for the respondents 1 & 2.

10. I have also perused the pleadings available before the Court, the oral and documentary evidence adduced by the parties as well as the judgments of the Court below.

11. The learned counsel for the appellant, Mr.S.S.Rajesh, would state that once the defendants had admitted to the execution of the sale agreement which was also a registered instrument, the Courts would not normally



interfere with the terms that have been agreed upon mutually by the parties.

He would place heavy reliance on Section 91 and 92 of the Indian Evidence Act, 1872 (in short 'Indian Evidence Act') and contend that the defendants were estopped from raising any oral plea which defeats the purport of the registered instrument of Exhibit A1 viz., the sale agreement.

12. He would also state that the Courts below have misinterpreted the power of attorney executed which was nothing to do with the suit property, but was in connection with the administration of the business. He would also state that the defendants have failed to prove their contentions that the transaction was only a loan transaction and not a sale transaction and that the sale agreement was entered into only as a collateral security for the amounts borrowed by the defendants from the plaintiff.

13. The learned counsel for the appellant would also place reliance on the following decisions:

- (i) ***Parvathy Vs. Gowri Meena*** reported in **2017(3) CTC 657**
- (ii) ***Padma and another Vs. C.Nasi*** reported in **2017(5) CTC 785**
- (iii) ***Abdul Rashid Khan (Dead) and others Vs. P.A.K.A. Shahul Hamid and others*** reported in **(2000) 10 SCC 636**.



14. Per contra, the learned counsel for the respondents would submit that no substantial questions of law arise for consideration in the above Second Appeal as both the Courts below have concurrently found on facts that the agreement of sale, was not intended to be acted upon as an agreement of sale, but was only executed as a security for the amount borrowed by the defendants.

15. The learned counsel for the respondents would take me through the findings of the First Appellate Court, confirming the findings of the trial Court and would contend that no interference was required under Section 100 of the Code of Civil Procedure.

16. I have paid my careful and anxious consideration to the rival submissions advanced by the learned counsel on either side.

17. Admittedly, the sale agreement is a registered document. The specific contention of the defendants is that the sale agreement was executed only as a collateral security for the amount borrowed by the defendants from the plaintiff, in respect of which, interest amount was also being regularly



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serviced by the defendants. In fact, in a suit for specific performance, the defendants are entitled to lead oral or such other evidence to establish that the written instrument viz., the agreement of sale was a sham and nominal document, not intended to be acted upon. I am unable to countenance the submission of the learned counsel for the appellant that the defendants are estopped from setting up a case that the agreement of sale, having admitted to the execution of agreement of sale, the defendants cannot set up a plea that it was not intended to be acted upon and that it was only executed for the purposes of creating a security of the plaintiff. The defence of this nature is available to the defendant in a suit for specific performance and it is more in the nature of an exception to the general Rule in Section 92 of the Indian Evidence Act.

18. Both the Courts have discussed the oral and documentary evidence adduced by the parties and have arrived at categorical findings that the agreement of sale was never intended to be acted upon. The Courts below have also rightly taken into consideration, the time period of three years fixed under Exhibit A1, for payment of the balance sale consideration of Rs.75,000/-. The plaintiff having paid and parted with a sum of



Rs.4,00,000/-, if really was a prudent perspective purchaser, would not have agreed upon such a timeline for payment of a paltry sum of Rs.75,000/-.

Any prudent purchaser who had such substantial amount available for disbursal as advance would have certainly proceeded to pay the entire sale consideration and had the property transferred in his or her favour.

19. Moreover, the further fact that despite fixing a time period of three years, the plaintiff did nothing for close to five years and only on 02.01.2006, the plaintiff chose to issue the pre-suit notice for the first time calling upon the defendants to come forward to execute the sale deed in her favour. Thus it can be clearly seen that the plaintiff has not exhibited any intention whatsoever with regard to obtaining the sale deed in her favour. It only probablises the case of the defendants that the agreement of sale was never intended to be acted upon. This aspect has been rightly discussed by both the Courts below in arriving at a concurrent finding that the plaintiff was not entitled to the relief of specific performance. In fact, the First Appellate Court, while confirming the findings of the trial Court has also independently discussed the oral evidence of P.W.1 as well as D.W.1 and held that Ex.A1 sale agreement was entered into only for securing amounts



borrowed.

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20. With regard to the decision relied on by the learned counsel for the appellant, in *Parvathy's* case, referred herein supra, this Court found that the plaintiff had established her readiness and willingness and the defendants had suppressed material facts, besides not establishing their objections and in such circumstances, held that the plaintiff was entitled to the relief of specific performance. However, I find that the facts of the said case stood on an entirely different footing. Though in the said case, the defendants have set up a defence that the agreement of sale was not intended to be acted upon, but only a loan transaction, the Court found that the property was subjected to heavy mortgages with different mortgagees, including by an attachment by a Competent Court and the time period fixed was only eight months and in such circumstances, accepted the plaintiff's case and granted the relief of specific performance.

21. In *Padma's* case referred herein supra, the Division Bench of this Court held that when the plaintiffs had established continuous possession of ready money to complete sale transaction and that they were always ready



and willing to perform their part of the contract and had filed the suit immediately after last date for performing of the contract, then the plaintiff cannot be disentitled to the relief of specific performance. Even in the said case, the time period fixed by the parties was only six months, which is not so in the present case.

22. In *Abdul Rashid Khan (Dead) and others* case the Hon'ble Supreme Court held that the said plea was beyond the written agreement and in that context held that when a contract is required by law to be reduced in writing then no oral evidence or understanding to the contrary or what is apart from the said contract would be admissible in law.

23. Thus I do not find any of the above three cases coming to the rescue of the appellant herein. Sections 16(c) of the Specific Relief Act, 1963, places a personal bar to relief only on the plaintiff. Therefore, it is incumbent on the plaintiff who approaches the Court and seeks the relief of specific performance, which is not only in equitable relief but also discretionary in nature, to establish the agreement of sale and also further plead and prove that the plaintiff was always ready and willing to perform



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the contract, according to its true construction.

24. In view of the categorical findings arrived at by the Courts below, concurrently, holding that the agreement of sale was not intended to be acted upon and having found that the said findings are neither illegal nor perverse, I do not find any substantial questions of law arising for consideration in the above Second Appeal. The suggested questions of law are not available to the appellant to be canvassed or put forth as substantial questions of law under Section 100 of the Code of Civil Procedure.

25. In fine, the Second Appeal is dismissed. Consequently, connected Miscellaneous Petitions are also dismissed. There shall be no order as to costs.

31.01.2024

Index : Yes/No
Internet : Yes/No
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To

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1. The Additional District and Sessions Judge, Salem
2. The Subordinate Judge, Mettur.

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P.B.BALAJI, J.

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