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AS. No.574 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

AS. No. 574 of 2022

L.Kumarasamy

...Appellant

Vs.

M.Kamaraj

...Respondent

PRAYER : This first appeal is filed under Section XLI Rule 1 of CPC, to set aside the judgment and decree dated 18.02.2022 passed in O.S No. 4643 of 2019(CS No. 441 of 2012) on the file of XVI Additional City Civil Court Chennai in respect of decreeing the suit for specific performance and consequentially dismiss the suit in toto.

For Appellant : Mr.B.Manoharan

For Respondent : Ms. Preethi Raj



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JUDGMENT

WEB COPY This first appeal has been filed to set aside the judgment and decree dated 18.02.2022 passed in O.S No. 4643 of 2019(CS No. 441 of 2012) on the file of XVI Additional City Civil Court Chennai.

2. The suit in O.S No. O.S No. 4643 of 2019(CS No. 441 of 2012) was filed by the respondent herein for the relief of specific performance directing the defendant to perform the obligation pertaining to the agreement for sale deed dated 26.04.2011 and to execute and register a sale deed in favour of the plaintiff or his nominee pertaining to the suit property and other consequential relief. After considering the submissions on either side and also based on the materials available on record the Trial court partly decreed the suit by directing the defendant to execute and register the sale deed in favour of the plaintiff, in default, the plaintiff is permitted to take steps for such registration through court by due process of law and directed the plaintiff to deposit the balance sale consideration amount one month from the judgment. Aggrieved over the above judgment the defendant preferred this appeal.

3. The learned counsel for the appellant submitted that the plaintiff bound to prove his case independently without relying on the loop holes on



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the side of the defendant but the case in hand the plaintiff not proved that he is a bonafide purchaser, but the description found in the sale agreement and suit schedule is totally differs which itself discloses that he was not a bonafide purchaser nor he known about the physical feature of the property at the time of executing the alleged sale agreement. Even assuming that it is true but without appreciating the above the Trial Court erroneously decreed the suit in favour of the plaintiff by relying the Section 92 of Evidence Act holding that the defendant is entitled to adduce evidence contra to the recital in the sale agreement. Hence, he prays to allow this appeal.

4. The learned counsel for the respondent submitted that the defendant get a sale consideration from the plaintiff for the suit property but not appeared for agreement besides he was always ready and willing to perform his part of the contract as a purchaser of the property as per the terms of the Ex.A1 sale agreement. The defendant was not ready and willing to perform his part of the agreement and the same was rightly appreciated by the Trial Court which needs no interference prayed to dismiss this appeal. For the sake of convenience the parties are denoted as per the suit.

5. Heard the learned counsel for the appellant and the learned counsel for the respondent.



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6. According to the plaintiff, the defendant approached the plaintiff to sell the suit property for urgent needs and the plaintiff accepted the defendant's request and entered into a sale agreement with the defendant to purchase the same for total sale consideration of Rs.18 lakhs and agreement of sale/Ex.A1 was executed on 26.04.2011. On three occasions the plaintiff paid Rs.15.5 lakhs out of Rs.18 lakhs as agreed. Thus, the balance payable amount is only Rs.2.5 lakhs. In the circumstances, as the time limit imposed in agreement being one year and as the same is due to expire the plaintiff had sought the defendant to complete the sale on receipt of the balance sale consideration but there was no progress the plaintiff issued notice to the defendant to complete the sale on receipt of the balance amount. But the defendant levelled allegations against the plaintiff. Hence, the plaintiff filed the suit.

7. On the other side, the defendant totally denied the allegations of the plaintiff stating that he was not executed the sale agreement to the plaintiff with the intention to sell the property. The fact is that the defendant had availed a loan of Rs.5,00,000/- by mortgaging the land and building of the property situated at Chennai. In the circumstances, the defendant need additional funds to help his daughter Jayalakshmi for her business and as



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such he searching for suitable financier, thereby the defendant through his son-in-law Kumar and daughter approached the plaintiff and requested him to give financial assistance. After the formal negotiations, the plaintiff agreed to give a sum of Rs.15,00,000/- as a loan, for which, the plaintiff imposed three conditions that the defendant has to execute a registered agreement of sale with regard to the property, and to hand over two unfilled Rs.20 stamp papers. Further, the rate of interest for the above loan was fixed as 5% per month and the defendant has to pay a sum of Rs.75,000/- per month as interest for the principal amount of Rs.15,00,000/-. Since no other alternative option and to redeem the mortgage, already subsisting in favour of Mr.Puppy Reddy the defendant executed the above alleged sale agreement dated 26.04.2011 and a general power of attorney dated 03.05.2011 in respect of the above mentioned property. The plaintiff got two unfilled stamp papers along with all the original documents of the above property. Then only the plaintiff paid a sum of Rs.15,00,000/-. On payment of Rs.15 lakhs the plaintiff received a sum of Rs.75,000/- as interest for the first month. Initially the defendant paid the interest regularly later he could not be able pay the high interest. Taking advantage of the non payment of interest the plaintiff trying to sell the property to the third party by misusing



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general power of attorney in favour of one T.Mothy, the relative of the plaintiff. Hence, the defendant forced to cancel the said power of attorney by cancellation deed dated 09.11.2011 and thereby the defendant prevented the plaintiff from executing sale deed and the plaintiff threatened the defendant to pay the principal amount along with the accumulated interest at the rate of Rs.1500 per day. Based on the alleged agreement which was executed for the purpose of security for the loan availed by the defendant the plaintiff filed the suit. Furthermore, as on date, the suit property as mentioned in the sale deed was not available it was promoted as apartment and the proportionate as UDS were sold to various purchasers all these facts was known by the plaintiff that all those undivided shares sold out between the year of 2005 to 2008, if the plaintiff really verified the encumbrance certificate he known about all these facts. Even assuming that he is a bonafide purchaser, the suit property is not in existence. So, the plaintiff ought to have filed the suit for the proper property as existed today which could be a alleged sale agreement thereby the plaintiff not approached the court with clean hands prayed to dismiss the suit.

8. After considering both side submissions and the materials available



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on record the Trial Court held that as per Section 92 of the Indian Evidence Act no one is permitted to let in evidence contra to the registered document beside the plaintiff was ready willing to perform his part of the agreement and the plaintiff is entitled to the relief of specific performance of contract with cost and not entitled to any other relief.

9. It is settled proposition that relief of specific performance is discretionary claim onus fixed on the plaintiff to prove his claim. As a bonafide purchaser he entered into sale agreement/Ex.A1 with the plaintiff and get sale deed in respect of suit property to prove its facts the plaintiff produced sale agreement based on that he claimed as a bonafide purchaser he entered into sale agreement with the defendant on 26.04.2011 for a sum of Rs.18 lakhs and paid a sum of Rs.15.5 lakhs on three occasions and sale agreement was registered one. The plaintiff case is that he was ready to pay the balance consideration as per the sale agreement but the defendant refused to execute the sale deed as per sale agreement. Hence, the plaintiff issued notice to the defendant calling upon him to execute the sale deed. But the same was replied by the defendant that it was false allegations. Before the Trial Court he produced the notice and reply notice which was marked as Ex.A2, Ex.A3 and Ex.A4. But the contention of the defendant is



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that he borrowed a sum of Rs.15,00,000/- from the plaintiff as hand loan for that he executed the sale agreement, power of attorney and stamp papers as a security after that he paid the interest but the plaintiff admitted to sell the property. Hence, he cancelled the power of attorney given to him. Aggrieved that the present suit was filed by the plaintiff. Further, the defendant submitted that as on date the suit property was converted as plots and enjoyed by the third parties even prior to the sale agreement the suit property was converted into plots therefore as on date the land mentioned in the sale agreement was not available. Thereby, the plaintiff not entitled for the relief he claimed to prove those aspects the defendant/D.W.1 appeared before the Court submitted the encumbrance certificate/Ex.B1 in his proof affidavit. Admittedly, on perusal of the Ex.A1 sale agreement and the suit property described in the plaint schedule are totally different and the same itself proves that the plaintiff filed the suit based on the description of the property found in the sale agreement and no reason was assigned by the plaintiff in the plaint for the filing suit for for different nature of the property. As per the encumbrance certificate the properties were converted to plots and it is stands in the name of the third parties. As rightly pointed by the appellant counsel, even assuming that the defendant was not appeared before the



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Court not proved his defence, the plaintiff bound to prove his case without find fault on the defendant's case. An ordinary prudent man would verify the encumbrance certificate before purchasing the property, so he should have verified the encumbrance certificate in respect of suit property before entered into the sale agreement. But as per the encumbrance certificate relied by the defendant's no such suit property is found in the sale agreement which itself clearly proves that he is not entered into sale agreement with the defendant as a bonafide purchaser which probablise the case of the defendant the said sale agreement was executed only for the security purpose of the loan transactions. It is said that as per the section 98 of the Indian Evidence Act, no one is permitted to let in evidence contrary to the registered document unless contrary is proved by adducing contra evidence but in the instant case, description found in sale agreement/Ex.A1 itself proves that plaintiff was not entered into sale agreement as bonafide purchaser but the Trial Court failed to consider the said legal proposition and erroneously granted the relief of specific performance as such is liable to be set aside. Therefore, the plaintiff is not bonafide purchaser not entitle for relief of specific performance, accordingly appeal is allowed suit is dismissed. On considering the entire facts, the defendant admitted that he borrowed a sum of



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Rs.15,00,000/- from the plaintiff and paid some interest on some occasion even as per the case of the plaintiff he paid a sum of Rs.15.5 lakhs to the defendant on three occasions. Now, the defendant is aged about 75 years to put an end to litigations the defendant is directed to pay a sum of Rs.15 lakhs with interest at the rate of 6 %per annum from the date of the suit till the date of realisation.

10. In the result, the first appeal is allowed. No costs Consequentially, connected miscellaneous petition is closed.

15.02.2024

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To

1. The XVI Additional City Civil Court Chennai.

T.V.THAMILSELVI,J.

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