IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

A.S.No.23 of 2023
and
C.M.P.Nos.27909, 8053 and 467 of 2023

Judgment reserved on	**Judgment pronounced on**
27.03.2024	**05.06.2024**

G.Kaleeswaran ... Appellant

Vs.

P.Balakrishnan ... Respondent

Prayer: This First Appeal is filed under Section 96 read with 1 of Code of Civil Procedure against the judgment and decree dated 31.10.2022 made in O.S.No.21 of 2020 on the file of the learned District Judge, Uthagamandalam.

For Appellant : Mr.R.Thiagarajan

For Respondent : Mrs.S.Deepika
For Mr.K.Raveendran

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JUDGMENT

The plaintiff is the appellant herein.

2. For the sake of convenience, the parties are referred according to their ranking before the trial Court.

3. The plaintiff filed in O.S.No.21 of 2020 before the learned District Judge of the Nilgiris, Udagamandalam for specific performance of the Ex.A1 suit sale agreement dated 05.09.2018 and to deliver vacant physical possession or, in the alternative, to refund the advance amount of Rs.11 lakhs with 12% interest from the date of the agreement.

4. The plaint proceeds on the basis that on 05.09.2018, the parties agreed to sell the suit property for a sale consideration of Rs.11,60,000/- and executed a sale agreement on 05.09.2018. The plaintiff paid a sale advance of Rs.11 lakhs, and it was registered as Doc.No.16 of 2018 before the Sub Register, Kotagiri. The period to complete the transaction is 1 1/2 years and, the plaintiff is ready and willing to perform his contract. Issued Ex.A3 copy of Legal Notice and Reply Notice is Ex.A5. Statement of account is Ex.A6, and certified copy of Mortgage Deed and Discharge Receipt are Exs.A7 and

A8.

5(a). The case of the defendant is that he admitted the signature and execution of Ex.A1 sale deed agreement. However, he could contend that due to domestic affairs, he wants to raise the amount and hence, the defendant mortgage the property with "Swaranapragati Housing Micro Finance Private Limited" on 02.12.2016 and executed a simple mortgage deed in favour of the said company under registered Doc.No.2309 of 2016 on the file of SRO, Kotagiri. Since he is unable to release the property from the mortgage, he borrowed cash to an extent of Rs.8 lakhs at the rate of 30%, and accordingly, worked out the amount to the existing loan of Rs.8 lakhs with interest with Rs.3,60,000/- thus arrived at Rs.11,60,000/-.

(b) The sale agreement was executed for the security purpose, showing the payment as Rs.11,60,000/- wherein a sum of Rs.11,00,000/- advance was shown for nominal purpose. The plaintiff's father has been known to the defendant for the past 20 years, and the entire money transaction was carried out with the defendants confidence. He has obtained the agreement of sale in favour of a son, who is only a college student. This is the reply statement.

6. On the above pleadings, the trial Court has formulated the necessary issues has framed on 09.11.2021.

(i) Whether the sale agreement dated 05.09.2018 was obtained by deception and misrepresentation?

(ii) Whether the sale agreement dated 05.09.2018 was entered as security towards financial transaction between the plaintiff's father and the defendant?

(iii) Whether the sale agreement was true, valid and genuine?

(iv) If so, whether the plaintiff was ready and willing to perform his part of contract?

(v) Whether the plaintiff is entitled for relief of specific performance?

(vi) In alternate whether the plaintiff is entitled of the refund of the advance amount as prayed for?

(vii) For what order relief the plaintiff entitled for?

7. At the time of the trial, the plaintiff was examined as P.W.1 by proof affidavit and through him Ex.A1 to Ex.A8 were marked. On behalf of the defendant, the defendant was examined as D.W.1 by proof affidavit. Through the cross of examination of D.W.1, Ex.B1 to Ex.B3 were marked.

8. On consideration of both oral and documentary evidence, the trial Court has come to the conclusion that Ex.A1 is not a sale agreement, it is only a security for the purpose of money transaction between the parties and also relied upon Ex.B3 marked during the cross-examination of P.W.1, wherein P.W.1 admitted that the signature and writing signature Ex.B3 statement of account are that of the plaintiff. It was held that, since the document is not an agreement of sale, the plaintiff is not entitled to the main relief of specific performance. Based on Ex.B3, it was held that only Rs.8 lakhs have been paid by the plaintiff, and accordingly, the suit was decreed by granting the alternative relief of refunding the amount of Rs.8 lakhs. On rejection of the main relief, the plaintiff has preferred this appeal. The defendant has not preferred any cross objection or cross appeal or independent appeal with regard to money decree of Rs.8 lakhs.

9. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

10. The following points are arises for consideration:-

(i) Whether Ex.A1 sale agreement dated

05.09.2018 is true valid and genuine.

(ii) Whether Ex.A1 is the legally enforceable?

(iii) Whether the sale agreement dated 05.09.2018 was obtained by deception and misrepresentation as contended by the defendant?

(iv) Whether the sale agreement dated 05.09.2018 Ex.A1 was entered as only a security for the loan transaction between the parties, as projected by the defendant is true?

(v) Whether the plaintiff is ready and willing to perform his part of contract?

(vi) Whether the plaintiff is entitled for the specific relief as prayed for?

(vii) Whether the plaintiff is entitled for the alternative relief of refund of advance amount, if so Rs.11 lakhs or Rs.8 lakhs?

11. The plaintiff filed a suit for specific performance with alternative relief as stated supra. The defendant is the owner of the property.

12. As per Ex.A2 sale deed was not disputed. Consequently, the ownership of the suit property belongs to the defendant is not in dispute. Ex.A1 is the registered sale agreement. Plaintiff projects the case as if it is a sale agreement which was refuted and counter projected by the defendant as

security for the loan transaction. As per Ex.B1 mortgage deed, there is a mortgage to the extent of Rs.3 lakhs with regard to "Swarnapragati Housing Micro Finance Private Limited". Ex.B7 is the certified copy of the mortgage deed.

13. By way of C.M.P.No.27909 of 2023 has been filed to produce additional documents has been filed.

14. With regard to the present document now filed at the appellate stage, both the parties have admitted about the mortgage of the property with the said "Swarnapragati Housing Micro Finance Private Limited" and effected by the plaintiff under Ex.B2 and hence, in the interest of justice, **C.M.P.No.27909 of 2023 has been filed under Order 41 Rule 27 of C.P.C is allowed**. The present document are ordered to be numbered as Ex.A9 and Ex.A10 in the appeal.

15. Ex.B2 is the mortgage deed. It was discharged on 05.09.2018. The property is now free of property. Pre legal notice has exchanged between the parties under Ex.A3, Ex.A4, Ex.A5. Ex.A6 is the account summary by the plaintiff. Ex.B3 is the statement of accounts on the side of the defendant.

16. On perusal of Ex.A5, it appears that under the said legal notice on

behalf of the defendant under Ex.A5 he has taken the stand that he had received a sum of Rs.11 lakhs from the plaintiff. On the date of the sale agreement and without any intention of sale of the suit property and Ex.A1 agreement is only intended for the security purpose. However, in the written statement, it appears that he has taken a different stand as if, the borrowed amount is only Rs.8 lakhs and 30% is the interest and accordingly, the interest of Rs.60,000/- which is rounded off Rs.11 lakhs. D.W.1 is in the witness box he was confronted with Ex.A5.

17. It remains to be stated that Ex.A6 is the statement of accounts of the plaintiff from 01.06.2019 to 02.06.2020. Further, as on 02.06.2020, the date of filing of the suit, the plaintiff in his bank account as Rs.63,000/- to satisfy the balance of sale consideration.

18. It remains to be stated that Ex.B3 has been shown to P.W.1 during the cross examination and P.W.1 admitted that Ex.B3 is the intention in his father wherein it is only shows that it is Rs.8 lakhs as on 04.09.2018. However, the suit sale agreement is 05.09.2018. The amount mentioned in the agreement was admitted by the defendant under Ex.A5 notice dated 29.02.2020. However, the learned District Judge (taking note of Ex.B3 dated

30.08.2018) came to the conclusion that amount due is only Rs.8 lakhs.

19. Admittedly, the document is a scrap of paper does not have any signature or counter signature accepting the calculation contained therein has correct neither of the parties are put the signature. Furthermore, it is a scrap of paper and hence, the admissibility though admitted by P.W.1 in the cross-examination does not pass a test of admissibility to rely upon the document merely because the letters and figures is found in it was returned by the plaintiff's father. On what contest of a document was came into force, remains under cloud.

20(a). Yet another point is that there is no such a plea in Ex.A5 reply notice and hence, I find that the trial Court has committed an error in placing reliance under Ex.B3 and granting alternative refund of advance amount of Rs.8 lakhs and hence, in view of the specific admission made by the P.W.1 with regard to the payment under Ex.A1 sale agreement has admitted by the defendant under Ex.A5, I find that the chief examination of the defendant is only an improvement of Ex.A5. Such an improvement as to the advance, amounts to contradiction and hence, this part of the evidence of D.W.1 is to the eschewed from consideration.

(b) Accordingly, the said point is held against the defendant and finding by the trial Court thereon is stands vacated. sum of the rupees mentioned in Ex.A1 sale agreement is to be treated as Rs.11 lakhs and the reasons assigned by the trial Court, for accepting Ex.B3 is unsustainable in law and hence Ex.B3 is the eschewed from consideration.

21. Admittedly, the mortgage deed was discharged. Ex.A7 is the mortgage deed by the defendant to the said "Swarnapragati Housing Micro Finance Private Limited". Ex.A8 is the discharge receipt. By way of additional document, original discharge receipt was filed Ex.A9 and Ex.A10 and property is free for encumbrance.

22. It remains to be stated that it is a specific case of the defendant in the written statement as well as the D.W.1 that due to the deception and undue influence Ex.A1 came into force. The trial Court accepted the case of the defendant and the said finding under challenge in this appeal.

23. The evidence of P.W.1 in the cross examination throws more light as to the colour of Ex.A1 sale agreement. On the date of the execution of

Ex.A1 sale agreement on 05.09.2019 the plaintiff was about 19 years 7 months and he has not completed his college and he is the student studying in college he is not entitled for the relief by the plaintiff since he admitted he has no independent income. Further P.W.1 also admitted that the advance amount of 11 lakhs was paid by his father. Further, in the cross examination P.W.1 could deposed that he is not willing to examine his father as a witness in this case.

(b) On the date of the sale agreement when plaintiff is not having any independent of income on the above admission the case of the defendant that in view of the mortgage existing over the property and to bail out the property from mortgage proceedings he borrowed the amount in the process the plaintiff had discharged the mortgage on behalf of the plaintiff's father had discharged mortgage on behalf of the defendant and brought the property to as a equity while discharge of the mortgage original document Ex.A2 was handed over to him assumes significance.

24. Yet another point is that P.W.1 in the cross examination admitted the money transaction between the parties in connection with Ex.B3 as stated under Ex.A1 it is a sale advance is Rs.11 lakhs. It is also admitted by the

defendant under Ex.A5 legal notice issued at the first instance assumes significance. Defendant further improved his case and changed his stand thereby he stand exposed as to the quantities of the amount and hence, in view of the discussions in the preceding paragraphs and the fact that for balance of payment of amount Rs.60,000/-, 1 1/2 years has been fixed as a period of limitation is found to be unreasonable. No plausible explanation was forthcoming as to why for a smaller amount 18 months has been fixed also assumes significance.

25. It remains to be stated that the plaintiff in the cross examination could deposed that he is not aware of the guideline value of the property and stamp duty registration parties and hence, the trial court has rightly come to the conclusion that Ex.A1 sale agreement is never intended to be the sale agreement from the answer elicited from the cross examination of P.W.1, as discussed supra, and therefore, further finding that he was not ready and willing is also made out and hence rejection of the main relief for the specific performance is well considered and well merited does not require any interference at the appellate stage. Accordingly, the rejection of the main relief by the trial Court is hereby confirmed and the point Nos.1 to 4 are

answered accordingly.

26. In respect of, relief of, alternative relief of refund of amount has admitted by the defendant under Ex.A4, he has received a sum of Rs.11 lakhs and Rs.11 lakhs is mentioned as an advance amount under Ex.A1 and it was also admitted by the P.W.1, the said amount was paid by the plaintiff's father to the defendant and hence, the alternative relief of Rs.11 lakhs as prayed for by the plaintiff is hereby granted. Consequently, the alternative relief granted by the trial Court to the extent of Rs.8 lakhs is increased to Rs.11 lakhs as mentioned in Ex.A1 admitted by the both the parties. In this connection, the points are answered accordingly.

27. In the result,

(i) This **Appeal Suit is partly-allowed and C.M.P.No.27909 of 2023 is allowed** and the main relief of specific performance of the suit sale agreement is rejected by the trial Court is confirmed and Ex.A1 is not intended to be a sale agreement but executed only as a security of the loan transaction and the appellant is entitled for Rs.11 lakhs instead of Rs.8 lakhs as ordered by the trial Court paid by the defendant to the plaintiff.

(ii) To that limited extent, the judgment and decree passed in O.S.No.21 of 2020 on the file of the learned District Judge Uthagamandalam dated.31.10.2022 stands modified with costs. Consequently, connected C.M.Ps are closed.

05.06.2024

Index : Yes / No
Neutral Citation : Yes/No
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To
1.The District Judge, Uthagamandalam
2.The Section Officer,
VR Section, High Court,Madras.

RMT.TEEKAA RAMAN, J.

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Judgment in
A.S.No.23 of 2023 and
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