

S.A. No.923 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED :21.12.2024

CORAM

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

S.A.No.923 of 2024

P.Madeswaran

... Appellant

Vs

1.T.Shanthi

2.C.Selvakuma

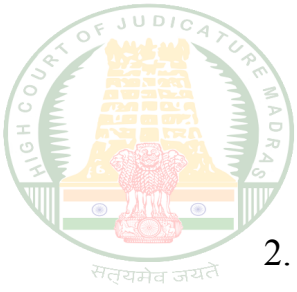
... Respondents

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, prayed to set aside the Judgment and Decree passed in A.S.No.61 of 2021, on the file of the Special Court for the Exclusive Trial of SC and ST Cases, Namakkal and confirming the judgement and decree dated 09.09.2021 made in O.S.No.33 of 2016 on the file of the Subordinate Court, Rasipuram.

For Appellants : Mr.S.Senthil

JUDGEMENT

The appellant/plaintiff has preferred this Second Appeal against the Judgment and decree passed in A.S.No.61 of 2021, on the file of the Special Court for the Exclusive Trial of SC and ST Cases, Namakkal and confirming the judgement and decree dated 09.09.2021 made in O.S.No.33 of 2016 on the file of the Subordinate Court, Rasipuram.



S.A. No.923 of 2024

2. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

3. Challenging the concurrent findings of the courts below, the plaintiff has preferred this appeal. The appellant, as plaintiff, filed a suit in O.S. No. 33 of 2016 before the Sub-Court, Rasipuram, seeking specific performance, directing the defendants to execute a sale deed by receiving the balance sale consideration as per the sale agreement dated 06.03.2013, along with other consequential reliefs against the respondents/defendants 1 and 2.

4. The suit was contested by the first defendant, the mother of the second defendant, contending that they had only borrowed a loan by creating a security over the land. According to her, the sale agreement was executed merely as security for a meagre sum of Rs. 4,00,000/-, whereas the suit property, which also has an RCC house, was worth more than Rs. 60,00,000/- at the relevant time. She further submitted that she had paid interest for the principal amount and insisted on settling the issue by

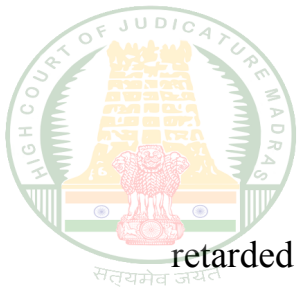


S.A. No.923 of 2024

repayment of the said amount, but the plaintiff refused. She also contended that the second defendant, who is a mentally retarded person, was unaware of the terms of the agreement. Hence, the alleged sale agreement was not a true and valid document and the suit deserved to be dismissed.

5. The first defendant also filed an application to appoint her as guardian of the second defendant, on the ground that he was mentally retarded. She also filed a memo to that effect, which was allowed. Consequently, the plaintiff amended the plaint. Based on these facts, the first defendant prayed for dismissal of the suit.

6. Before the trial court, both parties adduced oral and documentary evidence. On the side of the plaintiff P.W.1 and P.W.2 were examined and Ex.A1 and Ex.A3 were marked. On the side of the defendants D.W.1 was examined and Ex.B1 was marked. On consideration of the same, the learned trial judge framed three issues: (i) whether the alleged sale agreement was executed only as security for a loan transaction, (ii) whether the plaintiff was entitled to the relief of specific performance, and (iii) whether the agreement would bind the second defendant, who was claimed to be a mentally



S.A. No.923 of 2024

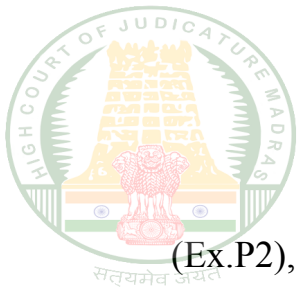
retarded person.

WEB COPY

7. Relying on Ex.B1, a certificate issued by the District Collector for rehabilitation of disabled persons, which recorded that the second defendant was suffering from Down Syndrome, the trial court held that the second defendant was not an ordinary person. He was represented in the proceedings by his mother as guardian, as per the order of the court on the memo filed. The plaint was amended accordingly, and the amendment was not challenged by the plaintiff. Therefore, the trial court held that the second defendant was a mentally retarded person and, even though his signature appeared in the sale agreement, the agreement would not bind him.

8. Further, the trial court noted that the suit property originally belonged to the first defendant's husband, Chandramohan, and upon his demise in 1982, his wife (D1) and son (D2) succeeded as legal heirs. As per Ex.A1, the plaintiff contended that defendants 1 and 2 agreed to sell the property for Rs. 4,00,000/-, out of which he paid Rs. 2,00,000/- as advance, fixing 11 months' time for payment of the balance, which ended on 05.02.2014. However, the plaintiff issued notice only on 24.01.2014

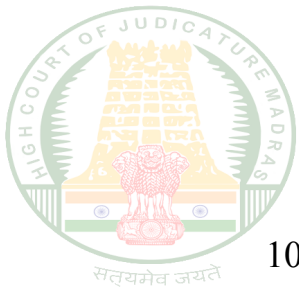
4\15



S.A. No.923 of 2024

(Ex.P2), which was received by the defendants, but no reply was sent. The plaintiff, however, approached the court nearly 2 years and 2 months later by filing the present suit for specific performance, without assigning any valid reason for the delay and without depositing the balance sale consideration in court, despite having recited in Ex.P2 that he was ready to do so.

9. The trial court therefore held that the conduct of the plaintiff disproved his readiness and willingness to perform his part of the contract. His own admission showed that he was a financier and real estate businessman. The property was a three-storey terrace house with about 2200 sq. ft., but it was not properly described in the agreement. This circumstance, along with the grossly inadequate consideration, showed that the agreement was not intended for a genuine sale but was executed as security for a loan transaction. Further, since the second defendant was not a valid contracting party, the alleged agreement could not bind him. Accordingly, the suit was dismissed by answering all the issues against the plaintiff.



S.A. No.923 of 2024

10. Challenging the said findings, the appellant preferred A.S. No. 61

of 2021 before the Special Court for the Exclusive Trial of SC and ST cases, Namakkal. The first appellate judge independently analyzed the entire facts, evidence, and documents, and framed separate points for consideration. The appellate court held that Ex.B1, the government certificate, established that the second defendant was suffering from 60% Down Syndrome and was classified as a mentally retarded person by a government doctor. This was sufficient to hold that he was not competent to enter into a valid contract under Section 10 of the Indian Contract Act. Therefore, the alleged agreement would not bind the second defendant, as rightly held by the trial court.

11. The appellate court also observed that the amendment made to the plaint acknowledging the appointment of the first defendant as guardian of the second defendant had not been challenged by the plaintiff. It further found that the suit property, being a three-storey terrace house of about 2028 sq. ft., could not reasonably have been agreed to be sold for only Rs. 4,00,000/-. The plaintiff had not filed the suit immediately after issuance of notice, nor deposited the balance sale consideration within a reasonable

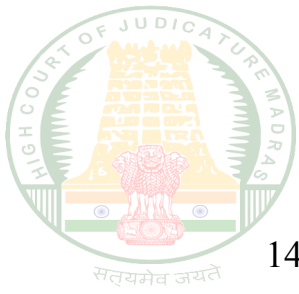


S.A. No.923 of 2024

time. Thus, he failed to prove his readiness and willingness. It was probable that the plaintiff, being a financier and real estate dealer, had advanced a loan to the first defendant, and the alleged agreement was executed only as security for such loan and not as a genuine contract for sale.

12. Accordingly, the appellate court confirmed the findings of the trial court and dismissed the appeal. Challenging the concurrent findings of the Courts below, the appellant has preferred this appeal.

13. The learned counsel for the appellant argues that within the stipulated period of the sale agreement, the appellant/ plaintiff issued notice calling upon the defendants to execute the sale deed by receiving the balance sale consideration. This itself, according to him, shows that the plaintiff was ready and willing to perform his part of the agreement. However, the Courts below failed to appreciate this aspect and erroneously held that the plaintiff had not proved his readiness and willingness. Such a finding, it is contended, is illegal and liable to be set aside.



S.A. No.923 of 2024

14. Further, the learned counsel for the appellant submits that the Courts below failed to appreciate the fact that the second respondent had signed before the Sub-Registrar, which itself shows that he was aware of the terms of the sale agreement. The fact that he was able to sign is sufficient to hold that he was capable of understanding the transaction. But the Courts below, relying on Ex.B1, erroneously held that he was a mentally retarded person. Such finding, according to the appellant, is illegal and liable to be set aside.

15. It is further contended that the learned trial Judge failed to properly appreciate the schedule of the property. Though the agreement did not specifically mention the terrace house, the schedule clearly mentioned all the buildings, and the agreement was always subject to negotiation. Therefore, it cannot be treated as a ground to defeat the plaintiff's claim. Hence, the appellant prays that the appeal be admitted, contending that substantial questions of law are involved.

16. However, considering the concurrent findings of the Courts below, it is seen that the appellant/plaintiff approached the Court for the



S.A. No.923 of 2024

relief of specific performance, directing the defendants 1 and 2 to execute the sale deed as per the alleged sale agreement dated 06.03.2013.

17. According to the appellant, the time to perform the contract was 11 months. Before the expiry of the said period, he issued Ex.A2 notice. The defendants did not send any reply nor comply with the terms of the agreement. Hence, the suit for specific performance was filed. But both the Courts below held that the plaintiff had failed to prove his readiness and willingness to perform his part of the contract, which is a precondition for granting such equitable relief.

18. The first defendant, who is the mother of the second defendant, contended that the second defendant was a mentally retarded person. To prove the same, she filed Ex.B1, an ID card issued by the District Collector for Rehabilitation of Disabled Persons, which showed that D2 was suffering from Down Syndrome. When he was directed to appear before the Court, he was not able to answer the questions put to him. Therefore, it stood proved that the second defendant was suffering from Down Syndrome and was not like an ordinary person.



S.A. No.923 of 2024

WEB COPY

19. Furthermore, after filing of the suit, the first defendant filed a memo stating that the second defendant was suffering from mental illness and prayed to be appointed as his guardian. Based on that, an amendment was carried out in the I.A., which was not objected to by the plaintiff. Consequently, in the cause title, the second defendant was shown as a mentally retarded person represented by his guardian/mother. In such circumstances, as rightly observed by the first appellate Judge, under Section 10 of the Indian Contract Act, the second defendant was not a competent person to enter into a contract. The mere fact that he had signed the agreement would not by itself be sufficient to hold that he was capable of understanding and entering into the contract. To that effect, the concurrent findings of both Courts require no interference.

20. Accordingly, the finding that the alleged agreement would not bind the second defendant is sustainable and requires no interference.

21. As per the contention of the first defendant, in order to meet the medical expenses of her family, she was introduced to the plaintiff, who is a



S.A. No.923 of 2024

financier, through her brother, and out of necessity, she borrowed a loan of Rs. 2,00,000/- in the year 2013. She paid interest up to January 2016. At the instance of the plaintiff, she executed the sale agreement as security for the loan transaction. In fact, the property was worth more than Rs. 60,00,000/-, as it comprised an RCC terrace house. She was ready to repay the loan amount, but the plaintiff intended to grab the property. Hence, she raised objections.

22. During evidence, the plaintiff himself admitted that he was doing real estate and financial business. Further, after issuance of notice, the suit was filed only after about two years and two months. No explanation was offered for the said delay, nor did the plaintiff take any steps to deposit the balance sale consideration in Court, though he had expressed readiness to do so in Ex.A2 notice. Section 16(c) of the Specific Relief Act mandates that the plaintiff must prove that he was always ready and willing to perform his part of the agreement. The conduct of the plaintiff, as discussed above, shows that he has not proved such readiness and willingness, even assuming the agreement to be true and valid. Hence, the findings of the Courts below



S.A. No.923 of 2024

on this aspect are well reasoned and require no interference.

WEB COPY

23. Another objection raised by the first defendant was that the property was undervalued. Admittedly, there is a three-floor terrace house in the suit property, but the same was not properly described. The agreement merely mentioned “all buildings” without specific details. If the plaintiff was truly a bona fide purchaser, he would have furnished the correct description of the property. The undervaluation of the property itself shows that the agreement was not a genuine one intended for sale, but only as a security for a loan transaction. To that effect, the findings of the Courts below are sustainable and require no interference.

24. Considering the entire findings of the Courts below, no substantial question of law arises for consideration. Hence, the Second appeal is dismissed as devoid of merit. There shall be no order as to costs.

25. However, considering the submission of the first defendant that she is ready to repay the loan amount of Rs. 2,00,000/-, it is directed that she shall return the said amount to the plaintiff with interest at the rate of 12%

12\15



S.A. No.923 of 2024

per annum from the date of suit till the date of realization, within a period of five months from the date of receipt of a copy of this order.

21.12.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

rri

To

- 1.The Special Court for the Exclusive Trial of SC and ST Cases, Namakkal.
2. The Subordinate Court, Rasipuram.
- 3.The Section Officer, VR Section, High Court of Madras.

13\15



WEB COPY



S.A. No.923 of 2024

T.V.THAMILSELVI, J.

rri



WEB COPY



S.A. No.923 of 2024

S.A.No.923 of 2024

21.12.2024