



S.A.No.900 of 2018
& C.M.P.No.23726 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 24.01.2024

Pronounced on: 31.01.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.900 of 2018
& C.M.P.No.23726 of 2018

Komarayal (Deceased).

1. Gopalsamy,
2. Eswaran,
3. Saraswathi,
4. Subramani,
5. Palanisamy,

... Appellants/Respondents/Plaintiffs No.2 to 6

/versus/

P.V.Ramachandran.

.... Respondent/Appellant/Defendant

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 22.08.2011 made in A.S.No.31 of 2011 on the file of the Additional District Court (FTC.No.2), Gobichettipalayam and reversing the judgment and decree dated 10.07.2009 made in O.S.No.147/2004 on the file of the Principal Sub Court, Gobichettipalayam.

For Appellants : Mr.R.Babu

For Respondent : Mr.J.Titus Enock



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J U D G M E N T

The unsuccessful plaintiffs in a suit for specific performance are the appellants before this Court.

2. The material facts which are necessary for adjudicating the Second Appeal, are as follows:-

The plaintiff claimed to be agriculturalist. The defendant had agreed to sell the suit property and the plaintiffs had agreed to purchase the same for a total sale consideration of Rs.1,10,000/-. According to the plaintiff, on 10.10.2001, the plaintiff and the defendant entered into a sale agreement and on the same day a sum of Rs.1,00,000/- was paid by the plaintiff and the balance amount of Rs.10,000/- was agreed to be paid by the plaintiff, within 2 years from the date of sale agreement.

3. According to the plaintiff, despite several demands made, the defendant did not come forward to execute the sale agreement and therefore, the plaintiff issued a legal notice dated 07.10.2003 and despite receipt of the same, the defendant did not even choose to send any reply. According to the plaintiff,



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was ready and willing to pay the balance sale consideration of Rs.10,000/-, but the defendant did not come forward to execute the sale deed. Therefore, the plaintiff instituted the suit seeking for the relief of specific performance with an alternate prayer for refund of advance amount of Rs.1,00,000/-, along with interest at the rate of 12% p.a, from the date of suit to till the realisation of the entire amount.

4. The defendant resisted the said suit and filed a written statement stating that the agreement was entered only as a security for a loan amount of Rs.25,000/-, borrowed by the defendant, from the plaintiff and the agreement of sale was never intended to be acted upon.

5. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and Mr.Venugopal was examined as P.W.2 and Ex.A.1 to Ex.A.3 were marked. On the side of the defendant, Mr.P.V.Ramachandran was examined himself as D.W.1 and Mr.Pasumaraj was examined as D.W.2.

6. The trial Court, on assessment of the oral and documentary



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evidence adduced by the parties proceeded to grant the relief of specific performance. The said findings of the trial Court were challenged by the defendant in A.S.No.31 of 2011. The First Appellate Court reversed the findings of the trial Court and dismissed the suit for specific performance. However, the First Appellate Court granted the alternate relief for refund of advance amount.

7. Aggrieved by the reversal finding of the First Appellate Court, the plaintiffs are on Second Appeal.

8. Heard the Learned Counsel for the appellants and the Learned Counsel for the respondent.

9. On 04.01.2019, this Court has admitted the above Second Appeal and framed the following substantial questions of law:-

“1. Whether the Lower Appellate Court is right in granting the alternative relief of payment of money to the appellant by the respondent when the agreement for sale is proved to be true?



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2. Whether the Lower Appellate Court is right in exercising its discretion and directing the respondent to pay the advance amount when only a meager sum of Rs.10,000/- is left over for payment by the appellant to fulfil his part of the obligation for claiming specific performance? ”

10. The Learned Counsel for the appellants would contend that when the defendant had categorically admitted the execution of sale agreement, the First Appellate Court ought not to have reversed the well considered findings of the trial Court and denied the relief of specific performance.

11. The Learned Counsel for the appellants would also state that the defendant despite having taken a defence that the sale agreement was entered into only as a security for Rs.25,000/- borrowed, the defendant had not mentioned the particulars of the borrowing in the written statement. He would also contend that the First Appellate Court has not considered the evidence of P.W.2 and the terms of Ex.A.1, the sale agreement.



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12. The Learned Counsel for the appellants would further state that if really the agreement of sale was not intended to be acted upon, then the defendant would have certainly issued a reply to legal notice, Ex.A.2 dated 07.10.2003.

13. The Learned Counsel for the appellants would also state that a sum of Rs.1,00,000/- was already paid and the balance sale consideration of Rs.10,000/- was also deposited before the Court and therefore, he prayed for the relief of specific performance to be granted, by setting aside the judgment of the First Appellate Court.

14. Per contra, the learned counsel for the respondent would submit that even though the execution of the agreement of sale was admitted by the defendant, at the earliest instance, by way of written statement, the defendant has categorically stated that the agreement was entered into only for the purposes of offering a security for the amount borrowed from the plaintiff. He would also rely on the clause in the sale agreement with regard to fixing an inordinate and long period of two years for payment of a mere Rs.10,000/-,



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especially when the total sale consideration was also only Rs.1,10,000/-, out of which Rs.1,00,000/- had been paid even on the date of sale agreement, according to the plaintiff.

15. The Learned Counsel for the defendant/respondent would also contend that the receipt of Ex.A.2 notice was never admitted by the defendant and the notice was sent only by courier and not by registered post. Even otherwise, according to the learned counsel for the respondent, if really the plaintiff had issued the demand notice (Ex.A.2) on 07.10.2003, calling upon the defendant to come forward and execute the sale deed in favour of the plaintiff, then the total silence and inaction on the part of the plaintiff, right from 07.10.2003 until 28.10.2004 when the suit came to be instituted has not been explained by the plaintiff. More over, the delay only exposes the lack of readiness and willingness, thereby disentitling the plaintiff to the relief of specific performance.

16. The learned counsel for the defendant would conclude his submissions, relying on the findings of the First Appellate Court which according to him are well merited and do not deserve to be interfered with.



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17. I have considered the rival submissions advanced by the Learned Counsel on either side and also gone through the judgment of the trial Court as well as the First Appellate Court, besides the pleadings and evidence on record.

18. No doubt, as rightly contended by the Learned Counsel for the appellants, the defendant did not deny the execution of the sale agreement. However, the specific case of the defendant is that the said agreement of sale was never intended to be acted upon as a sale agreement and that it was executed only for offering a security for a loan amount. It is equally true that the defendant had not even chosen to plead the particulars of borrowing alleged to have been made by him from the plaintiff, and the written statement merely states that a sum of Rs.25,000/- was borrowed from the plaintiff in respect of which the suit sale agreement was entered. With regard to Ex.A.2 notice, I find that the defendant has categorically denied the receipt of such legal notice dated 07.10.2003. Unfortunately, the plaintiff had not been able to establish the factum of said notice having been served on the defendant, by production of the



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acknowledgement card or any other relevant material from the courier company, to evidence that the defendant had actually received the said notice.

19. Be that as it may, even according to the plaintiff, having issued a legal notice in Ex.A.2 on 07.10.2003, there is absolutely no explanation as to why the plaintiffs remained silent for more than one year and chose to file the suit only on 28.10.2004. This apart, considering the specific defence taken by the defendant in the written statement that the agreement of sale was sham and nominal and only entered into for securing the amount borrowed from the plaintiffs and the unusual terms and conditions found in Ex.A.1 sale agreement, namely payment of approximately 90% of the sale consideration even on the date of sale agreement but reserving a two year time period for payment of the balance Rs.10,000/- would also raise eyebrows. If the plaintiff was really interested in purchasing the property and always ready and willing to perform his obligations, he would not have awaited for almost two years to issue a legal notice dated 07.10.2003, that too when the balance sale consideration payable was only Rs.10,000/-. Even thereafter, there is a delay of one year in approaching the Court.



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20. The First Appellate Court has rightly assessed the pleadings as well as the oral and documentary evidence adduced by the parties and came to the conclusion that the agreement of sale was not a contract intended to be acted upon and that the defence set up by the defendant was more probable. I also find from the evidence of the plaintiff, namely Mr.Komarayal (P.W.1) that he has also admitted to the practice in a village that whenever amounts were borrowed, it was customary for the parties to enter into an agreement of sale. This admission of P.W.1 only strengthens the defence set up by the defendant.

21. Thus, I do not find any perversity or illegality in the findings arrived by the First Appellate Court. The First Appellate Court has also rightly granted the alternative relief of refund of advance amount of Rs.1,00,000/- together with interest @ 12% per annum.

22. I do not find any justifiable reasons warranting interference with the said well considered findings of the First Appellate Court, reversing the judgment and decree of the trial Court. Thus, both the substantial questions of law are answered against the appellants.



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23. Hence, the *Second Appeal is dismissed.* The judgment and decree passed by the Additional District Court (FTC No.2), Gobichettipalayam made in A.S.No.31 of 2011, dated 22.08.2011 is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

31.01.2024

Index :Yes/No.
Internet :Yes/No.
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P.B.BALAJI, J.

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Pre-delivery judgment made in
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