



A.S.No.820 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 26.02.2024

Delivered On: 07.06.2024

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.820 of 2018 and
C.M.P.No.21642 of 2018

S.Ashok Kumar

...Appellant

Vs.

J.Aranganathan

...Respondent

PRAYER: First Appeal filed under Section 96 of the Civil Procedure Code, to set aside the judgment and decree of the learned III Additional District Judge, Vellore,Thirupattur dated 06.08.2018 in O.S.No.41 of 2015.

For Appellant : Mr.K.Sivasubramanian
for Mr.T.M.Hariharan

For Respondent : M/s.S.Thamizharasi

JUDGEMENT

The defendant is the appellant herein. The respondent/plaintiff filed a suit for specific performance of the suit sale agreement marked as Ex.A1 dated 27.09.2013. The suit was decreed by the Trial Court. Aggrieved by the same, the appellant has come before this Court by way of first appeal.



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2. For the sake of convenience, the parties are referred as per their ranking in O.S.No.41 of 2015.

3. According to the respondent/plaintiff, on 27.09.2013, the defendant executed a registered sale agreement in respect of the suit property belonging to him in favour of the plaintiff. As per the terms of agreement, the sale consideration was fixed at Rs.12,00,000/- and an advance amount of Rs.10,00,000/- was paid on the date of agreement. The time fixed for payment of the balance amount was 18 months and on the date of the registration of the sale agreement, the parent document namely Ex.A5 dated 26.08.2013, settlement deed in favour of the defendant, owner of the property was handed over. It was averred by the plaintiff that though he was ready and willing to perform his part of the contract, the respondent failed to complete the sale transaction. Therefore, a legal notice was issued by the plaintiff on 26.11.2014 calling upon the defendant to receive the balance sale consideration and complete the sale transaction. In spite of the same, the defendant failed to come forward to execute the sale deed. In these circumstances, the respondent/plaintiff was constrained to file a suit for specific performance.



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4. The defendant filed a written statement denying that Ex.A1 is not intended to be a sale agreement. It is only executed for the purpose of security for the loan transaction and also stated that the defendant borrowed the amount for which he had given two cheques and a bogus name cheque dishonoured case was filed before the Magistrate Court and also stated that market price are very high and the sale consideration fixed under Ex.A1, sale agreement is too low.

5. The Trial Court has framed necessary issues during the trial. Before the Trial Court, the plaintiff has examined himself as P.W.1 and yet another witness was examined as P.W.2 and 8 documents were marked as Ex.A1 to Ex.A8. On the side of defendant, the defendant was examined as D.W.1 and yet another witness was examined as D.W.2 and Ex.B1 and Ex.B2 were marked.

6. Based on the oral and documentary evidence available on record, the Trial Court came to the conclusion that Ex.A1, suit sale agreement was valid and the plaintiff was ready and willing to perform his part of the contract and also held that the sale agreement was not executed as a security for the loan transaction and hence, decreed the suit.



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7. Heard the learned counsel for the appellant and learned counsel for the respondent. On the basis of the submissions made by the learned counsel on either side and pleadings of the parties, the following points arise for consideration in this first appeal:-

1. Whether the Ex.A1 is not a sale agreement and was executed only as security for the loan transaction as pleaded by the defendant?

2. Whether the respondent/plaintiff is ready and willing to perform his part of the contract?

3. Whether the sale consideration fixed is to be revised in view of escalation of prices in the land for the past 10 years?

4. Whether the order of the Trial Court is sustainable or not?

8. Ex.A1 is the suit sale agreement. P.W.1 deposed regarding the execution of Ex.A1 that he signed the sale agreement in the Sub-Registrar Office, Vaniyambadi but the defendant received the advance amount outside the office of the Sub-Registrar. P.W.2, Charles, one of the attesor of the Ex.A1 corroborated the evidence of P.W.1 but under reply notice marked as Ex.A4 the defendant has stated that he obtained loan from the plaintiff for which a



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mediator by name Charles made arrangements. The evidence is clear, cogent and duly corroborates with the evidence of the P.W.1 assumes nothing in the cross examination of P.W.2 is made out to describe his evidence though the defendant claimed that Ex.A1 was only executed as a security for loan transaction, he has not let in any positive evidence in this regard. Neither the defendant spelled the dates of the payment nor filed any documentary evidence to show that the amount received from the plaintiff as a loan or any evidence to show that he has paid interest to the plaintiff as pleaded in the written statement and hence, the Trial Court has rightly come to the conclusion that Ex.A1 was only a sale agreement and not a security for the loan transaction between the parties and this point is answered in favour of the respondent/plaintiff.

9. Whether the respondent/plaintiff is ready and willing to perform his part of the contract, he has issued legal notice within the time stipulated under Ex.A2 and Ex.A4, reply notice also been sent. It remains to be stated that parent document namely Ex.A5, settlement deed in favour of the appellant/defendant was handed over to the respondent/plaintiff assumes significance. He has also produced copy of the demand draft for the balance sale consideration and Ex.A7, registered copy of sale deed dated 12.12.2014 to substantiate his plea. As



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per the legal notice under Ex.A2, the plaintiff was waiting in the Sub Registrar's Office and during the course of his waiting, he had signed as attesor in one of the sale deed registered in the said Sub Registrar's Office which is marked as Ex.A7 and Ex.A6 demonstrates that he has taken the demand draft for Rs.2,00,000/- Subsequently, it was credited back to his account and hence, the Trial Court, taking the entirety of the circumstances, has come to the conclusion that plaintiff was ready and willing to perform his part of the contract and he had also come with demand draft for the balance of sale consideration and hence, he demonstrated his readiness and willingness to execute the terms of the sale agreement. The plaintiff had issued a legal notice under Ex.A2 and stated his readiness and willingness and thus the necessary ingredients as required under Section 16(C) of the Specific Relief Act is being satisfied, I have no hesitation to hold that respondent/plaintiff is ready and willing to perform his part of the contract.

10. Taking into consideration that plaintiff has demonstrated his readiness and willingness to perform his part of the contract and also Ex.A1 is a true and valid sale agreement, the Trial Court has rightly decreed the suit. On the point of sale consideration is being low, this Court has given anxious consideration.



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Taking into consideration of the locality and the measurement of 2000 Sq.feet of the suit property, this Court, by following the decision of the Hon'ble Supreme Court in Civil Appeal No.9947 of 2014 dated 29.10.2014, which has been followed by this Court in the judgment in A.S.No.266 of 2007 dated 25.01.2019, is inclined to revise the sale consideration as Rs.20,00,000/- as against Rs.12,00,000/- and the balance amount to be paid as Rs.10,00,000/- as against Rs.2,00,000/- Accordingly, the decree granted by the Trial Court is hereby modified while the specific performance as prayed for by the plaintiff is hereby confirmed.

11. In view of the discussions made earlier, the First Appeal is partly allowed by modifying the judgment and decree passed by the Trial Court as indicated below:-

a) the judgment and decree dated 06.08.2018 made in O.S.No.41 of 2015 on the file of the III Additional District Judge, Vellore,Thirupattur is hereby modified and there shall be an order of specific performance of the suit sale agreement. However, the sale consideration is enhanced from Rs.12,00,000/- (Rupees Twelve Lakhs only) to Rs.20,00,000/- (Rupees Twenty Lakhs only) and



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the decree shall stand modified and accordingly, the first appeal is partly allowed to the extent indicated above.

b) the time for execution of the sale deed is one month from the date of receipt of a copy of this order failing which the Court shall pass an order by way of execution. The plaintiff is entitled to get sale deed through Court on payment of balance of Rs.10,00,000/- (Rupees Ten Lakhs Only).

c) In view of the above facts and circumstances of the case, there will be no order as to costs.

07.06.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To
The III Additional District Judge, Vellore, Thirupattur



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RMT.TEEKAA RAMAN,J.,

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Pre-delivery order made in
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