



A.S(MD)No.96 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 20.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

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1.Janaki Ammal (Died)

2.U.Selvaraj (Died)

... Appellants/Defendants 2 & 3

3.S.Suresh

4.S.Mahesh

5.S.Ramesh

6.S.Satheesh

... Appellants

(First appellant died and the respondents 2 to 11, who are already on record are recorded as legal heirs of the deceased first appellant vide Court order, dated 14.06.2019 made in C.M.P(MD)No.2767 of 2018 in A.S(MD)No.96 of 2012)

(Appellants 3 to 6 and 12th respondent are also brought on record as legal heirs of the deceased first appellant vide Court order, dated 06.12.2022 made in C.M.P(MD)No.2766 of 2018 in A.S(MD)No.96 of 2012)

(Appellants 3 to 6 and 12th respondent are brought on record as legal heirs of



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the deceased second appellant vide Court order, dated 10.10.2022 made in C.M.P(MD)No.2765 of 2018 in A.S(MD)No.96 of 2012)

Vs.

1.V.S.Sundaralingam

2.U.Durairaj

3.U.Paulraj

4.U.Jeyaraj

5.U.Kamaraj

U.Rathinaraj (Died)

6.U.Krishnaraj

7.Mallika

8.Annasaraswathi

9.Padma

10.Geetha

11.Sabeetha,
Represented by her Court Guardian
Advocate, Evercies.

12.Sujatha

... Respondents

*(Respondents 2 to 6 and 9, 10 are Given Up
as Set ex parte)*



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(Minor 11th respondent is declared as major and the guardianship of her Court Guardian Advocate. Evercies is discharged vide Court order, dated 24.07.2023 made in C.M.P(MD)No.5734 of 2019 in A.S(MD)No.96 of 2012)

Prayer : This Appeal Suit filed under Section 96 of CPC., against the judgment and decree, dated 28.06.2012 made in O.S.No.49 of 2004 on the file of the Principal District Judge, Tuticorin.

For Appellants : Mr.R.Subramanian
for Mr.N.C.Ashokkumar

For R-1 : Mr.V.Kanan

For R-7, R-8 &
R-11 : No appearance

JUDGMENT

This Appeal Suit has been preferred as against the decree and judgment passed in O.S.No.49 of 2004 on the file of the Principal District Judge, Tuticorin, dated 28.06.2012, wherein the first respondent herein has filed a suit for specific performance of contract and the same was decreed in favour of the plaintiff. As against the decree and judgment, the present Appeal Suit has been preferred by the defendants.



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2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Trial Court.

3. The case of the plaintiff is that the first defendant is the husband of the second defendant and the suit properties originally belonged to the defendants 1 and 2 and they entered into agreement with the plaintiff on 16.08.1996 to sell the properties for Rs.11,00,000/- and on the date of agreement itself, the entire amount was paid and four months time was fixed for execution of sale. After completion of four months, the defendants evaded from executing the sale deed and thereby, the plaintiff issued notice, dated 18.03.1997 and the same was received by the defendants and after receipt of notice, the defendants issued reply by stating false averments and thereby, rejoinder was also issued to the plaintiff. Even after the notice issued by the plaintiff, defendants have not come forward to execute sale deed and thereby, he filed the suit for specific performance on contract.



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4. The case of the defendant is that the agreement was not executed with intend to sell the suit property and the defendants borrowed loan for a sum of Rs.10,00,000/- and for that purpose the suit agreement was executed. As per the advice of the Panchayatars, One Lakh amount was mentioned as excess than what the amount received and they have not executed the agreement for sale. Therefore, for that reason only after payment of entire amount, the sale he was not executed on the date of agreement itself. Therefore, the sale agreement was not executed for sale of property and it is only executed as security for the loan obtained by the defendants. Therefore, the suit is liable to be dismissed.

5. Based on the above said pleadings, the Trial Court has framed the following issues:

- 1) Whether the agreement, dated 16.08.1996 allegedly executed by defendants 1 and 2 in favour of plaintiff is not a sale agreement as contended by the defendants?
- 2) Whether defendants 1 and 2 did not receive any consideration from the plaintiff for the said agreement as alleged by them?
- 3) Whether the plaintiff is entitled to the relief of specific



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performance of contract?

4) Whether the plaintiff is entitled to recovery of possession?

5) To what relief, if any, is the plaintiff entitled?

6. On the side of the plaintiff, they examined P.W.1 and P.W.2 and marked Exhibits A.1 to A.17. On the side of the defendants, they examined D.W.1 to D.W.4 and not marked any documents.

7. After considering the evidences and documents adduced by both the sides, the Trial Court has decreed the suit by granting decree for specific performance. As against the decree and judgment passed by the Trial Court, the present Appeal Suit has been preferred by the appellants on the following grounds:

"1) The judgment and decree of the Court below is against law, weight of evidence and probabilities of the case.

2) The Lower Court ought to have seen that the alleged agreement, dated 16.08.1996 in favour of the first respondent / plaintiff herein by the appellants is not at all a sale agreement and the same was executed for the amount received by the second appellant herein for his business



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transaction.

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3) The Lower Court ought to have seen that the first respondent / plaintiff is a money lender and he has not maintained any proper account for the said business.

4) The Lower Court failed to appreciate that if the entire sale consideration has been paid by the plaintiff to the appellants herein on the date of the alleged agreement, there is no necessity to enter a sale agreement and straight away sale deed itself can be executed.

5) The Lower Court failed to appreciate that the property belongs to the first appellant herein and there is no necessity to enter agreement including the husband of the first appellant herein.

6) The Lower Court ought to have seen that the documents with regard to the property in question was handed over before the Panchayatar by the appellants herein and the plaintiff collected the same from the Panchayatar to verify the said documents and the same was not return back to the Panchayatar with a *malafide* intention to grab the property.

7) The Lower Court erred in holding that the appellants have failed to prove that they have executed a loan document on 16.08.1996 and also not proved that the loan document was not received from the possession of



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D.W.2 and erred in come to the conclusion that the evidence of D.W.2 also could not be accepted.

8) The Lower Court erred in come to the conclusion that the parents of the second appellant herein have come not forward to adduce any rebuttal evidence and therefore adverse inference could be drawn against them.

9) The Lower Court erred in decreeing the suit relying on the Exhibit A.15 alleging that the appellants alone took time to clearance from the income tax department, but on contra the plaintiff alone has to be produce necessary income tax certificate for the alleged sale consideration paid by him.

10) The Lower Court ought to have seen that no title deeds have handed over in respect of the suit property before the plaintiff and the same has been handed over the panchayatar and hence the lower Court erred in come to the conclusion that the title deeds of the property in question was handed over to the plaintiff.

11) The Lower Court erred in holding that the second appellant here in was also authorized to deal with the property through Exhibit A.16.

12) The Lower Court failed to appreciate that the question of ready



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and willingness would not arise in this case, because the transaction itself is a loan transaction between the second appellant herein and the plaintiff and the alleged agreement between the parents of the second appellant and the plaintiff only on compulsion of panchayatars to settle the loan amount borrowed by the second appellant herein.

13) The Lower Court erred in holding that Exhibit A.1 has been categorically and corroboratively confirmed by the defendants own witness and hence Exhibit A.1 could not be suspected as a loan document and the same is a sale agreement only."

8. The learned Counsel appearing for the appellants would contend that originally the suit property belongs to the second defendant and both the defendants 1 and 2 obtained loan from the plaintiff and for that purpose, they executed an agreement for security purpose. Though the first defendant is not the owner of the property as requested by the plaintiff, in order to get loan, his name was also included in the agreement and he is not the owner of the property. As per the recitals of the document, entire amount was paid on the date of agreement. While so, no necessity to grant four months time for execution of sale deed. Therefore, the recital itself



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shows that the document was not intended to sell the property and it is only for the security for the loan obtained by the defendants. In order to prove the same, the defendants had examined D.W.1 to D.W.4 and as per the evidence, the agreement was not intended to sell the property and the same was executed for loan purpose. Further the plaintiff has not averred in the plaint with regard to the readiness and willingness and if he was always ready and willing to perform his part of contract, he ought to have get sale deed immediately on the date of agreement itself and there is no reason stated by the plaintiff for getting four months time. Moreover, after completion of four months, no notice was issued by expressing his readiness and willingness to perform his part of contract. But the notice was issued only after three months (i.e.,) on 18.03.1997. Therefore, the plaintiff was not ready and willing to perform his part of contract. But the Trial Court without considering the above said aspects, erroneously decreed the suit. Hence, the decree and judgment passed by the Trial Court are liable to be set aside by allowing this appeal.

9. The learned Counsel appearing for the respondents would contend that the second defendant is the owner of the landed property and



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the first defendant is the owner of the Mill, which was running in the suit property and thereby, both agreed to sell the landed property along with Mill. Thereby the agreement was signed by both the defendants. Since there was a business of Saw Mill, four months time was granted to hand over the possession of the property. The plaintiff was always ready and willing to perform his part of contract and to that effect he also mentioned in the plaint. Further, the defendants admitted the execution of agreement but they only denied the purpose of execution of the sale agreement. While so, they have to prove that the agreement was not executed for sale of property and the same was executed for loan purpose. In order to prove the same, the defendants have not entered into witness box to establish their case and only the son of the defendants entered into witness box and thereby, adverse inference can be drawn as against the defendants. Per contra, the plaintiff examined the attesting witness of the agreement and also examined other witness. Thereby, he proved that the agreement was executed for the purpose of sale. Though the entire amount was paid on the date of agreement itself, the time was given only for facilitating them to hand over the possession since there was a Saw Mill in the suit property. The Trial Court also after elaborate discussion, decreed the suit.



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There are no any grounds to set aside the decree and judgment passed by the Trial Court and thereby, the present appeal is liable to be dismissed.

10. This Court after hearing both sides and upon perusing the documents including the order of the Trial Court, the points for determination in this appeal are:

"1) Whether the agreement was executed for sale of the property or for loan purpose?

2) Whether the plaintiff was always ready and willing to perform his part of contract?

3) Whether the plaintiff is entitled to the relief of specific performance of contract?

4) Whether the judgment and decree passed by the Trial Court are sustainable in law or on facts?

5) Whether the appeal has to be allowed or not?

6) To what relief the parties are entitled to?"

11. Point No.1 :

In this case, it is admitted that the agreement was executed between the parties. But according to the plaintiff, it was executed for the purpose



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of sale of property. According to the defendants, the agreement was not executed for the purpose of sale and it is only for security for loan purpose. In order to prove the case of the plaintiff, the plaintiff was examined P.W.1 and P.W.2 and marked Exhibits A.1 to A.17 and on the side of the defendants, they examined D.W.1 to D.W.4 and not marked any documents. Once the defendants admitted the execution of deed, thereby, they have to prove the contrary for what purpose the sale deed was executed. But in this case, the entire sale price was given on the date of agreement itself, if so, the plaintiff could get sale deed on the date of agreement itself, but not done so. It is for the plaintiff to explain for what reason the sale deed was not registered on the date of agreement, when the entire amount was paid by the plaintiff. There is no reason stated either in the agreement or in the first notice, dated 18.03.1997. Further plaintiff has not taken steps to get sale deed in his favour within a period of four months and only issued notice on 18.03.1997, that too after a lapse of three months from the date of expiry of four months time mentioned in the agreement.



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12. Though the defendants have not entered into witness box, in this case, the plaintiff ought to have proved that for what reason the sale deed was not executed on the date of agreement itself. But no reason stated by the plaintiff. Further all the original sale deeds and other documents were also handed over to the plaintiff on the date of agreement itself. While so, it is for the plaintiff to explain as to what reason the sale deed was not registered on the date of agreement. At the time of argument, the learned Counsel argued that in the suit property there was a Saw Mill functioning for vacating the suit property the time was granted. But there is no recitals either in the agreement or in the plaint. In the plaint, there is an averment that to get clearance from income tax authorities the time was granted. But there is no recitals in the agreement. Had the agreement was intended to sell the property then the plaintiff could have got sale deed on the date of agreement itself, since all the original documents related to the suit property were handed over to the plaintiff and entire sale consideration was also paid to the defendants. The defendants also admitted the receipt of Rs.10,00,000/-. Further it is admitted fact that the second defendant is the owner of the property, then why the first defendant also signed in the agreement, has to be explained by the plaintiff, but no proper explanation



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to that effect. Even assuming that the plaintiff had took time for income tax clearance, he has not produced any documents to substantiate his contention. Therefore, the defendants have probabilized their case and the plaintiff failed to prove his case. Therefore, this Court is of the opinion that the agreement was not intended to sell the property and the same was intended only for the security of the loan purpose. Thus the point is answered.

13. Point No.2 :

The plaintiff has filed this suit for the relief of specific performance of contract and the main requirement is readiness and willingness. Already this Court in the previous point decided that the suit agreement was not intended to sell the property. Since this Court in the previous point decided that the suit property was not intended to sell the property and the same was loan purpose, the question of readiness and willingness would not arise. However, the plaintiff has only averred the plaint that he is ready to purchase the property but there is no reason stated by the plaintiff as to why he did not get sale deed on the date of agreement itself and also did not issue notice immediately after the expiry of the four months time and



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the first notice was issued only on 18.03.1997. Therefore, the conduct of the plaintiff shows that he was not ready and willing to perform his part of contract. Thus the point is answered.

14. Point No.3:

The plaintiff has sought for the relief of specific performance of contract. In the previous point, this Court decided that the agreement was not intended to sell the suit property and the plaintiff was also not ready and willing to perform his part of contract. The main requirement to grant specific performance is readiness and willingness. The agreement itself was not intended to sell the suit property and the plaintiff also failed to prove his readiness and willingness. Therefore, the plaintiff is not entitled to the relief of specific performance of contract. Thus the point is answered.

15. Point Nos.4 and 5:

This suit was filed before the Trial Court for the relief of specific performance of contract and the Trial Court also framed proper issues and analyzed the evidences adduced on both sides. In the judgment elaborately



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discussed about the agreement and thereafter came to a conclusion that the agreement was intended to sell the property and also discussed about the readiness and willingness and the plaintiff was always ready and willing to perform his part of contract. Further the Trial Court drawn adverse inference as against the defendants since the defendants have not entered into witness box. But the Trial Court failed to consider that when the entire amount was paid on the date of agreement itself then why the time was granted four months has not been discussed and answered. In general, when the agreement was admitted by the defendants, they have to prove the case but this is a peculiar case, when the entire sale consideration was paid, but not get sale deed, instead got sale agreement. The plaintiff has to prove for what purpose on the date of agreement itself the sale deed was not executed in his favour when all these documents were handed over to him. Therefore, the above said aspects have not been considered by the Trial Court. Further the Trial Court failed to consider that the plaintiff has not issued any notice by expressing his readiness and willingness to get sale deed immediately after four months time was over as per agreement. The Trial Court failed to consider that the plaintiff failed to prove that for income tax clearance purpose four months time was granted. Therefore, as



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stated above, the judgment and decree passed by the Trial Court are not sustainable in law and on facts. Therefore, the judgment and decree passed by the Trial Court are liable to be set aside by allowing this appeal. Thus the point Nos.4 and 5 are answered.

Point No.6:

16. In view of the above said discussions, the plaintiff is not entitled to the relief of specific performance of contract. At the same time, the defendants also admitted the receipt of amount. But the defendants only admitted Rs.10,00,000/- and Rs.1,00,000/- was excess amount mentioned in the document only at the request of the Panchayatars. But no any acceptable evidence adduced by the defendants. Once the defendants admitted the execution of documents, they have to pay the entire amount mentioned in the document. Therefore, the defendants are liable to pay the above said agreement amount. Though the plaintiff has not sought for any relief in respect of alternative prayer for return of advance amount due to the admission made by the defendant and under the equity this Court can pass money decree by directing the defendants to repay the said amount with interest at the rate of 9% from the date of agreement till the date of



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realization. Thus the point No.6 is answered.

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17. In the result, this Appeal Suit is partly allowed and the judgment and decree passed by the Trial Court in O.S.No.49 of 2004 in respect of the specific performance of contract are set aside and money decree is granted in favour of the plaintiff for a sum of Rs.11,00,000/- with interest at the rate of 9% per annum from the date of agreement till the date of realization of the amount. During the pendency of the case, both the defendants died and their legal heirs were brought on record. Therefore, the defendants being the legal heirs of the deceased defendants are liable to pay the above said decree amount from the estate of the deceased including the suit property. Time for payment is three months from the date of receipt of a copy of this judgment. After payment of the decree amount, the first respondent / plaintiff is directed to return the original documents to the appellants / defendants, the defendants are directed to pay the above said amount with interest from the estate of the deceased defendants 2 and 3. There shall be no order as to costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Principal District Judge,
Tuticorin.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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