



S.A.(MD).No.749 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.(MD).No.749 of 2011
and
M.P.(MD).No.1 of 2011

1.N.Mohana

2.V.Chitra : Appellants / Appellants / Defendants

Vs.

V.A.M.Thirupathy : Respondent / Respondent / Plaintiff

PRAYER: Second Appeal filed under Section 100 C.P.C. praying to set aside the Judgment and Decree in A.S.No.24 of 2009 dated 20.04.2011 on the file of the Additional District Court cum Fast Track Court No.II, Pattukottai, confirming the Judgment and Decree made in O.S.No.61 of 2003 dated 07.07.2009 on the file of the Sub Court, Pattukottai and allow the appeal.

For Appellants : Mr.G.Prabhu Rajadurai

for Mr.V.Thirumal

For Respondent : Mr.N.Balakrishnan



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J U D G M E N T

The defendants in the suit are the appellants. The respondent filed a suit for specific performance against the appellants and the suit was decreed by the trial Court granting relief of specific performance. The First Appeal filed by the appellants was also dismissed. Hence, challenging the concurrent findings against them, the defendants are before this Court.

2. According to the respondent / plaintiff, he entered into a sale agreement with the appellants / defendants on 01.07.2002 agreeing to purchase the agreement mentioned property for a sale purpose of Rs.4,90,000/- (Rupees Four Lakhs and Ninety Thousand only). As per the terms of agreement, on the date of agreement itself, an advance of Rs.4,00,000/- (Rupees Four Lakhs only) was paid and it was agreed that the remaining balance amount should be paid within a period of one year. The respondent / plaintiff issued a notice on 20.03.2003 expressing his readiness to pay the balance sale consideration and calling upon the defendants to perform their part of agreement. The notice was received



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only by the second appellant and the same was not received by the first appellant. The appellants issued a reply on 17.04.2023 as if the agreement was executed as a security for loan transaction. In these circumstances, the respondent laid the suit for specific performance on 23.04.2003.

3. The appellants herein filed a written statement and contended that they received a sum of Rs.4,00,000/- (Rupees Four Lakhs only) as a loan from the respondent and as a security for proper repayment of the amount, the suit sale agreement was executed. It was also contended by the appellants that the value of the agreement mentioned property was Rs.15,00,000/- (Rupees Fifteen Lakhs only) and they never agreed to sell the same for Rs.4,90,000/- (Rupees Four Lakhs and Ninety Thousand only). It was specifically contended by the appellants that there was no *consensus ad item* between the parties to treat the sale agreement as a real agreement to sell the property. On these pleadings, the appellant sought for dismissal of the suit.

4. Before the trial Court, the respondent was examined as P.W.1 and one of the attestors to the suit sale agreement was examined as



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P.W.2. On behalf of the respondent herein, four documents were marked as Ex.A.1 to Ex.A.4. On behalf of the appellants, no oral and documentary evidence was let in.

5. The trial Court on appreciation of oral and documentary evidence came to the conclusion that the suit sale agreement was genuine sale transaction and hence, granted a decree for specific performance. Aggrieved by the same, the appellants herein preferred First Appeal in A.S.No.24 of 2009 on the file of the Additional District Judge (Fast Track Court No.II), Pattukottai. The First Appellate Court confirmed the findings of the trial Court. Hence, the appellants are before this Court.

6. The learned counsel appearing for the appellants submitted that there are enough circumstances and evidence available on record to come to the conclusion that the suit agreement was executed only as a security for loan transaction and the parties had never intended to treat the same as a genuine sale transaction. The learned counsel submitted that the period of one year fixed in the agreement for payment of balance amount of Rs.90,000/- (Rupees Ninety Thousand only) was not at all



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explained by the respondent / plaintiff. The learned counsel further submitted that P.W.2 admitted that the respondent was a money-lender and the said admission was not taken into consideration in proper perspective by the Courts below. The learned counsel further submitted that the respondent has failed to deposit the balance sale consideration of Rs.90,000/- (Rupees Ninety Thousand only) before the Courts below at the time of filing of the suit. Therefore, the readiness and willingness on the part of the respondent was not at all proved. In support of his argument, the learned counsel relied on following judgments:

“1. *Pungodi Vs. Dhamotaran and Umamageswari* reported in **2023 (2) MWN (Civil) 1.**

2. *K.Velusamy Vs. C.Easwaran* reported in **[2024 (1) T.N.C.J.689 (MAD)]**.

3. *Alagammal and Others Vs. Ganensan and another* reported in **2024 INSC 28.”**

7. The main defence raised by the appellants was that the suit agreement was executed as a security for proper repayment of the loan amount received by the appellants. Though a plea to that effect was made by the appellants, the appellants for the reasons best to known to them,



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failed to enter the box and deposed in support of the defence raised by them. The first appellant's son-in-law and the second appellant's husband viz., Veerasekar Pathar attested the suit sale agreement as first witness. The other attesor to the agreement was examined by the respondent as P.W.2. The appellants failed to examine the first attesor, viz., the son-in-law of the first appellant and the husband of second appellant. If the suit agreement was not intended to be treated as an agreement, the appellants could have entered box and deposed to that effect or examined the first attesor to the document and proved the same. Both Courts below taking into consideration the failure of the appellants to lead any oral and documentary evidence, rightly came to the conclusion that the appellants failed to prove the defence that the suit sale agreement was executed only as a security for proper repayment of the loan amount received by the appellants. On the other hand, the respondent was examined as P.W.1 and the second witness to the suit sale agreement was examined as P.W.2. Based on the evidence of P.W.1 and P.W.2, the Courts below came to the conclusion that the suit sale agreement was a genuine document.

8. The learned counsel appearing for the appellants vehemently contended that the long time of one year fixed in the agreement for



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payment of meagre sum of Rs.90,000/- was not at all explained by the respondent and hence, he is not entitled to discretionary remedy of specific performance. The suit sale agreement is a registered document. In the absence of any positive evidence to show that the consent of the appellants to the suit sale agreement was vitiated by any of the factors recognized under the Indian Contract Act, 1872, it shall be treated as a genuine document. When parties for some reason or other agreed to give a long time of one year that itself cannot be treated as a ground to deny the relief of specific performance. In the case on hand, the suit agreement was entered into on 01.07.2002. on the date of agreement itself a sum of Rs.4,00,000/- was paid as an advance and remaining balance amount of Rs.90,000/- was agreed to be paid within a period of one year. The said one year period expired only on 30.06.2003. However, the respondents without waiting for expiry of one year period allowed by the agreement issued a pre-suit notice on 20.03.2003 and expressed his readiness and willingness to complete the sale transaction and called upon the appellants to perform their part of contract. After getting an unfavourable reply from the appellants on 17.04.2003, immediately the suit was laid by the respondent on 23.04.2003.



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Therefore, the suit was filed well within the time allowed by the agreement for performance of the agreement. Therefore, the respondent established his readiness and willingness to perform his part of the agreement and the submission made by the learned counsel for the appellants as if the time limit of one year fixed in the agreement would disprove the readiness and willingness of the respondent is not at all acceptable to this Court.

9. The learned counsel appearing for the appellants also submitted that the respondent had failed to deposit the balance sale agreement of Rs.90,000/- at the time of filing of the suit. Therefore, his readiness and willingness should be doubted. It is settled law that the plaintiff suit for specific performance need not jingle the coins before the Court. If he is able to prove his capacity to realize the amount within time stipulated by the agreement that is sufficient. In ***Pungudi Vs Dhamotaran and Umamageswari's case***, relied on by the learned counsel appearing for the appellants the sale consideration was Rs.13,00,000/- and two years time was fixed for payment of balance amount of Rs.50,000/-. In that case, it was held by this Court that



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fixation of two years time was not explained by the plaintiff. In the case on hand, time limit fixed by the agreement is only one year and the sale consideration is Rs.4,90,000/- and time fixed for payment for remaining Rs.90,000/- is only one year and even before the expiry of that period, the plaintiff filed the suit for specific performance. If the agreement was executed as a security for proper repayment of the loan amount, there was no necessity for the respondent / plaintiff to approach the Court even before the expiry of the time. Therefore, the case law cited by the learned counsel for the appellants is not applicable to the facts of the present case.

10. In support of his contention, the learned counsel relies upon another judgment of this Court in the case of ***K.Velusamy Vs. C.Easwaran*** reported in ***[2024 (1) T.N.C.J. 689 (MAD)]***. In that case, the contesting defendant entered the box and deposed in support of his plea that the suit sale agreement in that suit was executed as a security for loan transaction. However, in the case on hand, the appellants for the reasons well known to them failed to enter the box and therefore, the Courts below rightly drawn adverse interference against the appellants.



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Therefore, the second case law cited by the appellants is also not applicable to the facts of the present case.

11. In support of his contention, the learned counsel also relied on another judgment of this Court in the case of *Alagammal and Others Vs. Ganesan and another* reported in **2024 INSC 28**. In that case, there was an enormous delay on the part of the plaintiff in issuing pre-suit notice calling upon the defendants to execute the suit agreement. However, in the case on hand as mentioned earlier, the pre-suit notice was issued well within the time stipulated by the agreement and the suit was also filed before the expiry of time fixed by the agreement. In such circumstances, the third case law relied on by the learned counsel appearing for the appellants is not applicable to the facts of the present case.

12. In view of the discussions made earlier, the findings rendered by the Courts below that the suit sale agreement is a genuine sale transaction and the respondent / plaintiff proved the readiness and willingness to perform his part of the contract are all well founded



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findings based on the evidence available on record and the same requires no interference. There is no substantial question of law involved in this Second Appeal to interfere with the findings of the Courts below.

13. In view of the above, the Second Appeal stands dismissed.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

08.04.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
TSG

To

1. The Additional District Court cum Fast Track Court No.II, Pattukottai.
2. The Sub Court, Pattukottai.
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J

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Judgment made in
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