



S.A.(MD).No.202 of 2021

WEB COPY

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.03.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.202 of 2021
and
C.M.P.(MD)No.3237 of 2024

C.Selvakumar

... Appellant/Appellant/Plaintiff

/Vs./

R.Sadagopan

... Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 30.01.2019, made in A.S.No.27 of 2016 on the file of Additional District Court, Theni at Periyakulam, confirming the Judgment and Decree in O.S.No.106 of 2014, dated 21.09.2016, on the file of the Subordinate Court, Theni.

For Appellant : Mr.M.Senthil Kumar

For Respondent : Mr.A.Prasanna Rajadurai



S.A.(MD).No.202 of 2021

WEB COPY

JUDGMENT

This Second Appeal is filed by the plaintiff / appellant against the Judgment and Decree, dated 30.01.2019 passed in A.S.No.27 of 2016 on the file of Additional District Court, Theni at Periyakulam, confirming the Judgment and Decree in O.S.No.106 of 2014, dated 21.09.2016, on the file of the Subordinate Court, Theni

2. The plaintiff in the suit is the appellant herein and the defendant in the suit is the respondent herein. For the sake of convenience, the rank of the parties shall be referred as plaintiff and defendant as stated in suit.

3. The plaintiff has filed a suit for specific performance, to direct the defendant to receive Rs.1,50,000/- and execute the sale deed. Subsequently, the prayer was amended for alternative prayer to return the advance amount of Rs.3,00,000/- with 12 % interest from the date of agreement and restrain the defendant from encumbering the property. The



S.A.(MD).No.202 of 2021

WEB COPY

suit was dismissed. Aggrieved over the same the plaintiff had preferred an appeal and the Appellate Court has dismissed the appeal for specific performance and also dismissed the prayer to return the advance amount of Rs.3,00,000/-. Aggrieved over the concurrent findings, the present second appeal has been filed by the plaintiff in the suit.

4. The plaintiff and the defendant are co-brothers. The defendant has inherited the suit property from his father. The case of the plaintiff is that the plaintiff and the defendant have entered into registered sale agreement dated 31.05.2013, wherein the plaintiff had paid Rs.3,00,000/- (Rupees Three Lakh only) as advance and the balance Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) is payable on or before 31.05.2015, which is marked as Ex.A1. The plaintiff was ready and willing to pay the balance amount but the defendant failed to execute sale deed. Hence the present suit is filed for specific performance in O.S.No. 106 of 2014.



S.A.(MD).No.202 of 2021

WEB COPY

5. The case of the defendant is that the suit amount was paid for the loan transaction and the defendant had already repaid the same along with the interest to the tune of Rs.3,31,000/- (Rupees Three Lakh only). After discharging the liability, when the defendant demanded to cancel the sale agreement, the dispute arose between the parties. Hence, the plaintiff had filed the suit on 21.03.2014. And the defendant had lodged a complaint to register F.I.R for not cancelling the sale agreement and also for exorbitant interest on 04.04.2014. The claim of the plaintiff is false and the amount is only for the loan transaction where the defendant had already repaid the amount and hence prayed to dismiss the suit.

6. The Trial Court has accepted the contention of the defendant and dismissed the suit. In the appeal also, the Appellate Court has confirmed the findings of the Trial Court. Aggrieved over the same the present second appeal is filed by the plaintiff.

7. The second appeal is admitted on the following substantial



S.A.(MD).No.202 of 2021

WEB COPY

question of law:

i. Whether the Lower Appellate Court was not right in considering the claim of the plaintiff for refund of advance, even though a prayer to that effect was introduced at the appellate stage?

ii. Whether the Courts below were right in concluding that the suit agreement was executed only as security for loan transaction?

8. The Learned Counsel appearing for the defendant had raised additional substantial question of law, “*whether the suit is premature and the suit is not maintainable?*”

9. The first substantial question of law is whether the plaintiff is entitled to refund of the amount. It is an admitted fact that the plaintiff had not sought for alternative prayer for refund of amount of Rs. 3,00,000/- at the time of filing the suit, but had amended the prayer at appellate stage. The contention of the plaintiff is that the Appellate Court declined to grant the alternative prayer of refund of amount inspite of



S.A.(MD).No.202 of 2021

WEB COPY

amended prayer. Hence, the 1st substantial question of law.

10. After hearing the rival submissions this Court had given its anxious consideration. The plaintiff having suffered a finding, then the plaintiff cannot be permitted to amend the prayer to rectify the lacune. But in the present case the amendment was allowed. Further on perusal of the pleading and evidence of the parties, especially the defendant's pleadings and evidence, it is seen that the defendant has specifically pleaded that it is only loan transaction of Rs.3,00,000/- (Rupees Three Lakh only) and the same was repaid on 13.02.2014 along with interest of Rs.31,000/- (Rupees Thirty One Thousand), totally Rs.3,31,000/- (Rupees Three Lakh Thirty One Thousand only) was already paid. After considering this pleading, the prayer of the plaintiff cannot be entertained, when the said amount was already repaid. However, the defendant had only stated in the pleading but had not substantiated through any evidence to prove the same. Since the defendant is claiming that he had repaid, then the burden is on the defendant to prove that he



S.A.(MD).No.202 of 2021

WEB COPY

had repaid through evidence. But unfortunately, the defendant had not produced any evidence to prove the same. It is only a bare statement and absolutely there is no evidence to this effect. Infact, this Court was inclined to accept the contention of the defendant if the defendant had produced some piece of evidence. When there is no such evidence, this Court cannot accept the plea. Therefore, the substantial question of law is answered and the defendant is liable to refund the amount of Rs. 3,00,000/-. Since the plaintiff and the defendant are close relatives, this Court is not inclined to granting any interest for the said amount.

11. The next substantial question of law is whether the suit agreement was executed only as security for loan transaction. It is accepted by the plaintiff that he is doing agricultural activities. But it is the specific case of the defendant that the plaintiff is doing money lending business and there are other criminal cases to this effect. Further as per the sale agreement the plaintiff had paid Rs.3,00,000/- and the plaintiff is liable to balance amount of Rs.1,50,000/-. When the plaintiff



S.A.(MD).No.202 of 2021

WEB COPY

is having means to pay Rs.3,00,000/-, when the plaintiff is having means to pay the balance amount Rs.1,50,000/- since he is doing agricultural activities (as per the plaintiff and doing lending business as per the defendant), then the plaintiff needs two years-time to pay the balance amount of Rs.1,50,000/- is unbelievable. Therefore, this Court is of the considered opinion that the sale agreement is not executed to purchase the property but it is one for loan transaction. This is supported by one more fact that the defendant had preferred criminal complaint and registered a F.I.R. against the defendant alleging exorbitant interest and the plaintiff is refusing to hand over the alleged sale agreement. Therefore, this Court is of the considered opinion that the alleged sale agreement is not executed for purchasing the property but it is executed for loan transaction only. Accordingly, the second substantial question of law is answered against the plaintiff.

12. After answering the substantial question of law, this Court proceeds to answer the additional substantial question of law “whether



S.A.(MD).No.202 of 2021

WEB COPY

the suit is premature and the suit is not maintainable?’. The contention of the plaintiff is that the time stated in the sale agreement is only for two years. Therefore, no notice is necessary for filing a suit. Moreover, within a period of two years, the suit in O.S.No.106 of 2014 was filed on 21.03.2014 and the two years period will be over by 13.05.2015. Therefore, a suit is not barred by any law and the suit specific performance without a suit notice is maintainable. For which the learned Counsel relied on the judgment of the Hon'ble High Court in the case of ***Lakshmi Ammal Vs Gejaraj*** reported ***in 2022 (4) CTC 649***. The Hon'ble High Court has held that law does not expect that in every case there should be a pre-suit notice before the suit is filed. It will depend upon the facts and circumstances of each case and there cannot be a straight-jacket formula to mandate the issuance of pre-suit notice in every case. In the present case also as per the agreement, the time is two years. Therefore, a suit cannot be stated as premature suit. This Court is accepting the contention of the plaintiff that when the agreement states two years, when the suit is filed well before the two years period then the suit notice



S.A.(MD).No.202 of 2021

WEB COPY

is not necessary. Accordingly, the additional substantial question of law is answered against the defendant.

13. Based on the discussions stated supra, this Court is of the considered opinion that the transaction between the plaintiff and the defendant is only loan transaction, but there is no evidence that the defendant had repaid the amount and hence the defendant is liable to pay Rs.3,00,000/- (Rupees Three Lakh only) without interest within a period of the three months from the date of receipt of a copy of this order.

14. With the above said direction, this Second Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

20.03.2024

Index : Yes / No
NCC : Yes / No
jbr



S.A.(MD).No.202 of 2021

WEB COPY

TO:

- 1.The Additional District Judge,
Theni at Periyakulam
- 2.The Subordinate Judge, Theni.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD).No.202 of 2021

S.SRIMATHY, J.

jbr

Judgment made in
S.A.(MD)No.202 of 2021

Dated:
20.03.2024