BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved On	Order Pronounced On
09.12.2024	**27.12.2024**

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.145 of 2019
and
C.M.P.(MD)No.7462 of 2019

S.Nagayasamy ...Appellant

--Vs--

K.Ravindran ...Respondent

PRAYER: Appeal Suit filed under Section 96 of Civil Procedure Code, 1908, against the Judgment and Decree in O.S.No.62 of 2016, dated 05.01.2019, on the file of the Additional District Court (Fast Track Court), Theni.

For Appellant : Mr.P.Santhosh Kumar
For Respondent : Mr.D.Kirubakaran
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JUDGMENT

The First Appeal is preferred by the defendant against the Judgment and Decree dated 05.01.2019, passed in O.S.No.62 of 2016 on the file of the Additional District Court (FTC) Theni.

2. The defendant in the suit is the appellant herein and the plaintiff in the suit is the respondent herein. For the sake of convenience, the parties are referred as plaintiff and defendant as per the ranking in the suit.

3. The suit is filed for specific performance to enforce the sale agreement, dated 16.11.2015 by receiving the balance amount of Rs.50,000/- and consequently to grant the possession of the property to the plaintiff. Alternatively, to return the sale consideration of Rs.16,00,000/- with interest of Rs.2 for every 100 rupees.

4. The brief facts as stated in the plaint is that the defendant had purchased the suit property through the registered sale deed dated 18.12.1985 and the suit property absolutely belongs to the defendant. The defendant had approached the plaintiff on 16.11.2015 and agreed to sell the suit property to the plaintiff. Hence, a sale agreement, dated 16.11.2015, was executed fixing the sale consideration as Rs.16,50,000/-. The plaintiff had paid the advance amount of Rs.16,00,000/- and the balance Rs.50,000/- was payable within 12 months before 16.11.2016. The plaintiff was ready and willing to pay the balance amount of Rs.50,000/- and to get the sale deed executed but the defendant was not willing to perform the

contract. The plaintiff sent a legal notice, dated 13.08.2016, requesting the defendant to execute the sale at Sub Registrar Office, Cumbum on 16.11.2016. The notice was received and defendant through a reply notice, dated 18.08.2016, made false averments. The plaintiff again sent a legal notice on 12.11.2016, requesting the defendant to execute a sale deed at Sub Registrar Office Cumbum on 16.11.2016 and the same was received and the defendant replied through notice dated 15.11.2016 with false averments. On 16.11.2016, the plaintiff had waited at the Sub Registrar Office with the balance amount of Rs.50,000/- but the defendant failed to come to the office. To prove the presence of the plaintiff at Sub Registrar Office, Cumbum, the plaintiff had produced certain documents wherein he had affixed signature as witness. Since the defendant failed to come and execute the sale deed, the present suit is filed for specific performance.

5. The defendant had filed a written statement stating that except the averment that the suit property belongs to the defendant through registered sale deed, dated 18.12.1985, all other averments are false. The averments in the plaint are contrary to the oral agreement entered between the plaintiff and defendant on 16.11.2015. The plaintiff and the defendant are school mates. The defendant is running the shop in the name of KKK Traders in Cumbum and Gudalore Town

selling the construction articles. Since there was huge loss to the defendant in the business and also the defendant was constructing a house at Cumbum Town, the defendant borrowed amounts on exorbitant and usurious interest from Vijayan of Gudalore Town, Tamizhan of Gudalore and Nallakannan from Karunakkamuthan Patti but the defendant was unable to repay the debts to the said persons. The plaintiff was also doing money lending business on exorbitant and usurious interest. Since the defendant was locked with huge debt amount, to get over from the pressure of creditors, the defendant had approached the plaintiff for help since the plaintiff and defendant are school mates. The defendant borrowed a sum of Rs. 2,00,000/- for interest on 01.02.2014 and issued a blank Cheque No.000734 of Lakshmi Vilas Bank, Cumbum Branch, in favour of plaintiff and also signed the blank promissory note. On 28.02.2014, the defendant borrowed a sum of Rs. 3,00,000/-, issued blank Cheque No.000739 and also signed the blank promissory note. Again, the defendant borrowed Rs.5,00,000/- on 01.07.2014 and issued blank Cheque No.000017 and also signed the blank promissory note. Again, the defendant borrowed Rs.2,00,000/- on 03.09.2014, issued a blank Cheque No. 000021 and also signed the blank promissory note. Again, the defendant borrowed Rs.4,00,000/- on 15.11.2014, issued two blank cheques with No.000007 and No. 000008 and also singed the blank promissory note. And totally the defendant had borrowed Rs.16,00,000/- and has paid the interest amount of Rs.32,000/- per month. On 15.11.2015, the plaintiff approached the defendant that the debt amount borrowed by the defendant is huge and the creditors have also filed cases against the defendant. Hence, the plaintiff requested to execute sale agreement only for security purpose and he assured the defendant to cancel the sale agreement, if the entire debt amount was repaid. Since the market value of the suit property is Rs.60,00,000/-, the defendant refused to execute the sale agreement but the plaintiff pressurized with undue influence. Hence as a security document the alleged sale agreement was executed as if Rs.16,00,000/- is the advance amount and the balance Rs.50,000/- is payable. Even if the plea of plaintiff is considered that the transaction is sale agreement, then the plaintiff had paid only Rs.50,000/- as advance. The defendant paid the interest amount to the plaintiff for the borrowed amount of Rs.16,00,000/-. Now the defendant is ready to pay the debt amount to the plaintiff. The defendant did not agree to sell the property and did not receive 16,00,000/- for the alleged sale agreement. Hence, the plaintiff ought to prove the genuineness of the agreement and also the plaintiff ought to prove the readiness and willingness. The defendant already sent a suitable reply on 18.10.2016. But the plaintiff has wantonly sent a second legal notice on 12.11.2016 with an intention to create readiness and willingness. The suit is barred by limitation. The plaintiff is not entitled to any relief even the alternative relief. The defendant has no necessity or circumstances to sell the suit property. Hence, the defendant prayed to dismiss the suit.

6. Based on the rival pleadings the Trial Court had framed the following issues on 06.07.2018:

> i. Whether the defendant has executed a sale agreement dated 16.11.2015 for the purpose to sell away the suit property to the plaintiff?
>
> ii. Whether the plaintiff is entitled to the relief of Specific Performance of Sale agreement dated 16.11.2015 as prayed for?
>
> iii. To what other reliefs and cost, the plaintiff is entitled?

7. The plaintiff has marked Ex.A1 to Ex.A11 and examined PW1 to PW3. The defendant has not marked any documents but examined himself as DW1 witness. The suit was allowed directing the defendant to execute the sale deed by accepting the balance amount of Rs.50,000/- within two months. Aggrieved over the same, the present appeal suit is preferred by the defendant raising various grounds.

8. After hearing the rival submissions and the grounds raised in the appeal, the following points for consideration are formulated:

i. Whether the sale agreement, dated 16.11.2015, was executed for sale of the property or it was executed for loan transaction? In such circumstances, whether the plaintiff had discharged the burden to prove the sale agreement is genuine?

ii. When the plaintiff issued 1st notice, dated 13.08.2016, when the allegation of sale agreement was denied and indicated loan transaction through reply suit notice, dated 18.08.2016, whether the subsequent suit notice could indicate there is no readiness and willingness on the part of the plaintiff?

iii. Whether the period of one year to pay the balance Rs.50,000/- would indicate the transaction as loan transaction and not sale agreement?

iv. Whether the suit property is worth about Rs.60,00,000/-?

9. The sale agreement was executed on 16.11.2015 by fixing the sale consideration as Rs.16,50,000/-. The plaintiff had paid Rs.16,00,000/- and balance payable is only Rs.50,000/- and the time for paying the balance amount of Rs.

50,000/- is for one year. Of course, the defendant had taken a plea that the sale agreement is only for security purpose but had not produced any documents to prove the same. But in the suit for specific performance and the plaintiff is seeking for the prayer of specific performance, then the entire burden is on the plaintiff. And the plaintiff ought to stand on his own legs. Further the plaintiff can stand or fall on his pleadings alone and cannot depend on the defendant's pleadings. Further the relief of "Specific performance" is only an equitable relief given by the Courts in cases of breach of contract.

10. Before going into the merits of the case this Court is inclined to record that now-a-days almost all “loan transactions” are converted into “specific performance” suit. Even the purest form of anything is handed over to human being, as the day passes, the human nature is to corrupt the purest form. And one such example is loan transaction being converted into specific performance transaction. Hence the suit for specific performance ought to be dealt with in such changed scenario and the Courts are duty bound to scrutinize the contract and the circumstances of the contract. And heavy burden is on the person/plaintiff who claims for the relief of specific performance.

11. In the above scenario, this Court proceeds to analyze the present case. The first point for consideration is whether the plaintiff had proved the genuineness of the contract since the heavy burden is on the plaintiff to prove the genuineness of the contract.

12. When the plaintiff was able to pay Rs.16,00,000/- in one go, then it is unknown why the plaintiff needs one year for paying the meager balance amount of Rs.50,000/-. The plaintiff had not stated any reason and there is no explanation why the plaintiff needs one year for paying meager balance amount Rs.50,000/-. When the plaintiff was examined as PW1, a specific question was asked whether the plaintiff had stated the reason for one year to pay the balance, the plaintiff had admitted that the plaintiff had not stated any reasons or explanation why the period of one year is fixed for paying the balance amount of Rs.50,000/-. Therefore there is cloud over the alleged sale agreement.

13. The Madras High Court in judgment, dated 18.02.2021, in S.A.No.364 of 2010 in the case of ***Pavadai Gounder Vs. Sekar and another*** had held as under:

"7. The first Appellate Court has considered the materials available on record and concluded that the sale agreement dated 19.04.2006 could not be enforced due to the facts and circumstances surrounding the case. It is claimed by the Appellant that the entire sale consideration has been paid to the first defendant and the said fact was also proved. The learned Trial judge has framed specific issues as to the genuineness of the sale agreement and the passing of the sale consideration and held those issues against the Appellant.

8. The first Appellate court appreciated the evidence and held that even though the suit sale agreement had been executed by the parties, the plaintiff cannot get a decree for specific performance. In the suit for specific performance the mere truth of the execution of the sale agreement will not entitle a party to the agreement to get a decree for specific performance if the facts and circumstances surrounding the sale agreement cast cloud on the genuine intention of the parties."

14. As held in the aforesaid judgment in the suit for specific performance the mere execution of sale agreement will not entitle to the relief. If the circumstances surrounding the sale agreement cast cloud on the genuine intention of the parties, then the said relief cannot be granted. In the present case the plaintiff had not cleared the cloud of the genuineness of the intention, therefore the plaintiff may not be entitled to the relief of specific performance.

15. Further the suit notice dated 13.08.2016 was issued nearly after 9 months and the delay in issuing suit notice was not explained and no reason was adduced by the plaintiff.

16. Further the defendant vide his reply had denied the transaction as sale agreement but had claimed it to be loan transaction and also mentioned about the issuance of six cheques and six blank promissory notes. When the defendant had categorically denied the transaction as sale agreement, further when the defendant had taken the plea of loan transaction, then the burden is on the plaintiff to prove the same is not loan transaction. But the plaintiff had not proved that the transaction is only sale agreement.

17. Further when the defendant had replied through reply notice that the sale agreement is not true and had taken a claim the same is loan transaction, then it is evident that the defendant would not perform the contract. Then the plaintiff ought to have preferred the suit after the first notice dated 13.08.2016. Hence there is delay in preferring the suit and the only conclusion would be the plaintiff is not ready and willing to perform his contract. Also, it is not known why the plaintiff had issued a second suit notice dated 12.11.2016. Absolutely there is no

explanation or reasons for issuing the second suit notice. As rightly pointed out by the defendant the second suit notice was issued with an intention to create readiness and willingness. Therefore, this Court is of the considered opinion that the circumstances surrounding the sale agreement cast cloud on the intention of the parties.

18. The first suit notice is dated 13.08.2016 and the suit is filed on 28.11.2016 and there is delay of nearly four months in preferring suit from the date of the first notice. The plaintiff had not explained or stated any reasons for preferring belatedly, which would prove the plaintiff was not ready and willing to perform the contract.

19. Further the defendant had specifically stated in the reply notice that the property is valued at Rs.60,00,000/- but the agreement was entered for Rs. 16,00,000/-, which is too low. Then the plaintiff ought to have taken steps to prove that the suit property's market value is only Rs.16,00,000/- on the date of agreement, but the plaintiff had not proved the value of the property as Rs. 16,00,000/-. Therefore, this Court is of the considered opinion that the genuineness of the sale agreement was not proved by the plaintiff.

20. Further the plaintiff had stated in the plaint that he approached the defendant and requested to receive the balance payment and execute the sale deed, but had not stated on which date he approached. Even in the deposition the plaintiff had admitted that he had not stated in the plaint on which date he approached the defendant. In the deposition the plaintiff also stated that he does not remember the date when he approached the defendant. Therefore, this Court is of the considered opinion that the plaintiff had not approached the plaintiff at all. In turn this would prove the plaintiff was not ready and willing to perform his contract.

21. Strangely the plaintiff had stated that the advance amount of Rs. 16,00,000/- was paid in front of the sub register. But this statement would create a cloud over the transaction.

22. The plaintiff had also admitted that the two witness are his relatives and belongs to the same village. Therefore, the said two witnesses are interest parties and the same cannot be believed.

23. The Trial Court has relied on a single statement made by the defendant

wherein he has stated that he had borrowed amount from the plaintiff but he had not executed any documents for the same, but the said statement is contrary to the written statement wherein the defendant has stated that for each borrowed money, he had executed a cheque and a blank promissory note. However the Trial Court has failed to consider the defendant's statement that wherein he had narrated he had borrowed money from 12 persons and all the 12 persons have filed cases. The defendant has three cases in Uthamapalayam, three cases in Theni and three cases for cheque bounces and other cases are for mortgage. After extracting the said deposition, the Trial Court has come to the conclusion that the defendant is a habitual borrower. On the other hand, the Trial Court has accepted the sale agreement. When the defendant is a habitual borrower, the present transaction also ought to be for borrowing the amount alone. Then the alleged sale agreement is only for security purpose and not for sale agreement.

24. Under section 20 of Specific Relief Act, the Court has discretionary power if the conduct of the parties and / or the other circumstances under which the contract was entered are such that the plaintiff gets an unfair advantage over the defendant then the said relief can be declined. Especially if the property worth of Rs.60,00,000/- is sold to Rs.16,50,000/- then the plaintiff would get unfair

advantage over the defendant. Therefore, this Court is of the considered opinion that the conduct of the plaintiff and the circumstances stated supra would create unfair disadvantage to the defendant and for the reasons stated supra this Court is declining the specific performance relief.

25. However, when the defendant had admitted the receipt of money, the plaintiff is entitled to return of advance money of Rs.16,00,000/- along with interest.

26. The plaintiff had claimed in the written submission that if the Court declines to grant the relief of specific performance, then appropriate interest applicable to the business transaction may be granted. Considering the fact that the plaintiff and the defendant are doing business this Court is inclined to grant interest as applicable to business transaction and at the same time not inclined to grant “kanthu vaddi or “meter vaddi”.

27. For the reasons stated supra, the appeal suit stands allowed. The judgement and decree dated 05.01.2019 passed in O.S.No.62 of 2016 on the file of Additional District Court (FTC), Theni is set aside. The defendant is directed to

return the amount of Rs.16,00,000/- with 12.5% interest from the date of receipt of the amount dated 16.11.2015 till the date of judgment and decree of the suit dated 05.01.2019. Therefore, the said amount shall carry interest of 10% from 06.01.2019 to the date of this judgment dated 27.12.2024. Thereafter, the said amount shall carry interest of 8% from the next date of this judgment till the payment of the amount. No costs. Consequently, connected miscellaneous petition is closed.

27.12.2024

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

Tmg

To

1. Additional District Court (Fast Track Court),
   Theni.

2. The Section Officer,
   Vernacular Records,
   Madurai Bench of Madras High Court,
   Madurai.

S.SRIMATHY, J.,

Tmg

Judgment made in

A.S.(MD)No.145 of 2019

27.12.2024