

A.S.(MD)No.32 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.32 of 2014
and
C.M.P.(MD).No.1935 of 2024

S.A.R.Navakodi Alli Rajan @ Navakodi

...Appellant

Vs.

1.S.A.R.Meenakshisundaram
2.S.A.R.Jeyaraj (Died)
3.J.Ganesan
4.J.Sekar
5.S.Shakila
6.J.Nepoleon

...Respondents

(Respondents 3 to 6 are brought on record
as Lrs of the deceased 2nd respondent, vide
Court order, dated 21.08.2023, made in
CMP(MD)Nos.10439, 10442 and 10443
of 2023 in AS(MD)No.32 of 2014)

PRAYER: This Appeal Suit filed under order 41 rule 1 read with Section 96 of C.P.C., against the decree and judgment dated 04.09.2012, passed in O.S.No.138 of 2010 on the file of the VI Additional District Court, Madurai.

For Appellant : Mr.A.R.Sethupathy

For R1 : Mr.K.Sekar

For R3 to R5 : Mr.A.Saravanan



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JUDGMENT

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The suit is filed for specific performance and to hand over the title deed with respect of all the suit properties.

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

3. The plaintiff and the defendants are brothers and they are sons of Rathnaswamy. The plaintiff is the 3rd son of the Rathnaswamy, the 1st defendant is the 2nd son and the 2nd defendant is the 1st son.

4. The contention of the plaintiff is that there was an oral sale agreement between the plaintiff and the 1st defendant whereby the 1st defendant agreed to sell the property by fixing Rs.450/- per square feet. The property is measuring 3087 square feet thereby Rs.13,89,150/- was agreed upon on 06.05.2005. The plaintiff has given cheque through ICICI Bank to the tune of Rs.6,00,000/-. The next payments were made on 19.12.2007 to the tune of Rs.2,50,000/-, thereafter, on 12.02.2008, to the tune of Rs.1,50,000/-. For these three transactions, Exhibits A1 to A3 were marked. The plaintiff claims that he had also made payments to the



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tune Rs.80,000/- on 08.09.2005 and to the tune of Rs.20,000/- on 24.04.2006, and to the tune of Rs.1,00,000/- on 18.02.2008.

5. At the time of filing the suit, he had deposited Rs.1,89,150/-. Therefore, he is ready and willing to complete the oral sale agreement. However, the 1st respondent herein / 1st defendant had adopted delay tactics. Hence, the suit for specific performance was filed.

6. The contention of the 1st defendant is that there was never ever any oral sale agreement between the parties. The 1st defendant was indebted heavily due to his business. Hence, he borrowed Rs.10,00,000/- from the plaintiff through cheques. However the 1st defendant has declined other cash payments, which the plaintiff has stated that the same was paid on 08.09.2005, 24.04.2006 and 18.02.2008. Further, the first defendant has not handed over the documents of suit properties to the plaintiff. The contention of the 1st defendant is that the 2nd defendant was also indebted and in order to support him, the 1st defendant has given the property documents to the 2nd defendant who in turn had mortgaged the property to one Kanagavel. After the discharge of the suit mortgage, the 2nd defendant had handed over the property documents to the plaintiff deliberately thereby both the plaintiff and the 2nd defendant had cheated the 1st defendant.



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7. On the aforesaid facts, the parties adjudicated before the Trial Court. The

Trial Court had framed issues and recast the issues as follows:

i. Whether the plaintiff has proved the oral agreement of sale and the amount of Rs.10,00,000/- received by the 1st defendant for his business purpose or as a part of sale of consideration?

ii. Whether the plaintiff is entitled to get any relief as a part performance of contract under section 53-A of transfer of property Act?

The other original issues 2 to 8 were retained and renumbered as issues No.3 to 9 and they are as follows:

iii. Whether the property fetched Rs.4000/- per sq.ft. During 2005 itself?

iv. Whether the sale deed is handed over to 2nd defendant for the borrowal of Rs.2 lakhs by 2nd defendant from one V.K.M. Kanagavel under a promissory note dt. 20-01-99?

v. Whether the sale deed is handed over as security for the said borrowal?

vi. Whether the suit property is let out to tenant Manoj and rent collected by plaintiff?



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vii. Whether the suit is barred by time?

viii. Whether the 2nd defendant is an unnecessary party to the suit?

ix. Whether the plaintiff entitle for mandatory injunction for getting title deed from the 2nd defendant?

8. On the side of the plaintiff PW1 was examined and Ex.A.1 to A-11 were marked. On the side of the defendant DW1 and DW2 were examined and Ex.B.1 to Ex.B.5 were marked.

9. The points for consideration are that

- i. Whether the oral agreement of sale has been proved?
- ii. Whether the suit is barred by limitation?

10. The primary contention of the plaintiff is that he had made several payments on the various dates which would indicate it is a specific performance transaction. The oral sale agreement cannot be considered at all. However, the learned Counsel appearing for the appellant relied on the judgment rendered by the Hon'ble Supreme Court in the case of ***Sri Tarsem Singh Vs. Sri Sukhminder Singh*** reported in ***1998 (I) CTC 443*** wherein it is stated that the oral agreement is

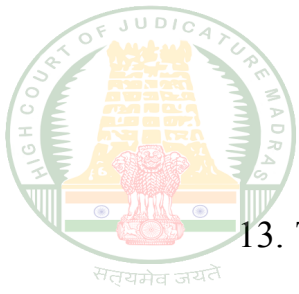


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11. On perusing, it is seen that the judgment has stated only pre negotiations may be oral. Once the stage has reached between the parties, a written document ought to be executed. The relevant portion of the judgment is extracted hereunder:

“12. 'Contract' is a bilateral transaction between two or more than two parties. Every contract has to pass through several stages beginning with the stage of negotiation during which the parties discuss and negotiate proposais and counter-proposals as also the consideration resulting finally in the acceptance of the proposal. The proposal when accepted gives rise to an agreement. It is at this stage that the agreement is reduced into writing and a formal document is executed on which parties affix their signatures or thumb impression so as to be bound by the terms of the agreements set out in that document. Such an agreement has to be lawful as the definition of contract, as set out in Section 2(h) provides that "an agreement enforceable by law is a contract". Section 2(g) sets out that "an agreement not enforceable by law is said to be void."

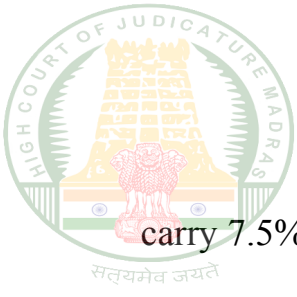
12. In the present case, it cannot be considered as pre-negotiation stage but it is a final state. Based on the pleadings, it has to be concluded that it is the final stage. Therefore, oral sale agreement cannot be entertained without written agreement. Hence, the said plea is rejected.



13. The next contention is that the suit is barred by limitation. The same is considered by the Trial Court wherein it is stated that as per the plaintiff, the oral agreement is dated 06.05.2005. However, the suit notice was issued on 21.05.2010 and the suit was filed on 16.06.2010. But it is seen in between there are several payments made by the plaintiff. As per statement of accounts marked as Ex.A3 the payments were made until 01.01.2008. If it is so the suit is filed within three years and the suit is not barred by limitation. Therefore, this Court is of the considered opinion that the suit is not barred by limitation.

14. Further this Court is of the considered opinion that the transaction is not for specific performance, however it ought to be considered as loan transaction. If so, then the plaintiff is entitled to refund of the amount paid to the 1st defendant.

15. Infact the 1st defendant had admitted that he borrowed Rs.10,00,000/- from the plaintiff, therefore he is liable to pay the same. Therefore, the 1st defendant / 1st respondent herein is directed to repay Rs.10,00,000/- with interest at the rate of 6% per annum from the date of plaint (15.06.2010) till the date of this judgment to the plaintiff / appellant herein. The same shall be paid within a period of four months from the date of receipt of a copy of this judgment. If there is any default in the above said payment within the stipulated time, the same shall



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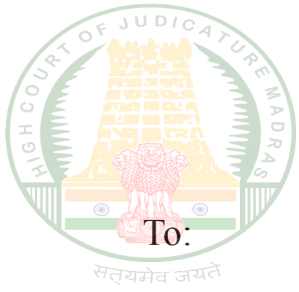
carry 7.5% interest per annum. On such payment, the plaintiff / appellant herein is directed to return the original sale deeds belonging to the 1st defendant / 1st respondent herein.

16. With the above said directions, the appeal suit is disposed of. No costs.

C.M.P.(MD)No. 1935 of 2024 is allowed.

18.07.2024

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



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To:

1. VI Additional District Court,
Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.,

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