



S.A.(MD)No.206 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.06.2024

Pronounced on : 18.07.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.206 of 2018

Nagarajan

... Appellant/
Respondent/
Defendant

Vs.

Nirmala

... Respondent/
Appellant/
Plaintiff

Prayer : This Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 29.04.2017 in A.S.No.41 of 2015 on the file of Principal District Judge, Trichy in reversing the judgment and decree dated 03.12.2012 made in O.S.No.8 of 2005 on the file of 1st Additional Subordinate Judge, Trichy.

For Appellant : Mr.K.Govindarajan

For Respondent : Mr.Shangar Murali



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JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.41 of 2015 dated 29.04.2017 on the file of the Principal District Court, Tiruchirappalli, reversing the judgment and decree made in O.S.No.8 of 2005 dated 03.12.2012 on the file of the Ist Additional Subordinate Court, Tiruchirappalli.

2. The appellant is the respondent/defendant and the respondent is the appellant/plaintiff. For the sake of convenience and brevity, the parties herein will be referred to as per their status/ranking in the trial Court.

3. The plaintiff has filed a suit in O.S.No.8 of 2005 on the file of the Subordinate Court, Tiruchirappalli, claiming the relief of specific performance of the agreement dated 28.08.2003 or in the alternative to refund the advance amount of Rs.1,00,000/- with interest and costs.

4. Admittedly, the suit property is owned by the defendant.



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5. The case of the plaintiff is that the defendant offered to sell the property to the plaintiff and the plaintiff agreed to purchase the same, that the plaintiff and the defendant have entered into a registered sale agreement on 28.08.2003 fixing the sale price as Rs.1,50,000/- and the period for performance as one year, that the plaintiff has paid sum of Rs.1,00,000/- towards advance on the date of agreement itself, that the plaintiff having paid 2/3rd of the agreed sale price has always been ready and willing to perform her part of the contract but the defendant has been evading under some pretext or other, that the plaintiff has then sent a legal notice dated 23.07.2004 calling upon the defendant to receive the balance sale price and to execute a sale deed, that the defendant having received the notice on 24.07.2004 has neither sent any reply nor chosen to comply with the notice demand and that therefore the plaintiff was constrained to file the present suit claiming the relief of specific performance or in the alternative refund of the advance amount.

6. The defence of the defendant is that the defendant was running a saw mill in the suit property with the finance availed from the Tamil Nadu Industrial Investment Corporation (hereinafter called as 'the TIIC'), that



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since the finance Corporation had been demanding the repayment of the loan and threatened of distraint proceedings, the defendant approached the plaintiff and her husband for financial assistance, that the plaintiff and her husband agreed to advance a loan of Rs.1,00,000/- and the defendant received the loan and discharged the liability to the TIIC, that the plaintiff and her husband directed the defendant to sign a document prepared in the form of sale agreement at the time of borrowing, that since it has been in the practice of the area, the defendant signed in the stamp papers and the same was executed on 19.03.2003, that since the defendant could not discharge the loan within three months as agreed by him, the plaintiff and her husband directed the defendant to execute another agreement of the same kind and accordingly, the defendant has also signed the document brought by the plaintiff and her husband, that since the defendant again could not repay the loan as agreed, the plaintiff and her husband insisted the defendant to repay the loan otherwise they would resort to legal proceedings, that subsequently one Mr.Rajaram, who is working in Tamil Nadu State Transport Corporation, intervened in the matter and on his advice and as per the demand of the plaintiff, the defendant had agreed to execute the suit sale agreement, that the sale agreement was intended to be



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kept only as a security, that the plaintiff, by suppressing the above facts, has filed the suit with an ulterior motive to defraud the defendant, that though the suit property is worth of more than Rs.5,00,000/-, the plaintiff has shown very lesser price in the sale agreement than the prevailing market value, that since the plaintiff promised to settle the dispute in an amicable manner after the legal notice was served on the defendant, he did not send any reply, that there is no cause of action for the suit and the one alleged is highly imaginary and fabricated and that since the plaintiff has not come to the Court with clean hands, the suit is liable to be dismissed.

7. The learned trial Judge, upon considering the pleadings of both the parties, has framed the following issues;

- 1. Whether the plaintiff is entitled to get the relief of specific performance as claimed?*
- 2. Is it correct to say that the sale agreement came to be executed as a security?*
- 3. To what other relief?*

8. During trial, the plaintiff has examined herself as P.W.1 and one Thangavel as P.W.2 and exhibited 3 documents as Ex.A1 to Ex.A3. The



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defendant has examined himself as D.W.1 and exhibited 8 documents as Ex.B1 to Ex.B8.

9. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed a judgment and decree dated 03.12.2012 by holding that the suit sale agreement came to be executed only as a security for the loan transaction, rejected the relief of specific performance but granted the relief of refund of the advance amount of Rs.1,00,000/- with interest at 18% per annum from the date of agreement till the decree and thereafter 6% per annum till realization. Aggrieved by the judgment and decree of the trial Court rejecting the claim of specific performance of the agreement, the plaintiff has preferred an appeal in A.S.No.41 of 2015 and the learned Principal District Judge, Tiruchirappalli, upon considering the materials available on record and on hearing the arguments of both the sides, has passed the impugned judgment and decree dated 29.04.2017 allowing the appeal and thereby setting aside the judgment and decree passed by the trial Court and consequently decreed the suit granting the relief of specific performance. Challenging the decree granted for the



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relief of specific performance, the defendant has preferred the present
Second Appeal.

10. The Second Appeal was admitted on the following substantial questions of law:-

- 1. Whether the first appellate Court is right in exercising its discretion to grant decree of specific performance, when the circumstances under which Ex-A1 was executed gives the plaintiff an unfair advantage over the defendant attracting Section 20(2) of Specific Relief Act?*
- 2. Whether the first appellate Court is right in granting the relief of specific performance when the evidence of plaintiff itself shows that Ex-A1 was not intended to be a sale agreement but only a security for loan transaction?*

11. The learned counsel appearing for the defendant would submit that the plaintiff as P.W.1 has admitted in her cross-examination that the defendant has received the money from her only to discharge the loan obtained from the TIIC, that plaintiff-P.W.1 has also admitted that she was aware that the original documents relating to the suit property were in possession of the TIIC, that Ex.A1 styled as sale agreement was executed



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only as a security for the loan obtained by the defendant, that the first appellate Court ought to have seen that Ex.A1 was never intended to be operated as an agreement but only as a security for the loan transaction, that Ex.A1 is a receipt-cum-agreement and as such, the plaintiff is not entitled to get a decree relying on the same, that the first appellate Court has failed to take into account the market value of the suit property at the time of execution of the sale agreement, that the sale consideration fixed in Ex.A1 was much below the prevailing market value at the time of execution, that the first appellate Court has also failed to note that the plaintiff has not proved that she is always ready and willing to perform her part of the contract and that though the trial Court has considered all the relevant aspects and rejected the relief of specific performance, the first appellate Court, without considering the above aspects in proper perspective, has allowed the appeal mechanically.

12. The learned counsel appearing for the plaintiff would submit that since the defendant has taken a stand that there is a custom to take sale agreement at the time of borrowing loans, custom should be proved on the basis of proper pleadings and independent evidence but there is



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absolutely no evidence available on record to prove the same, that though the defendant has taken a stand that the property is worth of more than Rs.5,00,000/-, he has not produced any iota of materials to prove the value of the property, that the defendant has taken a stand that there were two earlier sale agreements Ex.B1 and Ex.B2 and the same would go to show that there was only loan transaction but the defendant has miserably failed to prove the said documents in the manner known to law, that the defendant has alleged that one Rajaram working in Tamil Nadu State Transport Corporation has intervened and only on his advice, the suit sale agreement came to be executed but the said Rajaram was not at all examined, that the defendant having received the notice has failed to send any reply notice, that escalation of prices is not a ground to deny the relief of specific performance and that the defendant has utterly failed to prove his defence.

13. The learned counsel appearing for the plaintiff would further submit that in view of the bar under Section 92 of the Indian Evidence Act, the defendant is not entitled to canvass a case of loan transaction contrary to the terms of agreement, that even assuming that the defendant



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is entitled to adduce evidence, he has not produced any iota of evidence to substantiate his stand of loan transaction and that the first appellant Court has rightly granted the relief of specific performance.

14. According to the plaintiff, the defendant has agreed to sell the suit property and on that basis, he executed the sale agreement under Ex.A1 but failed to perform his part of the contract, whereas, according to the defendant, the defendant had no intention to sell the suit property at any point of time, but the defendant borrowed loan of Rs.1,00,000/- from the plaintiff for settling the debt due to the TIIC and as per the demand of the plaintiff, Ex.A1-sale agreement came to be executed as a security for the loan transaction.

15. It is not in dispute that the TIIC has demanded the repayment of the loan due by the defendant and threatened to take coercive action and that the defendant has received Rs.1,00,000/- from the plaintiff and settled the loan due to the TIIC. Considering the above, the main issue is whether the amount received by the defendant from the plaintiff was towards advance in pursuance of the sale agreement or that amount was received as a loan.



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16. It is pertinent to note that the defendant has not only admitted his signature found in the suit sale agreement but specifically admitted the very execution of Ex.A1-sale agreement.

17. The learned counsel appearing for the plaintiff would submit that since the defendant had admitted the execution of Ex.A1-sale agreement, in view of the specific bar under Section 92 of the Indian Evidence Act, the defendant could not contradict the terms of the said agreement and is not entitled to canvass a case of a loan transaction.

18. The learned counsel appearing for the defendant in an attempt to canvass the said argument has relied on the decision of this Court in the case of *N.Basuvaraj Vs. Gullamma* reported in 2024-1-L.W.620, wherein, a learned Judge of this Court has referred the judgment of the Hon'ble Supreme Court in *Gangabai Vs. Chhabubai* reported in **1982 1 SCC 4** and the relevant portion is extracted hereunder:-

“16. The Hon'ble Supreme Court in Gangabai Vs.Chhabubai reported in 1982 1 SCC pg 4 has elaborately dealt with Sec.92 Sub-Sec(1) of the Indian Evidence Act and held that the bar imposed by Sub-Sec(1) of Sec.92 applies only when a party seeks to rely upon the



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document embodying the terms of the transaction and in that event the law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the parties to such document for the purposes of contradicting or modifying its terms. However, the Apex Court has held that the said principle is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and the document is a sham document. Applying the ratio laid down by the Hon'ble Supreme Court to the facts of the present case, the appellant has asserted that the sale agreement entered into was a totally different transaction altogether and the terms of the sale agreement were never intended to be acted upon and were of no consequence and for such purposes, oral evidence is admissible to show that the document was never intended to operate as an agreement of sale but was an entirely different agreement altogether, though not recorded in the document. The said ratio will squarely apply to the facts of the present case since the case of the defendant is that even though an agreement of sale was entered into, the parties never intended to act upon the same as a sale agreement but it was only executed as a security for repayment of the amount borrowed.”



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19. There is no dispute about the legal position above referred. But in that decision case, the learned Judge, considering the facts and circumstances of that case and the admissions made by the plaintiff therein, has come to a decision that the plaintiff therein has not been able to establish that the suit sale agreement was a regular sale agreement, intended to be acted upon as a sale agreement and consequently rejected the relief of specific performance.

20. The learned counsel appearing for the plaintiff would rely on the decision of this Court in the case of ***Mannarsamy Naicker (Died) and another Vs. Nagammal and others*** reported in **2009 4 LW 674** and the relevant passages are extracted hereunder:-

“13. A perusal of the above said provisions would clearly show that when a party to a document admits its due execution then, he cannot turn round and challenge the terms contained therein. However, it is still open to the said person to contend that the document is sham and nominal and vitiated by fraud. In other words, if the above said party, who executes the document is able to satisfy the provisos, the said party is entitled to succeed in his contentions.



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14. *While making such a plea, the party concern who speaks against the registered document will have to make out a strong case in support of his contentions. In such a situation, the onus is heavily on the party who speaks against the document. Therefore, it is permissible to a party to a document to contend and prove that the deed was intended to acted upon but only a sham and nominal document. However, the said party cannot go against the terms of the document after admitting the character of the document. In other words, the terms of the documents in which a person is a party cannot be varying on contradicting by oral evidence to that of the document itself as sham and nominal is one thing and to say that the content of the document is not correct is another thing. In this connection, it is useful to refer the judgment of the Hon'ble Supreme Court reported in 2003 (6) SCC 595 (Roop Kumar Vs. Mohan Thedani) wherein, the Hon'ble Supreme Court has read as follows:*

"19. Sections 91 and 92 apply only when the document on the face of it contains or appears to contain all the terms of the contract. Section 91 is concerned solely with mode of proof of a document with limitation imposed by Section 92 relates only to the parties to the document. If after the document has been produced to prove its terms under Section 91, provisions of Section 92 come



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into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contracting, varying, adding or subtracting from its terms. Sections 91 and 92 in effect supplement each other. Section 91 would be inoperative without the aid of Section 92, and similarly Section 92 would be inoperative without the aid of Section 91."

.....

16. It is further seen that when the onus is heavily on the defendants to prove as to whether the document is sham and nominal, the failure of the second defendant, who executed the document in not deposing before the court making herself for examination would lead to adverse inference. In fact, the Hon'ble Supreme Court in A.I.R. 2007 SC 2191 (M/s.Kamakshi Builders Vs. M/s.Ambedkar Educational Society & Others) has taken a view in such a case, adverse inference can be drawn against the party. It is also seen that the Court below has decreed the suit in part and the appeal filed by the defendants was dismissed. In any case, when the document is said to have been proved and when the defendants admits their contents of the document partially, it is not open to the defendants to turn round and say that the remaining contents of the documents are not true. ..."



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21. The learned counsel appearing for the plaintiff would also rely on the judgment of the Hon'ble Supreme Court in the case of **Smt.Gangabai Vs. Smt.Chhabubai**, which was referred in **Basuvaraj's** case above referred (supra) and while explaining the scope of Section 92 of the Indian Evidence Act, the Hon'ble Supreme Court has observed,

“11. The next contention on behalf of the appellant is that sub-s.(1) of s. 92 of the Evidence Act bars the respondent from contending that there was no sale and, it is submitted, the respondent should not have been permitted to lead parole evidence in support of the contention. Section 91 of the Evidence Act provides that when the terms of contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself. Sub-s. (1) of s. 92 declares that when the terms of any contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives



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in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms And the first proviso to s. 92 says that any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contradicting party, want or failure of consideration, or mistake in fact or law. It is clear to us that the bar imposed by sub-s. (1) of s. 92 applies only when a party seeks to rely upon the document embodying the terms of the transaction. In that event, the law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the parties to such document for the purpose of contradicting or modifying its terms. The subsection is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever. For that purpose oral evidence is admissible to show that the document executed was never intended to operate as an agreement but that some other agreement altogether not recorded in the



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document, was entered into between the parties. Tyagaraja Mudaliyar and another v. Vedathanni. The Trial Court was right in permitting the respondent to lead parole evidence in support of her plea that the sale deed dated January 7, 1953 was a sham document and never intended to be acted upon. It is not disputed that if the parole evidence is admissible, the finding of the court below in favour of the respondent must be accepted. The second contention on behalf of the appellant must also fail.”

22. It is necessary to refer the decision of this Court reported in **2003 (1) MLJ 694 (M.Ramalingam (Died) and others Vs. V.Subramanyam (Died) and others)** and the relevant portion is extracted hereunder:-

“10. ... When the defendant came with a plea stating that the intention of the parties was only to treat the same as a loan transaction, and it was never intended to be acted upon, which is inconsistent with the terms of the document, a duty is cast upon the defendant to strictly prove that it was a different transaction all together, and what was recorded in the document was intended to be of no consequence whatsoever. No doubt, the defendant who came with such a plea, can well adduce evidence to show that Ex.A1 agreement though executed by him, was never



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intended to be operated as an agreement for sale, but only a loan transaction, which was not recorded in the document. After careful consideration of the available materials, the Court may hasten to say that the appellants have miserably failed to prove that it was a loan transaction, and the agreement was never intended to be acted upon. The defendant has not examined any independent witness or the attestors to the document, nor has he placed acceptable materials to hold so. Except the interested testimony of the defendant, nothing more is available on record.”

23. In a case with similar factual background, a learned Judge of this Court in the case of ***T.G.Pongiannan Vs. K.M.Natarajan and others*** reported in **2009 (6) CTC 301**, has observed,

“10. The defendants having entered into a registered agreement to sell with their wide open eye and voluntarily and volitionally, cannot expect the Court to assume and presume that the time granted in the agreement to sell was indicative of the fact that it was a loan transaction. It is not the case of the defendants that fraud, coercion or undue influence and such like acts, as contemplated under the provisos to Section 92 of the Indian Evidence Act, were perpetrated by the plaintiff as against the defendants.”



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24. After referring some of the decisions including the case of

M.Ramalingam referred above, the learned Judge has further observed,

“11. All the above decisions would exemplify and demonstrate that the plaintiff's right to get specific performance cannot simply be ignored on the mere plea of the defendants that it was not intended to be an agreement to sell, but it was only to secure repayment of the loan.”

25. It is also necessary to refer the following passages:-

“18. It is a trite proposition of law that the adequacy of consideration is not germane for deciding the specific performance of an agreement to sell. Only if there is a prima facie case that fraud has been committed by one party as against the other, in such an event alone inadequacy of consideration would arise.

19. To the risk of repetition without being tautologous, I would like to highlight that none of the ingredients contemplated under the provisos to Section 92 of the Indian Evidence Act, has been found exemplified or evinced in the case of the defendants.

20. It is the case of the defendants that they, understanding the real nature of the transaction, entered into the said agreement to sell Ex.A1. However, they



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would contend that it was the plaintiff, who persuaded them to enter into such a transaction under Ex.A1, instead of a mortgage transaction, to avoid the cost of registration and stamp duty. As an after thought, if any plea is dished out so as to wriggle out of a registered document, it is not for the Court to render judicial help to him and that too when he never acted in a fair manner.

21. The first appellate Court in para 9 assumed and presumed certain improbabilities as probabilities and rendered its judgement. In fact, the appellate Court's assumption was that no man having head over shoulder would sell away his property for the purpose of redeeming his mortgage from the Bank, is quite contrary to the reality obtaining among people in debts.

22. It is a sheer common sense that hundreds and thousands of mortgagors are in the habit of selling their property, so as to discharge their loan transaction at their instance and get themselves disencumbered of the same.”

26. In the case on hand also, the learned trial Judge has given a finding that the sale agreement came to be executed only as a security for the loan transaction on the ground that the defendant's intention was to



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repay the loan due to the TIIC and to retain the property with himself and if the defendant was having intention to sell the property, then he would have allowed the TIIC to bring the property to auction sale. Such an assumption on the part of the trial Court, as rightly observed by the learned Judge in **T.G.Pongiannan's** case above referred, is contrary to the reality obtaining among people in debts. It is also not the case of the defendant that Ex.A1-sale agreement was obtained by fraud or undue influence or by coercion.

27. The learned counsel appearing for the defendant would submit that the plaintiff herself has admitted that the amount was taken from them to discharge the loan due to the TIIC. The plaintiff as P.W.1 would only say that the defendant had negotiated for sale to discharge the loan due by him and the relevant portion is extracted hereunder:-

□கடன் தொகையை கட்டுவதற்காக தான் என்னிடம் கிரயம் பேசினார் என்றால் சரிதான். கடன் தீர்ப்பதற்காக என்னிடம் கேட்டாரா என்றால், நாங்கள் கிரயத்துக்கு நிலம் வேண்டும் என்று சொன்னதால், எங்களிடம் பிரதிவாதி கேட்டார்.□

28. Considering the above, it is clear that the plaintiff has nowhere



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admitted that the defendant has received loan from her for discharging the loan due to the TIIC, but on the other hand, she has specifically stated that the defendant had negotiated for sale to discharge the loan due to the TIIC.

29. As already pointed out, since the defendant has taken a stand that the suit sale agreement was executed as a security for the loan transaction and it was never intended to act upon, which is totally against the terms of Ex.A1-sale agreement, a duty is cast upon the defendant to strictly prove that it was a different transaction altogether and what was recorded in the document was not intended.

30. In an attempt to prove that it was a loan transaction, the defendant has mainly relied on Ex.B1 and Ex.B2-copies of the sale agreements and according to the defendant, at the time of borrowal, the plaintiff and her husband had demanded to execute a sale agreement and on that basis, Ex.B1 agreement came to be executed on 19.03.2003, that since the defendant could not settle the amount within 3 months as agreed, the plaintiff and her husband had demanded him to execute another agreement extending the time and on that basis, Ex.B2 agreement came to



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be executed on 14.06.2003 and that since the defendant could not repay the amount again, the plaintiff and her husband had threatened to initiate legal proceedings and at that time one Rajaram working in Tamil Nadu State Transport Corporation intervened and as per his advice, Ex.A1-sale agreement came to be executed. But it is pertinent to note that copies of the sale agreements alleged to have been executed by the defendant came to be exhibited as Ex.B1 and Ex.B2. The plaintiff has specifically disputed the execution of Ex.B1 and Ex.B2 agreements. Though the plaintiff has disputed the very genuineness of Ex.B1 and Ex.B2 agreements, admittedly, the defendant has not chosen to adduce any evidence to prove the Ex.B1 and Ex.B2 agreements. The defendant has not even taken any steps for production of the originals of Ex.B1 and Ex.B2 agreements.

31. The learned counsel appearing for the plaintiff would submit that the defendant has not raised any pleadings with regard to Ex.B1 and Ex.B2 in the written statement and as such, the same cannot be looked into as any amount of evidence without pleadings are of no use. But as rightly pointed out by the learned counsel appearing for the defendant, the defendant, in the written statement, has specifically pleaded about the



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Ex.B1 and Ex.B2 agreements, but as rightly contended by the learned counsel appearing for the plaintiff, Ex.B1 and Ex.B2 agreements were not at all referred in Ex.A1-sale agreement. When the defendant has taken a stand that Ex.A1-sale agreement came to be executed in continuation of the earlier two sale agreements of Ex.B1 and Ex.B2, he has not given any explanation for not referring the said two sale agreements in Ex.A1-sale agreement. As rightly contended by the learned counsel appearing for the plaintiff, the defendant has not even attempted to examine the witnesses to the sale agreements. P.W.2-witness to the Ex.A1-sale agreement in his evidence would specifically depose that he has not subscribed his signature in Ex.B2. Even thereafter, the defendant has not taken any steps to prove that P.W.2 alone stood as a witness for Ex.B2 agreement. Considering the above, the first appellate Court has rightly observed that Ex.B1 and Ex.B2 cannot be taken into account.

32. As already pointed out, even according to the defendant, one Rajaram, employee of Tamil Nadu State Transport Corporation alone has intervened and only as per his advice, Ex.A1 came to be executed as a security for the loan transaction, but the said Rajaram was not at all examined and the defendant has not offered any reason or explanation for



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non-examining him.

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33. It is not in dispute that the plaintiff has sent a legal notice dated 23.07.2004 directing the defendant to receive the balance sale price and to execute a sale deed in pursuance of the Ex.A1-sale agreement and the same has been received by the defendant on 24.07.2004 vide Ex.A3-postal acknowledgement. Admittedly, the defendant has not sent any reply in response to the Ex.A2-legal notice, but in the written statement, the defendant has attempted to give an explanation that since the plaintiff promised to settle the dispute in an amicable manner after the legal notice was served on him, he did not send any reply. As rightly contended by the learned counsel appearing for the plaintiff, when the plaintiff has demanded the defendant to perform his part of the contract, the question of plaintiff promising to settle the dispute in an amicable manner does not arise at all. Moreover, the explanation offered by the defendant in the written statement is very hard to believe. When the defendant has taken a serious defence that he was not having any intention to sell the suit property and the sale agreement came to be executed only as a security for the loan transaction, as rightly contended by the learned counsel appearing for the plaintiff, the defendant's failure to send a reply can only be taken as



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fatal to his defence.

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34. No doubt, adequacy of consideration can be taken as a one of the grounds for deciding the genuineness of the sale agreement but that by itself is not a sufficient ground to decide that the sale agreement is not genuine. Moreover, if a defence is taken that a fraud has been played by one party against the other, in that situation, inadequacy of consideration would arise.

35. According to the defendant, the value of the suit property was worth more than Rs.5,00,000/- at the time of the alleged execution of sale agreement and that therefore, there was no occasion or chance for the defendant to agree for selling the suit property for Rs.1,50,000/-. Admittedly, the defendant has not produced any iota of evidence to show that the value of the suit property was worth more than Rs.5,00,000/- at the time of execution of Ex.A1-sale agreement. As rightly contended by the learned counsel appearing for the plaintiff, subsequent escalation of the value cannot be a ground to reject the relief for specific performance.

36. As already pointed out, the defendant has also taken a stand that



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executing a sale agreement for a loan transaction has been in the practice of Musiri and Thuraiyur locality, but the defendant in his cross-examination would say that he did not borrow any loan from the persons belonging to Musiri and Thuraiyur. Though the defendant has alleged it as a customary practice, he has not produced any evidence to prove the said customary practice was/is existing in Musiri and Thuraiyur locality.

37. Though the defendant has taken a specific stand that he borrowed loan of Rs.1,00,000/- from the plaintiff, he has nowhere whispered in the written statement about the interest agreed to be paid and the payment of interest. It is not the case of the defendant that the plaintiff has advanced loan amount without any interest. The defendant has neither pleaded nor produced any evidence to show the payment of interest to the plaintiff for the alleged loan of Rs.1,00,000/- obtained from the plaintiff. Considering the above, this Court has no hesitation to hold that the defendant has miserably failed to prove that Ex.A1-sale agreement was executed only as a security for loan transaction.

38. The learned counsel appearing for the defendant would submit



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that the plaintiff has failed to prove that she has always been ready and willing to perform her part of the contract and that the first appellate court, without considering the above issue in proper perspective, has come to a finding that the plaintiff is always ready to perform her part of the contract.

39. It is pertinent to note that the plaintiff, in the plaint itself, has specifically stated that since the plaintiff having paid 2/3rd of the agreed sale consideration has always been ready and willing to perform her part of the contract and even now she is ready and willing to perform her part of the contract and that she had the balance of sale consideration readily available at all point of time immediately from the date of agreement itself. As rightly pointed out by the learned counsel appearing for the plaintiff, the defendant in the written statement has nowhere denied and disputed the above plaint averments with regard to readiness and willingness.

40. Moreover, the plaintiff in her chief examination affidavit would reiterate the plaint contentions that she has always been ready and willing to perform her part of the contract. In cross-examination, P.W.1 would say that she was having sufficient amount even at the time of Ex.A1 period



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and that they had deposited the amount in the Indian Bank from the date of sale agreement and the same was still available in the Bank. But not even a suggestion was made by the plaintiff that she was never ready and willing to perform her part of the contract. Considering the above, it is clearly evident that the defendant has not seriously disputed the readiness and willingness of the plaintiff.

41. As rightly contended by the learned counsel appearing for the plaintiff, merely because the plaintiff has claimed the alternative relief of refund of advance in the suit for specific performance, it cannot be said that she is not entitled to the main relief of specific performance of the agreement.

42. The learned counsel appearing for the plaintiff would submit that in a case of specific performance, hardship is a good defence provided such a defence is pleaded and proved through necessary evidence and relied on the decision of the Hon'ble Supreme Court in the case of ***Prakash Chandra Vs. Narayan*** reported in **2012 5 SCC 403**, wherein, the Hon'ble Apex Court has observed,



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“13. We have heard the learned counsel for the parties. The learned counsel appearing on either side elaborately took us through the findings of the trial court, the first appellate court as well as the High Court in second appeal. From the materials on record and the agreement dated 18th April, 1996 and from the judgment of the trial court and the first appellate court, it is evident that no issue relating to the hardship of the respondent was framed. In a case of Specific performance, hardship is a good defence provided such defence is taken by the defendant and evidence in support of such defence is brought on record, while in this case no such defence was taken by the respondent and no evidence was brought on record in its support.

...

15. The question as to whether the grant of relief for specific performance will cause hardship to the defendant within the meaning of Clause (b) of sub-section (2) of Section 20 of the Specific Relief Act, 1963, being a question of fact, the first appellate court without framing such an issue ought not to have reversed the finding of the trial court while concurring with it on all other issues with regard to the appellant's entitlement to relief for specific performance of contract.”



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43. In the case on hand, admittedly, the defendant has not taken a stand that granting the relief of specific performance would cause hardship to him as contemplated under Section 20 of the Specific Relief Act nor produced any evidence in that regard.

44. Though the first appellate Court has not given proper reasons for taking a different decision than that of the trial Court, has come to the right conclusion that the plaintiff is entitled to get the relief of specific performance. Hence, substantial questions of law are decided against the appellant/respondent/defendant and as such, the Second Appeal is liable to be dismissed. Considering the other facts and circumstances of the case, this Court further decides that the respondent/appellant/plaintiff is entitled to costs.

45. In the result, the Second Appeal is dismissed with costs.

18.07.2024

NCC :yes/No
Index :yes/No
Internet:yes/No



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To

1. The Principal District Judge,
Tiruchirappalli.
2. The I Additional Subordinate Judge,
Tiruchirappalli.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Judgment made in
S.A.(MD)No.206 of 2018

Dated : 18.07.2024