



S.A.(MD).No.346 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : **31.07.2024**

PRONOUNCED ON : **10.09.2024**

CORAM:

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

S.A.(MD).No.346 of 2023

Muthuvel

... Appellant

/Vs./

1.M.Ibramsha

2.M.Arabu Abdulraheem

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree passed in A.S.No.3 of 2020, dated 07.07.2021, on the file of the Principal District Judge, Dindigul, reversing the Judgment and Decree made in O.S.No.196 of 2012 on the file of the Subordinate Court, Veda sandur, Dindigul District, dated 30.09.2013.

For Appellant : Mr.S.Gokul Raj

For Respondents : Mr.S.Arunnithy

JUDGMENT

The present second appeal is preferred by plaintiff against the Judgment and Decree dated 07.07.2021 passed in A.S.No.3 of 2020 on the file of



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the Principal District Judge, Dindigul, reversing the Judgment and Decree dated 30.09.2013 passed in O.S.No.196 of 2012 on the file of the Subordinate Court, Veda sandur, Dindigul District.

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

3. The suit is filed for specific performance. Originally one Amjith Ibrahim and Kathusha Bivi were the owners of the suit properties, subsequently through settlement dated 07.12.1987 the defendants became the owners of the property. The contention of the plaintiff is that the plaintiff and the defendants had entered into registered sale agreement dated 26.04.2010 by paying an advance amount of Rs.2,00,000/- and agreed to pay the balance amount of Rs.2,90,000/- within a period of three months. In the said sale agreement, it has also been mentioned that the defendant had borrowed Rs.60,000/- from one Murugesan son of Ramasamy Gounder of Vadasandur Taluk and had mortgaged the suit property



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05.04.2006. The plaintiff had accepted to settle the amount along with interest and the said advance amount of Rs.2,00,000/- is inclusive of the said principal amount of Rs.60,000/- and the interest for the said amount and the receipt is marked as Ex.A-3. Based on the said sale agreement the plaintiff was ready and willing to pay the balance amount of Rs.2,90,000/- within a period of three months and within the said three months the defendant had agreed that he would vacate the order of “attachment before judgment” (ABJ order) and clear all encumbrances. Thereafter the plaintiff had verified the encumbrance, which indicated that the agreed sale amount would not be sufficient to clear the balance debt. Hence, the plaintiff had requested the defendant to clear all encumbrance and executed the sale deed in favour of the plaintiff but the defendants were not coming forward to execute the sale deed. Hence, the plaintiff had intended to deposit the balance amount of Rs.2,90,000/- before the Court and the plaintiff is not having any objection to clear the other debts from the balance amount of Rs.2,90,000/-. In spite of the same, the defendants were not coming forward to execute sale deed. Hence, lawyer notice, dated 04.08.2010, was issued and the same was replied by the defendants on 14.08.2010 stating false case. Hence, the present suit is filed for specific performance.



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4. The defendants had filed written statement stating that their grandparents (mother's parents) namely Amjith Ibrahim and Kathusha Bivi had executed a settlement deed, dated 07.12.1987 and settled the suit property when they were minors. After attaining majority, they are in possession and enjoyment of the suit scheduled property. But denied the execution of the alleged sale agreement dated 26.04.2010 by accepting the advance amount of Rs.2,00,000/- and also denied the contents of the of the sale agreement and also denied the entire contents of the plaint. And stated that the facts remains that the defendants had approached the plaintiff for loan to the tune of Rs.2,00,000/- and the same was granted by the plaintiff with interest at the rate of Rs.2/- for Rs.1,000/- per month, thereby the defendants ought to pay Rs.4,000/- as interest per month. For such loan transaction the alleged sale agreement was executed as security for repayment. The defendants had paid Rs.4,000/- regularly per month as interest until the suit was filed. If the case of the defendants is true, the plaintiff would have approached the defendants for completing the sale agreement within three months from 26.04.2010. But after the lapse of three months, on 04.08.2010, the plaintiff had issued legal notice and the same was suitably replied. Further, the defendants are ready and willing to repay the loan amount of Rs.2,00,000/- along



with agreed rate of interest. Hence, the defendants prayed to dismiss the second appeal.

5. After perusing the pleadings, the documentary evidence and the deposition the Trial Court had allowed the suit. Aggrieved over the same, defendants had filed First Appeal and the same was allowed. Aggrieved over the same, plaintiff has preferred the present second appeal raising the following substantial questions of law:

- “i. Have not the First Appellate Court erred in reversing the Judgment and decree of the Trial Court?*
- ii. Whether the First Appellate Court is right in holding that the appellant is not entitled for the relief of specific performance is correct, when the agreement entered between the parties is not prohibited any law or opposed to the public policy?*
- iii. Whether the First Appellate Court is right in holding that in the sale agreement executed by the 1st respondent is for security purpose, when the 1st respondent himself admitted that he had executed a sale agreement?*
- iv. Whether the First Appellate Court is right in holding that the appellant is not entitled for the relief sought for, when the 1st defendant failed to prove that the agreement entered between them is not by mistake or fraud and the defendants had not taken any steps to lift the attachment, thereby the defendants are trying to usurp the right of the plaintiff?*



v. *Whether the First Appellate Court is right in holding that the agreement ended between the parties by mentioning the court attachment is prohibited and cannot be entered?*

vi. *Whether the First Appellate Court is right in holding that the sale agreement is for loan transaction, when such contention raised by the 1st respondent is hit by Sections 91 and 92 of Indian Evidence Act?*

vii. *Is it not the First Appellate Court erred in ignoring the provisions under Section 58 of Indian Evidence Act, when the 1st respondent itself categorically admitted that he executed a sale agreement?"*

6. As far as the substantial questions of law (i), (ii), (iii) and (vii) are concerned, the Section 58 states that the facts admitted need not be proved. The contention of the plaintiff is that the defendants had admitted the execution of the sale agreement and hence the same need not be proved. On perusing the written statement, the defendants had denied the execution of agreement as “sale agreement”. But had admitted that there was loan transaction and for repayment the sale agreement is executed for security purpose. Further the defendants had stated that they approached the plaintiff for obtaining loan and it is the plaintiff who had forced the defendants to execute the sale agreement for security purpose. Further the defendants had stated that the plaintiff is doing pawn business under the name “Nalamtharum Vinayaga Adagu Kadai” and the said fact was not denied



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by the plaintiff. This would indicate that the transaction between the plaintiff and defendants ought to be only a loan transaction and there was no intention to the defendants to sell the property and there was no intention to the plaintiff to purchase the property. Infact the parties had entered into the alleged sale agreement in order to secure the repayment of the loan. If the defendants fail to repay the amount, based on the sale agreement, the same would be converted as a sale. Further this kind of practice is prevailing among the money lenders for several years. In such circumstances, the contention of the defendants is convincing and the same would be more convincing based on the fact the plaintiff is running pawn business. Therefore, this Court is of the considered opinion that the said section is not applicable to the facts of the case and the substantial questions of law (i), (ii), (iii) and (vii) are held against the plaintiff / appellants.

7. As far as the substantial questions of law (iv), (v) and (vi) are concerned, the contention of the plaintiff is that there is no plea in the written statement by the defendants that the alleged sale agreement is by mistake, fraud or the plaintiff is trying to usurp the property and hence the written agreement for sale cannot be denied as it would be against Sections 91 and 92 of the Indian



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Evidence Act, hence the finding of the Appellate Court is based on incorrect facts.

In order to consider these substantial questions of law, this Court perused the transaction between the parties. The defendants had already mortgaged the suit property to one Murugasen and was facing civil case. In the said case already the suit property was under attachment through the interim order. The defendants were under tremendous pressure to pay the amount in order to save the property. Hence the defendants had approached the plaintiff who is doing pawn business. The defendants had stated that the same in his reply notice, in his written statement and had also deposed the same during cross examination. Further a practice is prevailing in the society that all loan transactions are shown as sale agreement, once the loan is not paid, the suit for specific performance is filed. Therefore, it is incumbent on the plaintiff to prove that the sale agreement was executed only to purchase the property and not for loan transaction. Moreover, it is evident from the facts that one Murugesan had given loan to the defendants who had filed civil case before Sub Court, Dindigul and the property of the defendants are already under attachment from 10.03.1995. Therefore, the First Appellate Court has held that it is strange that the plaintiff intended to purchase a property which was under mortgage and also under attachment. Further, it is seen



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from the records that the defendants have discharged the mortgage loan on 26.04.2010 to the Murugesan and the Murugesan has issued receipt under Exhibit A3. On perusal of Ex.A-2 which is the alleged sale agreement and Ex.A-3 which is the receipt issued by the said Murugesan, it is seen that both were executed on the same date, i.e., on 26.04.2010 and the attesting witnesses were also the same. Therefore, the plea of the plaintiff that it is a sale agreement is not believable and it is only a loan transaction. Hence, the First Appellate Court is right in coming to the conclusion that the alleged sale agreement is only loan transaction and had declined the relief of specific performance.

8. The contention of the plaintiff that the section 91 and 92 is against the defendants' plea. The section 91 states of evidence of terms of contracts, grants and other dispositions of property reduced to form of document and section 92 states of exclusion of evidence of oral agreement. The said two sections elaborately states of when the oral evidence can be adduced even if there is written agreement with several illustrations. On perusal of the illustrations, it is seen if the agreement is entered based on some verbal warranty, then the verbal warranty may be proved through oral evidence. Likewise, if the contract is entered



into based on happening of certain contingency, then the same may be proved.

The relevant illustrations are extracted hereunder:

“(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs. 500". B may prove the verbal warrantly

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.”

In the present case even though the contract is agreement to sell the property but the same is obtained as loan by the defendants which is stated in the Ex.A2 sale agreement. Further the Ex.A3 receipt is issued by the said Murugesan acknowledging the settling the debt. The illustrations, as the nomenclature itself suggest it is only instances, and the same is not exhaustive, hence the illustrations (g) and (j) would be applicable. Based on the said illustrations the defendant is entitled to state under what circumstances the sale agreement was entered into and hence in such circumstances the oral evidence is admissible. Therefore, the said sections 91 and 92 is supporting the case of the defendants rather than the case of the plaintiffs. For the reasons stated above the substantial questions of law (iv), (v) and (vi) are held against the plaintiff / appellants.



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9. It is seen that the First Appellate Court had directed the defendants to repay Rs.2,00,000/- with 9% interest per annum from the date of sale agreement till the date of realization. When it is only a loan transaction, the First Appellate Court is right in directing the defendants to repay the loan. And also the First Appellate Court is right in declining the specific performance based on the alleged sale deed which is only executed for the loan transaction. The defendants shall pay the same within a period of two months from the date of receipt of the copy of the judgment and decree.

10. For the reasons stated supra, this Court is of the considered opinion that the plaintiff has not raised any legally sustainable grounds. Hence, the second appeal is dismissed. No costs.

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Index : Yes / No

NCC : Yes / No

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TO:
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1. Principal District Judge, Dindigul.
2. Subordinate Court,
Vedasandur, Dindigul District.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Judgment made in
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Dated:
10.09.2024