



S.A.(MD)No.439 of 2017,

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A(MD)No.439 of 2017 & CROS.OBJ(MD)No.19 of 2018

and

C.M.P(MD)No.9118 of 2017

S.A(MD)No.439 of 2017:

Valarmathi

... Appellant /
Respondent /
Defendant

-Vs-

Sugapriya

... Respondent /
Appellant /
Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to allow this Second Appeal by setting aside the judgment and decree of the First Additional District Court at Madurai in A.S.No.14 of 2016, dated 17.06.2017, reversing the judgment and decree of the III Additional Subordinate Court, Madurai, camp at Usilampatti made in O.S.No.558 of 2012 dated 04.02.2016.



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For Appellant : Mr.J.Senthil Keemaraiah

For Respondent : Mr.S.Ramsundar Vijayraj

CROS.OBJ(MD)No.19 of 2018:

Sugapriya

... Cross Objector /
Respondent

-Vs-

Valarmathy

... Respondent /
Appellant

PRAYER: Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code, to set aside the finding of the lower appellate Court insofar as in declining to grant relief of specific performance in its judgment and decree dated 17.06.2017 in A.S.No.14 of 2016 by the I Additional District Judge, Madurai confirming the judgment and decree of the III Additional Sub Court, Madurai camp at Usilampatti in O.S.No.558 of 2012 dated 04.02.2016 and grant relief of specific performance.

For Cross Objector : Mr.S.Ramsundar Vijayraj

For Respondent : Mr.J.Senthil Keemaraiah

COMMON JUDGMENT

Heard both sides.



2.Mrs.M.Sugapriya filed O.S.No.558 of 2012 on the file of III Additional Sub Court, Usilampatti for specific performance. Alternative relief for refund of the advance amount was also prayed in the event of denial of specific performance.

3.The case of the plaintiff was that on 10.07.2011, she entered into Ex.A1 sale agreement with the defendant Valarmathi. A sum of Rs. 4,00,000/- was paid as advance. Total sale consideration was Rs.4,50,000/-. One year was the time limit for concluding the sale transaction. The sale transaction was to be concluded on or before 10.07.2012. Since the defendant did not come forward to execute the sale deed even though the plaintiff was ready and willing to discharge her part of her obligation under the agreement, she issued Ex.A3 legal notice dated 23.02.2012. Since the defendant did not come forward to comply with the demand set out in the notice, she filed the suit for specific performance on 05.06.2012. The plaintiff examined herself as PW.1. Her brother-in-law Tamilkumaran who was the attesting witness was examined as PW.2. Ex.A1 to Ex.A5 were marked. The defendant examined herself as DW.1. Rajendran / husband of the defendant was examined as DW.2. One Selvi who was also the attesting witness was examined as DW.3. Ex.B1 and Ex.B2 were marked on the defendant side. The trial Court after a detailed consideration on the evidence on record came to the conclusion that the plaintiff did not



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approach the Court with clean hands. In that view of the matter, vide judgment and decree dated 04.02.2016 not only the relief of specific performance was denied but also the alternative prayer for refund the advance amount was rejected.

4. Aggrieved by the same, the plaintiff filed A.S.No.14 of 2016 before the First Additional District Judge, Madurai. The first appellate Court came to the conclusion that the plaintiff had proved the due execution of Ex.A1 sale agreement. However there was inaction on the part of the plaintiff in taking further steps. Therefore, on the ground of readiness and willingness, the issue was found against the plaintiff. However, the defendant was directed to refund the advance amount of Rs.4,00,000/- with interest at the rate of 7½ % per annum from the date of suit till the date of realisation. Challenging the same, the defendant filed this Second Appeal. The plaintiff had also filed her cross objections.

5. The learned counsel on either side reiterated the contentions set out in the respective memorandum of grounds and called upon this Court to frame substantial questions of law and take up the matter for final disposal later.



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6.After a careful consideration of the entire evidence on record, I come to the conclusion that the trial Court as well as first appellate Court were partly right in their reasoning. Even though I disagree with much of the reasons of the first appellate Court, I agree with the eventual conclusion arrived at by the first appellate Court. Since there is an agreement with the decree passed by the first appellate Court, there is no need for me to formally admit the Second Appeal.

7.It is beyond dispute that on 10.07.2011, the plaintiff and the defendant entered into Ex.A1 agreement. The plaintiff would style Ex.A1 agreement as a sale agreement. As rightly observed by the trial Court, if Ex.A1 was actually a sale agreement, there was absolutely no need or necessity for the plaintiff to obtain power of attorney from the defendant in favour of her father-in-law. Ex.B2 had been attested by the very same witnesses who attested Ex.A1 sale agreement. What clinches the issue is the time limit of one year provided for concluding the transaction. The plaintiff concedes that the sale consideration was fixed at Rs.4,50,000/-. If Ex.A1 reads that Rs.4,00,000/- was already paid by the plaintiff to the defendant, then when the balance amount payable is hardly Rs.50,000/- no prudent person would provide one year time limit to conclude the sale transaction.



8.I therefore conclude that the transaction between the parties was more in the nature of financial transaction and it cannot be called as a sale transaction. Therefore, the Courts below were justified in denying the relief of specific performance.

9.Ex.A1 agreement as well as Ex.B1 power of attorney are registered transactions. Rajendran / DW.2, husband of the defendant had attested both the documents. Ex.A1 reads that a sum of Rs.4,00,000/- was received by the defendant. The first appellate Court was therefore right in concluding that a sum of Rs.4,00,000/- passed from the plaintiff to the defendant. One can also apply common sense and conclude that since a substantial amount of sale consideration was already received, the defendant executed the power of attorney in favour of the father-in-law of the plaintiff. Since passing of a sum of Rs.4,00,000/- has been established, it is only just and proper that the same is ordered to be refunded to the plaintiff with interest. The first appellate Court was therefore justified in ordering refund. I may not agree with the reasons advanced by the first appellate Court but the conclusion arrived at is perfectly fair and justified. For this reason, I decline to interfere. If the defendant had not received Rs.4,00,000/- under Ex.A1 agreement, she would have definitely lodged a Police complaint immediately. The fact that Ex.B2 was lodged after the institution of the suit indicates that the defendant is also not stating the truth before the Court.



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10.The Second appeal as well as the cross objection are dismissed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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

To

1. I Additional District Court,
Madurai.
2. III Additional Subordinate Court,
Madurai camp at Usilampatti.

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



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G.R.SWAMINATHAN.J.,

MGA

Judgment made in
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and
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