IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2025

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

A.S.No.206 of 2013

A.Dhanasekaran ...Appellant

Vs.

1.A.Selvaraj (Died)
2. Nagalakshmi
3.Raj Bharath
4.Smt.Santhiya
R2 to R4 brought into record as LRs
of the deceased sole respondent
Viz., (A.Selvaraj) vide court order dt.18.02.2022
made in CMP.No.3938, 3940 & 3942/2020 in
AS.No.206 of 2013 ...Respondents

PRAYER: Appeal Suit filed under Order 41 Rule 1&2 r/w Section 96 of the Code of Civil Procedure, praying to set aside the judgment and decree dated 31.07.2012 made in O.S.No.770 of 2009 on the file of the I Additional District Judge, Coimbatore.

For Appellant :Ms. S.Mukunth, Senior Counsel
for M/s.Sarvabhauman Associates

For Respondents : R1-Died
Mr.M.Velmurugan for R2 to R4

JUDGMENT

The unsuccessful plaintiff in a suit for specific performance is the appellant. The plaintiff filed a suit for specific performance of suit sale agreement dated 05.06.2009 with alternative prayer for refunding of advance amount. The suit was dismissed by the Trial Court in its entirety. Aggrieved by the same, the plaintiff has come before this Court.

2. According to the plaintiff, he entered into a suit sale agreement on 05.06.2009 with defendant for purchase of the agreement mentioned property. The sale consideration was fixed at Rs.13,00,000/- and the time for performance of contract was fixed at 6 months. The plaintiff paid an advance of Rs.2,00,000/- in the morning at the time of execution of the sale agreement dated 05.06.2009. On the very same day, in the evening, a further amount of Rs.1,00,000/- was paid and got an endorsement in the back side of the 1st page of the agreement which was marked as Ex.A8. Subsequently, on 15.06.2009, the plaintiff paid further amount of Rs.2,50,000/- and got an endorsement in the back side of 1st page of the agreement under Ex.A9 from the defendant. It is stated that the plaintiff was always ready and willing to perform his part of the contract. However, during November 2009, the plaintiff acquired knowledge about arrangement made by the defendant to encumber the property. Hence, a telegram was issued on 05.11.2009 calling upon the defendant to execute a sale deed as per suit sale agreement by receiving the balance sale

consideration. In that circumstances, the defendant issued a legal notice on 10.11.2009 alleging that the subject property was mortgaged with the Syndicate Bank as collateral security for the amount borrowed by his friend one Anantha Narayanan, who was examined as D.W.2. In the said notice, the defendant also denied the execution of suit sale agreement. It was his specific case that plaintiff voluntarily advanced a loan of Rs.2,00,000/- to enable the defendant to discharge the mortgage deed and as a security, he obtained his signature in several papers, stamp papers, bond sheets and pro-notes etc., The plaintiff sent a reply notice on 11.11.2009 refusing the allegations made by the defendant in his legal notice. The said reply notice was returned unserved. Thereafter, the present suit was filed on 01.12.2009 seeking specific performance of the suit sale agreement with an alternate prayer for return of advance amount of Rs.5,50,000/-.

3. The respondent/defendant filed a written statement denying the various allegations made in the plaint. It was the specific case of the defendant that his friend Ananthanarayanan availed a loan of Rs.4,89,000/- from Syndicate Bank, Ram Nagar Branch, Coimbatore and the defendant stood as a guarantor for proper payment of the loan amount. He mortgaged the agreement mentioned property as a security with Syndicate Bank. Since the above said loan amount could not be paid by

the principal borrower, the Syndicate bank brought the property for auction. After acquiring knowledge about the said state of affairs, the plaintiff offered to pay Rs.2,00,000/- to enable the defendant to discharge the mortgage deed. The defendant arranged Rs.3,10,000/- from his daughter Santhiya, received Rs.2,00,000/- from the plaintiff and discharged the mortgage deed. At the time of payment of Rs.2,00,000/-, the plaintiff obtained the signature of the defendant and his wife in the blank stamp papers, blank pro-notes, blank bond papers and blank white sheets. It was also stated that plaintiff had obtained signature of the defendant on the back side of the stamp paper also. It was also stated by the defendant that though he tendered interest for the amount borrowed by him, the plaintiff did not receive the same and said that he would receive the entire amount with principal and interest as and when required. After some time, the plaintiff compelled the defendant to sell the property. After acquiring knowledge about attempt of the plaintiff to create document in his favour using signature of the defendant obtained in blank papers and stamp papers, the defendant issued a legal notice on 10.11.2009 mentioning real state of affairs and intimating his willingness to return the loan amount of Rs.2,00,000/- together with interest at the rate of 12% per annum. After receipt of the said notice, the plaintiff created suit sale agreement by using the signed papers and stamp papers available with him and laid the present suit vexatiously. On these averments, the defendant sought for dismissal of the suit.

4. The Trial Court, based on the above pleadings, framed following issues for consideration in the suit.

1. Whether the suit agreement dated 05.06.2009 is genuine?

2. Whether Rs.2 lakhs that plaintiff paid the defendant on 05.06.2009 is a loan?

3. Whether the endorsements in the sale agreement dated 05.06.2009 and 15.06.2009 are genuine?

4. Whether any amount has been paid as per the endorsements in the sale agreement?

5. Whether the plaintiff is ready and willing to perform his part of the contract.

6. To what relief is the plaintiff is entitled?

5. On behalf of the plaintiff, he was examined as PW-1. One of the attestor to suit sale agreement was examined as PW-2. The attestor to endorsement made in the back side of the 1st page of the sale agreement was examined as PW-3. On behalf of the plaintiff, 20 documents were marked as Exhibits A1 to A20. The wife of the defendant, who attested Ex.A1, sale agreement was examined as D.W.1.The friend of the defendant, who allegedly borrowed loan from Syndicate Bank, Anantha Narayanan, was examined as D.W.2. The Manager of the Syndicate Bank

was examined as D.W-3. On behalf of the defendant, five documents were marked as Exhibits B1 to B5.

6. On appreciation of oral and documentary evidence available on record, the trial court came to the conclusion that the suit sale agreement was not a genuine document and hence, dismissed the suit. Aggrieved by the same, the plaintiff has come before this court.

7. The learned Senior Counsel appearing for the appellant submitted that the execution of the suit sale agreement and the endorsement therein were duly proved by examining attestors to agreement and endorsement as P.W.2 and P.W.3 and the same has not been properly taken into consideration by the Trial Court. The learned Senior Counsel further submitted that the defendant has not produced any evidence to show how he mobilized Rs.5,10,353/- on the date of agreement to discharge the loan amount. According to him, amount of Rs. 2,00,000/- and Rs.1,00,000/- were paid by the plaintiff on the date of agreement. The learned Senior Counsel also submitted that the trial court having come to the conclusion that the suit sale agreement was not a genuine document failed to consider the admission made by the defendant in the written statement and committed an error in not considering the alternative prayer for return of advance amount paid by the plaintiff.

8. The learned counsel for the respondent/ defendant, by taking this Court to various contradictions in the evidence of PW1 to PW3, submitted that the trial court rightly came to the conclusion that the suit-sale agreement was not a genuine document. He further submitted that once the court comes to the conclusion that the suit-sale agreement is not a genuine document, the plaintiff is not entitled to return of the alleged advance amount. Therefore, he prays for dismissal of the appeal.

9. Based on the pleadings of the parties and the submission made by the learned Senior Counsel for the appellant and the learned counsel for the respondent, the following points are arising for consideration in this appeal.

> *1. Whether the suit sale agreement dated 05-06-2009 is a genuine document.*
>
> *2. Whether the plaintiff is entitled to decree for specific performance.*
>
> *3. Whether the plaintiff is entitled to alternative relief of return of advance amount.*

<u>Discussion on Point Nos. 1 and 2</u>

10. In order to prove the execution of the suit sale agreement and the endorsement made thereon, the plaintiff examined the attester to suit sale agreement as PW-2 and the attester to the endorsement as PW-3. A

perusal of Exhibit A1, suit sale agreement would indicate that the same was executed in Rs.20/- stamp paper and three green sheets. It is the specific case of the defendant that the plaintiff paid a sum of Rs. 2,00,000/- to him on 05.06.2009 to enable him to discharge the mortgage deed with syndicate bank and at that point of time, the plaintiff obtained the signature of the defendant and his wife in the blank stamp papers, bond papers, etc.

11. Now, in the light of the evidence of P.W. 1 to P.W.3, we have to see whether the due execution of the suit-sale agreement is properly proved by the plaintiff. The plaintiff, who was examined as P.W.1, in his evidence clearly admitted that the defendant informed him about the existence of mortgage deed in respect of the subject property with Syndicate Bank even prior to the suit sale greement. However, he further deposed that he has not enquired about mortgage deed and the steps taken by the bank to bring the property on auction by making necessary enquiry with the bank authorities.

12. The said evidence of P.W.1 creates a serious doubt with regard to the genuineness of the plaintiff's claim. Any prudent man who wants to purchase the property with the mortgage liability will certainly enquire with the bank with regard to the details of the mortgage liability. In the case on hand, the plaintiff admitted in his evidence that he did not make

any enquiry with the bank regarding the mortgage deed and the steps taken by the bank to bring the property for auction sale. The evidence of P.W.1 is quite unnatural. Further, the P.W.1, in his evidence, deposed as if his father was present along with him and the defendant at the time of execution of suit-sale agreement. However, one of the attestor to agreement who was examined as P.W.2 and deposed that at the time of execution, only plaintiff, defendant, P.W.2 and defendant's wife/D.W.1 were present. He did not mention about the presence of father of the plaintiff at the time of execution. This material contradiction between the evidence of PW1 and PW2 also creates a doubt with regard to the genuineness of the document.

13 The attester to Exhibit A1, who was examined as P.W2, could not give the details of the denomination of currency notes used for payment of advance by the plaintiff. Further, in his evidence, he had stated that two stamp papers were used for preparing the Exhibit A1, sale agreement. However, a perusal of Exhibit A1 would indicate that only Rs.20 stamp paper was used and three green sheets were utilized for preparing the agreement. Therefore, the evidence of P.W.2 does not create confidence in the mind of this court.

14. The attestor to the endorsement found in the suit sale agreement marked as Exhibits A8 and A9 was examined as P.W3. He in his evidence

had stated that he put two signatures on 05.06.2009 in the stamp papers. However, a perusal of Exhibit A1 would indicate that he put only one signature on 05.06.2009 and the other signature was allegedly put on the next date of endorsement namely 15-06-2009. Therefore, the evidence of P.W.3 that he put two signatures on the backside of first page of Exhibit A1 on 05-06-2009 is not acceptable. P.W.1 in his evidence also stated that after putting his signature, he had written his address along with his signature. A perusal of Exhibit A1 would reveal that the signature of P.W.3 is made with a fountain pen and that the address of P.W.3 was written with ballpoint pen. Therefore, it is clear that two different pens were used for signing and writing the address of P.W.3. If P.W.3 put his signature and also had written the address, there was no necessity for him to use two different pens. Therefore, the evidence of P.W.3 is also not helpful to support the case of the plaintiff.

15. Exhibit B4 is the certificate issued by the Syndicate Bank stating that the loan account of D.W.2, Anantha Narayanan was closed on 05.06.2009. Exhibit B5 is the statement of loan account. A perusal of the same would indicate that a sum of Rs.5,10,353/- was paid by the defendant on 05-06-2009 into the loan account and the total outstanding amount was reduced to Rs. (-)1,005/-.Therefore, it is clear that the defendant made a hefty payment into the loan account on 05.06.2009 and

the entire debt was discharged. In fact, the defendant paid Rs.1,005.32 paisa in excess to the loan account on that day. The excess amount was later adjusted with various administrative charges and the account was closed. Exhibits B4 and B5 also probabilise the defense raised by the defendant that there was a mortgage debt with the syndicate bank and the plaintiff paid Rs.2 lakhs to enable him to discharge the said amount.

16. In view of the discussion made earlier, this Court comes to the conclusion that Exhibit A1 is not a sale agreement as stated by the appellant. The Trial Court was justified in negativing the prayer for specific performance. Accordingly, Point Nos.1 and 2 are answered in favour of the respondent and against the appellant.

Discussion on Point No. 3.

17. A perusal of the written statement would indicate that the defendant clearly admitted the receipt of Rs.2,00,000/- from the plaintiff on 05.06.2009 to enable him to discharge the mortgage deed. In the written statement, he also clearly stated that he was ready to repay the said amount of Rs.2 lakhs with interest at the rate of 12% per annum. Though the plaintiff prayed for alternative relief of return of the advance amount, the trial court did not consider the said request made by the plaintiff. It was vehemently contended by the learned counsel for the respondent that the plaintiff only sought for return of advance amount,

when the court comes to the conclusion that a suit sale agreement is not a genuine document, the plaintiff is not entitled to return of advance amount.

18. The plaintiff in the suit sought for return of advance amount. It is a prayer in the nature of recovery of money paid under Exhibit A1. Therefore, this Court feels that treating the alternative prayer as a prayer for recovery of money, receipt of which is acknowledged in Ex.A1, a decree can be passed based on admission of defendant. The defendant in his written statement clearly admitted that he received Rs. 2 lakhs from the plaintiff on 05.06.2009 and put his signature in the blank stamp papers and bond papers and the same was utilized to create Exhibit A1, suit sale agreement. He also offered to return the said amount of Rs. 2 lakhs with interest at the rate of 12% per annum in his pre-suit notice marked as Exhibit A-10 and in his written statement. Therefore, there is no dispute with regard to the receipt of Rs.2,00,000/- by the defendant on 05-06-2009 and the said amount was utilized by him to discharge the loan amount as proved by Exhibit B5. In such circumstances, this Court feels that plaintiff is entitled to get recovery of the said amount with interest at the rate of 12% per annum as admitted by the defendant in his pleadings. Though the plaintiff sought for interest at the rate of 18% per annum, this Court is not inclined to grant interest at the rate of 18% per annum and

the same is highly excessive. The defendant, in the written statement, agreed to repay the amount with interest at the rate of 12% per annum.

19. In view of the admission in the pleadings, this Court has no hesitation in directing the defendant to pay the amount of Rs.2,00,000/- received by him with interest at the rate of 12% per annum from 05-06-2009 to the date of realization. The Point No. 3 is accordingly answered in favour of the appellant and against the respondent.

20. In view of the conclusion reached by this court in Point Nos.1 to 3, the first appeal stands partly allowed. The plaintiff is entitled to return of Rs. 2,00,000/- with interest at the rate of 12% per annum from 05.06.2009 to the date of decree. The plaintiff is also entitled to future interest at the rate of 6% per annum from the date of decree to the date of realization. In the facts and circumstances of the case, there shall be no order as to costs.

15.10.2025

Index : Yes
Internet : Yes
Neutral Citation Case : Yes
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To
The learned I Additional District Judge, Coimbatore.

S.SOUNTHAR, J.

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S.SOUNTHAR, J.

The above matter is posted under the caption "For Being Spoken To".

2. It is brought to the notice of this Court that respondents 2 to 4 were brought on record as legal representatives of the deceased sole respondent as per order dated 18.02.2022 made in C.M.P.Nos.3938, 3940 and 3942 of 2020 in A.S.No.206 of 2013. However, the details of the said order has not been incorporated in the preamble portion of the judgment even though the legal representatives were shown in the cause title. Therefore, the Registry is directed to incorporate the above details in the preamble portion of the impugned order.

3.The appeal was partly allowed by granting decree for recovery of Rs.2,00,000/- with interest at the rate of 12% per annum. In para No.20 of Judgment, the word " recovery" is wrongly typed as " return". Hence, the word 'return' found in second line of Para No.20 (at P.No.13) of Judgment shall be substituted with the word "recovery". The Registry is directed to carry out the amendment and issue a fresh order copy.

24.11.2025

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S.SOUNTHAR, J.

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