

A.S.No.823 of 2012

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.02.2025

PRONOUNCED ON : 04.03.2025

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

A.S.No.823 of 2012

and

M.P.No.1 of 2012

Malathy

...

Appellant

Vs.

1.R.Murugesan

2.The Sub Registrar

Sub Registrar Office

Gingee Taluk, Villupuram District,

(The 2nd respondent is not

a necessary party to the appeal)

...

Respondents

PRAYER :- First Appeal has been filed under Section 96 of CPC against the Judgement and Decree dated 13.07.2011 passed in O.S.No.11 of 2008 by the Additional District Judge, Fast Track Court No.1, Tindivanam.

For Appellant

... Mr.Ravikumar Paul,
Senior Counsel
for M/s.Paul and Paul

For Respondent
No.1

... Mr.S.Shanmuga Sundaram
for Mr.S.Senthilnathan

Respondent No.2

... Given up
(vide order dated 29.08.2013)



A.S.No.823 of 2012

JUDGMENT

Aggrieved over the Judgement and Decree dated 13.07.2011 passed in O.S.No.11 of 2008 by the Additional District Judge, Fast Track Court No.1, Tindivanam, the first defendant has preferred the first appeal.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for specific performance and permanent injunction.

4.The first defendant in O.S.No.11 of 2008 (Villupuram Prl. District Court O.S.No.101 of 2007) on the file of the Additional District Judge, FTC-I, Tindivanam is the appellant herein.

5.The plaintiff's case is as follows:

The first defendant is the owner of the plaint schedule property. She agreed to sell the suit property to the plaintiff for a sale consideration of Rs.14,50,000/- and received an advance amount of Rs.5,00,000/- on the same day. The agreement was entered on 20.03.2006. The balance of sale consideration is to be paid within three months from the date of the agreement and sale is to be completed. The first defendant at the time of the sale



A.S.No.823 of 2012

WEB COPY

agreement did not produce the original title deeds and other documents relating to the suit property. After some time, the first defendant disclosed that the document is pending before the second defendant Sub-Registrar office, Gingee. Therefore, on 17.06.2006, the plaintiff paid a further advance amount of Rs.1000/- to the first defendant and necessary endorsement was made in the agreement. The plaintiff is always ready and willing to pay the balance sale consideration of Rs.9,49,000/- to the first defendant and execute the sale deed registered. The first defendant had received the document of title deed from the Sub Registrar office, Gingee on 20.10.2007, the plaintiff came to know that the first defendant has received the document and also she is trying to alienate the suit property to some third parties. Immediately, the plaintiff caused a notice dated 23.10.2007 calling upon the first respondent to receive the balance sale consideration and execute the sale deed. Since the first defendant failed to execute the sale deed, the plaintiff filed the suit in time for specific performance and thus, pleaded to allow the suit.

6.The first defendant contested the suit and filed a written statement and specifically denied the allegations averred in the plaint and contended that the



A.S.No.823 of 2012

WEB.COM

first defendant did not execute the suit agreement dated 20.03.2006 with an intention to sell the property to the plaintiff nor the plaintiff took the agreement with an intention to purchase the property. This fact is known to the parties to the agreement, the attestors and scribe of the agreement. As such the plaintiff is not entitled to any claim of specific performance based on that agreement. The real fact is that the first defendant was in need of finance to the tune of Rs.5,00,000/- and through mediators and respectable persons, this defendant came to know about the plaintiff's financial business and on their recommendations and advice, this defendant approached the plaintiff for a loan of Rs.5,00,000/-. The plaintiff also agreed to pay and he demanded an interest of 24% p.a. He further wanted apart from the promissory note for Rs.5,00,000/- executed in his favour, he wanted property security, which he said is common in financial business. Due to the pressurised circumstances, this defendant agreed to offer her property (suit property) to be the security. The plaintiff wanted the same in the form of sale agreement which he said will not enforce, if the interest is paid regularly. Though this defendant was reluctant to execute the sale agreement and as the plaintiff refused to take the security by way of mortgage, the mediators prevailed over her assured smooth discharge and therefore, on their persuasion the suit agreement came into existence. The intention was not to sell the property but only to hold the



property as security. Further contended that the first defendant borrowed Rs.5,00,000/- and executed a pronote for Rs.15,00,000/- in favour of the plaintiff and also the agreement for Rs.14,50,000/- and she acknowledge received Rs.5,00,000/- as loan which is shown as advance in the agreement. This defendant has to pay Rs.5,00,000/- and balance of interest at 24% p.a. to the plaintiff. There is no cause of action for the suit and the alleged cause of action is false and thus, pleaded to dismiss the suit.

7.The trial Court, upon the above pleadings, framed the following issues for consideration;

1.Whether the sale agreement dated 20.3.2006 has been executed?

2.Whether plaintiff is entitled to get the sale deed from D1 on payment of balance of sale consideration of Rs.9,49,000/-?

3.Whether the plaintiff is entitled to get permanent injunction as prayed for?

4.Whether the second defendant is necessary party to the suit?



A.S.No.823 of 2012

5.To what relief?

WEB COPY

8.In support of the plaintiff's case, Pws1 and 2 were examined and Exs.A1 to A7 were marked and on the side of the first defendant, Dws1 & 2 were examined and no document has been marked.

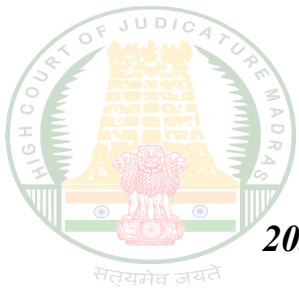
9.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to grant the relief of specific performance as prayed for by the plaintiff and dismissed the plaintiff's suit as regards the relief of the permanent injunction prayed for. Impugned the judgment and decree of the trial Court, the first defendant has preferred the first appeal.

10.The following points arise for determination in the first appeal.

1.Whether the sale agreement dated 20.03.2006 is true, valid and binding on the first defendant?

2.Whether the plaintiff has always been ready and willing to perform his part of the contract?

3.Whether the plaintiff is entitled to obtain the relief of specific performance in respect of the sale agreement dated



A.S.No.823 of 2012

20.03.2006 as prayed for?

WEB COPY

4.To what relief the plaintiff is entitled to?

5.To what relief the first defendant /appellant is entitled to?

11.The learned counsel for the appellant/first defendant submitted that the judgement and decree of the trial Court is against law and contended that the trial Court overlooked the fact that the alleged sale agreement Ex.A1 was only a document obtained as security for the loan availed by the first defendant and the suit ought not to have decreed. Further contended that the trial court overlooked the fact that the specific performance has to be completed within a three months period as per the sale agreement Ex.A1 which expired much earlier. They issued legal notice only on 23.10.2007 Ex.A3 which is the only document claiming that the plaintiff was ready and willing to disentitle the plaintiff for the discretionary remedy of specific relief. Further, the plaintiff failed to prove that he was ready and willing to perform the sale agreement in accordance with the terms of the agreement within the time. The trial Court overlooked the fact that the payment of Rs.1000/- by the first defendant as endorsed in Ex.A1 agreement marked as Ex.A2 was only towards interest on the loan advanced and could not be considered by any



means as further payment towards the balance sale consideration. The grant of decree as specific performance without reference to the evidence on record is clearly unsustainable and reiterated other grounds raised in the grounds of appeal and pleaded to set aside the judgment and decree of the trial Court and to allow the appeal.

12.To support of his argument, the learned counsel for the appellant/first defendant placed the following judgments:

i). (2019) 3 Supreme Court Cases 704 (Kamal Kumar Vs. Premlata Joshi and others)

ii). (2019) 17 Supreme Court Cases 429 (Vijay Kumar and others Vs. Om Parkash)

iii).2016 – 4 – L.W.45 (Kadali Venu Sankar Vs. Pydikondala Lakshmi)

iv).Special Leave Petition (civil) No.13933 of 2021 (R.Shama Naik Vs.G.Srinivasiah)

v).2022 LiveLaw (SC) 935 (V.S.Ramakrishnan Vs. P.M.Muhammed Ali)

vi).2022 LiveLaw (SC) 74 (Shenbagam & ors. Vs.



KK Rathinavel)

WEB COPY

13.The learned counsel for the first respondent/plaintiff supported the judgment of the trial Court and contended that the first defendant agreed to sell the suit property to the plaintiff for a sale consideration of Rs.14,50,000/- and received an advance amount of Rs.5,00,000/- on the same day. The agreement was entered on 20.03.2006. At the time of the agreement, the first defendant failed to produce the original sale deed, subsequently, the first defendant disclosed that the sale deed is pending with the Sub-Registrar office, Gingee. Thereafter, only on 20.10.2007, the plaintiff came to know that the first defendant had received the document, thereafter, he issued legal notice on 23.10.2007 to the first respondent to execute the sale deed. The plaintiff is always ready and willing to perform his part of his contract and further submitted that the plaintiff deposited for Rs.9,49,000/- as balance of sale consideration on 11.12.2007 before the trial Court. The first defendant failed to prove that she executed the sale agreement as a security for the loan obtained by her before the trial Court. Under such circumstances, the trial Court rightly held that the sale agreement is true and the plaintiff is always ready and willing to perform his part of the contract and the suit is not barred by limitation and decreed the suit. Further contended that in pursuance of the decree, the plaintiff filed E.P.No.1 of 2013 before the trial Court and got sale



A.S.No.823 of 2012

deed through the Court on 19.07.2013. In pursuance of the sale deed, he filed EP 2/2013. In pursuance of the E.P.No.2/2013, he got possession of the plant schedule property on 16.03.2015 and the same was also recorded on 07.04.2015 and the plaintiff is in possession of the plaint schedule property and there is no ground for interference and thus, pleaded to dismiss the appeal as it has no merit.

14.I have considered the matter in the light of the submissions made on either side and perused the materials available on record.

15.On perusal of the records, the fact reveals that the first defendant is the owner of the plaint schedule property. It is evidenced by sale deeds dated 24.11.1986 and 11.05.1992 as Ex.A4 and A5. This fact is not disputed by the parties.

16.The alleged sale agreement dated 20.03.2006 between the plaintiff and the first defendant is filed as Ex.A1. The sale agreement is also not disputed by the parties and the only contention of the first defendant is, the first defendant did not execute the suit sale agreement with an intention to sell the property to the plaintiff, only to hold the property as security for the loan.



WEB COPY 17. The specific defence placed by the first defendant in para 3 of the

written statement. For better appreciation, it is reproduced hereunder:

***“3. The real fact is that the first defendant was in need of finance to the tune of Rs.5,00,000/- and through mediators and respectable persons, this defendant came to know about the plaintiff's financial business and on their recommendations and advice, this defendant approached the plaintiff for a loan of Rs.5,00,000/-. The plaintiff also agreed to pay and he demanded an interest of 24% p.a. He further wanted apart from the promissory note for Rs.5,00,000/- executed in his favour, he wanted property security, which he said is common in financial business. Due to the pressurised circumstances, this defendant agreed to offer her property (suit property) to be the security. The plaintiff wanted the same in the form of sale agreement which he said will not enforce, if the interest is paid regularly. Though this defendant was reluctant to execute the sale agreement and as the plaintiff refused to take the security by way of mortgage, the mediators prevailed over her assured smooth discharge and therefore, on their persuasion the suit agreement came into existence. The intention was not sell the property but only to hold the property as security.*”**

18. In the above circumstances, the burden is upon the first defendant/appellant to prove the fact that the intention was not to sell the



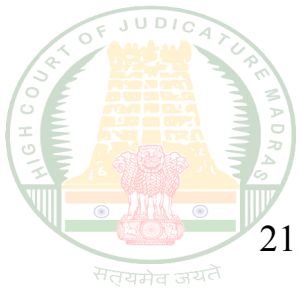
A.S.No.823 of 2012

property but only to hold the property as security.

WEB COPY

19. On perusal of the evidence on record, it is noticed that the first defendant/appellant not evidenced the alleged promissory note executed by her for a sum of Rs.5,00,000/- as pleaded in her written statement. Apart from this, she did not examine any mediators and respectable persons known about the loan transactions between the plaintiff and the first defendant as witnessed to establish her defence before the trial Court. Though in the written statement, she pleaded that the transactions took place in the presence of mediators and respectable persons, the first defendant miserably failed to examine any one of the mediators and respectable persons knowing the fact of the loan transactions between the plaintiff and the first defendant.

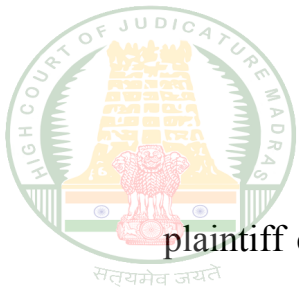
20. There is no evidence on record to show that the first defendant/appellant executed the suit sale agreement for loan transaction. Under these circumstances, the first defendant fails in this regard and her defence has no supportive evidence on record. Therefore, the trial Court rightly rejected the defence placed by the first defendant/appellant.



21.The law is well settled. The plaintiff is obliged not only to make specific statements and averments in the plaint but is also obliged to adduce necessary oral and documentary evidence to show the availability of funds to make payment in terms of the contract in time.

22.While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff.

23.On perusal of the evidence on record, it is noticed that the first defendant/appellant did not produce the original sale deed of the plaint schedule property to the plaintiff while entering into the suit sale agreement. The sale deed was pending before the Sub-Registrar Office, Gingee, for want of payment of required stamp duty. It is evidenced by Exs.A6 and A7 encumbrance certificates. Thereafter, the plaintiff paid further payment of Rs.1000/- on 17.06.2006 and made an endorsement in the sale agreement. It is evidenced by Ex.A2. The plaintiff specifically pleaded in para 6 of the plaint i.e. he is always ready and willing to pay the balance sale consideration of Rs.9,49,000/- to the first defendant for executing the sale deed. Thus, the



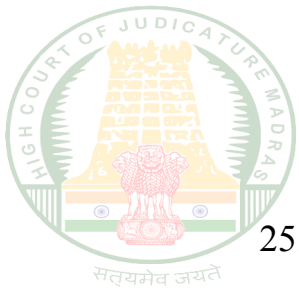
A.S.No.823 of 2012

plaintiff complied with the requirement of the Act. Further, it is noticed that

the plaintiff deposited for Rs.9,49,000/- as balance of sale consideration on 11.12.2007 by memo in L.O.No.234 dated 13.11.2007 before the trial Court. It is observed by the trial Court in its judgment.

24.It has been consistently held by this Court and the Hon'ble Supreme Court that in the case of agreement of sale relating to immovable property, time is not the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing the suit is three years. This case on hand in fact that the first defendant did not produce the original sale deed which was pending before the Sub-Registrar, Gingee and in such circumstances, the first defendant could not execute the sale deed in favour of the plaintiff. Therefore, after the sale deed of the first

defendant was released by the Sub-Registrar Office, Gingee, the plaintiff issued legal notice to execute the sale deed. Therefore, the time limits prescribed by the parties in the agreement have no significance. The evidence reflects the plaintiff is always ready and willing to perform his part of his contract.



A.S.No.823 of 2012

25. In view of the above, I find that the sale agreement dated 20.03.2006

is valid and binding on the first defendant and the plaintiff has always been ready and willing to perform his part of the contract and the plaintiff is entitled to obtain the relief of specific performance in respect of the sale agreement dated 20.03.2006 as prayed for. Thus, point Nos. 1 to 3 are answered accordingly.

26. The plaintiff is not entitled for any other relief and the defendant is also not entitled for any relief. Thus, point Nos. 4 & 5 are answered accordingly.

27. In view of the above, I find no ground to interfere with the findings of the trial Court and appeal has no merit. The judgment and decree of the trial Court dated 13.07.2011 in O.S.No.11 of 2008 is hereby confirmed and the first appeal is dismissed with costs. Consequently, the connected miscellaneous petition is closed.

Index/Internet: Yes / No
Speaking order: Yes/No
sms

04.03.2025

To



A.S.No.823 of 2012

1. The Additional District Judge, Fast Track Court No.1, Tindivanam.
2. The Section Officer, VR Section High Court, Madras.

WEB COPY

V.SIVAGNANAM, J.

sms



WEB COPY



A.S.No.823 of 2012

Pre-delivery judgment made in
A.S.No.823 of 2012 and M.P.No.1 of 2012

04.03.2025