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A.S.No.96 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.03.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.96 of 2025 and
C.M.P.No.2077 of 2025

M.Manthiriappan

... Defendant/Appellant

-VS-

1. G.Sivakumar

2. S.Radhamani

... Plaintiffs/Respondents

Prayer: Appeal Suit is filed under Order XLI Rule 5 of the CPC to set aside the judgment and decree dated 21.09.2024 made in O.S.No.442 of 2017 on the file of the 1st Additional District Judge, Coimbatore and allow the Appeal Suit.

For Appellant : Mr.M.Roshan Atiq

For Respondents : Mr.P.M.Duraisamy

For Mr.Deepan Uday

J U D G M E N T

Challenging the decree and judgment of the Trial Court, decreeing the suit for specific performance, the present appeal came to be filed by the unsuccessful defendant.

2. The case of the plaintiffs/respondents is that by a registered



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sale deed dated 04.02.1992, the defendant agreed to sell the property for a total sale consideration of Rs.20,00,000/- and received Rs.13,00,000/- as advance at the time of agreement. It was agreed between the parties that the sale has to be completed within a period of 18 months. Though the plaintiffs were ready and willing to pay the remaining sale consideration, the defendant sought for extension of time that was reduced in writing on 04.07.2016 and again a further period of 18 months was extended for execution of sale. According to the plaintiffs, they were ready and willing to perform their part of the obligation and it was the defendant, who did not come forward to execute the sale deed and made an attempt to sell the property to a third party. It is the further case of the plaintiffs that they issued legal notice on 21.12.2016 to the defendant, for which, a false reply was made by the defendant. Hence, a suit was filed by the plaintiffs for specific performance or in the alternative to return the advance amount with interest @ 18%.

3. It is the contention of the defendant that the defendant had borrowed a sum of Rs.18,00,000/- from the plaintiffs, who are financiers in Tiruppur. The amount was for purchase of power looms and the rate of



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interest was agreed at 18% per annum. The plaintiffs demanded a mortgage deed from the defendant for lending the amount and also requested to hand over all the documents of title. Accordingly, the defendant executed a mortgage deed dated 17.11.2014 and agreed to clear the amount within 20 months. The plaintiffs also obtained another document on 04.07.2016 for extension of another 20 months and after execution of the 2nd document, the defendant had paid interest of Rs.25,000/- per month for four months and the plaintiffs subsequently demanded 60% interest per annum. Hence, it is the contention of the defendants that he never intended to execute a sale agreement.

4. The Trial Court, on the basis of the aforesaid pleadings, framed the following issues:

- i) Whether the suit sale agreement is true and valid?
- ii) Whether the time extension agreement dated 04.07.2016 is true, valid and enforceable?
- iii) Whether the plaintiff is ready and willing to do his part of the contract?
- iv) Whether the plaintiffs are entitled to the relief of specific performance as claimed for?



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v) Whether the plaintiff is entitled to the alternate relief of refund of advance amount with interest?

vi) To what other relief the plaintiff is entitled to?

5. On the side of the plaintiffs, P.W.1 and P.W.2 were examined and Ex.A1 to Ex.A7 were marked. On the side of the defendant, D.W.1 was examined and no exhibits were marked.

6. The Trial Court, on the basis of the evidence adduced by both sides, decreed the suit for specific performance. Aggrieved over the same, the present appeal has been filed.

7. Learned counsel for the appellant would mainly submit that though a registered agreement was executed by the defendant, the conduct of the parties in extending the time for another 18 months after two years of agreement clearly probabalizes the case that it is only a loan transaction. The very conduct of the plaintiffs in obtaining document for extension indicates that it is only a loan transaction.

8. Whereas learned counsel for the respondents would contend



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that having admitted the registered document, the parties cannot now take a contrary view in terms of the contract. Once the execution is clearly admitted, the defendant without any probabilities, cannot deny the agreement and the Trial Court rightly appreciated the documents and decreed the suit.

9. In the light of the above, the points for consideration in this appeal are as follows:

- i) Whether Ex.A2 and Ex.A3 are not intended for sale of property?
- ii) Whether the plaintiffs are ready and willing to perform their part of the contract?

POINTS:

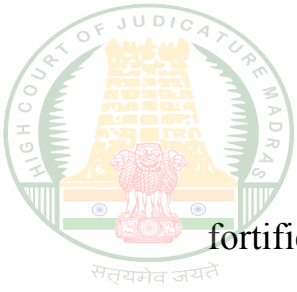
10. The execution of agreement is not disputed. The main contention of the defendant is that he had executed deeds under the impression that it is a mortgage deed. He borrowed Rs.13,00,000/- from the plaintiffs. Once a person has executed the document and registered the same before the authority, mere vague defence that it is not intended for actual



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purpose cannot be entertained as a matter of right. Ex.A2, when carefully seen, the parties have agreed to complete the sale within 18 months from the date of agreement, i.e., 17.11.2024. It is relevant to note that as per the agreement, the balance consideration has been paid, but the fact remains that within 18 months, no steps have been taken by the plaintiffs to pay the remaining sale consideration. On the contrary, in Ex.A3 dated 04.07.2016, an extension agreement has been once again entered into between the parties, wherein a further 18 months period was extended for completing the sale.

11. According to the plaintiffs, a substantial advance amount has been paid on the date of sale agreement. However, it is to be pointed out that to pay the balance amount of Rs.7,00,000/- they took time of 36 months, which is totally against normal human conduct. If a person is really intended to purchase a property and having paid a huge amount as advance, he would not keep quiet without taking any steps to complete the sale within the agreed time as per Ex.A2 agreement and this probabalizes the defendant's theory that the agreement is not intended for sale. These facts are further



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fortified by the very admission of P.W.1 / 1st plaintiff in his evidence and when his evidence is carefully seen, he has admitted that he does not know the survey number of the land proposed to be purchased. Further, he also admitted that the defendant has no other job, except agriculture and he has no other property apart from this property. His evidence also indicates that he has never met the defendant for the last 9 years. Thus, his evidence clearly probabilizes the defendant's theory that the agreement is not intended for sale of property. If a person is intending to purchase the property, his normal conduct would be to verify the survey number, title or encumbrance, etc, whereas P.W.1 deposed that he has never met the defendant for the last 9 years. These facts clearly indicate that the plaintiffs are not at all ready and willing to perform their part of contract. In such view of the matter, the plaintiffs are not entitled to the relief of specific performance.

12. At this juncture, learned counsel for the appellant would submit that the defendant admitted the payment of interest @ 18% in the written statement and the defendant is ready to repay the amount of Rs.13,00,000/- with interest @ 18% till date. Learned counsel for the



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respondents on instructions submitted that the respondents are willing to accept the amount with the agreed interest payable by the appellant.

13. In such view of the matter, the decree and judgment of the Trial Court in respect of specific performance is set aside and the suit is decreed for a sum of Rs.13,00,000/- with interest @ 18% from the date of agreement till the date of payment. It is made clear that the payment of interest at 18% now ordered is based on the admission made by the learned counsel for the appellant while disposing of the appeal that the appellant/defendant is prepared to pay the interest @ 18%.

14. In the result, *the Appeal Suit is allowed in part* and the decree and judgment of Trial Court granting specific performance is set aside and in the alternative, decree is passed for repayment of Rs.13,00,000/- with interest @ 18% from the date of agreement till the date of realization. It is made clear that till such time the amount is paid, there shall be a charge over the property.

15. It is submitted by the learned counsel for the respondents that the respondents have deposited Rs.7,00,000/- towards the balance sale



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consideration before the Trial Court. Needless to state that the said amount shall be returned to the respondents on proper application being filed by them. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes / No
Internet: Yes / No
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To:

1. The 1st Additional District Judge,
Coimbatore.
2. The Section Officer,
V.R.Section,
High Court,
Madras.

N.SATHISH KUMAR,J.,
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