



A.S.No.172 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : 28.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.172 of 2022

N.Sivakumar

... Appellant

Versus

Mr.B.Kavitha

... Respondent

PRAYER : Appeal Suit filed under section 96 of Code of Civil Procedure read with Order XLI Rule 1 of Code of Civil Procedure to set aside the judgment and decree dated 29.10.2021 and dismiss the suit in O.S.No.521 of 2014 on the file of the V Additional District Court, Coimbatore.

For Appellants : Mr.S.Ravichandran

For Respondent : Mr.N.Chandran



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JUDGMENT

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Challenging the judgment and decree of the trial Court decreeing the suit filed by the plaintiff for specific performance, the present appeal has been filed by the unsuccessful defendant.

2. The parties are arrayed as per their own ranking before the trial Court.

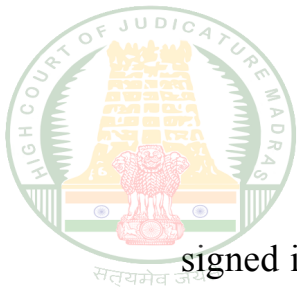
3. It is the case of the plaintiff that the defendant agreed to sell the suit property for a total sale consideration of Rs.14 lakhs and received a sum of Rs.10 lakhs on 25.11.2013 and executed a registered sale agreement on the same day. It is admitted between the parties that the sale shall be completed within a period of 11 months from the date agreement. The plaintiff was always ready and willing to perform her part of the contract. However, the defendant postponed the registration under some pretext or other and has not come forward to execute the sale deed. The plaintiff is always ready and willing to perform her part of the contract from July 2014 onwards. As the defendant has



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not come forward to receive the balance sale consideration and execute the sale, a legal notice was issued to the defendant on 10.10.2014 calling upon him to perform his part of the contract. Despite receipt of legal notice, as the defendant has not come forward to receive the balance sale consideration and execute the sale deed, the suit has been filed.

4. It is the stand of the defendant in the written statement that he has not entered into an agreement for sale at any point of time. The plaintiff is only a house wife and she has no source to advance any amount to buy the suit property. The plaintiff's husband is working in a ration shop and he is none other the cousin brother of the defendant. The defendant had sought financial assistance to the tune of Rs.10 lakhs for building his house and agreed to pay the amount within one year. As there was delay in processing the loan, he approached the plaintiff's husband for a loan agreeing to repay the loan along with interest at the rate of 12% per annum. The plaintiff's husband agreed to lend the loan provided an agreement for sale is executed. When the defendant hesitated to execute an agreement for sale, plaintiff husband informed him that the agreement for sale is only sham and nominal. Therefore, the defendant



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signed in the document styled as agreement for sale. The defendant was paying interest every month promptly. In the meanwhile, the plaintiff insisted to return the loan amount during August 2015. As the defendant was not in a position to pay such a huge amount, he was made to execute a sale deed pertaining to another property belonging to him. The defendant had to sell 40 cents of land at throw away rate of Rs.10,000/- per cent. The sale deed was executed in favour of the brother of the plaintiff. Apart from that a sum of Rs.5 lakhs has already been paid to the plaintiff and further sum of Rs.6 lakhs has also been paid to the plaintiff. Therefore, it is his contention that the agreement for sale is sham and nominal. Hence, prayed for dismissal of the suit.

5. On the basis of the above pleadings, the following issues have been framed by the trial Court :-

1. Whether the suit agreement dated 25.01.2013 was executed only for a loan transaction as claimed by the defendant?
2. Whether the plaintiff is always ready and willing to perform her part of the contract?



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3. Whether the plaintiff is entitled for the relief of specific performance as prayed for?

4. To what relief is the plaintiff entitled?

6. On the side of the plaintiff P.W.1 has been examined and Ex.A.1 to A.3 have been marked. On side of the defendant, D.W.1 and D.W.2 have been examined and Ex.B.1 to Ex.B.15 have been marked.

7. The trial Court, appreciating entire evidence, both oral and documentary, decreed the suit for specific performance. Challenging the same, present appeal came to filed by the appellant.

8. According to the appellant, the agreement is not intended for sale of the property. But the same has been executed in a loan transaction. The defendant has constructed a house in the ground and first floor, which is more than Rs.50 lakhs. Therefore, there is no necessity for the appellant to sell the suit property for a total sale consideration of Rs.14 lakhs. Further, in the notice issued by the plaintiff it is stated that Rs.4 lakhs sale consideration has also



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been received by the defendant. However, the plaintiff has deposited a sum of Rs.4 lakhs in the Court. Therefore, according to him, entire transaction is a loan transaction. The learned counsel appearing for the appellant would further submit that the suit property is to an extent of 1430 sq.ft. The defendant has purchased the property only on 05.10.2012 as a vacant site and he had constructed a house in the suit property. Ex.B.15 plan clearly show that only the defendant has put up the construction. Therefore, selling the property for Rs.14 lakhs is highly improbable. Further, it is his contention that the defendant after construction has also done house warming ceremony and that itself clearly show that the Ex.A.1 agreement is not intended for sale. The trial Court has not considered all these facts. It is his further contention that towards loan transaction, some other properties have also been sold in favour of the brother of the plaintiff. These facts have not been taken note by the trial Court. The readiness and willingness has not been established. Hence, the trial Court has not appreciated entire evidence properly.

9. Whereas, the learned counsel appearing for the respondent would submit that the defendant has admitted execution of the agreement. The

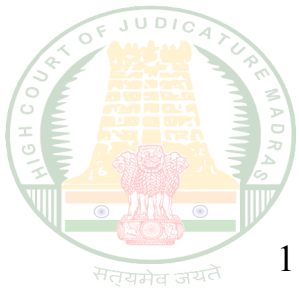


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agreement is a registered document and receipt of a sum of Rs.10 lakhs is also not in dispute. It is the contention of the defendant that the agreement is not intended for sale and it is only a loan transaction has not been established. It is his further contention that in lieu of the loan transaction, other immovable properties have been sold to the brother of the plaintiff has not been established. Hence, it is his contention that the defendant cannot take a contrary view than the written contract. The trial Court has appreciated entire evidence and granted the relief of specific performance.

10. In the light of the above submissions, now the points that arise for consideration in this appeal are :

1. Whether Ex.A.1 sale agreement dated 25.11.2013 was not intended for sale of the property and it is a result of a loan transaction?
2. Whether the plaintiff was always ready and willing to perform her part of the contract?
3. To what relief, the parties are entitled?



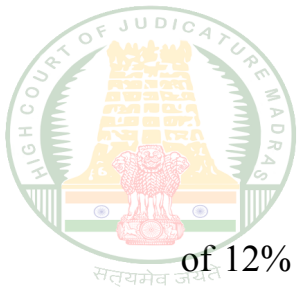
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11. Point No.1 :

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The specific case of the plaintiff is that Ex.A.1 has been executed by the defendant for sale of the suit property to an extent of 1430 sq.ft. Including the newly constructed house in 1300 sq.ft. Ex.A.1 is a registered contract, wherein it is clearly stated that the defendant has agreed to sell the property for a total sale consideration of Rs.14 lakhs and received a sum of Rs.10 lakhs as an advance and for paying remaining sale consideration and complete the transaction, 11 months time has been agreed between the parties. It is relevant to note that when the parties take a plea that the agreement was not intended for the purpose it was executed and it is a different transaction, the burden lies on the party, who takes such a plea to establish the same. Though oral evidence is admissible to show that the document is not intended for the purpose it came into existence for a different purpose, the oral evidence must be in such a manner that it brings out some probabilities to believe his version.

12. A perusal of the entire written statement indicate that the execution of the agreement has been clearly admitted by the defendant. According to him he has borrowed a sum of Rs.10 lakhs from the plaintiff for interest at the rate



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of 12% per annum. Therefore, at the request of the husband of the plaintiff, he executed the agreement. Thereafter, he was paying interest every month. It is relevant to note that it is the specific defence of the defendant that he had executed a sale deed in respect of 40 cents of the land situated in Nilgiris District in favour of the brother of the plaintiff for a sum of Rs.4 lakhs towards the loan. In this regard, when his evidence carefully perused, to show that after the sale agreement some properties have been sold in favour of one Manoj, no documents, whatsoever, have been filed. Therefore, to probabalize his defence that after the sale agreement, some immovable properties have sold in favour of the brother of the plaintiff, absolutely, there is no evidence, whatsoever, placed on record.

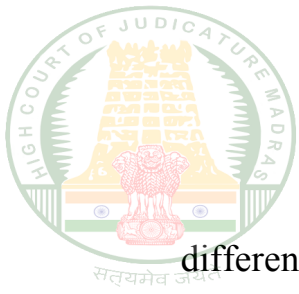
13. Further, to show that the defendant was regularly paying interest every month, after the loan agreement also not been established. Therefore, merely on the oral submissions that the document is not intended for sale, without any probabilities brought on record, the terms agreed between the parties in a registered contract cannot be ignored altogether and the parties are bound by the terms agreed between them.



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14. Further, though it is submitted by the learned counsel appearing for the appellant that building has been constructed by him and he had also let out the premises to third parties, in this regard Ex.B.1 has been filed. Ex.B.1 document was styled as unregistered mortgaged deed. None of the parties, who are said to be in possession of the property, have been examined. Further Ex.B.2 has been filed to show that he has constructed the house by spending a sum of Rs.37,46,000/-. The author of Ex.B.2 has not been examined. Ex.B.2 has been issued by one Sri Sai Consultants. Whether it was obtained prior to the construction of the house or not has not been established. If really, estimate was obtained by the defendant prior to the construction, atleast he ought to have examined the Engineer, who issued Ex.B.2. It has not been done in this case. Hence, no significance can be attached to Ex.B.2. Similarly, Ex.B.15, the so called plan of the building, when carefully perused, it relates to Karavalimadapur village and for whom, the plan has been issued, there are no details. However, the suit property situate in Sulus panchayat. In that case, the plan ought to have been sanctioned by Sulus Panchayat. Even the building was constructed after obtaining plan under Ex.B.15 same will not make any



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difference, since the defendant has agreed to sell the property under Ex.A.1 agreement.

15. The other documents relied upon by the defendant is of no way relevant to the lis between the parties. Some of the depositions of the third parties have been filed as documents. They are not relevant to the present case. Further the statement of the living persons cannot be admitted as an evidence and atmost, such an evidence can be used to contradict or corroborate witnesses of the parties who have given evidence in a previous proceedings. Those documents namely Ex.B.11, Ex.B.12, Ex.B.13 are no way useful to the defendant to prove his case of loan transaction. Ex.B.14 is said to have been executed by one Neelammal in favour of Arasan Jamunarani. This document also will not help the defendant in proving the loan transaction. P.W.1 in his evidence has clearly spoken about the execution of the agreement, which is a registered one. Execution of the agreement is also not disputed by the defendant. When the specific case of the defendant that it was a loan transaction has not been established and the registered agreement indicate that it



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is intended for sale of the property, it cannot be said that the agreement is not intended for sale of the property. Point No.1 is answered accordingly.

16. Point Nos.2 and 3 :

As far as readiness and willingness is concerned, receipt of Rs.10 lakhs is admitted by the defendant. Execution of Ex.A.1 agreement and receipt of Rs.10 lakhs on the date of agreement is also admitted. Further with regard to the construction, it is nowhere pleaded in the entire written statement and only for the first time in the evidence, these documents came into light. Therefore, when there is no pleadings with regard to the documents filed during trial, no significance can be attached to the documents. P.W.1 in her evidence has stated that 11 months time has been agreed to complete the entire construction and hence, 11 months time has been agreed by both sides. The plaintiff issued legal notice on 10.10.2014, within the period of 11 months and it has not been replied by the defendant. The suit has been filed on 27.10.2014, immediately after the legal notice. The remaining amount of sale consideration has also been deposited in the Court, which has been admitted by the appellant himself in the

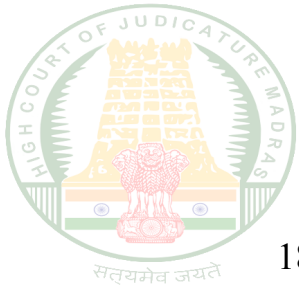


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memorandum of appeal. Though in the legal notice in the last para it is stated that the balance sale consideration has already been received, the same shall not have any impact as the remaining sale consideration has already been deposited before the Court.

17. The plaintiff has paid substantial amount of sale consideration and also issued legal notice within the time and filed the suit immediately without any further delay and the amount also deposited before the Court. All these facts clearly prove that the plaintiff was always ready and willing to perform her part of the contract. Therefore, escalation of price at a later point of time cannot be a ground to deny the relief of specific performance. When the plea of the defendant is found to be false and has not been established, the parties are certainly bound by the contract entered between them, which is registered in accordance with law. The points are answered accordingly.



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18. In the result, this Appeal Suit is dismissed. The decree and judgment of the trial Court in O.S.No.521 of 2014 dated 29.10.2021 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

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



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N. SATHISH KUMAR, J.

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