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A.S..Nos.162 & 1019 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 12.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.Nos.162 & 1019 of 2024

V.Patteswaran

... Appellant in A.S.No.162 of 2024 &
respondent in A.S.No.1019 of 2024

Versus

E.Jayanthi

... Respondent in A.S.No.162 of 2024 &
Appellant in A.S.No.1019 of 2024

PRAYER : These Appeal Suits filed under section 96 of Code of Civil Procedure to set aside the decree and judgment dated 22.12.2023 made in O.S.No.359 of 2016 on the file of the V Additional District and Sessions Judge, Coimbatore by allowing this firs appeal.

For Appellant : Mr.L.P.Shanmugasundaram
& respondent in A.S.No.1019 of 2024

For Respondent : Mr.B.Nedunchezian
& Appellant in A.S.No.162 of 2024



A.S..Nos.162 & 1019 of 2024

COMMON JUDGMENT

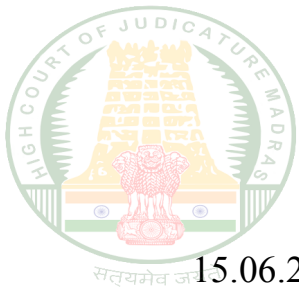
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These two appeals have been filed arising out of the same judgment in O.S.No.359 of 2016 dated 22.12.2023.

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

3. The suit has been originally filed by the plaintiff for specific performance to enforce the contract dated 13.11.2014 executed by the defendant for sale of the property for a total sale consideration of Rs.15 lakhs.

4. It is the case of the plaintiff that on the date of agreement a sum of Rs.13 lakhs advance has been paid and it is agreed between the parties that the sale shall be completed within a period of 11 months. The plaintiff was already ready and willing to perform his part of the contract. On 03.06.2015, the plaintiff approached the defendant for completing the sale. The defendant was not ready on that date and at her request registration was fixed on



A.S..Nos.162 & 1019 of 2024

WEB COPY

15.06.2015 However on 14.06.2015, the defendant informed that she is not in station therefore, she was unable to perform her part of the contract. Therefore, legal notice has been issued on 28.09.2015 The plaintiff is always ready and willing to perform his part of the contract.

5. It is the stand of the defendant that she had received only Rs.3 lakhs amount as loan from the plaintiff and agreed to execute mortgage. However, the plaintiff taking advantage of the urgency and need of money by the defendant, had prepared the sale agreement instead of mortgage deed. The defendant has signed the document under the impression that it is only a mortgage. However, only after receipt of notice he came to know that the document has been created as a sale agreement. Hence, disputed the agreement.

6. On the basis of the above pleadings, the following issues have been framed :



A.S..Nos.162 & 1019 of 2024

WEB COPY

1. Whether the parties to the suit sale agreement have entered into that agreement with consensus ad idem or not?

2. Whether the defendant is right in saying that she has no need to sell the suit schedule property?

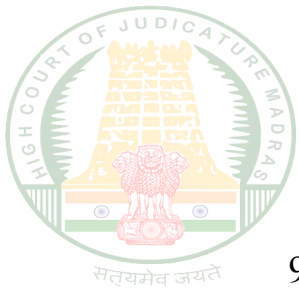
3. Whether the execution of suit sale agreement is proper or not?

4. Whether the plaintiff is entitled for the relief of specific performance upon the suit sale agreement?

5. To what other reliefs, the parties to the suit are entitled?

7. Though the issue as to readiness was also framed earlier, but the same has been recasted as above.

8. On the side of the plaintiff, P.W.1 and P.W.2 have been examined and Ex.A.1 to Ex.A.4 have been marked. On the side of the defendant, she examined herself as D.W.1 and Ex.B.1 and Ex.B.2 have been marked.



A.S..Nos.162 & 1019 of 2024

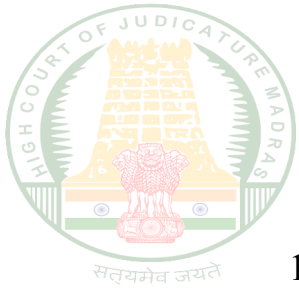
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9. The trial Court appreciating the entire oral and documentary evidence has exercised discretion and negatived the relief of specific performance and granted alternative relief for return of advance amount with interest at the rate of 12% from the date of agreement till the date of filing of the suit and thereafter, 6% per annum from the date of suit till the date of realization.

10. The Appeal in A.S.No.162 of 2024 has been filed by the plaintiff against the judgment and decree of the trial Court dismissing the suit for specific performance and granting alternative relief of return of the advance amount paid by the Plaintiff.

11. The Appeal in A.S.No.1019 of 2024 has been filed by the defendant against the judgment and decree of the trial Court challenging the alternative relief granted by the trial Court.

12. As both the appeals are arising out of the same judgment, both the appeals are disposed by way of a common judgment.

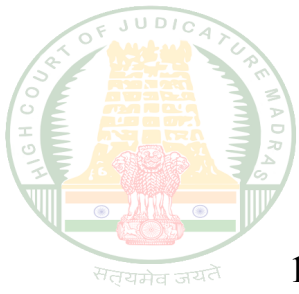


A.S..Nos.162 & 1019 of 2024

WEB COPY

13. The lead case is Appeal Suit in A.S.No.162 of 2022. According to the the plaintiff, the defence of the defendant that it is a loan transaction has not been established. Ex.A.1 is a registered sale agreement. Having admitted the execution of the sale agreement, now the defendant cannot take a contrary view than the terms of the contract. Such a stand is hit by Section 92 of the Indian Evidence Act. Therefore, once the defence set up by the defendant is found to be false, the plaintiff is certainly entitled to specific performance. The trial Court having found that the sale agreement is not executed properly for the purpose of sale of the suit schedule property, negated the relief of specific performance and granted the alternative relief of return of the advance amount.

14. According to the appellant, he was always ready and willing to perform his part of the contract. The trial Court finding that there is no consensus ad idem is without any basis.



A.S..Nos.162 & 1019 of 2024

WEB COPY

15. Whereas, it is the contention of the learned counsel for the respondent that though the sale agreement has been registered, there is no evidence that a sum of Rs.13 lakhs has been paid on the date of the agreement. As long as the payment has not been proved, the trial Court directing return of advance amount with interest cannot be sustained in the eye of law. Further, it is his contention that specific performance has rightly been negatived.

16. In the light of the above submissions, now the points that arise for consideration are :

1. Whether the sale agreement Ex.A.1 dated 13.11.2014 is not intended for sale of the property?
2. Whether the plaintiff is always ready and willing to perform her part of the contract?
3. Whether the plaintiff is entitled to the relief of specific performance?
4. Whether the alternative relief granted by the trial Court is appropriate?



A.S..Nos.162 & 1019 of 2024

WEB COPY

17. Points 1 to 4 :

The execution of agreement dated 30.11.2014 is not in dispute. The contention of the defendant is that he has executed the document as if it is a mortgage deed. Therefore, according to her, she has never intended to execute a sale agreement. Ex.A.1 is a registered agreement for sale. One of the attesting witness has been examined as P.W.2 to prove execution. Once the execution of the document has been proved, the party who denies the document has to establish that the document is not intended for that purpose and came into existence for a different purpose. The burden, certainly, lies on the defendant to show that Ex.A.1 is not intended for sale of the property. Except contending in her pleadings and evidence that the document was not intended for sale of property and it is only executed for mortgage of the property, no materials whatsoever has been placed on record. Therefore, mere allegation in the form of pleadings alone will not discharge the burden to establish the said fact. As long as the party has not discharged his initial burden to show that the document is intended for some other purpose, then the



A.S..Nos.162 & 1019 of 2024

WEB COPY

defendant cannot go beyond the terms of the contract as per section 92 of the Indian Evidence Act. Therefore, the very contention of the defendant that Ex.A.1 is not intended for sale of the property cannot be countenanced. In fact, the very defence set up by the defendant is found to be false.

18. Now it has to be seen whether the plaintiff has shown readiness and willingness from the very inception to seek equitable relief. The agreement was executed in the year 2014. The recitals in the agreement makes it clear that substantial portion of the sale consideration has been paid. Out of the total sale consideration of Rs.15 lakhs, a sum of Rs.13 lakhs has been paid. For payment of remaining amount of Rs.2 lakhs, the parties infact have fixed 11 months time to complete the sale. One of the term agreed between the parties is that if the remaining sale consideration has not been paid within 11 months, the entire advance amount shall be forfeited. The said term makes it very clear that the parties had intended to make time as essence of the contract, though as far as immovable property is concerned, time is not the essence of contract. When the parties make time as essence of contract by



A.S..Nos.162 & 1019 of 2024

WEB COPY

positive terms agreed between them, such time fixed by the parties cannot be ignored altogether. Having fixed the time to complete the sale within 11 months, it is the contention of the plaintiff that he has requested the defendant to complete the sale only on 03.06.2015 and the fixed the date for completing the sale on 15.06.2015. However, the defendant has not cooperated for that. Such a contention, in view of this Court, is highly improbable for the simple reason that if the defendant is not ready on 15.06.2015, the normal conduct of the plaintiff would be to take steps immediately to call for the defendant by way of legal notice or to rush to the Court by filing a suit. Whereas, the legal notice has been issued for the first time on 28.09.2015 only. Thereafter, the suit has been filed on 31.08.2016.

19. The above facts clearly indicate that the plaintiff was not ready and willing from the very inception of the contract. The readiness and willingness should be established from the inception of the contract. However, there is no materials placed on record to show that the plaintiff had ready cash to pay the remaining sale consideration. Having fixed specific time limit, despite the



A.S..Nos.162 & 1019 of 2024

WEB COPY

defendant not co-operating to execute the document, the legal notice was issued only on 28.09.2015, beyond the period of the agreement, above conduct of the plaintiff prove the fact that the plaintiff is not ready and willing to purchase the property.

20. Further, the evidence of P.W.1 when carefully perused, the same makes it clear that the plaintiff has not verified the property at the time of entering into the agreement. He was not in a position to give exact details regarding in and around suit property. He does not even know measurement of the property. Further there is no evidence available on record to show that he had verified the title and obtained encumbrance etc. Therefore, when a person, who not even verified the title and he has no idea about measurement of the property he intended to purchase, merely on the basis of the registered agreement, readiness and willingness cannot be inferred. Readiness and willingness has to be established by the plaintiff who come before the Court for equitable relief. Merely because the defence of the defendant is found to be false, that will not absolve the plaintiff from proving readiness and



A.S..Nos.162 & 1019 of 2024

willingness. Considering all these aspects, this Court is of the view that the finding of the trial Court that there is no consensus ad idem, is not based on the evidence.

21. Be that as it may. However, the trial Court negating the relief of specific performance, in view of this Court, does not require interference for the simple reason that readiness and willingness has not been established by the plaintiff.

22. As far as the alternative relief is concerned, the execution of the document has been proved and the defendant has not proved the alleged mortgage or any loan transaction. Hence, the defendant is liable to pay the amount with interest at the rate of 12% per annum from the date of sale agreement till the date of decree and thereafter, at the rate of 6% from the date of decree till the date of realisation. The points are answered accordingly.

23. In the result, both the Appeal Suits are dismissed and the judgment and decree passed by the trial Court in O.S.No.359 of 2016 dated



A.S..Nos.162 & 1019 of 2024

WEB COPY

22.12.2023 is modified to the effect that the defendant is directed to pay a sum of Rs.13,00,000/- [Rupees thirteen lakhs] to the plaintiff with interest at the rate of 12% per annum from the date of agreement, viz., 13.11.2014 till the date of decree and thereafter, at the rate of 6% from the date of decree till the date realization with costs. Consequently, connected miscellaneous petition is closed. It is also made clear that in respect of the above amount, there shall be a charge over the property. No costs.

12.03.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

1. The V Additional District and Sessions Judge,
Coimbatore.

2. V.R. Section, High Court.



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A.S..Nos.162 & 1019 of 2024

N. SATHISH KUMAR, J.

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A.S.Nos.162 & 1019 of 2024

12.03.2025