



Second Appeal No.865 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

Second Appeal No.865 of 2014

AND

M.P.No.1 of 2014

1.Ravi

2.Rajeswari

.. Appellants

Vs

A.Govindaswamy

.. Respondent

Second appeal filed under Section 100 C.P.C. against the judgment and decree dated 28.02.2011 passed in A.S.No.23 of 2010 on the file of the Additional District and Sessions Judge, Fast Track Court No.V, Coimbatore at Tiruppur, confirming the judgment and decree dated 05.10.2009 passed in O.S.No.166 of 2004 on the file of the Court of the Principal Sub Judge, Tiruppur.

For Appellants : Mr.T.Sundaranathan

For Respondent : Mr.P.V.Balasubramaniam, Sr.Counsel
for Mr.Dharani Subramaniam

J U D G M E N T

This Second Appeal has been filed to set aside the judgment and decree dated 28.02.2011 passed by the learned Additional District and Sessions Judge, Fast Track Court No.V, Coimbatore, in A.S.No.23 of 2010, confirming the judgment and decree dated 05.10.2009 passed by the learned Principal Sub Judge, Tiruppur, in O.S.No.166 of 2004.



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2. Heard Mr.T.Sundaranathan, learned counsel for the appellants/ defendants and Mr.P.V.Balasubramaniam, learned Senior Counsel for the respondent/ plaintiff and perused the materials available on record.

3. The defendants are the appellants. The suit has been filed by the plaintiff for the relief of specific performance. The trial Court decreed the suit and the first appeal filed by the defendants also got dismissed by confirming the judgment of the trial Court. Now, the defendants have preferred this second appeal.

4. The short facts pleaded in the plaint are as follows :

The suit property belongs to the defendants. The defendants executed a registered sale agreement in favour of the plaintiff for a sum of Rs.1,20,000/- on 27.03.2002 and on the same day itself, the defendants received an advance amount of Rs.1,00,000/- and three months time has been agreed to pay the balance sale consideration of Rs.20,000/-. Though the plaintiff was all along ready and willing to pay Rs.20,000/-, the defendants did not co-operate and have been delaying on some pretext or the other and thereafter, the plaintiff has sent a legal notice on 20.03.2004, calling upon the defendants to execute the sale deed and it has been received by the defendants and they had sent the reply



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notice on 24.03.2004, with false allegations. Hence, the plaintiff has filed this suit for the relief of specific performance.

5. The defendants resisted the suit by averring the following in their written statement :

The fact that the suit property belongs to the defendants is true. The 1st defendant had obtained a loan of Rs.1,00,000/- from the plaintiff in the year 2002 and as a security for the said loan, the plaintiff had obtained signatures of the 1st defendant in various unfilled stamp papers and promissory notes. In order to ensure a better security for the loan obtained by the 1st defendant and on the compulsion of the plaintiff, the defendants have executed a sale agreement, without getting any sale consideration as alleged by the plaintiff. As the said agreement has been executed just as a security for the loan availed by the first defendant, the plaintiff cannot insist the defendants to execute the sale deed. There is no cause of action for the suit and the suit should be dismissed.

6. Based on the above pleadings, the trial Court has framed the following issues :

- 1) உபயவாதிகளுக்கிடையே தாவாச் சொத்தினை பொறுத்து கடந்த 27.03.2002-ல் கிரய ஒப்பந்தம் ஏற்பட்டுள்ளதா?



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2) வாதியிடம் பெற்ற கடன் தொகைக்கு கூடுதல் ஆதரவாக கிரய ஒப்பந்தமாக எழுதப்பட்டது என்பது சரியா?

3) வாதி கோரியபடி ஏற்றத்தை ஆற்றுக பரிகாரம் பெறத்தக்கவரா?

4) வாதி பெறத்தக்க வேறு பரிகாரங்கள் எவை ?

7. During the course of the trial, on the side of the plaintiff, P.W.1 was examined and Exs.A1 to A5 were marked and on the side of the defendants, D.W.1 and D.W.2 were examined and Ex.D1 was marked.

8. At the conclusion of the trial and considering the evidence on record, the Trial Court has decreed the suit and the first appeal preferred by the defendants got dismissed by confirming the judgment and decree of the trial Court.

9. The Second Appeal preferred by the defendants was admitted on the following substantial questions of law :

- i. When the respondent/plaintiff had filed the suit praying for a decree of specific performance on the basis of the alleged sale agreement dated 27.03.2002 after paying a sum of Rs.1,00,000/- out of Rs.1,20,000/- to the appellants/



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defendants, as the appellants/defendants were also not ready and willing to execute the sale deed on receiving the balance sale consideration of Rs.20,000/-, admittedly, when the respondent/plaintiff has filed to pay the balance sale consideration of Rs.20,000/- for about six months, whether the non-payment of the balance sale consideration by the respondent/plaintiff as per the judgments of the Courts below would not show that the respondent/plaintiff had failed to prove his readiness and willingness ?

- ii. When the suit for specific performance is a discretionary remedy, whether the first appellate Court, after coming to know that the respondent/plaintiff has failed to pay the balance sale consideration even after the judgment by the trial Court, can exercise the discretion in favour of the respondent/plaintiff, who has miserably failed to prove his readiness and willingness as per Section 16(c) of the Specific Relief Act ?

10. Neither the trial Court nor the Lower Appellate Court has framed the issue as to the readiness and willingness on the part of the plaintiff.

11. When the substantial portion of sale consideration, viz., Rs.1,00,000/- was paid on the date of sale agreement, the necessity to agree for three years,



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was only to expect the 1st defendant to repay the loan and not for the plaintiff to pay the balance sale consideration of Rs.20,000/-. But, this aspect has not been considered properly by the Courts below.

12. In the notice sent by the plaintiff (Ex.A4), the time for executing the sale deed has been stated as three years from the receipt of the notice. Even though the plaintiff has chosen to issue legal notice after two years from the date of sale agreement *i.e.*, on 20.03.2004, it is only to coerce and put pressure on the defendants to execute the sale deed in three years. The above conduct of the plaintiff would go to show his pressure-giving attitude. Even in the legal notice, he has not stated whether he was ready to pay the balance sale consideration of Rs.20,000/-.

13. In the aforesaid background, the following substantial questions of law have been reframed by this Court :

- i. Whether in law, the appellate Court is right in confirming the judgment of the trial Court without appreciating the absence of a specific issue as to the readiness and willingness in a suit for specific performance ?



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- ii. Whether in law, the first appellate Court is right in allowing the appeal without appreciating the fact that the sale agreement has been executed only as a security for the loan availed by the 1st defendant ?
- iii. Whether the discretionary relief of specific performance be granted without properly evaluating the equitable grounds on the side of both the plaintiff and the defendants ?

14. In the reply notice itself, the defendants have specifically stated that there is no intention to sell the property and the very purpose of executing Ex.A1 sale agreement is only to ensure a better security. It is impractical and unbelievable that the plaintiff required three years time to pay a paltry balance sale consideration of Rs.20,000/-.

15. The specific contention of the learned counsel for the defendants is that the equitable grounds were not properly evaluated by the Courts below.

16. The learned counsel for the plaintiff submitted that the sale agreement is a registered one and hence, the defendants cannot deny its execution. The defendants who deny the purport of the sale agreement contended that it was executed only to ensure a better security, have not chosen



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to examine any of the witnesses to the sale agreement on their side. P.W.1. has stated in his evidence that the 1st defendant refused to execute the sale deed immediately after the sale agreement was executed and only at his request, three years time has been fixed and now, it cannot be held against the plaintiff. Even in the legal notice, Ex.A4, the plaintiff has only called upon the defendants to execute the sale deed, after paying the balance sale consideration and hence, the plaintiff has been always ready and willing to perform his part of contract.

17. The execution of the sale agreement Ex.A1 dated 15.05.2000, is not denied. Even though the substantial sale consideration of Rs.1,00,000/- has been paid out of the total sale consideration of Rs.1,20,000/- on the date of sale agreement itself, three years time has been agreed to pay the balance consideration of Rs.20,000/- and to get the sale deed executed. According to the defendants, the sale agreement has not been executed with an intention to sell the suit property, but, it was executed only to ensure a better security for the loan amount availed by the 1st defendant from the plaintiff to the tune of Rs.1,00,000/-.



18. No doubt, the sale agreement is a registered sale agreement. The plaintiff has produced Ex.A1, sale agreement, in order to prove that the sale agreement has been executed only with an intention to sell the suit property. As per Section 91 of the Evidence Act, 1872, when the terms of a contract have been reduced into writing, the same can be proved only by producing written instruction and not otherwise and Section 92, *ibid.*, would place a bar for oral evidence, unless the contrary, as stipulated under the proviso to Section 92, *ibid.*, is proved. So, in the instant case, the defendants have pleaded that the intention to execute Ex.A1 itself is due to a different transaction and hence, the plaintiff cannot press the relief of specific performance. Hence, the burden gets shifted upon the defendants to disprove that the intention to execute Ex.A1 is not to sell the suit property, but, to consider it as a better security for the loan availed by the first defendant.

19. It was the vehement contention of the learned counsel for the plaintiff that the defendants did not prove any contrary interest, other than the intention to sell the suit property. Before advertng on the aspect of other intention than the intention stated in the sale agreement, the absence of a specific issue as to the readiness and willingness can be looked into.



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20. The learned counsel for the plaintiff submitted that the Courts below did not frame a specific issue as to the readiness and willingness, which is an essential aspect to be dealt with in a case for specific performance. No doubt, the above issue of readiness and willingness is one of the essential aspects to be proved by the plaintiff, for the purpose of getting a decree for specific performance. The discussions made by the Courts below would only reveal that the above aspect has been delved into sufficiently, though a specific issue has not been framed. The Courts below had considered the readiness and willingness on the part of the plaintiff to perform his part of contract and have convinced themselves that the plaintiff was all along ready to pay the balance sale consideration of Rs.20,000/- and get the sale deed registered.

21. So, in my opinion, the absence of a specific issue as to the readiness and willingness, loses significance in view of discussions made on the above point in order to give a crystal clear answer for the same. Even though it is proved in favour of the plaintiff that he was ready and willing to perform his part of contract, if the fundamental aspect that the contract has been entered into, not for the purpose of sale, but only as a better security for a loan transaction, the aspect as to the readiness and willingness cannot serve any purpose to the plaintiff.



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22. Further, one of the aspects that has been highlighted by the defendants is, stipulation of three years time for paying a small part of the sale consideration to the tune of Rs.20,000/-. After the registration of the sale agreement, the plaintiff is said to have been paid Rs.1,00,000/- on the same day. The said payment of Rs.1,00,000/- is considered as part sale consideration by the plaintiff. But, the defendants have asserted that it is only for the loan availed by the 1st defendant. When the major sale consideration is said to have been paid on the same day of sale agreement, it is difficult to believe that the plaintiff had agreed to wait for three years to tender Rs.20,000/- and then, get the sale deed registered. One of the reasons stated by the plaintiff for agreeing three years long time is that the 1st defendant had refused to execute the sale deed immediately and he only requested three years time.

23. No prudent person would agree for three years time for the sake of asking by the other party to the contract, unmindful of substantial payment made already towards the sale consideration. In fact, it is stated by P.W.1, in his evidence that he has negotiated sale transaction before ten years, in the presence of some friends and bargained to reduce the sale price from Rs.1,40,000/- to Rs.1,20,000/-. No buyer would patiently wait for three years, without having any anxiety.



24. The evidence of P.W.1 would further reveal that the defendants have handed over the original title deed also to him, on the date when the sale agreement was entered. The original title deed of the defendants dated 15.05.2000 has been marked as Ex.A3. Normally, the original title deed will not be handed over to the proposed buyer, before the transaction is completed. D.W.1 would also accept the said fact in his evidence. So, the handing over of the title deed, even before the completion of sale transaction along with a long duration of three years time to repay the paltry sum of Rs.20,000/-, would only show the features of a loan transaction.

25. P.W.1. has further stated in his evidence that he has approached the defendants within two months from the date of agreement of sale to receive the balance sale consideration of Rs.20,000/-, but, the 1st defendant was pulling the time. The evidence of P.W.1. further discloses that he had been asking the 1st defendant to receive the balance sale consideration on several occasions at an interval of three months or six months. Even then, the plaintiff did not choose to send legal notice immediately. So, the above conduct of the plaintiff would also reveal that during the time gained in between, the balance of sale consideration was not paid, but as an accommodative offer to the defendants to repay the loan amount, the plaintiff has sent a legal notice, Ex.A.4 on



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20.03.2004, after two years. The defendants have received the notice and sent a reply on 24.03.2004, Ex.A.5, alleging that the sale agreement has not been entered into with an intention to execute the sale, but, to treat that as a better security for the loan availed by the 1st defendant from the plaintiff.

26. It is the consistent argument of the learned counsel for the plaintiff that the defendants did not produce any document to show that they had been paying interest as alleged in their evidence, by treating the payment of Rs.1,00,000/- as loan. It is further submitted that the fact of paying interest has not been stated in the written statement of the defendants. When the 1st defendant has pleaded that he had obtained only a loan from the plaintiff, the interest component on the loan is a natural corollary, though the rate of interest should be made specific. It is true that the defendants did not adduce any evidence to show that they have been paying interest for the loan of Rs.1,00,000/- availed by them from the plaintiff. The defendants did not state that for payment of interest, the plaintiff was in the habit of issuing any receipts. Had the defendants stated so, it is fair to expect the defendants to produce those receipts. However, the 1st defendant, whose defence is that it is only a loan transaction, did not avoid the witness box and he has stated in his evidence that the sale agreement was obtained from the defendants out of



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compulsion, as they have availed a loan of Rs.1,00,000/- from the plaintiff during 2002.

27. Apart from the evidence on the side of the defendants, the imperfections and the impracticalities of the plaintiff's evidence and his conduct, can also be considered as the rebutting circumstances to disprove the contents of Ex.A1, sale agreement. As stated already, the long time of three years for payment of a short bit of Rs.20,000/- to conclude the sale transaction and the alleged repeated requests made by the plaintiff, with an interval of three to six months to receive the balance sale consideration of Rs.20,000/- and the handing over of original title deed by the defendants to the plaintiff on the date of sale agreement itself, would also serve as rebutting circumstance and that would help the defendants to prove the contrary and thereby, the burden shifted on them gets discharged.

28. At this juncture, it is relevant to mention the various judgments of this Court cited by the learned counsel for the plaintiff in support of his contention that the relief of specific performance has been granted on several occasions, notwithstanding the long periods, say three years or so, to execute the sale transaction. But, those judgments are applicable only to the set of facts



in the respective cases. Each case has to be decided on its own facts and circumstances and the length of time to execute the sale agreement, is not an isolated circumstance highlighted in this case. At this juncture, it is apropos to allude to the judgment of the Supreme Court in *Padma Sundara Rao (dead) and others Vs. State of Tamil Nadu (2002) 3 SCC 533*, wherein, it was held in no uncertain terms as under:

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537:1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

(emphasis supplied)

29. The handing over of the original title deed and the different attitude of the plaintiff in tendering the balance sale consideration of Rs.20,000/-, despite renewing the request to that effect, to the defendants, with three or six months interval, would also tilt the nature of transaction more in favour of security for a loan transaction than as a sale agreement. The Courts below, without taking into consideration of the cumulative effect of all the circumstances, evidence and the conduct of the parties, had proceeded to grant



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the relief of specific performance. Had the Courts below properly appreciated the contrary proof and the rebuttal circumstances as discussed above, that would have impacted the result of the case differently.

30. As the relief of specific performance is discretionary in nature, the Courts have got a duty to weigh equitable advantage and disadvantage caused to either parties in granting or denying the relief of specific performance. If the granting of relief of specific performance causes more disadvantages to the defendants than the plaintiff, the Court can very well grant the alternative relief of ordering repayment of advance money with interest, by the defendants to the plaintiff, instead of decreeing the suit for relief of specific performance.

31. No doubt, the value of the suit property would have got multiplied by this time. In fact, the plaintiff has also enjoyed the defendants' money of Rs.1,00,000/- for all these years and the plaintiff has lost its appreciation value. The materials on record would only prove that the sale agreement has been executed by the defendants only as a better security for the loan availed by the first defendant. In all fairness, it is appropriate to grant the alternative relief of refund of advance amount, by the defendants to the plaintiff, with interest and that would serve the purpose of equity.



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32. In view of the above discussion, the substantial questions of law reframed by this Court are answered against the plaintiff.

33. In the result, the second appeal is partly allowed and the judgment and decree of the first appellate Court dated 28.02.2011 passed in A.S.No.23 of 2010, is modified to the effect of decreeing the suit for refunding the advance amount of Rs.1,00,000/- to the plaintiff by the defendants along with interest at the rate of 10% from the date of the suit till the date of realisation. Time granted for repayment of Rs.1,00,000/- by the defendants to the plaintiff is one month from the date of receipt of a copy of this judgment. No costs. Connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

To

1.Additional District and Sessions Court
Fast Track Court No.V,
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2.Principal Sub Court
Tiruppur



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