IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.07.2025	Pronounced on: 30.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.575 of 2022
& C.M.P.No.21867 of 2022

P.Krishnan, M/52,
S/o.Palanisamy,
6-2-30, Mettu Street,
Thoramangalam Village,
Jalakandapuram,
Mettur Taluk,
Salem District. ... Appellant/Plaintiff

/versus/

Sathya, F/39,
W/o.Vijayakumar,
No.2/127, Thirunagar,
Hospital Colony,
Mettur Taluk,
Salem District. ... Respondent/Defendant

Prayer:- Appeal Suit has been filed under Order 41 Rule 1 read with Section 96 of C.P.C., pleased to set aside the judgment and decree dated 18.08.2022 made in O.S.No.329 of 2018 on the file of the Learned Additional District Court, Fast Track Court, Mettur by allowing this appeal suit.

For Appellant : Mr.N.Manokaran
For Respondent : Mr.P.Valliappan, Senior Counsel,
for M/s.P.V.Law Associates.

JUDGMENT

The suit for specific performance filed by the appellant herein to enforce the registered agreement for sale dated 26.07.2018 was dismissed by the Court below. Hence, the present appeal.

2. The case of the appellant/plaintiff, as found in his plaint, is that the respondent/defendant is the owner of the suit property and agreed to sell the same for a total consideration of Rs.16,00,000/- and received Rs.15,00,000/- in the following manner:-

a). A sum of Rs.4,00,000/- (Rupees Four Lakhs) by cash on 14.03.2018.

b). A sum of Rs.9,00,000/- (Rupees Nine Lkhs) through the Karur Vysya Bank Branch, Jalakandapuram to plaintiff's A/c.No.1630280000000101 by way of cheque No.000985 dated 15.03.2018 and a sum of Rs.2,00,000/- (Rupees Two Lakhs only) by way of cheque No.000986 dated 15.03.2018 and all in total Rs.15,00,000/- (Rupees Fifteen Lakhs only).

3. The defendant agreed to execute the sale deed on or before on 27.08.2018, after receiving the balance consideration of Rs.1,00,000/-. The agreement for sale was executed and duly registered on 26.07.2018. The plaintiff/appellant was ready and willing to pay the balance sum of Rs.1,00,000/- and get the sale deed registered in his name, the respondent/defendant refused to come forward for execution of the same. Hence, after causing notice on 20.08.2018 calling upon the respondent/defendant for execution of sale deed as agreed and his denial through notice dated 28.02.2018, the suit for specific performance laid.

4. The defendant filed written statement stating that the averment made in the plaint are false and totally denied. The age and address of the defendant, as shown in the plaint, is false. It is also denied that the respondent/defendant received a sum of Rs.15,00,000/- on various dates and agreed to sell the suit property for a sum of Rs.16,00,000/-. The registration of the alleged sale agreement dated 26.07.2018 is specifically denied. The defendant, in fact, borrowed Rs.4,00,000/- as loan and as a security, executed a bond on 21.03.2018 and handed over the title document to the plaintiff/appellant. Three cheques signed by the husband of the defendant, were also given as security. The defendant agreed to repay the loan amount of Rs.4,00,000/- with interest and other expenses. To that effect, a receipt was also given by the defendant/respondent for a sum of Rs.5,00,000/-. On 26.07.2018, the entire loan amount was discharged and agreement was duly cancelled. The appellant/plaintiff had promised to return the original document and three blank signed cheques within a couple of days, which he has kept in his bank locker. Believing his words, the respondent/defendant had kept quiet. However, misusing the documents and signatures obtained at the time of cancelling the earlier agreement, the present suit been filed.

5. The trial Court framed the following issues:-

(i). Whether the address of the defendant as shown in the plaint is wrong?

(ii) Whether the defendant agreed to sell the suit property for a sum of Rs.16,00,000/- and received an advance of Rs.15,00,000/- (Rs.4,00,000/- in cash on 14.03.2018, Rs.9,00,000/- by cheque dated 15.03.2018 and Rs.2,00,000/- by way of cheque dated 15.03.2018)?

(iii) Whether the defendant agreed to sell the suit property and executed a registered agreement for sale on 26.07.2018?

(iv) Whether the plaintiff has received Rs.4,00,000/- in cash on 21.03.2018 and handed over the suit title document and three unfilled signed cheques?

(v) Whether the defendant had received receipt of Rs.5,00,000/- from the plaintiff for discharge of the loan with interest?

(vi) Whether the defendant had cancelled the agreement for sale dated 21.03.2018 & 26.07.2018?

(vii) Whether the plaintiff has fraudulently obtained signature in the agreement for sale under the pretext of cancelling the earlier agreement for sale document?

(viii) Whether plaintiff in connivance with the Manger of Karur Vysa Bank, Jalakandapuram had forged the signature of the defendant?

(ix) Whether the plaintiff is entitled for relief prayed?

6. The above issues were re-casted on 05.01.2019 as below:-

(i) Whether the plaintiff fraudulently obtained the signature of the defendant while cancelling the earlier loan agreement document?

(ii) Whether the plaintiff with the help of Manager, Karur Vysa Bank, Jalakandapuram, forged the signature of the defendant?

7. The trial Court examined the plaintiff as P.W.1. The son of plaintiff examined as P.W.3. The scribe of the document and one of the witnesses to the document are P.W.2 & P.W.4. The defendant examined as D.W.1, the Manager of Karur Vysa Bank examined as D.W.2. 5 Exhibits on the side of the plaintiff and 15 Exhibits on the side of the defendants were marked. Ex.X.1 to Ex.X.3 were marked as Court document.

8. The trial Court dismissed the suit, holding that the plaintiff is not entitled to a decree for suit for specific performance. The passing of consideration under Ex.A1, dated 26.07.2018 was disproved by Ex.B1 dated 21.03.2018 and Ex.B2 dated 26.07.2018. That apart, the trial Court has gone in detail about the failure of the plaintiff to prove ready and willingness and all other issues against the plaintiff.

9. The appeal is filed on the ground that the Court below erred in dismissing the suit despite the contradictions in the case of the defendant. The genuineness of Ex.A1 was duly proved through scribe and the attesting witnesses. Therefore, the trial Court ought not to have given undue credence to Ex.B1 which was superseded by Ex.A1. The principle of *novation* ought to have been applied by the trial Court.

10. The Learned Counsel appearing for the appellant submitted that Ex.B1 was the prior agreement for sale since the time prescribed in Ex.B1 was about to expire, Ex.B1 was cancelled under Ex.B2 with the intention to create a fresh agreement for sale. Having admitted the loan transaction, it is the burden of the defendant to prove the same. However, in the present case, there is no proof that Ex.A1 was intended only as security for the loan. Further, the trial Court erred in holding that the appellant was not ready and willing to perform his part of the contract, despite the fact that the appellant issued pre-suit notice dated 20.08.2018 and only thereafter, filed the suit. The appellant paid more than 95% of the sale consideration, the trial Court ignoring the same has held that the plaintiff had failed to prove the readiness and willingness. The Court below nonsuited the plaintiff without considering intention and conduct of the plaintiff/appellant which proves his readiness and willingness to perform the agreement.

11. Per contra, the Learned Senior Counsel for the respondent/defendant submitted that the examination of Ex.A1, Ex.B1 & Ex.B2 just-a-position would expose the lacuna in the appellant's case. Ex.A1, dated 26.07.2018, is captioned as “Agreement for Sale Without Possession”. The sale consideration mentioned in this document is identical to the sale consideration mentioned in Ex.B1, which is also an agreement for sale without possession, dated 21.03.2018. Ex.B2 is the cancellation deed of the earlier sale agreement (Ex.B1) and it is dated 26.07.2018. This cancellation of sale deed would clearly show that the earlier passing of consideration been repaid and agreement got cancelled. For the very same consideration, there cannot be another agreement for sale. More so, the defendant has proved, through Ex.B5 & Ex.B6 that the defendant has borrowed Rs.4,00,000/- as loan from the plaintiff and had discharged the debt on 26.07.2018 and given receipt to the defendant. The plaintiff has admitted his signature in Ex.B5 receipt. This has proved the case of the defendant.

Point for determination:-

Whether the dismissal of the suit for specific performance is without proper apprehension of the evidence?

12. While the specific case of the plaintiff is that on payment of advance Rs.15,00,000/- to the defendant towards part sale consideration, he got an agreement for sale registered on 26.07.2018. It is a specifically denied by the defendant stating that on 26.07.2018, she went to the Registrar office to cancel the earlier agreement for sale entered with the plaintiff on that date the earlier agreement for sale dated 21.03.2018, was cancelled by another registered deed dated 26.07.2018. These documents are marked as Ex.B1 and Ex.B2. The defendant alleges that under the guise of registering the cancellation deed, her signature was obtained in Ex.A1. Furthermore, the case of the defendant is that there was loan transaction with the plaintiff which was subsequently discharged. However, while borrowing the loan, the signatures were obtained and same been misused. The earlier loan transaction been proved through Ex.B5 & Ex.B6 which is the receipt given by the plaintiff to the defendant for discharging the earlier loan of Rs.4,00,000/- along with interest.

13. The case of the plaintiff/appellant has to fail for the reason that in Ex.A1, he had stated that, he paid the sale consideration in the following manner:-

a). A sum of Rs.4,00,000/- (Rupees Four lakhs) by cash on 14.03.2018.

b). A sum of Rs.9,00,000/- (Rupees Nine lakhs) through the Karur Vysya Bank Branch, Jalakandapuram to plaintiff's A/c.No.1630280000000101 by way of cheque No.000985 dated on the 15.03.2018 and a sum of Rs.2,00,000/- (Rupees Two Lakhs only) by way of cheque No.000986 dated on 15.03.2018 and all in total Rs.15,00,000/- (Rupees Fifteen lakhs only).

14. On perusing Ex.B1, the earlier sale agreement, it is seen that the same payment is shown for the sale consideration. After executing Ex.B2, which is cancellation of the sale agreement dated 21.03.2018, wherein it is specifically mentioned that the defendant not interested in selling the property and in the presence of the elders, both parties agreed to cancel the agreement for sale dated

21.03.2018. When there is specific recital in Ex.B2 that the defendant is not willing to sell the property and had cancelled the earlier agreement for sale, it is against prudence that she would have entered into an agreement for sale (Ex.A1), on the very same day, for the same amount, with the same person showing the earlier consideration as a part consideration for the second agreement for sale. For this singular reason, the case of the appellant is liable to be dismissed.

15. In the result, the judgment and decree passed by the Learned Additional District Court, Fast Track Court, Mettur in O.S.No.329 of 2018 is confirmed and the Appeal Suit stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

30.07.2025

Index :Yes/No.
Neutral citation :Yes/No.
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To,
1. The Additional District Court, Fast Track Court, Mettur.
2. The Section Officer, V.R.Section, High Court, Madras.

Dr.G.JAYACHANDRAN,J.

bsm

Pre-delivery judgment made in

Appeal Suit No.575 of 2022

30.07.2025