



A.S.No.349 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 07.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.349 of 2022
and CMP.No.12610 of 2022

A.Shakeela

... Appellant

Versus

T.Fiyaz Ahmed

... Respondent

Prayer: Appeal filed under Section 96 read with Order 4 Rule 1 of Code of Civil Procedure, to set aside the judgment and decree dated 03.06.2019 in O.S.No.37 of 2015 on the file of III Additional District Court, Vellore at Tirupattur.

For Appellant : Mr.G.Ilangovan

For respondents : Mr.L.Prabakar

JUDGMENT

Challenging the decree and judgment of the III Additional District Court, Vellore at Tirupattur dated 03.06.2019 in O.S.No.37 of 2015, the present appeal has been filed.



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2. It is the case of the plaintiff that the defendant has agreed to sell the property to the plaintiff for a sum of Rs.13 lakhs and entered into an agreement of sale on 28.10.2014. On the same day, the plaintiff paid Rs.9,60,000/- to the defendant as advance and the balance sale consideration is Rs.3,40,000/-. It is agreed between the parties that the sale shall be completed within a period of six months, original sale deed was handed over to the plaintiff. The plaintiff is always ready and willing to perform his part of contract, however, the defendant neglected to execute the sale deed. Therefore, plaintiff issued legal notice dated 26.05.2015, however, there was no reply. Hence, the suit.

3. The defendant disputed the agreement for sale. It is the specific contention of the defendant that plaintiff and the husband of the defendant were into real estate business. In the said business, the defendant's husband has agreed to sell the vacant site at the rate of 830 per sq.ft., and entered into an agreement for sale on 03.02.2013. In the said agreement, the defendant's husband has received Rs.6 lakhs as advance, however, the sale could not be effected. As the sale could not effected, plaintiff insisted return of Rs.6 lakhs received by the defendant's husband. Since the defendant's husband was in financial crisis at the relevant point of time, amount



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could not be paid, however, it is agreed that interest @ 5% will be paid on Rs.6 lakhs. Therefore, in order to secure that amount, the plaintiff insisted for an agreement to be executed by the defendant. Accordingly, the defendant has executed an agreement on 28.10.2014. Now, in order to knock out the property, the suit has been filed.

4. Based on the above pleadings, the Trial Court framed the following issues:

1. Whether the suit sale agreement dated 28.10.2014 is true, valid and binding on the defendant?
2. Whether a sum of Rs.9,60,000/- is not received by the defendant towards the sale agreement and a balance of Rs.3,40,000/- is not payable under the sale agreement?
3. Whether the suit sale agreement was executed only as Security for the loan transaction?
4. Whether the plaintiff has been ready and willing to Perform his part of contract?
5. Whether the suit is entitled to be decreed as prayed for?
6. To what other relief the plaintiff is entitled to ?



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5. The Trial Court vide judgment and decree dated 03.06.2019 decreed the suit for specific performance. Challenging the judgment and decree, the present appeal has been filed.

6. The learned counsel for the appellant submitted that the agreement came to be executed only in a loan transaction, which has been clearly established, in fact, plaintiff has also admitted the same in this regard. However, the Trial Court without considering this aspect has decreed the suit for specific performance. The Trial Court has not even considered the hardship that may be faced by the defendant. He would further submit that since the agreement is arising out of loan transaction, appellant is prepared to return the entire amount. Whereas, the learned counsel for the respondent submitted that if amount is repaid, he is also entitled to interest also. He would further submit that the suit agreement has been clearly established, the Trial Court has clearly considered the entire aspect and granted the decree.

7. In light of above submissions, now, the following points arises for consideration:-



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(i) Whether the suit agreement/Ex.A2 is executed as a security for the amount payable by the defendant's husband?

(ii) Whether the plaintiff was entitled for specific performance?

8. Heard both sides and perused the materials placed on record.

Points (i) and (ii)

9. The suit proceeded as if the defendant has agreed to sell the property for a sum of Rs.13 lakhs and received a sum of Rs.9,60,000/- on the date of agreement, i.e., 28.10.2014 and it is agreed between the parties that sale shall be completed within a period of six months. As the defendant failed to execute the sale deed, the plaintiff has filed a suit. Whereas, it is the specific stand of the defendant that her husband and the plaintiff were friends. Her husband has earlier agreed to sell a vacant site for a sum of Rs.30,51,287/- and received a sum of Rs.6 lakhs. As the said sale could not be effected, the plaintiff insisted return of Rs.6 lakhs received by the defendant's husband. Since the defendant's husband was in financial crisis at the relevant point of time, amount could not be paid. Therefore, the plaintiff has obtained the sale agreement for recovery of advance amount already received by



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her husband in different transaction.

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10. Though no oral evidence contra to written contract is permissible. However, first proviso to Section 92 of the Indian Evidence Act, 1872 or Section 95 of the Bharatiya Sakshya Adhiniyam, 2023 permits oral evidence to prove that there was no due execution or there was no consideration in respect of such contract. No doubt, the initial burden to contend that this was completely a different transaction, agreement was not intended for sale of the property lies on the defendant.

11. The evidence of PW1 when carefully perused, his evidence itself in fact probabalise the case of the defendant. PW1 has clearly admitted that the defendant is a pardanashin lady, therefore, he had all his dealing with her husband. It is also admitted by the plaintiff that Rs.6 lakhs has been paid on 03.02.2013, this, in fact is contrary to the very agreement/Ex.A2 and plaint. In fact, it is pleaded in the plaint that on 28.10.2014 itself, a sum of Rs.9,60,000/- has been paid, whereas, the plaintiff in his evidence has clearly admitted that on 03.02.2013 itself, Rs.6 lakhs has been paid and another Rs.3,40,000/- paid 15 days prior to the agreement. His



evidence, in fact, clearly indicate that the very agreement has been pressed into service to secure the earlier loan. He also admitted that the defendant's husband had entered into a sale agreement/Ex.B1.

12. Having entered the agreement, he has sold the property to the third party and the advance amount was not returned to the plaintiff. Therefore, advance paid under Ex.B1 agreement is shown as advance in Ex.A2. It is categorically admitted that in Ex.A2, he has not given any separate advance. The very admission of PW1 proves the fact that only to secure the earlier amount paid to her husband under Ex.B1, as her husband did not have any other property, the agreement came to be executed by the defendant. Therefore, the very defence set up by the defendant is clearly probalised by the admission of PW1. When the very allegation in the plaint that Rs.9.60 lakhs paid on the date of agreement itself is found to be false. As per the admission of the PW1, this Court is of the view that plaintiff is certainly not entitled for specific performance on the basis of such falsity. A person coming to the Court for equitable relief has to come with clean hands. Further, the evidence clearly indicate that as the defendant is a muslim pardanashin lady, entire dealing was done with her husband. As the Ex.A2 has been executed only to secure



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granting relief of specific performance is set aside and the appeal stands allowed and suit is decreed for return of a sum of Rs.9,60,000/- with simple interest at 6% p.a., from the date of agreement till the date of realisation, with costs. Consequently, connected miscellaneous petition stands closed.

07.02.2025

Index : Yes / No
Speaking/non speaking order
dhk

To,

The III Additional District Judge,
III Additional District Court
Vellore at Tirupattur

N. SATHISH KUMAR, J.



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