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A.S.No.234 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2025

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.234 of 2022

1.Lakshmi
2.Seenu
3.Kathirvel
4.Mrs.Jayalakshmi
5.Mrs.Varalakshmi

.... Appellants

Versus

Kaliyavarathan

....Respondent

First Appeal filed under Section 96 of Civil Procedure Code, 1908 against the judgment and decree dated 24.11.2017 made in O.S.No.87 of 2015 on the file of II Additional District Court, Puducherry (UT).

For Appellants	...	Mr.V.Rajendran
For Respondent	...	Mr.T.P.Manoharan Senior counsel for Mr.T.M.Naveen



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ORDER

Aggrieved over the judgment and decree of the trial Court granting specific performance, the present appeal came to be filed by the unsuccessful defendants.

2. The parties will be referred to as per their ranks before the trial Court.

3. Brief facts leading to filing of case is as follows:

The defendants, being the owners of the property, agreed to sell the suit property for a total sale consideration of Rs.10 lakhs and executed an agreement on 18.07.2012 by receiving a sum of Rs.4 lakhs as advance. After execution of the agreement, the defendants also received a further sum of Rs.30,000/-. Sale agreement was registered on the file of Sub-Registrar, Thirukkanur. The plaintiff was always ready and willing to purchase the suit property. The plaintiff has also informed the defendants to execute the sale deed after the receipt of remaining sale consideration. As the defendants have not come forward to execute the document, the plaintiff



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has issued a legal notice on 28.02.2015 calling upon the defendants to come forward to execute the sale deed. Said notice was received by the first defendant on 07.03.2015 and fourth defendant on 02.03.2015 and defendants 2 and 3 have not claimed legal notice. The fifth defendant has not received the notice though he was available in the very same address. Hence, the suit.

4. The stand of the defendants in the written statement filed by the third defendant and adopted by others is that they never executed a sale agreement to sell the property for Rs.10 lakhs on 18.07.2012 and received a sum of Rs.4 lakhs as advance. It is their case that the plaintiff and the second defendant are friends and second defendant has borrowed a hand loan from the plaintiff and only for the purpose of said loan, a registered sale agreement was executed as collateral security. The defendants denied the fact that the plaintiff was ready and willing. The defendants state that the property is the property of the defendants and the entire transaction is based on a hand loan obtained by the second defendant from the plaintiff.

5. Based on the above pleadings, the following issues have been framed by the trial Court:



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i) Whether the sale agreement dated 18.07.2012 is true, valid and enforceable?

2. Is it true that the second defendant borrowed hand loan from the plaintiff for which the sale agreement was executed as security as alleged by D3?

3. Whether the plaintiff is always ready and willing to perform the contract?

4. Whether the plaintiff is entitled to the decree as prayed for?

5. To what other relief the plaintiff is entitled?

6. To substantiate the case of the plaintiff, the plaintiff examined himself as PW1 and marked Exs.A1 to A8 and on the side of the defendants, third defendant was examined as DW1, but no documents were marked.

7. The trial Court, after analyzing the oral and documentary evidence on both side, answered the issues in favour of the plaintiff and decreed the suit. Challenging the judgment and decree of the trial Court, the defendants are before this Court.

8. The learned counsel appearing for the appellants/defendants would submit that Ex.A1 is never intended for sale of the property and it was executed as a collateral security in respect of a loan transaction. According to learned counsel, only a sum of Rs.4,00,000/- was borrowed from the plaintiff to meet out the family expenses of the appellants/defendants. The



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three years period fixed in the sale agreement to complete the sale itself would probabalize the defence theory that Ex.A1 is not intended for sale of property. Further, the market value of the property at the relevant point of time is much higher and therefore, the very sale agreement itself is doubtful. Further, the plaintiff has also not proved readiness and willingness.

9.Per contra, learned counsel appearing for the respondent/plaintiff would submit that the defence taken by the defendants are vague in nature. Further, the stand of the defendants that the second defendant borrowed a sum of Rs.4,00,000/- and only as a collateral security, the sale agreement came to be executed by all the defendants is highly improbable. The third defendant, while deposing as DW1, categorically admitted that out of the advance amount received, she has taken a share of Rs.1,00,000/-. Hence, the very defence that Ex.A1 is not intended for sale is not proved. It is his further submission that neither the second defendant was examined nor any statement was filed. The learned counsel for respondent/plaintiff submitted that the plaintiff has proved his readiness and willingness which is not properly denied by the defendants. The plaintiff has fairly stated that he is an agriculturist and the property is an agricultural property but on the other



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hand, the defendants has failed to establish the defence. As the plaintiff has not proved his readiness and willingness to perform the contract, he is not entitled to the relief of specific performance as prayed for in the plaint.

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

- i) Whether Ex.A1 sale agreement dated 18.07.2012 is intended for sale of suit property?
- ii) Whether the plaintiff has proved his readiness and willingness from the beginning?
- iii) What relief the parties are entitled?

Point No.1:

11. The case of the plaintiff that the defendants executed Ex.A1-sale agreement dated 18.07.2012 for sale of suit property for a total sale consideration of Rs.10 lakhs and received a sum or Rs.4 lakhs as advance on the date of the agreement has not been disputed by the defendants. Ex.A1 is admittedly a registered document. The only defence taken by the defendants in the written statement is that the second defendant being the friend of the plaintiff has borrowed a sum of Rs.4 lakhs as loan and only as

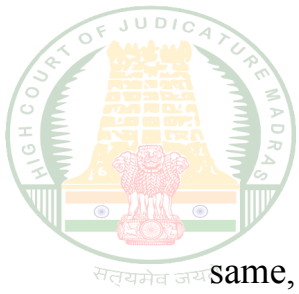


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a collateral security, the defendants have executed a sale agreement. It is relevant to note that once the execution of the document has been admitted, the party, who disputes the terms of the contract and takes a plea that the document is not intended for sale and it was executed for different purpose, the burden lies on such person to establish the said fact. The defendants, having taken a plea that there was a loan transaction, it is for the defendants to establish the said fact at least by probabilities. On a perusal of the pleadings in the written statement, it could be seen that except the evasive denial and denial in general, there were no specific denial as required under Order VIII Rule 5 of CPC. When the denial is evasive in nature, the facts pleaded in the plaint is deemed to be an admission.

12. Be that as it may, though the defendants have taken a plea that there was a loan transaction as the second defendant, who is the friend of the plaintiff, has borrowed a sum of Rs.4 lakhs from the plaintiff and the sale agreement came executed by all the defendants as a collateral security, the second defendant neither filed any statement nor examined as a witness. Therefore, the very contention of the defendants that second defendant has borrowed Rs. 4 lakhs and the sale agreement was executed in lieu of the



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same, has no legs to stand. On a perusal of evidence adduced by the DW1, it is seen that he has categorically admitted that he has received Rs.4 lakhs from the plaintiff on the date of the agreement. His admission indicate that all the defendants together received the advance amount and divided the amount as per their entitlement. Further DW1 has also categorically admitted that out of Rs.4 lakhs, DW1 (third defendant) has taken Rs.1 lakh towards his share. Therefore, his evidence is totally contrary to pleadings. This contradiction would indicate that the defence set up by the defendants was only to avoid execution of the sale deed. Once the plea of loan transaction has not been established, the terms agreed between the parties will bind on the parties. Now the defendants cannot take a contrary stand than the one agreed between them in Ex.A1-sale agreement. Accordingly, this Court holds that the defendants have not proved that Ex.A1 agreement was executed as a collateral security for the loan transaction.

Point No.2:

13. When Ex.A1-sale agreement was entered into on 18.07.2012, the time specified in the agreement is three years and a sum of Rs.4 lakhs has been paid as advance, within a period of three years, the plaintiff has also



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issued a legal notice dated 28.02.2015 under Ex.A2, the second and fourth defendants have received the legal notice and the acknowledgement cards have also been filed as Exs.A3 and A4 but they have not sent any reply. Other defendants have not claimed the legal notice. When the plaintiff has clearly pleaded that he was always ready and willing to perform his part of the contract and from the very inception he also requested the defendants to come forward to execute the sale deed by receiving the balance sale consideration, the same is not disputed in the cross-examination. When the pleadings in the chief examination are not even denied in the cross-examination, it has to be held that the said facts are admitted by the defendants. When the plaintiff has clearly spoken about readiness and willingness from the inception and his evidence is also not denied in the cross-examination, it has to be taken that plaintiff has proved his readiness and willingness. The plaintiff has also issued the legal notice within a period of three years as agreed between the parties but there was no reply from the defendants within three years time and hence, the suit was filed immediately thereafter. These facts clearly show that the plaintiff has proved his readiness and willingness also.

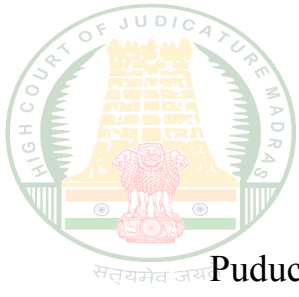


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14. It is the further contention of the defendants that the value of the suit property was higher at the time of execution of agreement for sale, but neither have they produced any document to prove the value of the property nor let in evidence to establish the fact that the property was fetching higher value at the time of execution of sale agreement. Only at the time of cross-examination, it was stated that the value of the property is more. However, there was no material whatsoever placed to show that the property was fetching higher value at the relevant point of time. Even assuming that there was escalation of price in the year 2017 when the third defendant let in evidence, that may not be a ground to decline the relief of specific performance. In any event, absolutely there is no material placed before the Court to countenance the submission of learned counsel for appellants that the property was fetching more value. Accordingly, the second point is also answered in favour of the plaintiff and against the defendants.

15. Hence, this Court do not find any merits in the appeal and the same is dismissed. The judgment and decree of II Additional District Court,



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Puducherry dated 24.11.2017 in O.S.No.87 of 2015 is confirmed. There shall be no order as to costs.

28.02.2025

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To

1. II Additional District Court
Puducherry (UT)
2. The Section Officer
VR Section Madras High Court



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N. SATHISH KUMAR, J

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