



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23-03-2026 :::: Pronounced on : 05-06-2026

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

**AS No. 515 of 2016
and CMP Nos. 17009, 12188 & 18867 of 2016**

G.Vijaya

..Appellant(s)

Vs

A.Maharani

..Respondent(s)

Prayer : This Appeal Suit filed to set aside the judgment and decree dated 29.04.2016 made in O.S. No. 2 of 2014 on the file of III Additional District and Sessions Judge, Cuddalore at Vridhachalam.

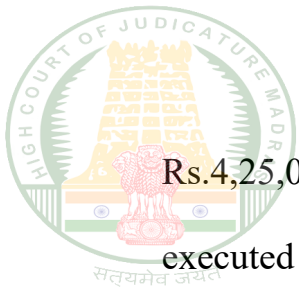
For Appellant(s): Mr.K.R.Gunashekar

For Respondent(s): Ms.V.Srimathi

J U D G M E N T

The present Appeal suit has been filed seeking to set aside the judgment and decree dated 29.04.2016 passed in O.S.No. 2 of 2014 by the Additional District And Sessions Judge-III, Cuddalore at Vridhachalam.

2. The case of the Plaintiff is that the defendant approached the Plaintiff with an offer to sell the suit schedule Property for a sum of Rs.20,00,000/-. At that time, the Defendant informed the Plaintiff that she had borrowed a sum of



Rs.4,25,000/- from one Mrs. Geetha, wife of Mr. Gunasekaran and had executed a Sale Agreement dated 23.03.2009 in her favour for the name sake of it. The defendant further stated that she had also borrowed a sum of Rs.8,00,000/- from the said Mr.Gunasekaran and had executed another sale agreement in his favour only for the name sake. The defendant further represented that the Suit Property was free from encumbrance and consequently executed a Sale Agreement dated 21.06.2012 in favour of the Plaintiff. It is averred that defendant had already received a sum of Rs.13,00,000/- from the Plaintiff prior to the agreement and a further sum of Rs.5,00,000/- was paid at the time of execution of the Sale Agreement. The balance Sale Consideration, namely a sum of Rs.2,00,000/- was agreed to be paid to the defendant at the time of execution of the Sale Deed in favour of the plaintiff on or before 20.06.2014. The Sale Agreement was executed and registered in the presence of witnesses, and the Defendant also handed over the original title deeds relating to the suit property to the Plaintiff

3. The Plaintiff avers that she was always ready and willing to perform her part of the contract and when she had called upon the Defendant to execute the Sale Deed the Defendant failed and refused to do so. Consequently, the Plaintiff issued a legal notice dated 27.11.2013 to the defendant. Though the defendant received the said notice, she issued a false reply to it. Thereafter, the defendant attempted to alienate the suit schedule property in favour of third



parties, in violation of the Sale Agreement dated 21.06.2012. Hence, the Plaintiff instituted the present suit seeking Specific Performance of the Contract of Sale Agreement by directing the Defendant to execute the Sale Deed in favour of the Plaintiff and for a permanent injunction restraining the defendant from alienating the suit property in favour of other parties.

4. The defendant filed a written statement specifically denying that she had agreed to sell the suit schedule property to the Plaintiff for a sum of Rs.20,00,000/- in the first place. The defendant admitted that she had borrowed a sum of Rs.4,25,000/- from one Mrs.Geetha, wife of Gunasekaran and had executed a Sale Agreement dated 23.03.2009 merely for name sake. The Defendant further admitted that she had received a sum of Rs.8,00,000/- from the said Gunasekaran and in accordance with village custom she had executed another name sake Sale Agreement dated 03.03.2010 in his favour at his request. The defendant further contended that in order to discharge the aforesaid loans, she had borrowed a sum of Rs.18,00,000/- from the Plaintiff and had executed the Sale Agreement dated 21.06.2012 only as a name sake document and not with an intention to convey the Suit property. It was further averred that the suit property consists of three floors and is worth more than Rs.2 crores. According to the defendant, the Plaintiff had instituted the suit with an intention to gain unlawful advantage and had undervalued the suit by paying insufficient court fee. The defendant therefore contended that an Advocate Commissioner



ought to be appointed, with the help of an Engineer, to measure the suit property assess its actual value.

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5. The Defendant further denied the Plaintiff's allegations regarding issuance of legal notice, receipt thereof, the subsequent issuance of a false reply to it and the alleged attempt to alienate the suit property in favour of third parties. It was also contended that the suit property had been purchased by the Defendant's husband and that the construction thereon had also been made using his income. Therefore the Defendant avers that she is not the absolute owner of the suit schedule property. Accordingly in view of the above submissions made the Defendant prayed for dismissal of the suit.

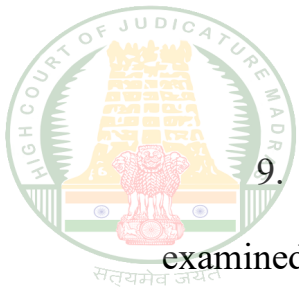
6. Based upon the aforesaid pleadings the Learned Trial Court had framed following issues which needs to be determined,

1. Whether the sale agreement dated 21.06.2012 is true. Valid and enforceable one?
2. Is it true that the defendant borrowed loan from the plaintiff and executed the sale agreement only as a name sake?
3. Whether the plaintiff is always ready and willing to perform the contract of sale agreement?
4. Whether the plaintiff is entitled to the decree prayed?
5. To what relief the plaintiff is entitled to ?



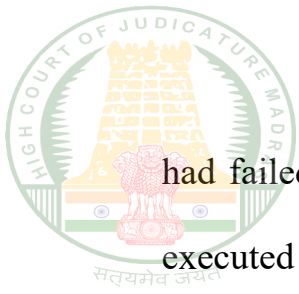
7. On the Plaintiff's side, the plaintiff examined herself as PW1 and marked five documents as Ex.A.1 to Ex.A5. The plaintiff had also examined PW2, who is scribe of the Sale agreement dated 21.06.2012. On the defendant side, the defendant herself examined as DW1 and examined the attesor of said sale agreement as DW2.

8. The Learned Trial Court after hearing both sides and perusing the materials available on record, had determined the aforesaid issues vide its judgement dated 29.04.2016. Insofar as Issue Nos.1 and 2 are concerned, the learned Trial Court noted that the Sale Agreement dated 21.06.2012 had been marked as Ex.A2 and the Plaintiff had examined the scribe of Ex.A2 as PW2. The Trial Court observes that the PW2 had deposed regarding the execution of Ex.A2 by the defendant and the receipt of a sum of Rs.5,00,000/- by the defendant from the Plaintiff on the date of the Sale Agreement. PW2 further deposed that he had drafted the entire Sale Agreement and that the contents stipulated therein were true and correct. The learned Trial Court therefore held that the evidence of PW2 corroborated the case of the Plaintiff (PW1) with regard to the execution of the Sale Agreement by the defendant in favour of the Plaintiff.



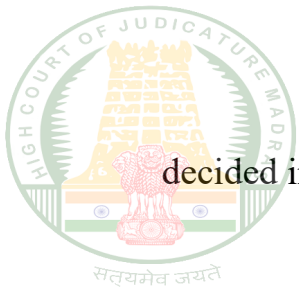
9. The learned Trial Court further noted that the defendant who was examined as DW1, had deposed on the date of execution of Ex.A2, another agreement with regard to the loan transaction had been made and she had no intention of selling the Suit schedule Property and further deposed that she is willing to pay the sum of Rs.20,00,000/- back to the Plaintiff along with interest. The DW1 in deposition had agreed to the execution of the Sale Agreement dated 21.06.2012, but deposed that it was towards the Loan amount she had gotten from the Plaintiff. The learned Trial Court had held that Ex.A2 being the registered Sale Agreement the defendant cannot depose against its content as per the section 92 of Indian Evidence Act. Further the learned Trial Court had also held that upon perusal of Ex.A1, which is the Original Sale Deed of the Suit Schedule Property, marked by the plaintiff, clearly shows that it was the defendant who had purchased the property under Ex.A1, therefore the plea of DW1 that the suit property being purchased by her husband and her not being the absolute owner of the Suit Property does not stand. The DW1 further in her reply notice marked as Ex.A5, had not taken the plea that the suit property belonged to her husband nor she had mentioned anything related to loan.

10. The learned Trial court had held that the defendant (DW1) has not produced any evidence to substantiate her contention that the Suit Property is worth more than Rs.2 crores. It was also categorically held that the Defendant



had failed to adduce any evidence in support of her plea that Ex.A2 had been executed merely as a name sake document in relation to the loan transaction. On the other hand, the evidence of PW2 clearly corroborated the case of the Plaintiff with regard to the execution of Ex.A2. Similarly PW2 also denied the suggestion that Ex.A2 was not a genuine document. Accordingly, the learned Trial Court decided the aforesaid issues in favour of the Plaintiff and against the Defendant.

11. Insofar as Issue No.3 is concerned, the learned Trial Court observed that, according to the plaint, the sale consideration had been fixed at Rs.20,00,000/- and on the date of execution of the Sale Agreement (Ex.A2) the Plaintiff had paid a sum of Rs.5,00,000/- to the Defendant, apart from the earlier payment of Rs.13,00,000/-. It was further noted that the Plaintiff had subsequently deposited the balance sale consideration of Rs.2,00,000/- before the Trial Court after an *ex parte* decree came to be passed against the defendant. The learned Trial Court further noted that the Plaintiff had paid the entire sale consideration as contemplated under Ex.A2 along with the deposition of the Plaintiff as PW1, wherein she had expressed her readiness and willingness to perform her part of the contract. Accordingly, the learned Trial Court held that the Plaintiff had clearly established her readiness and willingness to perform her part of the contract under the Sale Agreement (Ex.A2), as contemplated under Section 16(c) of the Specific Relief Act, 1963 and consequently the said issue was



decided in favour of the Plaintiff.

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12. Insofar as Issue No.4 is concerned, the learned Trial Court observed that, the Issue Nos.1 and 2 were decided in favour of the Plaintiff. The Trial Court further relied upon the evidence of PW1 and PW2 regarding the execution of Ex.A2 along with the Plaintiff's readiness and willingness to have the Sale Deed executed. It was also observed that the Plaintiff had already paid the entire sale consideration of Rs.20,00,000/-. Accordingly, the learned Trial Court held that the Plaintiff had established her readiness and willingness to perform her part of the contract and was therefore entitled to the relief of specific performance of the Sale Agreement. Consequently, the said issue was answered in favour of the Plaintiff.

13. Insofar as Issue No.5 is concerned, the learned Trial Court held that, in view of its decision under Issue No.4 granting the relief of Specific Performance of the Sale Agreement in favour of the Plaintiff, the Plaintiff was not entitled to any other relief apart from the said relief.

14. Heard Mr.K.R.Gunashekar, learned counsel for the appellant and Ms.V.Srimathi, learned counsel for the respondent.

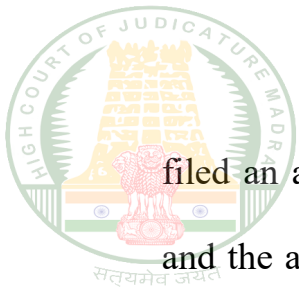


15. The learned counsel appearing for the appellant would submit that the respondent/plaintiff had instituted a suit on the strength of the Ex.A2. He would submit that a practice prevalent in the locality was execution of a Sale-agreement as a security for the loan transactions made between the parties. He would submit that the appellant had earlier entered into two such agreements with one Geetha and her husband for a sum of Rs.4,25,000/- and Rs.8,00,000/-. Only to repay the same, the appellant had requested the respondent for advancement of loan and had executed the Ex.A2. He would submit that the cancellation of the earlier sale agreement prior to execution of Ex.A2 itself would substantiate that Ex.A2 was executed only as security between the appellant and the respondent. To substantiate the same, apart from the appellant being examined herself as DW1, the appellant had also examined DW2 the attester to the document which the Court had failed to take note of in coming to the reasoning for various issues under which it had affirmed Ex.A2 to be only an agreement of sale and the respondent was entitled to a decree of specific performance. He would further submit that the Court had weighed itself based upon the deposits made pursuant to an exparte decree which had been set aside. Therefore, he would submit that the deposit of salary or payment of salary of Rs.2 lakhs made by the respondent ought to have been taken would not be the value under Ex.A2. That apart, he would submit that the Court below had failed to note that the Ex.A2 was of the year 2012 under which major portion of the consideration has been paid and only Rs.2 lakhs was remained to be paid and in



that context, he would submit that if the respondent was ready and willing, no reasons have been attributed as to why she has not attempted to make out the payment within the time stipulated and had waited for almost 1 ½ years before issuing lawyer's notice under Ex.A3. According to him, this itself would substantiate whether the relationship between the appellant and the respondent was only with regard to the money transaction and no more. He had also relied upon various judgments to contest that there should be a consensus ad idem between the party to the transaction and in this connection, there cannot be any transaction between the appellant to convey the suit property and the same had been only made as security and nothing more. Hence, he prays indulgence of this Court.

16. Countering his arguments, Ms.V.Srimathi, learned counsel appearing for the respondent would submit that even though it is the claim of the appellant that Ex.A2 was only a loan transaction as per the custom prevailing in the locality. The appellant had not brought in any evidence before this Court to establish such a customary practice in the locality. Even the appellant claim that the property would be valued more than Rupees Two Crores and therefore, Ex.A2 was a sham and nominal document. He would submit that the appellant had failed to produce any evidence whatsoever to substantiate the value of the property as claimed by her. She would further submit that the appellant purposefully remained exparte and suffered an exparte decree and thereafter

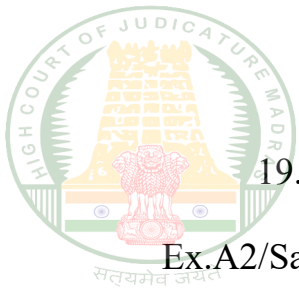


filed an application to set aside the ex parte decree, which came to be allowed and the attempt made by the appellant is nothing but the delay the fruits of the Ex.A2 by prolonging the litigation. She would further submit that the Court below had categorically found that no such evidence had been placed by the appellant for the Court to come to a different conclusion, there is no necessity for this Court to interfere with the well reasoned judgment and decree. Hence, prays this Court to dismiss the appeal suit. On the aforesaid finding and reasoning, the trial Court had granted a relief on specific performance as prayed for.

17. I have considered the submissions made by the learned counsel appearing on either side and had perused the materials available on record.

18. The point that arise for consideration in the Appeal Suit are :-

- (a) Whether the Court below was right in holding under Ex.A2 was a simplicity agreement of sale;
- (b) Whether the Court was right in holding that the agreement holder was always ready and willing to perform his part of contract;



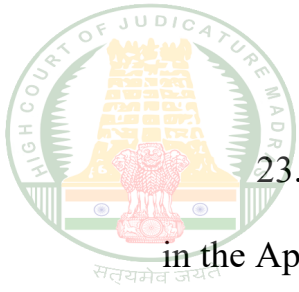
19. A primordial contention to the claim made by the respondent was that Ex.A2/Sale agreement had been executed by the appellant only for the purpose of a security for the monies that were advanced by the respondent to service the loan taken from third parties. It is the further case that even with the third parties such sale agreements were executed and on payment of the amounts, the same were cancelled. To substantiate such claim that earlier sale agreements were cancelled and that such customary practices prevail in the locality to execute such sale agreement as security, no evidence had been let in by the appellant. DW2 the attester of the document had been examined and even in his cross-examination, he had admitted execution of Ex.A2 consciously by the appellant had been clearly deposed. In the written statement filed by the appellant, she had admitted that of the part payment made in the document. Rupees 11 lakhs had been paid to one Gunasekaran towards the principal and interest and Rs.2 lakhs towards the dues for a chit amount and that the appellant had received a sum of Rs.5 lakhs. However, the appellant had denied such sale agreement. The Court had taken note of Ex.A5, reply notice sent by the appellant to Ex.A3. The said reply notice do not dispute the execution of Ex.A2 in entirety as well as the relationship between the parties. The reply notice do not dispute Ex.A2 on the said loan transaction between them. Only in the written statement, an attempt had been made by the appellant to dispute Ex.A2 to be a security pursuant to the loan transaction. Even to substantiate the same, no evidence had been let in.



20. For the aforesaid reasons, this Court do not find any infirmity in the findings and reasoning of the trial Court in holding that Ex.A2 is nothing sort of agreement of sale.

21. Readiness and willingness:-

As an alternative plea, the readiness and willingness of the respondent had also been contested by the appellant. The execution of the Ex.A2 had been admitted, but had been contested only to be a document of security which this Court had found otherwise as supra. Under the said document, advance of consideration to the tune of Rs.18 lakhs for various reasons had been admitted to by the appellant. What remained to be paid was Rs.2 lakhs. Under Ex.A3, the respondent had called upon the appellant to execute the sale deed pursuant to Ex.A2. The reply of the appellant under Ex.A5 blankly denies the execution of Ex.A2. There is no contest by the appellant either with the nature of the document nor the readiness and willingness of the respondent in performing her part of the contract. This would only show that the appellant had been trying to evade the execution of the sale deed pursuant to Ex.A2 and that as rightly pointed out by the Court, the respondent had always been ready and willing to perform her part of the contract.



23. For the aforesaid reasons, this Court do not find any reasons or merits in the Appeal suit, accordingly dismissed. CMPs closed. No order as to costs.

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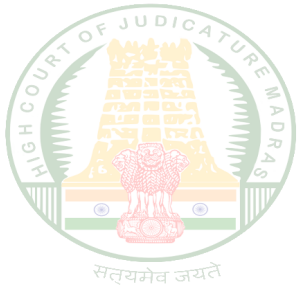
Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

The III Additional District and Sessions Judge,
Cuddalore at Vridhachalam.



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K.KUMARESH BABU, J.

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AS No. 515 of 2016

Dated : 05-06-2026