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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-04-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 559 of 2020

N.Kumarasamy

..Appellant(s)

Vs

1. Nagavalli
2. A.V.Ganesh
3. Sreenath

..Respondent(s)

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code, pleaded to set aside the Judgment and decree dated 26.09.2019 passed by the Learned II Additional District Judge, Puducherry in AS.No. 82 of 2018 reversing the judgment and decree dated 20.09.2018 passed by the Learned Principal Sub Judge, Puducherry in O.S.No.179 of 2009 .

For Appellant(s):

Mr.R.Thiagarajan

For Respondent(s):

Mr.S.Sudarshan for

Mr.S.Subramanian for R1

R2 – Notice dispensed with

R3 – Notice Served- No appearance

JUDGMENT

The unsuccessful plaintiff is the appellant herein. He filed a suit for specific performance of agreement dated 18.04.2009. The suit was decreed by the trial Court. On appeal filed by the second defendant, the First Appellate Court set aside the decree for specific performance and modified the same by directing the defendants 3 and 4 to refund the advance amount of Rs.3,50,000/- to the plaintiff. Aggrieved by the denial of main relief of specific performance, the plaintiff has come before this Court.



2. According to the appellant / plaintiff, the suit property belong to first defendant. He entered into a sale agreement with the first defendant for purchase of the suit property on 18.04.2009 marked as Ex.A3. The agreed sale consideration was Rs.4,00,000/- and advance of Rs.3,50,000/- was paid on the date of sale agreement. It was further agreed that the balance amount had to be paid within a period of one month. It is further pleaded by the plaintiff that eventhough he was ready and willing to perform his part of the contract, the first defendant evaded execution of sale agreement. Hence, a pre suit notice was issued on 03.07.2009, calling upon the first defendant to execute the sale deed pursuant to the suit sale agreement. The first defendant who received the notice came up with a reply denying the agreement itself. The plaintiff also acquired knowledge that first defendant sold the property to second defendant on 25.06.2009. In these circumstances, the above said suit was filed seeking specific performance of the suit sale agreement.

3. The first defendant filed a written statement and denied the suit sale agreement. It was her case that she entered into a sale agreement with second defendant for selling the agreement mentioned property on 09.01.2009 for sale consideration of Rs.3,60,000/- after receiving advance amount of Rs.10,000/-. Subsequently, on 26.06.2009, the first defendant executed a sale deed in favour of second defendant after receiving the entire sale consideration and delivered possession of the subject property in favour of second defendant. While denying



the execution of suit sale agreement in favour of plaintiff, the first defendant also pleaded that plaintiff was a financier and her husband borrowed a sum of Rs.2,00,000/- from the plaintiff and handed over original title documents, signed blank stamp papers and Canara bank cheque in favour of plaintiff as a security for proper repayment of the said borrowed amount. The present suit has been filed by the plaintiff fabricating the sale agreement. On these pleadings, she sought for dismissal of the suit.

4.The second defendant who is a subsequent purchaser filed a written statement denying the suit sale agreement. She also asserted that there was a previous agreement between her and first defendant on 09.01.2009 for purchase of subject property for a sale consideration of Rs.3,60,000/- and pursuant to the said sale agreement, a sale deed was executed by first defendant in favour of second defendant on 25.06.2009. The second defendant also raised plea of bonafide purchaser.

5.Before the trial Court, the plaintiff was examined as P.W.1. One of the attesor to suit sale agreement was examined as P.W.2. Scribe of the suit sale agreement was examined as P.W.3. On behalf of the plaintiff thirteen documents were marked as Ex.A1 to A13. The first defendant who filed a written statement subsequently died and her legal representatives were brought on record as defendants 3 and 4. However, they remained ex-parte. On behalf



of the second defendant, she was examined as D.W.1 and three documents were marked as Ex.B1 to Ex.B3.

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6.The trial Court on appreciation of evidence available on record came to the conclusion that suit sale agreement was a genuine document and second defendant was not bonafide purchaser and consequently, decreed the suit for specific performance. Aggrieved by the same, the second defendant preferred first Appeal in A.S.No.82 of 2018 on the file of II Additional District Court, Puducherry. The first Appellate Court on re-appreciation of the evidence came to the conclusion that suit sale agreement was not really intended for selling the suit property and it was only executed as a security for a loan transaction. Therefore, the First Appellate Court set aside the decree for specific performance and ordered for return of the advance amount. Aggrieved by the said judgment and decree, the plaintiff has come before this Court.

7.At the time of admission, this Court formulated the following substantial questions of law by order dated 29.10.2020 and the same are as follows:-

A)Whether the Appellate Court was right in concluding that the plaintiff is not entitled to a decree for specific performance on the ground that Ex.A1 agreement was intended to secure a loan transaction?

B)Whether the Appellate Court was right in concluding that the second defendant is a bonafide purchaser for value without notice



of the agreement between the plaintiff and the first defendant over looking the specific admissions in the evidence of D.W.1, which go a long way to show that the second defendant was aware of the existence of the agreement between the plaintiff and the first defendant.

8.Elaborating the substantial question of law formulated at the time of admission, the learned counsel for the appellant would submit that the execution of suit sale agreement has been properly proved by the plaintiff by examining one of the attester to the said document and scribe of the agreement. However, the first defendant who was signatory to the Ex.A3 agreement failed to enter the witness box. In such circumstances, according to the counsel, the First Appellate Court committed serious error in coming to the conclusion that suit sale agreement was executed as a security for loan transaction. The learned counsel further submitted that during the course of evidence, the second defendant clearly admitted that the plaintiff paid a sum of Rs.3,50,000/- to the first defendant and executed suit sale agreement. Therefore, finding rendered by the First Appellate Court that second defendant was a bonafide purchaser is vitiated by non consideration of material evidence available on record.

9.The learned counsel for the respondents would submit that even as per the case of the plaintiff in the pleadings on the date of sale agreement, the plaintiff and the first defendant entered into another sale agreement in respect of



the property at Tindivanam. The sale consideration was Rs.2,50,000/-. The plaintiff paid sum of Rs.2,00,000/- to first defendant agreeing to pay the balance consideration within a month. The learned counsel further submitted that plaintiff also pleaded that on the very same date, the first defendant borrowed a sum of Rs.5,00,000/- from the plaintiff and issued a cheque and same was bounced. The learned counsel for the respondents submitted that if the appellant had sufficient funds to pay Rs.5,00,000/- as loan on the very same date, he could have easily paid the balance consideration under the two sale agreements and got the pucca sale deed executed on the very same date. In such circumstances, the transaction pleaded by the plaintiff is highly doubtful and the First Appellate Court rightly came to the conclusion that suit sale agreement was not a genuine document and it was executed only as a security for loan transaction. The learned counsel also submitted that eventhough the time limit fixed for performance of the suit sale agreement was one month, the plaintiff failed to take any steps to pay the balance sale consideration and get the document executed within time stipulated. He issued notice only on 03.07.2009. Hence, the plaintiff has not proved his readiness and willingness. The learned counsel also submitted that the trial Court not even framed any issue regarding readiness and willingness. As a result, according to him, the First Appellate Court rightly set aside the decree for specific performance.



10. There is a controversy in the pleadings of the parties with regard to the genuineness of the suit sale agreement. Being a propounder of the document, it is for the plaintiff to prove the due execution of Ex.A3 sale agreement. In order to prove the same, the plaintiff examined one of the attester to the suit sale agreement as P.W.2, he clearly deposed about the execution of sale agreement between the plaintiff and the first defendant. He also deposed about payment of advance amount of Rs.3,50,000/- by plaintiff to the first defendant. The scribe of suit sale agreement was examined as P.W.3. He also deposed about due execution of the suit sale agreement. The evidence of P.W.2 and P.W.3 complementary to each other. The defendants failed to elicit any admission from the P.W.2 and P.W.3. In such circumstances, undefeated evidence P.W.2 and P.W.3 certainly proves due execution of Ex.A3 suit sale agreement. Though, it was pleaded by the defendants the suit sale agreement was not a genuine document and it was created by utilising the signed stamp papers handed over to the plaintiff as a security for loan transaction, in order to prove the said plea neither the first defendant nor her legal representatives namely defendants 3 and 4 entered the box. The defendants 3 and 4 conveniently remained ex-parte and second defendant has not taken any steps to call them as their witness. In the absence of any contra evidence in support of the plea raised by the defendants, this Court concludes the evidence of P.W.2 and P.W.3 are sufficient to come to the conclusion that suit sale agreement Ex.A3 is genuine document.



11. Therefore, the question of law “A” is answered in favour of the appellant and the finding entered by the First Appellate Court that suit sale agreement was not intended to be a sale agreement and it was executed as a security for loan transaction is not sustainable.

12. A perusal of evidence of D.W.1 would indicate, the second defendant in her evidence clearly admitted that on 18.04.2009, plaintiff entered into sale agreement with the first defendant and paid a sum of Rs.3,50,000/- to the first defendant. Though in her chief examination she denied the agreement. During the course of cross examination she admitted the suggestion of the plaintiff that first defendant received advance amount of Rs.3,50,000/- Therefore, second defendant had knowledge of the suit sale agreement and under such circumstances she cannot be treated as a bonafide purchaser for value without notice of a previous agreement. The Substantial question of law “B” is also answered in favour of the appellant and this Court comes to the conclusion that second defendant is not a bonafide purchaser.

13. As mentioned earlier the suit sale agreement was executed on 18.04.2009 and the sale consideration was Rs.4,00,000/-. The plaintiff paid advance amount of Rs.3,50,000/- to first defendant. The balance amount of Rs.50,000/- was agreed to be paid within a period of one month. In Ex.A3, there



is a default clause which says, in case the agreement Vendee failed to pay balance sale consideration and get the sale transaction paid within a time stipulated, he must lose his advance amount. Likewise, in case of failure on the part of agreement vendor, the agreement vendee was given right to seek specific performance against the vendor. In the case on hand, the time limit prescribed under the suit sale agreement expired on 18.05.2009. However, the first notice seeking performance was issued by the plaintiff only on 03.07.2009 under Ex.A4. Immediately after receipt of pre suit notice, the first defendant issued a reply denying suit sale agreement on 06.09.2009. As seen from Ex.A5, even after repudiation of suit sale agreement in the reply notice by the first defendant, plaintiff failed to approach the Court immediately. The present suit has been filed only on 23.12.2009. Therefore, it is clear there is a delay of more than one and half months in issuing pre suit notice demanding specific performance. Thereafter, the plaintiff waited nearly six months to present the suit seeking specific performance. It is also seen from the trial Court Judgement, the balance amount of Rs.50,000/- was deposited into Court only on 25.01.2020. The delay in issuing pre-suit notice and the delay in filing the suit etc., clearly point to the fact that plaintiff was not ready and willing to perform his part of the contract within time stipulated therein. It is for the person seeking specific performance to establish his readiness and willingness from the inception to the date of filing of the suit. In the case on hand, as mentioned earlier, there was unexplained delay on the part of the plaintiff in issuing pre suit notice. The trial Court not



even framed any issue with regard to readiness and willingness. It is seen from the averment in the plaint that on the very date of suit sale agreement the plaintiff entered into another sale agreement for purchase of property at Tindivanam and paid advance amount of Rs.2,00,000/- under the said agreement. Apart from that he also paid another Rs.5,00,000/- as loan to the first defendant. When he had wherewithal to pay loan amount to the tune of Rs.5,00,000/- to the agreement vendor, he could have easily paid the balance sale consideration and got the sale deed executed immediately or atleast within the stipulated time limit of one month. The failure of the plaintiff to pay the sale transaction within the time stipulated in the agreement and delay in issuing pre suit notice etc., only points to the lack of readiness and willingness on his part. Ultimately, the pre suit notice was issued by the plaintiff only after execution of sale deed by first defendant in favour of second defendant. Therefore, this Court comes to the conclusion that plaintiff failed to prove his readiness and willingness to perform his part of the contract within time stipulated in the agreement and hence, he is not entitled to main relief of specific performance. Therefore, I concur with the final conclusion reached by the First Appellate Court on different reasoning. Even though the substantial questions of law framed at the time of admission are answered in favour of the appellant, in view of the conclusion reached by this Court that plaintiff failed to prove his readiness and willingness, the second appeal fails and the judgment and decree passed by the First Appellate Court stands confirmed.



14. With the above observations, the Second Appeal stands dismissed. No costs.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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S.SOUNTHAR, J.

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To:-

- 1.The Principal Sub Judge, Puducherry.
2. II Additional District Judge, Puducherry.

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