

(2003) 02 MAD CK 0148
In the Madras High Court
Case No : A.S. No. 1007 of 1987

M. Ramalingam (died), R. Ramesh, Sailakshmi, R.
Krishnakumar and Lalitheswari

APPELLANT

Vs

V. Subramanyam (died), S. Prema, Veerasamy, Hari and
Sudha

RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : AIR 2003 Mad 305 : (2003) 1 MLJ 694

Hon'ble Judges : M. Chockalingam, J;A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : C.R. Prasannan, for the Appellant; M. Chinnasamy, for M. Haja Mohideen Gisthi, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—The defendant and his legal representatives are the appellants herein.

2. This appeal has arisen from the judgment and decree made by the learned Subordinate Judge, Coimbatore granting a decree in favour of the first respondent/plaintiff.

3. The first respondent/plaintiff has filed a suit for specific performance with the following averments:

The suit property belonged to the defendant. The defendant entered into a written agreement with the plaintiff on 22.5.1978 agreeing to convey the suit property to the plaintiff for a consideration of Rs. 40,000/-. A sum of Rs. 25,000/- was received by the defendant as advance, and he acknowledged its receipt in the agreement. On the date of agreement, the defendant received a sum of Rs. 10,000/- from the plaintiff as further advance. The balance of Rs. 5,000/- was to be paid within six months from the date of agreement. The

plaintiff was ready and willing to pay Rs. 5,000/-, and when he tendered the same in person on several occasions, the defendant was evading to receive the same. He issued a notice to the defendant on 30.10.78. The said notice has been returned unserved. Hence, the plaintiff was constrained to file the suit.

4. The suit was contested by the defendant by filing a written statement with the following averments:

The alleged agreement and the alleged payment of advance are all false. The defendant and the plaintiff were friends. The defendant was doing business at Coimbatore from 1986 as forest contractor. The defendant has sold 15 cents of land to the plaintiff. Due to financial crisis, the defendant approached the plaintiff and received Rs. 15,000/- as loan. The defendant executed a promissory note on 31.12.1977. On 21.1.1978, the plaintiff gave Rs. 43,075/- only to the defendant and obtained a pronote for Rs. 50,000/- from the defendant. The plaintiff has also obtained an agreement from him in respect of the sale of 12.25 acres in S. No. 224, 216/2, 217/1 and 233 of Thekkampatti Village in favour of Chitharanjan. The plaintiff has also obtained his signatures in blank papers. Since the defendant was in need of money for paying kist, he approached the plaintiff and asked for a loan. The plaintiff after deducting Rs. 3,462.50, gave Rs. 21,531.50 to the defendant and obtained a pronote for Rs. 25,000/-. He also obtained a receipt from him for Rs. 15,000/- in the name of Chitharanjan. When the defendant was facing problems in his business, he required money, and hence, he approached the plaintiff. The plaintiff told the defendant that he should sell his house property at Karamadai Road, Mettupalayam. The defendant handed over the original title deeds in respect of the said property to the plaintiff for perusal. On 22.5.1978, the plaintiff gave a cheque for Rs. 20,000/- to the defendant. The plaintiff obtained a pronote dated 25.5.78 from him for Rs. 50,000/-. The plaintiff also obtained a receipt from him for Rs. 35,000/-. For the due repayment of the said amounts, the plaintiff obtained an agreement from him for the sale of the suit property for Rs. 40,000/- and registered the same. The said agreement was made by the plaintiff on his own. The defendant has not given his consent to the contents in the agreement. Thereafter, the defendant paid Rs. 1,375/- to the plaintiff on 27.6.1978 and obtained a receipt therefor. Taking advantage of the circumstances faced by the defendant, the plaintiff forged documents, and hence, the agreement did not bind the plaintiff. The defendant did not execute any agreement agreeing to sell his property. The plaintiff was not entitled to get a decree for specific performance. Hence, the suit was to be dismissed.

5. The trial Court framed the necessary issues and tried the suit. After hearing the rival submissions and considering the evidence, both oral and documentary, the learned Subordinate Judge found that the plaintiff was entitled to the reliefs asked for and accordingly granted a decree for specific performance in favour of the first respondent/plaintiff. Aggrieved defendant has brought forth this appeal.

6. The appellant aggrieved over the rejection of his defence in a suit for specific

performance has brought forth this appeal. As seen above, the specific case of the plaintiff was that the appellant/defendant executed a registered agreement for sale on 22.5.1978 marked as Ex.A1, wherein he agreed to sell the plaintiff Schedule mentioned property for a consideration of Rs. 40,000/-; that out of the sale consideration, the major part viz. Rs. 35,000/- was already paid; that the plaintiff was ready and willing to pay the balance of consideration of Rs. 5,000/-; that the evasion on the part of the defendant to complete the sale transaction constrained the plaintiff to cause a notice under Ex.A2 dated 30.10.1978, and the non-compliance of the obligation of the defendant under Ex.A1 agreement necessitated him to file the suit. The first appellant/defendant though has admitted the execution of Ex.A1 sale agreement and the receipt of Rs. 35,000/- as stated by the plaintiff, contested the suit by raising a plea that it was only a loan transaction between the parties; that the parties never intended to have any sale transaction as put forth by the plaintiff; and that Ex.A1 agreement was never intended to be acted upon, but it was got executed by the plaintiff in order to assure the proper repayment of the loan availed by the plaintiff that time. In order to prove his case, the plaintiff has examined himself as P.W.1 and has marked Exs.A1 to A8. The first appellant/defendant has examined himself as D.W.1 and has marked Exs.B1 to B27. The Court below had discussed both oral and documentary evidence in extenso and has decided the case in favour of the plaintiff, directing the defendant to execute a sale deed by receiving the balance of consideration of Rs. 5,000/-.

7. The learned Counsel appearing for the appellants interalia would submit that Ex.A1 document though was shown as agreement for sale, was only a nominal one and not intended to be acted upon; that it was executed to serve only as a security for the money borrowed by the first appellant/defendant; that the said agreement was manipulated and brought about to hold a threat upon the first appellant to secure the due payment of Rs. 40,000/-; that the defendant both in his pleading and in evidence has categorically stated that Ex.A1 agreement was brought about due to the financial difficulties of the first appellant and never intended to be acted upon by the parties; that it would be quite evident from the available evidence that it was usual and customary for the first respondent/plaintiff to take agreement for sale as security for the loans given by him; that from the documentary evidence adduced by the defendant, it would be very clear that there was number of money transactions between the parties, and the suit transaction was one among the same; that it is pertinent to note that the cheque for Rs. 25,000/- was issued by the first respondent/plaintiff only on 23.5.1978 and not on 22.5.1978; that the period of six months" time mentioned in Ex.A1 for executing the sale deed was only a make belief stipulation in order to construe Ex.A1 as an agreement for sale; that it is an undisputed fact that the first respondent/plaintiff was a moneylender, and under such circumstances, the plaintiff having paid Rs. 35,000/- under the alleged Ex.A1 agreement, there was no impediment for him to take the direct sale deed from the first appellant by paying the balance of Rs. 5,000/- without executing the agreement of sale; that

this circumstance would clearly indicate that the transaction between the parties was only a loan transaction and not a sale transaction; that while the first appellant/defendant has questioned the truth of the agreement and the transaction found therein, the plaintiff should have examined the attesting witnesses, who were admittedly under his employment; that it has to be pointed out that at the time of the agreement, the suit property was vacant, and hence, the reason adduced by the plaintiff that it was agreed to complete the sale transaction within six months, since it was occupied by a tenant was an utter falsehood; that the available evidence would clearly show that the defendant was already indebted to the plaintiff on the date of the alleged agreement for sale, and in such circumstances, the plaintiff would not have entered into such an agreement for sale, and thus, the facts and circumstances would clearly be pointing to the probability of the defence that the transaction was only a loan transaction, and Ex.A1 agreement was never intended to be acted upon, and hence, the suit has got to be dismissed.

8. Contrary to the above contentions, the learned Senior Counsel appearing for the respondents would argue that Ex.A1 was a registered agreement for sale; that the plaintiff has clearly deposed about the negotiations between the parties, which were subsequently reduced to an agreement under Ex.A1; that a part payment of consideration of Rs. 35,000/- was made; that the parties agreed to complete the sale transaction within a period of six months, since the property was occupied by a tenant at the time of Ex.A1; that it is true that there were earlier loan transactions between the parties, and the first appellant/defendant had borrowed moneys on different occasions, but on promissory notes; that it was the defendant who came forward to sell his property, since he was in need of money; that in view of the consensus between the parties, an agreement for sale under Ex.A1 was entered into; that the plea of the defendant that it was only a loan transaction and Ex.A1 was never intended to be acted upon was an after thought to defeat the rights of the plaintiff under Ex.A1 agreement; that it was the defendant, who came forward with a case contrary to the contents found in Ex.A1 agreement, and hence, the burden of proof lies on him to prove the same, but he has thoroughly failed to do so, and thus, the lower Court only on proper appreciation of evidence both oral and documentary has arrived at a correct conclusion and has granted a decree, and hence, the judgment of the trial Court has got to be sustained.

9. As stated above, the plaintiff seeking the relief of specific performance has rested his case on Ex.A1 agreement for sale dated 22.5.1978. The said Ex.A1 is a registered agreement for sale in respect of the plaint Schedule mentioned immovable property, wherein the sale consideration was fixed at Rs. 40,000/-. Ex.A1 document also further contains a recital that a sum of Rs. 35,000/- was paid by the plaintiff to the defendant, and the balance of consideration was only Rs. 5,000/-, and the sale transaction should be completed within a period of six months therefrom. It remains to be stated that all the terms and the recitals in the said document by themselves were very clear and unambiguous, and it does

not require any further construction of the terms or recitals therein. The defendant in his written statement has well admitted not only the execution of Ex.A1 agreement, but also the receipt of Rs. 35,000/- as found under the agreement. The plaintiff in his evidence as P.W.1 has categorically narrated the events, which preceded the agreement viz. the part payment of consideration and the execution of Ex.A1 agreement. It is pertinent to point out that Ex.A1 agreement was also registered. Though the plaintiff was cross examined in length, not even one circumstance was brought forth to disbelieve or discredit the evidence of the plaintiff. In view of the admission of the execution of the said document along with the receipt of Rs. 35,000/- by the defendant coupled with the evidence of P.W.1 and also the clear and unambiguous terms and recitals found therein, the Court is of the considered view that no more proof could be expected to prove the document.

10. What the defendant contended before the lower Court and equally here also is that it was only a loan transaction; that the sale agreement was only manipulated and brought about to hold a threat upon the defendant to secure the due repayment of Rs. 40,000/- lent by the plaintiff; and that it was never intended to be acted upon. When the defendant came with a plea stating that the intention of the parties was only to treat the same as a loan transaction, and it was never intended to be acted upon, which is inconsistent with the terms of the document, a duty is cast upon the defendant to strictly prove that it was a different transaction all together, and what was recorded in the document was intended to be of no consequence whatsoever. No doubt, the defendant who came with such a plea, can well adduce evidence to show that Ex.A1 agreement though executed by him, was never intended to be operated as an agreement for sale, but only a loan transaction, which was not recorded in the document. After careful consideration of the available materials, the Court may hasten to say that the appellants have miserably failed to prove that it was a loan transaction, and the agreement was never intended to be acted upon. The defendant has not examined any independent witness or the attestors to the document, nor has he placed acceptable materials to hold so. Except the interested testimony of the defendant, nothing more is available on record. The specific averments in the written statement run as follows.

"nkW;go fld;fis gpujpthjp bghUg;ghf bfhLf;f ntz;Lk; vd;W mr;RUg;g[Vw;gLj;Jtjw;fhf nkl;Lg;ghisak; tPl;il Fwpj;J U:/40.000-=f;F fpuak; bra;J bfhLf;f ntz;Lbkd;w xU xg;ge;jk; vGjp gpujpthjpaplk; ifbaGj;J th";fp hp\$p!;lUk; bra;J bfhz;lhh;/"

This part of the written statement would clearly be indicative of the fact that before executing Ex.A1 sale agreement, the defendant had the full knowledge that it was an agreement for sale in respect of the plaint Schedule mentioned property, and it was also registered. Hence, the contention of the appellants" side that the defendant signed the document without knowing the contents of the same cannot be countenanced.

11. A perusal of Ex.A1 document would clearly reveal that two witnesses who have attested the document apart from two identifying witnesses, were parties before the Sub Registrar. It is not disputed that one of the attesting witnesses was brought by the defendant. But, he has not chosen to examine the said witness to prove his defence. The defendant has categorically admitted in his cross examination though denied in the chief, that one of the identifying witnesses was his co-brother. Hence, there would not have been any impediment for him to examine the said witness, but has not chosen to do so. Thus, the defendant though had the opportunity, had not examined either of the witnesses for the reasons best known to him.

12. It is not in dispute that the first appellant/defendant was liable to pay to the plaintiff under number of loan transactions contracted by him. For the recovery of the dues, the plaintiff filed O.S. No. 140/79 and O.S. No. 607/79. The certified copies of the plaints and the judgments in those suits were marked as Exs.B6 to B9 respectively. Apart from those two suits, the plaintiff has filed the instant suit. The lower Court has pointed out the admission made by D.W.1 that in all those three suits, he has filed the written statements containing the same averments. It is pertinent to point out that both those suits were based on promissory notes, and the decrees were passed on the basis of the endorsements made by the defendant submitting to decrees. The defendant himself has admitted in his written statement and also in evidence that he was in urgent need of money at the time of the agreement for sale. The contention of the appellants' side that the plaintiff would not have made any further payment when the defendant was liable to pay more than Rs. 75,000/- during the relevant time, has no force at all. Having lent number of occasions and found the recovery of the dues difficult, the plaintiff would have naturally reluctant to advance any further amount, and under such circumstances, the defendant who was in urgent need of money would have thought it fit to sell the property and entered into an agreement for sale as one found under Ex.A1.

13. As pointed out by the learned Counsel for the appellants, the plaintiff who was a moneylender, would have directly paid the consideration of Rs. 40,000/- instead of retaining Rs. 5,000/- out of it and got the sale deed executed outright and need not wait for a period of six months. In the instant case, out of the sale consideration of Rs. 40,000/-, Rs. 35,000/- has been paid as recited in the agreement, and the plaintiff has also retained Rs. 5,000/-. From the evidence of P.W.1, it would be abundantly clear that the suit property was occupied by a tenant that time, and the defendant was to vacate him and hand over vacant possession, and hence, there arose a necessity for stipulating a time of six months for completion of the sale transaction. The reason adduced by the plaintiff is fully fortified by the recitals in the sale agreement, which runs as follows:

"//////// tPl;od; FoapUg;gtiu fhyp bra;Jk; RthjPdKk; bfhlJ;J fpuak; bra;J bfhlJ;Jtpl
ntz;oaJ////////"

14. Relying on Ex.B22 a receipt dated 23.5.1978, it was contended by the appellants' side that at the time of execution of Ex.A1 agreement, the plaintiff got a receipt from the defendant; and Ex.B22 was a copy of the receipt which was handed over to the defendant; and that the same would indicate that the transaction between the parties is only a money transaction and not an agreement for sale. Though the said document was denied by the plaintiff's side, even assuming to be true, the recitals found in Ex.B22 would affirm the sale agreement under Ex.A1. The defendant in his cross examination has well admitted that he had handed over all the documents of title pertaining to the property to the plaintiff along with the encumbrance certificate which he obtained from the Sub Registrar's Office. The contention of the learned Counsel for the appellants that the property was worth more than Rs. 1,00,000/- at the time of Ex.A1 sale agreement; that the said agreement was highly unconscionable, and hence, it has got to be declared as invalid cannot be countenanced, since no material is placed in the hands of the Court to accept the same. Apart from that, the lower Court has pointed out that the defendant has executed a sale deed on 23.10.1980 in respect of 33 " cents along with a house situate therein only for a consideration of Rs. 2,00,000/-. Hence, taking into consideration the sale price found therein, the consideration found under Ex.A1 agreement cannot be said to be low. Thus, the appellants were unable to adduce any evidence either direct or circumstantial to hold that Ex.A1 was not intended to be acted upon or it was only a loan transaction, though not recorded under Ex.A1. Thus, the lower Court only on proper appreciation of the entire evidence on record has recorded a correct finding that Ex.A1 agreement was true, valid and properly executed by the defendant, as put forth by the plaintiff, and the defendant was liable to perform his part of the contract by executing a sale deed in favour of the plaintiff as per the terms found therein. Therefore, the judgment and decree of the trial Court have got to be sustained.

15. In the result, this appeal suit is dismissed, confirming the judgment and decree of the lower Court. The parties will bear their own costs.