

S.A. No.447 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED :03.12.2024

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.447 of 2024
and
CMP.No.13328 of 2024

Padmashri

... Appellant

Vs

1.C.Ganesan

2.G.Kaviarasan

... Respondents

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, prayed to set aside the Judgment and Decree passed in A.S.No.1 of 2021 dated 13.02.2024 on the file of the learned Principal District Judge, Vellore as against the Judgment and decree in O.S.No.253 of 2017 dated 21.02.2020 on the file of the Subordinate Court, Vellore District.

For Appellants : Mr.A.Ashwinkumar
For Respondents : Mrs.R.T.Sundari
for Mr.M.P.Jayaprakash

JUDGEMENT

The appellant has preferred this Second Appeal against the Judgment and decree passed in A.S.No.1 of 2021 dated 13.02.2024 on the file of the learned Principal District Judge, Vellore as against the Judgment and decree



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in O.S.No.253 of 2017 dated 21.02.2020 on the file of the Subordinate Court, Vellore District.

2. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

3. Challenging the concurrent findings of the courts below, the plaintiff preferred this appeal. Before the trial court, she filed a suit, O.S. No. 253 of 2017, seeking specific performance of a contract against the defendants/respondents.

4. The plaintiff's case is that the suit property belongs absolutely to the defendants, who offered to sell the property to her. A sale consideration of Rs.5 lakhs was agreed upon on 29.04.2016, and a sale agreement was executed on the same date. An advance amount of Rs. 4 lakhs was paid, and the balance of Rs.1 lakh was to be paid within 11 months. The plaintiff claimed that she was ready and willing to perform his part of the contract, but the defendants were not inclined to comply with the terms.

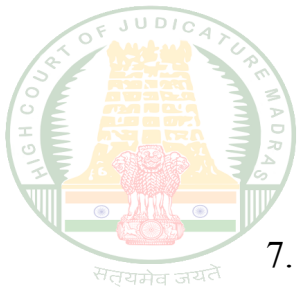


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Consequently, she issued a notice on 17.05.2017, but there was no response from the defendants, prompting her to file the suit.

5. The defendants denied the agreement, stating that it was executed as security for a loan they had borrowed. They claimed to have handed over their original title deeds as collateral. When they expressed their willingness to settle the loan amount, the plaintiff allegedly refused to accept it and made false claims before the court. The defendants contended that the property was worth Rs. 20 lakhs and denied any intention to sell it, raising strong objections to the plaintiff's claims.

6. Before the trial court, the plaintiff was examined as PW1, and another witness, PW2, was also examined. Documents marked as Ex. A1 to Ex. A4 were submitted by the plaintiff. The defendants did not present any evidence or documents. The learned trial Judge analyzed the evidence on record and noted that there was no dispute regarding the execution of Ex.A1, the sale agreement.



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7. However, relying on the precedent set in *Saradamani Kandappan v. S. Rajalakshmi* reported in (2011 (4) CTC 640), the court held that the plaintiff was required to prove his continuous readiness and willingness to perform his part of the contract as per the terms within the stipulated 11 month period. The plaintiff was obligated to pay the balance amount and get the sale deed executed within this period. The court found that the plaintiff failed to express her readiness and willingness within the stipulated time and issued a notice only after the period had lapsed.

8. Consequently, the plaintiff failed to prove her readiness and willingness, and specific performance was not granted. However, under equity, the learned trial Judge directed the defendants to refund the advance amount of Rs. 4 lakhs with 12% interest from the date of the agreement until the decree, and thereafter at 6% interest until realization.

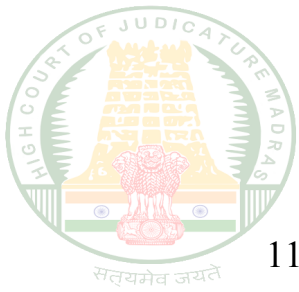
9. Challenging this decision, the plaintiff preferred an appeal in A.S. No. 1 of 2021 before the Principal District Judge, Vellore. The appellate Court independently analyzed the evidence on record and framed separate



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issues. It noted discrepancies in the plaintiff's evidence, particularly that PW1 was unaware of the value of the suit property, had not sent the parent documents of the property, and did not know the defendants' address. Additionally, PW1 admitted that her husband was involved in financial business dealings. The appellate court further observed that the plaintiff failed to express her readiness and willingness to the defendants within the stipulated period.

10. The appellate Court upheld the defendants' contention that the agreement was executed as security for a loan. Although the defendants did not enter the witness box, the plaintiff's failure to perform her part of the contract within the agreed time and the recitals in the agreement indicated that she had no entitlement to claim rights over the property. Consequently, the appellate court confirmed the findings of the learned trial judge and dismissed the appeal. Challenging the concurrent findings of the Courts below, now the plaintiff preferred this appeal.



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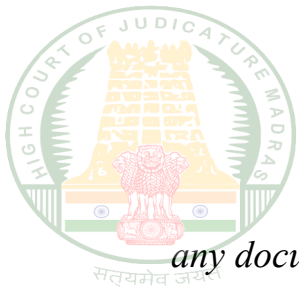
11. The second appeal was admitted by this Court on 27.08.2024, on the following Substantial Questions of Law.

(i) Whether the Subordinate Judge, Vellore and Principal District Judge, Vellore failed to apply their judicial mind and failed to provide any reasons for not exercising their discretion in decreeing specific performance under Section 20 of the Specific Relief Act, 1963 ?

(ii) Whether the Subordinate Judge, Vellore and Principal District Judge, Vellore erred in not decreeing specific performance without recording any reasons on how the case of appellant / plaintiff does fall under the exceptions as mentioned in Sec.20(2) of Specific Relief Act, 1963?

(iii) Whether the Subordinate Judge, Vellore and the Principal District Judge, Vellore have failed to appreciate that the execution of the registered sale agreement has not been denied by the defendants and have also erred in relying upon the written statement of the respondent / defendant, ignoring the registered sale agreement Ex.A1 dated 29.04.2016?

(iv) Whether the Subordinate Judge, Vellore and Principal District Judge, Vellore had failed to appreciate that the respondents neither filed

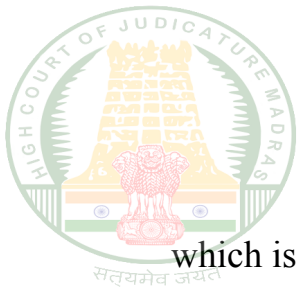


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any documentary evidence nor examined any witness on their behalf and the registered sale agreement Ex.A1 dated 29.04.2016 cannot be ignored?"

12. The Learned Counsel for the Appellant submitted that when the agreement was deemed to be true and valid between the parties. The courts below ought to have granted relief of specific performance, for the reason that the defendants not entered into witness box, which itself shows that they admits the terms of the agreement. Thereby, the plaintiff is entitled for the relief of specific performance. Without proper appreciation, courts below erroneously not granted the relief, as such is unjust and liable to be set aside.

13. Upon perusal of the record, it is revealed that the agreement explicitly stipulated an 11-month period within which the plaintiff was bound to pay the balance amount, failing which the plaintiff would lose all rights over the suit property. This condition was stated clearly in the recital of the agreement. Even though the defendants did not enter the witness box, it does not support the case of the plaintiff, particularly because the plaintiff herself issued notice after the completion of the 11-month stipulated period,



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which is undisputed.

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14. The recital of the agreement clearly implies that if the plaintiff fails to pay the balance amount of Rs.1 lakh within the stipulated 11 months, they lose their right over the property. This was rightly observed by the first appellate Judge, and there is no need for interference in this finding.

15. Moreover, the plaintiff failed to prove that they were ready to perform their part of the agreement within the stipulated 11 months. This failure is also evident from the testimony of PW-1, and the courts below rightly relied on this evidence to assess the conduct of the plaintiff. As such, no interference by this court is warranted, and there is no substantial question of law involved.

16. Section 20 of Specific Performance Relief Act as follows:

" 20. Discretion as to decreeing specific performance:-

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is a lawful to do so; but the discretion of the Court is not arbitrary but sound and



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reasonable, guided by judicial principles and capable of correction by a Court of appeal.

(2) The following are cases in which the Court may properly exercise discretion not to decree specific performance-

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable gives the plaintiff an unfair advantage over the defendant; or

(b) Where the performance of the contract would involve some hardship on the defendant which he did not foresee, where its non-performance would involve no such hardship on the plaintiff;

(c) Where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance."

17. Therefore, the alleged question of law submitted on behalf of the appellant does not arise for the aforementioned reasons. Accordingly, questions of law 1 to 4 are answered, and this second appeal is dismissed as devoid of merits. Consequently, the connected miscellaneous petition is



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closed. No costs.

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18. The defendants/respondents are directed to refund the amount of Rs. 4 lakhs along with interest, totalling Rs.8 lakhs, within a period of six weeks from the date of receipt of a copy of this order. This amount must be deposited in the original suit, O.S. No. 253 of 2017. The plaintiff is also directed to deposit the original title deeds of the defendants in the said suit. Upon such deposit, the defendants are permitted to withdraw the same by substituting a Xerox copy before the court.

03.12.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

1. The Principal District Judge, Vellore.
- 2.The Subordinate Judge, Vellore District.
- 3.The Section Officer, VR Section, High Court of Madras.

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T.V.THAMILSELVI, J.

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