(2011) 07 MAD CK 0177

Madras High Court

Case No: A.S. No. 659 of 2005 and C.M.P. No. 10399 of 2005

M. Vadivel and Others		APPELLANT
	Vs	
V. Muthukumar and C. Palanichamy		RESPONDENT

Date of Decision: July 21, 2011

Hon'ble Judges: Arumughaswamy, J

Bench: Single Bench

Advocate: G. Ethirajulu, for the Appellant; Parthasarathy and R. Velumani, for the Respondent

Final Decision: Allowed

Judgement

Arumughaswamy, J.

The appeal is preferred against the judgment and Decree dated 04.11.2004 made in O.S. No. 138/2001 on the file

of the Additional District and Sessions Judge, Fast Track Court No. II, Coimbatore.

2. The Defendants are the Appellants and the Plaintiffs are the Respondents in this appeal. The suit has been filed for the recovery of a sum of Rs.

8,79,350/- together with subsequent interest at 18% p.a. from the date of plaint till the date of realisation and also for a direction, directing the

Defendants to create charge over schedule properties for the due execution of the sale deed.

3. The averments in the plaint are as follows:

The Plaintiffs and the Defendants entered into a sale agreement in respect of the suit properties on 7.11.1994 whereby the Defendants agreed to

sell the suit properties for a valuable consideration of Rs. 8,75,000/- free of all encumbrances to the Plaintiffs herein. The Plaintiffs have also agreed to purchase the same and paid an advance of Rs. 4 Lakhs on the date of agreement itself, being the part of sale consideration to the

Defendants. Likewise, the Plaintiffs paid Rs. 4,60,000/- on various dates and the same were endorsed in the back side of the sale agreement. But

the Defendants have failed to execute the sale deed in favour of the Plaintiffs, in spite of the repeated demands made by the Plaintiffs. In the

meantime, the Defendants attempted to create false documents by way of encumbrance or alienation in the suit property. Therefore, the Plaintiffs

issued a lawyer''s notice to the Defendants calling upon them to receive the balance sale consideration and perform their part of agreement by

executing the sale deed in their favour as per the agreement dated 7.11.1994. But the Defendants failed to do so. Hence the suit.

4. The averments in the Written Statement filed by the 1st Defendant are as follows:

It is stated that the 1st Defendant obtained a loan of Rs. 2 Lakhs from the Plaintiffs for his children education and at the time of borrowal, the

Plaintiff has received blank stamp papers and promissory note and they have used the said stamp papers with malafide intention to grab their

property. It is further stated that they were paying interest for the entire loan amount and due to the financial crisis, they have not paid the interest

as agreed by them. Hence, the suit for specific performance is not maintainable on this ground alone. It is also stated that the transaction between

the Plaintiffs and the Defendants is only money transaction and the Defendants have not executed any sale agreement. There is no cause of action

for the suit and they never attempted to alienate the property. Therefore, the suit is liable to be dismissed.

5. The averments in the Written Statement filed by the 6th Defendant are as follows:

The suit for specific performance is not maintainable since the transaction was purely of money transaction. It is stated that on the date of sale

agreement i.e. 7.11.1994, they have executed a registered Mortgage Deed with regard to the suit property to one N. Subramanian. Therefore, the

suit is not maintainable and liable to be dismissed.

5. On careful consideration of the plaint and the written statement, the trial court had framed the following issues:

1 Whether the Plaintiffs are entitled for the relief of specific performance of the sale agreement dated 7.11.1994?

2 Whether the Plaintiffs are entitled for recovery of a sum of Rs. 8,79,350/- with interest at 18% p.a. in the alternative?

3 Whether the Plaintiffs have used the signatures obtained from the 1st Defendant in the stamp paper and prepared a forged document?

4 To what other relief or reliefs the parties are entitled? Additional Issue:

1. Whether one Subramaniam is a necessary party to the suit?

6. Before the trial court, on the side of the Plaintiffs, 3 witnesses have been examined as P. Ws.1 to P.W.3 and Exs.A.1 to A.13 were marked. On

the side of the Defendants, the 1st Defendant himself was examined as D.W.1 and Ex.D.1 to Ex.D.10 have been marked. After examination of

oral and documentary evidences, the trial court decreed the suit, granting the relief of specific performance as against the Defendants by directing

the Plaintiffs to pay the balance sale consideration of Rs. 15,000/- before the court and for costs. Aggrieved by the judgment and decree of the

trial court, the Defendants have preferred this appeal.

7. The Defendants are the Appellants. The vehement contention of the learned Counsel appearing for the Appellants is that Ex.A.1 agreement has

not been executed by the Defendants. It has been obtained only under coercion, threat and undue influence. He would further contend that the

Defendants have borrowed a sum of Rs. 2,00,000/- from the Plaintiffs for which the Plaintiffs have obtained their signatures in some promissory

notes for security purpose and the same were used against them. Further, it is contended that on the date of sale agreement dated 7.11.94, a

mortgage was created over the very same property against one Subramaniam who is the very close relative of the Plaintiffs. Hence, he prayed that

the appeal has to be allowed.

8. The learned Senior Counsel appearing for the Respondents contended that Ex.A1 is a registered document and Ex.A2 to Ex.A.4 were

endorsements made by the Appellants for the amount said to have been received by them towards the sale consideration on various dates. Hence

the relief granted by the trial court has to be confirmed and the appeal has to be allowed.

9. The question that arises for consideration in this appeal is as follows:

Whether the Plaintiffs are entitled for the relief of specific performance of the sale agreement as against the Defendants or in the alternative for

recovery of the amount of Rs. 8,79,350/- with subsequent interest ?

10. The Defendants are the Appellants. The Plaintiffs have filed a suit for specific performance in respect of the sale agreement dated 7.11.94 or in

the alternative, recovery of a sum of Rs. 8,79,350/- along with subsequent interest at 18% p.a. from the date of plaint till the date of payment. The

trial court has decreed the suit granting the relief of specific performance as against the Defendants. Therefore, the Defendants have approached

this Court as against the grant of such relief in favour of the Plaintiffs.

11. Ex.A.1 is the registered sale agreement. From Ex.A.1 registered agreement dated 7.11.94, it is seen that the total sale consideration arrived at

between the parties is Rs. 8,75,000/- and Rs. 4 Lakhs has been paid as advance and the time limit to execute the sale deed was fixed as 1 1/2

years. Ex.A.2 is the receipt of Rs. 2,50,000/- from the Plaintiffs, Ex.A.3 is the receipt for Rs. 2 Lakhs and Ex.A.4 is the receipt for Rs. 10,000/- .

On verification of the 3 receipts, it is seen that some space has been given in between the writings and the stamped signature. From this, one can

come to the conclusion that these 3 stamped receipts were pressed into service to show that these amounts were paid towards sale consideration.

Considering all the above, I am of the view that the Defendants have received a sum of Rs. 8,50,000/- towards the sale agreement dated

7.11.1994.

12. Now the contention of the learned Counsel appearing for the Appellants is that in the suit filed for recovery of the amount, discretionary

specific relief has been granted to the Plaintiffs. Whether the Plaintiffs are entitled for the discretionary relief of specific performance has to be seen.

Therefore, he prayed that the appeal has to be allowed.

13. The learned Counsel for the Appellant would rely on Ex.B.10 mortgage deed said to have been executed by the Defendants on the same date

in favour of some third party by name N. Subramanian on 7.11.1994 under Document No. 5322/94 for a sum of Rs. 4 Lakhs to that effect.

14. A comparison of both these two documents would go to show that both the documents were executed by the same Defendants in respect of

the same property with the knowledge of the Plaintiffs. Therefore, perusal of Ex.B10 clearly shows that it is not really a transaction for the sale of

specific property, but it is only a money transaction said to have been entered into between the parties. If it is an agreement to purchase the suit

property the sons of the agreement holder would not be the attestors for the mortgage deed. Thus the execution of Ex.B10 mortgage deed by the

Defendants on the same day in favour of one Subramaniam will go to show that the agreement is a sham and nominal one created for the purpose

of the suit. In fact the mortgage deed registered as the first document and the agreement for specific performance was registered as second

document. Therefore, I am of the view that the Plaintiffs are not entitled for the discretionary specific performance relief for the above stated

reasons.

15. Ex.A1 to A.5 are not denied by the Defendants. Therefore, the Plaintiffs have proved that they have paid Rs. 8,50,000/- to the Defendants to

execute the sale agreement dated 7.11.1994. In respect of interest, it is reasonable to award 12% interest for Rs. 8,50,000/- .

16. In the result, the Civil Appeal is partly allowed without costs directing the Defendants to pay a sum of Rs. 8,50,000/- to the Plaintiffs with 12%

interest from the date of plaint till the date of realisation. Consequently, connected CMP is closed.