



A.S.Nos. 11 of 2015 & 517 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

CORAM:

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

A.S.Nos. 11 of 2015 & 517 of 2019
and
M.P.No.1 of 2015

A.S.No.11 of 2015

G.Ravi
S/o. Ganesan

... Appellant

Vs.

1. K.Mathivanan,
S/o. Kalimuthu

2. M.Kalavathi,
W/o. K.Mathivanan

.. Respondents

PRAYER : Appeal Suit filed under Sec.96 of Civil Procedure Code r/w Order 41 Rule 1 of Civil Procedure Code, to set aside the judgment and decree dated 23.09.2014 passed by the learned Principal District Judge at Dharmapuri in O.S.No.9 of 2011.



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A.S.No.517 of 2019

1. K.Mathivanan,
S/o. Kalimuthu

2. M.Kalavathi,
W/o. K.Mathivanan

.. Appellants

Vs.

G.Ravi
S/o. Ganesan

... Respondent

PRAYER : Appeal Suit filed under Sec.96 of Civil Procedure Code r/w Order 41 Rule 1 of Civil Procedure Code, to set aside the judgment and decree dated 23.09.2014 passed by the learned Principal District Judge at Dharmapuri in O.S.No.9 of 2011.

For Appellant in
A.S.No.11 of 2015 : Mr.P.Valliappan,
Senior Advocate

For Respondents in
A.S.No.11 of 2015 : Mrs.D.Prasanna

For Appellants in
A.S.No.517 of 2019 : Mrs.D.Prasanna

For Respondent in
A.S.No.517 of 2019 : Mr.P.Valliappan,
Senior Advocate



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COMMON JUDGMENT

The appellant herein is the plaintiff and he has filed a suit in O.S.No.9 of 2011 on the file of learned Principal District Court, Dharmapuri directing the defendants to execute the sale deed. The defendants also contested the suit. On hearing both sides, the trial judge decreed the suit in favour of plaintiff. Challenging the interest portion of 18%, the plaintiff preferred appeal in A.S.No.11 of 2015. However, challenging the findings of the trial judge, the defendants have preferred the appeal in A.S.No.517 of 2019.

2. For the sake of convenience, the parties are referred as per ranking in the suit.

3. The defendants are husband and wife and both of them appeared and submitted that the 1st defendant was suffered with eye ailment and he has to undergo eye surgery, so necessity arose for him. Therefore, he was forced to sell the property and for that, the plaintiff offered to purchase



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the same at the rate of Rs.775/- per sq.ft. and for the medical expenses, the 1st defendant received an advance sum of Rs.50,000/- and the plaintiff agreed to pay a sum of Rs.5,50,000/- within a month and the defendants have agreed to execute the sale deed. In fact, they were tenants of the property under the plaintiff. After the agreement, they have agreed to pay the interest till execution of sale deed. But, as per the terms of agreement, they have agreed to pay rent also. The entire extent comes around 2000 sq.ft., in which house was given for rent and not for the vacant site and with proper information, the agreement was came into force but subsequently they have denied the agreement.

4. Before the trial court, both parties appeared and submitted their evidence. Accordingly, the documents Ex.A1 to A19 marked on the side of plaintiff and Ex.B1 to B3 marked on the side of defendants. Both parties were examined as P.W.1 and 2 and medical certificate and other documents were marked on the side of defendants. Before the trial court, the following issues were framed:-



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“1. வாதி தனது வழக்குரையில் குறிப்பிட்டுள்ள இவ்வழக்கு சொத்து பொறுத்தான வாதிக்கும், எதிர்வாதிகளுக்கும் ஏற்பட்டுள்ளதாகச் சொல்லப்படும் 13.10.2010 தேதிய விக்ரிய ஒப்பந்தம் வாதி கூற்றுப்படி உண்மையானதா? மறுபயன் உடையதா? முறையானதா?

2. வாதி குறிப்பிடும் 13.10.2010 தேதிய வழக்கு விற்கரிய ஒப்பந்தம் பொருண்மை மற்றும் சட்டத்தின் அடிப்படையில் செல்லத்தக்கதாகி எதிர்வாதிகளை கட்டுப்படுத்தி அதன்படி செயல்படக்கோரும் தன்மை உடையதா?

3. வாதிக்கு இவ்வழக்கு சொத்தை விற்பனை பெறுவதன்கான வசதி உள்ளதா?

4. வாதிக்கு வழக்குச் சொத்தை விற்பனை பெற எப்போதும், தயாராகவும், சம்மதமாகவும் உள்ளாரா?

5. வாதி வழக்கு சொத்தில் விற்பனை ஒப்பந்ததாரராக அனுபவித்து வருகிறாரா?

6. வழக்கிற்கு சொல்லப்பட்டுள்ள வழக்குமூலம் சரியானதா?”

5. Considering the evidence on record as well as documents, the trial judge concludes that there is a valid agreement between parties, though the defendants denied the agreement, both D.W.1 and D.W.2 admits that they have signed in the agreement. In fact, the 1st defendant was worked in Tamil Nadu Electricity Board and obtained voluntary retirement from service and 2nd defendant was a retired Headmaster. So, both were known recitals of the agreement and the suit property was originally belongs to T.N.H.B. and allotment order was issued to both husband and wife and the said order was also enclosed along with the



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agreement. Therefore, the trial judge also observed that the plaintiff is taking steps to get L.I.C. Loan and due to objections made by the defendants, he was not able to avail loan. However, the plaintiff approached the court in time. The defendants not expressed their willingness to perform the contract. Considering both side submissions, the trial court granted the relief of specific performance fixing interest at the rate of 18% for the balance sale consideration. Challenging the interest portion of 18%, the plaintiff preferred appeal in A.S.No.11 of 2015. Challenging the findings rendered by the trial judge, the defendants preferred the appeal in A.S.No.517 of 2019.

6. The learned counsel for plaintiff would submit that he has taken earnest steps to execute the sale deed for complying terms of agreement, but the defendants alone denied to perform their contract. Therefore, having agreed the plaintiff's case, the trial judge granted the relief of specific performance, however awarded 18% interest for the balance sale consideration as such is totally unfair and liable to be set aside.



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7. The learned counsel for defendants would submit that the 1st defendant is the disabled person and due to poor eye sight, he is not able to perform his part of agreement in time nor the plaintiff has paid the entire sale consideration. But, the trial judge erroneously granted the relief of specific performance, even otherwise 18% interest awarded to the balance sale consideration, as such is totally unjustifiable one for the reason that the value of the property is more than the amount mentioned in the agreement.

8. Heard and considered rival submissions of learned counsel for appellant as well as respondents and perused the records.

9. On perusal of records, it reveals that plaintiff and the defendants entered into agreement of sale. With regard to the vacant site along with house, it was originally belonged to Housing Board, which was allotted to both defendants and an agreement of sale was executed on 13.10.2010. On perusal of agreement, it reveals that the rate for per sq.ft. fixed is



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Rs.775/- and the total claim of 223.3 equivalent to 2400 sq.ft. was agreed to sell to the plaintiff and four months time was fixed for performing the contract. Before the expiry of time, legal notice was issued and the reply was given denying the agreement. So, the plaintiff filed a suit for specific performance and a sum of Rs.2 lakhs was deposited before the trial court. Based on the evidence, considering the execution of agreement between the parties and due to the objection raised by the defendants, the plaintiff was not able to realise the L.I.C. Loan and also the fact remains that the plaintiff was ready and willing to perform his part of agreement. In fact, the appellant is a teacher by profession, he has taken earnest steps to get the loan and filed the pass book, which would show that on the date of receipt of agreement, he is having a sum of Rs.5,50,000/- through Ex.A2. So, the plaintiff is ready and agreed to perform the contract by availing loan as well as spending his earnings. Therefore, the trial judge rightly concludes that he is ready and willing to perform the contract, however, interest of 18% was awarded for the balance sale consideration. Already the plaintiff has spent his earnings for the sale consideration as well as availed loan. Hence, he prayed to reduce the rate of interest.



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10. The learned counsel for defendants would submit that considering the value of property, 18% interest was awarded as such is valid one. But, however, during the pendency of appeal proceedings, the appellant paid arrears of rent of Rs.1,40,000/- and the defendants have also received the amount and expressed their willingness to perform the contract. It is pertinent to note that both are retired Government servants and the suit property is situated at Virupakshipuram village, Dharmapuri District. Therefore, on considering the submissions of plaintiff, this Court is inclined to reduce the interest from 18% to 10%, thereby the total amount payable by the plaintiff to the defendants comes around Rs.42,87,947/-, which is rounded to Rs.42,87,000/-. Accordingly, the plaintiff is directed to pay a sum of Rs.42,87,000/- within a period of five months from the date of receipt of copy of this order. Furthermore, since the defendants are senior citizens and suffered with disability, out of the total amount of Rs.42,87,000/-, this Court directs the plaintiff to pay part payment of Rs.20,00,000/- to the defendants either through demand draft or through RTGS. Already an advance of Rs.50,000/- was paid by the plaintiff and the same is ordered to be deducted. Thereafter, the



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remaining balance amount is ordered to be paid within a period of five months. Accordingly, the appeal suit in A.S.No. 11 of 2015 is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

11. Furthermore, the appeal suit filed by the defendants 1 and 2 in A.S.No.517 of 2019 is dismissed as no merit in view of order passed in A.S.No.11 of 2015. No costs.

12. Post the matter for reporting compliance on 02.02.2024.

01.09.2023

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp
To

Principal District Judge,
Dharmapuri.



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T.V.THAMILSELVI, J.

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