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A.S.No.699 of 2018

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR JUSTICE C.KUMARAPPAN

A.S.No.699 of 2018
and
C.M.P.No.3469 of 2024

G.Siddharaju

...Appellant

Vs.

1.H.Shaheen

2.H.Sartaj

...Respondents

Prayer: Appeal filed under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure, 1908, against the judgment and decree in O.S.no.30 of 2014 on the file of the Additional District Court, Krishnagiri dated 07.08.2018.

For Appellant	:	Mr.V.Raghavachari, Senior Counsel
For Respondents	:	Mr.G.Ethirajulu, for Mr.K.Balu



A.S.No.699 of 2018

J U D G M E N T

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The defendant, in O.S.No.30 of 2014, a suit for specific performance, is on appeal, aggrieved by the decree directing him to execute the sale deed, in respect of entirety of the suit properties.

2. The plaintiffs sued for specific performance of the agreement dated 09.04.2013, in and by which, according to the plaintiffs, the defendant agreed to sell six residential plots for a total consideration of Rs.30,00,000/-. An advance of Rs.5,00,000/- was paid on the date of the agreement and time of nine months was fixed for performance. The time fixed expired on 08.01.2014. The plaintiffs would further aver that there were certain negotiations between the parties and it was agreed that the sale deeds would be executed for three of the plots at the first instance and the remaining two plots will be sold later. Accordingly, on 27.01.2014, three sale deeds were prepared in respect of plot Nos.5, 22 and 26. It was agreed that the sale deeds in respect of plot Nos.9 and 44 will be taken later. Immediately after the sale deeds were prepared, the plaintiffs paid a sum of



A.S.No.699 of 2018

Rs.20,80,000/- being consideration under the three sale deeds to the defendant. When the parties went to the Registrar's Office at Soolagiri for registration of the said instrument, the defendant did not attend the Registrar's Office and escaped midway. Therefore, the plaintiffs issued a notice on 18.02.2014 requiring the defendant to receive the balance sale consideration of Rs.4,20,000/- and execute the sale deed in respect of all the five plots. Though the said notice was received by the defendant on 22.02.2014, there was no reply. The plaintiffs, therefore, came forward with the above suit.

3. The defendant resisted the suit raising all defences that were open to the defendant in a suit for specific performance. The usual plea that the agreement was not intended to be acted upon and it was only a loan transaction was also made. Apart from the said plea, the defendant also contended that the sale agreement was only nominal and it was agreed that the said agreement should be cancelled and the defendant would sell three plots for a total consideration of Rs.30,00,000/- to the plaintiffs. On execution of the sale deeds dated 27.01.2014, the defendant would contend



A.S.No.699 of 2018

that though he had signed the document, the sale consideration under the document totalling a sum of Rs.20,80,000/- was not paid. The defendant also pleaded that the plaintiffs were not ready and willing to perform their part of the contract. On the above pleadings, the defendant sought for dismissal of the suit.

4. On the above pleadings the learned trial Judge framed the following issues:-

- 1) Whether the plaintiffs are entitled to specific performance of the contract?*
- 2) Whether the plaintiffs were ready and willing to perform their part of the contract?*
- 3) Whether the plea that the suit agreement amount to loan transaction is correct?*
- 4) To what other relief is the plaintiffs entitled to?*

5. At trial, on the side of the plaintiffs, the 2nd plaintiff was examined as PW1 and the attesor to the agreement, as well as the sale deeds one Mr.Siraj was examined as PW2. Exs.A1 to A9 were marked. On the side of



A.S.No.699 of 2018

the defendant, the defendant was examined as DW1 and three other witnesses were examined as DW2 to DW4. Exs.B1 and B2 were marked.

6. The trial Court upon consideration of the evidence on record concluded that the agreement is true and valid. It also rejected the contention of the defendant that the agreement was executed as security for loan transaction. On the plea of the defendant that he had not received any money at the time of execution of three sale deeds on 27.01.2014, the trial Court accepted the evidence of PW1 and PW2, apart from relying upon the fact that the defendant did not choose to send a reply to the legal notice dated 18.02.2014, to come to the conclusion that the payment of sum of Rs.20,80,000/- on 27.01.2014 stood proved. The learned trial Judge also concluded that the plaintiffs were ready and willing to perform their part of the contract. On the above findings, the learned trial Judge decreed the suit for specific performance as prayed for. Aggrieved, the defendant is on appeal.



A.S.No.699 of 2018

7. We have heard Mr.V.Raghavachari, learned Senior Counsel appearing for Mrs.V.Srimathi, learned counsel for the appellant and Mr.G.Ethirajulu, learned counsel for Mr.K.Balu, learned counsel appearing for the respondents.

8. Mr.V.Raghavachari, learned Senior Counsel appearing for the appellant would vehemently contend that the entire conduct of the plaintiffs and the facts that have been established would demonstrate that the agreement cannot be true. Heavily relying upon the fact that the defendant had purchased the property (5 plots) for a consideration of Rs.30,00,000/- on 02.04.2013 only, the Senior Counsel would contend that it is improbable that the defendant would have agreed to sell the property within a week for the same consideration.

9. The learned Senior Counsel would also point out that the specific plea of the defence is that the agreement was entered into for money transaction. He would further argue that though three sale deeds dated 27.01.2014 have been signed by the defendant, the defendant has



A.S.No.699 of 2018

specifically denied passing of consideration under those documents and therefore, it was incumbent upon the plaintiffs to prove that they paid a sum of Rs.20,80,000/- on the date of execution of those sale deeds. In the absence of any other evidence, except the oral evidence of PW1 and PW2, the trial Court had wrongly assumed that the defendant had received a sum of Rs.20,80,000/- on 27.01.2014.

10. The learned Senior Counsel would further contend that the arrangement pleaded by the defendant to the effect that the parties agreed to cancel the sale agreement and instead convey three plots for the same consideration of Rs.30,00,000/- is probalised by the evidence of PW2, who had admitted that there was such arrangement. Therefore, according to the learned Senior Counsel, the trial Court was not justified in granting a decree for specific performance in respect of entirety of the property.

11. Contending contra Mr.G.Ethirajulu, learned counsel appearing for the respondents would submit that the execution of the agreement and receipt of advance of Rs.5,00,000/- had been admitted. The fact that the



A.S.No.699 of 2018

agreement is for Rs.30,00,000/- and an advance of Rs.5,00,000/- was paid and the period of nine months was fixed for performance by itself would show that the transaction in question cannot be a loan transaction. The learned counsel would also point out that the defendant had purchased the very same property for Rs.30,00,000/- on 02.04.2013, just a week prior to the agreement, hence, the claim that he was in need of money and agreed to execute the agreement as security for borrowing a sum of Rs.5,00,000/- is most unbelievable and artificial.

12. The learned counsel appearing for the respondents would also point out that each of the sale deeds dated 27.01.2014 contain a specific recital regarding receipt of the sale consideration by the defendant. Therefore, according to the learned counsel, the claim that the money was not paid is highly artificial and unbelievable. The learned counsel would also point out that the defendant had not chosen to reply to the notice dated 18.02.2014 and such conduct on the part of the defendant is fatal to his claim.



A.S.No.699 of 2018

WEB COPY

13. We have considered the rival contentions.

14. On the above contentions of the learned counsel for the parties, the following points emerge for consideration:

1) Whether there was an understanding between the parties as claimed by the defendant to convey only three plots and have the agreement for five plots cancelled?

2) Whether the payment of Rs.20,80,000/- on 27.01.2014 by the plaintiffs to the defendant has been established?

3) Whether the plaintiffs would be entitled to a decree for specific performance in the given circumstances?

Point No.1:-

15. Though the defendant has taken all possible defences, we have no



A.S.No.699 of 2018

hesitation in rejecting the defence that the agreement was entered into as a security for a loan transaction, that too, for a sum of Rs.5,00,000/-. A perusal of Ex.A1 sale deed dated 02.04.2013 under which the defendant had purchased the property subject matter of the suit would show that the defendant has paid a sum of Rs.30,00,000/- in cash on the date of execution of the said document. Therefore, it is highly improbable for the defendant to seek financial assistance to the tune of Rs.5,00,000/- and execute a sale agreement for Rs.30,00,000/- and have it registered as security for the borrowing. We are therefore unable to fault the trial Court for having rejected the said plea.

16. As regards the arrangement that resulted in execution of the three sale deeds on 27.01.2014, the plaintiffs would plead that there were several negotiations and at last on 27.01.2014 there was an amicable settlement by which, the parties agreed to have five separate sale deeds executed in respect of five plots. He would further claim that the defendant received a consideration of Rs.20,80,000/- and had executed three sale deeds for plot Nos.5, 22 and 26. Remaining two plots were agreed to be conveyed a little



A.S.No.699 of 2018

later. On the contrary, the defence in respect of this plea is that it was agreed that the three plots will be sold for Rs.30,00,000/- and the agreement will be cancelled in respect of the remaining two plots.

17. PW2, who is the attesor to the sale agreement and sale deeds dated 27.01.2014, in his proof affidavit would affirm the plea of the plaintiffs to the effect that the plaintiffs had paid a sum of Rs.20,80,000/- and it was agreed that three plots will be sold at the first instance and the remaining two plots will be sold at a later date. However, in cross-examination PW2 has almost accepted the defence set up by the defendant with reference to the understanding that was reached between the parties except the payment of consideration. The proof affidavit of PW2 with reference to this arrangement reads as follows:-

மீண்டும் 27.01.2024ல் வாதிகளும், பரிதிவாதியும் முதலில் 3
பள்ளாட்டுகளை கிரயப்பத்திரம் எழுதிக் கொள்வது என்றும் மீதி 2
பள்ளாட்டுகளை வேறொரு நாளில் கிரயப்பத்திரம் செய்துக் கொள்ளமுடிவு
செய்தனர். அதன்படி முடிவெடுத்தப்படி வாதிகளும், பரிதிவாதியும் ஒரேயில்
உள்ள வழக்கறிஞர் திரு.D.M.சிவசங்கர் வக்கீல் ஆபீஸிற்கு சென்று 3
தனித்தனி கிரயப்பத்திரங்கள் எழுதி டைப் செய்யப்பட்டு, ஆப்போதே 3



A.S.No.699 of 2018

பிளாட்டுகளின் மதிப்பாக ரூ.20,80,000/-ஐ பிரதிவாதி ரொக்கமாய் பெற்றுக் கொண்டு என் முன்பாக 3 கிரயப்பத்திரங்களிலும் பிரதிவாதி பக்கத்துக்கு பக்கம் கையெழுத்திட்டார். நான் பார்த்தேன். அவருக்கடுத்து வாதிகளும் ஒவ்வொரு பக்கத்திலும் கையெழுத்திட்டனர். நான் பார்த்தேன். 3 பத்திரங்களிலும் நான் முதல் சாட்சியாக கையெழுத்திட்டேன். அதனை வாதி, பிரதிவாதிகள் பார்த்தனர். எனக்கடுத்து பிரதிவாதியின் உறவினரான சின்னப்பா என்பவர் 3 பத்திரங்களில் கையெழுத்திட்டார். அதன்பின் பத்திரங்கள் தயாரித்த வக்கீல் கையெழுத்திட்டு சீல் வைத்தார். அதன்படி 3 பத்திரங்களுக்கான ரூ.20,80,000/-மும் பிரதிவாதி பாதிகளிடம் ரொக்கமாய் பெற்றுக் கொண்டு எல்லா பக்கங்களிலும் கையெழுத்திட்டார்.

18. However, in cross-examination, PW2 has deposed as follows:-

5 பிளாட்டுக்காக போடப்பட்டு 3 பிளாட்டுக்கு கிரயம் செய்வதாக ஏற்பாடு. அக்ரிமெண்டில் 5 பிளாட் கேன்சல் செய்யாததால் சார்பதிவாளர் அலுவலகத்தில் பிரதிவாதி சித்தராஜ் கையெழுத்து போடவில்லை. வாதி தங்களுடைய உறவினர் என்பதால் பொய் சாட்சியம் சொல்ல வந்தேன் என்றால் எனக்கு வாதியையும், பிரதிவாதியையும் தெரியும்.

19. This evidence of PW2 definitely points out that the parties had reached an arrangement, which is not in tune with Ex.A3 agreement. There was an agreement between the parties to have three plots conveyed and to



A.S.No.699 of 2018

have the agreement dated 09.04.2013 cancelled. Since the plaintiffs were not willing to have the agreement cancelled, the defendant refused to sign in the sub-Registrar Office and staged a walk out. This evidence of PW2 runs counter to the contention of the plaintiffs with reference to the execution of three sale deeds.

20. We find that the evidence of PW2 to a certain extent dis-lodges the plaint claim that there was an agreement for execution of sale deeds in respect of three plots on 27.01.2014 and execution of sale deeds in respect of the other plots was deferred for some time. The conduct of the defendant in signing the document, acknowledging the receipt of consideration and thereafter walking out of the transaction also lends credence to the claim of PW2 that the defendant did not sign because the plaintiffs did not accept cancellation. Even if we are eschewing the evidence of PW1 and DW1 as interested testimonies, the evidence of PW2 who asserts that he knew both the parties will have to be given some credence. We therefore conclude that there was an arrangement to the effect that the sale deed for three plots will be executed on 27.01.2014 and the suit agreement dated 09.04.2013 will be



A.S.No.699 of 2018

cancelled and the failure to cancel led to the defendant walking out of the transaction without appearing before the Sub-Registrar and affirming the execution of the sale deeds.

Point No.2:-

21. The plaintiffs would assert that they have paid a sum of Rs.20,80,000/- being the consideration payable under the three sale deeds dated 27.01.2014 at the time of execution of the sale deeds. The defendant would deny receipt of consideration. The trial Court has rendered a finding that the consideration has in fact been paid. The evidence that is available for proof of payment of consideration is the recitals in the documents themselves and the oral evidence, as it is stated that the money was paid in cash. PW1 and PW2 have deposed that the money was paid. The 1st defendant has denied receipt of the money. DW2 is more loyal than a King where he deposed in chief examination (proof affidavit) that three plots were agreed to be sold for Rs.55,00,000/-, whereas the defendant himself has admitted that three plots were agreed to be sold for Rs.30,00,000/- and not for Rs.55,00,000/- and DW2 has also stated that the plaintiffs did not



A.S.No.699 of 2018

pay Rs.20,80,000/- on the said date. But, DW2 in his chief-examination would also say that because the plaintiffs did not come forward to cancel the agreement of sale, the defendant refused to register the document. We therefore find that the evidence of DW2 has to be taken with a pinch of salt. The trial Court has also observed that DW2 has argued with the counsel and reacted harshly for certain questions put to him. Therefore, we do not propose to rely on his evidence.

22. The conduct of the defendant in not issuing a reply notice to the notice dated 18.02.2014 also assumes significance. No doubt, there is a delay on the part of the plaintiffs in issuing the said notice, but, the defendant having received the notice on 22.02.2014 has not chosen to send a reply, denying the assertion therein that the defendant has received Rs.20,80,000/- on 27.01.2014. The preponderance of probability lead to a conclusion that the defendant had received a sum of Rs.20,80,000/-.

23. Mr.V.Raghavachari, learned Senior Counsel appearing for the appellant would vehemently contend that there is nothing on record to show



A.S.No.699 of 2018

the payment of Rs.20,80,000/-. No document has been produced to show that the plaintiffs had the money on that date. We do not think we can venture in such hypothesis. The three sale deeds have been signed by the defendant, all of them contain a recital that the consideration had been paid. PW1 and PW2 very clearly deposed that the money was paid. The silence on the part of the defendant after receipt of the legal notice on 22.02.2014 also lead us to firmly believe that the claim of the plaintiffs that they paid a sum of Rs.20,80,000/- on 27.01.2014 is true.

Point No.3:-

24. The next question to be decided is what would be the decree that the plaintiffs are entitled to. We find that the plaintiffs themselves have pleaded that there was alternate arrangement between the parties and the version of the plaintiffs regarding the actual alternate arrangement has been given a go by, by PW2. PW2 has specifically deposed that there was an alternate arrangement and because the plaintiffs did not agree for cancellation as agreed to, the defendant walked out of the sub-Registrar Office without signing the sale deeds.



A.S.No.699 of 2018

WEB COPY

25. We have already concluded that the alternate arrangement was to the effect that the defendant would convey three plots and agreement in respect of two plots will stand cancelled. We therefore find that the plaintiffs would be entitled to a decree for specific performance in respect of three plots viz., plot Nos.5, 22 and 26. We have found that the sale consideration with reference to those plots have been paid on 27.01.2014. Therefore, the defendant would be obliged to execute sale deeds in respect of those three plots only. The suit will stand dismissed in respect of other two plots viz., plot Nos.9 and 44.

26. Mr.G.Ethirajulu, learned counsel would contend that in that event the plaintiffs would be entitled to refund of Rs.5,00,000/- which he has paid as advance on 09.04.2013, when the agreement was executed.

27. The Hon'ble Supreme Court has held that refund of advance cannot be granted, unless there is a specific prayer. We do not find any such prayer in the plaint. We therefore do not think that we can grant a decree for



A.S.No.699 of 2018

refund of a sum of Rs.5,00,000/-. In other respects the suit will stand dismissed.

28. In fine, the appeal is **partly allowed** and there will be a decree for specific performance in respect of three plots viz., plot Nos.5, 22 and 26. The suit in respect of plot Nos.9 and 44 will stand dismissed. It is stated that the plaintiffs have deposited a sum of Rs.4,20,000/- pursuant to the decree. He would be entitled to refund of the said sum with all accrued interest. The parties shall bear their own costs in the appeal. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) (C.K., J.)
12.11.2024

dsa
Index : No
Neutral Citation : No
Speaking order



A.S.No.699 of 2018

To

The Additional District Judge,
Krishnagiri.



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A.S.No.699 of 2018

R.SUBRAMANIAN, J.
and
C.KUMARAPPAN, J.

dsa

A.S.No.699 of 2018

12.11.2024