

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26 - 06 - 2015

CORAM:

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 451 of 2015

and

M.P. No. 1 of 2015

M/s Green Home Landscape Pvt. Ltd.
Rep. By its Managing Director
carrying on business at
No. 550 Whites Building
D.B. Road, R.S. Puram
Coimbatore

... Appellant/Appellant/
Defendant

Vs.

P. Rajarajeshwari

... Respondent/Respondent/
Plaintiff

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 16.08.2011 passed in A.S. No. 66 of 2010 on the file of the I Additional District Judge, Coimbatore, confirming the judgment and decree dated 31.10.2008 passed by the III Additional Subordinate Judge, Coimbatore, in O.S. No. 140 of 2007.

For Appellant : Mr. V. Meenakshisundaram

JUDGMENT

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Not satisfied with the findings rendered by the Courts below in a suit for specific performance, the defendant has filed the present Second Appeal.

2. The plaintiff had entered into an agreement for sale under Ex. A.1 dated 30.3.1999 with the defendant who is a promoter of real estates. As per the agreement Ex. A.1, the plaintiff had agreed to purchase plot No. 55 comprising an area of 6540 sq.ft. for a total sale consideration of Rs.1,99,000/- under instalment scheme. Accordingly, a sum of Rs.20,000/- was paid as advance and the balance amount had to be paid in 59 monthly instalments at the rate of Rs.2500/- per month. The last of such instalment was paid on 19.5.2004 by the plaintiff. The above transaction is recorded in Ex. A.4 passbook in which the defendant had made necessary entries acknowledging the receipt of payment. There were also further charges to be paid by the plaintiff towards annual development charges in the 12th, 24th, 36th and 48th instalments. Despite receiving the entire payment for the plot as per the agreement, the defendant was evading the execution of the sale deed. Hence, after causing a legal notice on 20.11.2006, the suit was filed for specific performance.

3. Though the defendant had admitted the execution of the agreement of sale and also the payment of instalments, it is alleged by him that there was an oral agreement on 20.12.1999 whereby the plaintiff offered to pay an additional sale price of Rs.1 Lakh. The said sum was not paid by the plaintiff. Further, it was contended by the defendant that the lay out developed was unapproved one and there was a ban on sale of plots of unapproved lay outs by the State Government and therefore, he could not sell the plot. It is further stated that though the defendant is willing to sell an alternative plot, the plaintiff is not willing to buy the same.

4. The trial Court / learned III Additional Subordinate Judge, Coimbatore, before whom the witnesses, viz., P.W.1 and D.W.1, were examined and documents, viz., Exs. A.1 to A.11 and Exs. B.1 to B.8, were marked, by judgment and decree dated 31.10.2008, decreed the suit O.S. No. 140 of 2007 by granting the relief of specific performance of sale agreement dated 30.3.1999 and the appeal A.S. No. 66 of 2010 was dismissed by the Lower Appellate Court / First Additional District Judge, Coimbatore, by judgment and decree dated 16.8.2011, confirming the finding of the trial Court. Aggrieved by the same, the defendant has come up with the present appeal.

5. The point that arises for consideration in this Second Appeal is whether the concurrent finding of the Courts below suffer from material irregularity.

6. Heard the learned counsel appearing for the appellant and perused the records.

7. The submission made by the learned counsel appearing for the appellant was of two-fold. Firstly, with regard to the additional sale consideration alleged to have been agreed to be paid by the respondent / plaintiff, learned counsel for the appellant / defendant submitted that the defendant had obtained signature on Ex. B.1 which is called as Information of Customer (IOC). It is the contention of the appellant that the respondent / plaintiff had committed to pay an additional sum of Rs. 1,06,000/- over and above the sum agreed in Ex. A.1.

8. When the suit is based on Ex. A.1 agreement, any alteration in the terms of contract should find place in Ex. A.1 or it should have been superseded by a subsequent document. But in the case on hand, there is no such term agreed upon by the respondent / plaintiff under Ex. A.1 and Ex. B.1, relied on by the appellant / defendant, also had not been proved by the defendant. In the absence of Ex. B.1 being proved, the appellant has to fail in his contentions.

9. The second contention raised by the learned counsel for the appellant is with respect to the ban of sale of plots of unapproved lay outs. In support of his contention, the defendant had produced Exs. B.3 to B.6 documents. It is to be noted that the above said documents are not Government Orders or Circulars banning sale of unapproved plots. Ex. B.3 is a Government Order which provides for simplified procedure for obtaining approval for unapproved lay outs. The Lower Appellate Court also held that the ban of unapproved plots is invented evidence for the purpose of the case and that there is no bona fide in the contention of the appellant / defendant. Even before this Court, the appellant was not able to substantiate his defence that the delay in not performing his part of the contract was in view of the ban as alleged by him. Having failed to establish Ex. B.1 and the ban on sale of unapproved plots, the appellant has to fail. As such, the findings of the Courts below in decreeing the suit are correct and no case is made out warranting interference of this Court and the point is answered accordingly.

In the result, the Second Appeal fails and the same stands dismissed confirming the judgment and decree dated 31.10.2008 passed by the III Additional Subordinate Judge, Coimbatore, in O.S. No. 140 of 2007 decreeing the suit as affirmed by the judgment and decree dated 16.08.2011 passed by the learned I Additional District Judge, Coimbatore, in A.S. No. 66 of 2010. However, considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. I Additional District Judge
Coimbatore,

2. III Additional Subordinate Judge
Coimbatore

3. The Record Keeper, V.R. Section
High Court
Madras

+1 cc to Mr.H.Rajasekar, Advocate vide sr.31642

S.A. No. 451 of 2015

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