

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.621 of 2015

and

M.P.No.1 of 2015

N.Dhanabalan Appellant/Appellant/Plaintiff

Vs.

Rani Respondent/Respondent/Defendant

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 25.10.2013 made in A.S.No.26 of 2012 on the file of the Principal District Judge, Namakkal confirming the judgment and decree dated 29.02.2012 in O.S.No.394 of 2002 on the file of the Additional Sub Court, Namakkal.

For Appellant : Mr.D.Shivakumaran

For Respondent : Mr.T.Dhanyakumar

J U D G M E N T

The plaintiff who lost unanimously before the Court below, has filed the above appeal. The suit is filed for specific performance and in the alternative for payment of the amount of Rs.2,00,000/- with interest, by the defendant.

2. The case of the plaintiff is that the defendant is the owner of the property, by virtue of the sale deed dated 09.02.1993 in her favour. She entered into an agreement with the defendant on 26.06.2000 agreeing to sell for a sum of Rs.2,50,000/- and the plaintiff agreed to pay Rs.2,00,000/- as advance.

3. It is further agreed in the agreement that balance sale consideration will be paid on or before 25.06.2003 and get the sale executed in favour of the plaintiff. Though the plaintiff alleged

that he was ready and willing to perform his part of the contract, the defendant did not come forward to execute the sale deed and hence, the defendant sent notice dated 25.06.2003.

4. The respondent/defendant denied the agreement and contended that it was only a loan transaction and the property was given as security for the said transaction. It is further contended that even in the earlier occasions, there were loan transactions between the parties. Such earlier agreements existed and were acted upon between them. In respect of the latest loan, even though the entire amount was paid, the sale agreement was not returned, taking advantage of the sale and the suit was filed by the plaintiff. According to the defendant, the suit property was more than Rs.10 lakhs and she never intended to sell the same. The defendant also does not owe any amount to the plaintiff.

5. The trial court, after considering the facts and circumstances, ultimately dismissed the suit in respect of the specific performance prayed by the plaintiff and decreed the suit alternatively for refund of the advance amount of Rs.2,00,000/- paid, with 6% interest per annum from the date of suit till the decree.

6. The plaintiff, aggrieved by the same, filed First Appeal in A.S.No.26 of 2012 on the file of Principal District Court, Namakkal. The lower appellate Court confirmed the dismissal of the suit passed by the trial Court in respect of the prayer for specific performance. However, the lower appellate Court modified the decree with respect to the refund of the amount to the plaintiff by granting interest at 6% per annum from the date of the sale agreement i.e., 26.06.2000 till the date of the decree of the trial Court. The second appeal is filed challenging the above said modified decree amount.

7. From the facts and circumstances of this case, there is no reason to differ from the judgment and decree passed by the courts below. In respect of the such payment of interest is concerned, which was granted by the courts below as an alternative relief, the learned counsel appearing for the appellant/plaintiff contended that he may be entitled for 12% interest from the date of sale agreement till the date of realization.

8. The learned counsel appearing for the respondent/caveator/defendant opposed the same and was not agreeable for the said proposal. When it is the specific case that it was only an earlier loan transaction, the same becomes commercial and the plaintiff is entitled to the commercial rate of interest. However considering the fact that it was only as an

alternative relief in the suit performance, this court is inclined to grant 9% interest to be fixed on Rs.2,00,000/- from the date of sale agreement i.e.,26.06.2000 till the date of decree and 6% interest from the date of decree till the date of payment.

9. With the above modification, the appeal is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Namakkal
2. The Additional Sub-Judge,
Namakkal.
3. The Record Keeper,
V.R. Section,
High Court, Madras.

+1cc to M/s.D.Shivakumaran, Advocate, S.R.No.42654
+1cc to M/s.T.Dhanyakumar, Advocate, S.R.No.42733

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