

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.12.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU  
and  
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

A.S.No.393/2016

1. Salammal
2. K.S. Madhavan
3. K.S. Sridhar
4. V. Vennila
5. K.S. Bharath Vijai

...Appellants/Defendants

Vs

S.M. Jaya Saaravanan

...Respondent/Plaintiff

Appeal filed Under 96 read with Order 41 Rule 1 of Civil Procedure Code against the Judgment and decree of the learned Principal District Judge, Krishnagiri dated 03.11.2015 in O.S.No.2 of 2015

For Appellants : Mr.J. Hariharan for  
Mr.V. Nicholas  
For Respondent : Mr.C. Jagadish

JUDGMENT

[Judgment of the court was delivered by N. AUTHINATHAN, J.]

The defendants in O.S.No.2 of 2015 on the file of Principal District Judge, Krishnagiri are the appellants. An extent of 2 acres punja land, belongs to the first appellant/first defendant. The defendants 2 and 3 are the sons of the first defendant; the 4<sup>th</sup> defendant is the daughter of the first defendant and the 5<sup>th</sup> defendant is the grandson. The first defendant entered into an agreement to sell the SAID property to the plaintiff for Rs.42,33,000/- and received Rs.10,00,000/- as advance. An agreement to sell was executed on 11.01.2012. The sale deed was agreed to be executed within a period of 6 months. Possession of the property was handed over to the plaintiff. He was allowed to develop the property into house sites. The first appellant agreed to hand over the parent documents relating to the property after discharging a loan obtained by her from Krishnagiri Co-operative Housing Society by encumbering the property. It was also agreed to survey the property before execution of the sale deed.

2. The case of the plaintiff is that he took possession of the property and developed it by spending a sum of Rs.3,50,000/-. He called upon the first defendant to perform her part of contract, by a Notice dated 05.04.2013. However, the first defendant has not come forward to perform her part of contract. She, with an intention to defraud the plaintiff, had executed settlement deeds in favour of the other defendants. Therefore, the plaintiff filed a suit for refund of the advance amount of Rs.10,00,000/- with interest at the rate of 12% p.a from the date of agreement till realisation of the amount and the expenses of Rs.3,50,000/- with interest. He has also claimed a sum of Rs.2,00,000/- as compensation. The plaintiff further prayed for permanent injunction against the respondents from alienating or encumbering the property.

3. The defendants 1 and 2 filed their written statement. It was adopted by the defendants 3 to 5. They have admitted the execution of the sale agreement. Their case is that the first defendant has performed her part of contract and she approached the plaintiff to perform his part, however, the plaintiff has not come forward to pay the balance consideration. The first defendant was ready to receive the balance sale consideration and execute the sale deed. The suit land is an agricultural land with a bore well. The plaintiff closed the well and removed the trees and plants. He caused a loss of Rs.35,00,000/- They have denied that the plaintiff incurred expenses to the tune of Rs.3,20,000/-. They have also denied that the plaintiff incurred loss. According to them, the plaintiff is not entitled to any relief.

4. The plaintiff examined himself as P.W.1 and has marked 14 documents. The first defendant examined herself as D.W.1 and examined two other witnesses.

5. The trial Court, on appreciation of evidence, held that the plaintiff is entitled to a decree for refund of advance amount of Rs.10,00,000/- with interest at the rate of 12% p.a from the date of agreement till the date of the suit and granted a decree. It has dismissed the suit in other respects.

6. Aggrieved by the decree, granted in favour of the plaintiff, the defendants have preferred the present appeal.

7. The only contention raised by the appellants is that the lower Court is not justified in granting interest from the date of agreement till the date of suit in the absence of any contract between the parties. No argument has been advanced as regards the finding on the question of refund of the advance amount.

8. The learned counsel for the respondent/plaintiff would submit that the lower Court granted interest by exercising its discretion as the advance amount was utilised by the first

defendant for discharging the loan obtained by her from Krishnagiri Co-operative Housing Society. According to him, as the first defendant is guilty of breach of contract and therefore, the trial Court is justified in granting interest at the rate of 12%.

9. The only point to be considered is whether the plaintiff is entitled to interest for the period upto the date of the suit. Admittedly, the first defendant executed the suit sale agreement (Ex.A.1) and she acknowledged the receipt of advance amount of Rs.10,00,000/- on 11.01.2012 on the date of agreement. As per the agreement, the first defendant agreed to discharge her loan payable to the Cooperative Society and hand over parent documents to the plaintiff before the execution of the sale deed. The sale was to be executed within six months. However, the first defendant discharged the debt and obtained discharge receipt only on 18.03.2013. The plaintiff called upon the first defendant to execute the sale deed by a Notice dated 05.04.2013. However, the first defendant in breach of the contract has transferred the property in favour of the other defendants by way of settlement deeds dated 20.03.2013. Therefore, the plaintiff is justified in treating the contract as having been revoked and filed the suit for refund of the advance amount and compensation.

10. As has already been pointed out that the suit has been filed for award of compensation and return of the advance amount. Sec.21 of the Specific Relief Act enables award of compensation in lieu of specific performance. In the case at hand, admittedly, in breach of contract, the first defendant has transferred the property. There is evidence to show that the plaintiff converted the agricultural land into house sites. It cannot be disputed that he has incurred expenses in making the land suitable for construction of houses. The advance amount was utilised by the first defendant for discharging her loan. In these circumstances, it can be safely held that the plaintiff is entitled to interest for the period upto the date of the suit. Interest can also be awarded on equitable grounds.

11. The learned counsel for the plaintiff would further contend that the award of interest at the rate of 12% is on the higher side. The trial Court awarded 6% interest from the date of suit till realisation. We are of the considered opinion that award of 6% interest from the date of agreement till the date of filing of the suit will meet the ends of justice.

12. For the reasons stated supra, the appeal is allowed in part. The interest on Rs.10,00,000/- is reduced from 12% to 6% from the date of agreement upto the date of the suit. No costs. Consequently, connected CMP is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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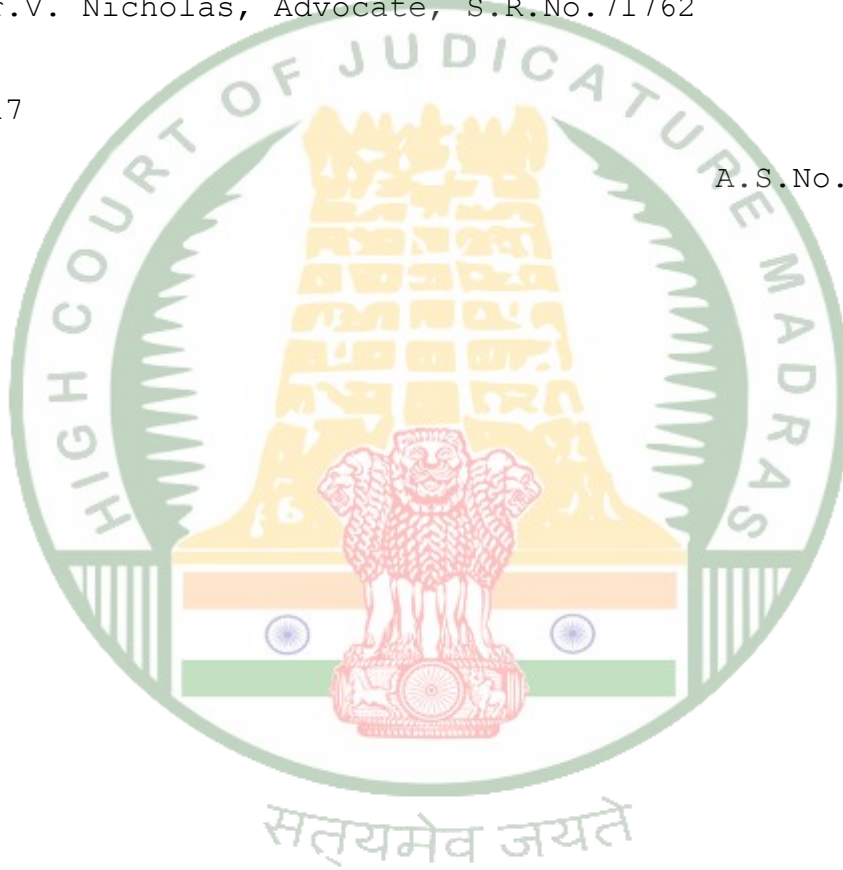
To

The Principal District Judge, Krishnagiri

+lcc to Mr.V. Nicholas, Advocate, S.R.No.71762

RSY(CO)  
Eu 03.02.17

A.S.No.393 of 2016



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