

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.09.2016

CORAM

THE HONOURABLE Mr.JUSTICE.K.RAVICHANDRA BABU

SECOND APPEAL No.771 OF 2016
and C.M.P.No.14577 of 2016

S.Anbalagan

..Appellant/Plaintiff

-vs-

1. G.Adhilakshmi
2. B. Damodaran
3. B. Mohan
4. Seenu @ Srinivasan

..Respondents/Defendants

Second Appeal under Section 100 of Code of Civil Procedure to set aside the decree and the judgment dated 04.01.2016 rendered in A.S.No.23 of 2013 on the file of the Subordinate Judge, Tirupattur at Vellore District, modified the decree and the judgment dated 20.06.2013 rendered in O.S.No.335 of 2004 on the file of the Principal District Munsif, Tirupattur, Vellore District by allowing this Second Appeal and to grant such other relief or reliefs.

For Appellant : Mr.S.Subbiah

J U D G M E N T

The appellant is the plaintiff in a suit of specific performance. The trial Court dismissed the suit and the appellate Court modified the decree only by granting refund of advance amount of Rs.57,000/- to the plaintiff with interest. Insofar as the relief of specific performance is concerned, both the Courts below have concurrently held against the plaintiff. Now, the present Second Appeal is filed by the plaintiff by contending that both the Courts below have concurrently erred in law in rejecting the relief of specific performance.

2. Heard Mr.S.Subbiah, learned counsel appearing for the appellant and perused the judgments and decrees passed by the courts below.

3. The case of the plaintiff is that the suit property originally belonged to the first defendant who entered into an

agreement of sale on 11.11.1998 with one Jayalakshmi for sale of the suit property for a sum of Rs.97,000/-. His further case is that a sum of Rs.17,000/- was paid as advance by the said Jayalakshmi followed by further payment of Rs.40,000/- on 07.03.1989 by her. It is further contended by the plaintiff that the said agreement holder namely, Jayalakshmi, on 10.10.2000 assigned the agreement in favour of the plaintiff by receiving due consideration. Thereafter, the plaintiff and the said Jayalakshmi issued legal notice to the first defendant calling upon the first defendant to perform his part of the contract after receiving the balance sale consideration of Rs.40,000/- which he failed to do.

4. The first defendant contested the suit by specifically raising a plea that the agreement holder namely, the said Jayalakshmi was not ready and willing to perform her part of the contract despite repeated demands. The trial Court as well as the appellate Court concurrently found that the said agreement holder was not ready and willing to perform her part of the contract and therefore, they have rejected the relief of specific performance.

5. Upon considering the entire facts and circumstances, it is evident that the original agreement holder namely, the said Jayalakshmi has not sought for the relief of specific performance for herself by calling upon the first defendant to perform his part of the contract within the time stipulated in the agreement. On the other hand, admittedly, she has assigned the agreement in favour of the plaintiff on 10.10.2000. Therefore, the very assignment by the said agreement holder in favour of the plaintiff would undoubtedly go to show that the said agreement holder herself was not ready and willing to perform her part of the contract and on the other hand, she has made over the agreement in favour of the third party to the agreement, namely, the plaintiff herein. Therefore, the courts below have found that such conduct of the agreement holder proving about her non-readiness and non-willingness to perform her part of the contract within the time stipulated disentitle her to the relief and accordingly, rejected the relief of specific performance. Needless to say, that such relief being a discretionary relief, need not necessarily be granted even if the plaintiff has made out a case. Granting of such relief is always within the discretion of the court based on the facts and circumstances of each case. As both the courts below have concurrently found against the plaintiff after considering the facts and circumstances of the case, I do not find any ground to interfere with such concurrent findings, especially, when the first defendant was directed to refund the advance amount to the plaintiff. Thus, I find no substantial question of law arises in

this Second Appeal to entertain the same. Accordingly the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

6. It is submitted by the learned counsel for the appellant that the plaintiff has made some deposits before the trial Court during the pendency of the suit to show his bonafide. If any such deposit is made during the pendency of the proceedings, it is open to the plaintiff/appellant herein to make appropriate application before the trial Court for withdrawal of the same.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Tirupattur at Vellore District.
2. The Principal District Munsif,
Tirupattur,
Vellore District.

+1cc to Mr.S.Subbiah, Advocate Sr.52424

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srg 13/10/2016

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