

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-06-2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE M.S. RAMESH

Appeal Suit No. 73 of 2015

S. Lakshmi

.. Appellant

Versus

L. Kuppusamy

.. Respondent

Appeal filed under Section 96 of the Code of Civil Procedure, 1908 against the Judgment and Decree dated 08.01.2015 passed in O.S. No. 39 of 2013 on the file of Principal District and Sessions Judge, Dharmapuri

For Appellant

: Mr. P. Valliappan

For Respondent

: Mr. V. Raghavachari

JUDGMENT

(Judgment of the Court was delivered by **R. SUBBIAH, J**)

The defendant in O.S. No. 39 of 2013 on the file of the learned Principal District and Sessions Court, Dharmapuri is the appellant in this appeal. The Plaintiff/respondent herein has filed the said suit for specific performance to direct the defendant/appellant to receive the balance sale consideration from him and to execute the sale deed in his favour in respect of the suit schedule property or in the alternative to direct the defendant/appellant herein to pay the advance amount of

2. The case of the plaintiff/respondent herein is the defendant/appellant herein is the owner of the suit schedule mentioned property and she agreed to sell the suit schedule mentioned property to him. The Plaintiff has also entered into an agreement of sale dated 25.06.2010, Ex.A-1, with the defendant/appellant herein whereby the defendant/appellant agreed to sell the suit schedule mentioned property in his favour for a total sale consideration of Rs.40,01,000/-. At the time of execution of the agreement, the defendant/appellant received a sum of Rs.5,00,000/- from the plaintiff. As per the agreement, the entire sale transaction has to be completed within 120 days from the date of execution of the agreement of sale. According to the plaintiff, on 24.08.2010, he paid Rs.15,00,000/-, another sum of Rs.14,01,000/- was paid on 22.10.2010 and subsequently on 25.10.2010, he paid another sum of Rs.2,00,000/- to the defendant. Thus, totally, the plaintiff has paid a sum of Rs.36,01,000/- out of total sale consideration of Rs.40,01,000/-. According to the plaintiff, for having received the aforesaid amount, the defendant also made endorsement in the agreement of sale itself. After one week, the plaintiff was ready with the balance sale consideration of Rs.4,00,000/- at Karimangalam Sub-Registrar Office. At that stage, the plaintiff came to know that one Mohan has filed a suit in O.S. No. 9 of 2008 on the file of Sub Court, Dharmapuri in respect of the suit schedule mentioned property for partition and consequential permanent injunction in which the Sub Court, Dharmapuri has also granted an order of temporary injunction. The Plaintiff also came to know that the defendant/appellant herein is also arrayed as one of the defendants in the said suit in O.S. No. 9 of 2008 and therefore the Sub-Registrar has refused to execute the

sale deed presented by the defendant/appellant in favour of the plaintiff/respondent herein. In such circumstances, the plaintiff called upon the defendant to clear the encumbrances and to execute the sale deed in his favour, but the defendant refused to do so. On the other hand, the defendant issued a notice dated 06.05.2011 to the plaintiff with false and untenable allegations, hence, he has filed the suit.

3. The suit was resisted by the defendant by filing a written statement denying the averments contained in the plaint. According to the defendant, the plaintiff was not ready and willing to perform his part of the contract. There was no litigation pending in respect of the suit property. Since time is the essence of the contract and the plaintiff failed to perform his part of the contract within the time stipulated, the defendant has issued the notice dated 06.05.2011 thereby cancelling the agreement of sale entered into with the plaintiff. Thus, the defendant sought for dismissal of the suit.

4. On the basis of the above pleadings, the trial Court framed the following issues namely:-

- (i) Whether it is true that the defendant refused to execute the sale deed in respect of the suit property due to the institution of the suit in O.S. No. 9 of 2008 on the file of Sub Court, Dharmapuri?
- (ii) Whether the plaintiff was always ready and willing to perform his part of the contract?
- (iii) Whether the sale agreement dated 26.05.2010 entered into between the plaintiff and the defendant was already cancelled?
- (iv) Whether the plaintiff is entitled to the relief of specific performance of the contract as prayed for?
- (v) Whether the plaintiff is entitled to get the alternative relief as prayed for?
- (vi) To what other reliefs is the plaintiff entitled?

5. During the course of trial, the trial court re-casted the issues already framed, which reads as follows:-

- (i) Whether the plaintiff is always ready and willing to perform his part of contract?
- (ii) Whether the sale was not concluded because of the litigation over the suit property on the file of the Sub Court, Dharmapuri?
- (iii) Whether the plaintiff is entitled to the relief of specific performance of contract? Or refund of the advance amount in the alternative?
- (iv) To what other relief?

6. Before the trial Court, on the side of the plaintiff/respondent herein, the plaintiff/respondent examined himself as PW1 and one another witness Balasubramanian was examined as PW2. Exs. A1 to A15 were marked on the side of the plaintiff. On the side of the defendant/appellant, the defendant/appellant examined herself as DW1 and Exs. B1 to B4 were marked.

7. The trial Court, on appreciation of the oral and documentary evidence, decreed the alternative prayer made by the plaintiff by directing the defendant/ appellant herein to pay the advance amount of Rs.36,01,000/- with interest at the rate of 18% per annum from the date of the agreement till the date of realisation, but dismissed the suit with respect to the relief of specific performance.

8. Now, the present appeal has been filed by the defendant/appellant only questioning the rate of interest at which the defendant/appellant was directed to pay the sum of Rs.36,01,000/- to the plaintiff/respondent herein.

9. It is the main contention of the learned counsel for the defendant/appellant that there is no clause incorporated in the agreement of sale, Ex.A1, to refund the amount with interest. In the absence of such a clause, the court below is not justified in awarding interest at the rate of 18% per annum. At best, the trial court could have awarded interest at the rate of 6% per annum. In support of his contention, the learned counsel for the defendant/appellant relied on several decisions to contend that the rate of interest awarded by the trial court at the rate of 18% is onerous and not in accordance with Section 34 of the Code of Civil Procedure. In **(Venkatesh Construction Company vs. Karnataka Vidyuth Karkhane Limited (KAVIKA))** reported in **AIR 2016 Supreme Court 553** which was relied on by the counsel for the defendant/appellant, it was held as follows:-

“17. Trial Court directed the respondent to pay a sum of Rs.3,23,000/- to the appellant with interest at the rate of 12% per annum from the date of suit till the date of realization. To award interest from the date of suit to date of decree and from the date of decree till the date of realization is entirely discretionary. The terms of the contract do not specify any rate of interest. In the facts and circumstances of the case and having regard to the fact that the matter is pending for over two decades and in the interest of justice, it is appropriate that the interest of 12% per annum awarded by the trial court is reduced to 6% per annum.”

11. On the above contention, we have heard the learned counsel for the plaintiff/respondent who would submit that even though the plaintiff/respondent herein prayed for a direction to the defendant to refund the advance amount with 24% per annum per annum, the trial Court has only awarded interest at the rate of 18% per annum and therefore, he prayed for dismissal of the appeal.

12. We have heard the counsel for both sides and perused the materials

placed on record, including the judgment and decree passed by the trial Court. In this appeal, the question that falls for our consideration is whether the trial Court is right in awarding interest at the rate of 18% per annum while decreeing the alternative relief prayed for by the plaintiff/respondent herein for refund of the advance amount of Rs.36,01,000/- paid by him.

13. The issue relating to payment of pendente lite interest is governed by Section 34 of the Code of Civil Procedure. As per Section 34 of the Code, interest shall be awarded at a reasonable rate in the discretion of the Court, but such discretion has to be exercised by the Court on sound legal principles and not arbitrarily. Applying the above provisions of law to the facts and circumstances of this case, in the present case, the trial Court awarded interest at the rate of 18% per annum. We find that the transaction between the appellant and the respondent is not a commercial transaction warranting award of interest at the rate of 18%. Therefore, having regard to the entire facts and circumstance of the case, we deem it appropriate to reduce the rate of interest from 18% per annum to 10% per annum, which would meet the ends of justice.

14. In the result, the Judgment and Decree dated 08.01.2015 passed in O.S. No. 39 of 2013 on the file of Principal District and Sessions Judge, Dharmapuri is modified and the defendant/appellant herein is directed to pay the sum of Rs.36,01,000/- to the plaintiff/respondent herein with interest at the rate of 10% per annum. The Appeal suit is partly allowed to the extent indicated above. No costs. Consequently, connected MP No. 1 of 2015 is closed.

(R.P.S.J.) (M.S.R.J.,)

20-06-2017

rsh

Speaking / Non-speaking Order

To

The Principal District and Sessions Judge
Dharmapuri**R. SUBBIAH, J**
and
M.S. RAMESH, J

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AS No. 73 of 2015

02-06-2017