

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.11.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

Appeal Suit No.94 of 2010
and M.P.No.1 of 2010

M.Ganesan .. Appellant

K.Karuppuraj .. Respondent

Vs

First Appeal preferred under Section 96 of CPC against the judgment and decree dated 25.08.2009, made in O.S.No.562 of 2006, on the file of the I Additional District Court, Coimbatore.

For Appellant : Mr.G.Masilamani, Senior Counsel
for Mr.R.Thiagarajan

For Respondents : No appearance

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JUDGMENT

[Judgment of the Court was delivered by A.SELVAM, J.]

Challenge in this Appeal Suit is to the judgment and decree dated 25.08.2009, passed in Original Suit No.562 of 2006, by the

I Additional District Court, Coimbatore.

2.The appellant herein, as plaintiff, has instituted Original Suit No.562 of 2006 on the file of the trial Court, praying to pass a decree of specific performance, in pursuance of sale agreement, dated 11.04.2006, wherein, the respondent has been arrayed as sole defendant.

3.It is averred in the plaint that the suit property is the absolute property of the defendant and he agreed to sell the same in favour of the plaintiff for a sum of Rs.16,20,000/- and to that extent, a suit sale agreement has come in to existence between the plaintiff and defendant on 11.04.2006 and on the date of its execution, the plaintiff has paid an advance amount of Rs.3,60,001/-. Further, it is recited in the sale agreement that the plaintiff should pay the balance of sale consideration, within a period of three months. Further, it is agreed that the defendant should vacate the tenants from the suit property, within the said period of three months. Despite of repeated demands made by the plaintiff, the defendant has failed to vacate the tenants from the suit property, nor execute a registered sale deed in favour of the plaintiff. Under the said circumstances, the present suit has been instituted for the relief sought therein.

4. In the written statement filed on the side of the defendant, it is averred that the suit property is the absolute property of the defendant and he agreed to sell the same, in favour of the plaintiff for a sum of Rs.16,20,000/- and to that extent, an agreement of sale has come into existence on 11.04.2006. Further, it is averred in the written statement that on the date of execution of sale agreement, the defendant has received an advance amount of Rs.3,60,001/-. Further, it is recited in the sale agreement that the defendant should vacate the tenants from the suit property and accordingly, he vacated them. It is false to aver that the plaintiff is always ready and willing to perform his part of the contract. Since the plaintiff is not ready and willing to perform his part of the contract, the discretionary relief of specific performance cannot be granted in his favour and therefore, the present suit deserves to be dismissed.

5. On the basis of divergent pleadings raised on either side, the trial Court has framed necessary issues and after analysing the both oral and documentary evidence, has refused to grant the relief of specific performance and directed the defendant to pay advance

amount of Rs.3,60,001/- with interest. The judgment and decree passed by the trial Court, are being challenged in the present appeal suit.

6. Even though the respondent/defendant has been served with summons, appearance has not been made. Under the said circumstances, on the basis of available evidence on record, this Court is inclined to pass this judgment on merit.

7. The learned Senior Counsel appearing for the appellant/plaintiff has laconically contended to the effect that in between the plaintiff and defendant, the suit sale agreement has come into existence on 11.04.2006, wherein, total sale consideration has been fixed at Rs.16,20,000/- and on the date of its execution, the plaintiff has paid an advance of Rs.3,60,001/-. Further, it is agreed that the plaintiff should pay balance of sale consideration, within a period of three months, for getting a registered sale deed. Further, it is recited in the suit sale agreement that within that period, the defendant should vacate the defendants from the suit property and since the defendant has failed to keep up his promise, a legal notice has also been issued and even after receipt of the same, the defendant has

failed to perform his obligation and under the said circumstances, the present suit has been instituted for getting the relief sought therein. But, the trial Court, even without considering the available evidence on record and also admissions made on the side of the defendant, has erroneously negated the relief of specific performance and further, during pendency of the present appeal suit, an affidavit has also been filed on the side of the appellant/plaintiff to the effect that he is ready to purchase the suit property, even though tenants have not been vacated from it. Under the said circumstances, the judgment and decree passed by the trial Court, are liable to be set aside.

8. It is an admitted fact that in between plaintiff and defendant, a suit sale agreement has come into existence on 11.04.2006 and the same has been marked as Ex.A1, wherein, it is clearly mentioned to the effect that the sale consideration has been fixed at 16,20,000/-. Further, it is recited in Ex.A1 that on the date of its execution, the plaintiff has advanced an amount of Rs.3,60,001/-. As set out earlier, it is agreed that the defendant should vacate the tenants from the suit property, within a period of three months.

9. The main contention put forth on the side of the

appellant/plaintiff is that as set out in Ex.A1, the defendant has failed to vacate the tenants from the suit property. But, the defence taken on the side of the defendant is that he has already vacated the tenants.

10.The trial Court, has negated the relief of specific performance, mainly on the ground that the suit property is being enjoyed by tenants. Further, it is not the finding of the trial Court that Ex.A1 is not a genuine document.

11.Apart from Ex.A1, before instituting the present suit, on the side of the plaintiff, a legal notice dated 01.07.2006, has also been issued to the defendant and even after receipt of the same, the defendant has not come forward to discharge his obligation as set out in Ex.A1. Further, it is seen from the records that various telegrams have also been exchanged between the parties.

12.Considering the clear admission made on the side of the defendant to the effect that in between plaintiff and defendant, Ex.A1 has been created and also considering that the defendant has received advance amount of Rs.3,60,001/- and also on the basis of the

remaining documents filed on the side of the plaintiff, the Court can early discern that from inception of Ex.A1, the plaintiff has always been ready and willing to perform his part of the contract. As mentioned supra, the trial Court has negated the relief of specific performance, simply on the ground that the defendant has not vacated the tenants from the suit property. Even for the sake of argument that the suit property is being enjoyed by the tenants, the same is not an impediment for granting relief of specific performance and further, during pendency of the present appeal suit, on the side of the appellant/plaintiff, an affidavit has also been filed, wherein, it is clearly averred to the effect that the appellant/plaintiff is ready to get a sale deed registered from the defendant, even though tenants are not vacated.

13. Considering the overall circumstances available on record and also on the basis of discussion made earlier, this Court is of the view that the relief of specific performance can easily be granted in favour of the appellant/plaintiff. The trial Court, without considering the readiness and willingness on the part of the appellant/plaintiff, from inception of Ex.A1, has erroneously negated the relief of specific performance. In view of the discussion made earlier, this

Court has found considerable force in the contentions put forth on the side of the appellant/plainiff and altogether, the present appeal suit deserves to be allowed.

In fine, this Appeal Suit is allowed without costs. The judgment and decree dated 25.08.2009, passed by the trial Court, in Original Suit No.562 of 2006, are set aside and Original Suit No.562 of 2006 is decreed as prayed for with costs. The affidavit filed on the side of the appellant/plainiff shall form part of the decree. The appellant/plainiff is directed to deposit the balance of sale consideration in Original Suit No.562 of 2006, within a period of two months. Connected Miscellaneous Petition is closed.

[A.S., J.]

[P.K., J.]

27.11.2017

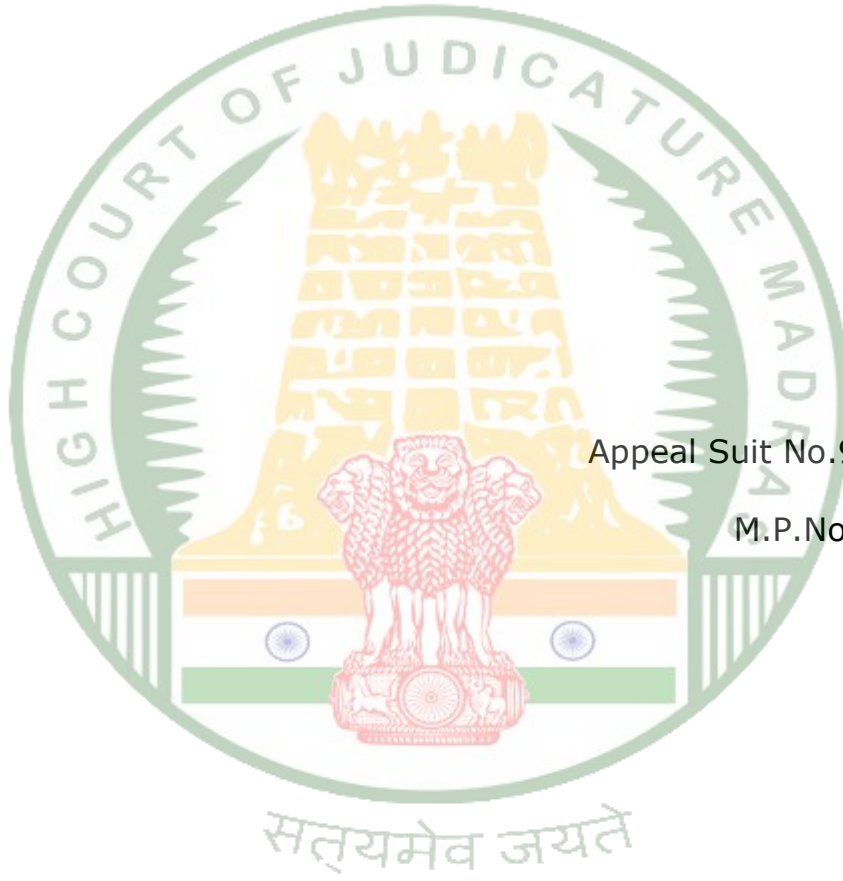
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To

The I Additional District Court,
Coimbatore.

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A.SELVAM, J.
and
P.KALAIYARASAN, J.
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