

HON'BLE Dr.JUSTICE SHAMEEM AKTHER

A.S. No.2399 of 1998

JUDGMENT:

Heard learned counsel for the appellant, respondent and perused the record.

This appeal is filed to set aside the judgment and decree passed in O.S.No. 154 of 1991 dated 06.08.1998 on the file of Senior Civil Judge, Kovvur, West Godavari District.

The appellant, who is the plaintiff therein, had filed a suit for specific performance of agreement of sale dated 09.06.1988 to purchase suit schedule house admeasuring 600 square yards, situated at Kovvur.

The appellant entered into agreement of sale for a consideration of Rs.1,25,000/- and paid an amount of Rs.25,000- on the date of agreement and agreed to pay balance sale consideration by 09.11.1988 i.e., on eviction of the tenant from the suit house.

It is contended on behalf of the appellant that the defendant did not evict the tenant as per the said agreement. Therefore, he did not pay the balance sale consideration and obtained valid registered sale deed in his favour. The appellant made several demands to the respondent to evict the tenant, receive the balance sale consideration and execute registered sale deed in terms of agreement dated 09.06.1988. The appellant had also issued a legal notice dated 27.08.1991 to the respondent calling upon to receive the balance sale consideration and register valid conveyance in his favour. Even then, the respondent did not

choose to do so and ultimately the Court below decreed the suit partly, directing the respondents to pay Rs.25,000/- i.e., earnest money received from the appellant with 12% interest per annum. The contention of the appellant is that he is always ready and willing to pay the balance, but the appellant could not pay the balance consideration within the stipulated time as the respondent failed to evict the tenant from the suit house. Therefore, he was ultimately made to file suit for specific performance.

On the other hand, learned counsel for respondent would submit that in spite of repeated demands, the appellant did not pay the balance sale consideration and obtained valid conveyance in his favour. The respondent was always ready and willing to perform his part of contract as per the terms of agreement dated 09.06.1988. It is further submitted that the trial Court had given reasons and partly decreed the suit as indicated above. The appeal is devoid of merits and ultimately prayed to dismiss the appeal with costs.

In view of the contentions put forth by both the parties, the point for determination is whether the appellant is entitled for decree of specific performance as prayed for?

To substantiate the same, the appellant examined himself as P.W1 and also examined P.W2 and got marked Exs.A1 to A5. Ex.A1 is the registered sale deed dated 05.10.1967, Ex.A2 is the General Power of Attorney dated 10.05.1984, Ex.A3 is the sale of agreement dated 09.06.1988, Ex.A4 is the office copy of registered notice dated 27.08.1991 and Ex.A5 is receipt dated 27.08.1991.

It is not in dispute that there was an agreement between the parties as contended by the appellant. Ex.A3 agreement of sale entered by the parties reveals the contentions put forth by the appellant. In Ex.A3 there is a specific mention that the balance sale consideration was agreed to be paid by 09.11.1988.

The respondent, to rebut the claim, examined himself as D.W1 and also D.W2 and D.W3. The evidence of D.W1 and other witnesses is that the appellant did not pay the balance sale consideration i.e., Rs.1,00,000/- by 09.11.1988 as per the terms of Ex.A3-agreement of sale. Even the legal notice was not issued to the respondent as contended by the appellant.

There is no record to show the service of legal notice on the respondent. Except the oral evidence of P.W1 that he was ready and willing to pay the balance sale consideration, there is no other documentary evidence till the suit is filed before the Court below. The balance sale consideration was required to be paid by 09.11.1988. The suit was instituted on 11.11.1991 i.e., just before the expiry of limitation. The trial Court while dealing with the entitlement of the appellant for decree of specific performance had stated number of reasons and held that as per terms of the agreement, the balance sale consideration was not paid and no further attempt was made by the appellant from his side such as demand., etc to the respondent to evict the tenant and pay balance sale consideration. The contention of the appellant that he was ready and willing to pay balance sale consideration is without any substance. It is also recorded that suit property originally belongs to one Shamsudddin and he left five sons and eight daughters

behind him. The respondent is the daughter of Shamsuddin. In Muslim Personal Law, property is required to be shared by all the issues of Shamsuddin. The respondent has no exclusive right to sale the same. In view of this finding, the agreement of sale is only to the extent of 1/24th share. The time is essence of contract and the appellant failed to perform his part of contract by 09.11.1988, therefore, the Court below ultimately negated the relief of specific performance of contract, in favour of the appellant. Those findings are based on record of evidence and ultimately held that respondent No.2 received Rs.25,000/- as part of sale consideration and directed to pay the same with 12% interest from 09.11.1998 till date of payment of the same to the appellant.

All these findings are based on record, all contentions raised on behalf of the appellant are untenable and there is no infirmity in the impugned order. Therefore, the appeal is devoid of merits. As such, it is liable to be dismissed.

In the result, the appeal is dismissed. No order as to costs.

Miscellaneous applications, if any, pending in this appeal shall stand closed.

October 11, 2017
dv

Dr.SHAMEEM AKTHER, J