

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CCCA.No.28 of 2016

JUDGMENT:

This appeal is filed against the judgment dated 19.01.2015, passed in O.S.No.1082 of 2008, on the file of the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad, by and under which, the learned Senior Civil Judge dismissed the suit of the plaintiff filed for specific performance of a contract.

For convenience, the parties are referred to as 'plaintiff' and 'defendant'.

The brief facts of the case are as under:

The defendant is a Builder and while he was constructing a residential complex at Vishwasnagar colony, Guddimalkapur, Hyderabad, by entering into a Development agreement with the landowners, he offered to sell a flat i.e. Flat No.201 on the second floor, admeasuring 800 square feet to the plaintiff for a consideration of Rs.8,40,000/- for which the plaintiff agreed to purchase the same. Accordingly, the plaintiff and defendant entered into an agreement of sale on 15.11.2005, the plaintiff paid Rs.50,000/- on 12.09.2004, another payment of Rs.1,00,000/- was made on 10.05.2005 and made another payment of Rs.3,70,000/- on 19.05.2005 to the defendant, for which, the defendant issued receipts. It is the contention of the plaintiff that despite several requests, the defendant has not come forward to execute sale deed by receiving the balance sale consideration.

The defendant filed written statement, denying the contentions of the plaintiff while admitting the receipt of the advance amount of

Rs.5,20,000/-. It is contended by the defendant that the plaintiff while agreeing to purchase one specific flat, she asked for another flat which is more than value of the agreed flat. It is also contended that the plaintiff was never ready to pay the balance sale consideration and purchase the flat.

On the basis of pleadings of both sides, the Court below framed following issues.

1. Whether the agreement of sale is true, valid and binding on parties.
2. Whether the plaintiff is entitled for relief of specific performance of contract as prayed for.

On behalf of plaintiff, the plaintiff was examined as PW 1 and marked Exs.A1 to A8. On behalf of defendant, no oral or documentary evidence was adduced.

After considering the oral and documentary evidence let in on behalf of the plaintiff, the Court below dismissed the suit, observing that there are corrections and interpolations in the receipts issued by the defendant and the plaintiff has not established the execution of Ex.A4 agreement of sale by any cogent evidence, and that though the defendant did not enter into witness box, the burden of proof lies on the plaintiff to prove her case and she shall not take advantage of weakness of the defendant to prove her claim.

Feeling aggrieved, the plaintiff filed the present appeal, contending that the court below erred in dismissing the suit though the defendant clearly admitted in his written statement about the receipt of the amount of Rs.5,20,000/- from him in three spells towards part sale consideration under Ex.A4 agreement of sale.

Though the respondent/defendant is served, nobody is appeared on his behalf.

The plaintiff has not prayed for alternative relief of refund of amount, but prayed for grant other reliefs, as the Court deems fit in the circumstances of the case. Therefore, there is no bar to grant alternative relief of refund of amount to the plaintiff.

The suit has been filed for specific performance of the contract. The learned trial Judge dismissed the suit for specific performance of the contract and has not considered the alternative relief.

The learned counsel for the appellant/plaintiff vehemently submitted that in the very written statement filed by the defendant, there is categorical admission on the part of the defendant that he received the advance amount of Rs.5,20,000 in three spells (50,000/- + 1,00,000/- + 3,70,000/-) on 12.09.2004, 10.05.2005 and 19.05.2005 respectively, and that he is prepared to refund the said amount with nominal interest @10% per annum till the end of June, 2007. The learned counsel further submitted that in spite of there being specific admission and a statement made in the written statement that the defendant is prepared to repay the earnest money together with nominal interest, the Court below has not taken the said aspect into consideration and erroneously dismissed the suit and not granted the relief of refund of the earnest money.

Having heard the learned counsel for the appellant and having perused the material on record, I feel that it is a fit case to grant alternative relief of refund of earnest money to the plaintiff.

In that view of the matter, the appeal is allowed in part. While confirming the judgment of the court below in so far as dismissal of plea

of specific performance of the agreement of sale, the plaintiff is granted alternative relief of refund of earnest money from the defendant. Accordingly, the defendant is directed to refund the earnest money of Rs.5,20,000/- to the plaintiff together with interest @10% p.a. from the date of agreement of sale till the date of filing of the suit, and @6% p.a. from the date of the suit till the date of realization. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 14.03.2017
Dsr

M.S.K.JAI SWAL,J

