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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.1363 of 2001

Muthulakshmi

.. Appellant/Appellants
Respondent-Cross
objector/defendant

Vs.

Masilamani

..Respondent/Respondent/
Appellant -Cross objector/
Plaintiff

PRAYER: Second Appeal filed under Section 100 of Cr.P.C., against the judgment and decree passed in A.S.No.126 of 1999 on the file of the Court of the Principal District Judge, Nagapattinam, dated 08.10.1999 which in turn confirms the judgment and decree passed in O.S.No.80 of 1998 on the file of the Additional Subordinate Judge, Mayiladuthurai, dated 09.03.1999.

For Appellant : Ms. V.Sabapathy Manonmani
for V.Raghavachari

For Respondent : Mr.S.Sounthar

JUDGMENT

This Second Appeal has been filed by the defendant against the Judgment and Decree passed in A.S.No.126 of 1999 on the file of the Principal District Judge, Nagapattinam, dated 08.10.1999 confirming the Judgment and Decree passed in O.S.No.80 of 1998 on the file of the Additional Subordinate Judge, Mayiladuthurai, dated 09.03.1999.

2. The respondent herein had filed a suit in O.S.No.80 of 1998 on the file of the Additional Subordinate Judge, Mayiladuthurai, for recovery of a sum of Rs.39,000/- with interest at the rate of 18% per annum from the date of suit till the date of realization and for costs. The learned Additional Subordinate Judge, Mayiladuthurai has decreed the suit directing the defendant to pay a sum of Rs.39,000/- with interest at the rate of 6% per annum from 17.08.1997 till the date of realization with proportionate costs. Aggrieved by the same, the appellant herein had filed an Appeal in A.S.No.126 of 1999 on the file of the Principal District



Judge, Nagapattinam. The learned Principal District Judge, Nagapattinam by his Judgment dated 08.10.1999 has dismissed the said Appeal confirming the judgment and decree passed by the learned Additional Subordinate Judge, Mayiladuthurai. Feeling aggrieved, the appellant herein filed the present Second Appeal.

3. For the sake of convenience, the parties are referred to as described before the trial Court.

4. The averments made in the plaint, in brief, are as follows:-

On 17.08.1997, the defendant entered into a sale agreement with the plaintiff for selling the suit property for a total consideration of Rs.1,53,450/- and on the same day, the defendant has received a sum of Rs.39,000/- as advance. It was agreed that the plaintiff has to pay the balance amount of sale consideration within 3 months and get the sale deed executed. The said arrangement was reduced into writing on the same day. The plaintiff made arrangements to pay the balance amount and get the sale deed executed. Knowing fully well that the plaintiff is ready to pay the balance amount, abruptly the defendant has sent a telegram stating that she is ready to execute the sale deed. Thereafter, the plaintiff approached the Sub-Registrar, Manalmedu on 14.11.1997 and on enquiry, he came to know that the suit property is the temple property and the defendant cannot alienate. Hence, he has sent a lawyer's notice on 15.11.1997 calling upon the defendant to repay the advance amount with interest at the rate of 18% per annum. The defendant, after receiving the said notice instead of returning the said amount, she has sent a reply through advocate on 19.11.1997 with false averments. Hence the suit.

5. The averments made in the written statement, in brief, are as follows:-

It is true that on 17.08.1997, the defendant entered into a sale agreement with the plaintiff in respect of the suit property. It is also true that the total sale consideration was fixed at Rs.1,53,450/- and pursuant to the said agreement, the plaintiff has paid a sum of Rs.39,000/- as advance. Though in the sale agreement the plaintiff's name alone has been mentioned, really the plaintiff, one Elangovan and one more person have approached the defendant and they have informed the defendant that they have enquired with the temple authority. After enquiry with the temple authority, they have made a request to transfer the lease hold right. Accordingly, an agreement was entered into in the name of the plaintiff. It appears that the plaintiff has specifically inserted his name alone in the agreement. Since, the agreement was entered with three persons all the three persons should have filed the above suit. The plaintiff alone is not having any right for filing the above suit. After knowing fully well that the defendant can alienate the lease hold



right, the plaintiff and others have entered into an agreement with the defendant. Therefore, it is not open to the plaintiff to say that the said agreement is not valid. Further, the period fixed in the said agreement expired on 17.11.1997. But, the plaintiff has not come forward to pay the balance amount and get the sale deed executed. Hence the defendant has sent a telegram on 14.11.1997 and after receipt of the said telegram, the plaintiff has sent a lawyer's notice on 15.11.1997 with false averments. The plaintiff was not ready and willing to perform his part of contract. He is not having sufficient funds for getting execution of the sale deed. The defendant is always ready and willing to perform her part of contract. Hence, the plaintiff is not entitled to ask for return of advance amount. Therefore, the defendant prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned Additional Subordinate Judge, Mayiladuthurai, has framed the following issues:-

- 1) whether, the plaintiff is entitled to get the suit amount from the defendant?
- 2) whether, the plaintiff is entitled to claim interest for the amount advanced to the defendant?
- 3) Whether the plaintiff has a cause of action to file the suit?
- 4) To what relief the plaintiff is entitled to?

7. On the aforesaid issues, a trial was conducted. During trial, on the side of the plaintiff, the plaintiff has examined himself as PW1 and he has also examined PW2 and PW3 and marked Exs.A1 to Ex.A3 on his side. On the side of the defendant, the defendant examined herself as DW1, but she has not marked any exhibits on her side.

8. The learned Additional Subordinate Judge, Mayiladuthurai, after considering the materials placed before him, found that the contract is void and hence, as per section 65 read with section 56 of the Indian Contract Act the defendant is bound to return the advance amount to the plaintiff. Accordingly, he has decreed the suit as stated above. Aggrieved by the same, the defendant has filed an Appeal in A.S.No.126 of 1999 on the file of the learned Principal District Judge, Nagapattinam. The learned Principal District Judge, Nagapattinam has dismissed the said appeal, confirming the Judgment and Decree passed by the trial Court. As against the same the defendant has filed the present Second Appeal.

9. At the time of admitting the Second Appeal, this Court has formulated the following substantial questions of law:-



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" 1) whether the courts below are right in holding that the agreement under Section 56 of the Indian Contract Act, 1872 is void especially when there is no legal embargo to transfer the leasehold rights?

2) whether the courts below have not misapplied the principles of impossibility of performance when the contract is capable of enforcement?

3) Whether the courts below are right in decreeing the suit at the instance of a defaulting party/plaintiff specially when he had failed to perform his part of the contract?"

10. Heard Ms.V.Sabapathy Manonmani, for Mr.V.Raghavachari, learned counsel appearing for the appellant and Mr.S.Sounthar, learned counsel appearing for the respondent.

11. Question Nos.1 to 3:-

The learned counsel for the appellant has submitted that PW1 has admitted in his evidence that even before entering sale agreement, he enquired with the temple authority and came to know that the suit property belongs to the temple, which shows that only after knowing the fact that the suit property belongs to the temple, he entered into the sale agreement. The learned counsel further submitted that in Ex.A1 sale agreement also, it is clearly stated that the lease hold right also will be transferred in favour of the plaintiff and that also shows that the plaintiff entered into the agreement with the defendant only with regard to the lease hold right of the suit property. She further submitted that the defendant is always ready and willing to perform her part of the contract, but, it is only the plaintiff who is not willing to perform his part of the contract. She further submitted that since the plaintiff is not having sufficient funds for getting execution of sale deed, he has twisted the recitals of the Ex.A1 agreement and taken a stand that the agreement itself is void and hence, he is entitled to get back the advance amount. She further submitted that the courts below have failed to appreciate the evidence in a proper manner and hence she prayed to allow the Second Appeal and dismiss the suit which was filed by the plaintiff.

12. On the other hand, the learned counsel for the respondent has submitted that the recitals found in Ex.A1 would clearly show that the agreement was entered only for selling the land and not for alienating the lease hold right. As per Section 34 of the Hindu Religious and Charitable Endowments Act, 1959, (hereinafter referred to as "HR & CE" Act), any sale in respect of the immovable property belonging to or given or endowed for the purpose of any religious



institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution. He further submitted that in this case, even if it is assumed that Ex.A1 agreement was entered only with regard to lease hold right, that also cannot be done as per Section 34 of the HR & CE Act, 1959. He further submitted that as per section 56 of the Contract Act, an agreement to do an act impossible in itself is void and hence Ex.A1 agreement cannot be enforced. He further submitted that since the agreement cannot be enforced and it is void as per section 56 of the Contract Act, as per section 64 of the Contract Act, the defendant is bound to return the amount to the plaintiff. He further submitted that courts below have come to the conclusion that the plaintiff is entitled for recovery of suit amount and since it is a factual concurrent finding, this Court cannot interfere and therefore he prays to dismiss the Second Appeal.

13. This Court considered submission made by the learned counsel on either side and perused the materials available on record.

14. It is not disputed that the suit property belongs to Thiruvidadaimaruthur Rethinapureeswarar temple, and the said temple is under the control of HR & CE Department. It is seen from Ex.A1 that on 17.08.1997, the defendant herein has executed a sale agreement in favour of the plaintiff agreeing to sell the said property for Rs.1,53,450/- and on the same day, he has received a sum of Rs.39,000/- as advance. It was agreed that the sale transaction has to be completed within three months. It is nowhere stated in the said document that the defendant had agreed to alienate only the lease hold rights. Recitals in the said document clearly show that the defendant has entered into the sale agreement only for selling of land because the value for the land has been fixed based on kuzhis. Further the defendant has stated that, after execution of the sale deed, she will take steps to transfer the lease hold right. So it is clear that the parties have entered into Ex.A1, sale agreement only in respect of the land.

15. As per Section 34 of the HR & CE Act, 1959, any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution. Without getting any sanction from the Commissioner, the defendant cannot alienate the suit property.

16. As per section 56 of the Contract Act, if the contract is not possible to enforce, then it is void. As per Section 65 of the Contract Act, When an agreement is discovered to be void, or when a contract becomes void, any



person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it. In this case, as already pointed out that the suit property belongs to temple and the said temple is under the control of the HR & CE Department. In such a case, without getting sanction from the Commissioner, HR & CE Department, the defendant cannot alienate the suit property. Therefore the agreement is void.

17. In this case, the defendant has admitted in her written statement and also in her evidence that she has received a sum of Rs.39,000/- as advance. Therefore, she is bound to return the said amount. Even though, the plaintiff has asked interest at the rate of 18% per annum from the date of the suit till the realization, the trial Court has awarded only 6% interest per annum. The trial Court after taking into consideration the materials placed before it, came to the conclusion that contract is void and the defendant is bound to return the amount and the same has been confirmed by the first Appellate Court. Therefore, this Court, cannot interfere with the said concurrent factual findings. Accordingly, the substantial questions of law are answered against the appellant/defendant.

18. In the result, the Second Appeal is dismissed. The judgments and decrees passed by the Courts below are confirmed. No costs.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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TO

1. The Principal District Judge, Nagapattinam.
2. The Additional Sub Judge, Mayiladuthurai.

+ 1 cc to Mr.V. Raghavachari, Advocate Sr.43392

S.A.No.1363 of 2001

MR (CO)

EU (05/09/2018)