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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

O.S.A.No.36 of 2015
and
M.P.No.1 of 2015

1.B.S.Raju
2.B.Sivakumari

.. Appellants/Plaintiffs

Vs

M.Govinda

... Respondent/ Defendant

Appeal preferred under Order XXXVI Rule 1 of O.S. Rules r/w Clause 15 of Letters Patent against the order dated 19.12.2007 made in C.S.No.709 of 1997 which was filed for me suit of specific performance of the sale agreement dated 30/11/1994.

For Appellant .. Mr.T.Murugamanickam,
Sr. Counsel
for Mr.A.Babu

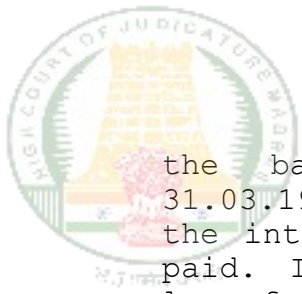
For Respondent .. Mr.P.K.Sivasubramaniam

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The unsuccessful plaintiffs are the appellants. The suit is filed for specific performance with an alternative prayer for return of advance amount with interest.

2.The case of the appellants is that under Ex.P1, an agreement for sale was entered into between the parties on 30.11.1994. As per Clause 6 of the agreement, the respondent shall discharge the loan to the Bank of Baroda, Sowcarpet Branch. As per Clause 7, on the failure of the appellants to pay



the balance sale consideration of Rs.13,15,000/- within 31.03.1995, which is the date fixed for conclusion of the sale, the interest at 24% per annum from 01.04.1995 will have to be paid. In the meanwhile, the respondent after discharging the loan for a sum of Rs.2 lakhs, which was in fact the part of the sale consideration as per Ex.P1, mortgaged it in favour of M/s.Purasawalkam Santhatha Sanga Nidhi Limited on 22.04.1996.

3.Under Ex.P2, the appellants sent a letter to the respondent asking him to be ready for execution of the sale deed. It was followed by a legal notice under Ex.P4 dated 09.06.1997. A reply was given under Ex.P5 dated 17.06.1997 stating that it is the appellants who are not ready to make the payment within the time schedule. Therefore, the respondent was constrained to discharge the loan by a deed of mortgage with M/s.Purasawalkam Santhatha Sanga Nidhi Limited. Thus, the appellants are not entitled for the relief sought for. Therefore, a specific plea has been taken that the agreement has already been abandoned by the appellants on their own volition.

4.To show that the appellants were having means, Exs.P7 and P8, which are the sale deeds dated 25.06.1997 have been marked. The pass books of the appellants have been marked as Exs.P9 to P11. To substantiate their case, the first appellant examined himself as P.W.1. On behalf of the respondent, two witnesses have been examined as D.Ws.1 and 2. After considering the respective contentions of the parties, the learned single Judge framed the following issues:

1.Whether the plaintiffs are entitled for the specific performance of the agreement of sale dated 30.11.1994 between the plaintiffs and the defendant as asked for in the plaint?

2.Whether the plaintiffs have committed breach in not completing the sale and abandoned the contract?

3.Whether the defendant has suffered any loss on account of the plaintiffs in not performing his part of the contract?

4.To what relief the plaintiffs are entitled?

5.The learned single Judge after noting the respective contentions, was pleased to hold that the appellants have not proved and established that they were ready and willing from 30.11.1994 to 03.04.1997. Incidentally, the respondent was also found at fault. The relief being discretionary, the alternative prayer sought for was accordingly granted by directing the



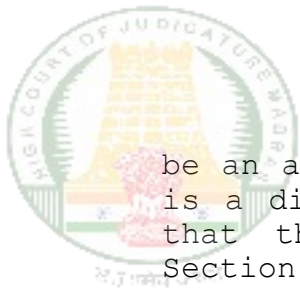
respondent to pay the advance amount with 6% interest.

6. Learned senior counsel appearing for the appellants would contend that under Ex.P1 with specific reference to Clause 6, it is for the respondent to discharge the loan with the Bank of Baroda, Sowcarpet Branch at the time of execution of Ex.P1. Thus, though Ex.P1 speaks about the time is the essence with the date fixed for the sale on 31.03.1995. Inasmuch as the respondent did not comply with his part, the same cannot be put against the appellants. The readiness of the appellants have been proved as per Exs.P7 to P11 read with the evidence of P.W.1. On the alternative prayer granted, the learned senior counsel would submit that without prejudice to the contentions on the main prayer, the learned single Judge committed an error in granting 6% interest only from the date of the decree till the date of realisation notwithstanding the fact that the money was all along with the respondent from 30.11.1994 onwards.

7. Learned counsel appearing for the respondent would submit that the learned single Judge has rightly held that the appellants were at fault. They have not shown and proved that they were ready and willing. Thus inasmuch as Section 16 C of the Specific Relief Act, 1963 having been not complied with, the suit was rightly dismissed. In view of the finding that the appellants were also at fault, the learned single Judge exercised his discretion in not awarding interest at all. As alternative prayer having been granted, which was not appealed against, no interference is required.

8. The point for consideration is as to whether the appeal should be allowed with respect to the prayer for specific performance or not and in the alternative, the appellants are entitled for enhanced interest from 30.11.1994 to the date of the decree.

9. The execution of Ex.P1 is not in dispute and so are the documents filed. Therefore, the main issue to be considered is as to whether the appellants were ready and willing from 31.03.1995 onwards. As rightly held by the learned single Judge, there is absolutely no material to hold that the appellants were ready and willing. Though Clause 6 of Ex.P1 speaks about the discharge of the loan, time has been specifically fixed for sale to be completed on or before 31.03.1995. Therefore, from 01.04.1995 onwards, the appellants have not shown their readiness and willingness. Only under Ex.P2, for the first time, it was conveyed by the respondent on 03.04.1997. It is to be noted that neither in the plaint nor under Ex.P4, the failure of the respondent in discharging the loan was raised alleging that there was non compliance of Clause 6 of Ex.P1. Therefore, the said contention sought to be raised thereafter can at best



be an afterthought. After all, a decree for specific performance is a discretionary one and it is for the plaintiffs to satisfy that they have complied with the parameters required under Section 16 C of the Specific Relief Act, 1963.

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10. In such view of the matter, we do not find any error in the judgment and decree rendered by the learned single Judge. Accordingly, the issues as dealt with by the learned single Judge stand confirmed.

11. Coming to the issue with respect to the interest awarded, we do find considerable force in the submissions made. Admittedly, the advance amount was available with the respondent. It is the case of the respondent that the appellants having abandoned the agreement under Ex.P1, nothing prevented them from returning the money. The learned single Judge had also given a finding that even the respondent was also at fault. Therefore, being a defaulter, the respondent cannot take advantage of his own wrong.

12. In such view of the matter, we are of the view that the appellants are certainly entitled for interest from 01.12.1994 to the date of the decree - 19.12.2007. We fix the interest payable at 9% per annum. The other part of the decree of the learned single Judge awarding interest at 6% from the date of the decree till its realisation stands confirmed. Accordingly, the Original Side Appeal stands allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to Mr.A.Babu, Advocate, S.R.No.40242

+1cc to Mr.P.K.Siva Subramaniam, Advocate, S.R.No.41355

O.S.A.No.36 of 2015

TM(CO)

GSP(26/07/2018)