

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.09.2019

PRONOUNCED ON : 17.10.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.Nos.303 & 304 of 2011

C. Raju ...Appellant in both the appeals/Plaintiff

Vs.

1. K. Arumugam (deceased)
2. N. Leela
3. Manjula
4. A. Saravanan ...Respondents in both the appeals/Defendants

RR2 to 4 brought on record as LRs of the deceased sole respondent vide order of court dated 09.08.2017 by RSMJ made in CMP No.12528 of 2017 in A.S.No.304/2011 & CMP 12527/17 in AS 303/2011.

Prayer: First Appeals filed under Section 96 of Civil Procedure Code, against the judgment and decree made in O.S.Nos.89 of 2006 & 666 of 2007 respectively on the file of Additional District Sessions Judge Court, Fast Track Court I at Coimbatre dated 30.08.2010.

For Appellant : Mrs.Sumitra Chakravarthi in both appeals.

For Respondents: Mr. R. Thiagarajan for R2 to R4 in both appeals.

COMMON JUDGMENT

A.S.Nos. 303 and 304 of 2011 are directed against the common judgment and decree dated 30.08.2010 passed in O.S.Nos.89 of 2006 & 666 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Coimbatre.

2. The first appeals have been preferred by the plaintiff in O.S.No.89 of 2006 and defendant in O.S.No.666 of 2007.

3. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

4. O.S.No.89 of 2006 has been laid for specific performance or in the alternative for the refund of advance amount.

5. Briefly stated, according to the plaintiff, the defendant is the owner of the plaint schedule property and agreed to sell the same to the plaintiff and accordingly during January 2003, had approached the plaintiff and offered to sell the same and the plaintiff had also agreed to purchase the same and the sale price had been fixed at Rs.8,32,447/- per cent and the agreement had been reduced into writing in the month of January 2003 and on the northern side of the suit property H.T. electricity line is passing through till the housing unit road and the defendant had orally promised to arrange for the shifting of the same at his own cost and accordingly, the plaintiff paid a sum of Rs.1,00,000/- as advance to the defendant and the parties had agreed to complete the sale transaction within six months. The plaintiff wanted to run a mess in the suit property by putting up a shed and the same was allowed by the defendant and accordingly, the plaintiff is running a mess in the suit property and the defendant obtained the signatures of the plaintiff and one Muthusamy in various blank revenue stamped papers, white papers and the defendant also approached the plaintiff for arranging loan in favour of the plaintiff through bank for paying the balance sale consideration at low interest and on believing the said representation made by the defendant, the plaintiff agreed to the same and the bank officials also visited the property for inspection and the defendant in the first week of June 2003 approached the plaintiff and informed that the first agreement period was going to end by June and as the bankers wanted a fresh agreement for the process of the loan, accordingly got back the first agreement and obtained the signatures of the plaintiff in the fresh agreement dated 13.06.2003 and as per the terms of the said sale agreement, the sale transaction should be completed within 45 days. Subsequently, on 22.06.2003, the defendant again demanded a further sum of Rs.1,00,000/- towards the sale transaction and the same was paid by the plaintiff and an endorsement has been made in the sale agreement. The defendant represented that the loan application is under process. On 19.07.2003, the defendant approached the plaintiff and demanded him to pay a further sum of Rs.50,000/- which was paid by the plaintiff through one S.M. Ramachandran. At that time, the defendant had taken several signatures of the plaintiffs in various blank papers and stamp papers on the pretext that a fresh agreement had to be prepared and submitted to the bank. The plaintiff was waiting with the fond hope that the defendant would take steps to shift the H.T. electricity line running over the suit property, but no steps had been taken by the defendant with reference to the same. Though the plaintiff has been always ready and willing to perform his part of the contract and obtain the sale deed, the defendant had been avoiding the same

on some pretext or the other. On account of the delaying tactics adopted by the defendant, the plaintiff was necessitated to issue the legal notice dated 12.03.2005 calling upon the defendant to remove the H.T. electric line passing through the suit property on the northern side and execute the sale deed in favour of the plaintiff after receiving the balance sale consideration. However, the defendant refused to receive the said legal notice and avoid the same and thereafter, the plaintiff sent the same notice on 12.04.2005 and to the same, the defendant sent a reply containing false and untenable allegations with a view to avoid the execution of the sale deed. The defendant had laid the false suit against the plaintiff for mandatory injunction and permanent injunction without any basis on the file of the District Munsif Court, Coimbatore on untenable allegations. Inasmuch as the defendant had failed to comply with the demand made by the plaintiff, according to the plaintiff, the need for the suit for appropriate reliefs.

6. The defendant resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and admitted that the parties had entered into the sale agreement in January 2003 with reference to the sale of the suit property by the defendant in favour of the plaintiff at Rs.8,32,447/- per cent and further admitted that the H.T. electricity line is running on the northern side of the suit property and according to the defendant, the same was erected very very long back and according to the defendant, he had never promised to shift the abovesaid electricity line as alleged in the plaint and further according to the defendant, the plaintiff was not granted permission to run the mess in the suit property and the plaintiff had encroached into the suit property and on being questioned, agreed to remove the shed put up by him and failed to do so, and the plaintiff was not able to pay the balance sale consideration as agreed to and accordingly assured to vacate the suit property and accordingly received a sum of Rs.1,00,000/- from the defendant and on the other hand, the plaintiff having failed to vacate the suit property, according to the defendant, he has been necessitated to levy the suit against the plaintiff in O.S.No. 666 of 2007 for appropriate reliefs to vacate the plaintiff from the suit property. The defendant denied the case of the plaintiff that he had obtained the plaintiff's signatures in the blank papers as claimed in the plaint and according to the defendant, he had never assured the plaintiff that he would arrange for the bank loan to enable the plaintiff to pay the balance sale consideration and on that pretext obtained the signatures in blank white papers and stamp papers and denied that a sum of Rs.50,000/- was paid towards advance and according to the defendant, only a sum of Rs.25,000/- was paid by the plaintiff and the plaintiff has never been ready and willing to perform his part of the contract and accordingly not evinced interest to complete the sale transaction and has filed the suit only to squat in the suit property endlessly

without any basis and to the notice sent by the plaintiff suitable reply has been given and hence according to the defendant, the plaintiff has no cause of action to levy the suit and therefore, the suit is liable to be dismissed.

7. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial court for consideration in O.S.No.89 of 2006

- 1) Whether the sale agreement entered into between the plaintiff and the defendant is true, valid and legally enforceable as claimed in the plaint?
- 2) Whether it is true that the defendant has repaid the advance amount?
- 3) Whether the plaintiff has been always ready and willing to pay the balance sale consideration and obtain the sale deed?
- 4) Whether the defendant is liable to receive the balance sale consideration of Rs.10,55,116/- and complete the sale transaction or whether the plaintiff is entitled to obtain the sale deed through the Court process?
- 5) To what other relief?

Additional Issue

"Whether the plaintiff is entitled to seek the alternative relief of refund of the advance amount with interest as prayed for?"

8. O.S.No. 666 of 2007 has been laid for mandatory injunction and permanent injunction.

9. The case projected by the defendant in the abovesaid suit is that he is the owner of the suit property and an agreement of sale had been entered into between the defendant and the plaintiff with reference to the sale of the suit property for the sale price of Rs.8,14,432/- per cent on 10.03.2003 and the plaintiff has paid a sum of Rs.1,00,000/- as advance and the plaintiff has failed to perform his part of the contract and never come forward to pay the balance amount within the stipulated period and during June 2003, the parties had entered into a fresh sale agreement by paying an additional advance amount of Rs.1,00,000/- by the plaintiff to the defendant and as per the fresh agreement, the sale should be completed within six months. Even thereafter, the plaintiff did not come forward to pay the balance sale price and obtain the sale deed and on the other hand, without the knowledge of the defendant, the plaintiff had put up a temporary shed in the suit property illegally and when the defendant questioned the same, the plaintiff, to gain sympathy, paid a sum of Rs.25,000/- and even thereafter, the plaintiff did not evince interest to pay the balance sale price and obtain the sale deed and inasmuch as the plaintiff

was unable to mobilise the fund for paying the balance sale price, he approached the defendant and got refunded a part of the advance amount of Rs.1,00,000/- from the defendant and agreed to vacate the suit property. However, he is continuing to retain the suit property unlawfully and without any authority and in this connection, the defendant also lodged a police complaint and inasmuch as the occupation of the suit property by the plaintiff is illegal and unauthorised, according to the defendant, he has been necessitated to lay the suit for appropriate reliefs.

10. The plaintiff resisted the abovesaid suit contending that the suit laid by the defendant is not maintainable either in law or on facts. After denying all the plaint allegations, according to the plaintiff, the defendant approached to sell the suit property in January 2003 for a sum of Rs.8,32,447/- per cent and also promised to shift the HT electricity line passing through the suit property and the plaintiff has paid an advance amount of Rs.1,00,000/- and the plaintiff was permitted to run the mess by putting up a shed in the suit property and at that point of time, the defendant obtained the signatures of the plaintiff and one Muthusamy in blank white papers and stamp papers. The defendant has also approached the plaintiff and assured him of loan from the bank in order to pay the balance sale consideration and the plaintiff agreed to the abovesaid proposal and some bank officials also visited the suit property. The defendant had apprised him that the original sale agreement is coming to an end accordingly informed that the bank requested for a fresh agreement and accordingly obtained a fresh agreement from the plaintiff and further a sum of Rs.1,00,000/- was paid and the parties had agreed to complete the sale transaction within 45 days and the defendant had assured to shift the H.T. electricity line passing through the suit property at his cost. At request of the defendant, a further sum of Rs.50,000/- was paid through one S.M. Ramachandran and however, though the plaintiff had been always ready and willing to perform his part of the contract, the defendant had been delaying the completion of the sale transaction for one or the other reason and accordingly left with no other alternative, according to the plaintiff, he had issued the legal notice on 12.03.2005 demanding the execution of the sale deed by receiving the balance sale consideration after removing the H.T. electricity line and as the defendant evaded to receive the same, the plaintiff was forced to issue another notice and to the same, the defendant sent a reply containing false allegations. The defendant is misusing the plaintiff's signatures obtained in the blank white papers and stamp papers for serving his own purpose and the plaintiff has been always ready and willing to perform his part of the contract and accordingly, it is put forth that the plaintiff is in the lawful possession and enjoyment of the suit property and his possession cannot be termed unlawful or unauthorised and it is only the defendant who has committed breach of the contract and endeavouring to

sell the suit property to the third parties and hence, the defendant is not entitled to seek and obtain the relief prayed for and accordingly contended that the suit is liable to be dismissed.

11. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial court for consideration in O.S.No.666 of 2007.

1. Whether the plaintiff is entitled to obtain the relief of mandatory injunction as put forth in the plaint?
2. Whether the plaintiff is entitled to obtain the relief of permanent injunction as claimed?
3. Whether the plaintiff is the owner of the suit property as per sale deed dated 15.02.2002?
4. To what other reliefs?

12. The abovesaid suits were jointly tried by the trial court and accordingly common evidence has been recorded in both the suits and the evidence had come to be recorded in O.S.No.89 of 2006.

13. In support of the plaintiff's case P.W.1 was examined, Exs.A1 to A15 were marked. On the defendant's side, D.W.1 was examined and Exs.B1 to B5 were marked.

14. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decline the relief of specific performance prayed for by the plaintiff, however, held that the defendant is liable to return the advance amount of Rs.2,25,000/- to the plaintiff at the time of vacating the suit property and also held that the plaintiff is entitled to a charge in respect of the suit property with reference to the abovesaid amount and accordingly disposed of the plaintiff's suit in O.S.No.86 of 2009. Further, the trial court granted the reliefs in favour of the defendant as prayed for in O.S.No.666 of 2007 and directed the plaintiff to vacate the suit property within two months and accordingly disposed of the abovesaid suit in favour of the defendant. Aggrieved over the judgment and decree of the trial court in the abovesaid suits, the abovesaid appeals have been preferred.

15. The following points arise for determination in the first appeals.

1. Whether the plaintiff has been always ready and willing to perform his part of the contract as claimed in the plaint?
2. Whether the plaintiff is entitled to seek the relief of specific performance as prayed

for in respect of the sale agreement dated 13.06.2003 as prayed for in O.S.No.86 of 2006?

3. Whether the plaintiff is entitled for the refund of the advance amount with interest as claimed in O.S.No.89 of 2006?
4. Whether the defendant is entitled to obtain the relief of mandatory injunction and permanent injunction as prayed for in O.S.No.666 of 2007?
5. To what relief the plaintiff in O.S.No.89 of 2006 and the defendant in O.S.No.666 of 2007 / appellant is entitled to?
6. To what relief the defendant in O.S.No.89 of 2006 and the plaintiff in O.S.No.666 of 2007 is entitled to?

Point Nos. 1 to 4

16. It is not in dispute that the defendant is the owner of the suit property. From the materials placed on record, it is found that the plaintiff and the defendant entered into a sale agreement pertaining to the sale of the suit property and it is found that the defendant had agreed to sell the suit property at the rate of Rs.8,32,447/- per cent. It is found that the suit property measures an extent of 605 sq. ft., equivalent to one cent and 169 sq.ft. Though the plaintiff would claim that the defendant had approached him qua the sale of the suit property in January 2003, however, the materials placed on record go to show that the parties had agreed to enter into a written sale agreement with reference to the same only on 10.03.2003, which sale agreement has been marked as Ex.B1. Ex.B1 sale agreement is found to be the first sale agreement entered into between the parties in writing and it is found that as per the terms of Ex.B1 sale agreement, the parties had agreed to complete the sale transaction on or before 01.06.2003. The other usual clauses of the sale agreement are incorporated in Ex.B1. Subsequently, it is found that the parties had entered into another sale agreement with reference to the suit property on 13.06.2003 and the abovesaid sale agreement has been marked as Ex.A1. As per the terms of Ex.A1 sale agreement, the parties had agreed to complete the sale transaction within one month from the date of the sale agreement. Therefore, it is found that the parties are very particular as regards the completion of the sale transaction within a particular point of time. It is not in dispute between the parties that a sum of Rs.1,00,000/- had been paid by the plaintiff towards the sale consideration as advance at the first instance and it is also found that on 22.06.2003, a further sum of Rs.1,00,000/- had been paid by the plaintiff towards the sale consideration and the endorsement with reference to the same is found on the reverse side of the sale agreement Ex.A1, which has been

marked as Ex.A2. The defendant has not disputed the receipt of Rs.1,00,000/- by way of Ex.A2 endorsement. Now according to the plaintiff, as directed by the defendant, he had paid a further sum of Rs.50,000/- to the defendant towards the sale consideration. However, it is contended by the defendant that only a sum of Rs.25,000/- alone had been paid by the plaintiff subsequently and disputed the claim of the plaintiff that he had paid a sum of Rs.50,000/- towards the sale consideration. As rightly held by the trial court, there is no material on the part of the plaintiff to buttress that he has paid a sum of Rs.50,000/- towards the balance sale consideration as put forth by him and accordingly, the trial court is found to be justified in determining that, in toto, the plaintiff has only paid a sum of Rs.2,25,000/- towards the sale consideration agreed to between the parties.

17. According to the defendant, the plaintiff has not been able to mobilise the sale consideration and complete the sale transaction and accordingly it is put forth that he had agreed to vacate the suit property and following the same also received a sum of Rs.1,25,000/- from him and agreed to vacate the suit property and receive the balance amount paid by him at the time of vacating the suit property and in this connection, the defendant has projected the letter said to have been executed by the plaintiff which has been marked as Ex.B5. However, Ex.B5 has been seriously challenged by the plaintiff and according to the plaintiff, Ex.B5 has been fabricated by the defendant by making use of the plaintiff's signatures obtained in blank white papers and stamp papers at the time of entering into the fresh sale agreement as well as at the time of the defendant offering to help the plaintiff in securing the bank loan for the payment of the balance sale consideration. It is found that Ex.B5 has been objected to even at the time of marking of the same. As held by the trial court rightly, if really the plaintiff had agreed to vacate the suit property as put forth by the defendant, the plaintiff would have endeavoured to receive the entire sum paid by him to the defendant i.e. the sum of Rs.2,25,000/- and not Rs.1,25,000/- in piecemeal as projected by the defendant. Furthermore, when there is no independent witness examined on behalf of the defendant to sustain the truth and validity of Ex.B5 receipt and the circumstances under which Ex.B5 had come to be executed not having been convincingly put forth by the defendant, in all, it is found that the trial court has rightly not placed reliance upon Ex.B5 projected for sustaining the defence version. Accordingly, it is found that no credence could be attached to Ex.B5 for sustaining the case of the defendant that the plaintiff had agreed to vacate the suit property.

18. Both Ex.B1 sale agreement as well as Ex.A1 sale agreement do not stipulate that the defendant should remove the H.T. electricity line passing over the suit property on the northern side. Accordingly it is found that when there is no stipulation or agreement entered into between the parties

qua the removal of the H.T. electricity line and when the materials placed on record go to show that the H.T. electricity line had been in existence over a period of time, in such view of the matter, the case projected by the plaintiff that the defendant had orally agreed to remove the H.T. electricity line passing over the suit property for the completion of the sale transaction, as such, cannot be believed and accepted and the abovesaid case of the plaintiff had been rightly rejected by the trial court.

19. As above pointed out, both Ex.B1 sale agreement as well as Ex.A1 sale agreement stipulates a particular point of time for the completion of the sale transaction. Therefore, even though the time may not be the essence of the contract between the parties qua the sale of the immovable property, still, when the parties had endeavoured to enter into the sale agreement for the completion of the sale transaction within a particular point of time, the same could not be easily discarded. Hence, it has to be found whether the plaintiff has been always ready and willing to perform his part of the obligations under the sale agreement and complete the sale transaction within the stipulated period or, atleast, within a reasonable time from the date of the sale agreement.

20. Though the plaintiff would claim that he has been ready and willing to perform his part of the obligations under the sale agreement Ex.A1, Ex.B1 sale agreement having been superseded by Ex.A1 sale agreement, we are now concerned only with the sale agreement Ex.A1 and accordingly it is for the plaintiff to establish that he has taken all the endeavours to pay the balance sale consideration within the stipulated period as agreed to by the parties under Ex.A1 or within a reasonable time thereafter. The balance sale consideration runs to several lakhs of rupees. Therefore, when according to the defendant, the plaintiff has been unable to mobilise the balance sale consideration and pay the same to him for the completion of the sale transaction, it is for the plaintiff to establish that he had been always ready and willing to pay the balance sale consideration and the same was in his possession and custody and it is only the defendant who had been evading to receive the same and complete the sale transaction on some pretext or the other. However, with reference to the claim of the plaintiff that he has been possessed of sufficient means to pay the balance sale consideration running to several lakhs of rupees, absolutely there is no material forthcoming on the part of the plaintiff. According to the plaintiff, the defendant had approached him for arranging bank loan for mobilising the balance sale consideration and pay to the defendant for the completion of the sale transaction and the abovesaid proposal offered by the defendant was agreed to by him. The abovesaid case projected by the plaintiff would squarely go to disclose, as rightly held by the trial court, the inability of the plaintiff to raise the funds for paying

the balance sale consideration on his own, accordingly, it is found that the plaintiff was depending upon the bank loan said to have been arranged by the defendant for paying the balance sale consideration and when the defendant has denied the abovesaid aspects of the plaintiff's case, in all, it is found that the abovesaid version of the plaintiff's case would itself go to expose the inability of the plaintiff to mobilise the balance sale consideration on his own and accordingly the resultant position would be that the plaintiff has not been possessed of sufficient means and capacity to pay the balance sale consideration and hence, his claim that he has been always ready and willing pay the balance sale consideration and it is only the defendant who had been delaying the matter, as such, cannot be believed and accepted. If that be so, on seeing the evasive attitude of the defendant, as held by the trial court, nothing prevented the plaintiff from immediately taking further steps in accordance with law to enforce the sale agreement by issuing a legal notice calling upon the defendant to receive the balance sale consideration and execute the sale deed as per law. On the other hand, it is found that though the plaintiff would claim that it is only the defendant who had been evading the completion of the sale transaction and he had been always ready and willing to perform his part of the contract, however, the legal notice had been come to be issued by the plaintiff only on 12.03.2005, very much after the stipulated period fixed under Ex.A1, i.e., nearly after a period of one year and 9 months, which has been marked as Ex.A3. It is found that subsequently, the notice had been again issued by the plaintiff to the defendant and the defendant is found to have issued the reply notice on 20.07.2005, marked as Ex.A6. Thus, it is found that absolutely there is no material on the part of the plaintiff to hold that he had been possessed of sufficient means and capacity to pay the balance sale consideration since 22.06.2003 till 12.03.2005 and therefore, the claim of the plaintiff that he has been always ready and willing to pay the balance sale consideration from the inception, as such, cannot be believed and accepted.

21. On the other hand, it is found that contending that the plaintiff has taken the possession of the suit property one way or the other and without authority had been running a mess therein and further contending that the plaintiff has failed to perform his obligations under the sale agreement Ex.A1, it is found that the defendant had laid the suit against the plaintiff in O.S.No.1349 of 2005 on the file of the Principal District Munsif Court, Coimbatore for the reliefs of mandatory injunction directing the plaintiff to vacate and hand over the suit property by removing the superstructure and also for permanent injunction restraining the plaintiff from putting up any pucca construction in the suit property and therefore, it is found that only after the defendant had laid the abovesaid suit, the plaintiff had chosen to take steps to enforce the sale agreement Ex.A1 by

sending the legal notice and accordingly, it is found that the plaintiff has failed to establish his readiness and willingness to complete his part of the contract as per the terms of Ex.A1 and in such view of the matter, the trial court has rightly held that though the sale agreement Ex.A1 had been entered into between the parties, however, it is only the plaintiff who is the defaulting party and not been ready and willing to perform his obligations under the said agreement and accordingly, the plaintiff has been held to to be rightly not entitled to seek and obtain the relief of specific performance. Particularly, insofar as this case is concerned, when it is found that the plaintiff had also taken the possession of the suit property one way or the other and running a mess by putting up a shed therein, in such view of the matter, when the abovesaid possession and enjoyment of the suit property could only be described at the most pursuant to the sale agreement entered into between the parties, the plaintiff being the agreement holder and as above noted when the agreement had fixed a particular time limit for the completion of the sale transaction, the plaintiff should have been earnest and ready and willing to perform his part of the contract and tender the balance sale consideration to the defendant within a reasonable time and on the other hand, as above pointed out, the plaintiff had been taking his own time in paying the balance sale consideration and in such view of the matter, the plaintiff cannot be extended the discretionary relief of specific performance as prayed for and accordingly, the trial court is found to be justified in holding that the plaintiff has failed to establish his readiness and willingness to complete the sale transaction and in my considered opinion, there is no reason warranting any interference with the abovesaid determination of the trial court.

22. Though the defendant would contend that the possession of the suit property by the plaintiff is unlawful and unauthorised, considering the position that the suit property had been taken possession of by the plaintiff pursuant to the sale agreement and with reference to the claim of the defendant that he has lodged a police complaint against the plaintiff for the alleged unlawful intrusion made by him into the suit property and when with reference to the same other than lodging of the complaint, the defendant has not evinced interest to proceed further and accordingly had also chosen to lay the suit for the reliefs of mandatory injunction and permanent injunction against the plaintiff as above pointed out, in all, it is found that the plaintiff having failed to perform his part of the contract and enforce the sale agreement within a reasonable time and accordingly, the plaintiff being found to be not entitled to seek and obtain the relief of specific performance, in all, it is found that merely on the basis of the sale agreement, the plaintiff cannot be allowed to continue and squat in the suit property

endlessly and the defendant being the owner of the suit property, in such view of the matter, the defendant is found to be rightly entitled to the reliefs of mandatory and permanent injunction as prayed for in his suit and the granting of the abovesaid reliefs in favour of the defendant by the trial court do not warrant any interference.

23. The plaintiff's counsel in support of her contentions placed reliance upon the decisions reported in

1. (2000) 7 SCC 548 (Gobind Ram vs. Gian Chand).
2. 2008 (1) CTC 86 (Sita Ram and others vs. Radhey Shyam).
3. 2017 (1) CTC 46 (Nagarathinam vs. S. Jaya).
4. (2015) 1 SCC 705 (Zarina Siddiqui vs. A. Ramalingam alias R.Amarnathan)

Similarly, the defendant's counsel, in support of his contentions, placed reliance upon the decisions reported in

1. 1976 1 MLJ 243 (Ramaswamy Gounder vs. Venkatachalam)
2. 1978-TLNJ-62 (Vyapuri Gounder vs. (Minor) Vijayan & others).
3. 1993-1-SCC 519 (Chand Rani (smt) (dead) by lr. vs. Kamal Rani (smt) (dead) by lrs.)
4. (1996) 4 SCC 423 (P.R. Deb and Associates vs. Sunanda Roy).
5. 1997 (II) CTC 417 (Amirtham vs. Subbian and 3 others)
6. (2015) 8 SCC 695 (Padmakumari and others vs. Dasayyan and others).
7. 2018 (3) CTC 595 (Besto Brite Steels Pvt. Ltd. vs. V. Muthu Krishnan).
8. 2016 (6) CTC 58 (T.Baskar vs. S. Venkatammal and others)
9. (2018) 13 SCC 352 (Parminder Singh vs. Gurpeet Singh)
10. (2018) 2 SCC (Balwant Vithal Kadam vs. Sunil Baburaoi Kadam)
11. (2018) 15 SCC 80 (P. Meenakshisundaram vs. P. Vijayakumar and another)
12. (2018) 3 SCC 658 (Kalwati (dead) through legal rep. and others vs. Rakesh Kumar and others)
13. (2015) 1 SCC 705 (Zarina Siddiqui vs. A.

Ramalingam aliar R. Amarnathan)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

24. For the reasons aforesaid, I hold that the plaintiff has not been ready and willing to perform his part of the contract, I therefore hold that the plaintiff is not entitled to seek and obtain the relief of specific performance in respect of the sale agreement dated 13.06.2003 as claimed in his suit. I hold that the defendant is entitled to seek and obtain the relief of mandatory injunction and permanent injunction as prayed for in his suit. Resultantly, I hold that the determination of the trial court that the plaintiff is entitled to the refund of Rs.2,25,000/- from the defendant at the time of vacating the suit property is correct. Accordingly, the point numbers 1 to 4 are answered.

Point Nos. 5 and 6

25. In the light of the abovesaid discussions, the common judgment and decree dated 30.08.2010 passed in O.S.Nos.89 of 2006 & 666 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Coimbatre, are confirmed and resultantly, both the first appeals are dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

bga

Copy to

1.The Additional District and Sessions Judge,
Fast Track Court No.I,
Coimbatre,

2. The Section officer, V.R. Section, High Court, Madras.

+2cc to Mr.R. Thiagarajan, Advocate SR.No.87109

+6cc to Mr.Geeta Ramaseshan, Advocate SR.No.,86759, 86760

A.S.Nos.303 & 304 of 2011

PA(CO)

GMV(24/01/2020)