

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.No.855 of 2008
and M.P.No.1 of 2008

1.Kalyani Amman (deceased)

2.Gajaraj Mudaliar

3.Sangeetha Saraswathi

[Appellants 2 & 3 brought on record as
LRs of the deceased sole appellant vide
order dated 30.01.2018 in
C.M.P.Nos.15574 to 15576 of 2017
in S.A.No.855 of 2008]

... Appellants/Defendants/
LRs of the deceased

versus

1.Dhanalakshmi

2.Rani

3.Gnanapriya

4.Kishore

5.Gayathri

... Respondents/LRs of the
deceased Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree, dated 12.10.2007 made in A.S.No.11 of 2006 on the file of the learned Subordinate Judge, Vellore, reversing the judgment and decree, dated 28.11.2005 made in O.S.No.150 of 2004 on the file of the learned Additional District Munsif, Ambur.

For Appellant : Mrs.Elizabeth Rani
for Mr.P.Raja

For Respondents : Mr.Jeevasiridharan

J U D G M E N T

This Second Appeal is filed against the judgment and decree, dated 12.10.2007 made in A.S.No.11 of 2006 on the file of the learned Subordinate Judge, Vellore, reversing the judgment and decree, dated 28.11.2005 made in O.S.No.150 of 2004 on the file of the learned Additional District Munsif, Ambur.

2. At the time of admission, the following Substantial Questions of Law were framed :

"1. When the sale agreement contained a provision that the purchaser would not be entitled to seek for the return of the amount paid as advance, whether, the plaintiff would be entitled to seek for the return of such amount ?

2. When Section 34 of the Code of Civil Procedure Provides for the discretionary relief of granting subsequent interest not exceeding 6% per annum, is it legal for the grant of interest at 12% per annum even in respect to the transaction which is not commercial in nature ? "

3. The brief facts leading to the appeal are as follows:

The defendant has entered into a sale agreement on 13.03.2002 for sale of the suit property in favour of the plaintiff for a total consideration of Rs.81,000/- and received Rs.30,000/- as advance and she has agreed that the sale shall be completed within 3 months from the date of agreement i.e. on or before 11.06.2002. Thereafter, on 13.06.2002, a further sum of Rs.10,000/- was paid towards the sale consideration. Since the defendant was not ready and willing to perform her part of contract, the plaintiff has filed the suit for specific performance.

4. After analysing the evidence, the trial Court dismissed the suit. Aggrieved over the judgment of the trial Court, the plaintiff has preferred an Appeal in A.S.No.11 of 2006 before the learned Subordinate Judge, Vellore.

5. The First Appellate Court allowed the appeal filed by the plaintiff, granting return of advance amount along with interest at the rate of Rs.12% per annum from the date of agreement till the date of decree. Being aggrieved by the findings of the First Appellate Court, the defendant has preferred this Second Appeal.

6. The learned counsel appearing for the appellants submitted that though the appellants are ready and willing to return the advance amount as ordered by the First Appellate Court, the interest awarded by the First Appellate Court at the rate of Rs.12% per annum from the date of agreement till the date of decree is to be interfered. Since the appellants were

always willing and ready to execute the sale deed, the respondents had not come forward to get the sale deed executed in their favour.

7. The learned counsel appearing for the respondents would submit that they have no objection for reducing the interest at the rate of Rs.6% per annum from Rs.12% per annum from the date of agreement till the date of realisation.

8. I have perused the judgment of the First Appellate Court. In paragraph No.10 of the judgment, it has considered the factual aspects and found that the defendant is ready to execute the sale deed only the plaintiff did not come to the Registrar Office on 09.12.2002 that shows the plaintiff is not willing to purchase the property and thereby dismissed the suit for specific performance whereas ordered returning of advance amount with interest.

9. It is to be noted from the judgment of the First Appellate Court that the plaintiff was not willing to perform his part of contract by paying the remaining amount and also not getting the sale deed executed in his favour. Therefore, this Court is of the view that awarding interest at the rate of Rs.12% per annum is excessive and accordingly, the same is reduced to Rs.6% per annum from the date of agreement till the date of realisation.

10. With regard to the substantial questions of law raised in this appeal, this Court is of the view that merely because the agreement provide for forfeiture of the entire advance amount, which was paid that cannot be forfeited since the defendant has not deposited any security deposit to compensate any damages etc. Accordingly, the first substantial question of law answered against the appellants. The second substantial question of law has already answered in favour of the appellants.

11. With these observations, the Second Appeal is partly allowed, by reducing the interest at the rate of Rs.6% per annum from Rs.12% per annum from the date of agreement till the date of realisation. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sri

To

1.The Subordinate Judge,
Vellore.

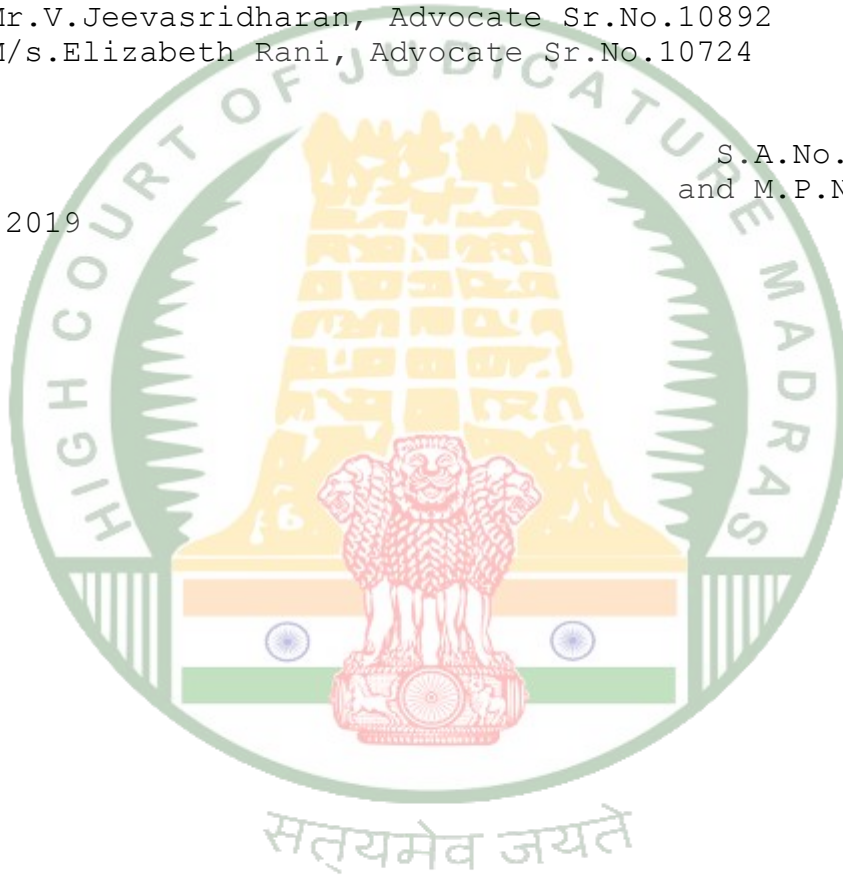
2.The Additional District Munsif,
Ambur.

+1 cc to Mr.V.Jeevasridharan, Advocate Sr.No.10892

+1 cc to M/s.Elizabeth Rani, Advocate Sr.No.10724

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CSL/08.04.2019



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