

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CITY CIVIL COURT APPEAL No.424 OF 2003

JUDGMENT:

This appeal is filed by the appellant/1st defendant aggrieved by the judgment, dated 08.09.2003, passed in O.S.No.992 of 1996, on the file of IV Senior Civil Judge, City Civil Court, Hyderabad, whereunder and whereby, the suit filed for Specific Performance of Agreement of Sale, dated 26.09.1992, was dismissed by the Court below against respondents/defendants 4 to 6 and decreed against the appellant/defendant No.1 and respondents /defendant Nos.2 and 3.

2. Heard learned counsel for the appellant and Sri Damodar Mundra, learned counsel for respondents/plaintiffs. Perused the record.

3. Learned counsel for the appellant/1st defendant would contend that the judgment and decree passed by the Court below directing the appellant/defendant No.1 and respondents/defendants 2 and 3 to pay a sum of Rs.3,22,000/- with interest @ 9% per annum from the date of suit till the date of realization is erroneous; that there is Ex.A.5-Memorandum of settlement between the parties; that no amount is due to the respondents/plaintiffs as on the date of filing of the suit; that the trial Court has not properly appreciated all the facts and circumstances of the case and erroneously decreed the suit against the appellant and respondents/defendants 2 and 3 herein as stated supra and ultimately, prayed to set aside the impugned judgment.

4. Learned counsel appearing for respondents/plaintiffs would contend that the trial Court, after considering the payments made

i.e., Rs.2,50,000/- to respondents/plaintiffs in view of settlement, dated 16.06.1992, held that Ex.A.6 is a genuine document and rightly decreed the suit for Rs.3,22,000/- with interest @ 9% per annum; that the findings recorded by the trial Court are based on the evidence on record; that there is nothing to take a different view and ultimately, prayed to dismiss the appeal.

5. In view of submissions made by both sides, the point of determination in this appeal is:

“Whether the judgment and decree, dated 08.09.2003, passed in O.S.No.992 of 1996 on the file IV Senior Civil Judge, City Civil Court, Hyderabad, are liable to be set aside?”

6. **POINT:**

The specific case between the parties is that respondents /plaintiffs filed the suit for Specific Performance of Agreement of Sale, dated 26.09.1992. As per the agreement of sale entered in between the parties, an amount of Rs.6,72,000/- was paid to the respondents/plaintiffs herein towards part sale consideration for purchase of suit schedule property. There is also evidence of P.W.1 to substantiate the contents in Ex.A.6. Ex.A.6 reveals that an amount of Rs.6,72,000/- to be paid to respondent No.14/defendant No.3 by the respondents/plaintiffs. However, there is a settlement arrived at in between the parties on 16.06.1992, which is covered by Ex.A.5-Memorandum of Settlement, pursuant to which Ex.A.6-agreement for construction of flat was entered into in between the parties. There is evidence on behalf of the appellant/defendant No.1 and respondents/defendants 2 and 3 that an amount of Rs.2,50,000/- was paid to

respondents/plaintiffs. Before the Court below, there is no challenge with regard to the same. In terms of Exs.A.6 and A.5, an amount of Rs.3,22,000/- had fallen due by the appellant/defendant No.1 and defendants 2 and 3 to respondents /plaintiffs, as on the date of filing of the suit. Having considered the whole evidence, the trial Court rightly decreed the suit for Rs.3,22,000/- with interest @ 9% per annum.

7. Learned counsel for the appellant/1st defendant would contend that the interest awarded by the trial Court @ 9% per annum from the date of filing of the suit till the date of realization is excessive and prayed to reduce the same.

8. In the circumstances of the case, award of interest @ 9% per annum from the date of filing of the suit till the date of realization is not excessive and it is quite just and reasonable. There are no circumstances to vary with the rate of interest. There is no infirmity in the impugned judgment passed by the trial Court. The appeal is devoid of merit and is liable to be dismissed.

9. Accordingly, the appeal is dismissed confirming the judgment and decree, dated 08.09.2003, passed in O.S.No.992 of 1996, on the file of IV Senior Civil Judge, City Civil Court, Hyderabad.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

JANUARY 30, 2019
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THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER



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Date:30.01.2019

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