

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.1013 of 2012
and M.P.No.1 of 2012 & C.M.P.No.23539 of 2019

1. Vimalamma
2. B.C.Chandramouli
3. B.C.Chandra Sekar
4. B.C.Chandra Prasad
5. B.C.Chandra Prakash
6. B.C.Chandra Shankar ... Appellants / Plaintiffs

Vs.

R.Adhimulam ... Respondent / Defendant

* * *

Prayer: Appeal Suit filed under Section 96 of the Civil Procedure Code, 1908, against the judgment and decree in O.S.No.87 of 2010 on the file of the Additional District Court, Krishnagiri, dated 31.07.2012.

* * *

For Appellants : Ms.V.Srimathi
for M/s.V.Raghavachari

For Respondent : Mr.P.Jagadeesan

J U D G M E N T

The Appeal Suit on hand is directed against the judgment and decree passed in O.S.No.87 of 2010 dated 31.07.2012.

2. The plaintiffs are the appellants in the Appeal Suit and the suit was instituted for the relief of specific performance.

3. The facts, in a nutshell, as narrated in the plaint, are that based on the sale discussion between the defendant and one Mr.Chandraiah, the husband of the first plaintiff and

the father of plaintiffs 2 to 6 with regard to the sale of the suit schedule mentioned property, which belongs to the defendant, Chandraiah entered into an unregistered sale agreement on 01.10.2007. The sale consideration fixed between the parties was Rs.11,00,000/- (Rupees Eleven lakhs only). An advance amount of Rs.1,00,000/- (Rupees one lakh only) by way of cash was paid and the time stipulated for the payment of the balance of the sale consideration was fixed as four months from the date of the agreement. It is contended by the plaintiffs that the defendant had delivered the possession of the suit schedule property to Chandraiah, the husband of the first plaintiff and the said Chandraiah was always ready and willing to perform his part of the contract and he had approached the defendant on several occasions to complete the sale process by executing the sale deed. Chandraiah had got money in his hand and expressed his willingness to pay the balance sale consideration for the purpose of execution of the sale deed. However, the defendant had given evasive reply and did not come forward to execute the sale deed as per the terms and conditions of the sale agreement. Thereafter, Chandraiah issued a legal notice on 02.02.2008 and the same had been intimated to the defendant on 05.02.2008. Meanwhile, Chandraiah died on 18.12.2009. Thus, the legal heirs of Mr.Chandraiah once again approached the defendant in the month of February, 2010 to complete the sale process and finally approached the defendant in the month of August, 2010. However, the efforts taken by the plaintiffs went in vain, which resulted in the institution of the suit for specific performance.

4. The defendant in their written statement denied the allegations as well as the averments set out in the plaint. The defendant had purchased the suit properties under two registered sale deeds bearing document No.2277/1990, dated 04.06.1990 and document No.5231/1993, dated 15.10.1993 on the file of the Sub Registrar Office, Hosur. The agreement was denied and the receipt of the advance amount was also denied. The defendant was working as a Surveyor in the Revenue Department, Hosur. It is contended in the written statement that the defendant had never offered to sell the suit property for a sum of Rs.11,00,000/- (Rupees Eleven lakhs only), while the value of the property even during the relevant point of time was more than Rs.50,00,000/- (Rupees Fifty lakhs only). As the adjoining land owner, the defendant received Rs.1,00,000/- (Rupees one lakh only) as hand loan from Mr.Chandraiah and signed in blank papers. Later Chandraiah converted the said blank paper into a sale agreement. The defendant also paid the interest of Rs.1,000/- per month to Chandraiah from the month of October, 2007 to December, 2007 and the defendant expressed his willingness to

pay the borrowed amount of Rs.1,00,000/- with interest for the balance period and sought for dismissal of the suit.

5. The Trial Court framed the issues as to (i) whether the suit sale agreement is not a genuine and true one and executed for loan transaction as averred by the defendant ; (ii) whether the plaintiffs have been ready and willing to perform their part of the contract ; (iii) whether the plaintiffs are entitled to a decree of specific performance as sought for ; and (iv) to what relief plaintiff is entitled to ?

6. In order to establish the case of the plaintiffs, P.Ws.1 to 3 were examined and Exs.A.1 to 14 were marked on the side of the plaintiffs. On the side of the defendants, D.W.1 was examined and no document was marked.

7. With reference to issue No.1, the trial Court relied on the evidence of P.Ws.1 to 3. P.W.3 is the Licensed Document Writer. The trial Court categorically found that those witnesses are credible and independent witnesses. The contentions of the defendant in the written statement that he signed in the stamped blank papers are not accepted by the trial Court on the ground that the defendant is a retired Surveyor from the Revenue Department and therefore, such a written statement cannot be trusted upon. In view of the fact that the evidence of P.Ws.1 to 3 are categorical in respect of the execution of the sale agreement in favour of Mr.Chandraiah, husband of the first plaintiff, the trial Court arrived at a conclusion that the defendant was not in a position to prove preponderance of probability in order to substantiate his case that he signed in the blank stamp papers. Thus, the trial Court held that Ex.A.1-sale agreement is a true document and executed by the defendant in favour of the plaintiffs (husband of the first plaintiff and the father of the other plaintiffs) and the issue was held in favour of the plaintiffs.

8. With reference issue No.2, the documents and evidences were considered by the trial Court and a finding was arrived that in Ex.A.2 - notice Mr.Chandraiah had categorically alleged that the defendant threatened him in order to extract more money and since the demand of extra amount was highly illegal and contrary to the terms and conditions of the sale agreement, he refused to pay the exact amount demanded by the defendant. By stating these reasons, Chandraiah pleaded that he could not able to file the suit for specific performance against the defendant immediately on demand for more sale consideration. Considering the deposition in this regard made by the plaintiffs, the trial

Court found that there is no plausible explanation on the side of the plaintiffs as to why the said Chandraiah did not file the suit during his lifetime. No document has been filed to show that he was undergoing treatment in the hospital, thereby making him impossible to contact his lawyer. Only to cover up the delay, the plaintiffs have raised the said plea in paragraph 7 of the plaint that only on 18.08.2010 the defendant demanded more money to conclude the sale as per the suit sale agreement.

9. The trial Court relied on the Supreme Court judgment reported in M.P.Thirugnanam V. Jegan Mohan Rao, AIR 1996 SC 116, in which, the Apex Court observed that ".... right from the date of execution till the date of decree, he must prove that he is ready and as always been willing to perform his part of the contract".

10. The plaintiffs have filed the suit after about ten months from the date of death of the said Chandraiah, who signed the suit sale agreement with the defendant. The contention was that the defendant refused to execute the sale deed by demanding more money and the said contention was not substantiated by the plaintiffs with sufficient proof and thus, the Trial Court declined to accept the contention of the plaintiffs in this regard and arrived at a conclusion that the plaintiffs have not exhibited the readiness and willingness beyond doubt and thus, the issue was held against the plaintiffs.

11. The trial Court considered the judgment of the Supreme Court with reference to the legal principle that the suit for specific performance is a discretionary relief and even if such a suit for specific performance is filed within the period of limitation, the relief need not be granted. The fact that the limitation is three years does not mean a purchaser can wait for one or two years to file the suit for specific performance and obtain a decree. Ex.A.1 - sale agreement reveals that the advance amount of Rs.1,00,000/- (Rupees one lakh only) was paid by the husband of the first plaintiff to the defendant and the sale consideration was Rs.11,00,000/- (Rupees Eleven Lakhs only). The original agreement holder Chandraiah died and his wife - the first plaintiff and the other legal heirs instituted the suit for specific performance after a delay of ten months. In those circumstances, the trial court refused to grant the relief of specific performance on the ground that there was a delay and the plaintiffs have not established the readiness and willingness always and therefore, they are not entitled for the relief of specific performance. Accordingly, the suit was dismissed.

12. This Court would like to refer to the recent judgment of the Supreme Court of India in the case of Surinder Kaur v. Bahadur Singh, (2019) 8 SCC 575, wherein, the Apex Court in unequivocal terms held as follows :

"14. A perusal of Section 20 of the Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the court is not bound to grant him the relief. True it is, that the court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub-clause (c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the court can refuse to grant such discretionary relief. Explanation (2) to the section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff."

13. Thus, it is not as if a case, where the plaintiffs had established the readiness and willingness as well as the genuineness of the agreement for grant of the relief of specific performance. However, the Court is bound to consider the inequality, if any, caused for the respective parties. Therefore, this Court is of the considered opinion that the trial Court has considered all the documents as well as evidence in consonance with the principles to be followed and there is no perversity or infirmity as such in arriving the conclusion. However, the trial Court has not considered the alternative relief of refund of the advance amount with interest, which must be a consequential one.

14. Now, the question arises for determination is "in the absence of any specific prayer in the plaint, whether the Court can grant alternative relief or not ?"

15. This Court considered this issue with reference to the power to grant general relief by the courts under the Code of Civil Procedure and with reference to the general prayer sought for by the plaintiffs in the plaint, always the general prayer sought for by the plaintiffs is "to grant any

other relief as the Court deems fit and proper" in A.S.No.130 of 2017 (P.Jayachandran V. S.Kumar (Died) and others) and in the judgment dated 07.01.2020 held as follows :

"37. Order VII, Rule 7 of the Code of Civil Procedure enumerates grant of general relief and therefore, it is to be construed that the general relief sought for in the plaint by the plaintiff stating that to grant any other relief as the Hon'ble Court may deem fit is to be considered for the purpose of return of the advance amount in the event of rejection of the relief of specific performance. In all circumstances, return of advance shall be the natural consequence in the event of dismissal of the relief of specific performance. Therefore, the alternate relief of return of advance, cannot be denied in all circumstances, except on certain exceptional circumstances, where the parties have agreed for forfeiture clause and such forfeiture clause is valid and enforceable.

16. Therefore, while considering the equality and possible inequality, the Courts are bound to consider the alternative relief by invoking the general relief prayer in the plaint by the plaintiff, when the relief of specific performance is denied. The plaintiff would be entitled for the consequential relief of refund of the advance amount with interest. This apart, the suit sale agreement was of the year 2007 and at this length of time, it may not be appropriate to direct him to execute the sale deed in respect of the sale consideration fixed during the relevant point of time. This being the factum, this Court is inclined to grant the alternative relief in favour of the appellants/plaintiffs. Accordingly, the following orders are passed :

(i) The judgment and decree dated 31.07.2012 passed in O.S.No.87 of 2010 is confirmed in respect of the rejection of the relief of specific performance in favour of the appellants/plaintiffs. However, the appellants/plaintiffs are entitled for the refund of the advance amount of Rs.1,00,000/- (Rupees One Lakh only) with interest at the rate of 10% per annum from the date of the plaint till the date of the decree and thereafter, at the rate of 6% per annum till the date of realization.

(ii) The respondents are directed to return the advance amount with accrued interest in favour of the appellants/plaintiffs within a period of three months from the date of receipt of a copy of this judgment.

17. Accordingly, the Appeal Suit in A.S.No.1013 of 2012 stands allowed in part. Consequently, connected Miscellaneous Petitions are closed. The parties shall bear their own costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Court,
Krishnagiri.

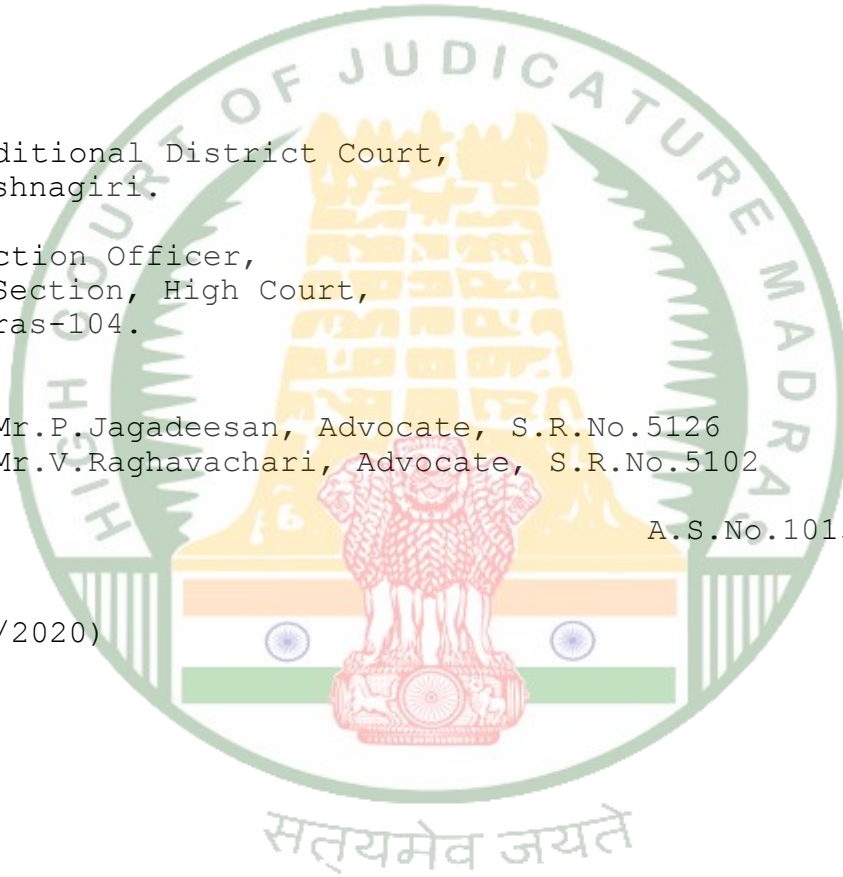
2.The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.5126

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.5102

A.S.No.1013 of 2012

PVS (CO)
CB(01/09/2020)



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