

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.35 of 2010

M.Sugumar

..Appellant/Plaintiff

vs.

1.U.Karpagam
2.U.Goutham
3.Devasena

..Respondents/Defendants

Prayer : First Appeal filed under Section 96 of CPC 1908 against the Judgment & Decree dated 21.04.2009 passed in O.S.No.28 of 2007 on the file of the learned VI Additional City Civil Court Judge, Chennai.

For Appellant : Mr.Gowtham Narayanan
For Respondent : Mr.G.Ashokapathy
for M/s.Pass Associates
for RR1 to 3.

J U D G M E N T

The appeal suit is filed against the judgment and decree dated 21.04.2009 passed in O.S.No.28 of 2007 on the file of the learned VI Additional City Civil Court Judge, Chennai.

2. The plaintiff is the appellant in the appeal suit and the suit was instituted for specific performance. The suit sale agreement relates to property being a Flat at Jaffer Khanpet, Chennai measuring 850 sq.ft. The suit sale agreement/Ex.A1 dated 18.01.2002 was signed between the plaintiff and the first defendant for a total sale consideration of Rs.6,75,000 and the plaintiff had paid an advance amount of Rs.50,000/- and the time for completion of the contract as agreed was 11 months. The agreement contemplates permission from Court for sale in respect of 2nd defendant's share, who was minor at that time. Admittedly, there was a delay in obtaining permission and the time was extended. Meanwhile, the plaintiff had paid another further advance of Rs.30,000/- on 25.02.2002. On 20.06.2003, the order was obtained by the first defendant and the order referred to one Sridhar as Agreement holder. Therefore, the plaintiff has not accepted the said order as he was of the opinion that such an order may create some dispute in respect of sale, if any,

executed. Again on 03.03.2004, a fresh sale agreement between the plaintiff and the first defendant was entered into in respect of suit property for the very same sale consideration which is marked as Ex.A3. On 21.06.2004, a clarification order from Court in respect of earlier O.P was obtained and the Court permitted sale to the said Sridhar or his nominee. However, no Court order was obtained in pursuance of the agreement with plaintiff and for permission to sell the property to the plaintiff. Once again, the plaintiff raised an objection in respect of said position. As per the suit sale agreement, the time fixed for completion of the contract was 02.09.2005 and the defendant did not obtain Court permission for the benefit of the plaintiff and at this juncture, the plaintiff had agreed his portion of the contract in order to avoid any further dispute. On 02.09.2005, the plaintiff was ready and willing to settle the balance sale consideration and accordingly, demanded the first defendant to execute the sale agreement. Since the first defendant was evasive in complying his portion of the contract, the plaintiff was constrained to issue a legal notice to the defendants terminating the agreement and consequently, the suit for specific performance was instituted.

3. The learned counsel for the appellant contended that an advance amount of Rs.80,000/- was paid and the plaintiff was always ready and willing to perform his part of the contract and inspite of that, the defendant had evaded to perform his portion of the contract which resulted in institution of the suit and the Trial Court has not considered continuous performance as well as readiness and willingness expressed by the plaintiff and rejected the suit on certain erroneous grounds.

4. The defendants in their written statement denied the allegations set out in the plaint. The agreement signed between the plaintiff and the defendants is admitted by the parties. It is contended that the permission to sell the minor's share was obtained in H.M.G.O.P.No.129 of 2003. The learned counsel for the respondents mainly contended that the plaintiff had raised certain doubts continuously, in order to prolong the completion of the transaction. Thus, the delay occurred only on account of the doubts raised by the plaintiff on several occasions, in respect of the orders obtained from the Court and therefore, the Trial Court was right in dismissing the suit on the ground that the plaintiff was not ready and willing to perform his portion of the contract. When the Court orders were produced by the respondents, the plaintiff raised various doubts regarding the Court orders and the defendants expressed their inability to repeatedly approach the Court and inspite of that, the plaintiff was not ready and willing to pay the balance sale consideration. Under these circumstances, the defendants could not able to execute the sale agreement and comply with their portion of the contract. Thus, the delay has occurred only because of the

plaintiff. Under these circumstances, the Trial Court considered the conduct of the plaintiff in respect of readiness and willingness and rejected the suit.

5. The Trial Court framed the issues as to whether the plaintiff is entitled to get specific performance prayer? Whether the plaintiff is always willing and ready to perform his part of contract? Whether the plaintiff took the possession of suit property as agreement vendee or he is residing in the suit property as a tenant previous to the agreement? To what other relief the plaintiff is entitled to?

6. In respect of issue Nos.1 and 3, the Trial Court considered the documents as well as the evidences produced by the respective parties. The time given in the suit sale agreement is 11 months. As per Ex.A1, the refund of advance amount, in the event of non-compliance with the terms and conditions is also contemplated. Considering the fact that there is a delay in completing the transactions between the parties and the plaintiff also raised various doubts regarding the orders obtained from the Court, the Trial Court arrived at a conclusion that the plaintiff has not proved the readiness and willingness to perform his portion of the contract, as per the terms and conditions of the suit sale agreement. The Trial Court, relying on the judgment of the Supreme Court, in respect of the ground of readiness and willingness, held that the time is specified in the suit sale agreement (i.e.,) 11 months and even after obtaining the Court order, the plaintiff has raised certain doubts regarding the Court order and the execution of deed. Therefore, the Trial Court arrived at a conclusion that the delay occurred only at the instance of the plaintiff and he is not entitled for the relief of specific performance.

7. The relief of specific performance being a discretionary relief, is to be granted based on the principles of equity. The property is situated at Jaffer Khanpet, Chennai and its price would have been escalated and at this length of time, it would be inequitable, in the event of granting the specific performance in favour of the plaintiff/appellant. However, in the present case, the plaintiff had not established his readiness and willingness before the Trial Court and the suit was dismissed. Even in case, the appellant is able to establish that the Trial Court has committed an error in dismissing the suit, this Court is of the opinion that the relief of specific performance cannot be granted, which will result in inequitably and the parties will be prejudiced in this regard. This Court would like to rely on the Supreme Court of India in the case of Surinder Kaur v. Bahadur Singh, reported in 2019 (8) SCC 575 wherein the Apex Court held that " 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."

8. Therefore, even in case, the plaintiff could able to establish the readiness and willingness for the purpose of considering the relief of specific performance, in the event of granting such relief, it would be inequitable. In the present case, the property situated within the city limit and the price of the suit property is escalated and the same cannot be sold for a sale consideration of Rs.6,75,000/-, as the suit property is measuring 850 sq.ft.

9. This being the principles to be followed, this Court is of the opinion that the plaintiff himself has not established readiness and willingness before the Trial Court and the Trial Court dismissed the suit. This Court do not find any perversity or infirmity in respect of the findings arrived by the Trial Court as the same is based on the documents as well as the evidence established before the Trial Court by the respective parties. The plaintiff had raised certain doubts regarding the Court orders and such circumstances, caused prolongation in respect of compliance of the suit sale agreement. This being the factum, this Court do not find any perversity in respect of the findings arrived by the Trial Court.

10. Though the Trial Court dismissed the suit by denying the relief of specific performance, the alternative relief of refund of advance amount was not considered, in view of the fact that the same has not been proved by the plaintiff before the Trial Court. The learned counsel appearing on behalf of the respondents made a submission that the plaintiff is a tenant and arrears of rent is due and the said arrears are to be adjusted with advance. This Court is of the considered opinion that such an adjustment cannot be made in the appeal suit and even if there is arrears of rent, the same is to be recovered in the manner known to law and the said arrears cannot be linked with the suit for specific performance.

11. Regarding the alternative relief of refund of advance with interest, this Court is of the considered opinion that it

is a consequential relief and the same cannot be construed as a separate relief. The alternate relief of return of advance amount is to be construed as a consequential relief to the rejection of the relief of specific performance. The Courts in the event of rejecting the relief of specific performance, returning of advance to the party would be a consequential relief and therefore, there is no necessity to seek for such relief and such relief can be construed as a general relief. In the event of not granting such a relief, the appellant/plaintiff would be prejudiced.

12. Keeping in mind the prejudice likely to be caused to either of the parties, this Court is of an opinion that in the event of allowing the first respondent to retain the advance amount it would amount to an unjust enrichment and the Courts cannot allow the party to enjoy any such unjust enrichment on the ground that the relief to the appellant/plaintiff was declined. Therefore, it is relevant to consider the provisions of Order VII, Rule 7 of the Code of Civil Procedure, wherein it is enumerated that "every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement".

13. The very spirit of Order VII, Rule 7 of the Code of Civil Procedure, is to be considered. Generally the procedures followed in the plaint relief column is that "granting such other relief or reliefs as this Hon'ble Court may deem just and necessary in the circumstances of the case and thus render justice". Such a relief sought for is to be considered if there is a likelihood of any prejudice to the either of the parties to the civil suit. The facts and circumstances of each case is to be weighed and in the interest of justice, such reliefs can be moulded under Order VII, Rule 7 of the Code of Civil Procedure, within the scope of the general relief sought for in the plaint by the plaintiff in the suit.

14. The alternative relief of refund of advance under Order VII, Rule 7 of the Code of Civil Procedure should be construed as a general relief and the same is to be construed in the present appeal suit as the relief of specific performance has been declined by the Trial Court. Under these circumstances, the judgment and decree dated 21.04.2009 passed in O.S.No.28 of 2007 stands confirmed, in respect of rejection of the relief of specific performance is concerned and the alternative relief of refund of advance amount of Rs.80,000/- is directed to be refunded by the respondents to the plaintiff with interest at

the rate of 10% per annum from the date of plaint till the date of the decree passed in O.S.No.28 of 2007 and thereafter, at the rate of 6% per annum till the date of realisation. The respondents/defendants are directed to refund the said advance amount with interest within a period of three months from the date of receipt of a copy of this Judgment. With these directions, the first appeal stands allowed in part. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssb
To

The VI Additional Judge
City Civil Court
Chennai

Copy to

The Section officer
VR Section
High Court, Madras 104.

+1 CC to M/s. Pass Associates sr 7299

+1 CC to Mr.R. Gowtham Narayanan, Advocate sr 6999.

A.S.No.35 of 2010

SSV(CO)
SP(02/09/2020)

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