

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-02-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.475 of 2018
And
C.M.P.No.12075 of 2018

H.Ashiq .. Appellant/Plaintiff

vs.

- 1.N.Mohyamed Mazihullah (Died)
- 2.The Sub Registrar of Assurances,
Denkannikottai,
Krishnagiri District.
- 3.Asma Tabassum
- 4.Kamarnissa
- 5.Minor Manaazir Rayyaan,
Daughter of Mohamed Mazihullah
Minor represented by the Guardian
Mother, second respondent .. Respondents/Defendants

Appeal Suit is preferred under Section 96 of the Code of Civil Procedure read with Order XLI, Rule 1 of the Code of Civil Procedure, against the judgment and decree dated 23.12.2016 passed in O.S.No.40 of 2010 on the file of the learned Additional District Judge, Hosur.

For Appellant : Mr.V.Raghavachari
For Respondent-1 : Died
For Respondent-2 : Mr.T.M.Pappiah,
Special Government Pleader.
For Respondents-3to5 : Mr.R.Thiagarajan

J U D G M E N T

The appeal suit on hand is directed against the judgment and decree dated 23.12.2016 passed by the learned Additional District Judge, Hosur in O.S.No.40 of 2010.

2. The appellant in the appeal suit is the plaintiff in the suit and the respondents in the appeal suit are the defendants in the suit.

3. For the sake of convenience, the ranking of the parties in the appeal suit would be referred to as per their ranks before the Trial Court.

4. The facts in nutshell as narrated in the plaint are that the plaintiff instituted the suit for specific performance. The plaintiff had entered into the Agreement for Sale with the defendants for the

purchase of the suit mentioned property. The total sale consideration fixed was Rs.15 lakhs and out of the total sale consideration of Rs.14,75,000/- had been paid by the plaintiff to the defendants as advance. The balance sale consideration of Rs.25,000/- was agreed to be settled within a period of three years i.e., on or before 17.01.2009 and accordingly, the defendants had agreed to execute the Sale Deed.

5. The complaint set out in the plaint is that the plaintiff all along was ready and willing to perform his part of the contract and approached the defendants for the enforcement of the suit Sale Agreement. However, the defendants were evading the execution of sale with reference to the suit mentioned property, by receiving the balance sale consideration and consequently, the plaintiff issued a notice and instituted the suit for specific performance to enforce the suit Sale Agreement Ex.A-1 dated 18.01.2006

6. The defendants disputed the contentions raised by the plaintiff and denied the allegations set out in the plaint by filing written statement on 15.03.2011. The defendants mainly stated that, at no point of time, they had intended to sell the suit mentioned property and in fact, the suit Sale Agreement was executed in lieu of the loan

amount borrowed by the defendants from the plaintiff as a security. In other words, the suit Sale Agreement was executed by way of security with reference to the loan amount given by the plaintiff to the defendants. Thus, there was no intention on the part of the defendants to sell the suit mentioned property.

7. The defendants 3 to 5 also filed written statement, denying the averments set out in the plaint. The said defendants also have reiterated that the suit Sale Agreement was signed between the parties towards security in lieu of the loan borrowed by the defendants from the plaintiff. It is stated, in their written statement, that there was no intention to sell the property and the plaintiff also has not seen the property and the signatures were obtained in the Sale Agreement towards security for the loan borrowed.

8. It is further contended that the suit property is a valuable one and even during the relevant point of time, when the defendants and the plaintiff had signed the suit Sale Agreement, the market value of the suit mentioned property was about Rs.15 lakhs and it is an Industrial Area and under these circumstances, the sale consideration fixed is not in commensuration of the market value of

the suit schedule property and for all these reasons, the suit is liable to be dismissed.

9. The learned counsel appearing on behalf of the defendants reiterated that the very nature of transaction and the terms and conditions agreed between the parties in the suit Sale Agreement reveals that there was no intention for the sale of the suit schedule property and the agreement was executed in lieu of the loan amount borrowed by the defendants from the plaintiff. Thus, the judgment and decree of the Trial Court is perverse and therefore, the judgment and decree of the Trial Court is not in accordance with law and accordingly, the suit is liable to be dismissed.

10. The Trial Court framed the following issues for consideration:-

"(1) Whether the suit Sale Agreement dated 18.01.2006 is true and genuine or not ?

(2) Whether the plaintiff was ready and willing to perform his part of the contract or not ?

(3) Whether the plaintiff is entitled for the refund of the advance amount of

Rs.14,75,000/- with interest or not ?

(4) Whether the plaintiff is entitled for the relief of permanent injunction against the defendants 3 to 5 or not ?

(5) To what other reliefs the plaintiff is entitled ?”

11. The Trial Court found that the suit Sale Agreement dated 18.01.2006 is true and genuine one, as the plaintiff as well as the defendants had signed the suit Sale Agreement and as per the terms and conditions of the suit Sale Agreement, the parties had agreed to sell the suit schedule mentioned property for a sale consideration of Rs.15 lakhs and further, it is admitted that the advance amount of Rs.14,75,000/- had been received by the defendants from the plaintiff.

12. The Trial Court further found that the time fixed for completion of the contract was three years from the date of agreement and on payment of the balance sale consideration of Rs.25,000/-, the defendants have to execute the sale. It is observed that interest amount had been paid by the defendants to the plaintiff and a sum of Rs.2,25,000/- was paid by the defendants towards the principal loan

amount. The defendants have pleaded that the balance amount of Rs.12,50,000/- alone is to be paid to the plaintiff and the balance amount had already been settled along with interest.

13. The deposition of PW-1 as well as DW-2 reveals that the loan details and the repayment of loan made by the defendants were stated. It is further deposed that even at the time of executing the suit Sale Agreement, the value of the property was more than Rs.50 lakhs. Therefore, there is no reason to sell the suit mentioned property for a total sale consideration of Rs.15 lakhs at that point of time.

14. The Trial Court also drawn the factual inference with reference to the nature of the agreement as the total sale consideration was fixed at Rs.15 lakhs. Rs.14,75,000/- was paid towards advance. The balance sale consideration of Rs.25,000/- is agreed to be settled, within a period of three years. The period of three years is fixed for repayment of loan and the parties have not intended for execution of sale in respect of the suit mentioned property. Though the learned counsel appearing on behalf of the appellant contended that the Sale Deed is the registered Sale Deed,

this Court is of the considered opinion that the nature of the Sale Deed and the terms and conditions agreed upon and the intention as well as the conduct of the parties are also to be considered for the purpose of granting the relief of specific performance as such the relief is discretionary. The Trial Court relied on several judgments of the Supreme Court and the High Courts, as those judgments are regarding the grant of relief of specific performance and such legal principles are settled one and this Court is not inclined to rewrite the said judgments as the principles are settled in this regard.

15. Perusal of the entire findings of the Trial Court, this Court is of the considered opinion that the terms and conditions of the suit Sale Agreement is relevant for the purpose of considering this case. The suit Sale Agreement dated 18.01.2006 is a registered agreement, wherein the parties have agreed to sell the suit property for a total sale consideration of Rs.15 lakhs. Further, it is admitted by the parties that the advance amount of Rs.14,75,000/- had been paid and the time limit prescribed for the payment of balance sale consideration of Rs.25,000/- is three years i.e. from 18.01.2006 to 17.01.2009. Irrespective of all other facts and circumstances, the terms and conditions agreed between the parties itself raises a doubt

in the mind of the Court. When the plaintiff had settled the advance amount of Rs.14,75,000/- on 18.01.2006 out of the total sale consideration of Rs.15 lakhs, why three years time is agreed for the purpose of payment of the balance sale consideration of Rs.25,000/-. The very nature of the transaction reveals that it is a loan transaction and the Sale Agreement was executed as a security towards the loan borrowed by the defendants from the plaintiff. Thus, the Trial Court has rightly considered the scope of the suit Sale Agreement and arrived a conclusion that the defendants, at no point of time, intended to sell the suit property and executed the suit Sale Agreement in lieu of the loan borrowed as security.

16. This Court would rely upon the recent judgment of the Supreme Court in the case of **Surinder Kaur vs. Bahadur Singh [(2019) 8 SCC 575]**, wherein the Hon'ble Supreme Court of India made observation in unambiguous terms 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."

17. The Apex Court of India, in the judgment cited supra, held in unequivocal terms that even in case the plaintiff proved the genuinity of the suit Sale Agreement, established the readiness and willingness, then also, the Courts are empowered to reject the relief of specific performance if the facts and circumstances create an inequity in the event of granting such relief. Therefore, the related facts and the circumstances are also to be considered for the purpose of granting the relief of specific performance.

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18. In respect of the lis on hand, even at the time of execution of the suit Sale Agreement, the suit mentioned property was a valuable property and the market price, at that point of time, was

about Rs.50 lakhs. However, the Sale Agreement was executed for a total sale consideration of Rs.15 lakhs, far below the market value and there is no probability or the defendants had intended to sell the property. Even there was no intention on the part of the plaintiff to execute the sale, as he parted with the advance amount of Rs.14,75,000/- on the date of agreement and agreed for a period of three years to settle the meagre amount of Rs.25,000/-. Thus, the plaintiff was not intended for execution of sale. Contrarily, the plaintiff was anxious in recovering the loan lended by him to the defendants. This being the factum, the plaintiff is not entitled for the recovery of specific performance.

19. Under these circumstances, this Court is of the considered opinion that the other points regarding the readiness and willingness on the part of the plaintiff may not have much relevance, as the perusal of Ex.A-1 suit Sale Agreement as well as the terms and conditions stipulated therein is sufficient to arrive a conclusion that the defendants had not intended to sell the suit schedule property and further the time limit fixed for the settlement of the balance sale consideration of Rs.25,000/- i.e., three years, is also reveals that the plaintiff had no intention to purchase the suit schedule property. This

being the factum, this Court do not find any infirmity or perversity in respect of the findings arrived for rejection of the relief of specific performance.

20. The Trial Court has rightly granted the alternate relief of refund of advance amount with interest. With reference to the refund of advance amount, it is consequential as the relief of specific performance is denied. Once the Court denied the relief of specific performance, then the plaintiff is entitled for the alternate relief of refund of advance amount.

21. The alternate relief of return of advance in a suit for specific performance is a consequential relief and therefore, the same need not be construed as a different relief. Once the relief of specific performance is rejected, then the refund of advance amount shall be consequential as no parties to the suit can be allowed to have an unjust enrichment. In other words, the dismissal of the relief of suit for specific performance, cannot stand in the way of granting the alternate relief to refund the advance amount with reasonable interest.

22. Considering the facts and circumstances, this Court

has no hesitation in arriving a conclusion that the Trial Court has not committed any perversity or infirmity. The Trial Court has arrived a conclusion in accordance with the documents and evidences produced by the respective parties and in consonance with the legal principles. Thus, this Court do not entertain to interfere with the judgment and decree passed by the Trial Court.

23. Accordingly, the judgment and decree dated 23.12.2016 passed by the learned Additional District Judge, Hosur in O.S.No.40 of 2010 is confirmed. The respondents/defendants 3 to 5 are directed to refund the advance amount as per the decree passed in O.S.No.40 of 2010, within a period of six months from the date of receipt of a copy of this judgment. Consequently, the present appeal suit, namely, A.S.No.475 of 2018 stands dismissed. However, there shall be no order as to costs. The connected miscellaneous petition also stands dismissed.

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Index : Yes/No.
Internet: Yes/No.
Speaking Order/Non-Speaking Order
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S.M.SUBRAMANIAM, J.

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To

- 1.The Additional District Judge,
Hosur.
- 2.The Sub Registrar of Assurances,
Denkannikottai,
Krishnagiri District.



A.S.No.475 of 2018

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