

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-02-2020

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.NO.388 OF 2017

Tikkireddy Satyanandham

.. Appellant/Plaintiff

vs.

Pampana Venkataramana Murthy

... Respondent/Defendant

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 09.02.2017 passed in O.S.No.81 of 2015 on the file of the learned Sub Judge, Yanam.

For Appellant : Mr.M.Ravi

For Respondent : Mr.V.V.Sai Ram

J U D G M E N T

The appeal suit on hand is directed against the judgment and decree dated 09.02.2017 passed by the learned Sub Judge, Yanam in O.S.No.81 of 2015.

2. The appellant in the appeal suit is the plaintiff in the suit and the respondent in the appeal suit is the defendant 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 plaintiff is the appellant, who instituted the suit for specific performance, seeking for a direction to the defendant to receive the balance sale consideration of Rs.1 lakh and execute the Sale Deed in favour of the plaintiff by conveying the suit mentioned property, within the time limit.

5. The facts in nutshell, as narrated in the plaint, by the plaintiff, are that on 01.06.2009, the plaintiff had entered

into Sale Agreement with the defendant for sale of the suit mentioned property for a total sale consideration of Rs.11 lakhs and he paid a sum of Rs.9 lakhs as advance. The balance sale consideration was agreed to be paid within a period of two years from the date of agreement and the suit Sale Agreement was registered as document No.244/2009. The contention of the plaintiff was that he was ready and willing to perform his part of the contract and the defendant was evading to perform his part of the contract, which resulted in issuance of notice and institution of a suit for specific performance.

6. The defendant set out the defence by denying the allegations stated in the plaint and contended that the suit Sale Agreement was not executed in favour of the plaintiff with an intention to sell the suit mentioned property. The defendant was in urgent need of money and therefore, approached the plaintiff for loan. The plaintiff lent money by obtaining the suit Sale Agreement as a security. In other words, it is contended by the defendant that, at no point of time, he had intended to sell the suit mentioned property and the suit Sale Agreement was executed by way of security in lieu of the loan borrowed by the defendant from the plaintiff.

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

"(1) Whether the plaintiff is entitled for specific performance of contract ?

(2) Whether the Sale Agreement dated 01.06.2009 is valid ?

(3) Whether the plaintiff is ready and willing to perform his part ?

(4) Whether time is the essence of contract ?

(5) Whether the suit is barred by limitation ?

(6) To what other relief the plaintiff is entitled ?"

8. With reference to issue No.4, the Trial Court arrived a conclusion that the parties had not intended that the time is the essence of Sale Agreement. Accordingly, the Trial Court held that time is not the essence of contract based on the facts and circumstances. With reference to the said finding, this Court is of the considered opinion that the total sale consideration for

sale of the suit mentioned property was fixed as Rs.11 lakhs and the defendant had received an advance amount of Rs.9 lakhs. For the balance amount of Rs.2 lakhs, two years time has been fixed. The nature and the manner in which the terms and conditions stipulated in the suit Sale Agreement reveals that the defendant had not really intended to sell the suit mentioned and the suit Sale Agreement was executed in lieu of the loan borrowed.

9. This Court is of the considered opinion that for a suit for specific performance, conduct of the parties as well as the terms and conditions agreement between them are also to be considered. The intention to sell the property is to be considered in such circumstances in view of the fact that in large number of cases such Sale Agreements are executed as securities in lieu of loan borrowed. Though such transactions are not strictly proved, the relief of specific performance, being discretionary, the Courts are bound to consider if any inequity arises and in the event of granting the relief of specific performance, if any, prejudice would be caused to either of the parties. For example, if the property worth about Rs.1 crore is granted to be sold for a meagre amount of Rs.10 lakhs, then the Court can arrive a conclusion that the parties had never intended to execute a Sale Deed. Such factual circumstances are also a ground to decline the relief of specific performance. Under these circumstances, the Trial Court has rightly arrived a conclusion that the defendant had not intended to sell the suit mentioned property and the suit Sale Agreement was executed as security for the loan borrowed by him.

10. With reference to issue No.5, the suit was not barred by limitation. With reference to issue No.2, the Trial Court arrived a conclusion that Ex.A-2 is not a valid Sale Agreement executed to sell the property and therefore, it is not true and binding on the parties to maintain suit for specific performance. Accordingly, it is concluded that the Sale Agreement dated 01.06.2009 is not true, valid and binding on the parties. Considering all these findings, the Trial Court held that the plaintiff is not entitled for the relief of specific performance.

11. Perusal of entire judgment of the Trial Court reveals that the Trial Court has proceeded on the right perspective based on the documents and the evidences filed by the respective parties to the lis on hand. There is no perversity as such, even in case, assuming that the plaintiff has proved the genuinity of the suit Sale Agreement, the terms and conditions agreed between the parties reveals that the defendant has not intended to sell the suit schedule property. Thus, in the event of considering

the relief of specific performance, undoubtedly an inequity or the prejudice would be caused to either of the parties in this case.

12. This Court would like to cite a judgment of the Hon'ble Supreme Court of India 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."

13. The above observations of the Hon'ble Supreme Court of India in unequivocal terms portrays that the appellant/plaintiff in the present case is not entitled for the relief of specific performance as he could not able to prove that the suit Sale Agreement is a valid one and further, the terms and conditions agreed between the parties also establishes that the agreement was not intended to execute the sale in respect of the suit mentioned property. Under these circumstances, this Court is of the considered opinion that the Trial Court has rightly rejected the relief of specific performance. However, the plaintiff is entitled for the alternate relief of refund of advance with interest.

14. It is contended that the plaintiff himself agreed for the interest at the rate of 6% per annum and the learned counsel appearing on behalf of the appellant/plaintiff made a submission that the agreed interest of 6% per annum is to be awarded along with the advance amount to be repaid. The said contention is, undoubtedly, reasonable and in the event of not considering the alternate relief of refund of advance amount, the plaintiff would be greatly prejudiced and the same would result in an unjust enrichment on the part of the respondent/defendant. Therefore, granting the alternate relief to the plaintiff is just and necessary.

15. 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.

16. The question arises in the absence of any such relief sought for in the plaint, whether the Court can grant the relief or not. This Court is of the considered opinion that the alternate relief to refund the advance amount is to be construed as a general relief, as such a relief is consequential to the rejection of the relief of specific performance. In the event of not considering the alternate relief under the umbrella of general relief, then one of the party to the civil suit would be prejudiced and the other party will get an unjust enrichment.

17. Keeping in mind the prejudice likely to be caused to one of the parties in the event of not granting the alternate relief of refund of advance amount, this Court has to adopt a pragmatic approach and constructive interpretation with reference to the Code of Civil Procedure.

18. Order VII, Rule 7 of the Code of Civil Procedure enumerates that "every Plaintiff 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".

19. The spirit of Order VII, Rule 7 of the Code of Civil Procedure is to be considered in the general format of the plaint. In the relief column, the plaintiffs used to pray for "grant such other relief or reliefs as the Hon'ble Court may deem fit and proper in the circumstances and thus render justice". Such a relief is to be construed as a general relief sought for in the plaint, the facts and circumstances and the equity to be considered in the interest of justice and the general relief is to be moulded, so as to grant the alternate relief of refund of advance amount in the event of rejecting the relief of specific performance by the Courts.

20. Order XLI, Rule 33 of the Code of Civil Procedure enumerates that "the Appellate Court shall have power to pass any decree and make any order which ought to have been passed or

made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection". Therefore, the Trial Court granted the general relief by moulding the prayer for grant of the relief of refund of advance amount with interest in the event of rejection of the relief of specific performance and the Appellate Court by invoking Order XLI, Rule 33 also grant the similar relief in respect of the appeals preferred against the judgment and decree of the Trial Court. In either of the circumstances, both the Trial Court as well as the Appellate Court are empowered to grant the consequential relief of return of advance amount in the event of rejection of the relief of specific performance on the basis of the principles of equity. Therefore, there is no impediment either for the Trial Court or for the Appellate Court to grant the alternate relief of refund of advance amount to either of the parties to the civil suit or an appeal in the event of rejecting the relief of specific performance in a suit or in an appeal suit.

21. This being the factum, the following orders are passed:-

(i) The judgment and decree dated 09.02.2017 passed by the learned Sub Judge, Yanam in O.S.No.81 of 2015 with reference to rejection of the relief of specific performance stands confirmed. However, the appellant/plaintiff is entitled for the refund of advance amount of Rs.9 lakhs from the respondent/defendant, with interest at the rate of 6% per annum from the date of plaint till the date of realisation of the said amount.

(ii) The respondent/defendant is directed to settle the advance amount with interest at the rate of 6% per annum, as stated above, within a period of six months from the date of receipt of a copy of this judgment.

22. Accordingly, the present appeal suit, namely, A.S.No.388 of 2017 stands allowed in part. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

Svn

To

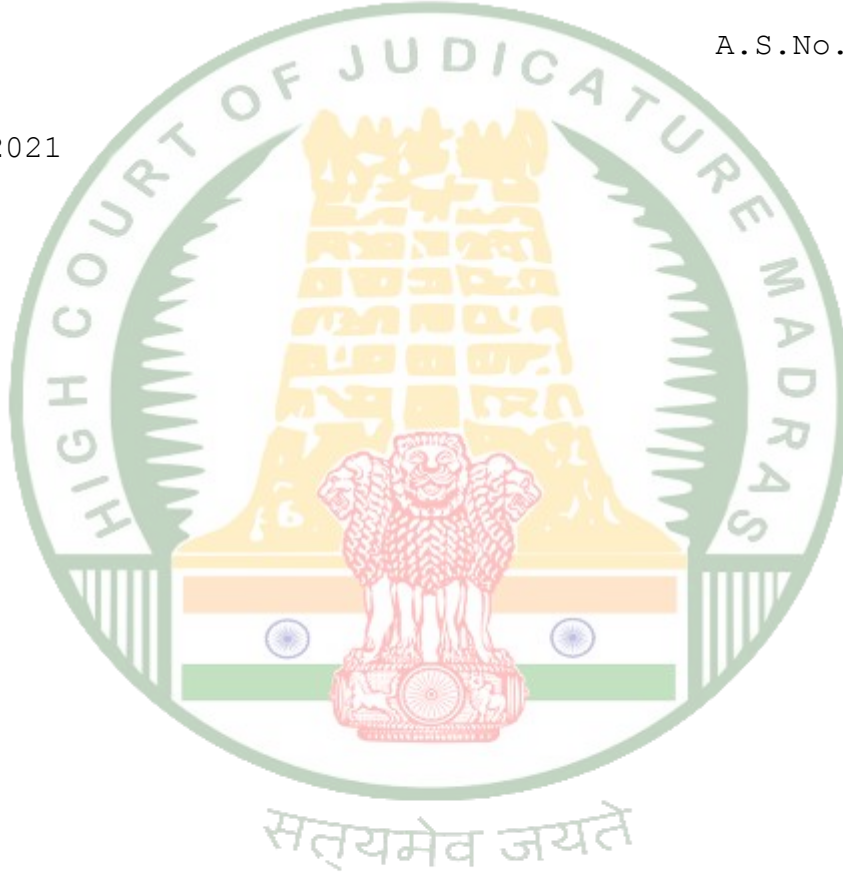
The Sub Judge,
Yanam.

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+1cc to Mr.V.V.Sai Ram , Advocate, S.R.No.11214
+1cc to Mr.M.Ravi, Advocate, S.R.No.11751

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