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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.06.2021

Date of Verdict : 05.07.2021

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

A.S.No.610 of 2013
and
MP.No.1 of 2013

Zameel Ahmed

... Appellant

Vs.

Jayashree Narayanan

... Respondent

PRAYER: This Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside comprised in O.S.No.122 of 2008 dated 27.09.2012 on the file of the learned II Additional District Judge, Pondicherry and to set aside the Judgment and decree made therein dated 27.09.2012.

For Appellant : Mr.V.Balamurugane

For Respondent : Notice Served

J U D G M E N T

This Appeal Suit is directed against the judgment and decree passed in O.S.No.122 of 2008 dated 27.09.2012 on the file of the learned II Additional District Judge, Pondicherry.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Trial Court.

3. The case of the plaintiff in brief is that on 12.08.2006, the defendant had entered into an agreement for sale and agreed to sell the suit schedule property for the total sale consideration of Rs.10 lakhs and received a sum of Rs.25,000/- by way of cheque dated 22.06.2006 and a sum of Rs.2,80,000/- as cash in advance. He also agreed to hand over the original title deeds and other connected documents within a period of two months to the plaintiff. Whenever, the plaintiff requested the defendant to perform his part of the contract, the defendant requested the plaintiff to give some more time. Though the plaintiff has expressed her readiness and willingness to pay the balance sale consideration, the defendant had not come forward to hand over the original title deed and also failed to execute



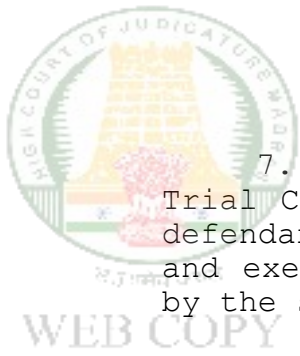
the sale deed in favour of the plaintiff. Therefore, the plaintiff caused legal notice on 29.08.2007, calling upon the defendant to execute the sale deed in favour of the plaintiff after receiving the balance sale consideration. Hence, the complaint.

4. Resisting the same, the defendant filed his written statement stating that he had agreed to sell the property to the plaintiff for the total sale consideration of Rs.12,80,000/- on condition that the sale should be completed by end of July 2006 and the balance sale consideration to be paid once in a lump sum. The plaintiff has paid a sum of Rs.2,80,000/- and entered into an unregistered agreement for sale for the total sale consideration of Rs.12,80,000/-. The plaintiff expressed that she is going to apply for a bank loan and it requires 15 days time for execution of sale deed. Further, in the first week of September 2006, she expressed that she was unable to raise the balance sale consideration of Rs.10 lakhs and requested the defendant to refund the advance amount by cancelling the agreement for sale. Therefore, the defendant informed her to come and collect the advance amount by the registered letter dated 01.11.2006 which was received and acknowledged by the defendant on 04.11.2006. Thereafter, there was no response from the plaintiff and again, the defendant informed the plaintiff on 25.11.2006 that he is ready with advance amount and asked her to collect the same. Therefore, the plaintiff violated the conditions of the sale agreement dated 12.08.2006 and as such, she is not entitled for relief of specific performance and prayed for dismissal of the suit.

5. On completion of pleadings of the both sides, the Trial Court framed the following issues:-

- "1. Whether the suit is maintainable?
2. Whether there is any cause of action for the suit?
3. Whether the plaintiff is entitled for interest at 24% p.a?
4. Whether the plaintiff is entitled for alternative relief?
5. Whether the plaintiff is entitled for judgment and decree?
6. To what relief the parties are entitled to?"

6. On the side of the plaintiff, the plaintiff's power agent was examined as P.W.1 and documents were marked as Ex.A.1 to A.5. On the side of the defendant, D.W.1 to D.W.4 were examined and documents were marked as Ex.B1 to Ex.B15.



7. On a perusal of the oral and documentary evidence, the Trial Court decreed the suit in favour of the plaintiff and the defendant is directed to receive the balance sale consideration and execute the sale deed in favour of the plaintiff. Aggrieved by the same, the defendant preferred this appeal suit.

8. The learned counsel for the defendant submitted that the plaintiff approached the Court below with unclean hands and failed to produce the agreement for sale, which was entered between the plaintiff and the defendant. The original agreement for sale was marked as Ex.B.1 dated 12.08.2006, whereas the copy of the agreement for sale was marked by the plaintiff as Ex.A.5. The said agreement was prepared only for the purpose of obtaining loan from the Bank. Thereafter, the plaintiff and the defendant entered a memorandum of agreement on the same date viz., 12.08.2006, which was marked as Ex.B.2. Accordingly, the sale consideration was fixed at Rs.12,80,000/-, in which it was mentioned that a sum of Rs.2,80,000/- was received on the date of execution of agreement for sale and the balance sale consideration has to be paid by the plaintiff within a period of two months from the date of agreement, failing which the agreement for sale shall stand automatically cancelled. He further submitted that the time is essence of the contract and as such, the plaintiff is not entitled for relief of specific performance. That apart, the plaintiff was never ready and willing to purchase the suit property by paying the balance sale consideration within time stipulated in the agreement for sale. Therefore, the suit filed by the plaintiff is liable to be dismissed.

9. He further submitted that after the expiry of the time as fixed in the agreement for sale, the defendant duly communicated a letter dated 11.06.2006, thereby calling upon the plaintiff to receive the advance amount, which was paid by her at the time of entering into the agreement for sale. In fact, the defendant issued a cheque for a sum of Rs.2,80,000/- to his counsel and asked the plaintiff to come and collect the same and the said communication was also duly received by the plaintiff. Therefore, even today, the defendant is ready and willing to return back the advance amount to the plaintiff. In fact, the plaintiff also asked for alternative relief in the suit for refund of the advance amount with interest.

10. Though notice was served on the plaintiff/respondent and the name is also printed in the cause list, no one appeared on behalf of the plaintiff through counsel or in person. Heard the learned counsel for the defendant/appellant.

11. The points that arise for consideration in the present appeal are as follows:-



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- (i) Whether the plaintiff is ready and willing to perform his part of the contract?
- (ii) Whether the time is essence of the contract and
- (iii) Whether the plaintiff is entitled for alternative relief/

12. Admittedly, there was an agreement for sale entered between the plaintiff and the defendant dated 12.08.2006. Accordingly, the total sale consideration was fixed for the suit schedule property at Rs.12,80,000/- and a sum of Rs.2,80,000/- was paid as an advance. The time fixed for payment of balance sale consideration and execution of sale deed was two months. The Power of Attorney of the plaintiff was examined as P.W.1 and stated that the defendant marked the signature and retained the original and the plaintiff was given the copy of the said agreement which was marked as Ex.A.5. The original of the said agreement was marked through D.W.1 as Ex.B.1. The original does not contain any signature of the witnesses, whereas, the copy of the same contained one of the witness's signature. Therefore, only to file the suit, it was forged by the plaintiff. According to the agreement, the time was fixed as two months for payment of the balance sale consideration as well as the execution of the sale deed. Admittedly, the plaintiff applied for bank loan for payment of the balance sale consideration. In this regard, the Assistant Manager, S.B.I. was examined as D.W.4 and she deposed that the plaintiff was sanctioned a loan at Rs.9 lakhs on 04.10.2006. Due to non performance of the part of the contract by the defendant, the said loan was cancelled subsequently. It does not mean that the plaintiff was ready and willing to perform her part of contract.

13. On a perusal of the deposition of D.W.1, it reveals that on 12.08.2006, the plaintiff expressed that she is going for bank loan to pay the balance sale consideration within a period of 15 days. Thereafter, in the first week of September 2006, the plaintiff expressed that she was unable to raise any loan for the balance sale consideration and requested the defendant to refund the advance amount by cancelling the sale agreement. Therefore, the defendant also agreed to refund the advance amount. In fact, the defendant sent a registered letter on 01.11.2006, which was marked as Ex.B.3 calling upon the plaintiff to receive back the advance amount and the same was duly received by the plaintiff. Thereafter, the plaintiff did not respond to the letter issued by the defendant. Again, the defendant sent another letter on 30.11.2006 to receive the advance amount and the same was also duly acknowledged by the plaintiff. Therefore, the plaintiff failed to prove her readiness and willingness to perform her part of the contract as agreed by her.



14. As far as the alternative relief is concerned, admittedly the defendant received a sum of Rs.2,80,000/- as an advance on 12.08.2006 and the defendant is also ready and willing to return the said advance amount with interest. Considering the above, the plaintiff is entitled for the alternative relief and that the defendant is directed to refund the advance amount with interest.

15. In view of the above discussion, this Appeal Suit is partly allowed. The suit is dismissed as far as the relief of specific performance against the defendant is concerned. The suit is allowed in respect of the alternative prayer that the defendant is directed to refund the advance amount of Rs.2,80,000/- with interest at the rate of 6% per annum from the date of agreement for sale i.e., on 12.08.2006 till the date of payment to the plaintiff. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

Sd/-

Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

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To

1. The II Additional District Judge, Pondicherry.
2. The Section Officer,
V.R.Section, High Court of Madras.

+1cc to Mr.V.Balamurugane, Advocate SR.No.31131

A.S.No.610 of 2013

RGN(CO)

GMV(31/08/2021)