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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2022

PRONOUNCED ON : 14.06.2022

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.456 of 2012

(Through Video Conferencing)

Saravanan

...Appellant/Plaintiff

Vs

1.K.V.P.Kambadoss
2.K.V.P.Govindaraj
3.K.V.P.Nagarajan
4.Madhanlal Shawla
5.Sanjay Shawla
6.Shanthi
7.Sumathi
8.K.V.P.Chandrasekar

...Respondents/Defendants

Prayer:- This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC, against the judgement and Decree dated 12.09.2011, made in OS.No.20 of 2009, by the Principal District Court, Namakkal.

For Appellant : Mr.K.Kannan

For Respondents : Mr.R.Nalliyappan-RR1 to 5 and 8
: No appearance-R6 and 7

JUDGEMENT

1.This Appeal Suit has been filed, against the judgement and Decree, dated 12.09.2011, made in OS.No.20 of 2009, by the Principal District Court, Namakkal.

2.The suit was filed for specific performance of the contract, dated 24.10.2008 directing the Defendants to finish the works, as per the terms of the contract and to execute the sale deed, by receiving the balance sale consideration of Rs.10,15,900/- or in the alternative, directing the Defendants, to return the sum of Rs.2,13,000/- being the advance amount with 18% p.a. from the date of the agreement till the date of the plaint and with further interest at the rate of 18% p.a. from the date of the plaint till date of realization.



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3.The case of the Plaintiff is that the suit properties belonged to the Defendants 1 to 8 by way of sale deeds and partition. The Defendants 1 to 7 had executed a Power of Attorney in favour of the 8th Defendant and consented to divide the lands into plots and to sell the same. The 8th Defendant had divided the lands into plots numbers 12 and 13 and agreed to sell the property to the Plaintiff by agreement, dated 24.10.2008 and an advance amount of Rs.2,00,000/- was paid. It was agreed that within 3 months period, the 8th Defendant had to lay roads and to complete the other amenities and works and entrust the pathway land to the concerned Municipality and to execute the sale deed, by receiving the balance sale consideration of Rs.10,15,000/-. Even after lapse of 3 months period, the 8th Defendant has not performed his part of the contract. Hence, a legal notice dated, 13.01.2009 was issued and a reply dated, 12.02.2009, with false averments, was received. In such circumstances, the suit had been filed, seeking the reliefs, as stated above.

4.The case of the Defendants, as set out in the written statement, filed by the 8th Defendant is that the Plaintiff has to prove the averments of the plaint as well as the terms and conditions of the agreement, dated 24.10.2008 and that he has done the works as set out in the agreement and that he is always ready to willing to perform his part of the contract. If the Plaintiff is not satisfied with the performance of the terms of the contract, then he is ready to return the advance amount with interest as per law. In such circumstances, the suit is liable to be dismissed.

5.On the pleadings of the parties, the Trial Court had framed the following issues:-

(a)Whether the Plaintiff is entitled for Specific Performance of the agreement, dated 24.10.2008?

(b)Alternatively whether the Plaintiff is entitled to return of advance sum of Rs.2,13,500/- together with subsequent interest?

(c)To what relief if any the Plaintiff is entitled to?

6.Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A5 were marked and PW.1 and PW.2 were examined. On the side of the Defendants, DW.1 and DW.2 were examined. Ex.C1 and C2 were marked. The Trial Court had decreed the suit, directing the Defendants to return the advance amount of Rs.2,00,000/- without interest till the date of the decree and with interest at 6% p.a. from the date of the decree till realisation. Aggrieved against the same, this Appeal Suit has been filed by the Plaintiff.



7.This Court heard the submissions of the learned counsel on either side.

8.The learned counsel for the Appellant has submitted that the suit was filed for specific performance of the sale agreement, dated 24.10.2008, entered into between the Appellant and the 8th Respondent and that the Power of Attorney deed was executed by the Respondents 1 to 7 in favour of the 8th Respondent and that the 8th Respondent agreed to sell plot nos.12 and 13 and that the total extent is 3816 sq.ft. and the sale amount is Rs.12,15,900/- and Rs.2 lakhs was paid as advance. He would further submit that in the sale agreement, certain conditions were imposed and the same have to be completed within three months, but the 8th Respondent has not executed the sale deed in favour of the Appellant and then, the Appellant had sent a notice to the 8th Respondent and that in the written statement, he denied the execution of the agreement and that the Respondents also admitted in the written statement that the conditions are not complied with and that the court below, without appreciating the oral and documentary evidence, came to the wrong conclusion and hence, he would pray for allowing this appeal.

9.The learned counsel for the Respondents has submitted that in the agreement dated 24.10.2008, five conditions are imposed and that the plot is situated at the low line area nearby the lake and so, construction of the concrete wall is not possible and hence, it is also not possible to execute the work. He would further submit that the sale consideration is Rs.12 lakhs and Rs.2 lakhs was paid as advance and that an Advocate Commissioner was also appointed and he has stated in his report that 90% of the conditions were complied with and that a reply notice was also sent and that in the written statement, he has stated that they are ready to sell the property and that the Appellant is not showing his willingness to purchase the property and he has not taken any steps to execute the sale deed and that the Trial Court, after considering the oral and documentary evidence, came to the proper conclusion and no interference is warranted and hence, this appeal is liable to be dismissed. He would rely on the unreported judgement of this Court, dated 26.08.2014, made in SA.No.961 of 2012.

10.This Court considered the submissions of the learned counsel on either side and also perused the materials placed on record.

11.PW.1 has deposed that the property belonged to the Defendants 1 to 7 and the 8th Defendant is the Power Agent of the Defendants 1 to 7 and the Defendant 1 to 7 entered into the agreement to sell the property. At the time of the agreement, it was agreed that he has to lay tar roads and to entrust the road lanes to the Panchayat Board and to set



right the electricity line, which was going across the plots and to install the electric line at the edge of the road to make it convenient to construct the drainage to let out water and to close the well in between the plots. He has further deposed that the above said work has to be completed within three months. But, the 8th Defendant failed to complete the work. Then, he issued a notice to the Defendants, who in spite of that, the 8th Defendant has not completed the work and issued a false reply. Hence, the Plaintiff issued a lawyer's notice and in spite of that the 8th Defendant has not completed the work and not executed the sale deed, by receiving the balance sale consideration.

12.DW.1 has deposed that electricity line has been set right at the edge of the road and they constructed the drainage.

13.The Advocate Commissioner also visited the premises and filed his report and plan, which were marked as Ex.C1 and C2. A perusal of the Commissioner report reveals that thar roads have been laid, electricity line has been set right, drainage has been constructed to the end of the plots. From this report, it is clear that major conditions in the agreement were complied with. For this, PW.1, in his cross examination, deposed that ஆணையர் தனது அறிக்கையில் தார்சாலை அமைத்தும் இருபுறமும் கழிவு நீர் செல்லக்கூடிய வாய்க்கால் அமைக்கப்பட்டிருந்ததாக சொல்லியிருக்கிறார் என்று சொன்னால் சாட்சி பாதி வேலை நடந்திருக்கிறது என்று சொல்கிறார்.

So, he admitted that half of the works have been complied with. He has not filed any objection to the report of the Commissioner. For non completion of the remaining work, the Plaintiff has not filed any document and not examined any witness.

14.DW.1 has deposed that in so far as the well is concerned, in and around, there is a water stagnation and due to the stagnation of water, on two occasions, the 8th Defendant put up wall, but the wall fell down. Hence, as per the agreement, the Defendant completed the work. Regarding this aspect, the Advocate Commissioner also noted in his report.

15.A perusal of Ex.C2 reveals that the entire area is low line area. Ex.C1 reveals that major agreement conditions have been complied with. Before entering into the agreement, he has to verify the physical features of the property, but he failed to do so. For this, no proper explanation is given. The Defendants proved their case through the report of the Commissioner that 90% of the work have been completed. The Trial Court, after perusal of the oral and documentary evidence, came to the proper conclusion and hence, no interference is warranted by this Court in this appeal. Accordingly, this appeal is liable to be dismissed.



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16. In fine, this Appeal Suit is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Srcm

To

1. The Principal District Court,
Namakkal

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

+1cc to Mr.K.Kannan, Advocate SR. No. 34781

+1cc to Mr.R.Nalliyappan, Advocate SR. No. 34959

AS.No.456 of 2012

SJ (CO)

PR (23/06/2022)