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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Second Appeal No.1238 of 2013
and M.P.No.1 of 2013

1.M.H.Ummer Farook
2.P.I.Ibrahim

...Appellants/Appellants/Plaintiffs

-Vs-

1.M.Marudhasalam
2.Muthu Lakshmi
3.Muthu Kumar

...Respondents/Respondents/Defendants

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 15.03.2012 made in A.S.No.138 of 2010 on the file of I Additional District Judge, Coimbatore confirming the judgment and decree dated 09.08.2010 made in O.S.No.566 of 2008 on the file of III Additional Subordinate Judge, Coimbatore.

For Appellants : Mr.N.Thiagarajan

For Respondents : Mr.Arun Kumar Rajan

J U D G M E N T

The plaintiffs are the appellants in this Second Appeal. The plaintiffs filed a suit seeking for the relief of specific performance of the agreement dated 19.08.2005, marked as Ex.A.1.

2. The case of the plaintiffs is that the first defendant and one Subbaiyan are brothers and they jointly owned an extent of 2.50 Acres of land at Thudiyalur Village. A suit came to be filed in O.S.No.832 of 1980 seeking for the relief of partition and it resulted in a final decree in I.A.No.156 of 1993, whereby the defendants were allotted 1.25 Acres which was marked as Plot 'A' in the Commissioner's plan. The other two plots viz., Plot 'B' and 'C' were left unallotted for the benefit of the other sharers in the property. It is under these circumstances, the plaintiffs entered into an agreement of sale with the defendants and agreed to purchase the entire 2.50 Acres for a total sale consideration of 1.01 Crores. It is stated that the defendants



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had revealed to the plaintiffs that the unallotted plots are to be allotted to their brother Subbaiyan and a pendente lite purchaser and that the defendants will be able to amicably settle their claims with them and those properties will also be sold in favour of the plaintiffs.

3. It is stated that the Court proceedings was not coming to an end, and hence, the plaintiffs issued a legal notice dated 17.07.2006, marked as Ex.A.5, to the defendants calling upon the defendants to execute the sale deed for an extent of 1.25 Acres. In the meantime, certain other persons started claiming rights over the property and a suit also came to be filed in O.S.No.1834 of 2006 claiming for 2/3rd share out of the suit property. Hence the plaintiffs had chosen to restrict their claim and the suit for specific performance was filed by making a claim for an extent of 9 cents. According to the plaintiffs, the defendants had already received the entire sale consideration of Rs.3,60,000/- which is the equivalent value of the extent of 9 cents. Hence the suit came to be filed seeking for the relief of specific performance by confining the claim to 9 cents alone.

4. The defendants filed a written statement and they primarily took a defence that the plaintiffs were speculative purchasers and the terms and conditions that were included in the agreement are impossible of performance. Therefore, they had sought for the dismissal of the suit on this ground alone. The defendants also took a stand that there was never any alternative promise that was made on the side of the defendants by restricting the extent of property to be conveyed to the plaintiffs and therefore the defendants have also questioned the restricted claim made by the plaintiffs.

5. The trial Court, after considering the facts and circumstances of the case, and on appreciation of oral and documentary evidence, found that Ex.A.1 is not an enforceable document and hence denied the relief sought for by the plaintiffs and dismissed the suit through judgment and decree dated 09.08.2010. Aggrieved by the same, the plaintiffs filed an appeal in A.S.No.138 of 2010 before the I Additional District Judge, Coimbatore.

6. The lower appellate Court, on re-appreciation of the oral and documentary evidence and on considering the findings of the trial Court, found that there are no grounds to interfere with the judgment and decree of the trial Court and accordingly, the appeal was dismissed through judgment and decree dated 15.03.2022. Aggrieved by the same, the plaintiffs have filed the Second Appeal before this Court.

7. Heard Mr.N.Thiagarajan, learned counsel appearing for the appellants and Mr.Arun Kumar Rajan, learned counsel appearing for the respondents. This Court also went through the



materials available on record and also the findings of both the Courts.

8. Both the Courts below found that the sale agreement marked as Ex.A.1 was virtually an inexecutable agreement. The plaintiffs were aware about the pending litigations which had an impact on the rights over the property. Even though only 1.25 Acres was allotted in favour of the plaintiffs under the final decree, for reasons best known to the plaintiffs, they entered into an agreement for the entire extent of 2.50 Acres. The allotment that was made in the final decree itself was put to challenge and it had reached this Court by way of a Second Appeal and it was pending at that point of time. Both the Courts also found that at the time of issuance of legal notice, the plaintiff was claiming for 1.25 Acres allotted in favour of the defendants and ultimately the suit was confined to a claim made over 9 cents. According to the plaintiffs, they had paid a sum of Rs.3,60,000/- to the defendants and this covered the value of 9 cents which ultimately was sought for by the plaintiffs in the suit.

9. While considering the issue of severability of Ex.A.1 agreement, the Courts also took into consideration the scope of Section 12 of the Specific Relief Act. While dealing with the said issue, it was found that the severability of a contract for its specific enforcement must satisfy a pre-condition wherein there must be inability on the part of the other party to the contract to perform the whole contract. Therefore, unless it was established that the defendants are unable to perform the whole of the contract, and the portion which is capable of being severed is capable of being performed by the defendants, the plaintiffs cannot seek for specific performance of a smaller portion of 9 cents. While applying the facts of the present case to the scope of Section 12 of the Specific Relief Act, a specific finding was given to the effect that the defendants were held to be entitled under the final decree for 1.25 Acres and they were capable of performing their part of the contract for the said entire 1.25 Acres. That was properly understood by the plaintiffs even while issuing the Ex.A.5 legal notice. However, the plaintiffs unilaterally confined their relief for the undivided 9 cents and such a severability was not provided under the agreement and hence it was held that Section 12 of the Act will not come to the aid of the plaintiffs. The plaintiffs cannot seek for a limited relief of specific performance for 9 cents only based on the fact that they had paid a sum of Rs.3,60,000/- to the defendants.

10. Both the Courts also found that the 9 cents that was claimed out of 1.25 Acres is an unidentifiable portion of the suit property and such an indeterminate portion cannot be claimed by the plaintiffs and the case of the plaintiffs did not fall under the requirements as contained under Section 12(1) of the Specific Relief Act.



11. In the considered view of this Court, both the Courts below have rendered their findings on appreciation of oral and documentary evidence and on proper application of the relevant provisions of the Specific Relief Act. This Court does not find any perversity in those findings and it does not warrant the interference of this Court. In any event, this Court does not find any substantial questions of law involved in this Second Appeal.

12. In the result, the Second Appeal stands dismissed. However, considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

KST

To

1.The I Additional District Judge,
Coimbatore.

2.The III Additional Subordinate Judge,
Coimbatore.

+1cc to Mr.Arun Kumar Rajan, Advocate SR. No. 19071

S.A.No.1238 of 2013

KJ (CO)

PR (17/05/2022)