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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

S.A.No. 642 of 2016

C. Ezhumalai

...Appellant / Appellant / Plaintiff

Vs

C. Elanchezhiyan

...Respondent / Respondent / Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 07.10.2015 in A.S.No.19 of 2013 on the file of the District Judge, Tiruvannamalai and confirming the Judgment and Decree dated 19.07.2013 in O.S.No.99 of 2012 on the file of the Subordinate Judge, Arni.

For Appellant : Mr.T.V.Badrinarayanan

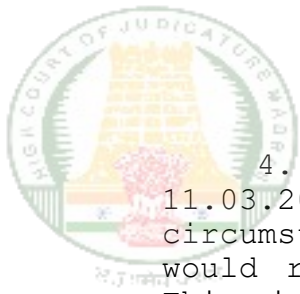
For Respondent : Mr.M.Venkatakkrishnan

JUDGMENT

The plaintiff is the appellant in this second appeal.

2. The plaintiff filed a suit seeking for the relief of specific performance based on the agreement of sale dated 23.07.2012 or in the alternative, for the relief of refund of advance amount with interest at the rate of 12% per annum till the date of realisation.

3. Both the Courts below, on appreciation of the oral and documentary evidence and after considering the facts and circumstances of the case, concurrently held against the plaintiff and dismissed the suit. Aggrieved by the same, the plaintiff has approached this Court and filed the second appeal.



4. When the matter came up for final hearing on 11.03.2022, this Court took into consideration the facts and circumstances of the case and suggested that interest of justice would require the refund of the advance amount with interest. This is in view of the fact that both the Courts below had concurrently held that the plaintiff will not be entitled for the relief of specific performance. Hence, this Court directed the respondent to be present before this Court during the next date of hearing.

5. Accordingly, when the matter was taken up for hearing today, the respondent was present. When he was enquired about his financial position, he informed that he is an agriculturist and that he is not in a position to immediately pay the amount and he would require atleast three months time to repay the advance amount with interest.

6. Insofar as the interest amount is concerned, the learned counsel for the appellant submitted that even as per the agreement, the respondent had agreed to refund double the advance amount with interest. The learned counsel further submitted that even at the time of filing the suit, the refund amount was sought for with interest at the rate of 12% per annum. Per contra, the learned counsel for the respondent submitted that the interest can be fixed at 7.5% per annum.

7. In the considered view of this Court, in order to maintain the balance, 9% interest can be fixed from the date of agreement till 31.03.2022. When this was put forth before the learned counsel appearing on either side, the same was consented and hence this judgment is passed on the consent given by either side.

8. In view of the above, the Judgment and Decree passed by the Trial Court is modified. The respondent / defendant is directed to refund the advance amount of Rs.1,00,000/- along with interest at the rate of 9% per annum from the date of agreement till 31.03.2022. The total amount works out to a sum of Rs.1,87,000/-. Considering the fact that the respondent is an agriculturist and he would require some time to arrange for this amount, time is granted to the respondent to pay this amount of Rs.1,87,000/- on or before 24.06.2022. A decree shall be drawn in the second appeal accordingly.

9. This second appeal is disposed of with the above direction. Considering the facts and circumstances of the case, there will be no order as to costs.



10. Post this case under the caption 'For Reporting Compliance' on 24.06.2022.

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Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

Lpp

To

1. The District Judge,
Tiruvannamalai.
2. The Subordinate Judge,
Arni.

+1cc to Mr.M.Venkatakrishnan, Advocate, S.R.No.20177
+1cc to Mr.Rajavelu, Advocate, S.R.No.20084

S.A.No. 642 of 2016

GMR[co]
NSK 07/04/2022