



S.A.No.124 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.02.2023

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THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.124 of 2023
and C.M.P.No.3604 of 2023

Rani

...Appellant

Vs.

Manjula

...Respondent

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 16.12.2020 in AS.No.7 of 2019 on the file of the Court of the Principal District Judge at Krishnagiri reversing the judgment and decree dated 06.09.2018 in OS.No.253 of 2014 on the file of the Subordinate Court at Uthangarai and to dismiss the suit with costs through out in favour of the appellant.

For Appellant : Mr.M.Marimuthu

JUDGMENT

This second appeal is directed as against the judgment and decree dated 16.12.2020 in AS.No.7 of 2019 on the file of the Court of the Principal District Judge at Krishnagiri reversing the judgment and decree dated 06.09.2018 in OS.No.253 of 2014 on the file of the Subordinate Court at Uthangarai, thereby dismissed the suit.

2. The appellant is the defendant. The respondent is the plaintiff.



S.A.No.124 of 2023

The respondent filed suit for specific performance. The case of the respondent is that on 06.08.2012, the appellant and the respondent entered into a registered sale agreement with respect to a property by fixing sale consideration of Rs.2,25,000/-. On the date of the agreement, the appellant received a sum of Rs.2,00,000/- as an advance and time fixed for balance sale consideration is 11 months. When the respondent arranged the said balance sale consideration of Rs.25,000/- in the first week of June itself, she informed to the appellant several times about her readiness and willingness. Even then, the appellant failed to come forward to receive the balance sale consideration and failed to execute the sale deed. Instead, the appellant demanded additional sum of Rs.75,000/- as sale consideration. Therefore, the respondent caused notice and filed suit.

3. Resisting the same, the appellant filed written statement stating that whenever she and her husband borrowed loan from the respondent, the respondent insisted for agreement for sale in respect of the suit property. In fact on three times, after repayment of the said loan amount, agreement for sale will be cancelled. On that score only, the appellant executed agreement for sale for borrowal of loan amount. After returning the entire loan to the respondent, she failed to cancel the agreement for sale and filed suit for



specific performance.

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4. On the basis of the pleadings, the trial court framed the following issues.

(a) Whether the plaintiff is entitled to the relief of Specific Performance as prayed for or not?

(b) Whether the plaintiff is entitled to the relief of separate possession as prayed for or not?

(c) Whether the plaintiff has always been ready and willing to perform her part of the contract or not?

(d) Whether the suit sale agreement is true or not?

5. On the side of the respondent, she had examined PW1 and PW2 and marked Ex.A1 to Ex.A3. On the side of the appellant, she had examined DW1 and marked Ex.B1 to Ex.B6. On perusal of oral and documentary evidences, the trial court dismissed the suit and aggrieved by the same, the respondent preferred appeal suit. The appellate court partly decreed the suit insofar as the alternative remedy and directed the appellant herein to return the advance amount which was received on the date of the alleged agreement for sale. Feeling aggrieved over the same, the present



second appeal has been filed by the defendant on the following substantial questions of law:

(a) Whether the learned First Appellate Court acted perversely by passing a decree for refund of advance money when the respondent herein has expressly given up her claims for specific performance which confirms the findings and the decree of the trial court with regard to that aspect and in view of such findings becoming final and conclusive by the act of the respondent herein and the learned First Appellate Court is right in granting the alternative relief of refund when the main relief of Specific Performance is given up?

(b) Whether the learned First Appellate Court is right in raising a presumption in favour of Ex.A-1 and the respondent herein under Section 92 of the Indian Evidence Act merely relying on the registration of Ex.A-1 alone without more?

(c) Whether the learned First Appellate Court is wrong in invoking Article 62 of the Limitation Act to grant a relief of refund of advance money?

(d) Whether the learned First Appellate Court is



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S.A.No.124 of 2023

right in invoking section 22 of the Specific Relief Act to grant the alternate relief of refund of advance money?

(e) Whether the appreciation of evidence on record – both oral and documentary – by the learned First Appellate Court is perverse?

6. The learned counsel for the appellant would submit that when the agreement for sale itself was denied by the appellant, the first appellate court ought not to have ordered for return of the advance amount. The appellant completely denied the entire transaction and it was executed only for the purpose of security at the time of borrowal of loan. Even after repayment of the entire loan amount, the respondent failed to cancel the same and filed suit for specific performance.

7. Heard, the learned counsel appearing for the appellant.

8. On perusal of records, revealed that the respondent filed suit for specific performance. In order to prove her case, the respondent must prove her readiness and willingness in order to perform her part of contract. However, the appellant denied the very execution of agreement for sale itself and it was executed only for security purpose and she never intended to sell



S.A.No.124 of 2023

the property. The agreement for sale was marked as Ex.A1. It is a registered document. As per the agreement, the appellant received an amount of Rs.2,00,000/- from the respondent in the presence of PW2 as an advance and agreed to sell the suit property. Section 92 of the Indian Evidence Act comes into play and once the advance amount paid towards property, the statutory charge is created on the property as per Section 55 (6) (b) of the Transfer of Property Act. In respect of the relief of repayment of the advance amount, Article 62 of the Limitation Act would apply. The limitation is 12 years for enforcement of charge. However, the trial court dismissed the suit on its entirety on the ground that the suit is barred by limitation for refund of the advance amount. Therefore, the first appellate court considering the above facts, rightly ordered for refund of advance amount and confirmed the dismissal of the specific performance. Therefore, this Court finds no substantial questions of law involved in this second appeal and this second appeal fails.

9. Accordingly, the judgment and decree dated 16.12.2020 in AS.No.7 of 2019 on the file of the Court of the Principal District Judge at Krishnagiri reversing the judgment and decree dated 06.09.2018 in OS.No.253 of 2014 on the file of the Subordinate Court at Uthangarai is



S.A.No.124 of 2023

confirmed and this Second Appeal is dismissed. Consequently, connected

miscellaneous petition is closed. There shall be no order as to costs.

24.02.2023

Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

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S.A.No.124 of 2023

G.K.ILANTHIRAIYAN, J.

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To

- 1.The Principal District Judge at Krishnagiri
- 2.The Subordinate Court at Uthangarai
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

in S.A.No.124 of 2023

24.02.2023