



AS.No.1001 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.12.2023

CORAM:

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

AS.No.1001 of 2009 and
MP.No.1 of 2009

R.Shanmugam

... Appellant

Vs.

1.Chinnakannu

2.Nagarajan

3.Rajendran

4.Murugan

5.Venkatachalam

6.S.P.Thiyagarajan

7.Sathiyamoorthi

8.T.Easwarn

9.S.Chandrasekaran

...Respondents

PRAYER: Appeal Suit is filed under Section 96 of CPC against the judgment and decree dated 27.07.2009 in OS.No.65 of 2008 on the file of the Additional District Judge(Fast Track Court-I), Salem.



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For Appellant : Mr.K.A.Ravindran

For Respondents

For R1 to 5, 8, 9 : Notice served

For R6 & 7 : Mr.P.Jagadeesan

JUDGMENT

This Appeal suit is filed against the judgment and decree dated 27.07.2009 passed in OS.No.65 of 2008 on the file of the Additional District Judge(Fast Track Court-I), Salem, thereby dismissed the suit for specific performance and also refund of excess amount.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The appellant is the second plaintiff, respondents 1 to 8 are the defendants and the ninth respondent is the first plaintiff in the above suit. The case of the plaintiffs is that the suit property owned by defendants 1 to 5. They gave power of attorney in favour of defendants 6 and 7 dated 04.07.2007 to deal with the suit property. On the strength of the power of attorney, defendants 6 & 7 entered into an agreement for sale with the plaintiffs on 23.07.2007 to



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purchase the suit property admeasuring 39 cents (17004 sq.ft.) for consideration of Rs.19/- per sq.ft. There is no road approach for the suit property. On the date of the agreement for sale, defendants 6 and 7 had received a sum of Rs.1,10,000/- as advance and also part of sale consideration. As per the terms of the agreement, both the parties agreed to complete their part of performance within a period of three months from the date of the agreement for sale. The total sale consideration was fixed at Rs.3,23,076/-. It was registered vide document No.4840 of 2007.

3.1 Since there is no approach road for the suit property, defendants 6 and 7 agreed to purchase a bit of land from the eighth defendant and convey the same in favour of the plaintiffs. In the event of purchasing the said bit of land for road purposes, the plaintiffs and defendants 6 and 7 have agreed to refix the sale price at Rs.151/- per sq.ft. for the suit property. In order to purchase the bit of land from the eighth defendant, another agreement was entered between them on 25.07.2007 and thereby fixed rate of Rs.10,71,000/- for the road portion to an extent of 2520 sq.ft. to be purchased from the eighth defendant. As per the said agreement, the plaintiffs have paid further sum of Rs.6,00,000/- on



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29.08.2007 to defendants 6 and 7 and also paid another sum of Rs.6,00,000/- thereafter. They were being power of attorney of defendants 1 to 5, they had received the entire amount of Rs.13,10,000/-. However, defendants 6 and 7 could not able to purchase the road portion of the property from the eighth defendant. They caused notice on 05.11.2007 thereby called upon the plaintiffs to perform their part of contract. However, on enquiry, the plaintiffs came to understand that the eighth defendant did not agree to sell his property in favour of defendants 6 and 7. Therefore, the plaintiffs caused suitable reply notice on 12.11.2007. Defendants 6 and 7 also caused rejoinder. Thereafter, the plaintiffs came to understand that the total sale consideration fixed at Rs.10,71,000/- for the road portion of the land was not paid by defendants 6 and 7 in favour of the eighth defendant. They had paid only a sum of Rs.4,00,000/-. Therefore, the plaintiffs filed suit for specific performance as per the agreement dated 23.07.2007 and also refund of the excess amount paid in favour of defendants 6 and 7.

4. Resisting the same, the seventh defendant filed written statement



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stating that only because of the failure on the part of the plaintiffs, they could not able to purchase the road portion of the land from the eighth defendant. Further, they were always ready and willing to perform their part of contract and the plaintiffs only failed to perform their part of contract. The plaintiffs had filed suit only on the strength of the agreement dated 23.07.2007. Under the said agreement, the plaintiffs paid only a sum of Rs.1,10,000/- as advance. Therefore, the plaintiffs are not entitled for relief of specific performance and also for refund of excess amount.

5. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

- 1. Whether the agreement dated 23.07.2007 and another agreement dated 25.07.2007 are valid and true?*
- 2. Whether the defendants 6 and 7 are adopt the contract?*
- 3. Whether the plaintiffs are ready and willing to perform on the contract?*
- 4. Whether the plaintiffs are entitled for the relief of specific performance?*



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5. *Cost and other reliefs?*
6. *Whether the plaintiffs are entitled to enforce the sale agreement dated 23.07.2007?*
7. *Whether the sale agreement dated 23.07.2007 is supersede by the sale agreement dated 25.07.2007?*

6. In support of the plaintiffs' case, P.W.1 was examined and sixteen documents were marked as Ex.A.1 to Ex.A.16. On the side of the defendants, D.W.1 to D.W.5 were examined and Ex.B1 to Ex.B7 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved by the same, the second plaintiff has preferred this appeal suit.

7. The learned counsel for the second plaintiff / appellant would submit that admittedly the second agreement for sale dated 25.07.2007 is unregistered one. It was entered between the parties only to purchase the road portion of the land from the eighth defendant. After receiving a sum of Rs.12,00,000/- for the total sale consideration of Rs.10,71,000/- to purchase the



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road portion from the eighth defendant, defendants 6 and 7 failed to pay the said sale consideration and as such, the eighth defendant refused to sell the road portion of the land. Therefore, the plaintiffs rightly filed the suit for specific performance on the strength of the agreement for sale dated 23.07.2007. As per the said agreement, it was agreed to purchase the said property for the total sale consideration of Rs.19/- per sq.ft. As per the second agreement dated 25.07.2007, after purchase of the road portion of the land from the eighth defendant, the plaintiffs agreed to purchase the said property at the rate of Rs.151/- per sq.ft. In fact, on the date of the agreement, the plaintiffs had paid a sum of Rs.6,00,000/- and subsequently paid another sum of Rs.6,00,000/-. Therefore, the plaintiffs had shown their readiness and willingness. The defendants only failed to perform their part of contract. The plaintiffs also prayed for excess amount which was paid by them from defendants 6 and 7 since the second agreement dated 25.07.2007 was not performed by defendants 6 and 7. Therefore, whatever the sale consideration as per the agreement dated 23.07.2007, the plaintiffs are entitled for excess amount paid by them.



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8. Per contra, the learned counsel for defendants 6 & 7 would submit that when the second agreement was executed between the parties, it superseded the first agreement for sale. However, the plaintiffs filed suit for specific performance only on the strength of the first agreement for sale. That apart, when the suit for specific performance was denied, they are not entitled for any refund of advance amount. In fact, the plaintiffs also failed to pray for refund of advance amount as alternative relief. They prayed only for excess amount to be refunded, that too from defendants 6 and 7. They acted only on the part of the principals i.e. defendants 1 to 5. Therefore, the trial court rightly dismissed the suit. As such, the learned counsel for the defendants prayed for dismissal of the appeal suit.

9. Heard, the learned counsel appearing for the second plaintiff and the learned counsel appearing for defendants 6 & 7.

10. On the submissions made by the learned counsel appearing on either side, the following points arise for consideration of this appeal suit:

1) Whether the plaintiffs are entitled to relief of specific performance?



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2) Whether the plaintiffs are entitled for refund of excess amount paid by them as per the agreement dated 23.07.2007?

11. The suit property was owned by defendants 1 to 5. They had executed power of attorney in favour of defendants 6 and 7 in order to deal with the property. In turn, they entered into agreement for sale with the plaintiffs and agreed to sell the suit property admeasuring 39 cents equivalent to 17,004 sq.ft. for consideration of Rs.19/- per sq.ft. on 23.07.2007. The plaintiffs also paid a sum of Rs.1,10,000/- as advance. It was registered one. Within a period of two days i.e. 25.07.2007, defendants 6 and 7 agreed to purchase the road access to the suit property from the eighth defendant at the rate of Rs.10,71,000/- to an extent of 2520 sq.ft. of land. On the said purchase, the plaintiffs agreed to purchase the suit property for the sale consideration of Rs.151/- per sq.ft. As per the said agreement, the plaintiffs also paid a sum of Rs.12,00,000/-. In turn, defendants 6 and 7 had paid only a sum of Rs.4,00,000/- in favour of the eighth defendant to purchase the road for access to the suit properties. However, they failed to pay the balance sale consideration. As per the agreement dated 23.07.2007, the period of time to perform their contract was fixed as three



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months. However, defendants 6 and 7 failed to purchase the road to access the suit property. They also failed to execute any sale deed for the road as per the agreement dated 23.07.2007. However, defendants 6 and 7 caused notice on 05.11.2007 thereby called upon the plaintiffs to perform their part of contract. However, the plaintiffs found that defendants 6 and 7 failed to pay the balance sale consideration in favour of the eighth defendant and as such, the eighth defendant did not agree to sell the road portion of the land to access the suit property. Therefore, the plaintiffs did not perform their part of contract.

12. The learned counsel for defendants 6 & 7 mainly contended that where there has been innovation of contract, a suit cannot lie on the basis of previous contract. According to Section 62 of the Contract Act, if the parties to a contract agree to substitute a new contract for it or it rescind it or alter it, the original contract need not be performed. The original contract of sale, therefore necessarily become inoperative and unenforceable and ceased to exist.

13. As stated supra, the second contract is nothing but continuation of the first contract. In fact, the first contract was registered one dated 23.07.2007



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and the second was not registered one. As such, the suit for specific performance cannot be considered and the trial court rightly dismissed the same.

14. Insofar as refund of the excess amount is concerned, as per the agreement dated 23.07.2007, the plaintiffs and defendants 6 and 7 agreed to purchase the suit property at the rate of Rs.19/- per sq.ft. to an extent of 17,004 sq.ft. It has no role. Therefore, on 25.07.2007, defendants 6 and 7 agreed to purchase the road portion of the land from the eighth defendant. As stated supra, they failed to pay the entire sale consideration and as such, the eighth defendant did not come forward to execute the sale deed in favour of them. It is also to be noted that only on condition that defendants 6 and 7 should have purchased the road portion to access the suit property, the plaintiffs agreed to pay the sale consideration as Rs.151/- per sq.ft. However, defendants 6 and 7 failed to purchase the same and as such, the first agreement for sale dated 23.07.2007 came into effect. However, no sale deed was executed in favour of the plaintiffs by defendants 6 and 7. Therefore, the plaintiffs rightly filed suit to refund the excess amount received by defendants 6 and 7 i.e. after deducting the total sale consideration of Rs.3,23,076/-. Since the plaintiffs are not entitled for the relief of specific performance, the plaintiffs are entitled to receive the entire



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advance amount received by defendants 6 and 7.

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15. Further, admittedly the eighth defendant received a sum of Rs.4,00,000/- from defendants 6 and 7 as advance and agreed to sell the road in favour of defendants 6 and 7. However, no sale deed was executed and as such, the eighth defendant is liable to refund the advance amount of Rs.4,00,000/-. Hence, the plaintiffs are entitled to receive the entire advance amount which was paid as per the agreements dated 23.07.2007 and 25.07.2007. Accordingly, the second point is answered in favour of the plaintiffs.

16. In view of the above, the judgment and decree of the trial court insofar as the rejection of relief of specific performance is confirmed. However, insofar as the rejection of the suit claim, the judgment and decree dated 27.07.2009 passed in OS.No.65 of 2008 on the file of the Additional District Judge(Fast Track Court-I), Salem is set aside. Accordingly, defendants 1 to 7 shall refund Rs.9,10,000/- (out of the entire advance amount) to the plaintiffs with interest at the rate of 6% per annum from the date of receipt of the amount till repayment of the said amount, within a period of four weeks from the date of



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receipt of copy of this order. The eighth defendant is directed to pay a sum of Rs.4,00,000/- with interest at the rate of 6% per annum from the date of receipt of the said amount till realisation in favour of the plaintiffs within a period of four weeks from the date of receipt of copy of this order.

17. In the result, this appeal suit stands partly allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

18.12.2023

Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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To

- 1.The Additional District Judge(Fast Track Court-I),
Salem.
- 2.Section Officer,
V.R.Section,
High Court of Madras

G.K.ILANTHIRAIYAN, J.

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