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S.A.No.78 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.02.2023

CORAM

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

S.A.No.78 of 2023

M.Ravi

S/o.Munusamy

... Plaintiff/Appellant/Appellant

Vs

Sundaramurthy

S/o.Munusamy

...

Defendant/Respondent/Respondent

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code as against the Judgment and Decree dated 21.09.2022 made in A.S.No.7 of 2022 on the file of the Subordinate Judge, Gingee, confirming the Judgment and Decree dated 07.01.2021 made in O.S.No.34 of 2017 on the file of the Principal District Munsif, Gingee.

For Appellant : Mr.N.Suresh

JUDGMENT

This Second Appeal is directed as against the Judgment and Decree dated 21.09.2022 made in A.S.No.7 of 2022 on the file of the Subordinate Judge, Gingee, confirming the Judgment and Decree dated 07.01.2021 made in O.S.No.34 of 2017 on the file of the Principal District Munsif, Gingee, thereby rejected the plaint for want of Court



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fees.

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2. The appellant is the plaintiff and the respondent is the defendant. The appellant filed a suit for specific performance with alternative relief of refund of advance amount. The suit was valued at Rs.90,600/- and Court fees paid under Section 42 of the Tamil Nadu Court Fees and Suit Valuation Act, for a sum of Rs.7,095/-. The suit is filed for specific performance with alternative prayer of refund of advance amount. The case of the appellant is that the respondent entered into an agreement for sale with the appellant and agreed to sell the property for a total sale consideration of Rs.90,600/- on 27.07.2007. On the same day, he received a sum of Rs.50,000/- as advance and time for execution of sale consideration was fixed as one year. However, when the appellant is ready and willing to pay the remaining sale consideration, the respondent failed to execute the sale deed in favour of the appellant herein. The Trial Court rejected the plaint under Order 7 Rule 11(b) of CPC on the ground that the appellant was given opportunity to pay Court fee for the alternative relief, even then the appellant failed to pay the Court fee. Therefore, the plaint was rejected. Aggrieved by the same, the appellant preferred an appeal suit. The



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appeal suit was also dismissed and the order of the Trial Court was confirmed. The respondent, after receipt of the suit summons, failed to appear before the Trial Court as well as the Appellate Court. He was set ex-parte and the suit was dismissed on the ground for non-payment of deficit Court fee and the same was also confirmed by the Appellate Court.

3. The learned counsel appearing for the appellant relied upon the Judgment reported in **CDJ 2017 MHC 5243** in the case of ***L.Rathanchand Sarma Vs. M/s.Vinayaka Exports & Imports, rep by its partners Dr.a.Shanmugasundaram & Others***, in which this Court held that what is contemplated under Section 6 of the Tamil Nadu Court Fees and Suit Valuation Act, is there are several reliefs prayed for in a suit and some of the reliefs which are ancillary to the main relief, the suitor is given the benefit to pay Court fee on the main relief only and is exempt from valuing each one of the ancillary reliefs and paying Court fee separately. For example, if in a suit for specific performance, the plaintiff seeks an ancillary relief of delivery of possession or partition, he could seek those reliefs without paying Court fee either under Section 30 or under Section 37 as the case may be. Similarly, when a plaintiff seeks



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an alternative relief of refund of advance in a suit for specific performance, he need not pay separate Court fee for the said relief.

Therefore, the proviso under Section 6(1) and Section 6(2) are intended for the benefit of the suitor and the same cannot be interpreted so as to include a relief of rejection of plaint as an ancillary relief and thereby make them to pay the Court fee payable in the suit in an appeal an order rejecting a plaint. Therefore, it is quite normal that whenever a suit is filed for specific performance, an alternative prayer of refund of advance amount is also made. Therefore, the law settled that the plaintiff is not required to pay the Court fee for alternative relief, if any.

4. Before the Courts below, the respondent received notice and thereafter failed to appear before the Court below. Therefore, this Court can very well dispense with the issuance of notice for the respondent.

Order 41 Rule 16(4) reads as follows :

“(4) Notwithstanding anything to the contrary contained in Sub-rule(1), it should not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first



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instance or has appeared in the appeal”

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5. Thus, it is clear that service of notice of any proceedings incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, there is no need to issue any notice to the respondent, since already the respondent was set ex-parte before the Trial Court as well as the Appellate Court. Hence, both the Courts below erred in holding that the appellant ought to have paid separate Court fee for alternative relief. As stated supra, for the alternative relief that too refund of the advance amount, the plaintiff need not pay any separate Court fee. Therefore, both the Judgments and Decree passed by the Trial Court and the Appellate Court are liable to be interfered with. Therefore, the Judgment and Decree passed by the Courts below are liable to be set aside.

6. In view of the above, the Judgment and Decree dated 21.09.2022 made in A.S.No.7 of 2022 on the file of the Subordinate Judge, Gingee, confirming the Judgment and Decree dated 07.01.2021 made in O.S.No.34 of 2017 on the file of the Principal District Munsif, Gingee are hereby set aside. Accordingly, the Second Appeal is allowed.



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The matter is remanded back to the Trial Court for fresh disposal. The Trial Court is directed to try the suit, without insisting for Court fee in respect of alternative remedy and dispose of the same in the manner known to law within a period of six months from the date of receipt of a copy of this order. No costs.

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Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

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To

1. The Subordinate Judge, Gingee.
2. The Principal District Munsif, Gingee.



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