



AS. No.490 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

AS. No. 490 of 2019

1.B.J.Elazer
2.B.J.Kumari
3.E.Zackulin
4.E.Mariena
5.B.E. Michael christober

...Appellants/Defendnats 1 to 6

Vs.

1.K.Shaber Hussain
2.K.Jaffer Hussain
3.K.Raghman Hussain
B.E. Vasanth Benjamin (Deceased)
4.Shamsheer Hussain

...Respondents 1 to 4/Plaintiffs

5. Sesham Narasaiah

...5th Respondent/7th Defendant.

PRAYER : This first appeal is filed under Order XVI Rule 1 r/w section 96 of the Civil Procedure Code, to set aside the judgment and decree dated 30th August 2018 passed in O.S No. 735 of 2011 on the file of learned V Additional Judge, City Civil Court, Chennai, and the dismiss the suit for specific performance.



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For Appellants : Mr.K.Thilageswaran

For R1 to R4 : Mr.A.Babu

For R5 : Mr.G.Vijayakumar

JUDGMENT

The appellants herein are the defendants 1 to 6 and the respondents herein are the plaintiffs in suit O.S No. 735 of 2011 on the file of the V Additional city Civil Court, Chennai. The said suit was filed by the respondents herein for the relief of specific performance against the appellants herein, directing them to execute the sale deed as per the sale agreement dated 17.06.2005 on receipt of balance amount of Rs.8,27,941/- and in alternative pay the plaintiffs/respondent herein a sum of Rs. 7,47,059/- together with interest as 24% per annum from 17.06.2005 till date of payment. The said suit was contested by the appellants herein by filing counter stating that the respondent herein were not ready to comply with the terms of the agreement within the stipulated period of three months nor they paid the entire advance amount of Rs.10,00,000/- as agreed by them. Hence, they were committed breach of contract so they are not entitle



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for the relief of specific performance.

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2. After considering the submissions on either side, and the evidence on record the Trial Court held that the plaintiffs/respondents were ready and willing to perform their part of the contract but on the other hand the defendants failed to execute the sale deed as per the sale agreement. Besides, the first defendant executed sale deed in favour of the seventh defendant to defeat the rights of the plaintiff. Accordingly, relief of specific performance was granted in favour of the plaintiffs. Further, the counter claim filed by the seventh defendant was rejected. Challenging the said findings, the defendants preferred this appeal.

3. The brief facts of plaintiff case is as follows:

The suit property was absolutely belongs to the first defendant and his legal heirs are defendants 2 to 6. The plaintiff have entered in to an agreement of sale with defendants on 17.06.2005 to purchase the suit property as described in the schedule and a sum of Rs. 15,75,000/- was fixed as sale consideration and it was mutually agreed that out of the above said sale consideration a sum of Rs.10,00,000/- is to be paid by the plaintiffs as advance within a period of three months and the defendants



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also ready to execute the sale deed in favour of the plaintiffs by receiving 10 lakhs and if the defendants failed to hand over the vacant possession within a period of three weeks the plaintiffs are entitle to retain a sum of Rs.5,75,000/- till handing over the possession of the property. Further, it was agreed that the said property was subject to mortgage with Thyagarayar Nagar Cooperative Building Society Limited, T. Nagar, Chennai – 17 and that amount to be payable for redeeming the suit property was roughly estimated at Rs.4,40,000/- and the defendants agreed to discharge the loan before execution and registration of sale deed. A sum of Rs.1,00,000/- was paid as advance on the date of the sale agreement and as per the terms of the sale agreement the time for execution and registration of sale deed is fixed as three months from the date of agreement of sale. Thereafter, the plaintiffs paid a sum of Rs.4,47,059/- on 05.07.2005 for enabling the defendants to discharge the loan and as agreed after the cancellation of the mortgage, the first defendant has also entrusted the original documents relating to the suit property with the plaintiffs. On 12.08.2005, the plaintiffs approached the first defendant and informed that he is ready to pay the balance sale consideration as per the sale agreement and requested the defendants to execute the sale deed on 16.08.2005 and the defendants also



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agreed that they would come to the Registrar's office on that day and also informed the plaintiffs to retain a sum of Rs.5,75,000/- till handing over the possession as per the sale agreement. As per the defendants assurance the plaintiffs prepared the sale deed and made all arrangements to execute the sale deed but the defendants failed to appear on that date. Then the first defendant intimated that due to non availability of his daughter Zackulin he was unable to come and requested the plaintiffs to postpone the registration of the sale deed and informed that he will contact the plaintiffs within a week and inform the prospective date for registration of the sale deed. Thereafter, the defendants was not contacted the plaintiffs but issued notice to the plaintiffs stating that the plaintiffs were not ready to comply the terms of the sale agreement as such intimated that a sum of Rs.2 lakhs was forfeited by the defendants and called upon the plaintiffs to hand over the original documents of the suit property and get back a sum of Rs.5,47,059/-. Thereafter the plaintiffs lodged a complaint against the defendants and filed a suit for specific performance.

4. The Defendants in their written statement stated as follows:

The defendants admitted the terms of the sale agreement but denied the plaintiffs' contention that they have always ready and willing perform



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his part of the agreement. The first defendant contended that as per the clause 4 of the sale agreement, that besides the initial advance payment of Rs.1 lakhs a further sum of Rs.9 lakhs ought to have been paid by the plaintiffs either before or at the time of redemption of the property from Thyagaranagar Co-operative Building Society Limited, Chennai – 17. Thus together with the initial advance paid, a total sum of Rs.10,00,000/- ought to have been paid by the time the property was redeemed from the co-operative Building Society. Although the plaintiffs paid considerably less than what had been promised at the time of entering into the agreement, the plaintiffs took away the title documents of the suit property as soon as the said documents were released by the said Society. The plaintiffs have thus clearly failed to act in accordance with the terms of the agreement from the very beginning. At the time of redemption of the property from the said society on 21.07.2005 the plaintiffs merely paid the outstanding amount which then stood as Rs.4,47,059/-. They neglected to pay the plaintiffs a further a sum of Rs.2,52,941/- as agreed under the terms of the agreement. Further, the plaintiff did not approach the defendants on 12.08.2005 informing the defendants of their intention to execute the sale deed on 16.08.2006 as has been made out by the plaintiffs. In fact, immediately after



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the property was redeemed from the Thyagaraya nagar Co-operative Society Ltd., the plaintiffs has tentatively fixed the date of execution of the sale deed as 10.08.2005. However, few day before 10.08.2005 the plaintiffs informed the defendants that the they were unable to arrange the requisite sum of money to pay the balance. In the meanwhile, the plaintiffs brought a draft sale deed and showed the same to the defendants indicating the sale consideration as Rs. 13,00,000/- whereas the consideration agreed in the agreement for sale was Rs.15,75,000/-, as such shows that the plaintiffs was not ready and willing to pay the amount as per the terms within a stipulated period of time as per clause 4 of the sale agreement. Finally, the defendants lost hope on the plaintiff and also in the draft sale deed the plaintiffs indicatethat the sale consideration as Rs.13,00,000/- amply demonstrates that the plaintiffs were out to cheat the defendants. Hence, the plaintiffs is not entitle for the specific performance prayed to dismiss the suit.

5. The foremost point to be decided is whether the plaintiff performed is part of the agreement or not?

6. Heard the learned counsel for the appellants and the learned counsel for the respondents.

7. The learned counsel for the appellants submitted that the time to



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perform the agreement was fixed as three months i.e., 17.09.2005 but prior to that in the month of July 2005 the plaintiff paid two lakhs rupees as part of the agreement and paid another Rs.4,47,059/- to discharge the mortgage loan of the defendant in the Cooperative society. Besides, he already paid Rs.1,00,000/- on the date of agreement i.e., 17.06.2005 and received the discharge loan receipt on 03.08.2005. Thereafter, on 12.08.2005 the plaintiff orally informed the defendants that he is ready to complete the transaction on 16.08.2005. Accordingly, on 16.08.2005, the petitioner made an arrangements for execution of sale deed with a sum of Rs.2,52,941/- as balance advance amount but the first defendant failed to appear before Registrar office by stating some circumstances. He submitted that the plaintiffs were ready and willing to perform the part of the agreement even before the stipulated period of three months. But the defendant with an ulterior motive defaulted the plaintiffs claim. But the learned counsel for the first defendants submitted that as per the terms of the agreement the plaintiff bound to pay ten lakhs on three occasions but not paid entire amount as agreed by the plaintiff. Thereby the plaintiff committed breach of contract, on the other hand after discharging the mortgage loan with society the defendants handed over all the original title deeds along with



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parent document to the plaintiff and the same also agreed by the plaintiff but with regard to payment of balance amount Rs.2,52,941/- the plaintiff has not paid the same within three months period not paid balance amount of advance before the adjusting the above loan. Thereby, he was not paid total entire advance amount of ten lakhs as he admitted to the first defendant as per the terms of the sale agreement. But the contention of the plaintiff is that he orally informed the first defendant to appear before registrar office on 16.08.2005, on that day he was ready with draft sale deed but the plaintiff not appeared, the said draft sale deed was marked as Ex.A2 before the Trial Court and in cross examination of P.W.1, he admits that said document was drafted at his instance with the help of his agent but the said allegation was denied by the first defendant. On perusal of the draft sale deed, it reveals that it was executed for the consideration of Rs.13,00,000/- but the sale consideration as per the sale agreement was Rs. 15,75,000/-. Even assuming that plaintiff was ready on 16.08.2005 with alleged draft sale deed but he has not drafted sale deed for the agreed sale consideration as per the sale agreement. Therefore, the evidence of P.W.1 itself shows that he was not ready to pay entire sale consideration as per the sale agreement. As discussed above, the plaintiff has failed to perform his



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part of the agreement but the court below erroneously allowed the suit as such is totally liable to be set aside.

8. Admittedly, after completion of three months period the first defendant issued notice cancelling the sale agreement and sold the property to the D7 who is his son in law. D7 also filed counter claiming praying for mandatory injunction but as per the terms of the agreement the first defendant hand over the title along with existence documents to the plaintiff after discharging loan with cooperative society therefore as on date original document of the property is in the hands of the plaintiff. As he is not entitle for the relief of specific performance he is bound to hand over the original deeds either to the first defendant or seventh defendant. But the entire facts reveals that agreement between the parties are admitted but the plaintiff not paid entire amount as per sale agreement nor he was ready and willing to perform his part of the agreement within the stipulated period. Therefore, the plaintiff is not entitle for the relief of specific performance relief but he is entitle for the the amount that he paid as advance. On seeing the documents the plaintiff deposited Rs.7,47,059/- to the appellants, the appellants are directed to hand over the above said amount with 12% interest till date of realisation to the respondents within a period of three



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months from the date of receipt of a copy of this judgment. After receiving the said amount the respondents/plaintiffs are directed to hand over the original documents to the appellant/defendants as per the terms of the agreement.

9. In result, this Appeal is partly allowed. No cost. Consequently, connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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To

1. The V Additional Judge, City Civil Court, Chennai.
2. The Section Officer,
V.R Section.

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