



A.S.No. 422 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

CORAM:

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

A.S.No. 422 of 2021

Vanitha,
W/o. Dananjayan

.. Appellant

Vs

1. Subramanian,
S/o. Kaliyaperumal

2. Ujali,
W/o. Farook

... Respondents

PRAYER : Appeal Suit filed under Sec. 96 r/w Order 41 Rule 1 of Civil Procedure Code, praying to set aside the judgment and decree in O.S.No.168 of 2019 dated 22.06.2021 on the file of III Addl. District Judge, Puducherry.

For Appellant : Mrs.V.Srimathi

For Respondents : No appearance



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JUDGEMENT

The appellant herein is the plaintiff in the suit in O.S.No.168 of 2019 on the file of III Addl. District Judge, Puducherry and he has filed the suit against the respondents/defendants 1 and 2 praying for the relief of specific performance directing the 1st defendant to execute a sale deed as per sale agreement after receiving balance sale consideration along with an alternative prayer directing the defendants to pay a sum of Rs.7,15,000/- with interest at 24% per annum. The 1st defendant is the owner of the suit property and the 2nd defendant is the purchaser of the property from the 1st defendant after the said sale agreement.

2. For the sake of convenience, parties are referred as per the ranking in the suit.

3. Before the trial court, both the defendants called absent and they were set exparte. The plaintiff was examined as P.W.1 and the documents



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Ex.A1 to A6 were marked. No evidence on the side of defendants.

Considering the oral and documentary evidence adduced by the plaintiff, the trial judge held that the plaintiff has not deposited the balance amount to prove her readiness and willingness to get the sale deed, thereby she is not entitled for the relief of specific performance, but alternative relief for refund of advance was granted with interest. Challenging the said findings, the plaintiff preferred this appeal.

4. The learned counsel for plaintiff would submit that under the unregistered sale agreement dated 20.08.2015, the 1st defendant agreed to sell his property for a valid consideration of Rs.8,18,000/-, out of which, a sum of Rs.7,15,000/- was paid on various dates. The remaining balance sum of Rs.1,03,000/- is payable to him. But, the 1st defendant failed to receive the same nor he was ready to execute the sale deed. However, suppressing the said agreement, the 1st defendant sold the property to the 2nd defendant on 19.11.2018 and came to know about the same when she applied for encumbrance and found that the sale deed was created by the 1st defendant. Hence, she approached the court for the relief of specific



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performance, but the trial judge without appreciating the evidence adduced on her side and though it was not denied by the 1st defendant, not granted the relief of specific performance, as such is total misconception of law and on facts and the same is liable to be set aside.

5. Admittedly, on perusal of records, both defendants remain exparte and no document was adduced on their side. As the relief claimed by the plaintiff in the suit is discretionary relief, the plaintiff is bound to prove her case independently without influence of evidence of defendants. According to the plaintiff, the property belongs to 1st defendant was offered to sell and the same was accepted by her, thereby the sale consideration was fixed at Rs.8,18,000/-. On various dates, from the date of agreement to till 11.02.2017, she paid total sum of Rs.7,15,000/- and there is a balance sum of Rs.1,03,000/- and even that amount also, she is ready to pay to the 1st defendant, but he evaded to execute the sale deed, however, the 1st defendant sold the property to the 2nd defendant. Hence, she has immediately filed the suit in order to execute the terms of sale agreement. Further, the plaintiff also content that there is no time limit



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was fixed and after the completion of entire payment, both plaintiff and 1st defendant agreed to comply the terms. The learned counsel for appellant argues that on various occasions, from the date of agreement from the year 2015 to February, 2017, the 1st defendant received a sum of Rs.7,15,000/-. The learned counsel had mentioned those dates of payment in para 3 of the plaint, which was not denied by the 1st defendant. However, the last payment made by the plaintiff was on 11.02.2017 and subsequently, on 19.11.2018, the 1st defendant sold the property to 2nd defendant. Thereafter, the plaintiff filed a suit in the year of 2019. There is no explanation offered on the side of plaintiff while she has not chosen to pay balance amount and get the sale deed executed from the defendant in the year of 2018 itself. Nearly about 15 months later from the date of last payment, the sale deed stands in the name of 2nd defendant came into force. So, after obtaining encumbrance certificate in the year of 2019, the plaintiff filed a suit. Therefore, the inordinate delay on the side of plaintiff for nearly about two years till the date of filing the suit was not properly explained. It is a settled proposition that when the plaintiff approached the court for the relief of specific performance, she



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has to prove the fact that she is ready and willing to perform her part of contract and also should have mentioned the same in the plaint, besides there is an inordinate delay on her part also to be explained.

6. As discussed above, the plaintiff has not proved that she was ready and willing to perform her part of agreement by paying balance consideration, however though the defendants not entered into the witness box, the plaintiff is bound to prove independently about her readiness and willingness to perform her part of contract. But, after nearly two years later, she approached the court nor there is any evidence to show that she is ready and willing to perform her part of contract and to get the sale deed from the 1st defendant. Furthermore, she has not deposited balance amount as observed by the trial judge. Therefore, the plaintiff is not entitled for the relief of specific performance, thereby the findings of trial judge is confirmed. According to plaintiff, she has paid total sum of Rs.7,15,000/- and the same was not denied by the defendants. Hence, the 1st defendant is directed to refund a sum of Rs.7,15,000/- with interest at the rate of 12% from the date of agreement



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till the date of suit and subsequent interest at the rate of 6% from the date of suit till realisation, thereby the findings of trial judge is confirmed.

Accordingly, this Appeal Suit is dismissed as no merit. No costs.

12.10.2023

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

II Addl. District Judge, District Judge,
Puducherry.



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T.V.THAMILSELVI, J.

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