



A.S.No.38 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.38 of 2022

and

C.M.P.No.1727 of 2022

Mr.P.Prakash

..Appellant

Vs.

Mr.T.V.Saravanan

..Respondent

Appeal filed under Section 96 of C.P.C., read with Order XLI Rule 1 of C.P.C., praying to set aside the Judgment and Decree of the learned Principal District Court at Villupuram in O.S.No.140 of 2018 on 28.09.2021.

For Appellant : Mr.S.Madhusudanan

For Respondent : Mr.S.Indrajith



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JUDGMENT

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The Appeal Suit has been filed to set aside the Judgment and Decree dated 28.09.2021 passed in O.S.No.140 of 2018 on the file of the Principal District Court at Villupuram.

2. The parties are referred as per the ranking in the trial Court.

3. The plaintiff has stated that he had executed a sale agreement with the defendant regarding the suit schedule mentioned property. The sale agreement was executed on 31.12.2015. The total sale consideration was fixed as Rs.13,81,355/-. The defendant received a sum of Rs.1,75,000/- as advance on the date of the sale agreement. The time limit fixed for completion of sale was 90 days from the date of sale agreement i.e., 31.12.2015 on payment of balance sale consideration of Rs.12,06,355/-.

4. The plaintiff states that he was ready and willing to perform his part of contract by repaying the balance sale consideration and approached the defendant to execute the sale deed as agreed. The defendant was evading from execution of sale deed and thus, the plaintiff issued notice through his



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counsel to the defendant on 22.03.2018, calling upon the defendant to execute the sale deed by receiving the balance sale consideration of Rs.12,06,355/- as agreed. However, the defendant failed to come forward to register the sale deed and thus, the plaintiff instituted the suit for specific performance.

5. The defendant filed a written statement, denying the plaintiff's averments. The defendant has stated that he entered into the registered sale agreement with the plaintiff on 31.12.2015 in respect of the defendant's property bearing Plot No.1A situated at S.No.109/1, within the Registration District of Villupuram and Sub Registration Office, Thiruvannainallur, Villupuram District, measuring an extent of 3448 sq.feet (320.5 sq.mtr) for a sum of Rs.13,81,355/- and the plaintiff had paid advance amount of Rs.1,75,000/- alone to the defendant. The sale agreement was registered before the Sub Registrar Office, Thiruvannainallur vide Doc.No.2615/2015 on condition that within 90 days, the plaintiff has to pay the balance sale consideration of Rs.12,06,355/- and to register the sale deed in his favour, in default, the plaintiff has to lose his advance amount as well as the plot. Even after the lapse of the agreed period, the defendant requested the plaintiff to



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pay the balance sale consideration and get the sale deed executed. However, the plaintiff has not registered the sale deed and issued a legal notice in the year 2017. A Panchayat was convened and through Panchayat, the defendant repaid the advance amount to the plaintiff and asked him to return the sale agreement. The plaintiff has not returned the sale agreement to the defendant and instituted the suit for specific performance and thus, the suit is liable to be dismissed.

6. On the side of the plaintiff, the plaintiff himself has been examined as P.W.1 and one Natarajan was examined as P.W.2 and Ex.A1 to A6 were marked. On the side of the defendant, the defendant himself was examined as D.W.1 and one Mohan was examined as D.W.2 and no documents were marked.

7. Based on the pleadings between the parties, the trial Court framed the following issues:

“1. Whether the Plaintiff is entitled to Specific Performance of contract as prayed for?

2. Whether the Plaintiff is entitled to get permanent injunction as prayed for?



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3. Whether the Plaintiff is unable to perform the contract as alleged by Defendant?

4. Whether advance amount already refunded to Plaintiff as alleged by Defendant?

5. To what other reliefs?”

8. With reference to Issue No.1, whether the plaintiff is entitled to Specific Performance of contract, the trial Court examined the suit sale agreement, Ex.A1 and Ex.A2, copy of Demand Draft along with original challan. Ex.A3 is the Encumbrance Certificate. Ex.A4 is the Legal Notice issued by the plaintiff's counsel to the defendant. Ex.A5 is the Acknowledgement card. Ex.A6 is the certified copy of partition deed entered into between the defendant and his brother.

9. The trial Court, on examination, found that the suit sale agreement was registered and the conditions are unambiguous. Though the plaintiff filed Ex.A2, copy of the Demand Draft along with original challan, the said Demand Draft is the registration value and not the balance sale consideration as agreed between the parties. Even the said Demand Draft for a sum of Rs.60,576/- was disputed by the defendant on the ground that the

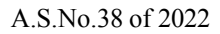


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said amount is not the actual amount of registration to be paid to the Sub Registrar and the Demand Draft was taken for some other purpose and therefore, the plaintiff is not entitled for the relief of specific performance.

10. Even the Indian Bank challan produced by the plaintiff would reveal that the name of the plaintiff nor his signature were found in the said challan. Therefore, the purpose for which the Demand Draft, Ex.A2 document was taken, was not proved and thus, the trial Court rightly has not trusted upon the Ex.A2 document. Ex.A2 document is not regarding the payment of balance sale price, but it was taken in favour of the Sub Registrar and that too, the amount in the Demand Draft is not matching with the registration charges to be paid to the Sub Registrar.

11. The plaintiff has not filed any document to establish that he was ready and willing to perform his part of contract. He has not established that he was possessing money to pay the balance sale consideration to the defendant. The plaintiff has not produced any Bank Statement or otherwise to establish that he was possessing balance sale consideration for the purpose of execution of sale deed. In the absence of establishing his



12. Regarding Issue No.3, whether the plaintiff was unable to perform contract as alleged by the defendant, it is the contention of the defendant that the plaintiff had not come forward to perform his part of contract within stipulated time i.e., 90 days from the date of suit agreement. The defendant was ready to execute the sale deed in favour of the plaintiff. On the above discussion between the plaintiff and the defendant, the Court formed an opinion that the plaintiff was not in a position to perform his part of contract as alleged by the defendant. Since the specific performance relief was not granted, the plaintiff is not entitled for the relief of permanent injunction.



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13. Regarding Issue No.4, whether the advance amount already refunded to plaintiff as alleged by defendant, the defendant also failed to file any document to establish that he has repaid the advance amount of Rs.1,75,000/- to the plaintiff. There is no proof on record to show that the defendant even during the pendency of the suit has refunded the advance amount of Rs.1,75,000/- to the plaintiff.

14. Mere statement in the written statement that in the presence of the Panchayatars, the defendant has repaid the advance amount would be insufficient and the said version in the written statement was not proved by the defendant before the trial Court. Thus, the trial Court ought to have considered the alternate relief to refund the advance amount to the plaintiff. However, the trial Court formed an opinion that the plaintiff is not entitled for the refund of advance amount, since he has not prayed for in the plaint. In this regard, the trial Court relied on Section 22(2) of Specific Relief Act, wherein Sub-Section (1) stipulates that any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for the relief of refund of the earnest money or deposit paid.



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15. The language employed in Section 22 of the Specific Relief Act is 'may'. Therefore, it is an option provided to the parties depending on the facts and circumstances to seek an alternate relief. The relief of specific performance is the discretionary relief and the Courts are empowered to grant relief by invoking the residuary prayer in the plaint. In such circumstances, in the interest of justice, if any inequity is found, then appropriate relief may be granted. In the event of allowing the defendant to take away the advance amount of Rs.1,75,000/- without executing the sale deed, it will result in an unjust gain for him. Therefore, a balanced approach in this regard is required. It is not as if the Court cannot give an alternate relief for refund of the advance amount received by the defendant. In the present case, it is an admitted fact that the defendant received Rs.1,75,000/- as an advance amount. While so, the Court ought to have considered for grant of alternate relief to refund the advance amount of Rs.1,75,000/- to the plaintiff.

16. With regard to the relief of specific performance, the grounds raised by the appellant in the present appeal suit would be insufficient to



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form an opinion that he was ready and willing to perform his part of contract. Ex.A2 document is an unbelievable document, since the Demand Draft was drawn in favour of the Sub-Registrar for a sum of Rs.60,576/- and it has not been proved that the said amount is paid for the registration charges in respect of the property belonging to the defendant, which was agreed to be sold pursuant to the suit sale agreement. Further, the appellant/plaintiff has not proved that he was possessing the balance sale consideration to be paid to the defendant within a period of 90 days. Therefore, the trial Court has rightly declined to accept the copy of the Demand Draft, Ex.A2 document and agreed the contention of the defendant in this regard. The deposit of balance consideration after a lapse of 4 years cannot be a ground to grant the relief of specific performance. The plaintiff, who instituted a suit for specific performance, must prove that he was ready and willing to perform his part of contract within the period agreed between the parties in the suit sale agreement and not after institution of the suit or thereafter.

17. In the present case, the plaintiff has failed to prove that he was ready and willing to perform his part of contract by paying the balance sale



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consideration of Rs.12,06,355/- and thus, the plaintiff/appellant is not entitled for the relief of specific performance. However a mere fact that the plaintiff has not prayed for an alternate relief, would not preclude him from getting such relief for refund of advance amount from the hands of this Court and such alternate relief(s) can be granted by the Courts for providing complete justice to the parties and no party is entitled for an unjust gain in such circumstances, since the relief of specific performance is the discretionary relief. Considering the fact that the agreement was entered into between the plaintiff and the defendant in the year 2015 and the increase of market price of the subject mentioned property, this Court is inclined to give the alternate relief.

18. Accordingly, the judgment and decree dated 28.09.2021 passed in O.S.No.140 of 2018 stands confirmed with reference to the relief of specific performance, which was rejected by the trial Court. Regarding the alternate relief for refund of the advance amount, the respondent/defendant is directed to repay the advance amount of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand only) without interest to the appellant/plaintiff within a



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period of three months from the date of receipt of a copy of this judgment.

On repayment of the advance amount, the appellant/plaintiff is permitted the withdraw the deposited amount lying in the credit of O.S.No.140 of 2018 on the file of the Principal District Court, Villupuram, by filing an appropriate application.

19. With the above modification, granting the alternate relief for refund of the advance amount to the appellant/plaintiff, the judgment and decree dated 28.09.2021 passed in O.S.No.140 of 2018 stands confirmed. Consequently, the Appeal Suit in A.S.No.38 of 2022 stands allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes
Speaking order: Yes
Neutral Citation: Yes
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To

WEB COM The Principal District Judge,
Villupuram.



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S.M.SUBRAMANIAM, J.

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