



S.A(MD).No.666 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.666 of 2020
and C.M.P(MD)No.7105 of 2020

L.Saravanan

.... Appellant/Appellant/Plaintiff

Vs.

1.P.Mariappan

2.Kaliammal

3.P.Kalyani

... Respondents 1 to 3/Respondents 1 to 3/
Defendants 1 to 3

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 24.01.2020 passed in A.S.No.136 of 2017 on the file of the Additional District and Sessions Court, Tenkasi, confirming the judgment and decree dated 08.09.2017 passed in O.S.No.127 of 2013 on the file of the Additional Subordinate Court, Tenkasi.

For Appellant : Mr.G.Thalaimutharasu

For Respondents : Mr.I.Robert

J U D G M E N T

This Second Appeal has been filed challenging the concurrent findings of the courts below. The plaintiff in the suit in O.S.No.127 of 2013



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on the file of the Additional Subordinate Court, Tenkasi, is the appellant herein. The respondents are the defendants in the suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The suit was filed for specific performance of an agreement of sale dated 09.01.2011 (Ex.A.1) entered into between the appellant and the first respondent/first defendant. On the date of agreement of sale, the appellant/plaintiff had paid a part sale consideration of Rs.5 lakhs and thereafter, on 08.02.2011, the plaintiff had paid an additional advance amount of Rs.1 lakh by way of cheque. The total sale consideration payable by the appellant/plaintiff under Ex.A.1 is Rs.9.5 lakhs out of which the appellant/plaintiff had paid an advance amount of Rs.6 lakhs leaving the balance of Rs.3.5 lakhs. According to the appellant/plaintiff, the first respondent/first defendant did not come forward to execute the sale deed in his favour and only under those circumstances, he was constrained to file a suit for specific performance to enforce the agreement of sale (Ex.A.1).

3. However, as seen from the written statement filed by the respondents/defendants, the appellant/plaintiff was not ready and willing to pay the balance sale consideration as per the terms and conditions of the



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agreement of sale (Ex.A.1) and therefore, he is not entitled for the relief of specific performance.

4. Before the trial court, the plaintiff filed 9 documents which were marked as Ex.A.1 to Ex.A.9. One witness was examined namely, the plaintiff himself as P.W.1. On the side of the defendants, no documents were filed, but one witness was examined namely the first defendant as D.W.1.

5. The trial court, namely, the Subordinate Court, Tenkasi by its judgment and decree dated 08.09.2017 in O.S.No.127 of 2013 based on the oral and documentary evidence available on record has come to the right conclusion that the plaintiff is not entitled for relief of specific performance as he was not always ready and willing to perform his part of the contract (Ex.A.1) by paying the balance sale consideration within a period of 6 months from the date of the agreement i.e from 09.01.2011.

6. The reasons given for rejecting the relief of specific performance in favour of the plaintiff by the trial court are as follows:

a) Even though the agreement of sale (Ex.A.1) was entered into on



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09.01.2011, the plaintiff has lodged a complaint to Shenkottai Police only on 07.10.2012 (Ex.A.2) for alleged breach of contract committed by the first defendant in not executing the sale deed as per Ex.A.1 in favour of the plaintiff.

b) Even the legal notice was issued by the plaintiff through his lawyer only on 31.12.2012, i.e after more than 1 year 10 months from the date of the agreement of sale (Ex.A.1).

c) The agreement of sale stipulates that the sale will have to be completed within a period of 6 months and therefore, the plaintiff was not ready and willing to complete the sale by paying the balance sale consideration within a period of 6 months.

By giving aforementioned reasons, the trial court rejected the relief of specific performance sought for by the plaintiff. But however, directed the first defendant to refund the advance amount of Rs.6 lakhs together with interest at 6% per annum from the date of the agreement of sale till deposit.

7. The defendants have also not filed any appeal as against the granting of alternate relief of refund of advance amount together with interest in favour of the plaintiff by the trial court. Therefore, the said finding has now become final.



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8. Only as against the refusal of grant of specific performance in respect of the agreement of sale (Ex.A.1) the plaintiff had filed a first appeal before the Additional District and Sessions Court, Tenkasi, in A.S.No.136 of 2017. The lower Appellate Court has also rightly confirmed the findings of the trial court by dismissing the appeal by its judgment and decree dated 24.01.2020 in A.S.No.136 of 2017.

9. Prior to the amendment of the Specific Relief Act, the relief of specific performance is an equitable relief. The plaintiff should always be ready and willing to perform his part of the contract in order to get the relief of specific performance. Admittedly, as seen from the evidence available on record and has rightly held by the courts below, the plaintiff has not completed the sale within a period of six months from the date of the agreement of sale (Ex.A.1). The documentary evidence produced by the plaintiff before the trial court which have been marked as Ex.A.1 to Ex.A.9 also reveal that the plaintiff has not approached the first defendant within a period of 6 months as stipulated under the agreement of sale (Ex.A.1) for completion of the sale to get the sale deed executed in his name by paying the balance sale consideration of Rs.3.5 lakhs. Only on 07.10.2012, i.e after a period of 1 year and 10 months, approximately the plaintiff has lodged a



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complaint with the police for the alleged breach of contract committed by the first defendant. As rightly held by the courts below, the plaintiff was not always ready and willing to complete the sale as per the agreement of sale dated 09.01.2011 (Ex.A.1). Only based on the oral and documentary evidence available on record, the courts below have granted the alternate relief of refund of advance together with interest at 6% per annum in favour of the plaintiff and has refused to grant the relief of specific performance. In fact, the plaintiff had also sought for alternative relief in the suit.

10. For the foregoing reasons, there is no substantial questions of law involved in this Second appeal as the issues raised by the plaintiff in the Second Appeal are all factual issues and further the issues have already been considered by the courts below rightly. There is no merit in the Second Appeal. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed. However, the plaintiff is entitled to execute the decree of the trial court with regard to the refund of advance amount together with interest payable to him as per the said decree.

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Index : Yes/No
Internet: Yes/No
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To,

- 1.The Additional District and Sessions Court, Tenkasi,
2. The Additional Subordinate Court, Tenkasi.
- 3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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