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THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 22.02.2024	Delivered on 03.06.2024
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CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.959 of 2012

and

M.P.No.1 of 2012

Vaithyanathasamy (died)

1.Elavarasan

2.Rani

3.Pennarasi

...Appellants

Vs.

Deivasagayam Selvanathan Edward,
rep. by his Power Agent,
Deivasagayam Savarinathan,
S/o.Kulandaisamy,
D.No.41, Jeevanandan Street,
Karaikal.

...Respondents

Prayer: First Appeal filed under Section 96 of C.P.C., against the judgment and decree dated 24.11.2011 made in O.S.No.32 of 2007 on the file of the Court of the District Judge, Karaikal.



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For Appellants : Mr.T.M.Naveen for Mr.T.P.Manoharan

For Respondent : Mr.J.Antony Jesus

J U D G M E N T

The defeated defendants are the appellants herein. The respondent / plaintiff filed a suit for specific performance of the Ex.A1 / suit sale agreement dated 17.07.2006 and with alternative relief to grant money decree by way of compensation for a sum of Rs.3,20,000/- under Section 21(2) of the Specific Relief Act.

2.The necessary facts for determination of this appeal is as under;-

The suit has been instituted by the respondent herein through his power agent. The plaintiff and the defendants had entered into an agreement of sale under Ex.A1 dated 17.07.2006 in respect of the schedule mentioned property. The defendants had received a sum of Rs.50,000/- as advance and agreed to receive balance of sale consideration within a period of four months. It is alleged that the defendants failed to do so and hence, pre-suit notice, which has been marked as Exs.A2 to A11 were exchanged between the parties when the suit was laid for the above relief.

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3.The defendants in the written statement has specifically stated that the plaintiff was never ready and willing to perform his part of the contract.

He has not taken any steps during the subsistence of the agreement and after receipt of the legal notice, the defendants returned the advance amount by way of Demand Draft to the plaintiff after his return from France during February, 2007.

4.Upon pleadings, the Trial Court has formulated the issues:-

"1. Whether the plaintiff was ready and willing to perform his part of contract and continue to be entitled ?

2.Whether the time is essence of the contract ?

3.Whether the suit is maintainable for want of permission under Foreign Exchange Management Act ?

4.Whether the defendants are entitled to retain the advance money for breaking the contract by the plaintiff ?

5.What is the relief to the plaintiff ?"

4.1.During the trial, the following additional issues were framed:-

"1. Whether the alternative prayer for money decree by way of compensation for Rs.3,20,000/- as against the defendant is barred by limitation ?



2. Whether the plaintiff is entitled for money decree by way of compensation to the tune of Rs.3,20,000/- payable by the defendants ?"

5. At trial, the plaintiff's power of attorney examined himself as P.W.1 and one another witness was examined as P.W.2 and Exs.A1 to A12 were marked. On the side of the defendants, the second defendant examined himself as D.W.1 and one another witness was examined as D.W.2 and marked Exs.B1 to B3.

6. Heard Mr.T.M.Naveen for Mr.T.P.Manoharan, learned counsel for the appellants / defendants and Mr.J.Antony Jesus, learned counsel for the respondent / plaintiff.

7. The terms of the agreement under Ex.A1, receipt of Rs.50,000/- received by the defendants / appellants and exchange of legal notices marked as Exs.A2 to A11 are admitted. Upon pleadings, the following points arise for determination in this appeal:-

i) Whether the judgment granted by the Trial Court is sustainable in law ?



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ii) Whether the judgment of the District Judge in granting compensation of Rs.3,20,000/- under Section 21(4) of the Specific Relief Act is sustainable in law?

iii) To what other reliefs?

8. Upon perusal of the documents, I find that the plaintiff has first issued advocate notice dated 25.11.2006 asking the defendants to produce all the necessary documents and he has also purchased the stamp papers for execution of the sale. In reply to it, the defendants have replied vide notice dated 30.11.2006 which has been marked as Ex.A3. In Ex.A3 the defendants had taken steps to return the advance amount of Rs.50,000/- after expiry of the period of four months from the date of sale agreement also after receiving the suit notice sent by the plaintiff himself. Further it is to be stated that the defendants in their written statement has specifically come forward with a specific plea that after execution of Ex.A1, suit sale agreement, the plaintiff has left for France and though he assured to return from France to pay the balance of sale consideration and to complete the transaction, he has not come forward. In the written statement, the



defendants had taken a specific plea that as per the recital in the suit sale agreement / Ex.A1, they had entrusted the work to one Thirumeni and paid Rs.3,500/- to get the sale deed translated from French to English and to obtain encumbrance certificate from the Sub-Registrar Office.

9.It is further stated that the said Thirumeni has been examined as P.W.2 on the side of the plaintiff. P.W.2 during his cross-examination before this Court has deposed that he is a signatory in Ex.A1 as witness and P.W.1 alone had given money for effecting the name change in the patta for the suit property. He has categorically deposed that both the parties have spoken about the execution of the sale deed only effecting change of the name of the defendants in the patta for the suit property. He has further deposed that the defendants have not handed over the copy of the Will, Encumbrance Certificates and patta to the plaintiff as on the date of the agreement. As such P.W.2 has supported the case of the plaintiff to the effect that the defendants have not taken any steps to hand over the copy of the above said documents to the plaintiff.

10.The admission of the P.W.1 assumes significance. The perusal of



Ex.A1 reveals that the plaintiff alone agreed to get sale deed executed in his name within the period of four months. P.W.1 during his cross-examination has deposed that during the period of transaction of notices between the plaintiff and the defendants, the plaintiff had come to India twice. However, the plaintiff has not chosen to produce any evidence to show that during his visit to India, he has taken any steps for getting the sale deed executed in his favour. The plaintiff has not chosen to prove that he was available at India for getting the sale deed executed in his favour within the period of four months, even at the time of issuance of notice, namely Ex.A2.

11.Further more, in the cross-examination, P.W.1 has categorically refused to answer about his availability in India after execution of Ex.A1 and further in the cross-examination, he has not whispered anything regarding the availability of the balance of sale consideration in his accounts within the period stipulated in Ex.A1 namely, four months assumes significance. Though the respondent / plaintiff has pleaded that he is ready and willing and the defendants had not furnished the copies of the Will and the encumbrance certificate, the admission in the cross-examination of the P.W.2 that registered copy of the Will and encumbrance certificate was



handed over to him and hence, he even admitted that those document as recorded by the respondent / plaintiff was handed over within one month from the date of the agreement and hence, I find that the defendant has completed his obligation under Ex.A1, suit sale agreement. The version of P.W.1 in the pleadings found to run counter to the admission made by P.W.1 in the cross-examination and hence, the Trial Court has rightly come to the conclusion that the respondent / plaintiff is not ready and willing to perform his part of the contract and rightly negated the relief of specific performance.

12(a).After hearing the learned counsel for the appellants and the learned counsel for the respondent with regard to grant of compensation of Rs.3,20,000/-, I find that the Trial Court has miserably misdirected itself in granting the relief. As per Section 21(2) of the Specific Relief Act any such suit, the court decides that specific performance ought not to be granted, but there is a contract between the parties which has been broken by the defendants and the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.



12(b).No doubt true that sub section (4) of Section 21 of Specific Relief Act postulates that in determining the amount of any compensation awarded under the section, the court shall be guided by the principles specified in Section 73 of the Indian Contract Act.

13.In the instant case, the alleged purchasers of the property are not impleaded in the suit to demonstrate that the sale price for which the property was sold by the defendants / appellants. Copies of the sale deed were also not marked to subsist the same. Compensation can be granted only in the event if the plaintiff demonstrated before the Court that he is ready and willing to perform his part of the contract. However, due to the act of the parties, the sale has been effected whereby, he has deprived of the property in the instant case. Based upon the admission of P.W.1 & P.W.2, the Trial Court has rightly come to the conclusion that the plaintiff is not ready and willing to perform his part of the contract and therefore, he is not entitled to for the discretionary relief for specific performance.

14.When such being the case, the Court cannot grant relief of compensation, since the defendants have not committed breach of the terms



of the contract. Immediately after the receipt of the legal notice which is issued, admittedly, after expiry of the period, the advance amount of Rs.50,000/- was returned as could be seen from Exs.B2 & B3. Further more, it is to be stated the escalation of the prices cannot be assumed unless there is a positive evidence placed before the Court. In the absence of any positive evidence available on record, the learned District Judge, Karaikkal has miserably misdirected itself in granting compensation on imaginary grounds. When there is a finding that the respondent / plaintiff is not entitled for the relief of specific performance, since he is not ready to complete the sale transaction nor willing to perform his part of the contract, the question of grant of compensation does not arise.

15.The defendants were now awarded with the money decree for Rs.3,20,000/-. On perusal of the evidence of P.W.1 and P.W.2, I find that as per the terms and conditions of the sale agreement, as admitted by the father and power agent of the respondent as P.W.1, the 1st appellant and his father have measured the suit property in the presence of the respondent and his father (P.W.1) through Surveyor Kaliaperumal immediately after the sale agreement and they have satisfied with the same, they have handed over a



copy of the Will in french language along with its English translation, the patta and tax receipt to his father and in the presence of the respondent himself, they have paid Rs.3,500/- to the land broker Thirumeni (P.W.2) to obtain certified copy of the Will and Encumbrance Certificate and give the same to him. Therefore, the respondent has to pay the balance sale consideration of Rs.2,80,000/- to them and get the sale deed executed in his favour within the time of four months fixed in the sale agreement thereof. But, he did not do so. Hence, he is not entitled for any of the reliefs sought by him.

16.Yet another issue is that the respondent has not produced any materials, including his Passport, Bank Pass Book etc. and not proved that he was in India on 25.11.2006 and thereafter, he was having sufficient funds ready with him in his hands atleast on that day to pay the balance sale consideration to them and get the sale deed executed and he has given instructions to the Advocate at Tuticorin to issue Ex.A2 / notice to them. They have sent a reply to the said notice, stating all the above admitted and actual facts and returning the advance amount of Rs.50,000/- by way of demand draft to him. Thereafter, he has issued four other notices making



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the same allegations and claims and returning the demand draft. They have sent suitable replies to those notice also. Therefore, the respondent has lost all the rights arising under Ex.A1 / sale agreement.

17. When the factual position be so, when the plaintiff is a defaulter and is not able to complete the sale transaction because of his own fault, for which, the defendants cannot be levied with the compensation and hence, grant of compensation by the Trial Court is unsustainable in law. Both points are answered in favour of the appellants / defendants. In the result, this appeal suit is allowed, judgment and decree granted in O.S.No.32 of 2007 dated 24.11.2011 is hereby set aside and the O.S.No.32 of 2007 stands dismissed. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

03.06.2024

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Speaking/Non-speaking order

Neutral Citation : Yes/No



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To:-

The District Court,
Karaikal.



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RMT.TEEKAA RAMAN, J.

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