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S.A.NO.283 OF 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 13 / 09 / 2024

JUDGMENT PRONOUNCED ON : 13 / 12 / 2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.283 OF 2020

K.Mariyappan

... Appellant / Appellant /
Plaintiff

Vs.

1.S.Ameer Deen

2.A.Akbar Basha

... Respondents / Respondents /
Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated July 24, 2019 made in A.S.No.45 of 2018 on the file of the Additional District Judge, Krishnagiri, confirming the Judgment and Decree dated July 20, 2018 made in O.S.No.118 of 2015 on the file of the Additional Special Judge (FAC), Krishnagiri.

For Appellant : Mr.V.Raghavachari
Senior Counsel
for M/s.V.Srimathi

For Respondents : Notice served, name printed in the
cause list – No appearance



J U D G M E N T

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This Second Appeal is directed by the unsuccessful plaintiff against the Judgment and Decree dated July 24, 2019 passed in A.S.No.45 of 2018 by the 'Additional District Court, Krishnagiri' [hereinafter 'First Appellate Court'], wherein and whereby the Judgment and Decree dated July 20, 2018 passed in O.S.No.118 of 2015 by the 'Additional Special Judge (FAC), Krishnagiri' [henceforth 'Trial Court'] was confirmed.

2. The plaintiff in the Original Suit is the appellant herein. The defendants therein are the respondents herein. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE:

3. The 1st defendant is the father of the 2nd defendant. The Suit Property absolutely belonged to the defendants. The defendants offered to sell the Suit Property to the plaintiff on May 15, 2014 and the plaintiff also agreed to purchase the same. Sale price was fixed at Rs.1,38,000/-. The plaintiff paid an advance of Rs.89,000/- on May 15, 2014 and it was agreed that the balance sale consideration had to be paid within the period of performance which was fixed at three months from the date of Sale Agreement, upon which, the defendants have to execute



the Sale Deed. Accordingly, they entered into an written Sale Agreement.

Since the Sale Agreement could not be registered on the day of execution, the defendants agreed to co-operate with the plaintiff for registering the same later.

3.1. The plaintiff got ready with the balance sale consideration and was requesting the defendants to receive the same and execute the Sale Deed directly. But the defendants were evasive in registering the Sale Agreement / Sale Deed. Hence, the plaintiff was constrained to compulsorily register Suit Sale Agreement, after due notice, as Document No.792/2015 on the file of Sub Registrar's Office, Kaveripattinam on March 18, 2015.

3.2. Thereafter, the plaintiff approached the defendants on May 6, 2015 requesting them to receive the balance sale consideration and execute the Sale Deed. But the defendants refused to perform their part of the contract stating that the cost of the land has shot up. In view of the conduct of the defendants, the plaintiff was forced to file the Suit seeking the relief of Specific Performance to enforce the Suit Sale Agreement.

DEFENDANTS' CASE:

4. The defendants filed written statement denying the



allegations made by the plaintiff except those specifically admitted. The

1st defendant is the father of the 2nd defendant. The Suit Sale Agreement is a fraudulent one. The plaintiff has compulsorily registered the same as Document No.792/2015 through some fraudulent means. The plaintiff did not approach the defendants on May 6, 2015 requesting them to receive the balance sale consideration and execute the Sale Deed. It is incorrect to assert that the plaintiff was always ready and willing to fulfil his part of the alleged Suit Sale Agreement.

4.1. The plaintiff actually tried to encroach upon the Suit Property which absolutely belongs to the defendants' family as undivided ancestral property. On May 9, 2014, the plaintiff and his sons with some local village people threatened the defendants to sign in some blank papers. The defendants had given a complaint against the plaintiff in local police station, however due to influence, the plaintiff and his sons escaped from police enquiry. Accordingly, the defendants sought to dismiss the Suit.

TRIAL COURT:

5. At trial, plaintiff – Mariyappan was examined as P.W.1 and Ex-A.1 to Ex-A.6 were marked on the side of the plaintiff. On the side of



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the defendants, the first defendant – S.Ameen Deen was examined as D.W.1, two other witnesses were examined as D.W.2 and D.W.3 [with regard to compulsory registration of Suit Sale Agreement] and Ex-B.1 to Ex-B.5 were marked.

5.1. After full-fledged trial and hearing both sides, the Trial Court dismissed the Suit holding that the plaintiff has not proved his readiness and willingness to perform his part of the contract. The conduct of the plaintiff in getting the Sale Agreement compulsorily registered shows his intention to create encumbrance over the Suit Property and thereby, coerce the defendants. Hence, he is not entitled to the discretionary relief of Specific Performance,. However, in the facts and circumstances of the case, the Trial Court alternatively granted the relief of refund of advance amount of Rs.89,000/- paid by him and accordingly, directed the defendants to pay Rs.89,000/- being advance paid by plaintiff to the defendants under Sale Agreement dated May 15, 2014.

FIRST APPELLATE COURT:

6. Aggrieved by the Trial Court's Judgment and Decree, the plaintiff preferred an appeal in A.S.No.45 of 2018 before the First Appellate Court. The First Appellate Court concurred with the findings of



the Trial Court and dismissed the Appeal Suit vide its Judgment dated July 24, 2019.

SECOND APPEAL:

7. Feeling aggrieved, the plaintiff has preferred this Second Appeal, which was admitted on March 12, 2020 on the following substantial questions of law:

- “i) Whether the Courts below were right in dismissing the suit having rejected the defence set up by the defendants?*
- (ii) Whether the Courts below were right in concluding that the plaintiff was not ready and willing to perform his part of the contract overlooking the fact that the plaintiff was forced to seek compulsory registration of the agreement and the same was eventually registered on 09.03.2015?”*

ARGUMENTS:

8. Mr.V.Raghavachari, learned Senior Counsel for M/s.V.Srimathi, learned Counsel on record for the appellant / plaintiff would argue that the plaintiff was ready and willing to perform his part of the contract. The readiness and willingness of the plaintiff could be inferred from the pleadings, evidence and his conduct. Further, in this case, the defendants denied the execution of Suit Sale Agreement citing threat and coercion. The burden to prove the alleged threat and coercion



lies upon the defendants. They have failed to establish the same. Further, in view of Tamil Nadu Act No.29 of 2012, there was a prevailing state of confusion among the legal fraternity as to whether a Sale Agreement has to be mandatorily registered or not. Hence, the plaintiff, naturally being apprehensive as a purchaser, in order to be on the safer side, applied for compulsory registration. No adverse inference can be drawn from compulsory registration. Further, despite notice, the defendants did not appear and raise any objection before the District Registrar or at the time of compulsory registration. Further, when the plaintiff approached the defendants on May 6, 2015, the defendants refused to execute the Sale Deed as per the Suit Sale Agreement. As a matter of fact, initially, before the compulsory registration, the plaintiff was ready and willing to get the Sale Deed executed directly without registering the Sale Agreement, for which, the defendants remained evasive citing lame excuses.

8.1. He would further argue that the plaintiff marked Ex-A.3— Bank Pass Book to show his readiness to perform his part of the contract. Moreover, his readiness and willingness could also be inferred from the fact that the plaintiff on the same day of Sale Agreement had paid nearly 2/3rd of the total sale consideration. The Trial Court and the First



Appellate Court failed to appreciate the pleadings, evidence, especially Ex-A.3, as well as the conduct of the defendants in the right perspective and erred in dismissing the Suit. Accordingly, he would pray to allow the Second Appeal, set aside the Judgment and Decree of Trial Court as well as First Appellate Court, and decree the Suit.

8.2. He would rely on the following decisions in support of his contentions:

- (i) ***Motilal Jain's Case*** - Judgment of Hon'ble Supreme Court in Motilal Jain Vs. Ramdasi Devi (Smt) and Others, reported in (2000) 6 SCC 420 ;
- (ii) ***Jagtab's Case*** - Judgment of Hon'ble Supreme Court in Madhukar Nivrutti Jagtap and Others Vs. Pramila Bai Chandulal Parandekar, reported in (2020) 15 SCC 731 ;
- (iii) ***Kanjana Baskaran's Case*** - Judgment of this Court in Tmt.Kanjana Baskaran and Others Vs. R.Sundaram and Another, reported in (2023) 5 MLJ 366 ; and
- (iv) ***Balwan Singh's Case*** - Judgment of the High Court of Punjab and Haryana at Chandigarh in Balwan Singh Raghav Vs. Dalip Kumar, reported in 2019 SCC OnLine P&H 709



9. Despite Court notice, the defendants did not appear and contest the Second Appeal.

DISCUSSION:

10. This Court has heard the submissions made by the learned Senior Counsel for the appellant / plaintiff and perused the materials available on record in light of the Substantial Questions of Law.

11. The date of Ex-A.4 - Sale Agreement is May 15, 2014. The agreed Sale Price is Rs.1,38,000/-. The plaintiff had paid an advance of Rs.89,000/- on the date of execution of Ex-A.4 itself. Balance consideration is Rs.49,000/-. The period of performance stipulated under Ex-A.4 – Sale Agreement is three months, that is to say, on or before August 15, 2014.

12. The plaintiff presented Ex-A.4 – Sale Agreement for compulsory registration on August 13, 2014. The Sub Registrar refused to register the document on October 30, 2014. Therefore the plaintiff preferred an appeal before the District Registrar under Section 72 of the Registration Act, 1908 and the same was allowed on March 9, 2015. Pursuant to the Order of the District Registrar, Ex-A.4 - Sale Agreement



was registered on March 18, 2015. Thereafter, the Suit was filed on June 15, 2015.

13. The defendants denied the execution and passing off consideration under Ex-A.4 – Sale Agreement. They contend that the Sale Agreement was obtained under threat and coercion. In these circumstances, the burden is upon the defendants to prove the alleged threat and coercion. The Trial Court as well as the First Appellate Court concurrently held that Ex-A.4 – Sale Agreement is true and the defence that it was obtained under threat and coercion was not established. Hence, the said factual findings have reached finality and need not be revisited in this Second Appeal.

14. The only point that has to be decided in this Second Appeal is whether the plaintiff was ready and willing to perform his part of Ex-A.4. The plaintiff's Bank Passbook has been marked as Ex-A.3 to prove his readiness and willingness. Perusal of Ex-A.3 would show that plaintiff had sufficient balance in his account on August 2, 2014 to pay the balance sale consideration and has been maintaining the same until March 2017. Thus, the plaintiff had sufficient money in his hand. The defendants also did not deny the wherewithal of the plaintiff. Though the plaintiff has



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proved his readiness by marking Ex-A.3, he has failed to adduce categorical evidence to show his willingness to purchase the defendants' land during the period of performance. No pre-suit Notice was sent by the plaintiff to the defendants (not mandatory though) P.W.1 / plaintiff in his evidence has deposed that on May 6, 2015 he approached the defendants and requested to execute Sale Deed after receiving the balance Sale Consideration; and that the defendants refused to perform their part of the contract by saying that the land value has shot up. To be noted, the period of performance is on or before August 15, 2014. There is no evidence available on record to show that the plaintiff was willing to perform his part of the contract on or before August 15, 2014.

15. The Trial Court as well as the First Appellate Court, after appreciating the evidence available on record in the right perspective concurrently arrived at a finding that the plaintiff has failed to satisfactorily prove his readiness and willingness and accordingly, dismissed the Suit for specific performance. However, both the Courts ordered the defendants to repay the advance amount of Rs.89,000/- paid by the plaintiff to the defendants. The observation of the First Appellate Court that the Suit has not been filed within the period specified in the Sale Agreement is incorrect. The Suit has been filed within the period



prescribed under the Limitation Act, 1963. Except this observation, the other observations of the First Appellate Court are correct. Hence, this Court does not find any reason to interfere with the same. However, both the Courts ought to have awarded interest thereon. They failed to do so. Hence, this Court is inclined to award 7.5% interest on the advance amount of Rs.89,000/- from the date of Suit till the date of realisation.

16. There is no quarrel with the legal proposition laid down in the case laws relied on by the learned Senior Counsel for the appellant. However, they are not applicable to the facts and circumstances of this case. Since the relief of specific performance is an equitable relief, even when the defence is rejected by the Court, it can refuse to grant the relief of specific performance based on the facts and circumstances of the case. Further, as narrated above, there is no sufficient evidence available on record to show that the plaintiff was willing to perform his part of the contract during the period of performance. Further, even when the Sale Agreement has been registered on March 18, 2015, the plaintiff has pleaded that he approached the defendants for concluding the contract only on May 6, 2015 *i.e.*, almost after two months. Hence, the Trial Court and the First Appellate Court's finding that the plaintiff was not ready and willing is correct. Substantial Questions of Law are answered accordingly.



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CONCLUSION:

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17. Resultantly, the Second Appeal stands partly-allowed with costs for this Second Appeal. The Judgment and Decree of the Trial Court as well as the First Appellate Court are hereby partially modified by awarding simple interest of 7.5% per annum on the advance amount of Rs.89,000/- (Rupees Eighty Nine Thousand Only) from the date of Suit till the date of realisation as well.

13 / 12 / 2024

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

R. SAKTHIVEL, J.

TK

To

- 1.The Additional District Judge
Krishnagiri.
- 2.The Additional Special Judge
Krishnagiri.



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PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.283 OF 2020

13 / 12 / 2024