



S.A.No.1096 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V. SIVAGNANAM

S.A.No.1096 of 2012

MP.No.1 of 2012

1.Velayudham
2.Mohandass
3.Alimuth

.. Appellants

Vs

K.Ravichandran

...Respondent

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 20.01.2007 made in AS.Nos.28 of 2006 on the file of the Principal District Judge, Salem partly allowing the judgment and decree dated 30.12.2005 made in OS.Nos.112 of 2000 on the file of the Sub Court, Attur, Salem.

For Appellants : Mr.P.Ganapathy
For Respondent : Mr.C.Gurulingam



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JUDGMENT

WEB COPY Heard the learned counsel for the appellants and the learned counsel for the respondent and perused the judgments of the Courts below and the materials available on record.

2. The case of the plaintiffs is that the suit property is the absolute property of the defendant as per the D-card dated 27.04.1988, the defendant is in exclusive possession and enjoyment of the suit property. The defendant entered into an agreement with the plaintiffs on 14.10.1999 for selling the suit property for the true and valid consideration of Rs.1,50,000/- and the defendant received the advance of Rs.1,00,000/- and agreed for balance payment of Rs.50,000/- within one year of the agreement i.e, on 14.10.1999. The last date for executing the said agreement by the defendant is 14.10.2000. The aforesaid sale agreement was registered in the office of the Sub Registrar, Pethanaickenpalayam vide Document No.2114/1999, various terms of the agreement were also reduces into writing. The plaintiffs were always ready and willing to perform their part of the contract by paying the balance amount and to proceed with the sale at their costs. The plaintiffs demanded the respondent orally for several times to execute the sale deed as



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per the sale agreement, but the defendant was evading to receive the balance amount of Rs.50,000/- and to execute the sale deed. Thereafter, the plaintiffs issued legal notice on 30.09.2000 to the defendant stating that the balance amount will be paid and to execute the sale deed on 11.10.2000 mentioning that the plaintiffs will be waiting at the concerned Sub Registrar office. The plaintiffs also sent a telegram to the defendant on 10.10.2020 through their counsel stating the aforesaid reason. Whereas, the legal notice was returned as not claimed and the telegram was also returned due to the refusal of the addressee. Hence, the plaintiffs filed the present suit for the specific performance.

3. The defendant filed the written statement wherein it is contended that the D-Card dated 27.04.1998 is not in the name of the defendant and it stands in the name of the defendant's mother. The defendant had not entered into an agreement with the plaintiff on 14.10.1999 and not received advance amount of Rs.1,00,000/- from the plaintiff. The value of the property is more than five lakhs and the defendant has no necessity to execute the sale agreement for a very low price. The plaintiff had not sent any notice or telegram to the defendant. The plaintiff and the witnesses to the said



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agreement are partners in finance. The defendant joined in three chit groups and took three chits and there is a balance payment of Rs.35,000/-. At that time the defendant signed few blank stamp papers and pronotes and the chits were ended during the year 1998. The plaintiff had calculated higher interest rate for the balance amount of Rs.35,000/- and arrived at Rs.1,00,000/- and thereby compelled the defendant to sign the sale agreement dated 14.10.1999 and thereafter returned the pronotes and the blank stamp papers to the defendant. Hence, the defendant submits that the sale agreement is not valid and prays to dismiss the suit.

4. The appellants are the plaintiffs in the suit in OS.No.112 of 2000 on the file of the Sub Court, Attur for the relief of specific performance based on the sale agreement dated 14.10.1999 and for delivery of possession, with an alternative relief to pass a decree for return of the advance amount with interest at 12%p.a. by way of damages.

5. The learned counsel for the appellants submitted that the defendant is the owner of the plaint schedule property. The plaintiffs entered into a sale agreement with the defendants on 14.10.1999 for purchasing the plaint



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schedule properties by fixing the sale consideration for a sum of Rs.1,50,000/- and the plaintiffs paid a sum of Rs.1,00,000/- towards advance. Since, the defendant has not come forward to execute the sale deed, hence, the plaintiffs have filed the suit for specific performance of the sale agreement dated 14.10.1999. The trial Court after trial, decreed the suit as prayed for.

6. Aggrieved against the said judgment and decree the defendants filed an appeal in AS.No.28 of 2006 on the file of the Principal District Judge, Salem. The first appellate Court found that the appellants are not entitled to get the relief of specific performance of sale agreement dated 14.10.1999 on the ground that the defendant is not having title over the plaint schedule property and the assignment order dated 21.02.1975 stands in favour of the defendant's mother/Sarasu under Ex.B1. Therefore, Ex.B1 stands in the name of the Sarasu and the suit schedule property has to be taken as the property of Sarasu, hence the sale agreement/Ex.A1 becomes unexecutable and rejected the claim of plaintiffs for specific performance. The prayer of alternative relief is granted and directed the defendant to return the advance amount of Rs.1,00,000/- with interest at 12% p.a. from



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the date of suit till the date of decree and thereafter at the interest of 5% p.a.

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7. The learned counsel further contended that the first appellate Court decreed the suit with interest at 5% which is less than 6%, thus he seeks to award return of advance amount of Rs.1,00,000/- with interest at 12% p.a. from the date of suit till the date of decree and thereafter 6% p.a. and to fix a date for returning the amount.

8. In reply, the learned counsel for the respondent acceded the alternative prayer remedy of the appellants/plaintiffs with an request to give four months time for payment with four installments.

9. Heard the learned counsel for the appellants and the learned counsel for the respondent.

10. The appellants filed the suit for the relief of specific performance based on the sale agreement dated 14.10.1999 and for delivery of possession, with an alternative relief to pass a decree for return of the advance amount with interest at 12%p.a. by way of damages.



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11. On perusal of records, it is seen that the defendant has not disputed the sale agreement dated 14.10.1999 is a registered sale agreement. The defendant resisted the suit on the ground that the sale agreement was not executed with an intention to sell the plaint schedule properties under Ex.A1, pursuant to the receipt transaction Ex.A1 sale agreement was executed. This contention was rejected by the trial Court as well as by the first appellate Court.

12. On perusal of records, it is noticed that the plaint scheduled property was originally assigned to mother of the defendant/Sarasu vide assignment order dated 21.02.1975 under Ex.B1. The patta dated 13.02.1991/Ex.B2 and Chitta dated 03.12.1991/Ex.B3 also stands in the name of the Sarasu. It is also seen that the defendant is not able to produce any evidence to show that the plaint schedule properties had been assigned in his name subsequently. Therefore, the first appellate Court rightly rejected the claim of specific performance of the sale agreement on the ground that the defendant had no title over the plaint schedule property and he cannot execute the sale deed in favour of the plaintiffs/appellants.



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13. The contention of the learned counsel for the appellants with an alternative prayer for refund of the advance amount paid by them with interest is valid and acceptable one. Considering the above request, the first appellate Court ordered the relief of alternative remedy and directed the defendant to return the advance amount of Rs.1,00,000/- to the plaintiffs with interest at 12% p.a. from the date of suit till the date of decree and thereafter ordered to pay 5% p.a. At this juncture, the learned counsel for the appellants seeks the interest at 6% p.a after the decree is reasonable and acceptable one.

14. Considering the nature of the transaction and accepting the contention of the appellants counsel, the decree of the first appellate Court is modified to the effect that the defendant is directed to pay the plaintiffs the advance amount of Rs.1,00,000/- with interest at 12 % p.a. from the date of suit till the date of decree and thereafter interest at 6% p.a. The defendant shall pay the above advance amount with interest to the plaintiffs in four instalments within a period of four months from the date receipt of a copy of



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this order.

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15. With the above modification, the second appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.

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Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

To

1. The Principal District Judge, Salem
2. The Sub Court, Attur, Salem.



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V. SIVAGNANAM, J.

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