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AS No.477 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

A.S.No.477 of 2018
and CMP Nos.13088 of 2018 and 15249 of 2022

Syed Akbar (Died)

2. Rehana Begum

3. Syed Altah Hussain

4. Salma Begum

5. Sameena

6. Muneera Begum

7. Thabassum

8. Waheeda Begum

... Appellants

A1 died, A2 to A8 are brought on record as Lrs of deceased
1st Appellant viz., Syed Akbar, vide order of Court dated
01/02/2023 made in CMP No.19870 of 2021 in
AS No.477 of 2018 (SVNJ & SNPJ)

Vs

V. Thilagar Madasamy

... Respondent



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This appeal is filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree in O.S.No.7875 of 2010 dated 14.07.2017, on the file of the learned XVII Additional City Civil Court at Chennai.

For Appellant : Mr.J.Amritha Sarayoo

For Respondents : Mr.M.L.Ganesh

J U D G E M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The defendant in OS No.7875 of 2010 on the file of the XVII Additional City Civil Court, Chennai, is on Appeal, challenging the decree for specific performance granted in the said suit. The parties will be referred to as per their rank in the suit for conviniance.

2. According to the plaintiff, the defendant agreed to sell the suit property viz. the super structure and the lease hold rights over the land belonging to a waqf under the suit agreement dated 12.10.2007 for a total



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consideration of Rs.11,75,00,000/-. A sum of Rs.1,00,000/- was paid as advance and a period of 6 months was fixed for performance of the contract. The plaintiff caused a notice to be issued on 19.03.2008 demanding performance expressing his readiness and willingness to perform his part of the contract.

3. The defendant sent a reply on 04.04.2008 claiming that the Agreement is not valid and the same was extracted when the defendant was not in a proper and fixed state of mind and health. It is also claimed that he was in a severe state of mental shock due to an auction notice received from the Government approved auctioneers at the instance of his creditors which fixed the date of auction on 12.10.2007.

4. The defendant further averred that he was not allowed to read the contents of the agreement and he was almost forced to sign the same on the pretext that he could save the property from being auctioned. Along with the reply notice, the defendant annexed a cheque for a sum of Rs.1,00,000/- which was paid as advance. The plaintiff issued a rejoinder reiterating his claim that the agreement was entered into save the property from being sold by the auctioneers at the instance of the creditors of the



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defendant.

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5. It was also contended that the sale was voluntary and since what is sought to be sold is only the super structure and lease hold right of the defendant, the sale would be perfectly valid. A surrejoinder was issued by the defendant on 03.06.2008 reiterating his claim made in the reply notice. Finding that the defendant is unwilling to execute the sale, the plaintiff filed a suit for specific performance as aforesaid. The plaintiff would claim that he was always ready and willing to perform his part of the contract. The balance amount was also deposited into Court at the time of filing of the suit. The plaintiff also made a prayer for damages at Rs.30,000/- per month from the date of suit till date of execution of the Sale Deed.

6. The defendant resisted the suit reiterating the averments contained in his reply notice apart from contending that the property being waqf property, the lease hold right is not alienable and therefore, the agreement itself is void *ab initio*. It was the further contention of the defendant that the agreement was entered into when he was facing a



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his creditors under Section 69 of the Transfer of Property Act.

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7. On the above pleadings, the learned trial Judge framed the following issues:

1. *Whether the sale agreement dated 12.10.2007 is valid;*
2. *Whether the plaintiff is entitled for specific performance of contract;*
3. *Whether the plaintiff is entitled for compensation;*
4. *Whether the plaintiff is entitled for injunction;*
5. *To what other reliefs.*

8. At trial, the plaintiff was examined as P.W.1 and Exs.A1 to A11 were marked and the defendant was examined as D.W.1 and Ex.B1 was marked.



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9. The learned Trial Judge on a consideration of the evidence on record concluded that the agreement was true and valid. He also found that the plaintiff was ready and willing to perform his part of the contract. The contention of the defendant that the agreement was extracted when he was under financial duress was rejected. The claim of the defendant based on the provisions of the Waqf Act and the Waqf Property Lease Rules 2014 was rejected on the ground that the defendant himself has purchased the property by initiating the suit for specific performance which was decreed and a sale deed was executed pursuant to the said decree having been confirmed upto the Hon'ble Supreme Court of India. The learned trial Judge, however, did not advert to the relevant Rules made under Section 56 of the Waqf Act.

9.1. On the above findings, the learned Trial Judge granted a decree for specific performance and also a decree for damages directing the defendant to pay Rs.30,000/- per month from the date of plaint till date of execution of sale deed and handing over possession. Aggrieved by the decree, the defendant is on appeal.

<https://www.mhc.tn.gov.in/judis> **10.** We have heard Ms.J.Amritha Sarayoo, learned counsel



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appearing for the appellant and Mr.M.L.Ganesh, learned counsel

appearing for the respondent.

11. Ms.J.Amritha Sarayoo, learned counsel appearing for the appellant would vehemently contend that the agreement itself is void, in view of the provisions of Section 56(1) of the Waqf Act, 1995 and Rule 16 of the Waqf Property Lease Rules, 2014. Section 56 of the Waqf Act imposes certain restrictions on the power of a Waqf to grant lease of its properties. It also empowers the State Government or the Central Government to frame Rules regarding lease of waqf property. Exercising the said power to frame Rules the Waqf Property Lease Rules have been framed by the Central Government. Rule 16 of the said Rules reads as follows:-

“16. Prohibition to assign, sub-lease or transfer waqf property.- The lessee shall not assign, sub-lease, pledge or transfer the lease or any interest therein or in any way part with possession of all or any part of the leased premises, or permit all or any part of the leased premises to be used or occupied by any other



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person;

Provided that the lease agreement entered into by any corporation or an agency of the Government in respect of waqf property shall be governed by the terms and conditions mutually agreed between the parties.”

Relying heavily upon the said provision, the learned counsel for the appellant would submit that the agreement could not be enforced specifically since it proposes to transfer the lease hold right in the Waqf property.

12. No doubt, the agreement is dated 12.10.2007 I.e., before the framing of the Rules, but the Rules had been put in place when the suit was pending. So at least from the date on which the Rules were put in place i.e., on and from 03.06.2014, there is a prohibition on transfer of lease hold right in waqf land. Therefore, the agreement though dated 12.10.2007 became unenforceable during the pendency of the suit. Hence, the decree that has been granted, according to the learned counsel, is bad.



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13. The learned counsel would also attack the decree for damages contending that such decree is unknown to law particularly in suits for specific performance. She would also point out that the defendant did not have the benefit of the money and he has also offered to return the advance amount even along with his reply notice dated 04.04.2008

14. Contending contra Mr.M.L.Ganesh, learned counsel appearing for the respondent would submit that the agreement was entered into on 12.10.2007 on which date there was no prohibition on alienation. According to him, the Rules would only be prospective and it will not affect the agreements entered into prior to the date of their coming into force.

15. The learned counsel would also point out that the suit filed by the defendant for specific performance was decreed and the sale deed was executed ultimately in 2002 under Ex.A1, i.e. after the coming into force of the Waqf Act, 1995. Therefore, according to the learned counsel, the



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Trial Court was justified in granting the decree for specific performance particularly when the plaintiff has proved his readiness and willingness as required under Section 16(c) of the Specific Relief Act. The learned counsel would also seek to justify the decree for damages at Rs.1000/- per day, pointing out that the entire sale consideration was deposited into Court, by the plaintiff, along with the suit.

16. On the rival contentions addressed before us the following points arise for determination.

1) Whether the Court could grant a decree for specific performance for transfer of lease hold right in a Waqf land after 03.06.2014;

2) Whether the trial Court was justified in granting a decree for damages at Rs.30,000/- per month from May 2008 till date of delivery of possession and thereafter at the rate of Rs.1000/- per day from the date of filing of the suit till execution of sale deed and handing over possession?



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3) *Whether the plaintiff would be entitled to*

refund of advance?

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Point No.1:-

17. The suit property is described as a super structure and the lease hold rights over the land belonging to the Waqf. Therefore, what is sought to be transferred under the agreement is a super structure that belonged to the defendant and the lease hold rights possessed by the defendant in the land belonging to the waqf. As rightly contended by the learned counsel for the appellant, the Rules framed by the Central Government under Section 56(1) of the Waqf Act viz., the Waqf Properties Lease Rules, 2014 which were notified on 03.06.2014 prohibit alienation of the lease hold right. Rule 16 which we have already extracted contains a direct interdiction on alienation of lease hold right in waqf property. Such prohibition was introduced on and from 03.06.2014, when the suit was pending. Therefore, the agreement became unenforceable even during the pendency of the suit.

18. The fact that the defendant obtained a decree for specific performance much earlier and obtained the sale deed in the year 2002,



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Rules in the year 2014. The object of such restrictions being placed on lessees of properties of the religious institution is noble that is to say to prevent indiscriminate transfer of properties of religious institutions which prevents the institutions from recovering the property in case of need or in case of violation of the conditions of the lease. These reasonable restrictions on right to property have been recognised by the higher judiciary on various occasions.

19. No doubt there was no prohibition when the agreement was entered into, but the prohibition came when the suit was pending and the agreement had not fructified into a decree. Even a decree for specific performance does not create an interest in the decree holder over the property subject matter of the suit. This is clear from Section 28 of the Specific Relief Act which enables even rescinding of a decree for specific performance by the Court in certain situations. Therefore, when the plaintiff has not acquired any right, he cannot contend that since the Rule came subsequently, the same should not be applied to the case on hand.

20. We are therefore unable to accept the contention of



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there is a prohibition and any decree granted by the Court will be in violation of a statutory Rule framed by the Central Government in exercise of the powers conferred on it under Section 56 of the Waqf Act, we cannot sustain the decree. Hence, Point No.1 is answered in favour of the appellant.

Point No.2:-

21. This decree for damages granted by the learned Trial Judge at Rs.1000/- per day shocks our conscience. In a suit for specific performance, the plaintiff would be entitled to a decree for specific performance, on payment of the sale consideration. The advance amount that is paid is also not substantial. Out of the sale consideration of Rs.11,75,000/-, the advance paid was only Rs.1,00,000/-. Of course the plaintiff has deposited the money into Court to show his bonafides, but the defendant has not had advantage of that money. We should also point out that the defendant had offered to return the advance money on 04.04.2008 along with the reply notice.

22. None of these facts have been taken into account by the learned



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Trial Judge while deciding on the question on damages. He has merely said that the building is situate in Alexander Road in the City and therefore, it would fetch an income of Rs.30,000/- per month or Rs.1000/- per day. We find that the decree for damages cannot be sustained. Therefore, the Point No.2 is answered against the plaintiff.

Point No.3:-

23. No doubt there is no prayer for refund of advance but the plaintiff has prayed for damages, which would take in the prayer for refund of advance. Admittedly a sum of Rs.1,00,000/- was paid as advance on 12.10.2007. Though the defendant offered to return it along with the reply notice dated 04.04.2008 the same was not accepted and it was returned to the defendant sometime in May 2008 along with the rejoinder which is marked as EX.A6. The defendant had advantage of that money of Rs.1,00,000 from 2008 till date. The plaintiff would be entitled to refund the said money along with interest at 9% from 19.03.2008 till date of the decree in the suit and at 6% thereafter.

24. In fine, the appeal is allowed in part, the decree for specific



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performance and the decree for damages granted by the Trial Court are set aside.

25. There will be a decree for refund of advance of Rs.1,00,000/- with 9% interest from 19.03.2008 till date of decree i.e., 14.07.2017 and thereafter at 6% per annum till date of payment. The plaintiff will be entitled to refund of the money that is deposited by him into Court along with accrued interest. We do not impose costs, in view of the fact that the defendant succeeds because of the statutory prohibition that was introduced after the suit. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)
12.06.2024

jv

Index : No
Internet : Yes
Speaking order
Neutral Citation: No



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To

1. The XVII Additional Judge,
City Civil Court,
Chennai.
2. The Section Officer,
V.R. Section,
Madras High Court, Chennai 104.



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R.SUBRAMANIAN, J.

and

R.SAKTHIVEL, J.

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