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O.S.A. Nos.327 of 2017 and 328 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

O.S.A. Nos.327 and 328 of 2017

and

C.M.P. No.20432 of 2017

Chevalier T. Thomas Educational Trust
represented by its Trustees

1. Justice Mr. N. Paul Vasantha Kumar [Retd.,]

2. L. Palamalai I.A.S. (Retd.,)

3. Leelamma John

4. T. Sakthidhar

5. Dr. S. Sridevi

6. M. Rajasekar

7. Meeriam Masilla Jayarani

8. P. Perumal

[amended as per order dated 23.03.2023 made in

C.M.P. Nos.6707 and 6708 of 2023]

... Appellant / Plaintiff

[common in both appeals]

Vs.

M/s. Union Carbide Employees Co-operative

House Building Society Ltd.,

represented by its President

... Respondent / Defendant

[common in both appeals]

COMMON PRAYER: Original Side Appeals filed under Order 43 Rule



O.S.A. Nos.327 of 2017 and 328 of 2017

WEB COPY

1 of Civil Procedure Code read with Clause 15 Original Side Rules praying to set aside the common order dated 27.02.2017 made in Application Nos.6283 and 6284 of 2016 in C.S. No.209 of 2008.

For Appellant : Mr. Yashod Vardhan, Senior Counsel
for Mr. V. Shanmugam

For Respondent : Mr. M.V. Vijaya Baskar

COMMON JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

These appeals have been preferred as against the common fair and decreetal orders passed in Application Nos.6283 of 2016 and 6284 of 2016 in C.S. No.209 of 2008.

2. The Application No.6283 of 2016 has been filed by the respondent herein, who is the defendant in the main Suit in C.S. No.209 of 2008 for directing the appellant / Plaintiff to deliver the vacant possession of the Suit property and the Application No.6284 of 2016 has been filed by the respondent / defendant to rescind the sale agreement dated 31.03.1999 entered between the appellant and the respondent.

3. The shorts facts necessary to dispose of these appeals are as



O.S.A. Nos.327 of 2017 and 328 of 2017

follows:-

WEB COPY

The respondent in this appeal, is the Co-operative Housing Society and the owner of the Suit property comprised in S.F. No.57/1, Kodungaiyur Village, Fort-Tondiarpet to an extent of 13 grounds and 1852 sq. ft. The appellant is an Educational Trust and thereby entered into an agreement with the respondent Society for the sale of the Suit property on 31.03.1999 and the total sale consideration was fixed as Rs.35,80,633/-. On the date of agreement itself, the respondent Society received a sum of Rs.5 lakhs and 50% of the sale amount has to be paid before June 1999 and the remaining amount has to be paid within 12 months from the date of agreement. Thereafter, no sale deed was executed within the time stipulated and thereby, the appellant herein has filed the main Suit in C.S. No.209 of 2008 for the relief of specific performance of contract and this Court by a decree and judgment dated 14.11.2014 partly decreed the Suit and directed to execute the sale deed in respect of only 6 grounds after receipt of Rs.80,83,829/- within 3 months. The appellant who is the Plaintiff in the main Suit got a decree for specific performance of contract with a direction to deposit the balance amount of Rs.80,83,829/-, but failed to deposit the money as ordered by the Court within the stipulated



O.S.A. Nos.327 of 2017 and 328 of 2017

WEB COPY

time and thereby, the respondent herein who is the defendant in the main Suit, has filed petitions to rescind the sale agreement and to deliver the vacant possession of the suit property and to pay damages of Rs.1 lakh from 01.04.1999 till the date of delivery of vacant possession of the Suit property.

4. The learned Single Judge after hearing both sides, passed a common order dated 17.02.2017 by allowing the petitions filed for the delivery of vacant possession of the Suit property, to rescind the agreement and disposed of the application filed for the relief of damages with liberty to file fresh application in accordance with law. Aggrieved by the said orders, in respect of rescinding the contract and the delivery of vacant possession, the respondent / Plaintiff, who obtained decree for specific performance of contract has preferred these appeals.

5. The learned Senior counsel appearing for the appellant would contend that the appellant is the decree holder and he got decree for specific performance of contract in respect of 6 grounds of land on deposit of remaining balance amount of Rs.80,83,829/- within 3 months from the date of judgment, i.e., on or before 14.02.2015, he had to pay the balance amount. Since the appellant has preferred the appeal in O.S.A. No.323 of



O.S.A. Nos.327 of 2017 and 328 of 2017

WEB COPY

2017, as against the judgment and decree in respect of remaining land, the decree of the Suit can be executed after the outcome of the appeal and the matter is subjudiced and therefore, the appellant need not deposit the amount. Hence Section 28 of Specific Relief Act will not be applicable. Moreover, in the written statement, the defendant has not pleaded that they are not entitled for possession of the property nor they are entitled for damages or compensation for the use and occupation of the suit property or that the agreement stipulates conditions for default of terms of the appellant / Plaintiff. As per Section 28 of the Specific Relief Act, the vendor / lessee is entitled to seek for rescinding the agreement if the Plaintiff has not paid the purchase money or any thereof to the defendant. While so, the term 'purchase money' refers to the contractual sum mentioned in the agreement and similarly such other money also refers in the context of the agreement if it stipulates or specifies any interest, damages or compensation to be paid to the vendor by the purchaser. The agreement has not specified any sum other than the consideration / purchase money. However the trial Court fixed the price, for the property to be conveyed. The extent of the property has also been altered and the Court directed the Plaintiff to pay the said sum and there is no default



O.S.A. Nos.327 of 2017 and 328 of 2017

clause or payment of interest or compensation or redelivery of possession.

However, the learned single Judge without considering the legal propositions of law, has erroneously allowed the application and rescinded the contract and also directed to deliver the possession of the property. Therefore, the common order passed by the learned single Judge is liable to be set aside.

6. The learned counsel appearing for the respondent would contend that already this Court directed the appellant / Plaintiff to pay a sum of Rs.80,83,829/- on or before 14.02.2015, but the appellant has not deposited the said amount as directed by this Court. Therefore, he filed a petition to rescind the contract, to deliver the possession of the property and for damages. The petition was filed on 28.03.2016 and the appellant, not even paid any amount till such date as directed by this Court. As per Section 28 of the Specific Relief Act, the respondent is entitled to rescind the contract, since the appellant has not paid money as directed by this Court. Therefore, the learned single Judge after considering all the aspects, has correctly allowed the petitions and rescinded the agreement and directed to deliver the possession of the property. Therefore, the present appeals are liable to be dismissed.



O.S.A. Nos.327 of 2017 and 328 of 2017

WEB COPY

7. This Court heard both sides and perused all the materials available on record.

8. The *points for determination* in these appeals are:

(i) *Whether the appeal in O.S.A. No.327 of 2017 is to be allowed or not.*

(ii) *Whether the appeal in O.S.A. No.328 of 2017 is to be allowed or not.*

9. *Answer to the points 1 and 2:*

It is an admitted fact that already the Suit for specific performance of contract was decreed through decree and judgment dated 14.11.2014 by directing the appellant to pay a sum of Rs.80,83,829/- within a period of 3 months i.e., on or before 14.02.2015, but the amount has not been paid by the appellant. Thereby the respondent / defendant filed petitions to rescind the agreement, for recovery of possession and for damages. The trial Court allowed the petitions filed for rescinding the agreement, recovery of possession and disposed of the petition filed for damages by granting liberty file a fresh Suit. Now the appellant / Plaintiff challenged the orders passed in the petitions filed for rescinding the agreement and recovery of possession through these appeals. As far as the appeal in respect of



O.S.A. Nos.327 of 2017 and 328 of 2017

WEB COPY

rescinding the agreement is concerned, it is an admitted fact that the Suit was disposed on 14.11.2014 by granting 3 months time to deposit the balance amount of Rs.80,83,829/- for 6 grounds, the said period of 3 months expired on 14.02.2015. But the Plaintiff has not paid the balance amount within the time fixed by this Court. Therefore, the defendant filed petitions on 28.03.2016 to rescind the agreement, delivery of vacant site and for damages. Even after filing the petition by the defendant for rescinding the agreement, the Plaintiff neither paid the balance of sale consideration nor sought for extension of time. Therefore, the defendant is entitled to rescind the agreement as per Section 28 of Specific Relief Act. The Trial Court also after elaborate discussions correctly allowed the petition and rescinded the agreement and no any error in the order passed by the Trial Court. During the pendency of said petitions, the appellant herein has preferred an appeal as against the decree and judgment of the learned single Judge in O.S.A. No.323 of 2017 and the respondent herein also filed cross objections and all the matters were heard together. This Court after hearing both sides dismissed the appeal filed by the appellant / Plaintiff and allowed the cross objections filed by the respondent and as per the judgment passed in cross objections in O.S.A. No.323 of 2017, the



O.S.A. Nos.327 of 2017 and 328 of 2017

WEB COPY

decree and judgment passed by the single Judge in C.S. No.209 of 2008 have been set aside by this Court and the Suit was dismissed. Therefore, the appeal in respect of rescinding the contract, is liable to be dismissed.

10. As far as the appeal in respect of directing to deliver the vacant possession of the property is concerned, the trial Court has allowed the petition since the contract was rescinded. Since the Appellant has not deposited the balance of sale price as directed by the Court and no any application filed for extention of time, this Court allowed the petition filed to rescind the agreement, therefore the appellant is liable to deliver the possession of the property. Now this Court dismissed the appeal filed by the appellant / Plaintiff and allowed the cross objections filed by the respondent and set aside the decree and judgment of the trial Court and the Suit was dismissed, thereby, the respondent is entitled for recovery of possession. Since already this court passed an elaborate judgment in the main appeal filed against the main Suit and the appellant was not entitled for the decree for specific performance of contract, it is the duty of the appellant Trust to deliver the vacant possession of the property to the respondent Society. The learned single Judge, also after elaborate discussion, correctly came to the conclusion that the appellant is liable to



O.S.A. Nos.327 of 2017 and 328 of 2017

deliver the vacant possession to the respondent. Therefore, there is no any infirmity or perversity found in the order passed by the learned Single Judge in respect of ordering delivery of vacant possession of the property to the respondent.

11. In view of the above discussions, this Court is of the opinion that these appeals have no merits and deserve to be dismissed.

12. In the result, the appeals in O.S.A. No.327 of 2017 and O.S.A. No.328 of 2017 are dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

(S.S.S.R.J) & (P.D.B.J)
19.11.2024

mjs
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S.S. SUNDAR, J.,
and



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O.S.A. Nos.327 of 2017 and 328 of 2017

P.DHANABAL,J

(mjs)

O.S.A. Nos.327 and 328 of 2017

19.11.2024