



A.S.(MD)No.10 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.10 of 2020

R.Murugaraj

...Appellant

Vs.

V.Sangaiya

...Respondent

PRAYER: This Appeal Suit filed under Section 96 of C.P.C., against the judgment and decree, dated 04.09.2019, made in O.S.No.18 of 2018 on the file of the Additional District Court (Fast Track Court), Theni.

For Appellant : Mr.P.Muthu Vijayapandian

For Respondent : Mr.J.Barathan

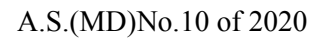
JUDGMENT

The present appeal is preferred against the judgment and decree, dated 04.09.2019 passed in O.S.No.18 of 2018 on the file of the Additional District Court (Fast Track Court), Theni. The plaintiff in suit is the respondent herein and the defendant in the suit is the appellant herein.



2. The suit is filed for specific performance. The brief facts of the case are that the parties have entered into a sale agreement, dated 31.12.2015 for sale consideration of Rs.15,00,000/- and the plaintiff had paid an advance of Rs. 5,00,000/-. Subsequently, Rs.50,000/- was paid on 14.02.2016. As per the agreement, the sale ought to be concluded within 11 months i.e. on or before 30.11.2016. Since the parties have not concluded the sale, suit notice was issued on 22.11.2016. Thereafter, the plaintiff has preferred the suit on 12.04.2018 and the Trial Court had allowed the suit.

3. It is seen that the sale consideration is fixed for Rs.15,00,000/-. The plaintiff had paid Rs.5,00,000/- as advance and Rs.50,000/- on 14.02.2016. Thereafter the plaintiff had not paid any amount until 30.11.2016, which is the date the sale ought to be concluded. When the plaintiff has not paid any amount after 14.02.2016, the plaintiff ought to prove that he has means to pay the balance sale consideration of Rs. 9,50,000/-. But the plaintiff has not established that he had means to pay the balance sale consideration, then the discretion relief of specific performance cannot be granted to the plaintiff. In such circumstances, the Trial Court had erred in granting the relief of specific performance.



5. The defendant / appellant has received Rs.5,50,000/- and he is liable to return the same. It is seen that the defendant / appellant had deposited Rs.5,50,000/- on 25.03.2021 before the Trial Court. The Learned Counsel appearing for the defendant / appellant submitted that the said amount is deposited in State Bank of India in an interest accruing deposit. Therefore, the plaintiff is entitled to withdraw the same along with the interest that is accrued.

6. As far as the interest from 30.11.2016 to 24.03.2021 is concerned, the



A.S.(MD)No.10 of 2020

plaintiff is entitled to 7% interest per annum for Rs.5,50,000/-. The said amount shall be deposited by the defendant within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the plaintiff is entitled to withdraw the same. The plaintiff is entitled to 50% of the costs which comes to Rs. 30,000/-. The defendant is directed to deposit Rs.30,000/- along with 7% interest and the plaintiff shall withdraw the same. If there is any default by the defendant in complying the above said directions, the plaintiff is at liberty to take appropriate legal proceedings.

7. With the above said directions, the appeal suit is allowed. No costs.

10.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

Tmg



A.S.(MD)No.10 of 2020

To

1. Additional District Court (Fast Track Court),
Theni.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD)No.10 of 2020

S.SRIMATHY, J.,

Tmg

A.S.(MD)No.10 of 2020

10.07.2024