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SA No. 1007 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-11-2025

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

SA No. 1007 of 2012

1. V.Dhanapal

Appellant(s)

Vs

1. S.P.Swaminathan

Respondent(s)

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 30.06.2011 passed in A.S.No.111 of 2008 on the file of the Principal District Judge, Coimbatore, reversing the judgment and decree dated 10.09.2007 in O.S.No.525 of 2005 on the file of the I Additional Sub Judge, Coimbatore and decree the suit in O.S.No.525/2005.

For Appellant(s): Mr T. Murugamanickam
Senior Counsel For
Mr B.Gopalakrishnan

For Respondent(s): Mr S. Mukund, Senior Counsel
For M/S.SARVABHAUMAN
ASSOCIATES

JUDGMENT

The plaintiff in the suit is the appellant herein. The suit has been filed for seeking relief of specific performance.

2. The trial Court had decreed the suit as against which a first appeal was preferred by the defendant. The first appellate Court has allowed the appeal



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and set aside the judgment of the trial Court and dismissed the suit. Aggrieved by the same, the plaintiff has preferred this second appeal.

SHORT CASE PLEADED IN THE PLAINT:

2.1. The suit property belongs to the defendant. He initially agreed to sell the suit property to the plaintiff for a total consideration of Rs.1,92,400/- and a sale agreement has been entered on 09.07.1997 and on the date of the sale agreement a sum of Rs.1,00,000/- was received as advance and the time fixed as one year from the date of sale agreement to complete the sale. Thereafter, the plaintiff has also made part payments of a sum of Rs.10,000/- on 04.07.1998 and of a sum of Rs.55,000/- on 12.07.1998 towards the part sale consideration. The plaintiff has issued a legal notice on 01.07.2005 to the defendant and that has been received on 12.07.2005. As the defendant has sent a reply with false allegations and did not come forward to execute the sale deed, the plaintiff has filed the suit for specific performance.

WRITTEN STATEMENT IN BRIEF:

2.2. The written statement has been filed by the defendant. The sale agreement is admitted by the defendant. It is also admitted that the plaintiff has made payments of Rs.1,00,000/- on 09.07.1997 as advance amount and one year period has been extended for performing the contract. But it is false to say that



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subsequently the plaintiff has made payments on 04.07.1998 and 18.07.1998. In fact, the plaintiff has so far paid only Rs.1,50,000/- towards the sale consideration. Even thereafter, the plaintiff has not come forward to complete the sale transaction. The plaintiff did not have whereabouts to pay the balance sale consideration and the suit is also barred by limitation. Hence, the suit has to be dismissed.

TRIAL COURT:

3. On the basis of the above pleadings, the trial Court had framed the following issues:

1. வாதி தாவாவில் கோரியவாறு ஏற்றதை ஆற்றுக பரிகாரம் பெற அருகரா?
2. தாவா நிலைக்கத் தக்கதா?
3. வாதிக்கு கிட்டும் பரிகாரம் யாது?

4. During the course of the trial, on the side of the plaintiff, one witness *viz.*, Dhanapal was examined as P.W.1 and Exs.A1 to A4 were marked and on the side of the defendant, one witness *viz.*, Saminathan was examined as D.W.1.

5. On considering the evidence on record, the trial Court had decreed the suit.



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LOWER APPELLATE COURT:

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6. The first appeal has been preferred by the defendant challenging the judgment of the trial Court which was allowed by set asiding the judgment of the trial Court and by dismissing the suit, aggrieved by which, the plaintiff has preferred this appeal by raising the following substantial questions of law:

“(i)Whether the learned District Judge had travelled beyond the pleadings by way of written statement and proof by way of D.W.1 to dismiss the suit ?

(ii)Whether the learned District Judge had committed a grave error in disbelieving the endorsement dated 18.07.1998 admitted by the defendant in his written statement and proof affidavit?”

7. The learned counsel for the appellant would submit that though the defendant has admitted the payment of the advance amount, the first appellate court has chosen to allow the appeal by set asiding the judgment of the trial Court on the finding that the suit is barred by limitation. The first appellate Court arrived at a wrong conclusion even though the endorsement for extension of time has been proved before the trial Court. Since the endorsement was true, the appeal ought to have been dismissed or at least partly allowed by modifying the decree in respect of refund of the advance amount.



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8. The learned counsel for the respondents would submit that the appellant has not proved before the trial Court that the suit is saved by limitation and hence, the first appellate Court is right in allowing the first appeal on the ground of limitation.

9. There is no disagreement between the parties with regard to the execution of the sale agreement and also with regard to the various payments towards the part sale consideration on various dates. Even though in the written statement it has been stated that the defendant has received only Rs.1,50,000/-, it is seen from the endorsement dated 18.07.1998 that the advance amount paid was Rs.1,65,000/-. When the sale agreement is not denied by the respondents then it has to be presumed that the advance amount has been paid only in accordance with the recitals found in the sale agreement and endorsements made therein. With regard to the endorsement found for extension of time, the trial Court got convinced with the evidence of the appellant/plaintiff on this aspect and chosen to decree the suit. The trial Court has made an observation as to the receipt of the part sale consideration in piece meal and that the suit is not barred by limitation.

10. The first appellate Court has not considered the endorsement made in 18.07.1998 which was admitted by the defendant. The defendant has not filed



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any suit or sent any legal notice stating that the sale agreement has got terminated after the expiry of the extension of the time granted after making the part payments each time. So, the plaintiff appears to have countered the limitation from the date when the defendant refused to come forward to execute the sale agreement and maintained the suit. But the first appellate Court, without appreciating the above fact had recorded a finding that the suit is barred by limitation.

11. Whatever may be the case, the fact remains that the plaintiff has been making an inordinate delay without seeing the contract is fulfilled within the reasonable time. The worth of the property would have got appreciated multiple times and hence, the appellant/plaintiff cannot be allowed to make any undue enrichment out of his own fault. Therefore, the conduct of the plaintiff is not satisfactory to the extent of proving equitable circumstances lying in his favour for granting the relief of specific performance.

12. On the other hand, the defendant did not deny the receipt of the part sale consideration on various dates and it would have been appropriate if the first appellate Court has modified the decree by allowing the alternate relief of refund of advance amount instead of setting aside the whole of the judgement of the trial Court in its entirety. Therefore, to this limit and extent, I feel the



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substantial questions of law can be answered in favour of the appellant and consequently, the appeal can be partly allowed.

13. In the result, this second appeal is partly allowed and the judgment of the first appellate Court is set aside to the extent of disallowing the plaintiff to get the relief of refund of part sale consideration which has been already paid. Hence, the suit is partly decreed by granting the appellant/plaintiff the relief of refund of the part sale consideration of Rs.1,65,000/- with interest at the rate of 9% from the date of the receipt of the payment. The suit is dismissed in respect of the specific performance. The time for completion of the payment is one month from the date of the receipt of the copy of this order. No costs.

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Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No
ssa

To

1. The Principal District Judge, Coimbatore.
2. The I Additional Sub Judge, Coimbatore.
3. The Section Officer, V.R. Section,
High Court, Madras.



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R.N.MANJULA J.

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