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A.S.No.112 of 2025

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 02.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.112 of 2025 & CMP.No.2255 of 2025

Daniel

... Appellant

Versus

K.S.K.Balamurugan

... Respondent

PRAYER : Appeal Suit filed under section 96 of Code of Civil Procedure to set aside the decree and judgment dated 22.06.2023 in O.S.No.7 of 2019 on the file of the Additional District Judge, Chidambaram

For Appellants : Mr.A.Murugan

For Respondent : Mr.S.Sivakumar



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JUDGMENT

Challenge has been made to the decree and judgment of the trial Court decreeing the suit for alternative relief and directing the appellant to pay a sum of Rs.14 lakhs with interest at the rate of 9% per annum from the date suit till the date of decree and thereafter at the rate of 6% per annum till the date of realization, in the present appeal.

2. The parties are arrayed as per their own ranking before the trial Court.

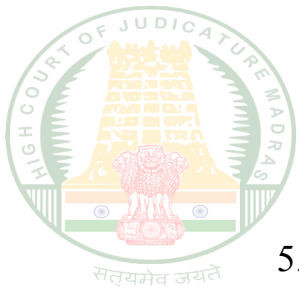
3. The suit has been filed by the respondent for specific performance of the agreement dated 13.08.2011. It is the case of the plaintiff that the first defendant, namely the appellant has agreed to sell the suit property for a total sale consideration of Rs.90,10,000/- and received a sum of Rs.10 lakhs as an advance on the date of the agreement. It is agreed between the parties that the sale shall be completed before 10.11.2012. It is also agreed between the parties,



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that the first defendant has to measure property and execute the sale. The plaintiff was always ready and willing to perform his part of the contract and he was also given possession of the property. The plaintiff is ready with Rs.80,10,000/- and requested the first defendant to execute the sale deed on 03.11.2012. However, the first defendant sought time to execute the sale deed and received a sum of Rs.2 lakhs. Thereafter, on 08.06.2015, he received another Rs.4 lakhs and made an endorsement on the back of the agreement. As the first defendant had failed to come forward to execute the document, the suit has been filed for specific performance.

4. The stand of the first defendant in the written statement is that admitting the execution of the sale agreement dated 13.08.2011 for a total sale consideration of Rs.90,10,000/- and receipt of a sum of Rs.10 lakhs on the date of the agreement, receipt Rs.2 lakhs on 30.11.2012. However, receipt of Rs.4 lakhs on 08.06.2015 is denied. According to the first defendant, the plaintiff was not ready to perform his part of the contract. Hence, opposed the suit.



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5. On the basis of the above pleadings, the following issues have been framed by the trial Court :

1. Whether the agreement dated 13.11.2011 is true and valid?

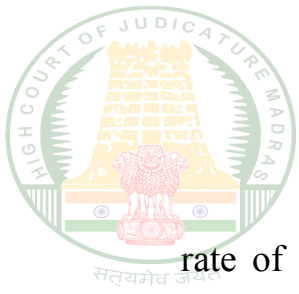
2. Whether the plaintiff is ready and willing to perform his part of the contract?

3. Whether the plaintiff is entitled for specific performance as prayed for?

4. To what relief the parties are entitled?

6. On the side of the plaintiff, P.W.1 to P.W.3 have been examined and Ex.A.1 to Ex.A.4 have been marked. On the side of the first defendant, D.W.1 and D.W.2 have been examined and Ex.B.1 has been marked.

7. Considering entire evidence, both oral and documentary, by a common judgment, the trial Court dismissed the suit for specific performance. However, granted alternative relief for return of the advance amount of Rs.14 lakhs with 9% interest from the date of plaint till the date of decree and thereafter, at the



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rate of 6% interest till the date of realization. Aggrieved over the same, the present appeal has been filed by the first defendant.

8. The main contention of the appellant before this Court is that the trial Court has clearly held that the suit has not been filed within a period of three years from the date of agreement and the suit has been filed after 5 years of the agreement. The trial Court, having held that the suit is barred by limitation, ought not to have granted the alternative relief. It is his further contention that as far as receipt of Rs.4 lakhs on 08.06.2015 is concerned, the same has not been proved by the respondent herein. However, the trial Court has granted decree for a sum of Rs.14 lakhs and the same cannot be sustained.

9. Whereas, the learned counsel appearing for the respondent would contend that time limit has been fixed in the agreement to complete the sale before 10.11.2012. But the fact remains that subsequent to that, in fact the first defendant had sought extension of time and Ex.B.1 has also been filed in this regard. On 08.06.2015, further amount of Rs.4 lakhs had been received by the first defendant. Therefore, the suit has been filed within the period of three



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years. Further, the endorsement in the agreement on 08.06.2015 shows that a further sum of Rs.4 lakhs has been received and payment of further amount has been clearly established. Hence, opposed the appeal.

10. In the light of the above submissions, now the points that arise for consideration are :

Whether the suit is barred by limitation?

Whether the payment of Rs.14 lakhs has not been received by the first defendant?

11. Points 1 & 2 :

The suit has been filed for specific performance to enforce the contract dated 13.05.2011 for sale of suit property for a total sale consideration of Rs.90,10,000/- has not been disputed by the first defendant. Similarly receipt of Rs.10 lakhs as an advance on the date of the agreement has also not been disputed in the written statement. It is agreed between the parties that the sale shall be completed before 10.11.2012. It is the specific case of the plaintiff that he was always ready and willing to perform his part of the contract and the first



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defendant was evading to execute the document. However, the first defendant had received a sum of Rs.2 lakhs on 03.11.2012 and further sum of Rs.4 lakhs on 18.06.2015 and sought time to execute the document. The suit has been filed on 07.06.2018 within three years from the date of endorsement made on 18.06.2015.

12. It is relevant to note that though the parties have originally agreed to complete the sale on or before 10.11.2012, the fact that even after the specific time limit agreed between them, the first defendant had received a further sum of Rs.4 lakhs on 18.06.2015 and made an endorsement, which has been spoken not only by P.W.1 but also by P.W.3. The defendant had not disproved the execution of endorsement on the agreement. Except contending that he has not signed the endorsement, he has not taken any steps to disprove the execution spoken by the witnesses in this regard. Therefore, once further payment has been established, it has to be held that the parties have never intended the time as an essence of the contract. After the endorsement, the suit has been filed within the time of three years. Therefore, it cannot be said that the suit is totally barred by limitation. However, the trial Court considering the circumstances



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pertaining to the case, found that the plaintiff has not proved the readiness and willingness and negated the relief of specific performance. The said decree and judgment has not been challenged by the plaintiff.

13. Whereas the first defendant has challenged the alternative relief granted by the trial Court in the present appeal. Though the trial Court has rejected the plea of specific performance, considering the admitted plea of the first defendant that the advance amount of Rs.14 lakhs had been received and the same has also been established on record, directed the first defendant to refund the amount. The evidence of P.W.1 and P.W.3 clearly prove the further payment of Rs.4 lakhs. It is the main contention of the learned counsel appearing for the appellant that he had received only Rs.10 lakhs and not Rs.14 lakhs.

14. At this stage, the learned counsel appearing for the respondent would submit that if the appellant repays Rs.10 lakhs with interest at the rate of 6%, his client has no grievance, for which the learned counsel appearing for the appellant also submitted that his client is also willing to pay Rs.10 lakhs with



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interest at the rate of 6% per annum. Though the plaintiff has made out a case for return of Rs.14 lakhs, as the parties have agreed before this Court through their counsel that the first defendant is willing to refund Rs.10 lakhs with interest and the plaintiff is also willing to accept the same, this Court is inclined to modify the decree. The points are answered accordingly.

15. In the result, this Appeal Suit is partly allowed and the suit is decreed for the alternative relief for a sum of Rs.10,00,000/- [Rupees ten lakhs only], which is admittedly received by the appellant under Ex.A.1 with interest at the rate of 6% per annum from the date of the agreement, i.e., 13.08.2011 till the date of realization. Till such amount is realized, the charge over the property, as Ordered by the trial Court, shall continue. No costs. Consequently, connected miscellaneous petition is closed.

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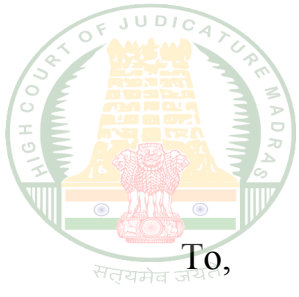
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To,

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1. The II Additional District Judge, Chidambaram.
2. V.R.Section, High Court, Madras.



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N. SATHISH KUMAR, J.

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