



A.S.(MD)No.235 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**A.S.(MD)No.235 of 2022
and
C.M.P.(MD)No.10541 of 2022**

1.K.Manikandan

2.D.Janaka Jebangelin

... Appellants

Vs.

M/s.APG Developers Private Limited,
Thammanam Post, Ponnithura Village,
Kanyakumari Taluk, Ernakulam District,
Kerala State,
Rep by its Manager George Joseph.

... Respondent

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the decree and judgment passed in O.S.No.31 of 2014 dated 26-07-2022 on the file of the Additional District Court, Kuzhithurai, Kanyakumari District.

For Appellants : Mr.Raguvaran Gopalan,
For Mr.C.Bharathi.

For Respondent : Mr.T.S.Mohamed Mohideen



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JUDGMENT

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The appellants herein are the defendants in O.S.No.31 of 2014 on the file of the Additional District Court, Kuzhithurai. The respondent herein filed the said suit for recovering a sum of Rs.3,37,50,000/- with interest.

2.The case of the plaintiff is as follows:-

The plaintiff entered into a sale agreement dated 23.11.2010 / Ex.A2 with the defendants. As per the terms of the agreement, the plaintiff was to pay a sum of Rs.6.5 Crores to the defendants. The defendants in turn were to convey 34.61 acres of land in Arumanai and Maankodu Village. The parties were conscious that the defendants owned only 9.72 acres out of the suit schedule properties. The defendants were to acquire the remaining 24.89 acres from third parties and thereafter convey the same in favour of the plaintiff / company. A sum of Rs.2.50 Crores was paid as advance amount in two installments (Rs.1 Crore on 23.11.2010 and Rs.1.50 Crores on 31.12.2010).



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Unfortunately, the defendants could not mop up 24.89 acres of land from third parties as major portion appeared to have declared as private forest.

Since the sale transaction could not go through in its entirety, the plaintiff filed the said suit for recovery of the amount advanced by him together with interest.

3.The defendants filed written statement admitting the execution of the sale agreement. However, they point out that the sale agreement contained a clause providing for partial performance. As per clause 2, if in the event of the defendants not being able to acquire the lands from third parties, they were to sell the lands that they owned along with building and machineries on *pari passu* basis. In the written statement, the defendants reiterated their willingness to abide by the said undertaking.

4.Based on the rival pleadings, the Court below framed the necessary issues. One George Joseph, the Manager working in the plaintiff/ company was examined as P.W.1 and Exs.A2 to A12 were marked. The first defendant examined himself as D.W.1. A rough plan



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was marked as Ex.B1. After considering the evidence on record, the trial Court decreed the suit as prayed for on 26.07.2022. Challenging the same, the defendants have filed this appeal.

5.The learned counsel for the appellants contended that the judgment of the trial Court is wholly unsatisfactory. He pointed out that the trial Court did not consider the defence taken by the defendants that they were willing to convey 9.72 acres of land owned by them in favour of the plaintiff / company. He pointed out that the discussion by the trial Court is rather cryptic. He also added that the sale agreement did not provide for any payment of interest and that therefore, the trial Court could not have awarded interest at the rate of 12% or 6% even.

6.Per contra, the learned counsel for the respondent submitted that the impugned judgment and decree are well reasoned and that interference with the same is not warranted.

7.The point arising for our consideration is whether the plaintiff is entitled to refund of the advance amount paid by them or whether the



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Court below ought to have directed the plaintiff to go in for partial performance of the sale agreement.

8.It is not in dispute that the parties entered into a sale agreement / Ex.A2 on 23.11.2010. The sale agreement envisages conveyance of 34.61 acres of land in favour of the plaintiff. It is admitted that out of 34.61 acres of lands, the defendants owned only 9.72 acres. The defendants could not arrange conveyance of the balance extent of lands from third parties. Therefore, the plaintiff caused issuance of more than one notice in this regard.

9.When the sale transaction could not took place as originally envisaged, the plaintiff had a choice before them; either they could go for specific performance to the extent the agreement admitted of performance or sue for refund of the advance amount paid by them. The plaintiff chose to opt for the latter course of action. Clause of Ex.A2 / sale agreement dated 23.11.2010 reads as follows:-

“2.That this agreement has been entered into by the PURCHASER on the SELLERS holding out that they, the SELLERS are the absolute owners of the said 972.105 cents



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of property and every thing in it including the aforesaid machineries and the building and a subsisting right to make the transfer in the manner hereby contemplated and that the said property is not in any manner encumbered or charged with the payment of any money With respect to the said 2489.810 cents property the Sellers hereby assure that they have already entered into agreements with the respective owners for the purchase of the respective extent described in each of the said annexed agreements and also have convinced about the clear and marketable title of the same. In this regard it is also agreed by the SELLERS that it shall be the duty of the SELLERS to arrange the transfer the said properties described in those annexed agreements in favour of the PURCHASER or its nominees in full or in part as a contiguous and continues stretch of property along with the road therein as shaded and shown in the sketch attached here with. If the SELLERS fails to arrange the transfer of the said extent of 2489.810 cents for whatsoever reason. in favour of the PURCAHSERS as aforesaid, the PURCAHSER shall be at liberty to purchase the aforesaid extent of 972.105 cents including the machinery and building therein at pro-rata division of the entire consideration on per cent basis. It is also agreed by the SELLERS that in such a situation where they are not able to arrange the transfer of the said 2489.810 cents as a



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compact area as shown in the sketch hereunder; there will not be any separate consideration for the machineries and building therein in their property and the pro-rata consideration so reached, on per cent basis, will be the consideration for their entire land (972. 105 cents) including the machinery as well as the building.”

10.A careful reading of the aforesaid clause indicates that if the defendants failed to arrange transfer of the entire extent of land as covered by the sale agreement, the plaintiff would be at liberty to purchase the aforesaid extent of 9.72 acres of land together with machinery and building from the defendants on pro-rata basis. In other words, there was no obligation case on the plaintiff to purchase whatever was available with the defendants. If according to the defendants, the clause should be interpreted and understood otherwise, nothing prevented the defendants from filing a suit for specific performance against the plaintiff. They did not do so. Having not done so, they can no longer place reliance on the aforesaid clause in the sale agreement. It is true that the Court below could have discussed this defence raised by the defendants. But failure to do so, may not really vitiate the impugned



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judgment and decree for that reason.

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11.As rightly pointed out by the learned counsel for the appellants, the sale agreement did not provide for payment of any interest on the advance amount. It is also seen that the defendants were making all efforts to conclude the transactions. Therefore, levy of 12% on the principal amount does appear to be unreasonable in the facts and circumstances of this case. We, therefore hold that the plaintiff will be entitled to interest only at the rate of 6% even on the principal sum. The principal sum was paid in the year 2010 in two installments. Therefore, the impugned judgment and decree are modified. The appeal is partly allowed in the following terms:-

(a) The defendants are directed to pay a sum of Rs.1 Crore to the plaintiff with interest at the rate of 6% per annum from 23.11.2010 till the date of realization.

(b) The defendants are directed to pay a sum of Rs.1.5 Crores to



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the plaintiff with interest at the rate of 6% per annum from 31.12.2010 till the date of realization. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (M.J.R. J.)
24.04.2025

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

The Additional District Court,
Kuzhithurai,
Kanyakumari District.

Copy to:

The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
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