

R. Radhakrishna Prasad

v.

Swaminathan & Anr.

(Civil Appeal No. 910 of 2024)

08 July 2024

[Vikram Nath and Prashant Kumar Mishra,* JJ.]

Issue for Consideration

Appellant-plaintiff filed suit for specific performance of the agreement of sale and in the alternative prayed for refund of the advance sale consideration of Rs.18,00,000/- (initial advance sale consideration of Rs. 3,00,000/- and additional sum of Rs. 15,00,000/-), mesne profits etc. with interest. Trial Court denied specific performance however, directed the defendant no.1 to refund Rs.18,00,000/- to the plaintiff with interest. High Court modified the decree and allowed the plaintiff to recover only Rs.3,00,000/- with interest. Whether the plaintiff proved payment of Rs. 3,00,000/- initially and another sum of Rs.15,00,000/- totalling to Rs.18,00,000/- to the defendant no.1.

Headnotes[†]

Specific performance – Suit for specific performance of the agreement of sale – Alternative prayer for refund of the advance sale consideration of Rs.18,00,000/- by defendant no.1 was made which was allowed by Trial Court – High Court allowing the appeal filed by the defendant no.1 modified the decree and allowed the plaintiff to recover only Rs.3,00,000/- with interest – Correctness:

Held: Both the Courts below found that payment of Rs.3,00,000/- on the date of agreement was duly proved in the evidence of PW-1 and PW-3 – The bone of contention between the parties was the payment of additional advance consideration of Rs.15,00,000/- as evidenced by exhibit A-1(a) endorsement – Considering the entire evidence, the plaintiff has proved payment of advance sale consideration of Rs. 3,00,000/- at the time of execution of the agreement – However, the case of the plaintiff as to the subsequent payment of Rs.15,00,000/- was not established by positive evidence as rightly held by High Court – No substance in the appeal. [Paras 11-13]

* Author

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Specific Relief Act, 1963.

List of Keywords

Specific performance; Suit for specific performance of the agreement of sale; Balance sale consideration; Ready and willing to pay; Advance sale consideration; Alternative prayer for refund of advance sale consideration; Specific relief of the agreement of sale declined; Specific performance denied; Decree for refund of money.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No.910 of 2024

From the Judgment and Order dated 23.06.2011 of the High Court of Kerala at Ernakulam in RFA No.25 of 2010

Appearances for Parties

V.Chitambaresh, Sr. Adv., K. Rajeev, Ms. Niveditha R. Menon, Bijo Mjoy, Advs. for the Appellant.

Zulfiker Ali P. S, Adv. for the Respondents.

Judgment / Order of the Supreme Court**Judgment****Prashant Kumar Mishra, J.**

This appeal would call in question the Judgment and decree of the High Court of Kerala by which the High Court has allowed the appeal preferred by the defendant no. 1 and modified the decree passed by the Trial Court whereby, in a suit for specific performance, the Trial Court had directed the defendant no. 1 to refund a sum of Rs. 18,00,000/- (Rs. Eighteen Lakhs only) to the plaintiff. Under the impugned Judgment, the High Court has allowed the plaintiff to recover only a sum of Rs. 3,00,000/- (Rs. Three Lakhs only) with 12% interest per annum from the date of suit till realisation from the defendant no. 1.

2. Briefly stated, the facts of the case are that the appellant/plaintiff preferred a suit for specific performance of the agreement dated 26.03.1998 whereunder the parties entered into an agreement for sale of the suit property over which the defendant no. 1 had a right

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by virtue of Partition Deed no. 2304/81 and Sale Deed nos. 759/93 & 1586/93 of the S.R.O. Chengannur. The defendant no. 1 agreed to sell the said property to the plaintiff for a sale consideration of Rs. 30,00,000/- (Thirty Lakhs only) and to handover the vacant possession of the suit property to the plaintiff within 06 months from the date of agreement. He received an advance sale consideration of Rs. 3,00,000/- (Three Lakhs only) from the plaintiff and also handed over the title deeds and encumbrance certificate to the plaintiff. The defendant no. 1 had availed of a loan from the defendant no. 2 - Bank by way of creating an equitable mortgage on deposit of his title deeds. Therefore, to clear the said liabilities, the defendant no. 1 received an additional amount of Rs. 15,00,000/- (Fifteen Lakhs only) from the plaintiff between the period from 26.03.1998 and 12.09.1998 and extended the period of the agreement for one year from 12.09.1998. The plaintiff averred in the suit that he was always ready and willing to pay the balance sale consideration as per the agreement but due to the laches on the part of the defendant no. 1, the sale deed could not be executed in time. In spite of repeated requests, the defendant no. 1 did not execute the sale deed, therefore, the suit was preferred. The plaintiff claimed for specific performance of the agreement and in the alternative prayed for refund of the advance sale consideration of Rs. 18,00,000/- (Eighteen Lakhs only), mesne profits etc. together with interest and other incidental expenses. No relief was sought from the defendant no. 2.

3. The defendant no. 1 contested the suit by denying the whole transaction. He denied having any acquaintance with the plaintiff as also the execution of the agreement. He also stated that he is only a co-owner of the suit property which would fetch value of more than Rs. 1,00,00,000/- (One Crore only). Thus, according to the defendant no. 1, the plaintiff has raised a false claim on the basis of a non-existing agreement. It is also stated in the written statement that there were financial transactions between one K.K. Vijayadharan Pillai and defendant no. 1 during which the said K.K. Vijayadharan Pillai obtained his signatures on blank papers and cheques from him and his wife. He has also initiated criminal prosecutions and instituted civil suit against defendant no. 1. The present suit is one of such instances. Thus, he denied any privity of contract between himself and the plaintiff. The suit has been instituted under the influence of K.K Vijayadharan Pillai on the strength of some forged and fabricated

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documents. The defendant no. 2 - Bank did not appear despite receiving summons and was thus proceeded ex parte.

4. Before the Trial Court, the plaintiff examined three witnesses and exhibited documents A1 to A8 whereas, on his side, defendant no. 1 examined two witnesses and exhibited two documents B1 and B2.
5. Basing on the undisputed facts that the agreement bears the signatures of defendant no. 1, the Trial Court found that the agreement was executed by the defendant no. 1 and the two witnesses of the agreement namely, K.K. Vijayadharan Pillai (PW-2) and Jose P. George (PW-3) having supported the plaintiff's case, the agreement is not forged or fabricated. The Trial Court also considered the documentary evidence as contained in exhibit A-1 to A-8 to conclude that the suit notice was duly served on the defendant no. 1 and that he was ready with the sale consideration amount for the execution of the sale deed as reflected in the document exhibit A-7. Therefore, the plaintiff is entitled to a decree for specific performance. This finding was also found supported by the evidence of PW-2 who was examined as a witness to the agreement and the endorsement exhibit A-1(a) and has proved that the documents were exhibited in his presence and the defendant no. 1 had put his signatures on the documents. Similar is the case with the other witness PW-3 – Jose P. George. The Trial Court also considered the evidence of DW-1, a practicing advocate who issued exhibit B-2 notice on the defendant no. 1. However, this witness has been disbelieved by the Trial Court. The defendant no. 1 examined himself as DW-2 who admitted his ownership in the suit property. He maintained his stand that K.K. Vijayadharan Pillai had obtained his signatures on blank papers and blank cheque leaves and the same has been misused to create forged agreement. However, the Trial Court upon consideration of the equitable principles on which a decree for specific performance is granted, was convinced with the case of defendant no. 1 that the suit property would fetch more value than the sale consideration mentioned in the agreement, therefore, considering the principles under Section 20 of the Specific Relief Act, 1963, the Trial Court denied specific performance and, in the alternative, directed the defendant no. 1 to repay the advance sale consideration of Rs. 18,00,000/- (Eighteen Lakhs only) together with interest at the rate of 12% per annum to the plaintiff.

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6. Feeling aggrieved by the decree for refund of money passed by the Trial Court, the defendant no. 1 preferred R.F.A. No. 25 of 2010 in the High Court, and the another Ex. F.A. No. 6 of 2011 was preferred by a claimant who had set up a claim over the property of the defendant no. 1, which had been brought to sell in execution to satisfy the decree passed by the Trial Court. The claimant was the advocate who appeared for the defendant no. 1 in the execution proceedings, and his claim was dismissed. Aggrieved thereby, he preferred the said appeal i.e. Ex. F.A. 6 of 2011.
7. Under the impugned judgement of the High Court, the appeal preferred by the defendant no. 1 has been allowed in part, modifying the decree and allowing the plaintiff to recover only a sum of Rs. 3,00,000/- (Three Lakhs only) with 12% interest per annum from the date of suit till realisation from the defendant no. 1 and at the same time rejecting the claim petition of the claimant who was the appellant in Ex. F.A. No. 6 of 2011.
8. In this Civil Appeal, we are concerned with the appeal preferred by the plaintiff who alone has approached this Court. The claimant in Ex. F.A. No. 6 of 2011 is not before us, therefore, the said part of the judgment has attained finality.
9. It is also to notice that in so far as the declining of the specific relief of the agreement of sale, there is no further challenge from the plaintiff by preferring First Appeal before the High Court. Therefore, the same has become final and we are only concerned with the refund part of the relief allowed in favour of the plaintiff by the Trial Court and modified by the High Court.
10. We have heard the learned counsel for the parties and perused the material papers available on record of the Civil Appeal as also the copy of the agreement which was made part of the record in course of hearing.
11. Since the defendant no. 1 has not preferred any appeal before this Court challenging the findings of the First Appellate Court that the execution of the agreement is proved, we are not considering the said issue. The material issue to be decided in this appeal is whether the plaintiff has proved payment of Rs. 3,00,000/- (Three Lakhs only) initially and another sum of Rs. 15,00,000/- (Fifteen Lakhs only) totalling to Rs. 18,00,000/- (Eighteen Lakhs only) to the

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defendant no. 1. Both the Courts below have found that payment of Rs. 3,00,000/- (Three Lakhs only) on the date of agreement has been duly proved in the evidence of PW-1 and PW-3. The bone of contention between the parties is the payment of additional advance consideration of Rs. 15,00,000/- (Fifteen Lakhs only) as evidenced by exhibit A-1(a) endorsement. On this aspect, the only evidence is that of the plaintiff himself without any corroboration from any other witness. The High Court has noted that PW-1 would state that stamp receipts had been collected whenever such subsequent payment were made but none of the stamp receipts were produced. We have perused the xerox copy of the document which was made available to us at the time of hearing. The document would show that the witness PW-2 had signed just below that endorsement and only thereafter, the signature of the defendant no. 1 is seen subscribed. Ordinarily, in any agreement witnessing payment of money, the party signs first and the witness(s) puts his signature(s) below that endorsement. However, in the case in hand, the witness has signed just below that endorsement and only thereafter, the defendant no. 1 is seen subscribing to the endorsement. In the suit notice exhibit B-1 also, there is no mention of payment of a definite sum paid as advance sale consideration nor existence of any endorsement has been mentioned therein. The amount of Rs. 15,00,000/- (Fifteen Lakhs only) so received subsequent to exhibit A-1 agreement of sale, as stated in the second notice and also in the plaint and so reflected in exhibit A-1(a) endorsement is not stated in exhibit B-1 suit notice. There is no reason why payment of such substantial amount of Rs. 15,00,000/- (Fifteen Lakhs only) would be missing in the suit notice. The only possible reason for this could be that the advocate who prepared the notice was not apprised of this fact. If such was the case, plaintiff's statement in Court, without any further corroboration, is not believable and the High Court has rightly found that the case of the plaintiff as to the subsequent payment of Rs. 15,00,000/- (Fifteen Lakhs only) is not established by positive evidence.

12. We have considered the entire evidence to examine the correctness of the findings recorded by the High Court and we fail to persuade ourselves to reach to any other conclusion than the one reached by the High Court holding that the plaintiff has proved payment of advance sale consideration of Rs. 3,00,000/- (Three Lakhs only) at the time of execution of the agreement.

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13. In view of the foregoing, we find no substance in this appeal which deserves to be and is hereby dismissed.
14. The parties shall bear their own costs.

Result of the case: Appeal dismissed.

[†]*Headnotes prepared by:* Divya Pandey