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Sureshkumar vs Anitha

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Court : Kerala

Decided On : Jun-01-2023

Judge : Honourable Mr. Justice Sathish Ninan

Appeal No. : AS/136/2002

Appellant : Sureshkumar

Respondent : Anitha

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN THURSDAY, THE 1ST DAY OF JUNE 2023 / 11TH JYAISHTA, 1945 AS NO. 136 OF 2002 AGAINST THE JUDGMENT AND DECREE DATED 22.06.2001 IN OS 21/2000 OF SUB COURT, NEDUMANGAD ------

APPELLANT/DEFENDANT: SURESHKUMAR, S/O SADANANDAN, MANAPURATHU BUNGLOW, PANANGODE, PERINGAMMALA VILLAGE, THIRUVANANTHAPURAM. BY ADV SRI.K.S.HARIHARAPUTHRAN RESPONDENT/PLAINTIFF: ANITHA, W/O SURESH, CHAITHRAM,PIRAPPANCODE, MANICKAL VILLAGE,THIRUVANANTHAPURAM. BY ADVS. SRI.T.KRISHNAN

UNNI SR. SRI.ASHWIN SATHYANATH SRI.VINOD RAVINDRANATH THIS APPEAL SUITS HAVING COME UP FOR HEARING ON 01.06.2023, A/W CROSS OBJECTIONS, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN, J.

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Dated this the 1st day of June, 2023

J U D G M E N T

The suit for money-advance sale consideration and damages, was decreed in part by the trial court. The defendant and the plaintiff have filed the appeal and the Memorandum of Cross Objections respectively, aggrieved by that part of the decree that is against them.

2. Ext.A1 agreement for sale dated 14.09.1995 was

executed between the plaintiff and the defendant. Under the agreement, an extent of 4.55 acres of property with a building situated thereon was to be conveyed by the defendant to the plaintiff. The sale consideration fixed

was ` 3,800/- per cent. The period stipulated for performance was four months. On the date of Ext.A1 an amount of ` 70,000/- was paid as advance sale consideration. Subsequently the defendant approached the -: 2 :- plaintiff on various occasions and obtain further advances. Thus the plaintiff has paid a total amount of ` 7,70,000/- towards part of the sale consideration.

The defendant failed to honour the agreement. The plaintiff had raised loans for purchase. She intended to purchase the property to divide it into plots and to sell the same. Consequent on the default on the part of the defendant, the plaintiff has sustained damages. It is on the said allegations that the plaintiff has filed the suit for return of the advance sale consideration and for damages.

3. The defendant denied the plaint allegations and

contended that he was ready and willing to perform his part of the contract. The agreement did not go through consequent on the failure on the part of the plaintiff to arrange the balance sale consideration, it was contended. The claim for return of the advance and for damages were denied. -: 3 :-

4. The trial court granted a decree for recovery of the advance sale consideration, with interest. However,

the claim for compensation/damages was

plaintiff by way of cross objections challenges the denial of the claim for compensation/damages.

5. Heard Sri.K.S.Hariharaputhran, learned counsel for the appellant and learned Senior Counsel Sri.T.Krishnanunni on behalf of the respondent.

6. The fact that Ext.A1 agreement was executed between the parties and that the total amount of

` 7,70,000/- was received towards advance sale consideration are not in dispute. The plaintiff and the defendant allege that the agreement did not go through due to fault of the other.

7. Though the defendant alleges that the plaintiff did not possess sufficient funds to pay the balance sale -: 4 :-

consideration to get the sale deed executed, the said contention was disproved by the production of Exts.A5 and A6 Bank Account statements of the plaintiff. The accounts show availability of sufficient funds for payment of the balance sale consideration. Therefore, the said contention of the defendant fails.

8. As per the terms of Ext.A1, the defendant is

bound to convince the plaintiff that there is no encumbrance over the property. So also, the defendant is bound to produce the original title deed relating to 3 acres of property. The defendant was also bound to have the property measured out and to convince the plaintiff regarding the extent. The plaintiff alleges that the defendant

failed to comply with the above. There is no evidence to show that the above conditions were honoured by the defendant. The defendant as DW1 did not have a case that the original title deed of 3 acres of property was made available to the plaintiff.

-: 5 :-

9. The plaintiff alleges that certain trees

standing in the property were cut and removed by the defendant. The Court found that the plaintiff was unable to prove that trees were cut and removed during the currency of the agreement. Be that as it may, the non- compliance with the terms of the agreement by the defendant as found supra, constitute sufficient grounds for the plaintiff to get back the advance amount. The court was right in holding that the plaintiff is entitled for return of the advance sale consideration.

10. Coming to the claim of the plaintiff for

damages, it is alleged that amounts were raised by the plaintiff by arranging loans from various sources by paying interest at the rate of 18% to 36%. It is also claimed that Ext.A1 agreement for purchase of property was entered into for the purpose of selling the property in various plots and thus to make profits. Consequent on the default of the defendant, the plaintiff has suffered

-: 6 :- damages by way of interest and loss of profit, is the claim.

11. The trial court has, on the evidence found that the above claim of the plaintiff has not been substantiated by any material. The court noticed that, but for the bald plea, there is no evidence to support

the above claims. The claim for damages was thus declined by the court. No material could be placed before me to enter a contrary finding. The claim for damages was rightly declined by the Court. Memorandum of Cross Objections is thus liable to be dismissed.

12. The trial court has granted a decree for

recovery of the advance sale consideration with interest at the rate of 18% per annum. Considering the prevailing banking rate of interest, I find that the rate fixed is arbitrary and excessive. Having due consideration to the prevailing banking rate of interest, grant of interest at 9% till date of decree and thereafter at 6% would be

-: 7 :- just and reasonable. The decree of the trial court is liable to be modified to the above extent. In the result, the appeal is allowed in part. The

decree and judgment of the trial court with regard to the grant of interest will stand modified as 9% interest from 15.01.1996 till date of decree (01.06.2023), and thereafter at 6% per annum till date of realisation. In all other respects, the decree of the trial court is affirmed. Memorandum of Cross Objections is dismissed.

Sd/- SATHISH NINAN JUDGE kns/- //True Copy// P.S. to Judge

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