

A.Narayanan vs Devaky

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Court : Kerala

Decided On : Oct-31-2023

Judge : Honourable Mr. Justice Sathish Ninan

Appeal No. : RFA/664/2007

Appellant : A.Narayanan

Respondent : Devaky

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN
TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA,
1945 RFA NO. 664 OF 2007 AGAINST THE JUDGMENT OS 60/2003
OF SUB COURT, OTTAPPALAM ----- APPELLANT/PLAINTIFF:
A.NARAYANAN, S/O AVUNHIYIL LATE CHAMI, [DIED; LRS
IMPLEADED *1] PEROOR AMSOM, AKALLOOR DESOM, OTTAPALAM
TALUK. *1 ADDITIONAL APPELLANTS 2 TO 7 ADDL. A2
SMT.A.PRABHAVATHI, W/O LATE A. NARAYANAN, AVUNHIYIL
HOUSE,

PEROOR AMSOM, AKALLOOR DESOM, OTTAPALAM TALUK. ADDL. A3 A. MOHANAN, S/O LATE A. NARAYANAN, -DO- -DO- ADDL. A4 SMT.A.SHYLAJA, D/O LATE A. NARAYANAN, KALLIKIZHAYIL HOUSE, KUNDUVANPADAM, PALAKKAD DISTRICT. ADDL. A5 SMT.A.SHYAMALA, KARUTHODIYIL HOUSE, P.O. CHETHATTUR, PALAKKAD. ADDL. A6 SMT.A.SHOBHANA, KALLITHODIYIL HOUSE, P.O. SHORANNUR, PALAKKAD. ADDL. A7 SMT.A.SUJATHA, KANDANGATH HOUSE, P.O. NELLAYA, PALAKKAD DISTRICT.

*1 [ADDITIONAL APPELLANTS 2 TO 7 ARE IMPEADED AS THE LEGAL HEIRS OF DECEASED APPELLANT VIDE ORDER DATED 15.07.2010 IN IA 2379/2010] BY ADVS. SRI.S.EASWARAN SRI.P.MURALEEDHARAN IRIMPANAM RESPONDENT-DEFENDANT: 1 DEVAKY, D/O AVUNHIYIL THANKAM @ THANKU AND WIFE OF MUNDENKOTIL LATE ACHUTHAN, EZHAKKAD AMSOM, VELIKKATTU DESOM, PALAKKAD DISTRICT. RFA NO. 664 OF 2007 - 2- *2 ADDITIONAL RESPONDENT NO.2 ADDL. R2 MOHANDAS, AGED 40 YEARS, S/O KUNHUNNI, MOOCHICKAL HOUSE, AKALLOOR POST, LAKKIDI, OTTAPALAM-679302. *2 [ADDITIONAL RESPONDENT NO.2 IS IMPEADED AS PER ORDER DATED 11.04.2008 ON IA BY ADVS. SRI.R.SUDHIR SANTHEEP ANKARATH THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 31.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN, J.

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Dated this the 31st day of October, 2023

J U D G M E N T

The plaintiff in a suit for specific performance of an agreement for sale is the appellant. Though the relief for specific performance was declined, the suit was

decreed for the alternate relief of refund of the advance amount. Dissatisfied with the decree, the plaintiff is in appeal.

2. Ext.A2 agreement dated 19.07.2000 was executed between the parties whereunder an extent of 2 acres and 35 cents of property was agreed to be conveyed by the

defendant to the plaintiff. The period fixed for performance was 31.10.2000. On the date of agreement, an amount of ` 50,000/- was paid towards advance sale consideration. Subsequently on 30.11.2001, a further amount of ` 50,000/- was paid towards advance sale consideration. The time for performance of agreement was -: 2 :- extended up to 30.04.2003 on intervention of mediators. The suit is filed alleging failure on the part of the defendant to honour the agreement.

3. The defendant admitted the execution of the

agreement. The contention of the plaintiff that the period for performance was extended up to 30.04.2003 on intervention of mediators, was denied. The plaintiff was not ready and willing to go ahead with the transaction and there was inordinate delay on his part. On 30.11.2000 an amount of ` 50,000/- was received towards part of the sale consideration with the specific condition that the balance amount has to be paid immediately and the sale taken through. However, the plaintiff failed to carry forward the agreement. On 03.02.2003, the defendant had issued Ext.A8 notice to the plaintiff requiring him to appear before Sub Registry Office on 15.02.2003 for execution of the sale deed, however he did not turn up. Therefore, the plaintiff is not entitled for any relief based on the -: 3 :- agreement, it was contended.

4. The trial court held that there is no material

to find that the plaintiff was ready and willing to perform the agreement. It was further found that the non-performance of the agreement occurred due to the fault of the plaintiff. While the relief for specific performance was declined, the court directed refund the advance amount of ` 1 lakh with interest at 6% per annum.

5. I have heard learned counsel on either side.

6. The following points arise for determination :-

(i) Is the finding of the trial court that the plaintiff committed breach of Ext.A2 agreement, based on materials ?

(ii) Does the decree and judgment of the trial court call for any interference by this Court ?

7. The execution of Ext.A2 agreement is admitted.

The parties are related. The title deed relating to the property is Ext.A1 Partition Deed. The contention of the learned counsel for the appellant is that, both the :- 4 :- plaintiff and the defendant are parties to Ext.A1 Partition Deed and that the deed provides for a right of pre-emption. Therefore, the defendant is obliged to offer the property to the plaintiff. The defendant has entered into an agreement with a third party. Therefore, the defendant is to be compelled to perform the agreement and sell the property to the plaintiff, it is argued. He also offers to purchase the property at a rate higher than the rate agreed to by the stranger.

8. As noticed first above, the agreement was

executed on 19.07.2000 and the period fixed for performance was 31.10.2000. The defendants allegation is that the plaintiff was not ready and willing to go ahead with the transaction. Admittedly, a further amount of ` 50,000/- from out of the sale consideration was paid much belatedly on 30.11.2001. The defendant accepted the same. According to the defendant, at that time the plaintiff was asked to pay the entire balance sale consideration and get the sale deed executed :- 5 :-

immediately. The plaintiff would on the 30.04.2003.

9. There is absolutely no evidence forthcoming

regarding any mediation. None of the so called mediators are examined. The alleged extension of period is claimed to be oral. Ext.A8 is the notice dated 03.02.2003 issued by the defendant to the plaintiff calling upon him to appear

before the Sub Registry Office on 15.02.2003 for execution of the sale deed. Admittedly the plaintiff failed to appear on the said date and get the sale deed executed.

10. From the circumstances as above, it could only

be concluded that the plaintiff was not ready and willing to perform the terms of Ext.A2 agreement. The plaintiff having failed to carry out the obligations under Ext.A2 and get the sale deed executed, there is no force in his contention based on the right of pre-emption. The plaintiff was offered the right to purchase the property but plaintiff failed to secure the benefit thereunder. Therefore, the right of pre-emption does not survive.

11. The trial court was right in having found that the plaintiff has not proved his readiness and willingness to perform Ext.A2 agreement. Point Nos.1 and 2 are answered accordingly.

12. The court has granted a decree for return of the advance sale consideration with interest at the rate of 6% per annum from the year 2003 onwards. It is to be noticed that from out of the total advance sale

consideration an amount of ` 50,000/- was paid on 19.07.2000 and a further amount of ` 50,000/- was paid on 30.11.2001. The defendant having enjoyed the benefits thereunder is bound to return the said amounts with reasonable rate of interest. I deem it appropriate that grant of interest at the rate of 12% per annum from 30.11.2001 on the total advance sale consideration of

` 1 lakh till the date of suit (04.04.2003), and thereafter at 9% per annum till date of recovery is just and reasonable considering the rate of interest during the relevant periods in banking transactions. Resultantly, this appeal is allowed in part. While affirming the decree of the trial court declining the

decree for specific performance, the plaintiff is granted a decree to realise an amount of ` 1 lakh with interest at the rate of 12% per annum from 30.11.2001 till the date of suit (04.04.2003), and thereafter at the rate of 9% per annum till recovery, as a charge on the plaint schedule property and also from the defendant

and assets. Parties to bear their respective costs.

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

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