

Siyadh vs Titto

Siyadh vs Titto

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Court : Kerala

Decided On : May-18-2022

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : RFA/205/2009

Appellant : Siyadh

Respondent : TITTO

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
WEDNESDAY, THE 18TH DAY OF MAY 2022 / 28TH VAISAKHA, 1944
RFA NO. 205 OF 2009 AGAINST THE JUDGMENT AND DECREE IN
OS 133/2007 DATED 12-11-2008 ON THE FILE OF PRINCIPAL SUB
COURT, NORTH PARAVUR. APPELLANTS/PLAINTIFFS : 1 SIYAD,
AGED 30 YEARS,S/O BEERANKUNJU, MANAMELPPARAMBIL
HOUSE, KIZHAKEPRAM MURI, KOTTUVALLY VILLAGE. 2 YOUSAF,
AGED 28 YEARS, S/O.MUHAMMAD HASSAN, KALATHIPPARAMBIL
HOUSE, PARAVOOTHARA MURI, PARAVUR VILLAGE. BY ADVS.
SRI.KAPPILLIL ANILKUMAR SMT.P.A.JASMIN
RESPONDENT/DEFENDANT : 1 TITTO, AGED 61 YEARS, (DIED)

S/O.MADHAVAN, NOW RESIDING AT NJATTUVETTY HOUSE, ALUPARAMBIL @ NELPPARAPPARAMBIL, KARUMALLOOR KARA, KARUMALLOOR VILLAGE. ADDITIONAL R2 TO R4 IMPEADED *2 MRS. BABY TITTO, AGED ABOUT 52 YEARS, WIFE OF LATE TITTO, NJATTUVETTY HOUSE , ALUPARAMBIL @ NELPPARAPPARAMBIL, MANAKKAPPADY, KARUMALLOOR P.O., NORTH PARUR, ERNAKULAM DISTRICT, PIN-683 511. RFA No.205 of 2009 2

*3 MR.RAYEEN TITTO, AGED ABOUT 21 YEARS, S/O. LATE TITTO, NJATTUVETTY HOUSE , ALUPARAMBIL @ NELPPARAPPARAMBIL, MANAKKAPPADY, KARUMALLOOR P.O., NORTH PARUR, ERNAKULAM DISTRICT, PIN-683 511. *4 MS.ROLA TITTO, AGED ABOUT 25 YEARS, D/O.LATE TITTO, NJATTUVETTY HOUSE, ALUPARAMBIL @ NELPPARAPPARAMBIL, MANAKKAPPADY, KARUMALLOOR P.O., NORTH PARUR, ERNAKULAM DISTRICT, PIN-683 511. ADDITIONAL R2 TO R4 ARE IMPEADED AS THE LEGAL

HEIRS OF DECEASED 1ST RESPONDENT VIDE ORDER

DATED 06/02/2020 IN IA 139/2018. ADDL.R2 TO R4 BY ADVS. SRI.A.S.BENOY SRI.N.S.MOHAMMED USMAN THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 18.05.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: RFA No.205 of 2009 3

P.SOMARAJAN, J.

----- RFA No.205 of 2009
----- Dated this the 18th day of May, 2022.

JUDGMENT

The plaintiffs came up against the decree passed

by the trial court in a suit for specific performance. It was decreed in part allowing recovery of the advance amount with interest. The relief of specific performance

was rejected mainly for the reason that the plaintiffs failed to prove readiness and willingness to perform their part of the contract, as mandated under Section 16 of the Specific Relief Act. According to the plaintiffs, Ext.A1 agreement was entered into on 6-8-2006 with the defendant for the sale of 29.50 cents of property for a total consideration of Rs.10,46,808/-, out of which, an advance amount of Rs.5,50,000/- was paid on that day, i.e., on 6-8-2006 under Ext.A1 agreement. Ext.A2 demand notice was issued as early as on

RFA No.205 of 2009 4 30-01-2007 to the defendant demanding performance of his part of the contract. It is thereafter the suit for specific performance was instituted.

2. The trial court, on consideration of evidence

and pleadings and after hearing both the parties found that the plaintiffs have utterly failed to prove the readiness and willingness to perform their part of the contract as mandated under Section 16 of the Specific Relief Act and rejected the relief of specific performance by granting an alternative remedy of return of the advance amount with interest. Aggrieved by the said decree and judgment, the plaintiffs have come up in appeal.

3. In support of the argument rendered by the

learned counsel for the appellants, various decisions rendered by the Apex court in *Madhukar Nivrutti Jagtap & Others v. Smt.Pramilabai Chandulal Parandekar & Others* (2019 AIR (SC) 4252), *Sughar Singh v. Hari Singh (Dead) through Lrs. & Others* (2019 AIR (SC) 4252), *RFA No.205 of 2009 5 Ors.* (2021(4) KLJ 664(SC) & *Silvey v. Arun Varghese* (2008 AIR (SC) 1568) brought to the notice of this Court.

4. It is the specific case of the defendant that

there was an earlier agreement between the first plaintiff and the defendant with respect to the same property on 27-01-2006 (Ext.B1 agreement). But it was not performed by the first plaintiff. Instead, by mutual consent, the second plaintiff was also inducted by entering into a second agreement, i.e., Ext.A1, by which it was further agreed to sell the property to the

plaintiff (presumably to the second plaintiff). An additional advance amount of Rs.2,50,000/- was also paid based on Ext.A1 subsequent agreement, besides the advance amount earlier given by the first plaintiff under Ext.B1 agreement which comes to Rs.3,00,000/- The total advance amount paid out of the sale consideration hence comes to Rs.5,50,000/-.

5. In order to prove the readiness and RFA No.205 of 2009 6

willingness, the second plaintiff has given oral evidence as PW1, besides the oral evidence tendered through the father of the first plaintiff, PW2. Exts.A4 and A5 documents were produced, which are the extract of bank accounts maintained by PW2 with a bank, wherein there are seven fixed deposits during the period from 6-1-2007 to 15-12-2007. It is the money kept by the father of the first plaintiff. The second plaintiff was inducted based on Ext.A1 agreement, subsequent to Ext.B1 for the sale of the property in favour of the second plaintiff and it would clearly show that the first plaintiff was not having sufficient money with him to perform his part of the contract at the time when Ext.B1 agreement was entered into and also within the period stipulated in that agreement. This might be the reason why a second agreement was entered into Ext.A1 by inducting the second plaintiff into the relationship.

6. The first plaintiff never mounted on the box RFA No.205 of 2009 7 to give any direct evidence. The second plaintiff alone had given oral evidence as PW1. None of the relatives

or friends of the second plaintiff was examined in order

to show his capacity to collect the balance sale consideration which comes to more or less Rs.5 Lakhs. PW2 is not the father of the second plaintiff and not a relative or friend of the second plaintiff, but the father of the first plaintiff, who had already parted with the agreement under Ext.B1 by inducting the second plaintiff by executing a subsequent agreement Ext.A1. Going through the evidence tendered, it is clear that there is no satisfactory evidence to show that the second plaintiff was having enough money or capacity to collect enough money to meet the balance sale consideration. As such, there is no reason to interfere with the

finding of the trial court that there is a failure on the part of the plaintiffs to prove their readiness and willingness as mandated under Section 16 of the Specific Relief Act.

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7. But yet another striking fact also came to the

notice of this Court with respect to the payment of advance amount, which is admitted by both the parties, which comes to more than 50% of the sale consideration agreed into, i.e., Rs.5,50,000/- out of Rs.10,40,808/-. From that, it can be seen that the proposed purchasers have paid more than half of the amount and the property comes to 29.50 cents. In other words, they have paid the sale consideration for more than half of the landed property.

8. The discretion that can be exercised under

Section 20 of the Specific Relief Act was taken into consideration by the Apex Court on various occasions including in *Her Highness Maharani Shantidevi P.Gaikwad v. Savjibhai Haribhai Patel and Others* (2001 KHC 1100 = AIR 2001 SC 1462). This court had also the occasion to consider the said question in *Anappath Parakkattu Vasudevakurup and Others v. C.Haridasan* (2021 (6) KHC 656) and by

RFA No.205 of 2009 9 following the legal position laid down by the Apex Court

held as follows:

The principles behind under Section 20 of the Act i.e. equity, good conscience and fairness were also applied by the Apex Court in *Gobind Ram v. Gian Chand* (AIR 2000 SC 3106) by ordering additional amount to be paid by the plaintiff to the defendant while decreeing specific performance i.e. an additional amount was ordered to be paid by the plaintiff to the defendant so as to get specific performance, by applying the principles under Section 20 of the Act - equity, good conscience and

fairness. It cannot be construed as the exercise of power under Section 20 of the Act, but should be understood as based on the principles of equity, good conscience and fairness and moulding the relief based on it, for which necessarily, before imposing additional burden on the plaintiff so as to get the relief of specific performance, his consent should be obtained or a conditional decree has to be passed by specifying a time limit so that the plaintiff can exercise his option either to accept or to reject it, otherwise it would amount to imposing additional burden on the plaintiff which was not dealt with under Section 20 of the Act or agreed into by the parties. Hence, it cannot be recognized as a statutory exercise of power under Section 20 of the Act, though the very same principle embodied thereunder can be applied so as to strike a balance on account of the enhanced value of property and to mould the relief accordingly.

9. In order to work out equity in view of the RFA No.205 of 2009 10 payment of more than half of the sale consideration as

agreed into, it will be proper to grant specific performance of half of the property in compliance with the requirement under Section 12 of the Specific Relief Act or to order sufficient compensation under Section 20 of the Act. By taking into consideration of the present value of the property as submitted across the Bar, it is fit and proper to pass a conditional decree directing the defendant to pay an additional amount of Rs.10,00,000/- (Rupees Ten Lakhs Only) without the liability of interest for a period of three months from today and to return the advance amount with interest as ordered by the trial court.

Hence, the appeal is allowed in part by passing a decree of recovery of an amount of Rs.10,00,000/- (Rupees Ten Lakhs only) without the liability of interest for a period of three months from today. Thereafter, it will carry interest @ 6% per annum till the date of recovery and a decree for recovery of the advance RFA No.205 of 2009 11 amount of Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand only) with interest @ 6% per annum from the date of suit till the date of recovery from the defendant and charged upon the plaint schedule property. Sd/- P.

SOMARAJAN, JUDGE amk

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