

Baby vs Premu

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Court : Kerala

Decided On : May-25-2022

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : RFA/248/2008

Appellant : BABY

Respondent : PREMU

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
WEDNESDAY, THE 25TH DAY OF MAY 2022 / 4TH JYAISHTA, 1944
RFA NO. 248 OF 2008 AGAINST THE JUDGMENT AND DECREE
DATED 4/10/2007 IN OS 108/2007 OF SUB COURT, PERUMBAVOOR
APPELLANT/PLAINTIFFS: 1 BABY, AGED 48 YEARS, S/O ITTAN
PILLAI, MADEEKAL HOUSE, NJARALLOOR KARA,
KIZHAKKAMBALAM VILLAGE, KUNNATHUNADU TALUK. 2 JOY,
AGED 43 YEARS, S/O.MATHAI, KARIPRA HOUSE, KUTTA KARA,
PUTHENCRUZ VILLAGE, KUNNATHUNADU TALUK. BY ADVS.
SRI.RENJITH THAMPAN SRI.M.V.JOY
RESPONDENTS/DEFENDANTS: 1 PREMU, AGED 53 YEARS, ELLIL

HOUSE, KUNNACKAL KARA, VALAKOM VILLAGE, MOOVATTUPUZHA TALUK. 2 PREPILU, AGED 25 YEARS, S/O.PREMU, ELLIL HOUSE, KUNNACKAL KARA, VALAKOM VILLAGE, MOOVATTUPUZHA TALUK. BY ADV SRI.ALEXANDER JOSEPH THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 25.05.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: RFA NO. 248 OF 2008 2

JUDGMENT

Aggrieved by the non-grant of specific relief pertaining to the property, the subject of a contract for sale of 2 acres of property by the trial court, the plaintiffs came up in appeal. A decree for recovery of the advance amount with interest alone was granted by the trial court and the relief of specific performance was rejected.

2. Ext.A1 contract was entered into on

22-11-2005 by which the parties have agreed to sell 2 acres of property for a total sale consideration of Rs.20 lakhs. There is no dispute with respect to due execution of the contract for sale and the receipt of advance amount which comes to Rs.2,80,000/-. It is the specific case of the defendants that the plaintiffs were not ready and willing to perform their part of contract. Prior to the expiry of the contract period, Ext.A2 notice was issued by the plaintiffs to the defendants, demanding performance of their part of contract. It has also come out in evidence that they were having sufficient capacity to

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collect balance amount which comes to more or less Rs.18 lakhs. It is contended that they have not prepared any sale deed prior to the expiry of the contract for sale. The property was not measured out. The legal

position is very much settled by various decisions regarding what actually amounts to readiness and willingness as embodied under Section 16 of the Specific Relief Act. When the plaintiffs have enough money to pay the balance sale consideration or sufficient capacity to collect the same unless a contrary intention is well evident from the act of plaintiffs, it is always permissible to draw an inference regarding the readiness and willingness to perform their part of contract. Nothing else was brought to the notice of this court in order to negate the said inference that can be gathered from the conduct of the plaintiffs, especially when he had opted to issue Ext.A2 notice demanding performance of contract by other party prior to the expiry of the agreed period of contract.

3. Inter alia it is contended that the present suit for specific performance of the contract would RFA NO. 248 OF 2008 4

stand hit by Order II Rule 2 Sub Rule 3 CPC, in view of the earlier suit instituted on the very same cause of action pertaining to Ext.A1 contract for sale. But, it is an admitted fact that the said suit was instituted before the expiry of the agreed period of contract, ie., before the commencement of cause of action for a suit for specific performance of the contract. As such, there cannot be any application of Order II Rule 2 Sub Rule 3 CPC and the present suit is not barred by the abovesaid provision.

4. The advance amount paid out of the sale

consideration by the plaintiffs as early as on 22-11-2005 comes to 14% of the agreed sale consideration, ie., an amount of Rs.2,80,000/- out of an amount of Rs.20 lakhs, the agreed consideration. It is admitted by the learned counsel for the appellants that the property is now worth more than Rs.1 lakh per cent. If that be so, the advance amount paid out of the sale consideration would satisfy the consideration for an extent of 28 cents out of 2 acres. Necessarily, in the matter of exercise of discretion

under Section 20 of the Specific Relief

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Act, equity has to be worked out based on the principle laid down by the Apex Court in *Her Highness Maharani Shantidevi P. Gaikwad v. Savjibhai Haribhai Patel and Others* (2001 KHC 1100 = AIR 2001 SC 1462). This court had the occasion to consider the said question in *Anappath Parakkattu Vasudevakurup and Others v. C. Haridasan* (2021 (6) KHC 656) and by 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

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5. By taking into consideration of the present

value of property and the advance amount paid, it is fit and proper to grant an additional amount of Rs.20,00,000/- (Rupees twenty lakhs) to the plaintiff without the liability of interest for a period of three months instead of granting specific performance of the contract so as to work out equity and good conscience, besides the return of advance amount with interest at the rate of 6% per annum. Hence, by exercising the discretion under Section 20 of the Specific Relief Act and by working out equity based on the consideration paid and the lapse of long period, I am of the view that a decree for recovery of an amount of Rs.20 lakhs without the liability of payment of interest for a period of three months from today can be granted in addition to the decree for return of the advance amount of Rs.2,80,000/- (Rupees Two lakh eighty thousand only) with 6 % interest from

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the date of suit till the date of realization. The decree and judgment of the trial court will stand modified to that extent. It is made clear that there will be a charge over the plaint schedule property for the recovery of the said amount. The abovesaid amount of Rs.20,00,000/- will carry interest at the rate of 6% per annum on the date of expiry of three months from today till realization. The appeal is allowed accordingly. There is no further costs.

Sd/- P.SOMARAJAN JUDGE msp

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