

K. Ramakrishnan (Died) and ors. Vs. Siddhammal and ors.

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Court : Chennai

Decided On : Aug-08-2001

Reported in : AIR2002Mad241

Judge : V. Kanagaraj, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 54; [Contract Act, 1872](#) - Sections 55

Appeal No. : Appeal Suit No. 879 of 1985

Appellant : K. Ramakrishnan (Died) and ors.

Respondent : Siddhammal and ors.

Advocate for Def. : K. Mohanram, Adv.

Advocate for Pet/Ap. : Bagirathi, Adv. for ;R.G. Rajan, Adv.

Disposition : Appeal allowed

Judgement :

V. Kanagaraj, J.

1. This Appeal Suit is directed against the judgment and decree dated 29-8-1985 rendered in O.S. No. 518 of 1983 by the Court of Subordinate Judge. Coimbatore seeking to set aside the said Judgment and decree in so far as the decree relates

to directing the deceased first appellant to deliver vacant possession of part of the suit property in his possession as tenant and further seeking interest at 18% p.a. on the amount of Rs. 1,25,000/- from the date of suit as on 30-11-1983 till the date of realisation and for costs.

2. Tracing the history of the above Appeal Suit, the deceased first appellant has filed the suit in O.S. No. 518 of 1983 on the file of the Court of Subordinate Judge, Coimbatore praying to pass a decree directing the defendants to pay a sum of Rs. 1,25,000/- to the plaintiff with interest at 18% p.a. and for costs on averments such as that the suit property originally belonged to one Rangammal; that on 28-8-1954, she executed a deed of settlement in favour of the first defendant and one K.B. Palaniswamy alias Doralswamy according to which the first defendant had only the right to enjoy the property during the lifetime of Rangammal granting the vested remainder to the said K.B. Palaniswamy; that about three years prior to the filing of the suit, the said Palaniswamy died leaving the defendants 2 to 5 as his legal heirs; that the plaintiff is the tenant in a portion of the suit property for several years; that since the defendants have been anxious to sell the suit property, the plaintiff entered into an agreement on 29-11-1982 with the defendants to purchase the suit property for a sum of Rs. 5,00,000/-; that the plaintiff had also paid an advance of Rs.1,00,000/- to the defendants on that date itself; that the period for completing the sale was ten months; that on 26-9-1983, the period was extended up to two months from 29-9-1983 since the defendants were not in a position to give vacant possession of the suit property to the plaintiff in terms of the agreement; that the defendants 1 to 3 signing the endorsement dated 26-9-1983 themselves promised to bring the defendants Nos. 4 and 5, but never acted as per their undertaking.

3. The further averments of the plaint are that on four occasions i.e. on 16-4-1983, 25-5-1983, 27-5-1983 and 8-9-1983, in poultry sums, a total amount of Rupees 25,000/- has been paid by the plaintiff in addition to the advance already parted with on receipts and with endorsement and in spite of the plaintiff having always been ready and willing to act up to the terms of the agreement, since the defendants were not in a position to evict the other tenants as per their undertaking, they were not in a position to comply with the terms of agreement and

therefore the plaintiff is also no longer interested in completing the same since it is learnt that a portion of the suit property is likely to be acquired by the Corporation of Coimbatore and hence the title is also affected thus invalidating the agreement and the publication of the notification in this regard was not disclosed to the plaintiff by the defendants prior to entering into the agreement and that the plaintiff is entitled to be reimbursed with the consolidated amount of Rs. 1,25,000/- which he had paid to the defendants with interest at 18% p.a. by way of damages from 26-9-1983 and to that effect he had also issued a notice to the defendants on 27-11-1983 through his Lawyer. On such averments, the plaintiff would pray for the reliefs extracted supra.

4. In the written statement filed by the defendants 1 to 3, besides generally denying the allegations of the plaint as false and putting the plaintiff to strict proof of the same, they would also specifically admit that they are the owners of the suit property and that the plaintiff is a tenant in occupation of a portion of the same for the past five years and on a monthly rent of Rs. 500/-and further admitting the receipt of the advance amount of Rs. 1,00,000/- and the further amounts of Rs. 25,000/- on four instalments, they would also submit that for the extension of the time, these defendants agreed but not the other two defendants. Further denying that it is false on the part of the plaintiff to say that he was ready and willing to perform his part of contract always and stating that there is no encumbrance in the property as alleged on the part of the plaintiff, these defendants would ultimately submit that the plaintiff is not entitled to get back the advance amounts since he has committed the breach of contract and he is also not entitled for the interest by way of damages; that no notice of that sort alleged in the plaint had been issued to the defendants and on such grounds, these defendants would seek to dismiss the suit with costs.

5 The defendants Nos.4 and 5 would file a separate written statement wherein besides repeating what had been alleged in the written statement of defendants Nos. 1 to 3, they would further allege that prior to completion of the time fixed for execution of the sale deed, the plaintiff represented that he was not able to muster the balance sale consideration and requested to extend the stipulated time for two more months for which these defendants did not agree and laid emphasis that

they were prepared to give extension provided the plaintiff is prepared to pay half of the balance sale consideration. Further denying the other allegations in the very same manner that the defendants Nos. 1 to 3 have pleaded, these defendants would also pray to dismiss the suit with costs.

6. Based on these pleadings by parties, the trial Court would frame five issues, viz.

1. Whether the plaintiff was always ready and willing to perform his part of contract?

2. Whether the defendants have committed breach of contract?

3. Whether the plaintiff is entitled to recover the amount of Rs. 1,25,000/-?

4. Whether the plaintiff is entitled to claim interest and if so at what rate? and

5. What relief, if any, is the plaintiff entitled to?

7. Having framed the above issues, the trial Court would conduct a trial in which on the part of the plaintiff, two witnesses would be examined, of whom P.W. 1 is the plaintiff himself. Likewise, on the part of the defendants also, equal number of witnesses would be examined, the second defendant as D.W. 1 and the 5th defendant as D.W. 2 for oral evidence. So far as the documentary evidence is concerned, the plaintiff would mark 12 documents as Exs. A1 to A12 and the documentary evidence submitted on the part of the defendants is Nil.

The 12 documents marked on the part of the plaintiff are : Ex. A1 dated 29-11-1982 is the agreement of sale. Ex. A.2 dated 26-9-1983 is the endorsement on Ex. A. 1 effected by defendants Nos. 1 to 3, Ex. A. 3 dated 27-11-1983 is the lawyer's Notice, Exs. A. 4 to A. 8 are the acknowledgments for the receipt of the Lawyer's Notice by defendants 1 to 5 respectively, Ex. A. 9 is the marriage invitation card, Ex. A. 10 is a receipt for Rs. 10,000/- dated 8-9-1983. Ex. A. 11 is a receipt dated 16-4-1983 for Rs. 10,000/ - and Ex. A. 12 is yet another receipt for Rs. 1,000/- dated 25-5-1983.

8. The trial Court, having traced the facts and circumstances and having its own discussion in the light of the evidence made available on record and in further

consideration of the position of law as argued on the part of the counsel for the plaintiff and the defendants as well, would ultimately arrive at the conclusion to grant the relief to the plaintiff thereby directing the defendants to return the amount of Rs. 1,25,000/-in favour of the plaintiff further requiring the plaintiff to hand over possession of the portion of the suit property in which he has been a tenant all these years and requiring the parties to bear their own costs. Aggrieved, the plaintiff would prefer the above Appeal Suit seeking to set aside the judgment and decree of the lower Court in so far as the decree relates to directing the plaintiff to deliver vacant possession of portion of the suit property in which the plaintiff has been a tenant and further seeking interest at 18% p.a. from the date of suit as on 30-11-1983 till the date of realisation.

9. During arguments, the learned counsel appearing on behalf of the appellants would lay emphasis that the appellant was always ready and willing to perform his part of contract and only since it was emphasised on the part of the defendants 4 and 5 that half of the sale amount should be parted with for granting extension of time and since the defendants were not able to evict the other two portions occupied by the other two tenants in order to hand over vacant possession with the appellant, the contract was not fructified and thus the breach was committed only by the defendants and the same could not be attributed to the plaintiff. The learned counsel would say that the plaintiff was in occupation of a portion of the suit property as a lawful tenant for the last ten years and to ask him to vacate and to hand over possession to the defendants is against the legal convictions; that the paramount consideration that is to be attached in cases of such nature is only in arriving at the finding as to on whose fault the contract was not able to be fructified: that it is an open case that defendants Nos. 4 and 5 openly defied to extend the time limit in spite of defendants Nos. 1 to 3 having come forward to extend the period over and beyond what has been fixed under Ex. A. 1 sale agreement and hence only on account of the non-co-operative attitude of the defendants Nos.4 and 5 with defendants Nos. 1 to 3, in spite of the plaintiff having been ready and willing to perform his part of contract, the agreement of sale could not be fructified and therefore the defendants being at fault, the norms observed in the two judgments cited by the lower Court reported in : and would not in any manner apply to the case in hand for denying the right of the plaintiff, who is not at

all at fault. On such arguments, the learned counsel would pray to allow the Appeal suit in full.

10. In reply, the learned counsel appearing for the respondents would submit that the plaintiff would not be interested to perform his part of contract in getting the sale deed in his favour on three grounds, viz. (1) that the title to the property is not perfect, (ii) that there was a proposal by the Corporation of Colmbatore to acquire part of the suit property for the extension of Coimbatore-Avinasi Road on which the property situates and (iii) that the defendants were not in a position to hand over vacant possession of the property since they were not able to evict the other two tenants as agreed at the time of Ex. A.1 agreement, the learned counsel would further submit that there is no mention in the Ex. A. 1 agreement regarding the eviction sought to have been agreed and handing over vacant possession.

11. The learned counsel for the respondents would further point out that Issue No. 1 is found against the plaintiff by the lower Court that he only committed the breach of contract that the second issue was also found against the plaintiff and in favour of the defendants: that the Issue No.3 is found in favour of the plaintiff to the extent that he is entitled to get back the amount of Rs. 1,25,000/-; that Issue No. 4 regarding the interest was found against the plaintiff that he is not entitled for the interest; that the grievance of the plaintiff is that the lower Court should not have directed him to hand over possession of the portion of the suit property held by him as a tenant and regarding the denial of interest. Citing from relevant paragraphs of the lower Court's Judgment, the learned counsel for the respondents would exhort that Section 64 of the Indian Contract Act is attracted in the case. The learned counsel for the respondents would cite the following decisions in support of his contentions. They are:

1. : (Chinna Thevar v. Gnanaprakasi Ammal)

2. : (Nedunurt Kameswaramma v. Sampatl Subbarao)

3. AIR 1958 Mad 527 (S.V.S. Mohammad Yusuf Rowther v. Muhammad Yusuf Rowther) and

4. (Girdharsingh v. Gokul)

In the first Judgment cited above, it has been held:

'In the proceedings instituted by the land-lord under the Tamil Nadu Buildings (Lease and Rent Control) Act, for eviction, the tenant is entitled to set up the agreement of sale in his favour as a shield in defence to the action.'

'Till the contract of sale was obtained, the petitioner-tenant only occupied the position of lessee. But after the date of the contract and after it was performed in part by consideration being paid for the contract and the landlord allowed the tenant to remain in possession by reason of the new status created under the contract it was no longer open to the landlord, to contend that the right of possession claimed by the petitioner was referable to the contract of lease. The conditions laid down in Section 53-A of the Transfer of Property Act are fulfilled even though a contract to sell alone had been obtained.'

'It is not necessary that a deed of transfer must have been obtained before Section 53-A of the Transfer of Property Act can be invoked.'

12. In the second Judgment cited above, it has been held by the Full Bench of the Apex Court:

'Where the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. The suit could not be dismissed on this narrow ground, and also there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion and neither party claimed that it had any further evidence to offer.'

13. In the third Judgment cited by the learned counsel for the respondents, in a case where parties were aware and led evidence on a point and case was decided on issue not framed, the learned single Judge of this Court held that 'the parties cannot complain afterwards that they were taken by surprise.'

14. In the last judgment cited by the teamed counsel for the respondents, it has been held by a learned single Judge of Rajasthan High Court that 'mere omission to frame issues is not necessarily fatal to the trial of the suit unless such omission has affected the disposal of the case on merits.' Citing the above Judgments, the learned counsel for the respondents would point out that the argument of the other side that the lower Court has not framed proper issues for determination of all the questions involved in the case falls to the ground and would pray to dismiss the above Appeal Suit with costs

15. In clarification, the learned counsel appearing on behalf of the appellants would submit that once a tenant is always a tenant and such of the inviolable rights of tenancy cannot be taken away unless the tenant is evicted in accordance with the Rent Control laws and therefore the Judgments cited on the part of the respondents are all not relevant for consideration and would pray to allow the Appeal Suit in full.

16. In consideration of the facts and circumstances as pleaded by parties, having regard to the materials placed on record and upon hearing the learned counsel for both, the crucial points that are to be considered by this Appellate Court in this Appeal Suit are :

1. Whether the lower Court is right in denying the interest that could be awarded as per Section 34 of the C.P.C. in favour of the plaintiff? and
2. Whether the direction given by the lower Court directing the plaintiff to hand over possession of the portion of the property that he is holding, admittedly to the other side, as a tenant is sustainable in law?

POINTS NOS. 1 AND 2 :--

17. The Court below in having arrived at the conclusion that the plaintiff has breached the contract, has ordered not to grant the interest even while it arrived at the conclusion to direct the defendants to return the amount of Rs. 1,25,000/- admittedly parted with by the plaintiff in favour of the defendants. It has also further held that the plaintiff is liable to vacate the portion of the property in his occupation

as a tenant within the meaning of Section 53-A of the Transfer of Property Act and as held by this Court in its Judgment rendered in Annamalai Gounder v. Venkataswami Naidu reported in : wherein it is held :

'It is obvious that till the contract of sale was entered into, the petitioner only occupied the position of lessee. But, after the date of the contract and after it was performed part by consideration being paid for the contract and the landlord allowing the tenant to remain in possession by reason of the new status created under the contract, it was no longer open to the landlord to contend that the right of possession claimed by the petitioner was referable to the contract of lease. The petitioner was entitled to rely on Section 53-A of the Transfer of Property Act (IV of 1982) and the conditions laid down in the said section are fulfilled even though a contract to sell alone was obtained.'

This Judgment had been followed in the Judgment reported in : (supra),

18. In the oral evidence adduced on the part of P.W. 1, the plaintiff, he would depose to the effect of confirming the plaint averments and further stating that he is in occupation of the 1/3rd of the suit property as a tenant for ten years and that he entered into an agreement with the defendants for the purchase of the suit property under Ex. A. 1 agreement for a sale consideration of Rs. 5,00,000/- and paid an advance amount of Rs. 1,00,000/- fixing the period for execution of the sale deed as ten months : that since the defendants were not able to evict the other two tenants, at their behest, the time was extended by defendants Nos. 1 to 3, but defendants Nos. 4 and 5 did not come forward to endorse the agreement for the extension of the time and that he had also paid, on instalments, a further sum of Rs. 25,000/-: that an acquisition notice had been sent from the Coimbatore Corporation which was not disclosed by the defendants at the time of entering into the agreement and therefore he was not inclined to carry on in accordance with the agreement and hence the suit for the recovery of his money with interest at 18% p.a. In the cross-examination, this witness would almost confirm what he deposed in the chief-examination. He would further depose that even after Ex. A. 1 agreement, for one year, he paid the rent and thereafter he was in occupation of the portion of the suit property as an agreement holder since the defendants asked

him not to pay the rent and that he continues to be in possession of the suit property. He would deny the suggestion that the defendants came ready to do the execution of sale deed in his favour,

19. P.W. 2 would depose that he knows the parties to the suit and that he has attested Ex. A. 1 agreement : that the plaintiff was having another property at Gandhlpuram, Coirnbatore worth Rs. 20,00,000/- besides owning two trucks and other properties; that the plaintiff is also running a petrol bunk for the last 20 years and doing lubrication supply to the Mills. This witness, in the cross-examination, would confirm that he signed Ex. A. 1 at the residence of the 5th defendant Maniammat; that whatever was agreed by parties have been reduced into writing under Ex. A.1 : that he has seen the industrial licence, petrol bunk licence etc. being in possession of the plaintiff,

20. The second defendant appearing as D.W. 2 would depose to the effect of the relationship between the parties and would admit the execution of Ex. A. 1 and the time limit fixed therein for obtaining sale deed as ten months. This witness would also admit the possession of 1/3rd of the suit property by the plaintiff as tenant and after Ex. A. 1 as an agreement holder; that the plaintiff did not pay any lease rent after Ex. A. 1. This witness would also admit that two other persons are in possession of rest of the suit property tenants (sic). He would further depose that there was no agreement to the effect that the defendants should vacate the tenants and hand over vacant possession of the suit property: that they extended lease period from 26-9-1983 for a further period of two months and would confirm the endorsement effected under Ex. A.2. He would also depose to the effect that only since, the plaintiff was not able to get ready with the balance sale consideration, he was not ready to get the registration done in his favour. But this witness would admit that there is the recital in Ex. A.2 to the effect that only since they were not able to vacate the other two tenants and hand over vacant possession of the suit and since some more time was required for the said purpose, they extended the time for another two months, but would say that it was thus written by the plaintiff and they signed and the same was not done by them whole heartedly. He would also deny that there was any acquisition proceeding; that in case, the plaintiff was ready with the balance sale consideration, himself

and the other two defendants Nos. 1 and 3 were ready to do the registration in his favour. In the cross-examination, excepting for what he deposed in the chief, he would deny either as not correct or that he did not remember further stating that there is nothing wrong in Ex. A. 2 endorsement. He would also deny knowledge of the other two tenants sending the rent by Money orders since the defendants were pressurising them to vacate.

21. D.W. 2 is the 5th defendant and this witness would besides admitting the execution of Ex.A. 1 sale agreement and the recitals therein, further state that they were ready and willing to do the registration of the same in favour of the plaintiff within the stipulated period of ten months and since the plaintiff represented that he was not equipped with sufficient funds to do the registration, they did not consent to extend the time limit and on such grounds, this defendant would also seek to dismiss the suit.

22. The lower Court, having traced the facts and the evidence let in by parties, would not accept the contention of the plaintiff that he was ready and willing to get the sale registered in his favour with sufficient funds, but would arrive at the conclusion that in spite of the defendants being ready and willing to perform their part of contract, only because of the default committed on the part of the plaintiff, the agreement was not fructifies and therefore would find no justification in the plea of the plaintiff that he was ready and willing to perform his part of the contract. This aspect, as to on whose fault the contract was not able to be performed whether because the plaintiff was not ready with the required amount and not willing to perform his part of the contract within the stipulated time of ten months as it is alleged on the part of the defendants or in spite of the plaintiff being ready with the balance sale consideration, since the defendants as per their assurance and understanding that they would hand over vacant possession evicting the other two tenants also within the ten months period were not able to vacate them, the contract was not able to be fructified, needs a discussion in the context of the position of law pertaining to such contracts of sale of immovable properties.

23. At this juncture, the legal position that is to be decided upper most prior to entering into the facts is whether the ten months time as fixed by the parties for

fructification of the sale deed as per the terms and conditions of the agreement under Ex. A. 1 was considered the essence of the contract thereby giving effect to the legal dictum that time is the essence of the contract? Though generally time is considered to be the essence of the contract, the legal proposition so far held by the upper forums of law, particularly by the Honourable Apex Court, in an unequivocal manner is that time is not the essence of the contract regarding the sale of immovable properties, unless it is specifically stipulated that the time that is fixed in the sale agreement is a relevant factor and the said time is considered the essence of the contract further putting the other side on notice to the said effect, it is an open case that no such stipulations are found nor emphasis made in Ex. A. 1 agreement that time is the essence of the contract nor had the defendants issued any notice to the plaintiff to the said effect laying emphasis that ten months time fixed in Ex. A. 1 agreement is the essence of the contract. Therefore, easy conclusions could be arrived at so far as Ex. A. 1 is concerned that time is not considered by parties the essence of the contract and hence over and beyond the period of ten months fixed under Ex. A.1, still the parties have three more years for fructification of the sale deed in accordance with the recitals of Ex. A.

24. At this juncture, it is relevant to point out that the lower Court should have framed an issue to the effect whether time was considered the essence of the contract by parties so far as the recitals of Ex. A. 1 agreement deed are concerned? The lower Court has not only failed in framing an issue to the said effect but also it has never bothered about discussing the same in the context of the position of law that is well settled that while generally time is considered the essence of the contract, so far as the sale of immovable properties is concerned, time is not the essence of the contract unless it is specifically stipulated that time is considered to be the essence of the contract and the other side is put on notice. However, it must be mentioned that merely on omission to frame an issue, is not necessarily fatal to the trial of the suit unless such omission has affected the disposal of the case on merit as rightly held in the Rajasthan High Court judgment cited supra reported in and therefore this Court is of the firm view that deciding the above appeal on merits and in accordance with law is in no way shaken by the omission of framing the issue to the said effect by the lower Court.

25. The trial Court has not at all focussed its attention on the well settled legal principle that time is not the essence of the contract in so far as immovable properties are concerned and therefore it was not able to arrive at valid conclusions so far as the first issue whether the plaintiff was ready and willing to perform his part of the contract and regarding the second issue whether the defendants have committed breach of the sale agreement are concerned. Moreover, on evidence, it is rather an admitted case on the part of the defendants Nos. 1 to 3 that they effected Ex. A. 2 endorsement extending the time for two more months. Though these defendants Nos. 1 to 3 also come forward to say that they did not willingly sign Ex. A.2 endorsement, it is relevant to note that even to sign this endorsement, defendants Nos. 4 and 5 did not cooperate with them. Therefore, it could be seen that there had been difference of opinion among the defendants who are all alleged to be the owners of the suit property in granting the extension of time. On the part of defendants Nos.4 and 5, no valid or tangible reason would be assigned for not coming forward to sign Ex. A.2 endorsement in spite of defendants Nos. 1 to 3 signing the same, excepting to say that since the plaintiff did not come forward to get the sale registered in his favour within the stipulated time of ten months, they did not want to extend the time for execution of the sale deed further more. This defence is not a valid defence for defendants Nos.4 and 5 since it is already concluded, based on the legal dictum that time was not considered the essence of the contract under Ex. A. 1 and therefore the defence put up on the part of the defendants Nos. 4 and 5 to the effect that the plain-tiff was not ready and willing to get the sale deed registered within the stipulated time often months cannot come to the rescue of defendants as a whole.

26. Moreover, it is glaringly seen from Ex. A. 2 recitals that only the defendants have voluntarily granted the extension of time offering the reason that since they were not able to vacate the other two tenants as agreed upon within the stipulated time of ten months and on their requirement, the time is extended for two more months by the defendants 1 to 3 even though it is drafted in the names of all defendants. Nothing else is seen in Ex. A. 2 to the effect that at the request of the plaintiff, the time was extended. Against these recitals, admittedly signed by the defendants Nos. 1 to 3, no other valid evidence need be necessary for anything put forth excepting defendants 1 to 3 coming forward to say that willingly they did

not sign Ex. A. 2. Therefore, it is safe to conclude that though there was no recital in Ex. A. 1 agreement to the effect that the defendants agreed at the tie of entering into the Ex. A. 1 agreement that they would vacate the other tenants also and hand over vacant possession, from Ex.A.2 it is morefully revealed that it had been agreed by the defendants that they would vacate the other tenants and hand over vacant possession and such recitals of Ex. A. 2 cannot so easily be denied by oral evidence. It is further seen that in spite of this document having been signed by defendants Nos. 1 to 3, the defendants Nos. 4 and 5 did not come forward even to sign this document in granting the extension of time and therefore in spite of time being not the essence of the contract, what is revealed by such of the attitudes adopted on the part of the defendants is that all the defendants, who are all parties to Ex. A. 1 sale agreement, were not at all ready and willing to perform their part of contract and it is false on the part of these defendants to come forward to allege that only the plaintiff was not ready to perform his part of contract.

27. From Ex. A. 1 agreement it comes to be seen that the plaintiff having agreed to purchase the suit property for a sale consideration of Rs. 5,00,000/- had immediately parted with Rs. 1,00,000/- as the advance amount and also on four other occasions had paid yet another Rs. 25,000/- as part of the sale consideration. Moreover, with the clinching evidence adduced on the part of P. W. 2 bringing to fore the affluent circumstances of the plaintiff, it is clear that the plaintiff is not at all running short of funds so as to say that he was not ready with the required money for fructification of the sale deed and it is safe to conclude that only since the defendants did not come forward to do the registration in his favour, in spite of some of the defendants coming forward to extend the lease time, because of their fault as of not being in a position to vacate the other tenants in the suit property to hand over vacant possession as agreed upon by the defendants, the plaintiff could not get the sale deed in his favour and it is held that the breach of the Ex. A. 1 sale agreement was committed only by the defendants and not by the plaintiff and therefore the plaintiff is fully justified in coming forward to file the suit for the return of his amounts with interest and for the other reliefs.

28. While such being the manner in which the subject should have been dealt with, the lower Court, having gone into unnecessary details and trusting the oral

evidence as against the commitment of the defendants in Ex. A.2, has arrived at erroneous conclusions, which cannot be sustained in law while on facts such conclusions have been arrived at, neither the judgments cited on the part of the lower Court nor on the part of the learned counsel appearing for the respondents would come to the rescue of the respondents since factually it is held that on account of the breach committed on the part of the respondents defendants only, the plaintiff was made to take a decision to rescind with the contract as he has prayed for in the suit. Therefore, the plaintiff is entitled to get the relief sought for in the suit and he becomes entitled not only to the interest though not at 18% p.a., as sought for in the suit, since his money to the tune of Rs. 1,25,000/- is with the defendants, the plaintiff is entitled to a reasonable interest of 12% p.a. from the date of suit till the date of decree by the lower Court and thereafter at 6% p.a. till the date of realisation. Further more, since it is held that on account of the breach committed on the part of the defendants, the execution of the sale was not able to be done as agreed upon under Ex. A.1, the proposition of law propounded in the judgments cited by the lower Court reported in : and : will not come to the rescue of the defendants. Moreover, in the second Judgment cited above, it would only add strength to a tenant who is in occupation of the property agreed to be sold as he had already been a tenant further armed with the shield as per Section 53-A of the Transfer of Property Act and absolutely it is unnecessary to hold that the plaintiff will have to vacate the suit property as it has been wrongly concluded by the lower Court. It is ascertained that the plaintiff (since deceased, his legal representatives) will continue to be the tenants so long as such of their inviolable rights are not testified and decided in accordance with the provisions of the Rent Control laws. Both the points are answered accordingly.

In result,

(i) the above Appeal Suit succeeds and the same is allowed setting aside the Judgment and decree dated 29-8-1985 rendered in O. S. No. 518 of 1983 by the Court of subordinate Judge, Coimbatore to the extent of refusing to grant the relief of the interest and farther directing the plaintiff to hand over vacant possession of the portion of the suit property in his possession to the defendants.

(ii) In short, the suit in O.S. Nos. 518 of 1983 on the file of the Court of Subordinate Judge, Colmbatore is decreed as prayed for subject to the restrictions regarding the interest, as mentioned above.

However, in the circumstances of the case, there shall be no order as to costs.

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