

T. Logeswaran Vs. P. Ranganathan Reddiar and Others

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Court : Chennai

Decided On : Dec-06-2012

Judge : Vinod K. Sharma

Appeal No. : A.No. 4864 of 2012 in C.S.No.1573 of 1994

Appellant : T. Logeswaran

Respondent : P. Ranganathan Reddiar and Others

Advocate for Pet/Ap. : For the Petitioners: ----- For the Respondent:-----

Judgement :

VINOD K.SHARMA, J.

1.This application under Order XIV Rule 8 of Original Side Rules read with provisions of Civil Rules of Practice for withdrawal of Rs.1,11,78,863/- (Rupees one crore eleven lakhs seventy eight thousand eight hundred and sixty three only) lying in the credit of fixed deposit in Union Bank of India, Mylapore branch, Chennai.

2. The respondents are the absolute owners of the land measuring 1 acre and 70 cents (approximately 32 grounds) situated in Old S.Nos.19/2 to 19/8 corresponding to New S.No.44/2 in Alandur Village, Saidapet Taluk, Kancheepuram district.

3. The respondents offered to sell the suit property to the plaintiff and executed an agreement of sale, dated 17.8.1992. The price fixed for the land is Rs.80 lakhs. The applicant paid a sum of Rs.4,33,000/- (Rupees four lakhs thirty three thousand only) as advance and part performance of the contract of sale, possession of the property was handed over to the applicant along with original title deeds.

4. It is the case of the applicant that the respondents had inherited the property under the Will, dated 30.6.1992 which was duly probated vide O.P.No.321 of 1992. After the execution of agreement of sale with the applicant, one Sai Jaganathan and others challenged the probate by filing applications for revocation of the probate.

5. This Court stayed the operation of the impugned order of probate which resulted in delay of execution of sale deed. However, the application for revocation of probate was dismissed subsequently.

6. The case of the plaintiff/applicant is that he is willing to perform his part of the contract by payment of balance sale consideration. It was the defendant/respondent who committed breach of the agreement, by demanding further amount over and above the sale consideration. The defendant/respondent in violation of agreement of sale, started negotiating with third parties which resulted in applicant/plaintiff filing the suit for specific performance.

7. Though there was no necessity to deposit of the balance sale consideration to show readiness and willing to purchase the property, but plaintiff/applicant filed A.No.4695 of 2007 to deposit balance sale consideration with the object to show readiness and willing to purchase the property.

8. In spite of opposition by the defendant/non applicant, this Court vide order dated 19.7.2007 permitted the applicant to deposit the money. The applicant accordingly, deposited a sum of Rs.76,67,000/- (Rupees seventy six lakhs sixty seven thousand only) by way of cheque drawn in favour of Registrar General, High Court, Madras which now stands deposited with the Union Bank of India, Mylapore branch, Chennai, as fixed deposit. The deposit was for a period of one year.

9. It is the case of the applicant that as the defendants did not accept balance sale consideration and execute the sale deed, therefore, plaintiff/applicant could be permitted to withdraw the amount lying in the credit of the suit, as the plaintiff/applicant needs money for business and also has sufficient funds to pay the balance sale consideration as and when decree for specific performance is granted in favour of the plaintiff/ applicant.

10. The plaintiff/applicant seeks liberty of this Court to withdraw the amount deposited by him, without prejudice to his right in the pending suit. The applicant is ready to give bank guarantee to show his bonafide.

11. This application is vehemently opposed by the learned counsel for the respondents by contending that a similar application filed earlier by the defendant was dismissed by this Court on 13.8.2010.

12. It is also the contention of the learned counsel for the respondents that the application to deposit money was not bonafide, as the suit for specific performance was filed in the year 1994, whereas application to deposit balance sale consideration was filed in 2007 and that too against the wishes of the respondents.

13. On consideration, I find this application deserves to succeed. The willingness of the plaintiff/applicant to perform his part of the contract cannot be determined by deposit of the balance sale consideration after the filing of the suit. It is for the plaintiff to show by leading cogent evidence that the plaintiff was willing at the time of execution of the sale agreement, on the date fixed for execution of the sale deed, as also during pendency of the suit that he was always willing to perform his part of the contract. This can be proved by leading cogent evidence. There is no requirement in law to deposit balance sale consideration, unless demanded by the defendant by accepting the agreement of sale and showing willingness to execute the sale deed.

14. In this case, the defendant has opposed the deposit of money by claiming it not to be bonafide act, this cannot be determined in the interlocutory application filed by the applicant. The money lying in the credit of the suit, is neither of any use to the plaintiff or to the defendant/non applicant.

15. The contention of the learned counsel for the non applicant, that second application is not competent, as earlier application filed by the plaintiff/applicant was dismissed on 13.8.2010 cannot be accepted. The principle of res judicata are not applicable to interlocutory application. Though by following underlying principle of res judicata, this Court does not entertain the subsequent application on the same cause of action if it results in prejudice to the party in whose favour, the earlier order is passed.

16. The underlying principle of res judicata is applied to interlocutory application, so as not to prejudice party in whose favour order is passed by Court while deciding the application.

17. The underlying principle of res judicata cannot be applied to this case, as the deposit of money by the applicant/plaintiff in this Court is neither for the benefit of plaintiff/applicant nor the defendant/non applicant, as law gives right to the plaintiff/applicant to deposit sale consideration within the time fixed by the Court, in the event of suit for specific performance being decreed.

18. The amount lying is also not to the benefit of the defendant/non applicant, as they have not accepted the balance sale consideration and are opposing the suit for specific performance of the agreement.

19. The mistake committed by the plaintiff/ applicant in depositing money in this court on misconceived that this will prove that plaintiff is willing to perform his part of the contract, could always be corrected.

20. The Courts act in the interest of justice and not on procedural technicalities. It is in the interest of justice that the plaintiff/ applicant be permitted to withdraw the amount from the credit of the suit without prejudice to the right of either of the parties to contest the suit by leading evidence in accordance with law, on the issues framed/to be framed by the Court.

For the reasons stated hereinabove, this application is ordered as prayed for. No costs.