

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(s).4943 OF 2022

(arising out of SLP (Civil) Nos. 19087 of 2018)

AYILLYATH YADUNATH NAMBIAR ...APPELLANT(S)

VERSUS

P. SREEDHARAN ...RESPONDENT(S)

WITH

CIVIL APPEAL NO.4944 OF 2022

(Arising out of SLP (Civil)No.6476 of 2019)

J U D G M E N T

VIKRAM NATH, J.

1. These two appeals assail the correctness of same judgment and order of Kerala High Court dated 12.04.2018 passed in RFA No.269 of 2008 between Puthiyonnan Sreedharan versus Ayillyath Yadunath

Nambiar, whereby the said first appeal filed by the defendant was partly allowed; the decree of the Trial Court for specific performance of contract was set aside, however, the defendant was held liable to pay an amount of Rs.50 lakhs with interest @12% per annum from 20.01.2005 till realization and also to bear entire cost of proceedings both at the trial level and at the appellate level.

2. Civil Appeal No.4943 of 2022 has been filed by the plaintiff with the prayer to restore the decree of the Trial Court whereas Civil Appeal No.4944 of 2022 has been filed by the defendant praying for dismissal of the suit. In view of the cross appeals, the parties are referred to as the plaintiff and the defendant hereinafter.

3. The defendant is the owner of both the properties mentioned in the schedule of the property appended to the plaint. According to the plaintiff, the defendant required substantial amount of cash urgently to liquidate

his loans which he had taken from certain banks. The defendant had advertised for the sale of his properties but as he did not get any good buyer upon mediation of common acquaintance, he agreed to sell both the properties mentioned in the schedule of properties to the plaintiff and in view of the same, a written agreement was executed on 20.01.2005. As per the agreement, item No.1 of plaint schedule property was settled for a consideration of Rs.70,000/- per cent and the item No.2 of the plaint schedule property was settled for Rs.75,000/- per cent. The total sale consideration came to Rs.64,60,600/-. It was also agreed as per the agreement that the sale deed would be executed within a period of four months after receiving the balance consideration.

4. Soon after the execution of agreement to sell dated 20.01.2005, the plaintiff came to know that the defendant was likely to assign the plaint schedule

properties to third parties thereby frustrating the agreement to sell. Although four months' time stated in the agreement to sell had not expired but in order to protect his interest, the plaintiff on 02.02.2005 instituted a suit for injunction in the Court of Munsiff, Kannur, registered as O.S. No.69 of 2005, against the defendant impleading him as defendant No.1 and one P. Mohanan impleaded as defendant No.2 in whose favour it was apprehended that the assignment would be made.

Following reliefs were claimed:

“Prayer:

It is therefore, respectfully prayed that this Honourable Court may be pleased to pass a decree and judgment;

- a) Restraining the first defendant, his men and agent and any person claiming through or under him from assigning or transferring the plaint schedule property to the 2nd defendant or to any other person that the plaintiff;
- b) Restraining the defendants, their men and agent any person or in any way interfering with the peaceful possession of the same by the plaintiff;
- c) To pay the cost of the suit; and

- d) To grant such other relief as may be necessary during the pendency of this proceedings at the request of the plaintiff.”

5. In the said suit for injunction, the defendant filed objections. The Court of Munsiff, Kannur, vide order dated 15.03.2005 disposed of the application for temporary injunction restraining the defendant from alienating plaint schedule properties in favour of the defendant No.2 or others before the expiry of term provided in the agreement dated 20.01.2005.

6. The plaintiff thereafter communicated his interest to pay the balance sale consideration and requesting to execute the sale deed. He also gave a legal notice dated 25.04.2005. The defendant gave a reply through his counsel to the aforesaid notice on 07.05.2005 denying the execution of agreement to sell and also stating that he had never received any amount from the plaintiff. The plaintiff thereafter instituted suit for specific performance of contract on 17.05.2005. Following reliefs were claimed

in the said suit registered as O.S. No.111 of 2005 in the Court of Munsiff, Kannur:

“Prayer:

It is therefore, respectfully prayed that this Honourable Court may be pleased to pass a decree and judgment;

- a) Directing the defendant to execute and register the sale deed in respect of the plaint schedule property in favour of the plaintiff receiving the balance consideration with possession.
- b) If the defendant fails to do so, get it done through the officer of this Honourable Court at the expense of the defendant.
- c) Alternatively directing the defendant to pay an amount of Rs.51,64,658/- with interest @12% per annum from the date of suit till realization being the advance amount paid by the Plaintiff and damages with interest.
- d) Restraining the defendant from culminating the plaint schedule property to any other person than the plaintiff.
- e) To pay the cost of the suit.
- f) To grant such other relief as may be necessary during the pendency of this proceeding at the request of the plaintiff.”

7. The defendant filed written statement whereupon based upon the pleadings the Trial Court framed

following five issues:

“1. Whether, the plaintiff is entitled for a decree for specific performance of contract?

2. Whether the defendant has received the advance sale consideration and after executing agreement and promised to execute the sale deed within the given time?

3. Whether the agreement relied by the plaintiff is forged and concocted?

4. Whether the plaintiff is entitled to get the advance sale consideration?

5. Relief and cost.”

8. Both the parties led evidence documentary as well as oral. Trial Court upon consideration and analysis of the evidence on record decreed the suit vide judgment

and order dated 30.07.2007 in the following terms:

“1. Defendant is directed to execute the sale deed in respect of plaint schedule item No.1 and 2 in favour of the plaintiff after receiving the balance sale consideration as stated in Ext.A-1.

2. In case, the defendant fails to execute the document, plaintiff shall be at liberty to approach the court for getting the document executed.

3. Defendant shall also pay the cost of the suit to plaintiff.”

9. Aggrieved by the aforesaid judgment and decree, the defendant preferred appeal before the High Court registered as RSA No.269 of 2008. The Division Bench of the High Court analyzed the entire evidence on record and came to the conclusion that the defence taken by the defendant of not receiving any amount from the plaintiff and also its denial of executing the agreement to sell dated 20.01.2005 is not acceptable. However, considering various other facts and circumstances of the case, did not think it appropriate to decree the suit for specific performance and rather thought it fit to award the alternative relief (c) as claimed by the plaintiff for refund of the advance along with interest. In paragraph 40 of the judgment, the High Court gave ten reasons why it thought it proper not to decree the suit for specific performance of contract rather award refund of the advance money with interest @ 12 % per annum from the

date of the execution of the agreement till the realization of the same. It would be appropriate to reproduce

paragraph 40 along with its sub-paragraphs:

“40. The question to be considered is whether Court below was justified in exercising the jurisdiction to grant specific performance in the facts and circumstances of the case. As we have already observed, defendant has a case that Ext.A1 agreement is not genuine and he has not received the consideration. The said contention is not accepted by us. But despite the said fact, certain circumstances which has evolved in this case tends us to deny specific performance on account of the following reasons:

- i) That a huge sum of Rs.50 lakhs was paid as cash to the defendant which covers almost major portion of the sale consideration. Under normal circumstances when huge amounts are involved, some payments are paid either by cheque or demand draft.
- ii) Plaintiff is a person who is capable of purchasing the entire property by paying the entire sale consideration at one stretch. If he could pay fifty lakhs on 20.01.2005, he could have paid the balance amount within a short time.
- iii) It is not known under what circumstance a period of four months had been stated for complying with the terms of contract.
- iv) Plaintiff claims that he was put in possession of the property which appears to be incorrect. There is no evidence to prove the said fact.
- v) Plaintiff is a person who does not know to read Malayalam, but still the agreement is executed in Malayalam.

- vi) The agreement is written by PW3 who is an interested party to the transaction. He claims to have received commission from both the parties which is not the practice followed in such situations.
- vii) Defendant has a contention that his intention was only to get a loan for which he had signed certain papers. But he further states that he did not receive the loan. According to him, he had not received any amount from the plaintiff which of course we don't agree.
- viii) The actual amount paid by the plaintiff to defendant can only be discerned from the agreement, the genuineness of which is doubted by the defendant.
- ix) Exts. A5 and A5(a) though had been relied upon by the Court below, the manner in which the said documents are executed and the purpose is doubtful.
- x) The intention of the defendant was to sell only one item of property as is evident from Exts.B1 and B2 advertisements. The advertisements were published on 1st January, 2005. A person who is in dire need of finances will either sell his property or he may take loan. Taking into account the factual circumstances, it is possible that a loan was arranged by the plaintiff for which a document in the nature of Ext.A1 was prepared."

10. The High Court further in paragraphs 41 and 42 gave further reasons for not approving the reliefs granted by the Trial Court. The said two paragraphs also are reproduced hereunder:

“41. Defendant’s case is that market value of property will come to Rs.8 crores. But there is no evidence to substantiate the said contention. A criminal complaint has been filed by the defendant before the Judicial First Class Magistrate Court, Kannur on 16.02.2005(Ext.B14), the investigation of which is still pending. Ext.B13 is the First Information Report. It relates to an allegation that he was threatened and attacked by a group of people on 04.02.2005 at 6 pm and the assailants which includes plaintiff and PW3 and certain others had threatened him asking him to vacate the property and he was threatened that he will be killed. Ext.B15 is the chargesheet dated 16.02.2005 wherein the plaintiff along with PW3 and PW6 were made accused. Charge was under Sections 417, 420,465,467, 471 r/w S.34 I.P.C. Final report had been filed alleging fabrication of the agreement. Ext.B19 is the certified copy of a complaint filed by plaintiff against the defendant and PW3 alleging offences u/s 420, 406 r/w 109 I.P.C. This was filed before JFCM, No.II Kannur on 18.05.2005. Ext.B24 is the certified copy of the order dated 23.03.2005 in IA No.358 of 2005 in OS No.69 of 2005. Though an order of injunction was granted against alienation of the property, the Court below did not grant any injunction restraining the defendant from interfering with the peaceful possession of the plaint schedule. The suit OS No.69 of 2005 was withdrawn by filing IA No.219 of 2006 on 17.01.2006. The suit was dismissed as withdrawn as per order dated 17.01.2006.

42. Taking into account the substantial contentions urged on behalf of either side, especially when an allegation regarding fabrication of document is being prosecuted by the defendant, it is not appropriate to grant specific performance. The Court below had failed to consider the above aspect of the matter in the light of the settled legal

principles. Court below proceeded on the basis that when execution of Ext.A1 document is proved, the suit has to be decreed. As already stated, there is sufficient material before this Court to doubt the respective contentions of the parties. Under such circumstances, it is only taking into account the preponderance of probabilities, Court below had found that Ext.A1 agreement is genuine based on sufficient material and such finding is not perverse.”

11. In paragraph 43 of the judgment, the High Court decreed the suit directing the defendant to pay the plaintiff an amount of Rs.50 lakhs along with interest @ 12%per annum from 20.01.2005 till realization and also to bear the entire cost of the suit before the Trial Court as also the High Court.

12. The above two appeals one by the plaintiff and other by the defendant have questioned the correctness of the said judgment.

13. Learned counsel for the parties made detailed submissions referring to the relevant pieces of evidence on record in support of their submissions. Having heard the learned counsel for the parties and having perused

the material on record, we find that the High Court has advanced substantial justice between the parties by accepting the alternate relief claimed by the plaintiff of refund of the advance amount along with the interest @ 12% per annum. The High Court found suspicious circumstances and doubtful situations being raised by both the sides. The reasons given by the High Court as contained in paragraph 40, in our opinion, were sufficient to arrive at a conclusion of not awarding the relief of specific performance of contract rather directing for refund of advance amount at adequate interest rate.

14. In the facts and circumstances of the case, we are not inclined to interfere with the judgment and order of the High Court. Accordingly, both the appeals are dismissed.

.....J.
[HEMANT GUPTA]

.....J.
[VIKRAM NATH]

NEW DELHI
AUGUST 18, 2022.