
(1961) 09 KL CK 0001

In the High Court Of Kerala

Case No : S.A. No. 799 of 1958 and C.R.P. No. 801 of 1958

Kannan Menon

APPELLANT

Vs

Kuttikrishna Menon and Others

RESPONDENT

Date of Decision : 25-09-1961

Acts Referred:

Transfer of Property Act, 1882 — Section 55(6)(b)

Citation : (1962) KLJ 257

Hon'ble Judges : M. Madhavan Nair, J

Bench : Single Bench

Advocate : V. Balakrishna Eradi in S.A. 799/58 and in C.R.P. 801/58, for the Appellant; A.S. Krishna Iyer and A.K. Ramaseshadrinathan, for the Respondent

Judgement

M. Madhavan Nair, J.—These two cases have arisen out of a contract of sale between Kunchi Amma and her husband Kuttikrishna Menon on the one part and Kannan Menon on the other. The contract for sale is evidenced by a letter, Ext. P. 1, in the case. It is dated December, 1, 1955. It shows that the parties have agreed for a sale and purchase of the suit property for a sum of Rs. 6,500/- and that a sum of Rs. 300/- has been paid and the remainder should be paid on the execution of a conveyance within a week thereof. Admittedly, the sale did not take place either within the stipulated period or thereafter. On 13-7-1956 the buyer made demand to the vendor for return of the advance paid by him under Ext. P. 1 as also for damages to the extent of Rs. 100/- for the breach of contract for sale. The reply of the vendor dated 19-7-1956 is proved in the case as Ext. P. 2. There the vendor attributed the breach of contract to the buyer and claimed damages to the extent of Rs. 1,000/-. The buyer instituted the suit, O. S. No. 32 of 1957, for return of the advance and for damages to the extent of Rs. 100/- on 9-2-1957; which was soon followed by another suit by the vendor, O. S. No. 54 of 1957 instituted on 26-2-1957, claiming damages to the extent of Rs. 1000/- for the breach of the contract for sale and praying for a decree to recover Rs. 700/- after setting off Rs. 300/- outstanding with him as the advance paid under Ext. P. 1. During trial the buyer withdrew his claim for damages made in O. S.

No. 32 of 1957 and confined his prayer to a return of the advance paid by him. The Munsiff decreed return of the advance by the buyer, and dismissed the vendor's suit for damages. On appeal, the District Judge reversed the same dismissing O. S. No. 32 of 1957 and allowing O. S. No. 54 of 1957 to the extent of Rs. 100/- as damages besides making a declaration that the advance paid has been forfeited. The C. R. P. No. 801 of 1958 is by the vendee pressing for a return of the advance paid by him and S. A. No. 799 of 1958 is also by him against the decree allowing forfeiture of the advance and the award of damages against him. A cross-objection has also been preferred by the vendor in the Second Appeal claiming Rs. 100/-more as damages from the vendee. Ext. P. 1 does not refer to any deposit or earnest. All that it mentions is that the price of the property having been agreed between the parties at Rs. 6,500/- and Rs. 300/- having been paid the conveyance would be executed and the balance paid within a week of its date. The contention is that this advance paid on the date of Ext. P. 1 was nothing but earnest or a security deposit. I could not find any provision or even an indication in Ext. P. 1 that warrants that inference. A mere prepayment at the time of a contract for sale does not automatically become an earnest or a deposit by way of security for the performance of the contract. Counsel for the vendor relied on *Puran Chand Vs. The Official Liquidator, Simla Banking and Industrial Co. Ltd. and Another*, which concerned the provisions of a proclamation for sale issued by the Official Liquidator with the express conditions of the sale that on acceptance of a bid the buyer should deposit one-fourth of the purchase money and the remaining three-fourths within 15 days of the intimation of confirmation of the sale by the High Court, in default of payment of which "the earnest money of one-fourth shall be forfeited." The initial deposit of one-fourth of the purchase money was clearly a deposit of earnest which will be given credit to in the purchase money if the sale was completed. To this extent it partakes of the nature of a part payment of the purchase money itself. A payment by way of earnest or deposit is primarily one of security for the performance of the contract, liable to be forfeited on breach thereof, while a mere prepayment of part of the purchase money is liable to be refunded if the sale does not take place. The learned commentator Mulla in his work on Transfer of Property Act, 4th Edn., at page 319, referring to the provisions of Section 55(6) (b) observes:

If the buyer improperly refuses to accept, it he loses his charge (for the purchase money). But although the buyer loses his charge the seller has no light to retain any instalments of price that have been paid, unless they have been paid as deposit or earnest.

It follows therefore that any payment that made of part of the purchase money at the time of the contract for sale, must, even if the blame for its breach is on the buyer, be refunded to the buyer. Counsel for the vendor cited *Chiranjit Singh v. Bar Swarup* (A. I. R. 1926 P. C. 1), *Jodha Mal Kuthalia v. Associated Hotels of India, Ltd.* (A. I. R. 1950 Lah 106), *Subbayya Chowdary v. Garikapati Veerayya* (A. I. R. 1957 AP 307) and *Naresh Chandra Guha Vs. Ram Chandra Samanta* and

Others, , all of which deal with cases of either earnest or deposit made by the buyer at a contract for sale being forfeited on breach of the contract. They do not deal with a claim for return of part of the purchase money paid by the buyer. As the terms of Ext. P. 1 do not lend support to the contention that the payment made at the time of its execution was only an earnest or deposit by way of security for the performance of the contract it has to be refunded in this case. It then follows that the claim in O. S. No. 32 of 1957 has to be allowed. The decree of the trial court in that suit is therefore restored and that by the District Judge reversed.

2. Turning to the vendor's claim for damages it has to be stated at the outset that no evidence has been adduced by the vendor of any damages being suffered by him on account of the breach of contract. As observed by Mulla in his Transfer of Property Act (4th Edn. page 322) damages in such cases should "be the difference in the market value at the time of the contract and at the time of the breach." The testimonies of the vendor himself as D. W. 1 and his witness as D. W. 2 are only to the effect that subsequent to Ext. P. 1 there were offers to purchase the property for an enhanced price of Rs. 7,000/- and even Rs. 7,250/- and those offers when the buyer demanded return of his advance and thereby repudiated the contract. It then follows that the vendor has not suffered any damages at all; and without proof of actual damage the seller is not entitled to damages. The evidence only shows that the price of the property has only been going high subsequent to the execution of Ext. P. 1. O. S. No. 54 of 1957 is therefore without merits and is dismissed. The decree of the trial court in this suit is therefore restored and that of the appellate Judges reversed. In the result, the second appeal is allowed and the cross-objection and the Civil Revision Petition are dismissed, restoring the decree of the trial court in both the suits. Costs follow the event throughout.