

(2013) 06 MAD CK 0204

In the Madras High Court

Case No : C.M.A. No. 2486 of 2012 and M.P. No. 1 of 2012

R. Saravanan and Smt. S. Anandhi

APPELLANT

Vs

S. Mallika, M.S. Rajkumar and M.S. Balaji Kumar

RESPONDENT

Date of Decision : 12-06-2013

Acts Referred:

Specific Relief Act, 1963 — Section 22(1), 22(2)

Citation : (2013) 4 CTC 458

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Advocate : S. Thirumavalavan, for the Appellant; V.R. Shanmuganathan for R1 to R3, for the Respondent

Final Decision : Allowed

Judgement

G.M. Akbar Ali, J.—The appeal is preferred against the judgment and decree dated 20.6.2012 made in A.S. No. 6 of 2011 on the file of Principal District Court, Krishnagiri. The appellants are defendants in the suit in O.S. No. 67 of 2005, which was filed by the respondents/plaintiffs 1 to 3, before the Sub Court, Krishnagiri for specific performance of the contract. The first respondent had claimed such specific performance on a sale agreement dated 10.5.2002, in which, a sum of Rs. 4,00,000/-(Rupees four lakhs only) had been paid as advance amount.

2. The suit was resisted by the appellants/defendants in all aspects and the learned Principal Sub Judge, Krishnagiri, by decree and judgment dated 11.11.2010, dismissed the suit with regard to the relief of specific performance of the contract, but has directed the defendants to return the advance amount of Rs. 4,00,000/- with 6% interest.

3. Aggrieved by such decree and judgment, the respondents/plaintiffs preferred the appeal before the Principal Sessions Court, Krishnagiri in A.S. No. 6 of 2011.

4. On notice, the appellants/defendants appeared. After hearing both sides, the

learned Principal Sessions Judge, Krishnagiri/the first appellate court framed only one point for consideration i.e., "whether there exists sufficient ground, so as to remit back the original suit for re-trial?

5. The learned Principal District Judge proceeded to consider the relief of return of the advance amount and referred to Sec. 22(1) of Specific Relief Act and also the judgment reported in Vinod Seth Vs. Devinder Bajaj and Another, and also other judgments and wondered how the trial court can grant the relief when the same was not being asked and which is opposed to Sec. 22(2) of Specific Relief Act.

6. In that context, the learned Principal District Judge thought it fit to remand back the matter for fresh disposal. Aggrieved by such order, the defendants/appellants are before this Court.

7. The learned counsel for the appellant submits that the appellants/defendants have not preferred any appeal against the relief granted by the trial court. The learned counsel also submitted that if the first appellate court had decided that granting of such relief is opposed to law, it could have corrected the decree and judgment and could have passed a decree by dismissing the suit itself. The learned counsel pointed out that in any event, remanding back the matter for fresh disposal is erroneous, which has to be set aside.

8. On the other hand, the learned counsel for the respondents/plaintiffs submit that they are also opposing the order of remand on the ground that the first appellate court has not even framed the issue for consideration i.e., "whether the plaintiffs are entitled for relief of specific performance of the contract".

9. Heard and perused the materials available on record.

10. The suit was for specific performance of the contract. The trial court had framed necessary issues and while dismissing the suit, it proceeded to grant the relief of return of advance amount. Aggrieved by such decree and judgment, the plaintiffs had preferred the appeal.

11. Though several grounds have been raised in the first appeal, the learned first appellate court has framed only one point for consideration that whether the matter is fit for remanding back as there was a relief of return of advance amount which was uncalled for.

12. The first appellate court has referred to Sec. 22(2) of the Specific Relief Act and some of the case laws and found that when the relief was not specifically prayed, the trial court is wrong in granting such relief. Having found so, the first appellate court has remanded the matter for fresh disposal.

13. As rightly pointed out by the learned counsel for the appellant, this court is of the considered view that remanding back the matter is erroneous. It is to be noted that the appellants/defendants have not filed any appeal against the relief granted by the trial court for refund of advance amount.

14. Even now, the appellant/defendants, who entered into the contract, which is not denied, but opposed on other grounds, is ready to return the money. However, the respondents/plaintiffs are opposing the decree and judgment of the trial court on various grounds and the main point for consideration before the first appellate court was whether the plaintiff was entitled for the relief of specific performance when he was ready and willing to perform his part of the contract.

15. Those points were not even framed and considered by the first appellate court. The first appellate court may be right in considering the point whether the trial court was right in granting the relief, but does not call for remanding the matter back without addressing the other point for consideration. Therefore, the order of remand is erroneous and unsustainable and the appeal is liable to be allowed. In fine, the civil miscellaneous appeal is allowed and the matter is remanded back to the first appellate court for fresh disposal on all the points for consideration. The first appellate court is directed to dispose of the matter on merits within a period of three months from the date of receipt of copy of this order. The parties are directed to appear before the first appellate court on 1.8.2013. No costs. Consequently, connected MP is closed.