
(2025) 02 KL CK 0055

High Court Of Kerala

Case No: Regular First Appeal No. 303 OF 2012

Valli

APPELLANT

Vs

Jayaprakash

RESPONDENT

Date of Decision: Feb. 13, 2025

Acts Referred:

- Code of Civil Procedure, 1908 - Section 96, Order 41 Rule 1
- Specific Relief Act, 1963 - Section 20

Hon'ble Judges: A. Badharudeen, J

Bench: Single Bench

Advocate: P.K.Mohanan, Mathew B.Kurian, K.T.Thomas, V.M.Kurian

Final Decision: Dismissed

Judgement

A. Badharudeen, J

1. Defendant in O.S.No.38/2008 on the files of the Subordinate Judges Court, Ottapalam, who is aggrieved by the decree and judgment in the above

case dated 9.12.2011, has filed this appeal under Section 96 r/w Order XLI Rule 1 of the Code of Civil Procedure, 1908. The sole respondent herein is

the plaintiff.

2. Heard the learned counsel for the appellant/defendant and the respondent/plaintiff. Perused the case records including the pleadings and evidence.

3. I shall refer the parties in this appeal as 'plaintiff' and 'defendant' hereafter, for convenience.

4. The plaintiff's case is that, the defendant agreed to sell the plaint schedule property for a total consideration of Rs.2,30,000/-(Rupees Two Lakh

Thirty Thousand only) and accordingly, an agreement was executed in this regard on 3.10.2007. According to the plaintiff, Rs.1 Lakh was paid as

advance sale consideration and it was agreed to execute the sale deed on or before 3.4.2008 on payment of the balance consideration of Rs.1,30,000/-

(Rupees One Lakh Thirty Thousand only), by the plaintiff. According to the plaintiff, though the plaintiff has been ready and willing to execute the sale

deed, the defendant denied the execution even after receipt of notice issued by the plaintiff demanding the performance of contract. Thus the suit.

5. Defendant resisted the suit contending that there was no agreement to sell the plaintiff schedule property and the defendant did not receive Rs.1

Lakh, as contended by the plaintiff. The case of the defendant is that the defendant received Rs.25,000/- (Rupees Twenty Five Thousand only) as

loan from the plaintiff on 3.10.2007 and during this period, as insisted by the plaintiff, the defendant had handed over signed blank stamp paper as

security. Thereafter, the said paper was misused and a sale agreement was created by the plaintiff. The defendant agreed to return Rs.25,000/-

(Rupees Twenty Five Thousand only) along with interest.

6. Adverting to the above pleadings, the trial court recorded evidence, after framing necessary issues. PW1 and PW2 were examined and Exts.A1 to

A3 were marked on the side of the plaintiff. DW1, son of the defendant was examined on the side of the defendant. On appreciation of evidence and

after hearing both sides, the trial court found that the plaintiff proved execution of Ext.A1 and the plaintiff was granted decree as under:

“In the result, the suit is decreed with costs and the defendant is hereby directed to execute the sale deed with respect to the plaintiff schedule property in favour

of the plaintiff within a period of one month. She is also directed to hand over all the basic documents with respect to the plaintiff schedule property which are

available with her. The plaintiff shall deposit the balance consideration of Rs.1,30,000/- within this time. If the defendant fails to execute the sale deed as directed,

the plaintiff can resort to the process of the court for getting the sale deed executed.”

7. The learned counsel for the defendant argued that there was no agreement as Ext.A1 executed by the defendant, as alleged by the plaintiff and in

fact, Ext.A1 was created in a stamp paper worth Rs.50/- and blank signed papers which were given by the defendant at the time when she borrowed

Rs.25,000/- (Rupees Twenty Five Thousand only) from the plaintiff on 3.10.2007 in connection with the marriage of her daughter. According to the

learned counsel for the defendant, the evidence available, in no way, would establish the execution of Ext.A1 and the court below went wrong in

granting decree for specific performance of Ext.A1 and therefore, the same requires interference. Apart from the above contention, the learned

counsel for the defendant argued that in the instant case, the trial court granted discretionary relief of specific performance and the reason stated by

the trial court to grant the discretionary relief is relying on the evidence of PW1 to the effect that he was a poor coolie and he thought of purchasing

the plaint schedule property for constructing a house of his own. But no such evidence is forthcoming and therefore, the said finding is erroneous.

It is also pointed out that, in this matter, the total consideration as per the case put up by the plaintiff is Rs.2,30,000/- (Rupees Two Lakh Thirty

Thousand only), out of which, Rs.1 Lakh alone was paid as advance. According to the learned counsel for the defendant, in the instant case, the relief

may be modified by directing the defendant to execute the sale deed to the extent of Rs.1 Lakh paid in advance from the total extent of 23.5 cents of

property. In support of his contention, the learned counsel placed the decision of the Division Bench of this Court in *Asha Joseph v. Babu C. George*

and Others reported in (2022 (3) KHC 48 (DB) and also the decision of the Apex Court in *Zarina Siddiqui v. A.Ramalingam* reported in (AIR 2015

SC 580).

8. The learned counsel for the plaintiff, on the other hand, supported the verdict of the trial court and submitted that even though the defendant denied

execution of Ext.A1, PW1 and PW2 had given evidence in support of execution of Ext.A1 and therefore, on finding proof of Ext.A1 by the plaintiff,

the trial court exercised the discretion in favour of the plaintiff and granted relief for specific performance. It is also submitted by the learned counsel

for the plaintiff that as directed by the trial court, the plaintiff already deposited Rs.1,30,000/- (Rupees One Lakh Thirty Thousand only) before the trial

court within one month from the date of the trial court decree. Therefore, the verdict under challenge would not require any interference.

9. Having addressed the rival arguments, the points arise for consideration are;

1) Whether the trial court erred in holding that the plaintiff proved execution of Ext.A1 agreement?

2) Whether the trial court went wrong in granting the discretionary relief to the plaintiff?

3) Whether the verdict under challenge would require interference?

4) Reliefs.

5) Costs.

10. Points Nos.1 to 3:

Ext.A1 is the original agreement dated 3.10.2007 alleged to be executed in between the plaintiff and the defendant. The case of the plaintiff is that as

per Ext.A1 agreement, the defendant agreed to sell the plaint schedule property for a total consideration of Rs.2,30,000/- (Rupees Two Lakh Thirty

Thousand only) and out of which, Rs.1 Lakh was paid by the plaintiff to the defendant as advance. Accordingly, it was agreed to execute the sale

deed on or before 3.4.2008. Even though the plaintiff has been ready and willing to execute the sale deed, the defendant denied the execution. Plaintiff

who was examined in this case as PW1 supported execution of Ext.A1 assserting that he had agreed to purchase the plaint schedule property for a

total consideration of Rs.2,30,000/- (Rupees Two Lakh Thirty Thousand only) and he had paid Rs.1 Lakh as advance. Further, the defendant agreed

to sell the property for Rs.2,30,000/-(Rupees Two Lakh Thirty Thousand only) and she accepted Rs.1 Lakh as advance. Even though PW1 was cross

examined, other than making suggestion by denying execution of Ext.A1 and creation of an agreement in blank signed stamp paper, nothing extracted

to disbelieve his version. One Vijesh, who is the signatory and witness to Ext.A1 also was examined as PW2 to prove the execution of Ext.A1. He

also supported execution of Ext.A1 and he deposed that he put signature as a witness in Ext.A1. In fact, nothing extracted during cross examination of

PW2 also in the matter of proving Ext.A1.

11. The trial court, apart from the evidence of PW1 and PW2, relied on the evidence of DW1, who is none other than the son of the defendant, to hold

that the plaintiff proved the execution of Ext.A1. It was observed by the trial court that the evidence of DW1 in cross examination would also support

the case of the plaintiff that he had handed over Rs.1 Lakh to the defendant. It was observed by the trial court that, during cross examination of DW1,

he deposed that on 3.10.2007, the defendant had repaid some amount in excess of Rs.90,000/- (Rupees Ninety Thousand only) to Payyanedam

Service Co-operative Bank, Kumaramputhur. When DW1 was asked about the source of the amount paid by the defendant, he stated that the

defendant had received a sum of Rs.69,000/- (Rupees Sixty Nine Thousand only) by selling her two cows and 12 goats. He also gave evidence that

there are witnesses for the sale of cows and goats. But nobody was examined to prove the said source. Thus, the trial court found that repayment of

more than Rs.90,000/- (Rupees Ninety Thousand only) to Payyanedam Service Co-operative Bank, Kumaramputhur by the defendant by selling the

cows and goats could not be accepted, since the said payment was on the date of execution of Ext.A1 agreement, on receipt of Rs.1 Lakh by the

defendant.

12. On perusal of the evidence by DW1, the observation of the trial court appears to be convincing. Thus, it is to be held that the trial court rightly

appreciated the evidence of PW1, PW2 and DW1 while holding that Ext.A1 was proved by the plaintiff.

13. It is not in dispute that before the amendment of Section 20 of the Specific Relief Act w.e.f. 1.8.2018, grant of specific relief by the court is

absolutely a discretionary relief. It is the settled law that the said discretion is to be exercised on sound and reasonable grounds guided by judicial

principles capable of correction by the courts of appeal. Now, the question that arises for consideration is whether the trial court went wrong in

granting the specific relief itself in the instant case by exercising its discretion?

14. As pointed out by the learned counsel for the defendant, the trial court balanced the status of the plaintiff and the defendant. The trial court found

that even though the defendant also has no other property other than the personal property, she had been residing in a house belonging to her husband.

At the same time, the trial court found that the evidence of PW1 to the effect that he was a poor coolie and he thought of purchasing property for

constructing a house, would show bona fide intention of the plaintiff to purchase the property and therefore, the said desire would justify grant of

discretionary relief. Even though the learned counsel for the defendant raised a contention that no such contention raised in the plaint or in the

evidence of PW1, on perusal of chief affidavit filed by PW1, such an assertion is clearly stated and therefore, the trial court rightly relied on the same.

The contention in negation of such a positive evidence of PW1 at the instance of the learned counsel for the defendant, is found in the negative, since

such an argument is advanced without fully reading the evidence of PW1.

15. Coming to the decision in Asha Joseph's case (*supra*), an agreement of sale was executed on 7.8.2006 whereby, defendant Nos.1 to 3 agreed to

sell their plaint schedule property having an extent of 12.32 acres for a total consideration of Rs.55,44,000/- (Rupees Fifty Five Lakh Forty Four

Thousand only), out of which, Rs.10 Lakh alone was paid as advance. In the said case, the Division Bench of this Court in paragraph No.38 observed

as under:

38. Ext.A2 agreement is dated 07/08/2006. 16 years have elapsed since the execution of the agreement. The price of the property must necessarily have gone up

many fold. Hence directing the defendants to execute a sale deed for the entire extent of the property comprising 12 and odd acres for a sale consideration fixed

years back would be quite unjust, especially when the plaintiff has given only less than 20% of the sale consideration by way of advance at the time of entering

into the agreement. However, a total rejection of the relief of specific performance would also be unjust to the plaintiff. Therefore, keeping in mind, the principles

laid down in the aforesaid decisions, we find that it would be just and proper to grant a decree of specific performance relating to that much extent of property

that could have been purchased for an amount of Rs.10 lakhs at the time of Ext.A2 agreement. As per Ext.A2, the sale consideration for one cent of property has

been fixed at Rs.4,500/- per cent. Therefore for Rs.10 lakhs, the plaintiff would have got about 2.22 acres, that is, two acres and twenty-two cents of property. To

that extent alone, she can be granted a decree for specific performance. Points answered accordingly.

Finally, the Division Bench granted decree for specific performance relating 2.22 acres out of the total extent of 12.32 acres by adjusting the sale

comprised for the said sum. In fact, the ratio of the decree cannot be applied in the instant case, since Rs.1 Lakh out of Rs.2,30,000/- (Rupees Two

Lakh Thirty Thousand only) was paid by the plaintiff in deviation from payment of only Rs.10 Lakh out of Rs.55,44,000/- (Rupees Fifty Five Lakh

Forty Four Thousand only).

16. In Zarina Siddiqui's case (supra), the Apex Court considered a case where 1/3rd share in the suit property was agreed to be sold by the 2nd

defendant in the suit for a total consideration of Rs.40,000/- (Rupees Forty Thousand only), out of which, Rs.5,000/- (Rupees Five Thousand only) was

paid as advance. The plaintiff raised another contention that by the time, he had paid the entire sale consideration to the 2nd defendant and the same

was received by the 2nd defendant for and on behalf of the 1st defendant. In the said case, the 1st defendant raised a contention that he did not get

Rs.5,000/- (Rupees Five Thousand only) as advance and also raised a contention that the said agreement was prepared by his elder brother by

misusing the power of attorney and the 2nd defendant had acted on the ill-advice of the plaintiff and another contention raised was that the property

would fetch more than Rs.3 Lakh on the date of the said agreement and the 1st defendant also sent a notice to the plaintiff on 1.10.1983 denying the execution of the agreement.

17. Adverting to the facts of the said case, in paragraph No.39 in Zarina Siddiqui's case (supra), the Apex Court held as under:

39. Be that as it may, in the facts and circumstances of the case and considering the phenomenal increase in price during the period the matter remained pending

in different courts, we are of the considered opinion that impugned order under appeal be set aside but with a condition imposed upon the Appellant (Plaintiff) to

pay a sum of Rs.15,00,000/-(Rupees Fifteen Lakh) in addition to the amount already paid by the Appellant to the Respondent. On deposit in trial court of

aforesaid amount by the Appellant, for payment to the Respondent, within three months from today, the Respondent shall execute and register the sale deed in

favour of the Plaintiff in respect of the suit property. In the event the aforesaid condition of deposit of Rs.15 lakh is fulfilled within the time stipulated hereinabove

but the Defendant fails to comply with the direction, then the Appellant shall be entitled to execute the decree in accordance with the procedure provided in law.

18. In paragraph No.38 of the said judgment, the Apex Court took note of the contention raised by the defendant stating that that the property would

fetch worth Rs.3 Lakh instead of Rs.40,000/-while granting an escalation price of Rs.15 Lakh more while directing execution of sale deed.

19. In the instant case, the defendant raised a contention that the plaint schedule property would fetch more than Rs.3 Lakh. The execution of Ext.A1

after finalising its sale price on the date of execution of Ext.A1 worth Rs.2,30,000/- (Rupees Two Lakh Thirty Thousand only) was proved and no

evidence otherwise available to see that the value of the property is more than what has been stated in Ext.A1. Though in the written statement, a

contention was raised to the effect that the property would fetch more than Rs.3 Lakh, whether it was on the date of filing of written statement or at

the time of the execution of Ext.A1 was not specifically pleaded. Otherwise, more pleading alone would not suffice to hold that the market value of

the property would come more than Rs.3 Lakh, as contended by the defendant.

20. It is true that in the decision in Zarina Siddiqui's case (supra), the Apex Court dealt the case under special circumstances and granted Rs.15

Lakh towards the escalation price.

21. In the instant case, no such special circumstances subsist so as to follow the ratio in Zarina Siddiqui's case (supra). The case advanced by the

defendant is not at all proved and the plaintiff proved his case as to the execution of Ext.A1 for the sale consideration shown therein. In such a case,

the trial court exercised the discretion. Therefore, there is no reason to interfere with the verdict of the trial court and the discretion exercised by the

trial court is only to be justified in the circumstances already discussed. Holding so, the trial court verdict does not require any interference.

In the result, this appeal fails and the same is dismissed. Needless to say, the plaintiff is entitled to get cost of this appeal to be realised from the

defendant. Accordingly, cost also allowed to the plaintiff in this appeal to be realised from the defendant.

All interlocutory orders stand vacated and all interlocutory applications pending in this appeal stand dismissed.

Registry is directed to inform this matter to the jurisdictional court, forthwith.