

(2012) 03 KL CK 0258

High Court Of Kerala

Case No: Regular Second Appeal . No. 75 of 2012

Shobhana and Others

APPELLANT

Vs

Payoli Babu and Payoli Usha

RESPONDENT

Date of Decision: March 23, 2012

Hon'ble Judges: Thomas P. Joseph, J

Bench: Single Bench

Advocate: P.B. Sahasranaman, Sri. T.S. Harikumar and Sri. K. Jagadeesh, for the Appellant;
AVM. Salahudeen, for R1 and R2, for the Respondent

Final Decision: Dismissed

Judgement

Thomas P. Joseph, J.

Appellants are the legal representatives of plaintiff who filed O.S. No. 134 of 2006 in the first additional Sub Court, Kozhikode for a decree for specific performance or in the alternative, for recovery of Rs. 1,15,000/- with interest at the rate of 12 % per annum. Trial court granted a decree for recovery of Rs. 55,000/- with interest at the rate of 6% per annum. Plaintiff challenged that judgment and decree in the IIIrd Additional District court, Kozhikode in A.S. No. 241 of 2008 but failed. Hence, this second appeal. According to the original plaintiff, he entered into an oral agreement with the second defendant for purchase of her property for Rs. 1,20,000/- and paid Rs. 20,000/- as advance. Plaintiff discharged liability over the property with the Service Co-operative Bank paying Rs. 51,567/- . The bank executed release deed in favour of second defendant on 28-07-2004. Documents of title were returned to the second defendant. Plaintiff paid Rs. 3,433/- to the defendants (1st defendant is the husband of the second defendant) as charges for taking photocopies of relevant documents. He made a further payment of Rs. 15,000/- to the first defendant on 27-10-2004. Second defendant agreed to execute the sale deed on 04-11-2004. First defendant demanded Rs. 20,000/- on 01-04-2004 and that amount also was paid. Defendants informed plaintiff that they are ready to execute the sale deed on 08-11-2004. But, defendants did not come to the office of the Sub Registrar. Plaintiff

claimed that after payment of amounts as above stated, balance payable to the defendants is only Rs. 5,000/- . Hence, the suit for specific performance or in the alternative for recovery of Rs. 1,15,000/- with interest.

2. Defendants admitted that there was an oral agreement on 04-07-2004 for sale of property of the second defendant. But they claimed that, the agreement was to sell the property for Rs. 4,80,000/- at the rate of Rs. 30,000/- per cent. They denied that any amount was paid as advance on the date of agreement. They claimed that plaintiff was to discharge liability over the property with the Service Co-operative Bank. Plaintiff paid Rs. 51,567/- to the said bank. He also paid Rs. 3,433 to get the release deed executed. Thus, plaintiff altogether spent Rs. 55,000/- in connection with the agreement. No other amount was received by any of the defendants. They also claimed that plaintiff failed to pay the balance sale consideration and get the sale deed executed.

3. Plaintiff gave evidence as PW1 and spoke to his case. Ext. A2 is draft sale deed prepared by the plaintiff. First defendant gave contra evidence as DW1.

4. Trial court found that there is no reliable evidence to show that any agreement was made for sale of the property for Rs. 1,20,000/- or that any amount, except Rs. 55,000/- was spent by the plaintiff. Trial court also held that the oral agreement was sometime in June or July, 2004 and even the evidence of PW1 revealed that price per cent in the locality during that time was around Rs. 10,000/- to 60,000/- . DW1 stated that the price was Rs. 50,000/- per cent. In the circumstances, trial court was of the view that it was unlikely that defendants would agree to sell 16 cents for Rs. 1,20,000/- . Trial court also noticed that in the year 1994, second defendant purchased the suit property for Rs. 80,000/- and hence, the agreement pleaded by the plaintiff could not be accepted. In the circumstances, trial court granted a decree for recovery of Rs. 55,000/- with interest of 6 % per annum from the date of the suit, till recovery.

5. In the appeal, plaintiff produced Exts. A5 to A8 which were accepted as additional evidence. Ext. A5 is the copy of document No. 3153 of 2004 while Ext. A6 is copy of document No. 1787/2005. Exts. A7 and A8 are copies of document Nos. 1783 and 1841 of 2006. Exts. A5 to A8 were produced by the plaintiff to show value of land in the locality during the relevant period. First appellate court though admitted those documents in evidence held that there is no evidence regarding similarity of properties covered by Exts. A5 to A8 with the suit property.

6. In this appeal, it is contended by the learned counsel that findings of courts below are not correct. Exts. A5 to A8 should have been accepted and acted upon.

7. Admittedly, the agreement between the parties is oral. Though, original plaintiff claimed to have paid various amounts to the defendants, except the oral evidence of PW1 which is controverted by the evidence of DW1, there is no other evidence for the disputed payments. What is available is only the admission of defendants that

original plaintiff discharged liability of the bank to the tune of Rs. 51,567/- and spent Rs. 3,433/- to get the release deed executed in favour of second defendant. So far as Exts. A5 to A8 are concerned, that does not improve the case of original plaintiff. As pointed out by the first appellate court, similarity of properties is not proved. That apart, question is what was the sale consideration agreed between the parties? So far as the suit property is concerned, I have already referred to the evidence of PW1 and DW1 regarding value. In the year 1994, second defendant purchased the property for Rs. 80,000/- . In the above circumstances, courts below held that it is quite improbable that defendants would have agreed to sell the 16 cents for Rs. 1,20,000/- . The findings of the courts below are based on evidence and involve no substantial question of law.

Hence, this second appeal fails. It is dismissed.