

HIGH COURT OF KERALA**Case Title: Regular First Appeal No. 392 of 2004****Bench: Honorable Mr. Justice Sathish Ninan****Date of Decision: 22nd November 2023****Khalid****VS****B. Sarala**

Subject: Appeal against the judgment in a specific performance suit involving the sale of property, focusing on the readiness and willingness of the plaintiff to perform the contract, and the appropriate rate of interest for the return of advance sale consideration.

Headnotes:

Specific Performance Suit – Sale of Property – Appeal against trial court’s judgment declining specific performance and ordering return of advance sale consideration – Original suit involved an agreement (Ext.A1) for sale of property, with the plaintiff alleging defendant’s evasion of performance. [Para 2]

Readiness and Willingness to Perform – Key issue in the appeal – Whether the plaintiff demonstrated readiness and willingness to perform the agreement terms, crucial for specific performance – Trial court found plaintiff lacking in proving continued readiness and willingness. [Paras 5, 7]

Evidence Analysis – Consideration of Ext.A2 (notice), Ext.A3 (defendant’s willingness), Ext.B2 (defendant’s presence at Sub Registry Office), and Ext.A4 (plaintiff’s bank passbook) – Evidence indicated defendant’s readiness but not plaintiff’s. [Paras 6-7]

Financial Capacity – Plaintiff’s inability to show sufficient funds for balance sale consideration – Reliance on oral statement about land acquisition compensation, without supporting evidence. [Para 7]

Interest on Advance Sale Consideration – Modification of trial court's order – Interest rate increased to 12% per annum from agreement date to filing of suit, then 9% per annum till realisation, considering the defendant's use of the amount and banking rates during the relevant period. [Para 9]

Decision – Appeal partially allowed – Judgment modified regarding interest rate, upheld in other aspects. [Para 9]

Referred Cases: Not specifically mentioned in the provided judgment excerpt.

Representing Advocates:

For Appellants: Sri. P.V. Jayachandran, Venugopalan Menon

For Respondent: Sri. James Abraham, Sri. P. Jacob Varghese Sr.

HIGH COURT OF KERALA AT ERNAKULAM PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

**WEDNESDAY, THE 22ND DAY OF NOVEMBER 2023 / 1ST
AGRAHAYANA, 1945**

**RFA NO.392 OF 2004 AGAINST THE JUDGMENT IN OS 35/2002 OF
PRINCIPAL SUB COURT, ALAPPUZHA**

----APPELLANTS:

1 KHALID, [DIED; LRs IMPEADED]
S/O AHAMMED, SURUMI MANZIL, PERUNNERMANGALAM MURI,
MARARIKULAM NORTH VILLAGE, NOW RESIDING AT
PALATHARAKKAL HOUSE, KATTUR MURI, AMBALAPUZHA.

*** ADDL. APPELLANTS 2 TO 8 IMPEADED**

ADDL. JAMEELA, AGED 70,
A2 W/O LATE KHALID, SURUMI MANZIL, S L PURAM,
MARARIKULUM,ALAPPUZHA-688523.

ADDL. FHATHIMA, AGED 45, D/O KHALID,PUTHUVAL, VANDANAM
A3 ALAPPUZHA-688005.

ADDL. SHEMER,
A4 SURUMI MANZIL, AGED 41, S/O KHALID, NAJIA MANZIL, S
L PURAM, ALAPPUZHA-688523.

ADDL. SHAMNA, AGED 38, W/O SAJEER, FAUSIA MANZIL,
A5 MARARIKKULUM ALAPPUCHA-688523.

ADDL. SHAMLA, AGED 34, D/O KHALID, NAJIS MANZIL, S L
A6 PURAM, ALAPPUZHA-688523.

ADDL. SHAFEEK, AGED 35,
A7 S/O KHALID, SURUMI MANZIL, S L PURAM,
MARARIKULUM, ALAPPUZHA688523.

ADDL. SHAHEELA, AGED 31, W/O SHABEER, SURUMI MANZIL, S
A8 L PURAM, ALAPPUZHA-688523.

* **[LRS OF THE SOLE APPELLANT IS IMPLEADED AS ADDITIONAL
A2 TO A8 VIDE ORDER DATED 01.11.2023 IN IA NO.1/2023]**

RFA NO. 392 OF 2004

-2-

BY ADVS.
SRI.P.V.JAYACHANDRAN
P.V.JAYACHANDRAN
VENUGOPALAN MENON

RESPONDENT/DEFENDANT:

B.SARALA, 'ATHIRA', VAZHISSEERI WARD, ALAPPUZHA.

BY ADVS.
SRI.JAMES ABRAHAM SRI.P.JACOB VARGHESE SR.

THIS REGULAR FIRST APPEAL HAVING COME UP FOR
HEARING ON 22.11.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

SATHISH NINAN, J.

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R.F.A. No.392 of 2004

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Dated this the 22nd day of November, 2023

J U D G M E N T

Dissatisfied with the grant of alternate relief for return of advance sale consideration in a suit for specific performance, the plaintiff is in appeal.

2. Ext.A1 agreement dated 01.12.2000, is sought to be specifically enforced. As per Ext.A1, 46 cents of property is agreed to be sold by the defendant to the plaintiff for a total sale consideration of ` 5,30,000/-. An amount of ` 45,000/- is paid as advance sale consideration. The period fixed for performance is up to 30.04.2001. Alleging that the defendant is evading performance of the agreement, the suit has been filed.

3. The defendant contended that the non- registration of the sale deed occurred consequent on the default of the plaintiff. The plaintiff was not ready and willing to perform the contract. The plaintiff did not have sufficient funds to pay the balance sale consideration. It was also contended that time was the essence of the contract.

4. The trial court considering the entire facts and circumstances, exercised the discretion declining specific performance; decree was passed directing return of the advance sale consideration with interest.

5. The points that arise for consideration in this appeal are :-

(i) Does the evidence on record prove the readiness and willingness of the plaintiff to go ahead with the agreement ?

(ii) On the facts and circumstances of the case, is the plaintiff entitled for a decree for specific performance ?

(iii) Does the decree and judgment of the trial court warrant any interference ?

6. The execution of Ext.A1 agreement and its terms are not in dispute. Parties allege each other to be responsible for the non-performance. Ext.A2 is the notice dated 24.07.2001 issued by the plaintiff to the defendant calling upon him to have the property measured on 08.08.2001 and to appear before the document writer and Sub Registry Office (SRO) on 09.08.2001 for execution of the conveyance. As per Ext.A3 dated 03.08.2001, the defendant expressed his willingness. The defendant alleges that though he was present at the property on 08.08.2001 and at the SRO on 09.08.2001 for executing the conveyance, the plaintiff did not turn up. The plaintiff committed breach, it is contended. Though the plaintiff would contend that he was present for measurement on 08.08.2001, there is no evidence in the said regard. So also there is no evidence to show that the plaintiff had presented himself before the document writer and at the SRO on 09.08.2001. At the same time, the defendant produced Ext.B2, the registration copy of a document that was registered at the SRO on 09.08.2001 wherein he had stood as a witness. Ext.B2 shows that the defendant was present at the SRO on that day. On the contrary, there is no evidence to find that the plaintiff was present at the SRO on that day.

7. In the written statement, the defendant has contended that the plaintiff did not have the sufficient funds to go ahead with the transaction. To prove the financial capacity, the plaintiff has produced Ext.A4 pass book relating to his bank account. Ext.A4 shows that on 26.05.2001 he had an amount of ` 2,50,000/- in deposit. However, it is seen that prior to the said date there was only meagre amounts in the account. So also, out of the total sale consideration of ` 5,30,000/-, only an amount of ` 45,000/- was paid as advance sale consideration. Therefore, the balance sale consideration payable is ` 4,85,000/-. The amount in deposit is only ` 2,50,000/-. With regard to the remaining part

of the consideration, PW1 would state that he had some land acquisition compensation amount available with him.

However, apart from the mere oral statement, no evidence in the said regard is produced. No details regarding the acquisition or receipt of compensation amount if any, are produced. Therefore, there is no material to find that the balance consideration was available with him.

Moreover, even going by Ext.A4 pass book, the deposit of ` 2,50,000/- is only on 26.05.2001 i.e. after the period fixed for performance. The suit is filed on 13.03.2002. Suffice to notice that, the plaintiff has failed to prove his continued readiness and willingness to perform Ext.A1 agreement. To obtain a decree for specific performance, he must prove his continued readiness and willingness to perform the agreement. Therefore, the plaintiff is not entitled for a decree for specific performance.

8. The 46 cents of property covered under Ext.A1 isa part of a larger extent of 68 cents. With regard to the southern 22 cents, there was an agreement for sale between the plaintiff and the husband of the defendant. A copy of the agreement is produced as Ext.B1. Ext.B1 is also dated 01.12.2000 i.e. the same date of Ext.A1. The period for performance fixed therein was one month. Ext.B1 fructified into sale. The plaintiff, as PW1 chose to deny Ext.B1. In his cross-examination, however at a later point of time he admitted Ext.B1 agreement. Though it may not be of much significance, it tells upon his bonafides and conduct. The trial court has exercised its discretion to refuse a decree for specific performance. The exercise of discretion cannot be said to be perverse or without any material. Thus I find that the plaintiff is not entitled for a decree for specific performance. Refusal of such relief by the trial court is only to be upheld.

9. Now coming to the claim for return of advance sale consideration, it is to be noticed that the trial court has granted interest only at the rate of 6% per annum from the date of agreement/payment. The defendant having utilised the amount, is bound to pay reasonable interest. Considering the banking rates of interest during the relevant period, I deem it appropriate that the plaintiff be granted interest at the rate of 12% per annum till date of suit and thereafter at the rate of 9% till date of realisation.

Resultantly, the decree and judgment of the trial court will stand modified to the limited extent of refixing the rate of interest at 12% per annum from the date of agreement (01.12.2000) till date of filing of the suit (13.03.2002), and thereafter at the rate of 9% per annum till date of realisation. In all other respects, the decree and judgment of the trial court are affirmed.

Appeal is allowed as above.

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