

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).21844 OF 2017
Arising out of SLP(C) No.2106 OF 2015

P. CHINNAPPA GOUNDER

Appellant(s)

VERSUS

G. K. RAJALAKSHMI & ANR.

Respondent(s)

O R D E R

R.BANUMATHI, J.

Leave granted.

The question falling for consideration in this appeal is whether the appellant-plaintiff who was unsuccessful in the suit for specific performance is entitled to refund of the earnest money of Rs.4,00,000/- (Rupees Four Lakh only) which was paid by him at the time of entering into an agreement of sale dated 6.1.2001 to the 1st respondent/defendant/the original vendor.

Based on the agreement of sale dated 6.1.2001, the appellant-plaintiff has filed the suit for specific performance and the suit came to be decreed by the Trial Court. In the meanwhile, the 1st respondent sold the property to the 2nd respondent/second defendant on 20.4.2001 that is, shortly after expiry of five days stipulated for

completion of sale.

Being aggrieved by the decree for specific performance, the second-respondent herein/subsequent purchaser had filed the appeal before the High Court of Madras, Madurai Bench, in A.S. No. 857 of 2003. The High Court held that the 2nd respondent is a bona-fide purchaser for value and that he had purchased the property without knowledge of the existence of agreement between the appellant and the 1st respondent. The High Court set aside the judgment and decree for specific performance and dismissed the suit filed by the appellant-plaintiff.

The learned counsel appearing for the 1st respondent-defendant has drawn our attention to the terms in the agreement of sale which enables the defendant to forfeit the advance amount of Rs.4,00,000/- (Rupees Four Lakh only) paid by the plaintiff, in case if the plaintiff fails to complete the sale transaction on or before 15.4.2001. As we pointed out earlier, within five days of the date stipulated for completion of sale i.e. 15.4.2001, the 1st respondent-defendant had sold the property to the 2nd respondent on 20.4.2001. Be it noted that the 1st respondent-defendant had also got the sale consideration amount from the 2nd respondent. As submitted by the learned counsel for the appellant, the defendant had not taken any plea justifying the forfeiture of the entire amount of Rs.4,00,000/- (Rupees Four Lakh only). In such facts and

circumstances, in our view, the 1st respondent-defendant cannot forfeit the entire advance amount of Rs.4,00,000/- (Rupees Four Lakh only).

While dismissing the suit of the appellant-plaintiff, the High Court should have kept in view the amount of earnest money of Rs.4,00,000/- (Rupees Four Lakh only) paid by the appellant-plaintiff to the 1st respondent, pursuant to the agreement dated 6.1.2001. While setting aside the judgment of the Trial Court, the High Court should have considered the issue of refund of earnest money advanced by the appellant-plaintiff.

The appeal is, therefore, partly allowed by modifying the impugned judgment of the High Court to the aforesaid extent. The 1st respondent-G.K.Rajalakshmi is directed to refund the amount of Rs.4,00,000/- (Rupees Four Lakh only) to the appellant, with interest @ 6% per annum from 6.1.2001 till the date of realisation.

No costs.

.....J
(R. BANUMATHI)

.....J
(UDAY UMESH LALIT)

NEW DELHI;
DECEMBER 13, 2017

ITEM NO.9

COURT NO.3

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).21844/2017 @ SLP (C)No. 2106 of 2015

(Arising out of final judgment dated 16.9.2014 passed by the High court of Judicature at Madras at Madurai Bench in A.S.No. 857 of 2003)

P. CHINNAPPA GOUNDER

Appellant(s)

VERSUS

G. K. RAJALAKSHMI & ANR.

Respondent(s)

Date : 13-12-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Mr. P. Ramesh, AOR

For Respondent(s) Mr. S. Santanam Swaminadhan, Adv.
Ms. Nishtha Khurana, Adv.
Mr. T.Anil Kumar, Adv.
Mr. Anil Kumar Tandale, AOR
Mr. Zoheb Hossain, AOR
Mr. Fahad M. Khan, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeal is partly allowed in terms of the signed
order.

(B. PARVATHI)
COURT MASTER(TAPAN KUMAR CHAKRABORTY)
BRANCH OFFICER

(Signed order is placed on the file)