



WEB COPY

S.A.No.1017 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 25.07.2024****PRONOUNCED ON : 30.07.2024****CORAM****THE HONOURABLE MR.JUSTICE V.SIVAGNANAM****S.A.No.1017 of 2012**

M.Panimalar ... Appellant

Vs.

V.Mala ... Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgment and Decree of the Additional District and Sessions Court No.3, Vellore, dated 17.07.2012, in A.S.No.4 of 2012, reversing the Judgment and Decree of the Subordinate Court, Tirupattur, dated 06.08.2010, in O.S.No.144 of 2007.

For Appellant : M/s. V.Srimathi
For Respondent : M/s. J.James

JUDGMENT

Challenge in this second appeal is made to the Judgment and Decree dated 17.07.2012 in A.S.No.4 of 2012, on the file of the Additional District and Sessions Court No.3, Vellore, reversing the Judgment and Decree dated



S.A.No.1017 of 2012

06.08.2010, in O.S.No.144 of 2007, on the file of the Subordinate Court,

Tirupattur.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3. The case of the plaintiff, in brief, is that the suit properties originally belongs to the defendant. The defendant agreed to sell the suit schedule properties to the plaintiff for Rs.55,000/- per cent on 21.03.2007 and in part performance, the defendant had received Rs.50,000/- cash toward the advance and agreed to among other terms and conditions to complete, execute and register the sale deed on or before 20.06.2007 at the expenses of the plaintiff. In spite of the plaintiff's readiness and willingness to perform her part of the contract with the balance sale consideration, the defendant was postponing and had failed to perform her part of the contract. Therefore, the plaintiff had issued a registered notice dated 19.11.2007 through her Advocate to execute, complete and register the sale deed at her expenses after due receipt of the balance sale consideration, but the defendant had failed to do so. Hence the plaintiff was constrained to file the suit for specific performance of contract against the defendant.



S.A.No.1017 of 2012

WEB COPY

4.The defendant contested the suit, denied the allegations in the plaint and filed a written statement, contending that the allegations contained in paragraph 4 of the plaint are false. The suit properties absolutely belong to the defendant. It is true that the defendant agreed to sell the suit properties at the rate of Rs.55,000/- per cent on 21.03.2007 and received an advance of Rs.55,000/-. It was also agreed that the sale was to be executed on or before 20.06.2007. It is not correct to state that the plaintiff was ready and willing to execute the sale deed after duly paying the balance of sale consideration. The plaintiff never approached the defendant with the balance sale consideration and asked the defendant to execute the sale deed. The plaintiff was never willing to perform her part of the contract. It is not correct to state that the defendant was postponing the execution of the sale deed. Even at the time of agreement, it was mutually agreed that time was the essence of the contract. It is highly imaginary and not correct to state that the defendant is making arrangements to alienate and encumber the suit properties to third parties. It is false to state that the plaintiff had issued a lawyer's notice on 19.11.2007 to the defendant. The defendant did not receive any such notice. It is false to state that the defendant failed to perform her part of the contract and it is the



S.A.No.1017 of 2012

plaintiff, who failed and neglected to perform her part of the contract. Thus,

he prayed for the dismissal of the suit.

5. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

1. Whether the plaintiff is entitled to claim the relief of specific performance?

2. Whether it is correct to state that the defendant had not made any arrangements to alienate and encumber the suit properties to third parties?

3. Whether it is correct to state that there is no cause of action for the suit?

4. To what other relief, the plaintiff is entitled to?

6. Before the Trial Court, in support of the plaintiff's case, PWs 1 & 2 were examined, 3 documents were marked as Ex.A.1 to Ex.A.3. On the side of the defendant, DW1 was examined and no documents were marked.



S.A.No.1017 of 2012

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court decreed the suit as prayed for.

8. Aggrieved over the same, the defendant had filed A.S.No.4 of 2012, before the Additional District and Sessions Court No.3, Vellore. The First Appellate Court, after considering the entire materials and evidence on record, allowed the appeal with a direction to the defendant to repay the advance amount of Rs.50,000/- to the plaintiff with an interest @ 7.5% per annum from 21.03.2007 till the date of repayment and set aside the decree and judgment of the Trial Court. Aggrieved by the same, the plaintiff has filed the present second appeal.

9. The second appeal has been admitted on the following substantial questions of law:

1) Whether the lower appellate Court is justified dismissing the suit for the non deposit of the balance consideration on the date of filing the suit, when the explanation to section 16 (c) of the Specific Relief Act did not oblige the plaintiff to take such a recourse?



S.A.No.1017 of 2012

2. Whether the finding of the lower appellate Court is not contrary to the provision of section 16 (c) of the Act and principles laid down in (2011) 3 MWN (Civil) 559?

3. Whether the lower appellate Court is justified overlooking the fact that the plaintiff had deposited the amount on 11.2.2010 and established his continuous readiness and willingness?

10. The learned counsel for the appellant submitted that the First Appellate Court erred in reversing the well considered judgment of the Trial Court. The findings of the First Appellate Court that the plaintiff had failed to deposit the balance sale consideration on the date of filing of the suit, and therefore, it reflects no readiness and willingness to perform the contract on the part of the appellant is against section 16 (c) of the Specific Relief Act and erroneous. As per section 16 (c) of the Specific Relief Act, the plaintiff is not obliged to deposit the amount before filing the suit for specific performance and this fact is overlooked by the First Appellate Court and the First Appellate Court failed to properly appreciate the pleadings and evidence of the plaintiff, which clearly proves the readiness and willingness of the plaintiff. The



S.A.No.1017 of 2012

plaintiff had deposited the amount on 11.03.2010 in the Court deposit. The First Appellate Court failed to appreciate the fact that time is not the essence of the contract in respect of immovable properties and the learned counsel reiterated the other grounds raised in the grounds of appeal and thus, pleaded to allow the appeal.

11.The learned counsel for the respondent supported the judgment of the First Appellate Court and contended that on 21.03.2007, the sale agreement was executed and it was also agreed that the sale was to be executed on or before 20.06.2007. The plaintiff failed to perform her part of the contract and there is no readiness and willingness on the part of the plaintiff. The plaintiff never approached the defendant with balance sale consideration and asked the defendant to execute the sale deed. Time is the essence of the contract. The First Appellate Court had rightly appreciated this fact and allowed the appeal. There is no ground for interference and no merits in this case and thus pleaded to dismiss the appeal. To support his argument, he relied on the judgment in *Alagammal and others vs. Ganesan and another reported in (2024) 3 SCC 232*.



S.A.No.1017 of 2012

12.I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments passed by the Courts below.

13.On perusal of the records and evidence, it is seen that the suit properties is owned by the defendant. The plaintiff entered into an agreement with the defendant to purchase the plaint schedule properties with a sale consideration of Rs.2,75,000/- (Rs.55,000/- per cent) and received an advance of Rs.50,000/-. The balance sale consideration is Rs.2,25,000/- and the transaction should be completed on or before 20.06.2007.

14.The sale agreement is admitted by the defendant in paragraph No.4 of her written statement. For better appreciation, it is extracted hereunder:

4) The allegations contained in para 4 of the plaint are false. It is true that the defendant agreed to sell the suit properties at the rate of Rs.55,000/- per cent on 21.03.2007 and received an advance of Rs.55,000/-. It was also agreed that the sale was to be executed on or before 20.06.2007.



S.A.No.1017 of 2012

14.1.It is true that the defendant agreed to sell the suit properties at the rate of Rs.55,000/- per cent on 21.03.2007 and received an advance of Rs.55,000/- and it was also agreed that the sale has to be executed on or before 20.06.2007. Further, on perusal of the records, it is noticed that the defendant admitted the same in Ex.A1 sale agreement.

15.Further, from the judgment of the First Appellate Court, it is noticed that the plaintiff has filed the lodgment schedule for depositing the balance sale consideration, but not deposited the balance sale consideration before the Court. For better appreciation, the relevant portion is extracted hereunder:

“நீதிமன்றத்தில் மீதி கிரைய தொகையை டெபாசிட் செய்வதற்கு லாட்ஜ்மென்ட் ஷெட்யூல் தாக்கல் செய்த பிறகு பணத்தை ஏன் டெபாசிட் செய்யவில்லை என்று கேட்டால் நீதிமன்றத்தில் உத்திரவு போட்ட பிறகு கட்டிக்கொள்ளலாம் என்று வழக்கறிஞர் சொன்னதன் பேரில் வைப்பீடு செய்யவில்லை” என்று மட்டுமே கூறியுள்ளார்”.

16.Further, it is noticed that the plaintiff was examined on 09.03.2010, till that date, the balance sale consideration was not deposited before the Court. The plaintiff had not taken any action to complete the sale transaction



S.A.No.1017 of 2012

on or before 20.06.2007. Further, the averment that the plaintiff was present at the Sub Registrar Office, Jollarpet, with balance consideration and sent notice to the defendant to be present is a false one. The notice sent to the defendant was not properly addressed. Ex.A2 is the notice sent by the plaintiff to the defendant, in which, he has clearly mentioned about the address of the defendant. But in the returned notice Ex.A3, he has mentioned the wrong address. Therefore, that notice was not served to the defendant and returned. It exposes malfe intention of the plaintiff. It is observed by the First Appellate Court in paragraph 19 of its judgment. For better appreciation, the relevant portion is extracted hereunder:

19.வா.சா.ஆ.2 ஆக எதிர்மேல்முறையீட்டாளர் தரப்பில் அனுப்பப்பட்ட சட்ட அறிவிப்பில் இந்த எதிர் மேல்முறையீட்டாளர் மேல்முறையீட்டாளரின் முகவரியை தெளிவாக குறிக்கப்பட்டு, ஆனால் வா.சா.ஆ.3 ஆன மேல்முறையீட்டாளருக்கு சார்வாகாமல் திரும்பி வந்த பதிவஞ்சலில் வேறு ஒரு முகவரி காட்டப்பட்டுள்ளது. எனவே, மேல்முறையீட்டாயாளர் தரப்பில் வாதிட்டதுபோல் இந்த 19.11.2007 அன்று அனுப்பப்பட்ட சட்ட அறிவிப்பு என்பது மேல்முறையீட்டாளர் கைக்கு கிடைக்கப்பெறவில்லை என்றும், 19.11.2007 அன்று இந்த எதிர்மேல்முறையீட்டாளர் மேல்முறையீட்டாளரை 06.12.2007ம் தேதி



S.A.No.1017 of 2012

வியாழக்கிழமை அன்று ஜோலார்பேட்டை சார்பதிவாளர் அலுவலகத்திற்கு வரவேண்டும் என்றும், மேல்முறையீட்டில் கண்ட சொத்துக்களை கிரையம் செய்து தர வேண்டும் என்று கேட்ட விவரம் இந்த மேல்முறையீட்டாளருக்கு தெரியவில்லை. எனவே ஒரு முறையான அறிவிப்பை மேல்முறையீட்டாளருக்கு அனுப்பாமல் வேண்டும் என்றே வழக்கு தாக்கல் செய்ய வேண்டும் என்று வேறு ஒரு முகவரி கொடுத்து வா.சா.ஆ.3 ஆன பதிவஞ்சல் அனுப்பப்பட்டது இந்த மேல்முறையீட்டை வஞ்சிக்கும் எண்ணத்துடன் செயல்பட்டார் என்ற வாதம் ஏற்கும்படியாக உள்ளது. என்னில் 06.12.2007 அன்று இந்த எதிர்மேல்முறையீட்டாளர் மற்றும் சாட்சிகளும் ஜோலார்பேட்டை சார்பதிவாளர் அலுவலகத்தில் மேல்முறையீட்டில் கண்ட சொத்தை கிரையம் கொடுக்க தயாராக இருந்தனர் என்பதற்கான எந்த ஆவணமும் எதிர்மேல்முறையீட்டாளர் தரப்பில் தாக்கல்செய்யவில்லை. இந்த விவரமானது அ.வ.எண்.144/2007ல் வா.சா.2 ஆக விசாரணை செய்யப்பட்ட விஜயன் என்பவர் வா.சா.ஆ.1 ஆக கிரைய ஒப்பந்த பத்திரத்தில் சாட்சி கையொப்பம் செய்தவர் ஆவார். அவருடைய குறுக்கு விசாரணையில் "சார்பதிவாளர் அலுவலகத்தில் நாங்கள் இருந்து வந்தோம் என்பதை காண்பிக்க ஆவணம் எதுவும் தாக்கல் செய்யவில்லை" என்று கூறியுள்ளார்.



S.A.No.1017 of 2012

17.No doubt, in the case of sale of immovable property, there is no presumption as to time being the essence of contract. But, it has to be performed in a reasonable time if conditions are evident: (1) from express terms of contract; (2) from the nature of the property; and (3) from surrounding circumstances. Therefore, the Court should look at all relevant circumstances including the time limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised.

18.The admitted position in this case is that the time is indicated in the agreement Ex.A1. In the sale agreement Ex.A1, it is mentioned that the sale has to be concluded on or before 20.06.2007. It is the case of the plaintiff that he is able to afford and pay the balance sale consideration before the expiry of the time limit, i.e. on or before 20.06.2007. The evidence indicates that even after the filing of the suit, the plaintiff filed only lodgment schedule and not deposited the entire balance amount of sale consideration. Further, Ex.A2 and Ex.A3 notices reflects the attitude of the plaintiff and he has not approached this Court with clean hands. Further, it is also to be noted that the time limit i.e., on or before 20.06.2007 having not been extended, therefore, no enforceable right will exist in favour of the plaintiff for getting the relief under



S.A.No.1017 of 2012

the Specific Relief Act 1963. The First Appellate Court observed that the plaintiff had not approached the Court with clean hands and not come forward to complete the sale transaction and there is no readiness and willingness on the part of the plaintiff and therefore, rightly set aside the judgment and decree of the Trial Court and ordered to refund the advance amount to the plaintiff with 7.5% interest till the payment of the entire amount.

19. Therefore, I find no ground to interfere with the findings of the First Appellate Court. There is no consideration of irrelevant fact and no evidence is misconceived. The plaintiff has not deposited the amount within the time limit. Therefore, the First Appellate Court is justified in dismissing the suit for non payment of the balance sale consideration and its finding is not contrary to the provisions of the Specific Relief Act and the principles laid down in (2011) 3 MWN (Civil) 559.

20. In the light of the abovesaid factors, it is found that the First Appellate Court, on a proper appreciation of the materials placed on record, both oral and documentary evidence adduced by the respective parties and the principles of law governing the same, had rightly allowed the appeal and there



S.A.No.1017 of 2012

is no misappreciation of evidence and irrelevant consideration. There is no ground to hold that the findings are perverse. The substantial question of law formulated in the second appeal is accordingly answered.

21. For the aforesaid reasons, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

sli

30.07.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

To

1.The Additional District and Sessions Court No.3,
Vellore.

2.The Subordinate Court, Tirupattur.



WEB COPY



S.A.No.1017 of 2012

V.SIVAGNANAM, J.

sli

Pre-Delivery Judgment made
in S.A.No.1017 of 2012

30.07.2024