

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 05.01.2015

THE HON'BLE Ms.JUSTICE K.B.K.VASUKI

SA.No.1517 OF 1997

1.Anumathappa
2.Muniamma
3.Lakshmiddevamman @ Lakshamma
4.Sarojamma
5.Erappa @ Veerappa
6.Gowramma @ Gowri ... Appellants/Defendants 1 to 3 & 5 to 7

V.

1.Govindaraj
2.Goopalliamma .. respondents/Plaintiff/Defendant 4

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 23.12.1996 made in AS.No.147 of 1996 on the file of the Subordinate Judge, Hosur, confirming the judgment and decree dated 08.04.1996 made in OS.No.326 of 1990 on the file of the District Munsif, Hosur.

For appellants : Mr.N.E.A.Dinesh
For 1st respondent : Mr.M.Veerappan
For 2nd respondent : Unserved.

JUDGMENT

The defendants are the appellants herein.

2.The present second appeal is filed against the concurrent judgment and decree of the Courts below, thereby decreeing the suit for specific performance of the suit sale agreement.

3.It is the definite case of the plaintiff that the suit agreement was executed by the first defendant along with other defendants and all the defendants duly affixed their signatures. The sale consideration agreed was Rs.6,000/- and the first defendant received Rs.4,000/- as advance and the plaintiff had been repeatedly calling upon the defendants to receive the balance sale consideration and to execute the sale deed and the first defendant had been for no reason postponing the same and had thereafter refused to do so. The plaintiff filed the suit for specific performance, on the strength of Ex.A1 sale agreement dated 14.03.1986 having the signatures of not only the first defendant, but also his wife, son and daughters.

4.The suit relief was opposed by the defendants by filing the written statement for himself and also on behalf of other defendants. Though the execution of the sale agreement by the first defendant was

admitted the signatures of the defendants 2 to 7 in the same and receipt of advance of Rs.4,000/- was denied. The other contention raised on the side of the defendants is that the period fixed in the document was exactly three years. As the time is the essence of the contract, the plaintiff, having failed to perform his part of the contract by being ready with the balance sale price within the stipulated period, is dis-entitled to claim the suit relief.

5.Both the parties in support of their respective contentions, adduced oral and documentary evidence. The trial court after analysing the entire evidence adduced before the same, found that Ex.A1 sale agreement was duly executed by the first defendant as well as other defendants and the first defendant received Rs.4,000/- as advance and the plaintiff had satisfactorily proved his readiness and willingness to pay the balance sale consideration and to get the sale deed executed. The trial Court having found that the defendants came forward with different stand at different stage, was inclined to accept the plaintiff's case and rejected the defence and accordingly decreed the suit. Aggrieved against the same, the defendants preferred an appeal in AS.No.147 of 1996. The lower appellate court, after duly considering the respective contentions raised on both sides in the light of the available oral and documentary evidence, agreed with the findings of the trial court and confirmed the decree and dismissed the appeal. Hence, the present second appeal by the defendants before this Court.

6.The Second Appeal is admitted on the following Substantial Questions of Law :

a)When there is material alteration regarding the time for performance of the agreement whether the plaintiff is entitled to the relief of specific performance?

b)When the materials on record clearly establish that time was the essence of the contract and that the plaintiff was not ready and willing to perform his part of the contract, whether the courts below are correct in granting the relief to the plaintiff?

c)When the plaintiff did not come with clean hands whether he is entitled to equitable relief of specific performance?

7.Heard the rival submissions made on both sides and perused the records.

8.The plaintiff has through his plaint averments and his oral evidence as PW1, reiterated his stand that he has always been ready and willing to perform his part of the contract and it is the first defendant who refused to receive the balance sale consideration and to come and execute the sale deed. The plaintiff, in order to prove his readiness has also produced Ex.A2 notice issued by him calling upon the first defendant to perform his part of contract and to

complete his transaction. Whereas, the defendants have in their written statement, as well as in the witness box come forward with the pervaricating statement. The defendants on one hand admitted the execution of the document and receipt of the advance, but on the other hand denied the execution and the signatures of other defendants etc. The first defendant as DW1 has also not come forward with the definite case in this regard.

9.Considering the inconsistent nature of the stand taken by the defendants and the absence of any pleadings about the material alteration in Ex.A1 regarding the time for performance of the sale agreement and considering the evidence of PW2, who is the scribe of the document and the evidence of DW1 and also considering the absence of any pleading and proof on the side of the defendants, the substantial questions of law "a" and "c" raised for the first time at the second appeal stage, need not be answered.

10.As far as the substantial question of law "b" is concerned, the time fixed in Ex.A1 agreement for completing the transaction is three years and the same is also categorically admitted in the written statement, reply notice and also in the witness box by the defendants. The presumption regarding the agreement for sale in respect of immovable properties is the time is not the essence of the contract and it is for the defendants to prove the same. In the absence of any specific case put forth herein, the defendants cannot be permitted to say that the time is the essence of the contract. Even otherwise, the time fixed in the agreement for completing the transaction is three years and the plaintiff issued notice within the reasonable time after the expiry of three years and filed the suit within the period of limitation. In that event, the defendants cannot raise any issue regarding time limit for enforcing the contract and it is not a fit case, wherein, such plea can be permitted to be raised. Thus the appellants have not made out any ground much less valid ground to interfere with the well considered judgment of the Courts below and the substantial questions of law are accordingly answered against the defendants.

11.In the result, the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

vsg/tsh

To

- 1.The Subordinate Judge, Hosur.
- 2.The District Munsift, Hosur.

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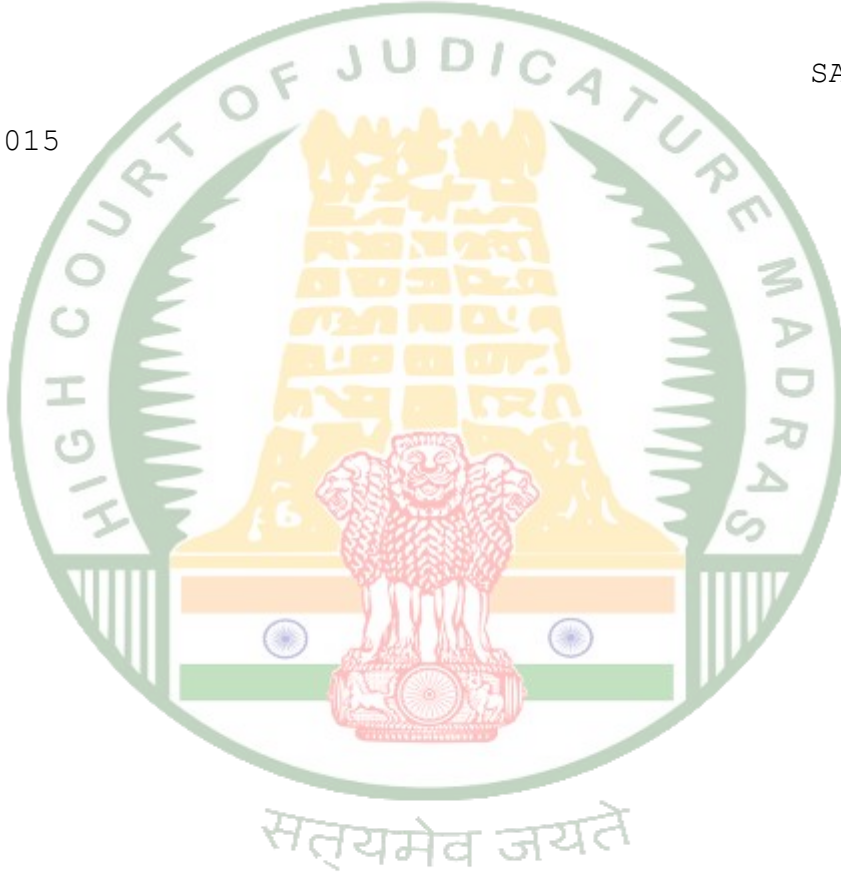
The Section Officer, V.R.Section, High Court, Madras-104

1 cc to Mr.V.Nicholas , Advocate Sr.No.417

1 cc to Mr. Veerappan, Advocate Sr.No.171

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rj(co)
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