

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22..09..2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

O.S.A.No.191 of 2015

Pushpa Raju

..Appellant

Versus

Vasumathi H.Shah

..Respondents

Prayer : Appeal filed under XXXVI Rule 9 of O.S.Rules and Clause 15 of the Letters patent against the judgment and decree dated 22.01.2015 in C.S.No.553 of 2014.

For Appellant :: Mr.A.P.S.Kasturi Rangan for
M/s.Sampathkumar & Asso.,

For Respondent :: Mr.R.Parthasarathy for
M/s.Sathish Parasasran (Caveator)

J U D G E M E N T

(Order of the Court was made by T.S.SIVAGNANAM, J.)

The appellant is the plaintiff in C.S.No.553 of 2014, which was filed for a decree of specific performance by directing the respondent/defendant, to execute a sale deed in favour of the appellant/plaintiff on receipt of the balance sale consideration in respect of the suit property, pursuant to an agreement for sale, dated 25.03.2010 and for a decree for permanent injunction.

2. The respondent/defendant filed an Application in A.No.5568 of 2014, under Order 7, Rule 11(d) CPC, to reject the plaint as being barred by limitation. The Application was resisted by the appellant/plaintiff stating that she has through out shown her readiness and willingness to perform her part of the obligation under

the agreement for sale.

3. The learned Single Judge by the impugned order accepted the case of the respondent/defendant, allowed the application and rejected the plaint as being barred by limitation.

4. The learned counsel appearing for the appellant elaborately referred to the factual details and submitted that in a suit for specific performance, time is not the essence of the contract and limitation starts from the date on which the respondent refuses to perform the obligation under the contract. It was further contended that the plea of limitation is a mixed question of law and the fact which could be decided only at the time of trial. Further, it is submitted that the respondent/defendant for the first time sent a reply on 10.06.2014, refusing to perform her part of the contract, which gave rise to cause of action and the suit filed within three years there from is within the period of limitation.

5. We have heard the submissions made by the learned counsel appearing for the appellant and perused the materials placed on record.

6. In terms of the agreement for sale dated 25.03.2010, the total sale consideration payable was fixed at Rs.42,50,000/-, and the appellant/plaintiff has paid a sum of Rs.2,00,000/- as advance under the agreement and the balance amount was payable on or before 25.08.2010 and this is the specific date fixed in the agreement.

7. The case of the appellant/plaintiff is that she was ready and willing to perform her part of the obligation under the agreement, written several letters to the respondent and none of the letters were replied by the respondent/defendant and only on 10.06.2014, the respondent refused to perform the obligation under the agreement which lead to the filing of the suit.

8. The learned Single Judge rightly came to a conclusion that the suit ought to have been filed within three years from the date fixed in the agreement for sale, the date by which the performance of the sale should take place and referred to Article 54 of the Limitation Act, which states that for specific performance of contract, the period of limitation is three years and the period to be computed from the date fixed for the performance or if no such date is fixed, when the plaintiff has noticed, the performance is refused.

9. Admittedly in the instant case, the date has been fixed for the performance of the contract and the limitation of three years should be computed from the said date and not from the date of the respondent/defendant's letter dated 10.06.2014, which itself is after

the period of three years. The sale agreement having fixed an outer time limit by specifying the date, the question their being any ambiguity on the starting point of the limitation does not arise and there is nothing to be adjudicated during trial and it is neither a mixed question of fact or law, as the facts are vividly clear and stares at the face of the plaintiff.

10. Thus, taking the entire plaint averment as true and when the plaint itself is solely based on the agreement, which has to be treated as the part of the plaint and considering these facts, it is clear that the Suit is hopelessly barred by limitation and the plaint was rightly rejected at the threshold and the respondent/defendant need not be allowed to face the ordeal of trial.

11. In the light of the above, the appellant has not made out any case for interference with the order passed by the learned Single Judge and accordingly, the Appeal fails and the same is dismissed. No costs.

-s/d-

Assistant Registrar (CSIII)
dt:09/10/2015

True Copy

Sub-Assistant Registrar

pbn
To,

The Sub Assistant Registrar (OS)
High Court, Madras

+1 cc to M/s. Sampathkumar Associates Advocate
sr.51639

+1 cc to Mr. Sathish Parasaran Advocate sr.51576

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