

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.01.2015

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

A.S.No.702 of 2009
and
M.P.No.1 of 2009

M.Perumal ...Appellant/Defendant

vs.

Masthnammal ...Respondent/Plaintiff

Appeal against the judgment and decree dated 22.01.2009 made in O.S.No.5 of 2007 on the file of the Additional District and Sessions Judge, (Fast track Court No.2) Ranipet, Vellore District.

For appellant : Mr.M.V.Muralidharan

For respondent : M/s.S.Hemalatha

JUDGMENT RESERVED ON: 08.12.2014

JUDGMENT

Defendant has preferred this appeal, aggrieved against the judgment and decree of the trial Court in allowing the suit filed by the plaintiff for specific performance.

2. The case of the plaintiff before the Trial Court is as follows:

(i) On 25.01.2006, the defendant entered into an unregistered sale agreement with the plaintiff to sell the 'A' schedule property by fixing the sale prize at Rs.13,500/- per cent and the total sale consideration at Rs.18,22,500/- for 1.35 acres of land and the plaintiff has paid Rs.3,00,000/- as advance. As per the sale agreement, the plaintiff has to pay the balance sale consideration within three months from the date of execution of the sale agreement. The plaintiff has paid a further sum of Rs.4,10,000/- and Rs.3,00,000/- on 18.03.2006 and 30.07.2006 respectively and the same were endorsed by the defendant on the backside of the sale agreement. Thus, the time of three months mentioned in the sale agreement to perform their part of contract was not considered as essence of contract by both the parties.

(ii) On enquiry with the revenue official, the plaintiff came to know a shortfall of an extent of 0.16.0 Hectares in the agreed 'A' schedule property which was acquired by the National Highways Authorities and therefore, the actual land available with the defendant is only 1.05 acre alone, which is described as 'B' schedule property.

(iii) The plaintiff is always ready and willing to purchase the 'B' schedule property by calculating Rs.13,500/- per cent and the total sale consideration amount at Rs.14,17,500/-. The defendant not only refused to receive the amount, but also demanded higher amount of Rs.25,000/- per cent. Hence, the plaintiff issued a legal notice dated 15.08.2006, to which the defendant issued a reply notice dated 18.08.2006 with false and untenable averments. Moreover, the defendant is making arrangements to sell the property to third party so as to defeat and deny the right of the plaintiff. Hence, the suit.

3. The brief averments of the written statement filed by the defendant are as follows:-

Execution of sale agreement dated 25.01.2006 and the receipt of Rs.3,00,000/- as earnest money were accepted. But it was specifically agreed between the parties that the time should be intended as the essence of contract. The endorsement of payment and signatures on the rear side of the agreement dated 18.03.2006, 30.07.2006 and 31.07.2006 were denied. The plaintiff was not ready and willing to perform his part of contract and to show his bonafide, the plaintiff has not cared to deposit the remaining balance into the credit of the proceedings. The value of the properties is several times high more than as mentioned in the said agreement. The entire proceeding is based on discretionary relief, remedy, which cannot be claimed as a matter of right. The defendant never attempted to sell the property to third parties. The plaintiff has to pay advalorem court fee on the market value. The plaintiff without exhausting his remedy approached the Court with false and frivolous grounds. Hence, he prayed for dismissal of the suit.

4. The Trial Judge framed necessary issues for consideration. Before the Trial Court, the plaintiff examined herself as PW1 while examining five more witnesses as PW2 to PW6 and marked eighteen documents. The defendant examined himself as DW1 and marked one document on his side. The Trial Court, on analysis of the oral and documentary evidence, decreed the suit as prayed for. Aggrieved against the judgment and decree of the trial court, the present appeal has been filed.

5. The arguments advanced by Mr.M.V.Muralidharan, learned counsel for the appellant and by Mrs.S.Hemalatha, learned counsel appearing on behalf of the respondent are heard in detail. The materials available on record are also perused.

6. The learned counsel for the appellant has submitted that there is no agreement of sale in respect of 'B' schedule property and if the extent and price differs, the respondent ought to have cancelled the agreement and get back the advance amount paid and it is settled law that the respondent is liable to pay the price prevailing on the date of execution of sale deed and not on the date of agreement of sale. He also submitted that the time is the essence of contract and the signature found on the back side of the agreement is not the signature of the appellant. He further submitted that trial court has decreed the suit filed by the plaintiff/respondent without properly appreciating the evidence both oral and documentary and has come to a wrong conclusion and therefore, the judgment and decree of the trial court has to be set aside.

7. In support of his contentions, the learned counsel for the appellant relied on para-25 of the judgment reported in 2009 (4) CTC 842 (Shanthi Kawarbai .v. Sushila).

8. The learned counsel for the respondent has submitted that the respondent has paid entire sale consideration for 1.05 acres of land, after deducting 30 cents, which was acquired by the Highways Department and the trial court has properly appreciating the evidence, both oral and documentary, and has come to a correct conclusion and therefore, the judgment and decree of the trial court have to be confirmed.

9. In support of her contentions, the learned counsel for the respondent relied on the following judgments:-

(i) Rathinam Chettiar v. Embar Naidu reported in 1999 (III) CTC 394;

(ii) Manjunatha Anandappa urf Shivappa Hanasi v. Tammanasa reported in 2003 (2) CTC 109;

(iii) G.Ramalingam v. T.Vijayarangam reported in 2007 (1) CTC 243; and

(iv) S.Sankaran (died) and others v. N.G.Radhakrishnan reported in 1994-2-LW-642.

10. The point for consideration in this appeal is whether the judgment and decree of the trial court is liable to be set aside and whether the plaintiff/respondent proved her readiness and willingness to perform the contract ?

11. In a suit for specific performance, the trial Court decreed the suit as prayed for. It is an admitted fact that the agreement of sale was entered between the parties on 25.01.2006, in respect of

'A' schedule property by fixing the sale prize at Rs.13,500/- per cent and the total sale consideration at Rs.18,22,500/- for 1.35 acres of land and the plaintiff has paid Rs.3,00,000/- as advance and as per the sale agreement, the plaintiff has to pay the balance sale consideration within three months from the date of execution of the sale agreement. Out of 1.35 acres of land, 30 cents were acquired by the Highways Department. It is also an admitted fact that though the agreement speaks about 1.35 acres of lands, the agreement holder paid the entire sale consideration for 1.05 acres of land, after deducting 30 cents, which was acquired by the Highways Department and the appellant accepted and received the same.

12. In the judgment relied on by the learned counsel for the appellant in 2009 (4) CTC 842 (Shanthi Kawarbai .v. Sushila), it is stated that relief of specific performance is discretionary and would be granted only when plaintiff pleads and proves readiness and willingness, which should be consistent with terms of agreement and the specific relief cannot be granted as a matter of right. As stated earlier, the plaintiff has paid entire sale consideration for 1.05 acres of land, which proves her readiness and willingness to perform her part of contract. Hence, the above citation is not applicable to the case on hand. On the other hand, the decisions cited by the respondent support her case.

13. In view of the above, this Court is of the opinion that after receiving the entire sale consideration as stated above, only to overcome the execution of the sale agreement so as to deprive the interest of the respondent, the appellant denied signature and the endorsement. Therefore, this court comes to the conclusion that the plaintiff proves her readiness and willingness to perform her part of contract and paid entire sale consideration for 1.05 acres of land. Section 73 of the Evidence Act reads as under:-

"73. Comparison of signature, writing or seal with others admitted or proved.-In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. "

If the signature is disputed, it is the duty of the person, who disputed his/her signature, to prove the same as forged. These facts are rightly considered by the trial court and the trial court has come to a correct conclusion in decreeing the suit in favour of the

plaintiff. Hence, there is no case for the defendant/appellant to agitate. Therefore, the appeal is liable to be dismissed.

14. In the result, the appeal is dismissed confirming the judgment and the decree of the trial court. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar
Dated:23.1.15

True Copy

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge, (FTC No.2)
Ranipet, Vellore District.

2. The Section Officer,
V.R. Section,
High Court,
Madras.

+1 cc to M/s.S.Hemalatha, Advocate,SR.1498

+1 cc to M/s.M.V.Muralidaran, Advocate,SR.1380

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