

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10-08-2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.345 of 2016
& CMP Nos.7680 and 12212 of 2016

1. Thangamani
2. Parameswari
3. Shanthi ... Appellants/Defendants

Vs
Rajkumar ... Respondent/Plaintiff

Appeal suit filed under Section 96 of CPC against the judgment and decree, dated 31-07-2014, passed in O.S.No.105 of 2011 by the Principal District Judge, Villupuram.

For Appellants : Mr. R. Baskar
For Respondent : Mr. K. Rajasekaran

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

Challenge in this appeal suit is to the judgment and decree dated 31-07-2014 passed in Original Suit No.105 of 2011 by the Principal District Court, Villupuram.

2. The respondent herein, as plaintiff, has initiated O.S.No.105 of 2011 on the file of the Trial Court praying to pass a decree of specific performance in pursuance of the sale agreement, dated 27-10-2010 wherein the present appellants have been shown as defendants.

3. In the plaint, it is averred that the suit property is the absolute property of the defendants and their deceased mother, and all of them have agreed to sell the same in favour of the plaintiff for a sum of Rs.65,00,000/- (Rupees Sixty five lakhs only) and to that effect a sale agreement has come into existence on 27-10-2010 and on the date of its execution, the defendants have received a sum of Rs.20,00,000/- (Rupees Twenty lakhs only). After execution of sale agreement, the first defendant has sent a letter dated 07-04-2011 wherein it has been stated to the effect that there is a dispute among the

family members and subsequently, the plaintiff has issued a notice on 08-04-2011. After receipt of the same, the first defendant has sent a false reply notice dated 21-04-2011 and finally, the plaintiff has issued a notice dated 27-04-2011 and even after receipt of the same, the defendants have not come forward to execute a sale deed in favour of the plaintiff. The plaintiff has always been ready and willing to perform his part of the contract. Under the said circumstances, the present suit has been filed for getting the relief sought therein.

4. In the written statement filed on the side of the defendants it is averred that the defendants and their deceased mother by name Visalakshi have agreed to sell the suit property for a sum of Rs.65,00,000/- (Rupees Sixty Five lakhs only) and they executed a sale agreement dated 27-10-2010 and on the date of its execution they received a sum of Rs.20,00,000/- (Rupees Twenty lakhs only). However, in the sale agreement it is stated that the plaintiff should pay the balance of sale consideration within a period of 90 days and the defendants should execute a sale deed in his favour. The plaintiff has failed to perform his part of the contract. Since the plaintiff has not shown his readiness and willingness to perform his part of the contract, he is not entitled to get discretionary relief of specific performance. Further, the present suit is barred by limitation. Further, the time mentioned in the sale agreement, dated 27-10-2010 is an essence of the contract and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the rival pleadings raised on either side, the Trial Court has framed necessary issues and after analysing both the oral and documentary evidence has decreed the suit as prayed for. Against the judgment and decree passed by the trial court, the present appeal suit has been filed at the instance of the defendants as appellants.

6. The sum and substance of the case of the plaintiff is that the defendants and their mother by name Visalakshi have agreed to sell the suit property by virtue of the sale agreement dated 27-10-2010 wherein the total sale consideration has been fixed at a sum of Rs.65,00,000/- (Rupees Sixty five lakhs only) and on the date of its execution an advance of Rs.20,00,000/- (Rupees Twenty lakhs only) has been received by the defendants. On 07-04-2011, the first defendant has issued a letter to the plaintiff wherein he has stated about the dispute that has arisen among family members and on 08-04-2011, the plaintiff has issued a legal notice to the first defendant and on receipt of the same, the first defendant has given a false reply notice and thereafter, on 27-04-2011, the plaintiff has issued a legal notice to the first defendant and even after receipt of the same, the defendants have not come forward to execute a sale deed, after receipt of balance sale

consideration. Under the said circumstances, the present suit has been filed for the relief sought therein.

7. The main defence put forth on the side of the defendants is that the plaintiff has not shown his readiness and willingness after execution of the sale agreement dated 27-10-2010. Since the plaintiff has not shown his readiness and willingness, after execution of the sale agreement dated 27-10-2010, he is not entitled to get discretionary relief of specific performance and further, the present suit is barred by limitation and therefore, the present suit deserves to be dismissed.

8. The Trial Court after considering the overall evidence available on record, has decreed the suit as prayed for.

9. The learned counsel appearing for the appellants/defendants has contended to the effect that in the sale agreement, dated 27-10-2010, marked as Ex-A1, it has been clinchingly stated to the effect that the plaintiff should pay the balance of sale consideration within a period of three months and get a registered sale deed from the defendants. But the plaintiff has not shown his readiness and willingness to perform his part of the contract. Under the said circumstances, he is not entitled to get discretionary relief of specific performance and further, the present suit is barred by limitation and the Trial Court without considering the vital defence taken on the side of the defendants has erroneously decreed the suit. Therefore, the judgment and decree passed by the Trial Court are liable to be interfered with.

10. Per contra, the learned counsel appearing for the respondent/plaintiff has contended that even though the sale agreement has come into existence on 27-10-2010 wherein the period of execution has been mentioned as three months, on 07-04-2011, the first defendant has written a letter wherein it has been clearly stated to the effect that there is a dispute among his family members and due to that, delay has occurred in getting the execution of sale deed and subsequently, on 08-04-2011, the plaintiff has issued a legal notice to the first defendant to perform his part of the contract. After receipt of the same, the first defendant has given a false reply notice on 21-04-2011, and finally, on 27-04-2011, the plaintiff has given another legal notice to the said defendants and even after receipt of the same, the defendants have not come forward to execute the sale deed. Further, for the purpose of showing the financial status of the plaintiff, Exs-A8 to A11 have been marked and the Trial Court after considering the overall evidence available on record has rightly decreed the suit. Therefore, the judgment and decree passed by the Trial Court need not be set aside.

11. It is an admitted fact that Ex-A1, sale agreement has come into existence on 27-10-2010 wherein it has been clearly stated that the total sale consideration is Rs.65,00,000/- (Rupees Sixty five lakhs only) and on the date of its execution, the defendants have received a sum of Rs.20,00,000/- (Rupees Twenty lakhs only). It is also equally an admitted fact that in Ex-A1, time for specific performance has been fixed as three months. After execution of Ex-A1, the mother of the defendants by name, Visalakshi has passed away on 16-01-2011 and thereafter, the first defendant has sent a letter dated 07-04-2011 and the same has been marked as Ex-A2 wherein it is clearly mentioned to the effect that a dispute has been in existence among his family members and thereafter, the plaintiff has issued Ex-A3, legal notice on 08-04-2011. After receipt of the same, the first defendant has given reply notice dated 21-04-2011 and the same has been marked as Ex-A4 and finally, the plaintiff has issued another legal notice dated 27-04-2011.

12. From a conjoint reading of Exs-A1 to A5 coupled with the fact that on 16-01-2011, one of the executants of Ex-A1 by name Visalakshi has passed away and also considering the fact that in Ex-A2 it has been clearly stated to the effect that after the demise of mother, dispute has been in existence among the family members of the first defendant, this Court is of the view that the plaintiff has always shown his readiness and willingness to perform his part of the contract. Further, on the side of the plaintiff, Exs-A8 to A11 have been marked for the purpose of showing the financial status of the plaintiff.

13. The main contention put forth on the side of the appellants/defendants is that the plaintiff has not shown his readiness and willingness to perform his part of the contract. In the light of the discussions made earlier, this Court is of the view that after execution of Ex-A1, the plaintiff has always shown his readiness and willingness to perform his part of the contract and only due to lapses on the part of the defendants, the plaintiff has not been able to get the sale deed registered.

14. The second contention put forth on the side of the appellants/defendants is that the present suit is barred by limitation. It is an admitted fact that Ex-A1 has come into existence on 27-10-2010 and finally, a legal notice has come into existence on 27-04-2011 and even after receipt of the same, the defendants have failed to execute the sale deed in favour of the plaintiff and the present suit has been instituted on 13-09-2011. Considering the above said factual circumstances, the present suit is not barred by limitation.

15. The Trial Court after considering the available evidence on record has rightly given a finding to the effect

that the plaintiff has always been ready and willing to perform his part of the contract and the present suit is not barred by limitation.

16. In view of the discussions made earlier, this Court has not found any illegality nor any infirmity in the judgment and decree passed by the Trial Court and therefore, the present appeal suit deserves to be dismissed.

In fine, this appeal suit is dismissed with costs. The judgment and decree dated 31-07-2014, passed in O.S.No.105 of 2011 are confirmed. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

glp

To

The Principal District Judge, Villupuram

+1 CC to Mr. K. Rajasekaran, Advocate Sr.No.45642

+1 CC to Mr. R. Baskar, Advocate, Sr.45815

Appeal Suit No.345 of 2016

RJ (CO)

MD : 09/09/2016

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