

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM

THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

A.S.No.379 of 2015
and M.P.No.2/2015

Dr.K.Natarajan

..Appellant/Plaintiff

..Vs..

- 1.Sri Nandanar Kalvikazagam Omakulam
Represented by its Secretary, having his Office
at Omakulam, Chidmbaram.
- 2.Sri Nandanar Trust represented by its Madathipathi
Omakulam, Chidambaram,
- 3.M.Damodaran
- 4.M.Paranthaman
- 5.The State of Tamil Nadu rep by its
District Collector
Cuddalore District having his office at
Collectorate, Cuddalore.

..Respondents/Defendants

Prayer: Appeal filed Under Section 96 of the Code of Civil Procedure to set aside the judgment and decree dated 17.03.2015 made in O.S.No.35/2014 on the file of Principal District Judge, District Court, Cuddalore.

For Appellant	:	Mr.K.Chandrasekaran
For RR-2	:	Mr.V.Stalin
		for M/s.Row & Reddy
For RR-3 & 4	:	R.Jaya Prakash
For RR-5	:	Mr.Gunasekaran AGP

JUDGMENT

The plaintiff in O.S.No.35/2014 on the file of the Principal District Court, Cuddalore is the appellant. The suit was filed for Specific Performance of the agreement sale dated

23.01.1987, entered between the plaintiff and the defendants 1 and 2.

2. According to the plaintiff, the defendants 1 and 2 agreed to sale the suit property for a total consideration of Rs.12 lakhs (Rupees Twelve lakhs only) and on the date of the agreement namely on 23.01.1987, received an advance of Rs.1 lakh (Rupees One lakh only). A period of 1 year was fixed for performance of the agreement, and the plaintiff was also put in possession of the property in part performance of the contract. Though the plaintiff has been ready and willing to perform his part of the contract a Civil Suit in O.S.No.1062/1987 came to be filed with reference to the property subject matter of the agreement. In view of the pendency of the suit, an endorsement was made in the agreement on 12.01.1988, extending the time fixed under the agreement for further a period of one year from 23.01.1988, since the suit was not disposed of. Another suit in O.S.No.91/2004 (originally O.S.No.102/1988) also came to be filed. Taking note of the pendency of the suits it was agreed on 06.01.1990 to extend the time up to a period of 6 months from the date of disposal of both the suits. An endorsement to that effect was also made in the suit agreement on 06.01.1990. Eventually, the suit in O.S.No.91/2004 (originally O.S.No.102/1988) stood disposed of, when the appeal in A.S.No.82/2006 was disposed of by the Additional District Court, Chidambaram on 08.04.2011.

3. The plaintiff would further claim that the plaintiff has also cleared the loans of defendants 1 and 2 to the tune of Rs.4,73,700/- (Rupees Four lakhs seventy three thousand seven hundred only), and he has also paid the defendants 1 and 2 a sum of Rs.3,14,700/- (Rupees Three lakhs fourteen thousand seven hundred only) to meet the litigation expenses. Therefore, the balance of sale consideration payable by the plaintiff is only Rs.3,11,600/- (Rupees Three lakhs eleven thousand six hundred only). Since the defendants did not come forward to execute the sale after the disposal of the appeal in A.S.No.82 of 2006, the plaintiff caused a legal notice on 03.08.2011. The defendants 1 and 2 sent a reply stating that the appeal in S.A.No.812/2011 is pending before this Hon'ble Court. They had also stated in the reply notice they will execute the sale deed after the disposal of the appeal by this Court. It appears that in the mean time, the defendants 1 to 4 entered into a settlement, giving consent to the 5th defendant for construction of "Manimandabam" for Swami Sagajanantha without consulting the plaintiff. Therefore, the plaintiff is constrained to come forward in the above suit for Specific Performance.

4. The 1st defendant had filed a written statement wherein they would admit the agreement and claimed it was forced to construct the Manimandabam. The 1st defendant would also

claim that it is not responsible for delay in execution of the sale deed. The 2nd defendant filed a separate written statement denying the allegations in the plaint. The 2nd defendant would claim that the 1st defendant is a trust and as such its property is inalienable. In fact the 2nd defendant would submit that his predecessors had no power to agree for sale of the property. The 5th defendant namely the State of Tamil Nadu represented by the District Collector, Cuddalore filed a separate written statement contending that the suit based on an unregistered sale agreement is not maintainable. It was also claimed that the Section 80 notice is not pertaining to the suit claim, and it is not in a proper format. In the suit, the 5th defendant filed an application in I.A.No.364/2014 seeking rejection of the plaint, on the ground that the plaint does not disclose cause of action and that the notice under Section 80 is not in the proper format. The said application was resisted by the plaintiff and various grounds. The learned Principal District Judge, Cuddalore, by an order dated 17.03.2015 made in I.A.No.364/2014 allowed the said application and rejected the plaint. Aggrieved by the said rejection of the plaint, the present appeal has been filed by the plaintiff. I have heard Mr.K. Chandransekaran, learned counsel appearing for the appellant, and Mr.Gunasekaran, learned Additional Government Pleader appearing for 5th respondent, Mr.V.Stalin for M/s.Row & Reddy, learned counsel appearing for 2nd respondent and Mr.R.Jayaprakash, learned counsel appearing for respondents 3 and 4. The 1st respondent, though notice was served, does not appear either in person or through counsel. Considering the scope of the appeal, the following point is framed for determination.

- 1.Whether the learned District Judge was right in rejecting the plaint, on the ground that the notice under Section 80 is not in a proper form?
- 2.Whether the suit suffers for want of cause of action?

5.It is not the case of the 5th defendant that there was no notice under Section 80, in fact the notice issued under Section 80 has been produced as plaint document no.6. The sum and substance of the notice is that the plaintiff has entered into an agreement on 23.01.1987 and is entitled to Specific Performance in the said notice it is also stated that in view of the pendency of the Second Appeal in this Court, the plaintiff cannot seek for Specific Performance. It is also claimed that the contract entered into between the 5th defendant and the defendants 1 and 2 will be subject to the rights of the plaintiff. The learned District Judge has come to the conclusion that a notice under Section 80 is not in a proper format. I am afraid that the said conclusion of the learned

District Judge cannot be sustained. It is true that the notice is not happily worded. But the notice specifically states that the plaintiff has entered into an agreement with the defendants 1 and 2 and he has been put in possession pursuant to the agreement and he has a right to sue for Specific Performance.

6.This in my considered opinion, is sufficient to satisfy the requirements of Section 80. After all the object of Section 80 is only to enable the government or the public officer to avoid, if possible a unnecessary suit. It is seen from the records that the construction of the Manimandapam has also run into rough weather. Therefore, the reasoning of the learned District Judge that the notice under Section 80 is defective, because it does not disclose plaintiff cause of action cannot be sustained. Moreover the 5th respondent is not a party to the contract. As regards the claim that the suit is barred limitation and that the plaintiff was never ready and willing to perform his part of the contract, the learned District Judge has found that the allegations in the written statement cannot be taken into account and from the pleadings in the plaint alone as to whether the plaintiff was ready and willing to perform his part of the contract cannot be decided against the plaintiff in the absence of evidence. The other question as to whether the endorsements alleged by the plaintiff were actually made by the defendants 1 and 2, whether the suit is bar by limitation are all questions which will have to be decide on the basis of evidence. The learned counsel appearing for the 2nd respondent would produce an order of this Court in CRP PD No.44/2015, and contend that this Court had in fact approved the action of the District Collector in filing the application under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint I have gone through the said order, I do not find any observation of the learned Judge, on merits of the application under Order VII Rule 11 of the Code of Civil Procedure. The said Civil Revision Petition arose out of an attempt by the plaintiff to give up defendants 3 to 5 and get a decree against defendants 1 and 2 alone, the said attempt was rejected by the trial Court, and the order of the trial Court refusing permission to give up defendants 3 to 5 was confirmed by this Court. I do not see any lacuna regarding the cause of action so as to enable the Court to reject the plaint Order VII Rule 11 Code of Civil Procedure and therefore in my considered opinion, the rejection of the plaint cannot be sustained and this appeal has to be allowed, setting aside the order rejecting the plaint.

7.In fine, the appeal is allowed, the order rejecting the plaint in I.A.364/2014 is set aside and the suit is restored to the file of the trial Court namely, the Principal District Court, Cuddalore. The Principal District Judge, Cuddalore is directed to deal with the suit on merits, and dispose of the

suit in accordance with law within a period of 6 months from the date of receipt of a copy of this order and report such disposal to this Court. No costs. Consequently the connection miscellaneous petition stands closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KP

To

1.The Principal District Judge,
Cuddalore

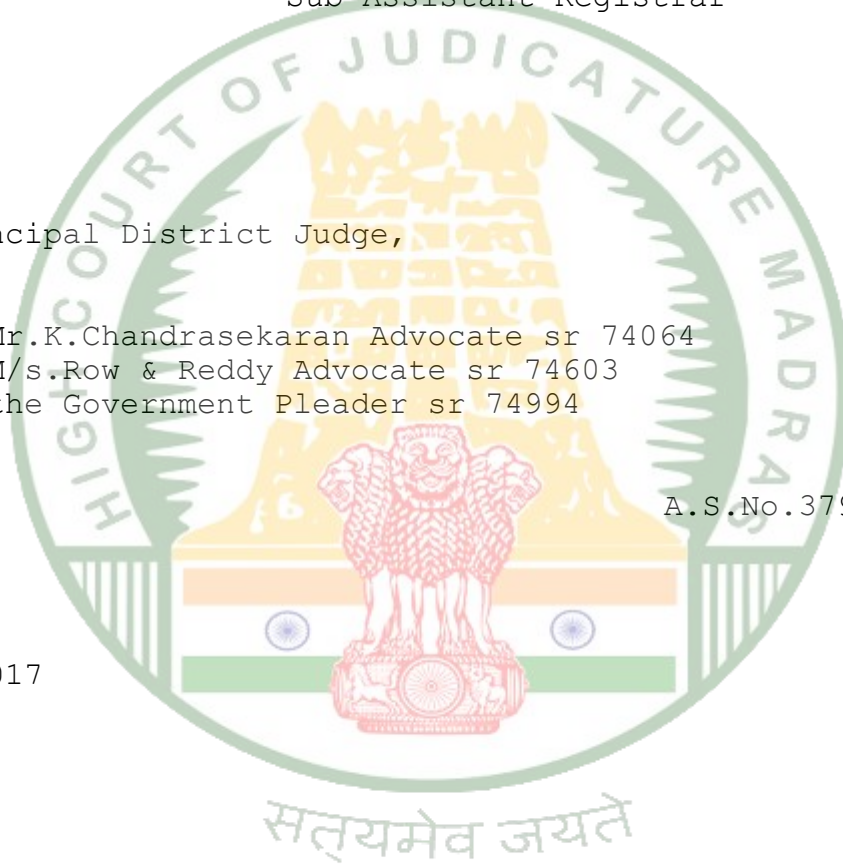
+1 cc to Mr.K.Chandrasekaran Advocate sr 74064

+1 cc to M/s.Row & Reddy Advocate sr 74603

+1 cc to the Government Pleader sr 74994

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