

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM

THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

A.S.No.451 of 2011

S.Jayan

..Appellant/Plaintiff

.Vs.

1.A.P.Somasundaram

2.M/s.Chettinad Power Corporation P.Ltd.,
Rep.by its Chairman and Managing Director,
Rani Seethai Hall, 5thFloor,
603, Anna Salai, Chennai-600 006. ...Respondents/Respondents

Prayer: Appeal filed Under Section 96 and Order XLI Rule 1
CPC, to set aside the judgment and decree made in O.S.No.13 of
2010 dated 27.06.2011 on the file of the District Judge,
Nagapattinam.

For Appellant : Mrs.AL.Ganthimathi

For RR-1 : Mr.Kannan
for M/s.Raghuvaran Gopalan

For RR-2 : Mrs.Revathy Kannan
for R.Parthasarathy

JUDGMENT

The plaintiff in O.S.No.13/2010 is the appellant. The said suit was filed seeking Specific Performance of the agreement of sale dated 21.11.2008 said to have been executed by the 1st defendant agreeing to sell an extent of 8 acres 62 cents at Rs.500/- per khzhi. The total consideration was fixed at Rs.12,93,000/- (Rupees Twelve lakhs ninety three thousand only). According to the plaintiff an advance of Rs.1,00,000/- (Rupees One lakh only) was paid on the date of agreement. It is further contention of the plaintiff that a period of 21 months was fixed for performance of the agreement, since the 1st defendant sold the property subject to matter of the agreement

to the 2nd defendant on 05.06.2009, the plaintiff filed the present suit.

2.The 1st defendant resisted the suit contending that he never entered into an agreement as alleged by the plaintiff. According to the 1st defendant, the plaintiff had taken his signature in blank papers representing that he would get a certain aid for the defendant since he is a victim of Tsunami. Thus the 1st defendant contended that the agreement has been fabricated with the help of the signatures obtained in blank papers. Apart from the above said plea, the 1st defendant would also contend that the plaintiff was not ready and willing to perform his part of the contract and there is a considerable delay in filing the suit.

3.The 2nd defendant which is a subsequent purchaser of the property filed a written statement contending that it is a bonafide purchaser for value without notice of the agreement. On above pleadings, the learned District Judge, Nagapattinam framed the following issues:

- 1.Whether the plaintiff is entitled to specific performance as prayed for?
- 2.Whether the plaintiff is entitled alternative relief as prayed for?
- 3.Whether the plaintiff was always ready and willing to purchase the suit properties?
- 4.Whether the 2nd defendant is not a bonafide purchaser?
- 5.Whether the suit agreement is not fabricated?
- 6.To what relief?

4.P.Ws-1 and 2 were examined on the side of the plaintiff and Exs.A-1 to A-4 were marked. DWS-1 and 2 were examined on the side of the defendants and no documentary evidence was produced.

5.Upon a consideration of the oral and documentary evidence, the learned District Judge came to the conclusion that the agreement itself appears to be a fabricated document and the corrections made particularly in the period fixed for performance, have not been counter signed by the parties. The learned District Judge came to the conclusion that the claim of the defendant that the agreement is fabricated is true. Upon from such findings, the learned District Judge dismissed the suit for Specific Performance. However, the relief of refund of advance was granted. The learned District Judge also recorded a finding that the 2nd defendant is a bonafide purchaser for value. Aggrieved by the said judgment and decree, the plaintiff has filed the above appeal.

6.It should be pointed that the 1st defendant has not challenged the decree for refund of advance granted by the trial Court. I have heard Mrs.A.L.Ganthimathi, learned counsel appearing for the appellant, Mrs.Revathy M.Kannan for Mr.R.Parthasarathy, learned counsel appearing for the 2nd respondent, and Mr.Raghuvaran Gopaln appearing for the 1st respondent. The following issues arise for determination in this appeal.

- 1.Whether the suit agreement is true and valid?
- 2.Whether the plaintiff is entitled to the discretionary relief of Specific Performance?
- 3.Whether the 2nd defendant is a bonafide purchaser for value without notice of the prior agreement of sale?

POINT No.1:- Mrs.AL.Ganthimathi, learned counsel appearing for the appellant taking me through the evidence as well as the contents of Ex.A-1 agreement would contend that the learned trial Judge erred in concluding that the agreement is a fabricated document. On a perusal of the original agreement, I find that the following features. The stamp paper has been purchased at Poraiyar. The plaintiff is the resident of Thirumaiyam Taluk in Pudukkottai District. The manner in which the agreement has been written creates considerable suspicion regarding the genuineness of the same. The last three lines in the 1st paragraph in the agreement are cramped, and there is a large space left between the first

paragraph and 2nd paragraph in the first page. In the 2nd page, the time fixed for performance has been altered. I find an attempt has been made to alter the original period of 3 months as 21 months. Numeral '3' has been partially struck of, and 21 has been written before the numeral '3'. The said correction has not been counter signed by either of the parties. The manner in which the plaintiff and the 1st defendant have signed at the bottom of the 2nd page strengthens the suspicion about the execution of the agreement. Though PW-2 Vaidyalingam has been examined as the attessor. He has deposed that there are corrections in the agreement. He would also claim to be a tenant in the property subject matter of the agreement. In his cross examination PW-2 has admitted that he had not written his address when he signed as a witness. He would further admit that the writings differ. In the light of such evidence, I am unable to countenance the arguments of learned counsel for the appellant to the effect that, since the defendant had not raised the plea of regarding corrections the Court should not base its conclusion on the said corrections. As already stated the plea

in defence is one of total denial. Further, the suit being one for Specific Performance utmost good faith he is expected on the part of the plaintiff who seeks the discretionary relief for Specific Performance. Hence point no.1 is answered against the plaintiff.

POINT.No.2:- The learned counsel appearing for the appellant would contend that the suit had been filed within the period fixed under the agreement. Therefore, there is no question of the plaintiff being not ready to willing her part of the contract. If the time fixed under the agreement is taken to be 21 months, it is true that the suit has been filed within the said time. But, whether the parties agreed upon the said 21 months itself is doubtful, it is the said period which has been corrected in the agreement. The plaintiff as PW-1 would state that he had sought for Specific Performance after he came to know of the sale of the property in favour of the 2nd defendant. The sale in favour of the 2nd defendant is on 05.06.2009, and the suit eventually came to be filed nearly after 10 months i.e,19.04.2010. There is no pre suit notice either to the 1st defendant or the 2nd defendant. The plaintiff as PW-1 has in his cross examination admitted that he did not demand execution of sale deed prior to the filing of the suit that is by itself would demonstrate that the plaintiff was not ready and willing to perform his part of contract. The 2nd point is also answered against the plaintiff.

POINT.No.3:- The 2nd defendant had contended that it is a bonafide purchaser for value without notice of the earlier agreement. Admittedly the agreement is unregistered one. PW-1 in his evidence has not stated anything regarding the knowledge of the 2nd defendant about the existing agreement. The fact that the 2nd defendant is a Limited Company should also be taken into account there is nothing in evidence to impute knowledge of the agreement to the 2nd defendant. Therefore, the 2nd defendant is held to be a bonafide purchaser for consideration without notice of the subsisting agreement. It is contended by the learned counsel for the appellant that the property has been sold to the 2nd defendant for much lesser price than what was agreed between the plaintiff and the 1st defendant. That alone in my opinion, cannot be a ground for granting a decree for Specific Performance in favour of the plaintiff as it has been already found that agreement is fabricated. Therefore, the difference in price cannot really matter. Point no.3 is also answered against the plaintiff.

7.Though the trial court had found that the agreement itself is doubtful. It has chosen to grant a decree for refund of advance. Since the 1st defendant has not challenged, the said decree either by way of an appeal or by way of a cross objection in this appeal, I do not propose to interfere with the said decree. In the result, the judgment and decree of the trial Court are confirmed and the appeal stands dismissed. However there shall be no order to costs in this appeal.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

KP

To

The District Judge,
Nagapattinam.

+1cc to M/s.A.L.Ganthi Mathi, Advocate sr.74267

+1cc to M/s.Satish Parasaran, Advocate sr.74422

ug(co)
ss(10/2/2017)

Judgement in
A.S.No.451 of 2011

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