

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:25.10.2016
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.233 of 2010

M.Arumugam

... Appellant/Defendant

Vs

Smt.Poongodi

... Respondent/Plaintiff

This appeal is filed against the judgement and decree passed in O.S.No.885 of 2007 on the file of Additional District and Sessions Judge, Fast Track Court-I, Coimbatore on 30.12.2009 decreeing the suit for specific performance of contract directing the defendant to execute the sale deed in pursuance of an agreement on receipt of balance sale consideration.

For Appellant : Mr.Ramakrishnan for
Mr.C.Veeraghavan
For Respondent : Mr.B.R.Sankaralingam

J U D G E M E N T

The unsuccessful defendant has preferred this appeal against the decree for specific performance granted in O.S.No.885 of 2007 on the file of Additional District and Sessions Judge, Fast Track Court-I, Coimbatore.

2. It is the case of the plaintiff that he entered into an agreement of sale with the defendant so as to purchase the suit properties on 14.3.2007. The total sale consideration agreed to is Rs.6,35,000/-. A sum of Rs.4,00,000/- was paid on the date of execution of the agreement and a period of five months was prescribed for completion of the contract. The defendant had also agreed to get the original document and also encumbrance certificate for 20 years 10 days prior to the execution of the sale deed. The original agreement dated 14.3.2007, apart from other other terms provided that if the plaintiff fails to perform her part of contract, she will be precluded from enforcing the agreement and that she will also forfeit a sum of Rs.1,00,000/-

out of the advance paid by her. In the event of failure on the part of the defendant to perform her part of the contract, the sale consideration will be reduced to Rs.5,35,000/- after deducting Rs.1,00,000/- towards compensation.

3. On 11.04.2007 the plaintiff paid a further sum of Rs.50,000/- as advance and the same is also evidenced by endorsement in the agreement. The plaintiff would further claim that since the defendant was not ready to execute the sale deed as per the agreement, a Panchayat came to be convened and a memorandum of understanding dated 15.8.2007, marked as Ex.A3 was entered into between the parties. As per the said memorandum of understanding, it was agreed that the defendant was not able to execute the sale deed within a period of five months i.e. on or before 13.08.2007. It was further agreed between the parties that the defendant should pay the advance amount of Rs.4,50,000/- along with interest Rs.20,000/- within 46 days i.e. from the date of agreement i.e. on or before 1.10.2007.

4. The said memorandum of understanding also provided that in the event of failure on the part of the defendant to pay a sum of Rs.4,70,000/- within the time prescribed, it would enable the plaintiff to seek specific performance of the agreement by paying the balance amount. Since the defendant did not pay the sum of Rs.4,70,000/- as agreed to, the plaintiff issued legal notice on 03.10.2007 to which reply was sent by the defendant through his counsel admitting the receipt of Rs.4,50,000/- towards advance. Even in the reply notice it is stated that the defendant is making serious attempt to settle the amount and he needs time to settle the amount to the plaintiff. Therefore, the plaintiff had come forward with the above suit for specific performance of the agreement. Though the plaintiff is entitled to deduct Rs.1,00,000/- from the agreed sale consideration in event of default on the part of the defendant, the plaintiff has not chosen to exercise her option.

5. The defendant in his written statement admitted the agreement. A plea was taken that the plaintiff was never ready and willing to perform the contract. The fact that the defendant agreed to execute the sale deed or pay the advance amount of Rs.4,50,000/- along with Rs.20,000/- towards interest was also admitted. It is also claimed that the plaintiff was not ready and willing to execute sale deed, hence, she is not entitled to the relief for specific performance. A plea was taken that when the plaintiff agreed for receiving the advance amount with interest, she cannot seek specific performance of the contract.

6. An additional written statement was filed by the defendant contending that he had raised loan for a sum of Rs.4,20,000/- from the Union Bank of India on 19.06.2008 to pay back the plaintiff and the plaintiff sent a notice to the bank

stating that a suit for specific performance was pending and as such the bank should not lend money to the defendant.

7. On the above pleadings, the learned Additional District Judge framed the following issues:

- 1) Whether the sale agreement dated 04.03.2007 in favour of the plaintiff is true, valid and enforceable?
- 2) Whether the plaintiff was ready and willing to perform her part of the contract?
- 3) Whether the plaintiff is entitled to the relief of specific performance of contract as prayed for?
- 4) Whether the plaintiff is entitled to alternative relief of refund of advance amount as prayed for?
- 5) To what other reliefs?

8. On the side of the plaintiff PWs. 1 to 3 were examined and Exs.A1 to A10 were produced. The defendant examined himself as DW1 and he produced three documents in Exs.B1 to B3.

9. I have heard Mr.Ramakrishnan, the learned Counsel appearing for Mr.C.Veeraraghavan for the appellant and Mr.B.R.Sankaralingam, learned counsel appearing for the respondent.

10. The following points arise for determination in the appeal.

1. Whether the plaintiff could be said to have given up her right under the agreement dated 14.03.2007 by entering into the memorandum of understanding dated 15.08.2008?

2. Whether the plaintiff had proved that she had been ready and willing to perform her part of contract through out?

3. Whether the memorandum of understanding would fall within Section 14(a) of the Specific Relief Act so as to dis-entitle the plaintiff from seeking specific performance?

11. The learned counsel Mr.Ramakrishnan appearing for the appellant would vehemently contend that by entering into the memorandum of understanding dated 15.08.2007, the plaintiff has given up her right to seek specific performance. He would invite my attention to Section 10(b) and 14(a) of the Specific Relief Act and would contend that this case falls within Section 14(a) of the Specific Relief Act and the Court ought not to have granted the relief for specific performance. Mr.Ramakrishnan would rely upon a Division Bench Judgement in Lt.Col. K.C.Bheemaiah v. Kakamada A.Kuttappa and others reported in AIR 2004 Karnataka 224, wherein the Division Bench on consideration of recital in the agreement of sale, which runs as follows:

" 7. The purchaser hereby agrees that in the event of the vendors opting to retain the schedule properties, they shall jointly and severally pay to the purchaser the sum of Rs.2,50,000/- (Rupees Two Lakhs and fifty thousand only) together with interest thereon at 21% P.A. on or before the time fixed for the execution of the sale deed viz. 24.4.1991. If the vendors fail or neglect to pay the above said sum of Rs.2,50,000/- with interest as aforesaid, the purchaser shall be entitled to specific performance of the agreement by payment of the balance of Sale Price to seek enforcement of the agreement of sale and for registration of the Sale Deed in his name or in the name of his nominee/nominees immediately after 24-4-1991. "

it came to the conclusion that the plaintiff had given option in the agreement to the vendor and therefore, the case would fall under Section 14(a) of the Specific Relief Act. In the judgement of the Hon'ble Supreme Court in M.L.Devender Singh v. Syed Khaja reported in AIR 1973 SC 2457, it has been observed as follows:

" ... The Court classified the contracts into following three categories:

i) Where the sum mentioned is strictly a penalty a sum named by way of securing the performance of the contract, as the penalty is a bond;

ii) Where the sum named is to be paid as liquidated damages for a breach of the contract; and

1. Where the sum named is an amount the payment of which may be substituted for the performance of the act at the election of the person by whom the money is to be paid or the act done.

2.

15. Having done so. the Court observed:

" Where the stipulated payment comes under either of the two first mentioned heads, the Court will enforce the contract. If in other respects it can and ought to be enforced, just in the same way as a contract not to do a particular act, with a penalty added to secure its performance or a sum named as liquidated damages, may be specifically enforced by means of an injunction against breaking it. On the other hand, where the contract comes under the third head, it is satisfied by the payment of the money, and there is no ground for the Court to compel the specific performance of the other alternative of the contract."

12. I am of the considered opinion that the case on hand falls within the clause (2) enumerated by the Hon'ble Supreme Court and the Hon'ble Supreme Court itself had specifically held

where stipulated amount had not been paid the court will enforce the contract. If in other respect it can and ought to be enforced.

13. By citing the judgements in N.P.Thirugnanam (Dead) by Lrs vs. Dr.R.Jagan Mohan Roa and others reported in (1995) 5 SCC 115 and in Sita Ram and others vs. Radhey Shyam reported in 2008 (1) CTC 86. Mr.Ramakrishnan, learned counsel appearing for the appellant would contend that the plaintiff though pleaded readiness and willingness, was not actually willing to perform her part of the contract. He would further submit that Section 16 (C) contemplates willingness on the part of the parties to be entitled for specific performance. There is no doubt about the law relating to readiness and willingness with reference to suits for specific performance.

14. I am afraid, in the case on hand, the plaintiff has not incurred disqualifications which had been laid down by the Hon'ble Supreme Court as well as by this Court. On the facts narrated above, it could be seen that the agreement was entered into on 14.03.2007 and a major portion of the sale consideration namely, Rs.4,00,000/- was paid as advance and another sum of Rs.50,000/- was also paid as additional advance during the currency of agreement dated 14.03.2007. On 15.8.2007, when the period of 5 months was about to be over, the memorandum of understanding emanated, wherein, it was specifically agreed that the advance amount Rs.4,50,000/- with interest of Rs.20,000/- should be paid within 46 days from the date of the memorandum of understanding i.e. on or before 1.10.2007. The learned counsel for the appellant would contend that there are discrepancies in the evidence of PW1 and PW2 as to performance of the contract within five months time as fixed. Relying upon the said discrepancy, it is contended that the plaintiff has come to Court with a false case. I am unable to agree with the contention of the learned counsel and even assuming there are discrepancies, they do not relate to a material fact so as to dis entitle the plaintiff to the relief of specific performance.

15. In the event of failure on the part of the defendant to perform his part of the contract, i.e. payment of the said sum of Rs.4,50,000/- with interest of Rs.20,000/-, the plaintiff was given option to enforce the agreement. At best it could be only seen as magnanimous gesture on the part of the plaintiff to have allowed the time to enable the defendant to pay back the advance amount received and wriggle out the agreement. Unfortunately, the defendant has not chosen to avail the same. Therefore, I am of the considered opinion, the defendant cannot plead lack of readiness and willingness on the part of the plaintiff. It is now well settled that the conduct of the defendant is also to be taken into account while dealing with a suit for specific performance. The discretion can be exercised on the conduct of

the defendant also.

16. In view of the findings recorded above, I do not see any acceptable contention put forth by the appellant. I also do not see any reason to interfere with the well considered judgement of the learned Additional District and Sessions Judge, Fast Track Court-I, Coimbatore, where he has considered the entire evidence and record and has come to the conclusion that the plaintiff is entitled to specific performance and I see no reason to interfere with the findings of fact recorded by the learned Additional District and Sessions Judge, Fast Track Court-I, Coimbatore, even after reconsideration of the entire evidence on record in the appeal. Hence, the appeal is dismissed confirming the judgement and decree of the Trial Court. However, there will be no order as to costs. M.P.No.1 of 2010 is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
The Additional District and Sessions Judge,
Fast Track Court-I, Coimbatore.

copy to

The Section Officer
VR Section
High Court Madras

+1 cc to Mr.B.R.Shankaralingam Advocate sr 60815
+1 cc to Mr.C.Veeraraghavan Advocate sr 61455

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