

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
01.08.2016	11.08.2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.1059 of 2009
& CMP No.8064 of 2016
& M.P.No.2 of 2009

1. T.R.Jagadheesan
2. Latha
3. S.Kalpana
4. P.Nirmala
5. K.Rekha
6. T.R.Sivagami

... Appellants/2 to 7 defendants

Vs

- 1.M.Ramadass Niadu
2. T.K.Chandrasekaran
(deceased)

...1st Respondent/Plaintiff

(R2 - deceased vise order of court
dated 28.7.2016 made in
Memo in USR No.6102 in
A.S.No.1059 of 2009)

... 2nd Respondent/1st Defendant

Prayer:- Appeal suit filed under Section 96 of CPC r/w Order 41 Rule 1 of CPC against the judgment and decree, dated 22.4.2009, passed in O.S.No.111 of 2007 by the Principal District Court, Thiruvallur.

For Appellants :Mr.K.S.Sankar Murali
for 1st appellant
Dr.P.Jagadeesan
for appellants 2 to 6

For Respondents :Mr.G.Masilamani, Senior counsel
for Mr.A.Palaniappan for R1
R2 - died

JUDGMENT

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

This appeal suit has been directed against the judgment and decree dated 22.4.2009, passed in O.S.No.111 of 2007, by the Principal District Court, Thiruvallur.

2. The first respondent herein, as plaintiff, has filed O.S.No.111 of 2007 on the file of the trial court, praying to pass a decree of specific performance in pursuance of the sale agreement dated 17.8.2006 so as to direct the defendants 2 to 7 to execute and register the sale deed in favour of the plaintiff after receiving the balance of sale consideration and alternatively for the relief of recovery of Rs.2,50,000/-.

3. It is averred in the plaint that the defendants 1 and 2 have represented themselves that they are the absolute owners of the suit property. The plaintiff with an intention to purchase the same, has entered a Sale Agreement dated 17.8.2006. One Cent of land has been fixed for Rs.1,700/- and a total sale amount comes to Rs.1,12,84,600/-. On the date of execution of the sale agreement, the defendants 1 and 2 have received a sum of Rs.5 Lakhs. In the sale agreement, time has been fixed as 90 days. The plaintiff is always ready and willing to perform his part of contract. The defendants 1 and 2 have failed to execute the sale deed in favour of the plaintiff in pursuance of the sale agreement and subsequently on 13.12.2006, a legal notice has been issued to the defendants 1 and 2. The defendants 1 and 2 have given a reply notice dated 22.12.2006. They have given another reply notice dated 24.12.2006. The plaintiff has given a legal notice dated 6.2.2007. On 13.2.2007, the defendants 3 to 6 have given a notice to the plaintiff and first defendant. The plaintiff has issued a reply notice on 26.2.2007. In the meanwhile, the first defendant along with his wife have sold 20 Acres 79 Cents of land in favour of the plaintiff. Now the defendants 2 to 7 have refused to execute a sale deed in favour of the plaintiff. Under the said circumstances, the present suit has been instituted for the relief sought therein.

4. In the written statement filed on the side of the second defendant, it is averred that the second defendant has not approached the plaintiff. The first defendant approached the second defendant and expressed his willingness that he is going to sell his property to the plaintiff and he requested the second defendant to come along with him. Since the first defendant is an aged person, the second defendant has agreed to

lend his assistance. The plaintiff has insisted the first defendant to get signature of the second defendant in the alleged sale agreement dated 17.8.2006. The first defendant has coerced the second defendant to put his signature in the sale agreement. The plaintiff has failed to perform his part of contract. The plaintiff has not approached the second defendant till 19.12.2006. The second defendant has not received any amount from the plaintiff and there is no merit in the suit and the same deserves to be dismissed.

5. In the written statement filed on the side of the defendants 3 to 7, it is averred that the defendants 3 to 7 have not approached the plaintiff at any point of time and they have not authorized the second defendant to sell the suit property in favour of the plaintiff. The defendants 3 to 7 have not entered into any sale agreement and they have not received any amount from the plaintiff and there is no merit in the suit and the same deserves to be dismissed.

6. On the basis of the divergent pleadings raised on either side, the trial court has framed necessary issues and after analyzing both the oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial court, the defendants 2 to 7, as appellants, have filed the present appeal suit.

7. The consistent case of the plaintiff is that on 17.8.2006, the plaintiff and defendants 1 and 2 have entered into a sale agreement and on the date of execution of the sale agreement, both of them have received a sum of Rs.5 Lakhs and subsequently, they refused to execute a sale deed in favour of the plaintiff and thereafter, legal notices have been exchanged and in the meanwhile, the first defendant and his wife have executed a sale deed in favour of the plaintiff in respect of their share in the suit property and now the defendants 2 to 7 have refused to execute a sale deed. Under the said circumstances, the present suit has been instituted for the relief sought therein.

8. The defence put forth on the side of the second defendant is that he has not entered into a sale agreement with the plaintiff much less on 17.8.2006 and he has not received any amount and since the first defendant has insisted him to put his signature in the sale agreement, he simply subscribed his signature and therefore, the plaintiff is not entitled to get any relief against the second defendant.

9. The contention put forth on the side of the defendants 3 to 7 is that they have not authorized the second defendant either orally or in writing to execute a sale deed in favour of the plaintiff and since they are not parties to the sale

agreement, they are not bound to execute any sale deed in favour of the plaintiff and therefore, the present suit deserves to be dismissed.

10. The trial court, after considering the overall evidence available on record, has decreed the suit as prayed for.

11. The learned counsel appearing for the first appellant/second defendant has raised the following points:

(i) The present suit has been instituted only on the basis of the alleged sale agreement dated 17.8.2006 and the same has been marked as Ex.A.1 and in fact Ex.A.1 is not at all a sale agreement.

(ii) The sale agreement dated 17.8.2006 is not supported by consideration and therefore, the same cannot be enforced.

(iii) The plaintiff has not shown his readiness and willingness to perform his part of contract and therefore, the plaintiff is not entitled to get the discretionary relief of specific performance.

(iv) It is seen from the records that the first defendant and his wife have executed sale deed in favour of the plaintiff in respect of 20 Acres and 79 Cents and therefore, a fresh contract is created and under the said circumstances, the original contract created under Ex.A.1 cannot be enforced.

12. The learned counsel appearing for the remaining appellants has also equally contended that the defendants 3 to 7 have not authorized the second defendant to enter into a sale agreement with the plaintiff and in fact, they are not parties in Ex.A.1. The legal notice dated 13.2.2007 has been issued without their knowledge and therefore, the defendants 3 to 7 are not liable to execute a sale deed in favour of the plaintiff.

13. In order to resile the contentions put forth on the side of the appellants, the learned counsel appearing for the first respondent/plaintiff has befittingly contended that even in the reply notice dated 22.12.2006 issued by the defendants 1 and 2, Ex.A.1 has been mentioned as an agreement of sale and they have also admitted to the effect that they received an advance of Rs.5 Lakhs from the plaintiff and even though in Ex.A.1 it has been mentioned the period of execution of sale deed as 90 days, in the instant case, time is not an essence of the contract and further only due to lapses on the part of the defendants, the present suit has been instituted. The plaintiff has been always ready and willing to perform his part of contract and therefore, the present appeal suit deserves to be dismissed.

14. In respect of the first point raised on the side of the first appellant/second defendant, the decision reported in (2016) 4 SCC 352 (Satish Kumar vs. Karan Singh and another) is relied upon, wherein the Hon'ble Supreme Court has dealt with receipt plus agreement dated 6.1.1995 and the same reads as follows:

"Received a sum of Rs.2,30,000/- (Rupees two lakhs thirty thousand only) from Karan Singh, S/o.Shri Basti Ram, R/o. Village and PO Mahipalpur, New Delhi -110 037 on 6.1.1995 against our DDA alternative PLOT F.No.32(5)/113/87 L& B/Alt/2511 dated 11.8.1989 in the name of Shri Jaishi, S/o.Shri Ram Saran, R/o V & PO Mahipalpur, New Delhi. The total area of the abovesaid plot is 400 sw.yd. The total premium settled for the abovesaid plot is Rs.4,60,000/- (Rupees four lakhs sixty thousand) and will be given at the time of receiving the lease after execution at the Registrar Office. No payment will be given in between."

On the basis of the recitals found in the alleged receipt plus agreement, the Hon'ble Supreme Court has declined to grant the relief of specific performance by way of holding that receipt plus agreement is not a sale agreement.

15. In the instant case, it is an admitted fact that on 13.12.2006, the plaintiff has issued a legal notice to the defendants 1 and 2 and the same has been marked as Ex.A.2. After receipt of Ex.A.2, the defendants 1 and 2 have given a reply notice dated 22.12.2006 and the same has been marked as Ex.A.3, wherein it has been clinchingly mentioned to the effect that the defendants 1 and 2 have entered into a sale agreement with the plaintiff and they also received a sum of Rs.5 Lakhs as token advance.

16. From the recitals found in Ex.A.3, the Court can easily come to a conclusion that the recitals found in Ex.A.1 would constitute a valid sale agreement. Since the defendants 1 and 2 have clearly expressed in their reply notice that Ex.A.1 is a sale agreement, it is very clear that the first contention put forth on the side of the first appellant/second defendant is sans merit and the decision reported supra is not applicable to the facts and circumstances of this case.

17. The second contention put forth on the side of the first appellant/second defendant is that Ex.A.1, sale agreement is not supported by consideration. Even in the written

statement filed by the second defendant, it is clearly mentioned that the second defendant has not received any amount from the plaintiff. Once again the court has to look into Ex.A.3 reply notice, wherein, as stated supra, both the defendants 1 and 2 have clearly admitted to the effect that they have received a sum of Rs.5 Lakhs from the plaintiff.

18. At this juncture, the Court has to look into M.P.No.1 of 2009 and the same has been filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908, praying to admit the documents mentioned therein as additional evidence on the side of the appellants. Along with M.P.No.1 of 2009 certified copies of five sale deeds have been annexed. Since all the documents are related to suit survey numbers, this Court is of the view to allow M.P.No.1 of 2009 and the documents annexed therein are marked as Ex.B.1 to B.5.

19. The learned counsel appearing for the first appellant/second defendant has relied upon the recitals found in Ex.B.5. Ex.B.5 is the certified copy of sale deed alleged to have been executed by the first defendant and his wife in favour of the plaintiff, wherein no mention has been made with regard to Ex.A.1. On the basis of recitals found in Ex.B.5, the Court cannot come to a conclusion that Ex.A.1 is not supported by consideration.

20. Further, the learned counsel appearing for the first appellant/second defendant has relied upon the sworn affidavit filed by the plaintiff, wherein it has been stated to the effect that the first defendant has already received Rs.2,50,000/- and received the remaining sale consideration, but the said aspect has not been found in Ex.B.5. Simply because in Ex.B.5, the averments made in the affidavit of the plaintiff are not found place, the Court cannot belittle the issuance of Ex.A.2 and also the recitals found in Ex.A.3. As stated earlier, in Ex.A.3, the defendants 1 and 2 have clearly admitted to the effect that both of them have received a sum of Rs.5 Lakhs from the plaintiff. Therefore, it is needless to say that the second contention put forth on the side of the first appellant/second defendant cannot be admitted.

21. The third contention put forth on the side of the first appellant/second defendant is that the plaintiff has not shown his readiness and willingness to get a sale deed registered from the defendants and therefore, he is not entitled to get the discretionary relief of specific performance.

22. In support of his contention, he has relied upon the following decisions:

(i) In (2011) 6 MLJ 149 SC, (Saradamani Kandappan and another vs. S.Rajalakshmi and others), the Hon'ble Supreme court has held that payment of balance price evidently does not depend upon satisfaction of purchaser about title. Failure of purchaser to adhere to payment schedule justifies cancellation of agreement.

(ii) in 2005 (11) SC 454, (Sahadeva Gramani (Dead) by LRs. v. Perumal Gramani and others), the Hon'ble Supreme Court has held that the agreement in question is unenforceable and no corresponding rights have been created among the parties.

(iii) In 2002 (2) Law Weekly 422, (K.Jeyakumar v. Robert and others) this Court has held that the plaintiff has not expressed his readiness and willingness during the relevant time and therefore is not entitled to specific performance.

23. The learned counsel appearing for the first respondent/plaintiff has befittingly drawn the attention of the Court reported in (2004) 8 SCC 689 (Swarnam Ramachandran and another vs. Aravacode Chakungal Jayapalan, wherein, at paragraph Nos.12 and 13, it is observed as follows:

"12. That time is presumed not to be of the essence of the contract relating to immovable property, but it is of the essence in contracts of reconveyance or renewal of lease. The onus to plead and prove that time was the essence of the contract is on the person alleging it, thus giving an opportunity to the other side to adduce rebuttal evidence that time was not of essence. that when the plaintiff pleads that time was not of essence and the defendant does not deny it by evidence, the court is bound to accept the plea of the plaintiff. In cases where notice is given making time of the essence, it is the duty of the court to examine the real intention of the party giving such notice by looking at the facts and circumstances of each case. That a vendor has no right to make time of the essence, unless he is ready and willing to proceed to completion and secondly, when the vendor purports to make time of the essence, the purchaser must be guilty of such gross default as to entitle the vendor to rescind the contract.

13. Applying the above principles to the facts of the present case, we find that there was no justification in claiming, in the circumstances, to treat time as of the essence. At the outset, referring to the original agreement dated 18.2.1981,

there is nothing in the express stipulation between the parties to show that the intention was to make the rights of the parties dependent upon the observance of the time limits. Prima facie, equity treats the importance of such time-limits as being subordinate to the main purpose of the parties (see Jamshed Khnodaram Irani v. Burjori Dhunjibhar)."

24. From a cumulative reading of the decisions referred to supra, it is made clear that if an agreement is inchoate and unenforceable, the relief of specific performance cannot be granted. Further, the plaintiff should prove his/her readiness and willingness to get a sale deed registered. Otherwise, discretionary relief of specific performance cannot be granted. Further, it is clear that in all contracts of sale of immovable properties, time is not the essence of contract.

25. Now the Court has to meticulously analyze as to whether the plaintiff has shown his readiness and willingness to perform his part of contract?

26. It has already been pointed out that in Ex.A.1, time limit is fixed only for 90 days. But, in Ex.A.1, no more conditions are stipulated. For the first time, the plaintiff has issued a legal notice dated 13.12.2006, wherein he pointed out the evasion on the part of the defendants 1 and 2 and thereafter, various legal notices have become emerged. If really the plaintiff is not ready and willing to perform his part of contract, such legal notices and reply notices would not come into existence. Therefore, it is very clear that the plaintiff has always shown his readiness and willingness to perform his part of contract.

27. The fourth contention put forth on the side of the first appellant/second defendant is that since under Ex.B.5, the plaintiff has obtained a sale deed from the first defendant and his wife, the plaintiff has rescinded the original contract created under Ex.A.1 and therefore, by virtue of Ex.A.1, the present suit is not legally maintainable.

28. In support of the said contention, Section 62 of the Indian Contract Act, 1872 has relied upon and the same reads as follows:

"62. Effect of novation, rescission and alteration of contract:-

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."

29. In the instant case, as mentioned supra, the defendants 1 and 2 have jointly agreed to sell the entire extent mentioned in the Survey Numbers found in Ex.A.1. It is true that the first defendant and his wife are having absolute right and interest in respect of 20 Acres 79 Cents in the survey numbers and to that extent, they executed Ex.B.5 Sale Deed in favour of the plaintiff and the same does not amount to creation of new contract. Under the said circumstances, the fourth contention urged on the side of the first appellant/second defendant also goes out without merit.

30. The learned counsel appearing for the remaining appellants has also befittingly contended to the effect that the defendants 3 to 7 have not authorized the second defendant to sell the suit property on their behalf. Further, it is contended on their side to the effect that one advocate without their permission/knowledge has issued a legal notice to the plaintiff and defendants 1 and 2.

31. In support of their contention, the decision reported in (2003) 4 SCC 86 (M.V.Shankar Bhat and another vs. Claude Pinto since (deceased) by LRs. and others), is relied upon, wherein the Hon'ble Supreme Court has observed that an agreement has been made subject to ratification of the terms and conditions thereof by the co-heirs, but subsequently the same has not been done. Therefore, discretionary relief of specific performance cannot be granted.

32. At this juncture, the Court has to look into Ex.A.7. Ex.A.7 is a legal notice issued by the defendants 3 to 6 to the plaintiff and the first defendant, wherein it has been explicitly stated to the effect that the defendants 3 to 6 have authorized the second defendant to sell the suit property.

33. The only defence put forth on the side of the remaining appellants is that Ex.A.7 has not been issued by the remaining defendants and the same has been given by an advocate and without their knowledge.

34. In fact, this Court has analyzed Ex.A.7, wherein it has been clearly mentioned that only on the basis of instructions given by the persons mentioned in it, Ex.A.7 has been given. If really Ex.A.7 has been given without the knowledge of the remaining defendants, definitely they would have taken proper steps against the concerned advocate. Therefore, it is very clear that the defence put forth on the side of the remaining defendants with regard to Ex.A.7 cannot be accepted.

35. In the instant case, Ex.A.1 has come into existence on 17.8.2006 and on the date of its execution, the defendants 1 and 2 have received a sum of Rs.5 Lakhs from the plaintiff. Further, under Ex.A.7, the court can easily observe that the second defendant has acted himself and also on behalf of the remaining defendants. To put it in short, the defendants 3 to 7 have authorized him to sell the suit property.

36. It has already been pointed out that the time fixed in Ex.A.1 is not the essence of contract and further only due to evasive attitude of the defendants 1 and 2, the plaintiff has not been able to get a sale deed and therefore, viewing from any angle, the plaintiff is certainly entitled to get a decree of specific performance.

37. The trial court, after considering the overall evidence available on record, has rightly decreed the suit. In view of the discussions made earlier, this Court has not found any error nor illegality 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 cost. The judgment and decree dated 22.4.2009, passed in O.S.No.111 of 2007, by the Principal District Court, Thiruvallur are confirmed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Exhibits marked on the side of the appellants/defendants 2 to 7 :

Ex.B.1 : Sale Deed No.4013/1976, Dated 31.05.1976 in favour of Smt. Padmini Ammal, Wife of T.K. Chandrasekaran.

Ex. B.2 : Sale Deed No.2095/1976, Dated 31.05.1976 - in favour of Mr. T.K. Rukmangadan

Ex. B.3 : Sale Deed No.2094/1976, Dated 31.05.1976 in favour of Mr. T.K. Chandrasekaran.

Ex. B.4 : Sale Deed No.4017/1976, Dated 31.05.1976 in
favour of Smt. Sivagami Ammal, Wife of Mr.T.K.
Rukmangadan

Ex. B.5 : Sale Deed No.7023/2007, Dated 04.04.2007 in
favour of Mr. Ramadoss Naidu

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

1.The Principal District Judge,
Thiruvallur.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.K.S.Shankar Murali, Advocate sR.45835

+1cc to Mr.A.Palaniappan, Advocate Sr.46045

+2cc to Dr.P.Jagadeesan, Advocate Sr.45834

Appeal Suit No.1059 of 2009

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