

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.529 of 2013
& M.P.No.2 of 2013

D.Mohan ... Appellant

Vs

Anganmuthu Manickam .. Respondent

Prayer:- Appeal suit filed under Section 96 of CPC r/w Order XLI Rule 9 of CPC against the judgment and decree, dated 27.8.2013, passed in O.S.No.2495 of 2011 by the XVIII Additional Judge, City Civil Court, Chennai.

For Appellant :Mr.T.S.Rajamohan

For Respondent :Mr.P.L.Narayanan

JUDGMENT

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

Challenge in this appeal suit is to the judgment and decree dated 27th day of August, 2013, passed in O.S.No.2495 of 2011, by the XVIII Additional City Civil Court, Chennai.

2. The respondent herein, as plaintiff, has instituted O.S.No.2495 of 2011 on the file of the trial court, praying to pass a decree of specific performance in pursuance of the sale agreement dated 1.3.2006 alleged to have been executed by the defendant therein and also for permanent injunction.

3. The material averments made in the plaint are that the suit property is the absolute property of the defendant and both the plaintiff and defendant have entered into a sale agreement dated 1.3.2006 and thereby, the defendant has agreed to sell the same in favour of the plaintiff for a sum of Rs.15 Lakhs. On the date of execution of the sale agreement dated 1.3.2006, the plaintiff has given a sum of Rs.2 Lakhs. Further, in the sale agreement, it is agreed that on or before 31.5.2006, the defendant has to give a sale deed alleged to have been executed in his favour by Housing Board. The plaintiff has given a cheque for a sum of Rs.5 Lakhs on 21.3.2006. Further, on 23.3.2006, the plaintiff has paid through cheque to the defendant another sum of Rs.3 Lakhs and in aggregation, the plaintiff has paid a sum of Rs.10 Lakhs. Since the defendant has failed to perform his part of contract, the plaintiff has chosen to issue two telegrams on 26.1.2007 and 27.2.2007 and ultimately on 5.3.2007, the plaintiff has given a legal notice and even after receipt of the same, the defendant has not come

forward to execute a sale deed in favour of the plaintiff, but the defendant has given a false reply notice. The plaintiff has always been ready and willing to perform his part of contract. Under the said circumstances, the present suit has been instituted for the reliefs sought therein.

4. In the written statement filed on the side of the defendant, it is averred that the suit property is the absolute property of the defendant. It is true to aver that both the plaintiff and defendant have entered into a sale agreement dated 1.3.2006. It is also equally true that on the date of execution of sale agreement, the defendant has received a sum of Rs.2 Lakhs, but it is false to aver that the sale consideration has been fixed for Rs.15 Lakhs. The actual sale consideration is Rs.30 Lakhs. In the suit sale agreement, it is clearly stated that within a period of three months, the plaintiff has to pay the balance of sale consideration and get a sale deed registered in his favour. The plaintiff has not evinced any interest so as to pay the balance of sale consideration. It is false to aver that the plaintiff has always been ready and willing to perform his part of contract. Since the plaintiff has not performed his part of contract and since the present suit has been instituted beyond the period mentioned in the suit sale agreement, the plaintiff is not entitled to get the reliefs sought in the plaint and therefore, 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 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 present appeal suit has been preferred at the instance of the defendant, as appellant.

6. The learned counsel appearing for the appellant/defendant has raised the following points:

(i) The suit sale agreement has been marked as Ex.A.1, wherein time has been fixed for paying the balance of sale consideration and execution of registered sale deed, within a period of three months and within the said period, the plaintiff has failed to perform his part of contract and therefore, he is not entitled to get the discretionary relief of specific performance and the trial court has failed to look into the same.

(ii) Even though in the suit sale agreement, the total sale consideration is mentioned as Rs.15 Lakhs, subsequently it has been orally agreed that the plaintiff has to pay Rs.30 Lakhs and since the plaintiff has not attempted to pay the entire sale consideration within the stipulated period, he is not entitled to get the reliefs sought in the suit and the trial court has also failed to look into the same.

7. To controvert the contentions put forth on the side of the appellant/defendant, the learned counsel appearing for the respondent/plaintiff has laconically contended that the suit sale agreement has come into existence on 1.3.2006, wherein certain terms have been mentioned and one of the terms is that on or before 31.5.2006, the defendant has to give a sale deed alleged to have been executed in his favour by the Housing Board and the same has not been done. Even though the defendant has failed to abide the conditions mentioned therein, the plaintiff has paid a sum of Rs.5 Lakhs on 21.3.2006 and Rs.3 Lakhs on 23.3.2006 and even after subsequent payments, the defendant has not shown his readiness and willingness to perform his part of contract and ultimately telegrams have been given twice. Even after receipt of the same, the defendant has not evinced any interest in performing his part of contract, which culminated in issuance of legal notice dated 5.3.2007 and even after receipt of the same, the defendant has not come forward to execute a sale deed in favour of the plaintiff, after receipt of balance of sale consideration, but, he has given a false reply notice and further, in the sale agreement, the sale consideration has been clinchingly mentioned as Rs.15 Lakhs and in the written statement filed on the side of the defendant, various amounts have been quoted starting from Rs.30 Lakhs and the trial court, after considering the subsequent conduct of the

defendant, after execution of the sale agreement and also after considering the subsequent payments made on the side of the plaintiff, has rightly decreed the suit and therefore, the judgment and decree passed by the trial court do not warrant interference.

8. It is an admitted fact that the suit sale agreement has been marked as Ex.A.1, wherein the following terms and conditions have been mentioned:

- (1) The vendor shall sell and the purchaser shall purchase the schedule property free from all encumbrance
- (2) The sale consideration for the schedule property shall be Rs.15,00,000/- (Rupees Fifteen Lakhs only)
- (3) The purchaser has today paid a sum of Rs.2,00,000/- (Rupees two Lakhs only) towards advance, receipt of which sum vendor hereby admits and acknowledges Rs.1,42,000/- (Rupees One Lakh and Forty Two Thousand only) is payable towards TNHB balance and final cost the remaining Rs.58,000/- (Rupees Fifty Eight thousand only) towards expenses for obtaining original sale deed from TNHB.
- (4) The purchaser shall pay the balance sale consideration of Rs.13,00,000/- (Rupees Thirteen Lakhs only) as follows:
 - (a) At the time of handing over of the original sale deed by the vendor attested in favour of the

purchaser which shall be within a period of three months hereof, i.e. on or before 31.5.2006

(b) At the time of registration of the property, the remaining sum of Rs.5,00,000/- (Rupees five lakhs only) will be handed over

(5)The Vendor shall handover vacant possession of the schedule property in the purchaser before the execution of sales registration in favour of the purchaser

(6)The vendor assures the purchaser that the sale contemplated herein shall be "as is where is" condition with all fittings and amenities free from all encumbrances, charges, claims or other legal impediments whatsoever. The Vendor also covenants that the property described in the Schedule hereunder is not subject to any mortgage, charge, attachments/requisition/acquisition or any kind of legal proceedings whatsoever. The Vendor has agreed to produce E.C before the final settlement.

(7)The Vendor shall indemnify the purchaser against any loss or damage that the purchaser may be put to, due to any defect in the Vendor's title to the Schedule property.

(8)The vendor hereby agrees that all rates, taxes, charges, rents, public charges and other dues payable in respect of Schedule property upto the date of sale registration shall be paid by the Vendor and shall thereafter be borne by the purchaser.

- (9)The vendor hereby agrees that copies of title deeds and other documents pertaining to the Schedule property will be handed over to the purchaser at the time of execution of this agreement in favour of the purchaser and the original at the time of execution of sale deed in favour of the purchaser
- (10)The vendor covenants that during the pendency of this agreement, the Vendor shall not encumber, create any charge over, or otherwise deal with the schedule property in a manner which would affect the purchaser's interest under this agreement.
- (11)The expenses, stamp duty and registration fees for the sale registration contemplated herein shall be borne by the purchaser
- (12)The parties hereto specifically agree that the time stipulated herein shall be the essence of this agreement.
- (13)That the parties to this agreement may amend or modify the terms and covenants in this Agreement by mutual consent which shall be in writing.
- (14)Either party is entitled to specific performance of the terms of this agreement. In addition to the right of specific performance, the performing party shall also be entitled to damages against the defaulting party."

9. One of the terms is that on or before 31.5.2006, the defendant has to give the original sale deed to the plaintiff. Admittedly, as per the terms mentioned in Ex.A.1, the defendant has not given the original sale deed to the plaintiff. Even though the defendant has failed to abide the terms mentioned supra, the plaintiff has advanced part of sale consideration twice through cheques on 21.3.2006 and 23.3.2006. Since the plaintiff has made subsequent payments on 21.3.2006 and 23.3.2006, the Court can easily come to a conclusion that the plaintiff has always been ready and willing to perform his part of contract.

10. As adverted to earlier, on 26.1.2007 and 27.2.2007, the plaintiff has issued two telegrams, whereby directed the defendant to receive the balance of sale consideration and execute a sale deed in his favour. Even after receipt of the same, the defendant has not shown any interest and ultimately on 5.3.2007, a legal notice has been issued and even after receipt of the same, the defendant has not come forward to execute a sale deed in favour of the plaintiff, but he has given a reply notice.

11. The consistent case put forth on the side of the plaintiff is that after execution of sale agreement, the defendant has failed to abide the terms mentioned in the sale agreement and even though he has failed to abide the terms mentioned in the

sale agreement, the plaintiff has paid subsequent payments and in aggregation, he has paid Rs.10 Lakhs. In fact, this Court has closely perused the documents filed on the side of the plaintiff and ultimately found that there is no deviation on the part of the plaintiff in following the terms of the sale agreement dated 31.3.2006, but on the other hand, the defendant has wilfully failed to give the original sale deed on or before 31.5.2006, as agreed by him in the sale agreement. Therefore, it is quite clear that within the period of three months mentioned in Ex.A.1, the plaintiff has shown his readiness and willingness to perform his part of contract.

12. Now the Court has to decide the quantum of sale consideration mentioned in Ex.A.1 and also in the written statement.

13. In Ex.A.1, it has been clinchingly stated that the total sale consideration is Rs.15 Lakhs and even in the legal notice, which has been marked as Ex.A.6, the same amount has been given. After receipt of Ex.A.6, Ex.A.8 reply notice has been given by the defendant, wherein no mention has been made with regard to variation of sale consideration. In the written statement filed on the side of the defendant, it is stated that after execution of Ex.A.1, an oral agreement has come into existence with regard to quantum of sale consideration and thereby, the plaintiff has agreed to pay

Rs.30 Lakhs.

14. As rightly pointed out on the side of the plaintiff, in the written statement various amounts have been mentioned as sale consideration. Even for the sake of argument, in the written statement, if a sum of Rs.30 Lakhs has been mentioned, the same has not been put forth in the reply notice, viz., Ex.A.8. Therefore, it is needless to say that the defense put forth on the side of the defendant is totally baseless. Further even at the risk of repetition, the Court would like to point out that from inception of Ex.A.1, the plaintiff has shown his readiness and willingness to perform his part of contract.

15. The learned counsel appearing for the respondent/plaintiff has drawn the attention of the Court to the following decisions:

(i) In **(2008) 11 SCC 45 (Silvey and others v. Arun Varghese and another)**, the Hon'ble Supreme Court has held that in a suit for specific performance, not only the plaintiff must show his readiness and willingness, the defendant also must show his readiness and willingness.

(ii) In **(2015) 1 SCC 705 (Zarina Siddiqui vs. A.Ramalingam alias R.Amarnathan)**, the Hon'ble Supreme Court has categorically held that if the defendant has not approached the Court with clean hands in a suit for specific performance, the remedy of discretionary relief of specific performance can easily be granted to the plaintiff.

16. In the instant case, as objurgated earlier, in the written statement, different kinds of defense have been raised, which are not in consonance with the terms and conditions of Ex.A.1. To put it in short, the defendant has put forth defense totally against the terms and conditions mentioned in Ex.A.1. Therefore, it goes without saying that the defendant has not approached the Court with clean hands.

17. It has already been discussed in detail that as per Ex.A.1, the plaintiff has always shown his readiness and willingness to perform his part of contract, even though the defendant has failed to give the original sale deed on or before 31.5.2006. Viewing from any angle, this Court has not found any defect in the case of the plaintiff.

18. The trial court, after considering the overall evidence

available on record, has rightly found that the plaintiff is entitled to get the discretionary relief of specific performance and ultimately decreed the suit. In view of the discussions made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/defendant and altogether, the present appeal suit deserves to be dismissed.

In fine, **this appeal suit is dismissed with cost.** The judgment and decree dated 27.8.2013, passed in O.S.No.2495 of 2011, by the XVIII Additional City Civil Court, Chennai are confirmed. Consequently, the connected Miscellaneous Petition is closed.

(A.S.J.,) (P.K.J.)
29.08.2016

Index:Yes/No
ajr
To

XVIII Additional Judge, City Civil Court, Chennai.

**A.SELVAM,J.
and
P.KALAIYARASAN,J.
ajr**

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