

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
30.08.2016	26.09.2016

CORAM

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

Appeal Suit No.528 of 2012
& M.P Nos.1 of 2012, 1 of 2014 and 2 of 2014

Kannan ... Appellant/Plaintiff

Vs

Dr.Sridharan ... Respondent/Defendant

Prayer:- Appeal suit filed under Order 41 Rule 1 r/w under section 96 of the CPC against the judgment and decree, dated 11.4.2012, passed in O.S.No.3 of 2011 by the Additional District and Sessions Court/Fast Track Court No.3, Kallakurichi.

For Appellant : Mrs.Hema Sampath, Senior counsel
for Ms.R.Meenal

For Respondent : Mr.V.Manohar

JUDGMENT

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

This appeal suit has been directed against the judgment and decree dated 11.4.2012, passed in O.S.No.3 of 2011, by the Additional District Court/Fast Track Court No.3, Kallakurichi.

2. The appellant herein, as plaintiff, has filed O.S.No.3 of 2011 on the file of the trial court, praying to pass a decree of specific performance in pursuance of the sale agreement dated 14.2.2009, wherein the present respondent has been shown as sole defendant.

3. The material averments made in the plaint are that both the plaintiff and defendant are known to each other for a long time. The suit properties are situate in Chinna Salem, Kallakurichi Taluk. The suit properties are the absolute properties of the defendant. Since the defendant along with his family members is living in Kerala, he executed a general Power of Attorney in favour of one Gururaj, son of the plaintiff. The suit first item is in a dilapidated condition and it requires lot of expenses. Under such circumstances, a

rental agreement dated 24.9.2008 has been executed in favour of the plaintiff. The plaintiff has advanced an amount of Rs.9 Lakhs in pursuance of the rental agreement. The defendant has expressed his desire to sell the suit properties in favour of the plaintiff. The sale consideration has been fixed at Rs.1,10,00,000/- and accordingly, the suit sale agreement has come into existence and on 14.2.2009, on the date of its execution, a sum of Rs.10,00,000/- has been received by the defendant. The sale agreement has also been attested by the wife of the defendant. The sale agreement contains general clauses. On 22.9.2009, the plaintiff has paid a sum of Rs.27 Lakhs to the defendant. Again, on the same day, the defendant has received a further sum of Rs.1 Lakh from the plaintiff. The defendant has also received a sum of Rs.5 Lakhs on 27.11.2009. In aggregation, the defendant has received Rs.43 Lakhs. The balance amount payable is Rs.67 Lakhs. The plaintiff has contacted the defendant on several times to receive balance of sale consideration and also to execute a registered sale deed in his favour. The defendant has postponed the same. After some time, the defendant has intimated to the plaintiff that there is higher offer from a third party to purchase the suit properties. The defendant has also quoted higher price than what he has agreed to sell to the plaintiff. Now the defendant has been making arrangements to sell the suit properties for a higher price. The plaintiff has always been ready and willing to perform his part of contract. After institution of suit, the defendant has received a sum of Rs.5 Lakhs on 27.1.2010 and Rs.12 Lakhs on 14.4.2010 and therefore, the balance amount is only of Rs.50,000/-. 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 defendant, it is averred that it is false to aver in the plaint that the defendant has agreed to sell the suit properties in favour of the plaintiff for a sum of Rs.1,10,00,000/- and to that extent the suit sale agreement dated 14.2.2009 has come into existence. It is also false to say that a rental agreement has come into existence on 24.9.2008 and the plaintiff has paid a sum of Rs.9 Lakhs. It is also equally false to aver that on several times, the plaintiff has approached the defendant for paying balance of sale consideration and the defendant has evaded to execute a registered sale deed in his favour. The defendant and his family members have resided in Chinna Salem for a long number of years. The plaintiff has met the defendant as a patient and during the course of time, he developed close relationship with the defendant. The value of the suit properties is more than that of Rs.2 Crores. The defendant has kept the plaintiff as an intermediary to sell his properties to third parties and to realize the sale proceeds and not to sell the properties to him. The plaintiff himself has prepared the suit sale agreement and obtained signature of the defendant and his wife at Kerala. The defendant has specifically denied

the genuineness of the suit sale agreement. As a Power of Attorney, the son of the plaintiff, by name Gururaj, has filed a suit for partition in O.S.NO.80 of 2009 on behalf of the defendant and also on behalf of his sister. After cancellation of Power of Attorney, the defendant has filed a petition to cancel Vakalat of his counsel. The suit in O.S.No.80 of 2009 is yet another fraud committed by the plaintiff with the connivance of his son, viz., Gururaj. It is false to aver in the plaint that on several occasions, the defendant has received a part of sale consideration from the plaintiff. There is no merit in the suit and 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 contemplating both oral and documentary evidence, has dismissed the suit in respect of the relief of specific performance and passed a decree in respect of refund of Rs.60 Lakhs and also amount of Rs.50,00,000/- which has been deposited in the court. Against the judgment and decree passed by the trial court, the present appeal suit has been instituted at the instance of the plaintiff as appellant.

6. The sum and substance of the case of the plaintiff is that the suit properties are the absolute properties of the defendant. The defendant and his family members are residing in Kerala. Under such circumstances, he desired to sell the same in favour of the plaintiff for a sum of Rs.1,10,00,000/- and in pursuance of the desire of the defendant, an agreement of sale dated 14.2.2009 has come into existence and on the date of its execution, the plaintiff has paid a sum of Rs.10 Lakhs and subsequently, on several occasions, the defendant has received part of sale considerations. In aggregation, the defendant has received a sum of Rs.60 Lakhs, but the defendant has failed to execute a registered sale deed in favour of the plaintiff. Under the said circumstances, the present suit has been instituted for the relief sought therein.

7. The pith and substance of the defence is that the parents of the defendant have once settled in Chinna Salem and the defendant is a medical practitioner. The plaintiff has approached him as a patient and subsequently developed close intimacy with the defendant and his family members. Under such circumstances, a Power Deed has been executed in favour of the son of the plaintiff. Considering the rapport of the plaintiff and defendant, the defendant has permitted the plaintiff to sell suit properties and in fact, the plaintiff has acted only as an intermediary. On several occasions, the plaintiff has given some amounts to the defendant by way of saying that those amounts are sale proceeds. The defendant has not at all executed the suit sale agreement in favour of the plaintiff and the same is nothing but a fraudulent document and therefore, the plaintiff is not entitled to get the relief of specific performance.

8. As adverted to earlier, the trial court has declined to grant a decree of specific performance in favour of the plaintiff, whereas the trial court has granted a decree in favour of the amounts paid as well as deposited by the plaintiff.

9. The learned senior counsel appearing for the appellant/plaintiff has laconically contended that both the plaintiff and defendant have entered into a sale agreement dated 14.2.2009, wherein the total sale consideration is fixed at Rs.1,10,00,000/- and on the date of its execution, the defendant has received a sum of Rs.10 Lakhs and subsequently, the plaintiff has paid some amounts and all subsequent amounts have been acknowledged by the defendant and his wife and in aggregation, the plaintiff has paid a sum of Rs.60 Lakhs. The plaintiff has been always ready and willing to perform his part of contract. Since the defendant has evaded in receiving balance of sale consideration and registering a sale deed in favour of the plaintiff, the present suit has been instituted and further the plaintiff has deposited a sum of Rs.50 lakhs into court and the trial court, without considering the clear admission made by the defendant (D.W.1) and also the documents filed on the side of the plaintiff, has erroneously declined to grant the relief of specific performance and therefore, the judgment and decree passed by the trial court are liable to be interfered with.

10. The learned counsel appearing for the respondent/defendant has also equally contended that the defendant is a medical practitioner and when he has set up his practice in Chinna Salem, the plaintiff has met him as a patient and in due course, he developed close relationship with the defendant and his family members. Under such circumstances, the defendant has executed a Power of Attorney deed in favour of son of the plaintiff, by name Gururaj. Since the defendant has reposed confidence upon the plaintiff, he authorized him to sell his properties to third parties and therefore, the plaintiff is nothing but an intermediary to the defendant and the defendant has not informed his desire to sell the suit properties in favour of the plaintiff. Due to close relationship of the defendant and plaintiff, the plaintiff has impelled/cajoled the defendant to put his signature in the alleged suit sale agreement and therefore, the suit sale agreement is not at all a sale agreement and the same has become emerged only due to fraud committed by the plaintiff and since there is no privity of contract between the plaintiff and defendant, the plaintiff is not entitled to get discretionary relief of specific performance and the trial court, after considering the overall evidence available on record, has rightly declined to grant the relief of specific performance in favour of the plaintiff and therefore, the judgment and decree passed by the trial court are not liable to be set aside.

11. Basing upon the divergent submissions made on either side, the Court has to look into as to whether the defendant has desired to sell the suit properties in favour of the plaintiff for a sum of Rs.1,10,00,000/- and consequently executed the suit sale agreement on 14.2.2009?

12. The entire case of the plaintiff is based upon the suit sale agreement dated 14.2.2009 and the same has been marked as Ex.A.1. In Ex.A.1 in explicit terms, it has been mentioned to the effect that the defendant has agreed to sell the suit properties for a sum of Rs.1,10,00,000/- in favour of the plaintiff. On the date of its execution, the plaintiff has paid a sum of Rs.10 Lakhs to the defendant. In Ex.A.1, both the defendant and his wife have put their signatures. Ex.A.2 to Ex.A.4 are the receipts for the purpose of showing/proving the subsequent payments alleged to have been made by the plaintiff to the defendant.

13. The trial court has declined to grant a decree of specific performance only on the ground that even in the year 2008, a rental agreement has been executed in favour of the plaintiff by the power of attorney of the defendant, by name Gururaj and therefore, in the year 2009, the suit sale agreement would not have come into existence.

14. For the purpose of contemplating the rival submissions made on either side, the court has to meticulously analyze the evidence given by P.Ws.1 and 2 and D.W.1.

15. The plaintiff has been examined as P.W.1 and his specific evidence is that on 14.2.2009, the suit agreement has come into existence between him and defendant and thereby, the defendant has agreed to sell the suit properties for a sum of Rs.1,10,00,000/-. Further, he deposed to the effect that prior to filing of the suit, he paid a sum of Rs.60 Lakhs to the defendant and he deposited a sum of Rs.50 Lakhs into court.

16. The witness found in Ex.A.1 has been examined as P.W.2 and his specific evidence is that on 14.2.2009, the defendant has executed the suit sale agreement and on the date of its execution, the plaintiff has paid a sum of Rs.10 Lakhs to the defendant.

17. The defendant has been examined as D.W.1. During the course of cross-examination, he candidly admitted to the effect that he knows Tamil. Further, he admitted that the signature found in Ex.A.1 is his signature. Further, he clinchingly admitted to the effect that he received a sum of Rs.60 Lakhs from the plaintiff and to that effect, he has given a receipt. The further evidence of D.W.1 is that in all documents, both he and his wife have put their signatures.

18. Even from a mere reading of the evidence given by D.W.1 (defendant), the Court can easily come to a conclusion

that he executed Ex.A.1 in favour of the plaintiff and in pursuance of Ex.A.1, in aggregation, the defendant has received a sum of Rs.60 Lakhs. The main defence taken on the side of the defendant is that considering the closeness of the plaintiff and defendant, the plaintiff has been permitted to sell the properties of the defendant to third parties as an intermediary and under such circumstances, the plaintiff has paid the amounts to the defendant on several occasions and therefore, Ex.A.1 is not a genuine document and the same has been created by way of playing fraud upon the defendant.

19. It has already been pointed out that the defendant has clearly admitted to the effect that he can read and write Tamil. Ex.A.1 is in Tamil. Since Ex.A.1 is in Tamil and since the defendant is a medical practitioner, definitely he and his wife would have put their signatures in Ex.A.1. Therefore, it is quite clear that Ex.A.1 is a genuine document and the same has been executed by the defendant in favour of the plaintiff. If really such an agreement of sale has not come into existence, definitely the plaintiff would not have paid a sum of Rs.60 Lakhs to the defendant. Therefore, it is quite clear that on the side of the plaintiff, plenitude of evidence is available for the purpose of showing that Ex.A.1 has been executed by the defendant and in pursuance of the same and also in aggregation, the defendant has received a sum of Rs.60 Lakhs.

20. It is also equally an admitted fact that after filing of the suit, the plaintiff has deposited a sum of Rs.50 Lakhs into Court.

21. Considering the total amount paid to the defendant by the plaintiff, the Court can easily infer that the plaintiff has been always ready and willing to perform his part of contract.

22. The trial court has also negatived the relief of specific performance on the ground that stamp papers of Ex.A.1 have been purchased in Tamil Nadu, whereas Ex.A.1 has been executed in Kerala and on that ground also, the relief of specific performance cannot be granted.

23. It is true that the stamp papers for execution of Ex.A.1 are purchased only in Tamil Nadu, but Ex.A.1 has come into existence in Kerala. Since the stamp papers have been purchased in Tamil Nadu, the court cannot come to a conclusion that Ex.A.1 is a concocted document. In fact, during the course of cross-examination, the defendant has given all favourable answers to the plaintiff. Under such circumstances, this Court is of the definite view that Ex.A.1 has been executed by the defendant in favour of the plaintiff and thereby agreed to sell the suit properties for a sum of Rs.1,10,00,000/- and on the date of its execution, he has received a sum of Rs.10 Lakhs and subsequently, on various

occasions, he received a sum of Rs.50 Lakhs and in aggregation, he has received Rs.60 Lakhs.

24. Considering the evidence available on record, this Court is of a definite conclusion that Ex-A1 is a genuine document. The Trial Court without considering the available evidence on record has erroneously declined to grant the relief of specific performance in favour of the plaintiff and therefore, viewing from any angle, the argument advanced by the learned Senior Counsel appearing for the appellant/plaintiff is really having subsisting force whereas the argument advanced by the learned counsel for the respondent/defendant is not having merit.

25. It has already been pointed out that the Trial Court has failed to appreciate the available evidence in a proper perspective manner and therefore, the judgment and decree passed by the Trial Court are liable to be set aside.

In fine, this appeal suit is allowed with cost. The judgment and decree dated 11.4.2012, passed in O.S.No.3 of 2011, by the Additional District Court/Fast Track Court No.3, Kallakurichi are set aside. The suit filed in O.S.No.3 of 2011 is decreed as prayed for, with cost. The respondent/defendant is directed to execute a sale deed in favour of the appellant/plaintiff, within a period of three months. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ajr

To

The Additional District and Sessions Court/
Fast Track Court No.3,
Kallakurichi.

+1cc to M/s.R.Meenal, Advocate, S.R.No.54968
+1cc to Mr.V.Manohar, Advocate, S.R.No.54595

Appeal Suit No.528 of 2012

VGI(CO)
CA(11/01/2017)