

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2016

Coram

The Honourable Mr.Justice R.SUBRAMANIAN

A.S.No.763 of 2009

and

M.P.No.1 of 2009

P.Hariharan

...

Appellant/Plaintiff

Vs.

1.S.Ramakrishnan

2.S.Lakshminarayanan

... Respondents/Defendants

This Appeal has been filed against the Judgment and decree dated 30.04.2009 made in O.S.No.261 of 2006 on the file of the learned Additional District Judge, Fast Track Court No.I, Chengalpattu.

For Appellant : Mr.S.Sadasharam

For 2nd respondent : Mr.N.Jayabalan for
Mr.P.Premkumar
Mr.B,Manivannan
Mr.K.Vaidhyanathan

For R1 : No Appearance

J U D G M E N T

The unsuccessful plaintiff in O.S.No.261 of 2006, which was originally filed as O.S.No.357 of 1999 before the Sub Court, Poonamallee and on being transferred and re-numbered as above before the learned Additional District Judge, Fast Track Court No.I, Chengalpattu is the appellant.

2. The suit was filed by the plaintiff for specific performance for agreement of sale dated 03.10.1997 entered into between the plaintiff and the defendants who were joint owners of the property. According to the plaintiff, on 03.10.1997, the defendants offered to sell the property for a total consideration of Rs.6,00,000/- and they entered into the suit agreement and on the said date the plaintiff paid a sum of Rs.1,00,000/- as advance and six months time was fixed to perform the contract. Since the defendants attempted to alienate the property to third parties, the plaintiff had chosen to file a suit in O.S.No.150 of 1998, for bare injunction restraining the defendants from alienating the property, in December,1997. During the pendency of the said suit, the above suit for specific performance was filed by the plaintiff. The plaintiff would over that though he was ready

and willing to perform his part of the contract and offered to pay the balance sale consideration, the defendants were evading performance. Therefore, the plaintiff was constrained to file the said suit eventually in June, 1999.

3. The first defendant was set ex parte. The second defendant contested the suit claiming that the agreement itself was executed as security for a loan transaction between the first defendant and the plaintiff and it was not with an intention to sell the property. He signed the agreement only on assurance of the first defendant that it is only a loan transaction. He also contended that the alleged advance amount of Rs.1,00,000/- paid by the plaintiff on the date of agreement was only loan.

4. Before the trial Court, the plaintiff examined himself as P.W.1 and the sale agreement dated 03.10.1997 was marked as Ex.A1. The second defendant examined himself as D.W.1 and Exs.B1 to B4 were marked on the side of the defendants. Ex.B1 was marked in the cross examination of the plaintiff. On a consideration of the oral and documentary evidence, the learned Additional District Judge, Fast Track Court No.I, Chengalpattu framed the following issues:-

1. Whether the sale agreement dated 03.10.1997 is valid and enforceable?
2. Whether the advance amount of Rs.1,00,000/- was paid by the plaintiff to the defendant and the defendant is agreed to sell the property to the plaintiff is correct or not?
3. Whether the amount of Rs.1,00,000/- is only security for the amount payable by the first defendant is correct or not?
4. Whether the sale consideration was received by the defendant is correct or not?
5. Whether the plaintiff is entitled for specific performance of contract as prayed for?
6. To what relief?

5. On a consideration of the oral and documentary evidence, the learned trial Judge came to the conclusion that the plaintiff has not established the truth and genuineness of the agreement. The learned trial Judge also found that the plaintiff failed to examine at least one of the attestors to the suit agreement Ex.A1 which would cause serious doubt about the execution of the documents in the form as it is presented before the Court and upon such finding the learned trial Judge came to the conclusion that the plaintiff will not be entitled to the exercise the discretion in his favour. The learned trial Judge also found that the plaintiff has not proved that he was always ready to willing to perform his part of contract. The learned trial Judge also took note of the delay in filing of the suit seeking specific performance. On the above findings, the learned trial Judge dismissed the suit.

Aggrieved over the said dismissal, the plaintiff has filed the above appeal.

6. Heard Mr.S.Sadasharam, learned counsel appearing for the appellant and Mr.S.Jayabalan, learned counsel appearing for the second respondent. Though the first respondent is represented by counsel, none appeared.

7. The following points arise for determination in this appeal.

1) Whether the trial Court was correct in refusing the discretionary relief for specific performance on the ground that the plaintiff has not established Ex.A1 agreement was entered into, intending it to be an agreement of sale.

2) Whether the plaintiff was ready and willing to perform his part of contract?

8. Mr.S.Sadasharam, the learned counsel appearing for the appellant would contend that the learned trial Judge had rejected the claim of the plaintiff on the ground that the plaintiff has not signed the sale agreement and that the plaintiff has not sought for specific performance for more than 10 years. The learned counsel would also draw my attention to the written statement filed by the second defendant, wherein, according to him, the execution of the agreement has been admitted. Since the suit has been filed within the period contemplated under limitation, there is no question of the plaintiff not being ready and was unwilling to perform his part of contract.

9. Countering the said submission, Mr.S.Jayabalan, learned counsel appearing for the second respondent would contend that the execution of the agreement is not admitted. What was admitted was that the agreement was signed, but it was intended to be security for a loan transaction. Therefore, according to the learned counsel, the receipt of advance or intention to sell the property was never admitted. It was for the plaintiff to prove that there was an agreement between the parties and the advance of Rs.1,00,000/- as found in Ex-A1 was in fact paid to the defendants. The learned counsel would point out that Ex.B1 a hand written note book, which reflected a certain loan transaction has been marked through P.W.1 in his cross examination. P.W.1 has admitted that Ex.B1 has been written by him. In the said circumstances, it is for the plaintiff to prove the same by examining at least one of the attestors.

10. I have considered the rival submissions and also gone through the evidence on the side of the plaintiff and the defendants as well as the documents.

11. The trial Court had observed that the plaintiff has not signed the document. It has also stated that the plaintiff cannot fail in the suit on that ground alone. The learned trial Judge has basically found that the plaintiff has not established the fact that the agreement, which was entered into between the parties, was in consonance with terms of the sale of the property at the time of agreement. The trial Court has taken note of the specific plea of the second defendant to the effect that the agreement was intended it to be a security for a loan transaction between the plaintiff and the first defendant and held that the plaintiff has not examined the attestors to the sale agreement Ex.A1, and, therefore, he failed to establish that Ex.A1 was intended to be only a sale agreement and not a security transaction.

12. Upon going through the evidence on record, I find that the specific plea of the second defendant that there was no agreement for sale of the property and no advance was paid on the date of execution of Ex.A1 dated 03.10.1997 and the agreement was intended only as a security for loan transaction is correct. The production of Ex.B1 and the admission of P.W.1 in his cross examination would probabilise the case of the second defendant. It should be pointed out at this juncture that Ex.B1 was in fact marked through the plaintiff as P.W.1 in his cross examination. Even after that the plaintiff has not chosen to examine any one of the attestors to the document to prove that the document was intended to be a sale agreement and the plaintiff had in fact paid a sum of Rs.1,00,000/- on the date of execution of Ex.A1 dated 03.10.1997. In the absence of any such evidence, I am unable to agree with the learned counsel appearing for the appellant who would contend that once the execution of the agreement is admitted, it was not necessary for him to examine the attestors. It should be pointed out that the admission of execution is a qualified admission. It is a specifically qualified admission or an admission with reservation. In such circumstances, the proof of the contents cannot be dispensed with. This, by itself creates a doubt in the mind of the Court as to the truth and validity of Ex.A1 or the circumstance under which Ex.A1 came to be executed.

13. Admittedly, the period of six months for performance of the agreement has expired on 03.04.1998 and the present suit for specific performance came to be instituted in June,1999, after one year two months after expiry of time fixed in the agreement. No doubt, it is within the limitation contemplated under Article 54 of the Limitation Act. Having regard to the relief, namely, specific performance, in 2011 (12) SCC page 18, SARADAMANI KANDAPPAN, the Hon'ble Supreme Court has pointed out that the time fixed under the agreement should be very relevant and the suit filed long after expiry of the time will have to be rejected, necessarily on the ground that the plaintiff has not been ready and willing to perform his part of contract as required under Section 16(c) of the Specific Performance Act.

14. In the light of the above, I am unable to see any ground for interference with the Judgment and Decree of the trial Court. The trial Court has taken note of the facts and circumstances of the case and denied the relief sought for by the plaintiff.

15. In the result, the appeal fails and the same is dismissed, confirming the Judgment and Decree of the trial Court. There is no order as to costs. Consequently, connected M.P. is closed.

Sd/-

Asst.Registrar (CS)

/true copy/

Sub Asst. Registrar

To

The Additional District Judge,
Fast Track Court No.I,
Chengalpattu.

+1 cc to M/s.P.Premkumar,advocate,sr.68144

+1 cc to M/s.S.Sadasharam,advocate,sr.68400

rsk(co)
krd 4/1

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