

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON 07.11.2016
DATE OF DECISION: 18 .11.2016
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.837 of 2009

S.V.Ravindran

... Appellant/Plaintiff

Vs

1.S.Chinnaswamy

2.The Manager,

Central Bank of India,

Peelamedu, Coimbatore.

... Respondents/Defendants

This appeal is filed under Section 96 of C.P.C. against the judgement and decree made in O.S.No.391 of 2006 on the file of the Additional District and Sessions Judge and Fast Track Court No.II, Coimbatore dated 09.02.2009.

For Appellant : Mr.K.P.Chandrasekaran

For Respondents : M/s.N.Manokaran for R1

M/s.T.M.Hariharan &

L.Leela Raman for R2

J U D G E M E N T

The unsuccessful plaintiff whose suit for specific performance of the agreement of sale dated 10.02.2015 in O.S.No.391 of 2006 was dismissed is the appellant in this appeal.

2. According to the plaintiff, the defendants agreed to sell the suit property, measuring an extent of 3050 sq.ft. bearing Door Nos.91 and 92 Kalayanasundaram Road, Velankurichi Village, Gandhipuram, Coimbatore District situate within the Coimbatore Corporation limit for a total consideration of Rs.12,05,001/- (Rupees twelve lakhs five thousand and one only). The said sale agreement was reduced in writing on 10.02.2005 and the plaintiff had paid advance amount of Rs.25000/- (Rupees twenty five thousand only) on the date of the agreement.

3. Under the said agreement, a period of two months was fixed for execution of the sale deed. It is averred that on 10.04.2005, an endorsement was made in the agreement extending the time for performance till 10.07.2005. It is further averred that on 25.05.2005 the plaintiff paid a further advance of Rs.30,000/- and an endorsement to that effect was made in the

sale agreement dated 10.02.2005. Again by an endorsement made on 9th July 2005, the time for performance was extended to 9th September, 2005.

4. The plaintiff had claimed that the Electricity Board Card, House Tax book, Water Charges payment Card were handed over to him by the defendants. The plaintiff would claim that since the 1st defendant did not come forward to execute the sale deed, he issued telegram requesting the first defendant to be present at the Office of the Sub-Registrar on 08.09.2005. As the first defendant did not turn up, he was forced to issue a legal notice dated 16.09.2005 demanding execution of the sale deed. The said notice was received by the 1st defendant on 01.10.2005 and the 1st defendant sent a reply on 03.11.2005 containing various false allegations. In the meantime, the second defendant bank had issued a notice under Section 13(4) of the SARFAESI Act 2002 claiming a sum of Rs.5,95,066.94 as due and payable by the first defendant to the bank. On the above contentions, the plaintiff came forward with a suit for specific performance. The suit was filed on 3.08.2006.

5. The first defendant filed a written statement admitting the agreement and contending that the agreement itself was entered into to pay the loan due to the second defendant bank and the plaintiff was not ready and willing to pay the balance sale consideration. The claim of payment of additional advance amount of Rs.30,000/- was also denied by the first defendant. The 1st defendant would also contend that he went to Registrar Office on 8.09.2005, waited there and also attested the document registered on the said date. According to the 1st defendant, it is the plaintiff who was not available for registration on the said date.

6. The 1st defendant would further claim that he had issued notice on 14.02.2006 canceling the agreement. Thus the defendant would contend that the plaintiff is not entitled to the discretionary relief of specific performance. The 1st defendant's failure to perform his part of contract and the substantial delay in filing the suit, it would dis-entitle the plaintiff from seeking discretionary relief of specific performance.

7. On the above pleadings the learned Additional District Judge (Fast Track Court No.2) Coimbatore framed the following issues:

- 1) Whether the plaintiff is entitled to the specific performance?
- 2) Whether the agreement dated 10.02.2005 is subsisting?
- 3) Whether the plaintiff is entitled to decree for injunction as prayed for?
- 4) To what other reliefs, the plaintiff is entitled to?

8. The plaintiff had examined himself as PW1 and has produced Exs.A1 to A10. In support of the defence, the 1st defendant had examined himself as DW1 and has produced Exs.B1 to B10.

9. Upon consideration of oral and documentary evidence on record, the learned Additional District Judge, (Fast Track Court No.2) Coimbatore came to the conclusion that the plaintiff is not entitled to the relief of specific performance, since he has not been ready and willing to perform his part of contract. The learned Additional District Judge has also held that the agreement is in force, on the ground that the defendant has not proved the service of notice dated 14.02.2006 canceling the agreement of the plaintiff. The learned Additional District Judge also found that the plaintiff is not entitled to injunction as claimed by him.

10. On the aforesaid findings, the learned Additional District Judge, Coimbatore dismissed the suit. Aggrieved by the said judgement and decree, the above appeal has been filed by the plaintiff.

11. I have heard Mr.K.P.Chandrasekaran, learned counsel appearing for the plaintiff/appellant and Mr.N.Manokaran, learned counsel appearing for the first respondent/first defendant and Mr.T.M.Hariharan, learned counsel appearing for the second respondent-bank. Since the loan has been discharged by the first respondent, the bank has no interest in the subject matter of the suit as on today.

12. The following points arise for determination in the appeal:

- 1) Whether the plaintiff is entitled to seek discretionary relief of specific performance?
- 2) Whether the plaintiff has established his readiness and willingness to perform his part of contract?
- 3) Whether the plaintiff is entitled to a decree for injunction as prayed for by him?
- 4) To what other relief, the plaintiff is entitled to.

POINTS 1, 2 & 3

13. Mr.K.P.Chandrasekaran, learned counsel appearing for the appellant would rely upon the judgement of the Hon'ble Supreme Court in Chand Rani vs. Kamal Rani reported in AIR 1993 SC 1742 and the judgement of this Hon'ble Court in N.Saraswathi Ammal vs. Jayaram Rao and others reported in 1998 (II) CTC 613. Relying upon the judgement in Chand Rani case, learned counsel would contend that time is not the essence of the contract with reference to agreement relating to sale of immovable properties.

The plaintiff has filed the suit within three years from the date of the refusal. There is no question on the appellant being not ready to perform his part of the contract. The learned counsel invokes the aid of the judgement in Saraswathi Ammal to claim that the suit is well within time prescribed under Section 54 of the Limitation Act and as such his client has to be favoured with a decree for specific performance.

14. On the other hand Mr. N. Manokaran, learned counsel appearing for the first respondent would rely upon the judgements of the Hon'ble Supreme Court in K.S. Vidyamandam vs. Vairavan reported in (1997) 3 SCC 1 and the judgement of the Hon'ble Supreme Court in Saradamani Kandappan vs. S. Rajalakshmi and others reported in (2011) 2 SCC 18. Learned counsel would draw my attention to paragraphs 37 and 43 of the judgement in Saradamani Kandappan's case and would contend that the property being an urban property, the law laid down by the Hon'ble Supreme Court would aptly apply to the case on hand. It will be useful to extract paragraphs 37 and 43 of the said judgement.

" 37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and "non-readiness". The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received

rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining Rupees Ninety thousand, when the property value has risen to a crore of rupees.

43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S.Vidyanandam.

(i) The Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The Courts will apply greater scrutiny and strictness when considering whether the purchaser was "ready and willing" to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The Courts will also "frown" upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser"

15. The learned counsel inviting my attention to the notice dated 16.09.2005 and the reply dated 3.11.2005 would contend that the suit came to be filed only on 3.8.2006 i.e. only after nine months from the date of the reply notice wherein, the first respondent had categorically stated that the plaintiff is not entitled to specific performance in view of the delay. The learned counsel also drew my attention to the specific statement made in the reply notice which runs as follows:

" 4. My client states that even now if your client is having the remaining sale consideration of Rs.11,50,000/- my client is ready to execute the sale deed."

It is further stated that:

" My client is always ready and willing to execute the sale deed by receiving remaining sale

consideration..... "

It is also claimed that the plaintiff is not a man of means. In the said reply notice marked as Ex.A6, it is claimed as follows:

" You are hereby called upon to inform my client on which date your client will be ready with remaining sale consideration so as to execute the sale deed by my client by receiving the amounts....."

In the very same reply notice dated 3.11.2005, the first respondent had pleaded that the plaintiff has to pay atleast a sum of Rs.8,00,000/- immediately so as to enable him to close the loan amount and receive the original sale deed. Surprisingly, the plaintiff has not chosen to comply with the demand made in the said reply dated 3.11.2005. However, he has chosen to issue rejoinder on 19.11.2005, wherein he would claim that it is for the defendant to clear the loan and get the document from the bank.

16.It should be pointed out that the plaintiff has not expressed his readiness and willingness to pay the balance sale consideration and has issued a rejoinder. A reading of the entire rejoinder dated 19.11.2005 marked as Ex.B5 would show that the aim of the plaintiff is to buy time. Knowing fully well that the document was with the bank and the same will not be released without loan being discharged, the plaintiff would claim that he is ready subject to the production of original documents.

17.It is not in dispute that the plaintiff as well as the defendants have produced documents to show that they were present in the Office of the Sub Registrar on 8.9.2005. Though the plaintiff would claim that he had Rs.18,00,000/- in his hand on the date of agreement, he has not produced any documentary evidence to support such a claim. The plaintiff would also admit that he was aware that the first defendant was indebted to the second respondent-bank at the time of agreement.

18.A reading of the evidence of PW1 particularly, the manner in which he had deposed in cross-examination would lead me to believe that he is not speaking the truth.

19.The relief of specific performance being a discretionary relief, unless the plaintiff proves his case in such a way to inspire confidence of the courts, he will not be entitled to the exercise of discretion in his favour. It is no doubt true that the periods fixed for specific performance under Ex.A1 have been extended by the parties on two occasions. Mr.K.P.Chandrasekaran, learned counsel appearing for the appellant would submit that the very extension would mean that parties never intended time to be the essence of the contract. He would further submit that having issued notice demanding performance within the extended period,

the appellant has proved his readiness and willingness to perform his part of the contract. I am unable to agree. The time fixed for performance was extended till 9.9.2005 and the plaintiff chose to issue telegraphic notice on 6.9.2005 just about 3 days prior to the expiry of the time fixed in the agreement.

20.The facts and circumstances, according to me would disentitle the plaintiff from seeking specific performance of his contract for nearly nine months after the receipt of Ex.A6 reply notice wherein, the 1st defendant had literally pleaded that the plaintiff has to pay atleast a portion of the sale consideration immediately to enable him to discharge the debt due to the bank. The substance of the rejoinder dated 19.11.2005 would belie claim of the plaintiff that he is ready and willing to perform his part of the contract.

21.The plaintiff had insisted upon production of original documents even when the defendants have made it clear that unless the bank is paid the production of document was not to be possible. In the light of the above, I am constrained to agree with the conclusion of the learned Additional District Judge (Fast Track Court No.2) Coimbatore to the effect that 1) the plaintiff has not been ready and willing to perform his part of the contract and as such he is not entitled the relief of specific performance and 2) in view of the rejection of the prayer for specific performance there is no question of granting any injunction in favour of the plaintiff. All the points are answered against the appellant/plaintiff.

22.Thus I find that the plaintiff is not entitled to any relief and the appeal deserves to be dismissed. In fine the above appeal is dismissed confirming the judgment and decree of the Trial Court in O.S.No.391 of 2006 on the file of the Additional District and Sessions Judge and Fast Track Court No.II, Coimbatore dated 09.02.2009. However, there will be no order as to costs in the appeal. Consequently the connected M.P.No.1 of 2009 is also dismissed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vk

To

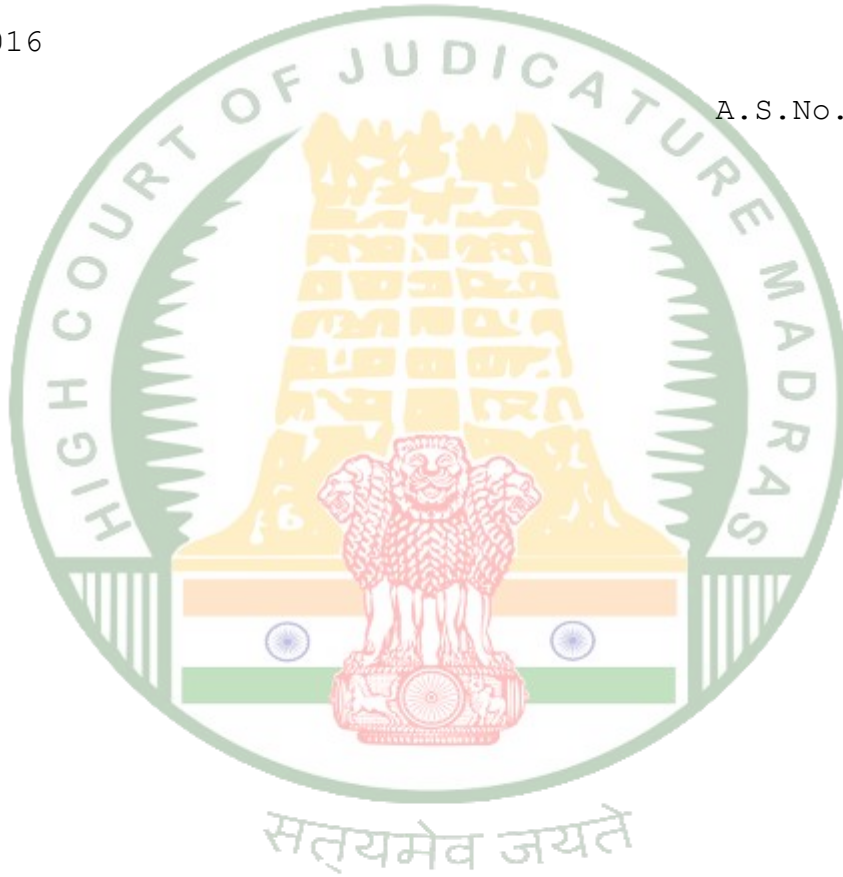
1.The Additional District and Sessions Judge
and Fast Track Court No.II, Coimbatore.

2.The Section Officer
VR Section High Court Madras

+1 cc to M/s.N.Manokaran Advocate sr 67358

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A.S.No.837 of 2009



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