

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.11.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.334 of 2015

K.Saradammal

..Appellant/Respondent/Defendant

-Vs-

V.Devendran

..Respondent/Appellant/Plaintiff

Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 28.11.2014 made in A.S.No.35 of 2014 on the file of Sub Court at Vellore, reversing the decree and judgment passed in O.S.No.629 of 2007 dated 08.08.2012 on the file of the Principal District Munsif Court, Vellore.

For Appellant : Mr.K.J.Parthasarathy

For Respondent : Mr.R.Gandhi, Senior Counsel
for Mr.R.G.Narendhiran

J U D G M E N T

The appellant is the defendant in a suit for specific performance. The respondent herein as the plaintiff filed the suit based on an agreement of sale dated 28.03.2004 executed by the defendant.

2. It is the case of the plaintiff that as per the agreement, the defendant agreed to sell the suit property for a total consideration of Rs.82,500/- and received a sum of Rs.10,000/- as advance on the date of such agreement and three months time was given for the performance of the agreement by the respective parties. It is the further case of the plaintiff that though he was ready and willing to perform his part of the contract, the defendant has not come forward to execute the sale deed and therefore, he issued a notice on 08.06.2007. Thereafter, he filed the present suit seeking for specific performance of the said agreement of sale or in the alternative, for refund of the advance amount with interest.

3. The case of the defendant is that she is not the owner of the suit property and on the other hand, the same was enjoyed by her husband by way of life estate interest under a settlement deed executed by one Chellammal, namely, the grand mother of the defendant's husband and that the settlement deed very clearly stipulated that after the life time of the defendant's husband, who had only the life estate, the suit property should go to the children of her husband absolutely. Therefore, it is contended by the defendant that the agreement executed by her, cannot be enforced since she is not holding title to the suit property either on the date of the agreement or later. Apart from raising such defence, it is also contended, even otherwise, that the plaintiff was not ready and willing to perform his part of the contract within the time stipulated and the very notice issued on 08.06.2007 itself is after three years from the date of the agreement especially when the time stipulated for performance was only three months.

4. The plaintiff, in support of his case examined himself as P.W.1 and the attesting witness of the sale agreement as P.W.2. He marked Exs.A1 to A4 on his side. The defendant examined herself as D.W.1 and marked Exs.B1 to B9 in support of her case. The trial Court, by considering the rival pleadings of the parties and the evidence let in by them, found that the defendant was not having right to execute the sale agreement as she was not the owner of the suit property on the date of such execution, going by the terms of the settlement deed executed by the said Chellammal in favour of the defendant's husband, marked as Ex.B2. The trial Court also pointed out that even otherwise the plaintiff is not entitled to such equitable relief when he has not established his readiness and willingness, as required under law. Accordingly, the trial Court rejected the relief of specific performance and granted the alternative relief of refund of the advance amount of Rs.10,000/- with 24% interest.

5. The plaintiff preferred an appeal before the First Appellate Court. The defendant did not challenge the judgment and decree of the trial Court insofar as against the grant of the alternative relief of refund of advance amount.

6. The appellate Court allowed the appeal by reversing the judgment and decree of the trial Court and granted the relief of specific performance on the reason that the patta marked on the side of the defendant as Ex.B5 shows the defendant's name also as one of the party to such patta and therefore, she is the owner of the property and that she is bound to execute the sale deed. The appellate Court has also given a finding that after the demise of the husband of the defendant, the property would

devolve upon the legal heirs of her husband which include the defendant and therefore, the agreement executed by the defendant is valid and binding as she is having title to the suit property.

7. Challenging the reversing finding, the present Second Appeal is filed before this Court. At the time of admitting this appeal, the following substantial questions of law were raised before this Court.

a. Whether the Lower Appellate Court was erred in dismissing the claim of the appellant herein that she is not the owner of the suit schedule property by virtue of Settlement Deed/ Ex.B2?

b. Whether the Lower Appellate Court is right in holding that Ex.A1 constituted a valid and concluded contract and capable of performance in the absence of title to the appellant herein?

c. Whether the Lower Appellate Court is right in granting the equitable relief of specific performance ignoring the time limit specifically fixed in alleged sale agreement Ex.A1?

8. Mr. K.J.Parthasarathy, learned counsel appearing for the appellant submitted that the lower appellate Court erred in granting the relief of specific performance without considering the fact that the defendant is not having title to the suit property, in view of the settlement deed executed and marked as Ex.B2, according to which, only her children namely, two sons and one daughter become the owners after the demise of her husband, who was given only a life estate therein. Therefore, he contended that a person who has no title to the property, even though entered into an agreement of sale with another person, cannot be compelled by the agreement holder to execute the sale deed in respect of such property. Apart from raising such contention, learned counsel also submitted that even assuming that the defendant is having title and bound by the agreement, the lower Appellate Court is not justified in granting the relief, which is purely a discretionary one, in view of the fact that the plaintiff has not established his readiness and willingness as required in law, as he filed the suit after three years, that too, by issuing the notice under Ex.A1 after three years.

9. Per contra, Mr.R.Gandhi, learned senior counsel appearing for the respondent/plaintiff submitted that in the very plaint itself the plaintiff has specifically stated that the defendant promised the plaintiff that the schedule property had fallen to her share as per the family arrangement among her family and as per such family arrangement, she is the absolute

owner having absolute possession and enjoyment of the same. Therefore, the learned senior counsel submitted that specific pleading raised by the plaintiff having not been denied by the defendant in her written statement, the same has to be accepted as true and consequently, the defendant has to be held as the owner of the property and bound by the agreement. Learned senior counsel further contended that the patta stands in the name of the defendant and her children and therefore, it shows that she is having title to the suit property. He also submitted that the defendant had obtained some bank loan which conduct would show that her title to the property cannot be disputed.

10. Heard learned counsel appearing for the appellant and the learned senior counsel appearing for the respondent and perused the materials placed before this Court.

11. The plaintiff has come forward with the present suit seeking for specific performance of the agreement of sale dated 28.03.2004. There is no dispute to the fact that the total sale consideration fixed in the agreement was Rs.82,500/-, out of which, Rs.10,000/- was paid and received as an advance on the date of such execution. It is also not in dispute that three months time was fixed for the performance of the contract. It is also seen that the plaintiff has issued the suit notice only on 08.06.2007, marked as Ex.A2 and has not filed any other document to prove that he has taken any steps to seek the execution of the sale deed within the time fixed in the agreement by paying the balance amount thereby showing his readiness and willingness. I will go into this aspect of readiness and willingness little later after considering the rival pleadings of the parties and the evidence let in by them in respect of the title to the suit property.

12. No doubt, the plaintiff has pleaded that the defendant promised him that she is the owner of the property in pursuant to a family arrangement. Therefore, it is contended by the plaintiff that the defendant, having so promised and made the plaintiff to believe such promise, cannot go back and refuse the specific performance. On the other hand, the defendant in her written statement has specifically stated that she never expressed that she was the absolute owner of the suit property at any point of time and all allegations contrary to the above fact are denied as false. Apart from saying so, the defendant has specifically stated in paragraph No.10 of the written statement that she was not the owner of the suit property and the same originally belonged to one Chellammal, wife of one Veerasamy Reddiar, who in turn, out of love and affection, executed a settlement deed in favour of the defendant's husband, Kandaswamy Reddiar on 27.12.1966, registered as document No.166/1967, creating a life estate on her husband in the suit

property and specifically vesting the absolute right on his children after his demise. In order to establish such contention, the defendant has marked Ex.B2 settlement deed. A perusal of Ex.B2 settlement deed would clearly indicate that the suit property was vested in the hands of the defendant's husband for him to enjoy only during his life time, by specifically vesting its absolute right on the children born to him. Therefore, it is very clear that the testator of Ex.B2 has not vested the suit property in the hands of all the legal heirs of Kandaswamy Reddiar and on the other hand, vested the same only on the children of Kandaswamy Reddiar. Therefore, it goes without saying that the defendant being the wife of the said Kandaswamy Reddiar, is excluded from the ownership and thus, she is not entitled to the suit property at any point of time.

13. No doubt, Ex.B5 patta indicates that the defendant was also shown as one of the owner of the suit property along with her two sons and one daughter. It is well settled that patta itself cannot be considered as a document of title to seek any relief. At best, it can be taken into consideration in support of the plea of possession over the suit property. Therefore, it is evident that the defendant is not the owner of the property, either at the time of execution of the agreement or thereafter. An agreement executed by such person, not having title to the suit property, cannot be enforced by way of getting a decree for specific performance. It is well settled that the decree for specific performance, being a discretionary one, need not be granted even assuming that the plaintiff has made out a case. The Court has to consider all the facts and circumstances and only if it finds that the grant of such decree is absolutely necessary it can do so. In this case, I have pointed out that the defendant had no title over the suit property at any point of time. When such being the position, the agreement executed by the defendant, cannot be enforced by the plaintiff. If any false promise is made by the defendant, the plaintiff, at best, could seek for damages against the defendant by filing appropriate suit at the appropriate time. In this case, the plaintiff has chosen to seek the alternative relief only for refund of the advance amount, which the trial Court has rightly granted.

14. Now let me come to the next issue on readiness and willingness. Let us assume that the agreement is valid and the defendant is having title to the suit property. Even then, as I have noted already, the very conduct of the plaintiff in coming to the Court after three years, that too, by issuing notice after three years from the date of agreement, especially when the time limit fixed was only three months, would show that the plaintiff is not ready and willing to perform the contract within the time stipulated, at any point of time. It is well settled that the plaintiff has to necessarily plead and prove as

required under Section 16(c) of the Specific Relief Act about his readiness and willingness from the date of agreement till the date of the decree. In this case, such required pleading is totally absent. Thus, it is evident that the readiness and willingness are not at all proved by the plaintiff, except by marking Ex.A2 notice, which is admittedly issued after three years. Therefore, even on the ground of readiness and willingness, the plaintiff has to fail. The lower Appellate Court, unfortunately misconstrued Ex.B2 Settlement Deed, without applying its mind to the recitals contained therein and found that the defendant being the legal heir of Kandaswamy Reddiar is entitled to the suit property. Such finding in effect is factually wrong as could be seen from the recitals of Ex.B2 itself. Considering all these aspects, I find that the judgment and decree of the lower appellate Court cannot be sustained and liable to be set aside. Accordingly, the questions of law raised in this appeal are answered in favour of the appellant and against the respondent. Consequently, the Second Appeal is allowed and the judgment and decree of the lower appellate Court are set aside and the judgment and decree of the trial Court are restored. If any amount is deposited by the appellant/defendant in pursuant to the decree granted by the trial Court, it is open to the respondent/ plaintiff to receive the same by making an appropriate application before the Court in which such deposit was made. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi

To

1. The Sub Court, Vellore .
 2. The Principal District Munsif Court, Vellore.
- +2 ccs to Mr.K.S.Parthasarathy Advocate sr 66947
+1 cc to M/s.R.G.Narendhiran Advocate sr 66463

Second Appeal No.334 of 2015

ssl(co)

aa06/01/2017