

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.741 of 2015

and

M.P.No.1 of 2015

1.Egammal
2.Raja
3.Selvam

.... Appellants/LRs of deceased
sole Defendant

vs.

1.Lakshmiammal
2.Somu
3.Karthick
4.Devi

....Respondents/Legal heirs of
the deceased sole Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 31.03.2015 made in A.S.No.28 of 2006 on the file of IV Additional District Court, Ponneri, reversing the judgment and decree dated 24.06.2005 made in O.S.No.343 of 2006 on the file of the District Munsif Court, Ponneri.

For Appellants : Ms.T.Jayalakshmi
for M/s.Paul and Paul
For Respondents : Mr.A.Kandasamy

J U D G M E N T

The appellants are the legal heirs of the deceased sole defendant in a suit for specific performance of agreement of sale. The respondents are the legal heirs of the deceased sole plaintiff. For the sake of convenience, let me refer the parties herein as plaintiff and defendant.

2.The case of the plaintiff is as follows:

The suit property originally belonged to Chakkarai Reddi with whom he entered into an agreement of sale on 03.08.1987 to purchase the same for a total sale consideration of Rs.25,620. A sum of Rs.13,000/- was paid as advance on the date of agreement. For paying the balance sale consideration of Rs.12,620/-, a time limit was fixed upto 20.05.1988. Though the plaintiff was ready and willing to perform his part of the

contract, the said Chakkarai Reddi did not come forward to perform his part of the contract. The said Chakkarai Reddi died on 15.06.1990 and the suit property devolved upon his legal heir viz., the defendant. Even the defendant evaded his performance under the agreement and consequently, after issuing a notice on 20.05.1991, the present suit was filed on 10.06.1991, by seeking the relief of specific performance of the agreement of sale or in the alternative for return of the advance amount.

3.The defendant contested the suit by claiming that the suit is barred by limitation and that the plaintiff failed to perform his part of the contract within the time stipulated.

4.The trial court, upon considering the rival pleadings of the parties and the evidence let in by them, while refusing to grant the relief of specific performance, however, granted the alternative relief of refund of advance amount with 6% interest from the date of decree till the date of realisation.

5.Challenging the said judgment and decree of the trial court, the plaintiff filed the first appeal. The Appellate Court, after hearing both parties, reversed the findings of the trial court and granted the relief of specific performance in favour of the plaintiff.

6.Challenging the said finding of the lower appellate court, the legal heirs of the defendant have filed the present second appeal.

7.It is seen that during pendency of the present proceedings before the courts below, both the plaintiff and the defendant had died and their respective legal heirs were brought on record. It is also seen that as against the decree granted by the trial court in respect of the alternative relief of refund of the advance amount, the defendants have not filed any appeal before the first appellate court.

8.The above second appeal was admitted by this court by raising the following substantial questions of law:

"a)Whether the learned appellate court could hold that the plaintiff was ready and willing to perform his obligations under the Agreement of Sale without any pleading or evidence on the part of the plaintiff that he had performed his obligations as per the mode set out in the Agreement of Sale which included preparation of the sale papers and call upon the defendant to execute and register the sale deed after paying the balance sale consideration?

b) Whether the lower appellate court was right in granting the relief of specific performance without appreciating the ratio of the decisions laid down by the Hon'ble Apex Court in various decisions including the one reported in 2011(4) CTC 640 that suits for specific performance need to be filed immediately after the breach/refusal and the fact that limitation is three years does not mean a Purchaser can wait for one or two years to file a suit and obtain specific performance?

c) Whether the lower appellate court was right in any even in the given circumstances in granting the relief of specific performance without considering the alternative relief of refund of advance amount sought for by the plaintiff?"

9. Learned counsel appearing for the appellants submitted that when the suit for specific performance is hopelessly barred by limitation, the lower appellate court is erred in law in granting such relief. However, in so far as the grant of alternative relief is concerned, the learned counsel fairly conceded that the defendants are bound to pay the advance amount to the plaintiff according to the decree granted by the trial court.

10. Per contra, learned counsel for the respondents submitted that when the suit is filed within three years from the date of refusal, the relief of specific performance granted by the lower appellate court need not be interfered with. He also submitted that the plaintiff was ready and willing to perform the contract always and therefore, the grant of relief of the specific performance is just and proper. He further submitted that the readiness and willingness was proved by examining PW1 and PW2, apart from marking the suit notice dated 20.05.1991.

11. Heard both sides and perused the materials placed before this court.

12. The fight between the parties herein is in a suit for specific performance or in the alternative for the relief of refund of advance amount. Admittedly, the suit agreement was entered into on 03.08.1987 between the plaintiff and one Chakkarai Reddi, who is the brother of the deceased defendant. There is no dispute to the fact that the total sale consideration fixed therein was Rs.25,620/- out of which, Rs.13,000 was paid as advance on the very same day. It is also an admitted fact that the agreement stipulated time limit for payment of balance sale consideration as on or before 20.05.1988. It is also seen that Chakkarai Reddi was alive till 14.06.1990. Though the plaintiff sought to contend that he

was ready and willing to perform his part of the contract, what prevented the plaintiff from calling upon the said Chakkarai Reddi within the time stipulated under the said agreement by issuing any notice and filing a suit immediately thereafter, is not known.

13. In this case, admittedly, the suit notice itself came to be issued only on 20.05.1991, that too, on the deceased defendant in whose name the property got devolved after the death of the said Chakkarai Reddi. Therefore, it is evident that the plaintiff was not ready and willing to perform his part of the contract either within the time stipulated therein or even thereafter. He has chosen to file the suit only on 10.06.1991. Therefore, I find that the trial court has rightly refused the relief of specific performance, which is a discretionary relief, need not necessarily be granted, even assuming that the plaintiff has made out a case. In this case, the readiness and willingness on the part of the plaintiff is totally absent. The oral evidence of P.Ws.1 and 2 alone cannot be taken into consideration in the absence of any documentary evidence to show the readiness and willingness on the part of the plaintiff, when admittedly the very suit notice itself came to be issued after nearly three years from the date of the agreement. Further, it is admitted by the plaintiff in the plaint that the plaintiff can exercise the right to move a court of law for the specific performance of the agreement of sale if the said Chakkarai Reddi failed to execute the sale deed by the appointed date i.e., 20.05.1988. It is also admitted by the plaintiff in the plaint that ever since the date of agreement of sale, he was ever ready and willing to perform his part of the contract and was urging the said Chakkarai Reddi to execute the sale deed which he wantonly postponed. The plaintiff also admitted the knowledge of the death of the Chakkarai Reddi on 15.06.1990. Therefore, it is evident from the plaint averment itself that the said Chakkarai Reddi failed or refused to perform his part of the obligation under the contract either within the time stipulated in the agreement or even thereafter till his death. When that being the admitted facts by the plaintiff himself, the failure on the part of the plaintiff to file a suit immediately by pleading and establishing his readiness and willingness would undoubtedly show that the plaintiff was, in fact, not at all ready and willing to perform his part of the contract. Therefore, I find the rejection of the relief of specific performance by the trial court is just and proper, which the lower appellate court ought not to have granted. The lower appellate court failed to consider all these aspects and came to an erroneous conclusion that the plaintiff is entitled to the relief of specific performance.

14. The learned counsel for the respondents finally submitted

that the trial court, while granting the relief of refund of advance amount, directed the defendant to pay interest only from the date of the decree and not from the date of the agreement. I find justification in his submission. Therefore, the defendant is bound to pay interest from the date of the agreement. Accordingly, the second appeal is allowed, by answering the questions of law raised in favour of the appellants and the judgment and decree of the lower appellate court are set aside by restoring the judgment and decree of the trial court, however, by modifying the same to the extent as indicated hereunder:

The defendants/appellants are directed to pay the advance amount of Rs.13,000/- with interest at 6% p.a. from the date of the agreement till the date of realisation. If any balance amount is deposited by the plaintiff before the court below, he is entitled to get back the same by making appropriate application within a period of four months from the date of receipt of a copy of that application.

No costs. The connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vri

To

1.The IV Additional District Court,
Ponneri.

2.The District Munsif Court,
Ponneri.

copy to:

The Section Officer

VR Section High Court Madras

+1 cc to M/s.M.Srividhya Advocate sr 68663

+1 cc to Paul and Paul advocates sr 68403

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