

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.08.2016

Delivered on : 10.08.2016

CORAM

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

Appeal Suit No.786 of 2012

1.Smt.P.Sakunthala

2.R.Annamalai (deceased)

3.Smt.B.Nachiar

4.Kannammal

5.Smt.Suja

6.Deepa

7.Sathiya

... Appellants/Defendants

Appellants 4 to 7 brought on
record as LR's of deceased
2nd appellant vide order
of Court dt.16.10.2014,
made in M.P.No.1 and 2
of 2013

vs.

N.A.Rajendran

.... Respondent/Plaintiff

Appeal suit filed under Section 96 of C.P.C. against the
judgment and decree dated 28.1.2012, passed by the Additional
District Judge, Fast Track Court No.II, Coimbatore, in
O.S.No.553 of 2008.

For Appellants :Mr.V.Radhakrishnan, Sr.counsel
for Mr.S.Kadarkarai

For Respondent :Mr.T.R.Rajagopalan, Sr.counsel
for Mr.D.Ravichandran

JUDGMENT

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

This Appeal Suit has been directed against the judgment and
decree dated 28.1.2012, passed in O.S.No.553 of 2008, by the
Additional District/Fast Track Court, No.II, Coimbatore.

2. The respondent herein, as plaintiff, has instituted O.S.No.553 of 2008, on the file of the trial Court, praying to cancel the sale deed dated 20.02.2006, executed by the first defendant in favour of defendants 2 and 3 and for directing the first defendant to execute a Sale Deed in favour of the plaintiff, in pursuance of sale agreement, dated 20.08.2000 and alternatively to grant a money decree against the first defendant for a sum of Rs.11,40,000/- and also for passing permanent injunction against defendants 2 and 3 from making encumbrance in respect of the suit property.

3. In the plaint it is averred that the suit property is the absolute property of first defendant and she purchased the same under a registered Sale Deed, dated 11.7.1980. The plaintiff and first defendant have entered into the suit sale agreement on 20.08.2000, wherein, the sale consideration has been fixed at Rs.18,75,000/- and on the date of execution of sale agreement, the first defendant has received a sum of Rs.1,00,000/-. In the sale agreement, it has been stated to the effect that the plaintiff, after paying balance of sale consideration, has to get a Registered Sale Deed from the first defendant within a period of 1 1/2 years. As per the sale agreement, the plaintiff has to convert the suit property as layout sites and enter into sale agreements and receive sale advance from the prospective buyers. In the sale agreement it is also agreed to the effect that the first defendant has to give her co-operation to the plaintiff. Further, it is agreed that the first defendant has to put her signature in various sale documents. As per sale agreement, the plaintiff has converted the suit property into house sites and at that time, the Government has imposed restrictions in respect of registration of house sites. The plaintiff has made necessary efforts for removing embargo. On 6.1.2005, the plaintiff has paid a sum of Rs.1,00,000/- by way of cash and Rs.40,000/- by way of cheque. The plaintiff has always been ready and willing to perform his part of the contract. The first defendant has refused to handover original documents. The plaintiff has requested the first respondent to extent the period from time to time. The first defendant has sold the suit property in favour of defendants 2 and 3 for a lesser price. Under the said circumstances, the present suit has been instituted for the reliefs sought therein.

4. In the written statement filed on the side of the first defendant, it is averred that most of the averments made in the plaint are false, except execution of sale agreement dated 20.08.2000. As per the terms and conditions of the sale agreement, the plaintiff has failed to perform his part of the contract and therefore, the plaintiff is not entitled to get the reliefs sought in the plaint. It is false to aver that due to

embargo, the plaintiff has not been able to perform his part of the contract. It is also equally false to aver that on 6.1.2005, the plaintiff has paid a sum of Rs.1,40,000/-. The first defendant has sold the suit property in favour of defendants 2 and 3 for reasonable price. The present suit is barred by limitation and there is no merit in the suit and the same deserves to be dismissed.

5. In the written statement filed on the side of defendants 2 and 3, it is averred that the present suit is barred by limitation and the defendants 2 and 3 are bona fide purchasers for value without notice of prior agreement and there is no merit in the suit and the same deserves to be dismissed.

6. On the basis of rival pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the oral and documentary evidence, has decreed the suit to the extent indicated in the judgment. The judgment and decree passed by the trial Court are being challenged in the present appeal suit.

7. The consistent case of the plaintiff is that the suit property is the absolute property of first defendant and she has agreed to sell the same in favour of the plaintiff and to that extent an agreement has come into existence on 20.08.2000 and on the date of agreement of sale, Rs.1,00,000/- has been given by way of advance and the period of execution of sale deed has been fixed as 1 1/2 years, subject to fulfillment of the terms and conditions mentioned in the sale agreement. In pursuance of the sale agreement, the plaintiff has converted the suit property into various house plots and subsequently, an embargo has been created by the Government in getting registration of house plots and due to that the plaintiff has not been able to get the sale deed from the first defendant and further, the first defendant has failed to fulfill her obligation and subsequently, she sold the suit property in favour of defendants 2 and 3. Under the said circumstances, the present suit has been instituted for the reliefs sought therein.

8. The defence put forth on the side of the defendants is that the plaintiff has failed to perform his part of the contract and under the said circumstances, the first defendant has sold the suit property in favour of defendants 2 and 3 and further, the present suit is barred by limitation and the same is liable to be dismissed.

9. The trial Court, after considering the rival evidence available on record, has decreed the suit as indicated in the judgment.

10. The learned Senior counsel appearing for the appellants/defendants has contended to the effect that the sale agreement dated 20.08.2000 has been marked as Ex.A2, wherein, the suit property has been described as 'punja land'. Under the said circumstances, the embargo alleged to have been created by the Government would not be a bar for executing the sale deed and the plaintiff even without adhering/following the terms mentioned therein, has failed to perform his part of the contract and in fact, the plaintiff has not shown his readiness and willingness to perform his part of the contract, even though the period of execution of sale deed is mentioned as 1 1/2 years and virtually, the present suit is barred by limitation and the trial Court, without considering the main defence taken on the side of the defendants, has erroneously decreed the suit as indicated in the judgment and therefore, the judgment and decree passed by the trial Court are liable to be set aside.

11. As a repartee to the contentions put forth on the side of the appellants/defendants, the learned Senior counsel appearing for the respondent/plaintiff has befittingly contended that even in Ex.A2, sale agreement, it has been clearly mentioned to the effect that the plaintiff has to convert the suit property into house plots and even the concerned lay out is being called 'Sakunthala Nagar' and since the Government has created an embargo in respect of registration of house sites, the plaintiff has not been able to get the sale deed registered from the first defendant and even though, period of 1 1/2 years has been mentioned in Ex.A2, both the plaintiff and first defendant have agreed to elongate time then and there and further, the plaintiff has made last payment on 6.1.2005 and the trial Court, after considering the over all evidence available on record, has rightly decreed the suit to the extent as indicated in the judgment and therefore, the judgment and decree passed by the trial Court need not be set aside.

12. The learned Senior counsel appearing for the appellants/defendants, has relied upon the following decisions:

(1) In 2012(2) L.W.917 - A.S.M.Balasubramanian vs. S.P.Swaminathan, this Court has held that agreement holder-plaintiff, who is bent upon getting specific performance of even a smaller extent contemplated in the agreement to sell should pay the entire sale consideration for the whole of the extent contemplated in the agreement to sell without any abatement or proportionate reduction. The agreement holder should approach the Court within the shortest possible time, say, even without availing the full limitation period under Article 54.

(2) In 2016(4) CTC 470 - Kadali Venu Sankar vs. Pydikondala Lakshmi, the Hon'ble Supreme Court has held that mere averment in the plaint by the plaintiff that he is always ready and willing to perform his part of the contract is not sufficient.

(3) In 2016(4) CTC 152 - M.Johnson vs. E.Pushpavalli, this Court has held that as per Section 16(c) of the Specific Relief Act, 1963, the plaintiff has to aver and prove his readiness and willingness.

(4) In (2010) 10 Supreme Court Cases 512 - Man Kaur (Dead) by Lrs., vs. Hartar Singh Sangha, the Hon'ble Supreme Court has held that the plaintiff has to prove his readiness and willingness to perform his part of the contract.

(5) In (2011) 1 Supreme Court Cases 429 - J.P.Builders and another vs. A.Ramadas Rao and Another, the same view has been expressed.

13. It is a settled principle of law that in a suit for specific performance, as per Section 16(c) of the Specific Relief Act, 1963, the plaintiff has to plead and prove his readiness and willingness from the date of sale agreement till filing of the suit. There is no cleavage of opinion with regard to the said legal aspect.

14. In the instant case, the main defence taken on the side of the appellants/defendants is that the suit sale agreement is barred by limitation, since the plaintiff has not shown his readiness and willingness to perform his part of contract from its inception. The suit sale agreement, dated 20.08.2000, has been marked as Ex.A2. The sale Deed dated 20.2.2006, executed by the first defendant in favour of defendants 2 and 3 is marked as Ex.A.34.

15. The entire argument put forth on the side of the appellants/defendants is that the embargo alleged to have been created by the Government is not at all applicable to the property mentioned in Ex.A2.

16. At this juncture, the Court has to meticulously analyse the recitals mentioned in Ex.A2. In Ex.A2, in Clause No.(6) it has been specifically stated to the effect that the plaintiff has to convert the suit property into house plots and the first defendant has agreed to put her signature in sale agreements/sale deeds to be created in favour of the prospective purchasers. Further, in Ex.A2, it has been clinchingly stated to the effect that the first defendant has to discharge the entire encumbrance created in respect of the suit property. Therefore, from the terms mentioned in Ex.A2, the Court can

easily come to a conclusion that a sale deed can be executed, after converting the suit property into house plots.

17. The main defence put forth on the side of the respondent/plaintiff is that after Ex.A2, an embargo has been created by the Government with regard to registration of house sites/plots and the same has been clearly admitted on the side of the defendants. It is an admitted fact that the concerned Notification has been cancelled by virtue of judgment of this Court and the same is reported in 2007 (3) CTC 513 (1.Captain Dr.R.Bellie 2.Dr.Smt.Seetha Bellie and another vs. The Sub-Registrar, Registration Office, Sulur, Coimbatore District and others). The said judgment has been pronounced on 30.03.2007. The present suit has been instituted in the year 2008.

18. The learned Senior counsel appearing for the appellants/defendants has mainly advanced his argument on the basis that the plaintiff, from inception of Ex.A2, has not shown his readiness and willingness to perform his part of the contract.

19. In fact, on the date of execution of Ex.A2, Rs.1,00,000/- has been paid as an advance and in aggregation, the plaintiff has paid a sum of Rs.11,40,000/-. The last payment is on 6.1.2005. If really the respondent/plaintiff is not willing to perform his part of the contract, definitely he would not have parted with a huge amount of Rs.11,40,000/-. Further, as pointed out earlier, the embargo created by the Government has been cancelled only by virtue of judgment dated 30.03.2007. Therefore, it is quite clear that the plaintiff has always been ready and willing to perform his part of the contract and further it is made clear that even on the date of execution of Ex.A2, the suit property has been converted into house plots and only on that basis the first defendant has agreed to put her signature in sale agreements/sale deeds to be created in favour of proposed purchasers.

20. The first and foremost relief sought in the plaint is to cancel the sale deed dated 20.02.2006 (Ex.A34) executed in favour of defendants 2 and 3 by the first defendant. Since Ex.A.34 has come into existence on 20.02.2006, the Court can easily come to a conclusion that there is a refusal from the first defendant only on 20.02.2006. As per Article 54 of the Limitation Act, 1963, it is made clear that a suit for Specific Performance can be instituted within three years from the date of refusal on the part of defendant. Since this suit has been instituted in the year 2008, the same has been filed well within the period of limitation.

21. Even at the risk of repetition, the Court would like to point out that the main defence put forth on the side of the appellants/defendants is that the first defendant has agreed to sell the suit property in favour of plaintiff by virtue of Ex.A2 and in Ex.A2, the suit property has been mentioned as 'punja land' and therefore, the alleged embargo created by the Government is not at all applicable and the same cannot be taken as a defence on the part of the respondent/plaintiff.

22. It has already been pointed out that as per the terms and conditions mentioned in Ex.A2, one can easily deduce that even at the time of execution of Ex.A2, the suit property has been converted into house plots and named as 'Sakunthala Lay-out', who is none other than the first defendant. Therefore, the contentions put forth on the side of the appellants/defendants are not factually and legally correct. Under the said circumstances, the present appeal suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed with cost. The judgment and decree passed in O.S.No.553 of 2008, by the trial Court, are confirmed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

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

2.The Section Officer,
V.R.Section, High Court, Madras.

+lcc to Mr.S.Kadarkarai, Advocate Sr.45610
+lcc to Mr.D.Ravichandar, Advocate Sr.45678

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srg 01/09/2016