

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30-08-2016
PRONOUNCED ON : 22-09-2016

CORAM

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

Appeal Suit No.858 of 2008

1. P. Selvaraj
2. M. Sivagami
3. D. Amaravathi
4. N. Rengasamy
5. N. Aruchamy
6. P.Lakshmi
7. P. Jayalakshmi
8. P. Neelamani
9. P. Thangamani
10. P. Nagaraj ...Appellants/Defendants

Vs

1. S. Kathiresan
2. K. Senthil
3. S. Kalyanasundaram ...Respondents/Plaintiffs

Appeal suit filed under Section 96 of CPC against the judgment and decree, dated 27-06-2008 made in O.S.No.291 of 2006 by the Additional District and Sessions Court, (Fast Track Court II) Coimbatore.

For Appellants :Mr. T.R. Rajagopalan, SC
for Mr. M. Velmurugan
For Respondent :Mr. S.Muthuraman

JUDGMENT

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

This appeal suit is directed against the judgment and decree dated 27-06-2008 passed in O.S.No.281 of 2006 by the Additional District and Sessions Court (Fast Track Court No.II), Coimbatore.

2. The respondents herein as plaintiffs have instituted O.S.No.291 of 2006 on the file of Trial Court praying to pass a decree of specific performance, in pursuance of the sale agreement dated 20-01-2006 wherein the present appellants have been shown as defendants.

3. The material averments made in the plaint are that the plaintiffs are the business partners and carrying their business in Chennai. The defendants 2 to 10 are the absolute owners of the suit properties. The first defendant is the Power Agent of fourth to tenth defendants, by virtue of Power Deed dated 13-10-2005. The defendants have agreed to sell the suit properties in favour of the plaintiffs and in pursuance of the same, an agreement of sale has come into existence on 20-01-2006 wherein the total sale consideration has been fixed at Rs.28,89,900/- (Rupees Twenty Eight lakhs Eighty nine thousand and nine hundred only). On the date of execution of sale agreement, the defendants have received a sum of Rs.5,00,000/- (Rupees Five lakhs only). In the sale agreement, time for execution of registered sale deed has been fixed at three months. The defendants are bound to produce Patta, Chitta Adangal and other relevant documents of the suit properties to the plaintiffs before registration of a sale deed. The defendants are also bound to produce an exchange deed. Further, it is agreed to survey the suit properties with the assistance of a Government Surveyor. On 23-02-2006, the plaintiffs have paid a sum of Rs.10,00,000/- (Rupees Ten lakhs only). Even after receipt of the same, the defendants have not handed over the relevant documents of the suit properties. Further, they represented that the time mentioned in the sale agreement is nothing but formality. The defendants have failed to execute a sale deed in favour of the plaintiffs. The plaintiffs have always been ready and willing to perform their part of contract. The defendants have asked the plaintiffs to be present on 20-04-2006 at about 10:30 a.m., in the Sub-Registrar Office, Perianaickenpalayam. The plaintiffs have gone there and waited till 5:30p.m. The defendants have failed to come to Sub-Registrar Office. On 21-04-2006, a telegram has been given to the defendants wherein also it has been clearly mentioned about the non-production of relevant documents of the suit properties. On 22-04-2006, through the counsel of the defendants a false telegram has been given. On 29-04-2006, a legal notice has been issued. Since the defendants have failed to perform their part of contract, the present suit has been instituted for the relief sought therein.

4. In the written statement filed on the side of the defendants, it is averred that the defendants 2 to 10 are the absolute owners of the suit properties. It is agreed that on 20-01-2006, a sale agreement has come into existence and on the date of its execution, the defendant has received a sum of Rs.5,00,000/- (Rupees Five lakhs only). Further, it is admitted that the defendants have also received another sum of Rs.10,00,000/- (Rupees Ten lakhs only). The defendants are always ready and willing to perform their part of contract. As per the terms and conditions of sale agreement dated 20-01-2006, the plaintiffs have failed to perform their part of contract. It is false to say that on 20-04-2006, the defendants have failed to come to Sub-Registrar Office. Since

the plaintiffs are not in a position to mobilize funds they failed to get a registered sale deed. On 20-04-2006, a telegram has been given whereby the defendants have cancelled the sale agreement. There is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the rival pleadings raised on either side, the Trial Court has framed as many as four issues and after contemplating both the oral and documentary evidence has decreed the suit as prayed for. Against the judgment and decree passed by the Trial Court, the present appeal suit has been preferred at the instance of the defendants as appellants.

6. Before analysing the rival submissions made on either side, the Court has to narrate the following admitted facts:

The suit properties are the absolute properties of the defendants 2 to 10. The first defendant has been appointed as a Power Agent of some of the defendants. On 20-01-2006, both the plaintiffs and defendants have entered into a suit sale agreement. In the suit sale agreement, the total sale consideration has been fixed at Rs.28,89,900/- (Rupees Twenty Eight lakhs Eighty nine thousand and nine hundred only). On the date of its execution, the defendants have received a sum of Rs.5,00,000/- (Rupees Five lakhs only). On 23-02-2006, the defendants have received a sum of Rs.10,00,000/- (Rupees Ten lakhs only). Further, in the sale agreement time for execution of registered sale deed is mentioned as three months.

7. The specific case of the plaintiffs is that in pursuance of the suit sale agreement, the plaintiffs have always been ready and willing to perform their part of the contract. But the defendants have failed to abide the conditions mentioned in the sale agreement and even on the last date mentioned in the sale agreement, the defendants have failed to come to Sub-Registrar Office as agreed by them and subsequently, notices have been exchanged. Under the said circumstances, the present suit has been instituted.

8. The main defence put forth on the side of the defendants is that the defendants are always ready and willing to perform their part of the contract and since the plaintiffs are not able to mobilize funds, they fail to get a registered sale deed on or before 20-04-2006 and therefore, the plaintiffs are not entitled to get the discretionary relief of specific performance.

9. On the basis of the rival contentions put forth on either side the following aspects have to be analysed:-

(1) Whether the plaintiffs have always been ready and willing to perform their part of contract ?

(2) Whether the time fixed in the suit sale agreement is an essence of contract?

(3) Whether the plaintiffs are entitled to get the discretionary relief of specific performance?

10. The learned Senior Counsel appearing for the appellants/defendants has argued that the plaintiffs are the residents of Chennai City and no document has been filed on their side for the purpose of showing that on 20-04-2006, they have come to Coimbatore and further, no document has been filed for the purpose of proving that they have come to Sub-Registrar Office on the said date. But without proving the same, the plaintiffs have given a contra pleading in the plaint and since the present suit has been instituted for getting discretionary relief of specific performance and since the plaintiffs have not approached the Court with clean hands they are not entitled to get the same. But the Trial Court without considering the above aspects has erroneously decreed the suit and therefore, the judgment and decree passed by the Trial Court are liable to be interfered with.

11. In support of the contentions raised on the side of the defendants, the following decisions are relied upon:

(i) In AIR 1996 SC 2814 (1) (Lourdu Mari David Vs. Louis Chinnaya Arogiaswamy and others) the Honourable Supreme Court has held that in a suit for specific performance, if the plaintiffs have not come to Court with clean hands, equitable relief of decree for specific performance cannot be granted.

(ii) In 2015 (1) SCC 705 (Zarina Siddiqui Vs. Ramalingam alias R. Amarnathan) at Paragraph Nos.33 and 34, the Honourable Supreme Court has observed as follows:

"33. The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misled the Court then such discretion should not be exercised by refusing to grant specific performance.

34. In the instant case, as noticed above, although defendant no.2 held a registered power of attorney on behalf of defendant no.1 to sell and dispose of the property, but the defendants not only made a false statement on affidavit that the power of attorney had authorized the second defendant only to look after and manage the property but also withheld the said power of attorney from the Court in order to misguide the Court from truth of the facts. Further, by registered agreement the defendants agreed to sell the suit premises after receiving advance consideration but they denied the existence of the agreement in their pleading. Such conduct of the defendants in our opinion, disentitle

them to ask the Court for exercising discretion in their favour by refusing to grant a decree for specific performance. Further, if a party to a lis does not disclose all material facts truly and fairly but states them in distorted manner and mislead the Court, the Court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse of the process of law."

12. Per contra, the learned counsel appearing for the respondents/plaintiffs have laconically contended that as per suit sale agreement, the plaintiffs have always been ready and willing to perform their part of contract. But the defendants have failed to perform their part and even on 20-04-2006, the plaintiffs have gone to Sub-Registrar Office. But, the defendants have failed to attend and subsequently, telegrams and notices have been given. Under the said circumstances, the present suit has been instituted for the relief sought therein and the Trial Court after considering the available evidence on record has rightly decreed the suit and therefore, the judgment and decree passed by the Trial Court need not be interfered with.

13. In support of the contentions put forth on the side of the respondents/plaintiffs, the following decisions are relied upon:

(i) 2015 (1) SCC 705 (cited supra), wherein the Honourable Supreme Court has held that conduct of parties must be considered and parties must come with pure and clean hands.

(ii) 2008 (1) CTC 530 (Balasaheb Dayandeo Naik Vs. Appasaheb Dattatraya Pawar) wherein the Honourable Supreme Court has held that time is not an essence of contract.

(iii) AIR 2005 SC 3503(1) (Aniglase Yohannan Vs. Ramlatha) wherein the Honourable Supreme Court has held that as per Section 16(3) of the Specific Relief Act (47 of 1963) that in a suit for specific performance, the readiness and willingness must be clearly averred in the plaint and proved.

(iv) In 2005 (7) SCC 534 (Aniglase Yohannan Vs. Ramlatha) the Honourable Supreme Court reiterated the same principle.

(v) In 2004 (6) SCC 649 (P.D'Souza Vs. Shondrilo Naidu) the Honourable Supreme Court has held that even if there is a clause for liquidated damages in a contract of sale, suit for specific performance is legally maintainable.

(vii) In 1999 (6) SCC 337 (FB) (Syed Dastagir Vs. T.R. Gopalakrishna Setty) the Honourable Supreme Court has reiterated the mandatory provisions of Section 16(c) of the Specific Relief Act (47 of 1963).

(viii) In 1996(2) CTC 295, (Sukhbir singh Vs. Brij Pal Singh), the Honourable Supreme Court has held that if the vendors in an agreement of sale have failed to come to Sub-Registrar Office, it would infer that they fail to execute a sale deed. Further, the purchaser need not show ready cash in all times.

(ix) In AIR 1977 SC 1005 (Govind Prasad Chaturvedi Vs. Hari Dutt Shastri) the Honourable Supreme Court has held that neither the terms of agreement nor the correspondence indicated that parties treated time as essence of contract.

14. From a conjoint reading of the decisions mentioned supra in a suit for specific performance, the following aspects have to be looked into:

(i) As per Section 16(1) of the Specific Relief Act (47 of 1963), a primordial duty is cast upon the plaintiff to aver and prove his/her readiness and willingness to perform his/her part of the contract from its inception;

(ii) The defendants must also show his/her readiness and willingness to perform his/her part of the contract;

(iii) In an agreement of sale in respect of an immovable property, time is not an essence of contract;

(iv) The plaintiff need not show ready cash in all times, till execution of a registered sale deed.

15. With these legal aspects, the Court has to analyse the present case.

16. The suit sale agreement dated 20-01-2006, is marked as Ex-A1. The endorsement dated 23-02-2006 is marked as Ex-A2. The receipt alleged to have been executed by the plaintiffs 1 to 3 has been marked as Ex-B9. Even though on either side several documents have been marked, this Court is of the view that the documents mentioned supra have played a pivotal role in the present case for deciding the real lis.

16. It is an admitted fact that the defendants have executed, Ex-A1 suit sale agreement in favour of the plaintiffs wherein the total sale consideration has been fixed at Rs.28,89,900/- (Rupees Twenty Eight lakhs Eighty nine thousand and nine hundred only). It is also an admitted fact that on the date of execution of Ex-A1, the defendants have received a sum of Rs.5,00,000/- (Rupees Five lakhs only). In Ex-A1, it has been clinchingly mentioned to the effect that within a period of one month, the plaintiffs have to pay a sum of Rs.10,00,000/- (Rupees Ten lakhs only) to the defendants.

17. As mentioned supra, Ex-A2 has come into existence on 23-02-2006 and the same has been accepted by the defendants. As per Ex-A1, the said sum of Rs.10,00,000/- (Rupees Ten lakhs only) has to be paid on or before 20-02-2006, whereas Ex-A2 has come into existence on 23-02-2006. Therefore, even though in Ex-A1, three months' time has been stipulated for getting a registered sale deed, after paying balance of sale consideration, both the plaintiffs and defendants have treated that the time mentioned in Ex-A1 is not an essence of contract.

18. Now, the Court has to look into as to whether the plaintiffs have always shown their readiness and willingness. Likewise, the defendants are also equally bound to show their

readiness and willingness to execute the sale deed in favour of the plaintiffs.

19. The entire defence put forth on the side of the defendants is nothing but the incident alleged to have taken place on 20-04-2006.

20. The specific case of the plaintiffs is that on 20-04-2006 as agreed by both parties, the plaintiffs have gone to Sub-Registrar Office, Perianaickenpalayam. But the defendants have failed to abide their promise and their defence is that since the plaintiffs are not able to mobilise funds they failed to come to Sub-Registrar Office. In support of their defence, Ex-B9 has been filed.

21. Ex-B9 is nothing but an unsigned receipt wherein it has been simply stated that on 20-04-2006, the plaintiffs have paid a sum of Rs.5,00,000/- (Rupees Five lakhs only) and requested to give further extension of time and accordingly, the defendants have given four months' time.

22. As pointed out earlier, Ex-B9, does not contain signatures of the defendants as well as plaintiffs mentioned therein. Further, no signature of witnesses is also found place. Therefore, the Court cannot give much adherence to Ex-B9. As stated earlier, the entire defence is based upon Ex-B9. Since Ex-B9 is not a trustworthy document and not believable, the entire defence taken on the side of the defendants is nothing but farce.

23. In fact, on the side of the plaintiffs various documents have been filed and replete evidence is also available for the purpose of proving that they are always ready and willing to perform their part of contract. If really they are not willing to get a sale deed registered, definitely, they would not have parted with more than 50% of total sale consideration.

24. The main argument put forth on the side of the appellants/defendants is that the plaintiffs have averred contra-pleadings in the plaint with regard to incident occurred on 20-04-2006.

25. It has already been animadverted to that Ex-B9 is nothing but a concocted document. The telegram sent by the defendants on the same day is also false.

26. Further, on the side of the plaintiffs, various documents have been forthcoming for the purpose of proving that they are always ready and willing to perform their part of contract. Since the plaintiffs are always ready and willing to perform their part of contract, the Court can very well grant the discretionary relief of specific performance in their favour. Under the said circumstances, the contentions

put forth on the side of the appellants/defendants are not accepted, whereas the argument put forth on the side of the respondents/plaintiffs is really having subsisting force.

27. The Trial Court after considering the overwhelming evidence available on the side of the respondents/plaintiffs has rightly decreed the suit in their favour. In view of the discussions made earlier, this Court has not found any error or illegality in the judgment and decree passed by the Trial Court and altogether, the present Appeal Suit deserves to be dismissed.

In fine, this appeal suit is dismissed with costs. The judgment and decree passed in O.S.No.291 of 2006 dated 27-06-2008 by the Additional District and Sessions Court, (Fast Track Court II) Coimbatore are confirmed. The connected miscellaneous petition is also dismissed.

(memo

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

glp

To

The Additional District and Sessions Court,
(Fast Track Court II) Coimbatore.

+ 1 cc to Mr.M.Velmurugan, Advocate Sr.54002

Appeal Suit No.858 of 2016

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