IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.191 of 2016
and
C.M.P.No.4137 of 2016

Banumathy ... Appellant/Plaintiff

Vs.

Velmurugan ... Respondent/Defendant

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 18.11.2015 and made in A.S.No.46 of 2015 on the file of Principal District and Sessions Judge, Ariyalur, against the judgment and decree dated 27.06.2014 and made in O.S.No.258 of 2010 on the file of District Munsif, Jayamkondam.

For Appellant : Mr.S.Balasubramanian

For Respondent : Mr.A.Murughan

J U D G M E N T

The plaintiff is the appellant in a suit for specific performance. She lost before both the Courts below. This matter is listed before this Court at the adjourned admission stage.

2. Heard both sides.

3. The plaintiff sought to get the sale deed executed in her favour by the defendant in pursuant to an agreement dated 24.12.1994 by filing a suit in the year 2010. Admittedly, the suit notice itself was issued by the plaintiff only in the year 2010 i.e.,on 26.7.2010, even though it is contended by the plaintiff that since the parties are closely related and that the defendant was evading the execution of the sale deed for a long time and that there was panchayat held in the year 2010 culminating into the filing of the present suit. Both the Courts

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have concurrently found against the plaintiff and rejected her claim on the reason that she was not ready and willing to perform her part of the contract for nearly about 16 years. Though the learned counsel for the appellant vehemently contended that there is no delay on the part of the plaintiff in approaching the Court as the parties are closely related and there was a panchayat held in the year 2010, this Court is not in a position to accept such contention as the reasonable explanation for such an inordinate delay of 16 years in approaching the Court for seeking the relief of specific performance.

4. It is well settled that the plaintiff who seeks to get a decree before the Court for specific performance of an agreement of sale must plead and prove that he/she is ready and willing to perform his/her part of the contract from the date of the agreement till the date of the decree. Even if there is some delay, such delay must be a reasonable one which has to be explained with convincing and cogent reason solely attributable to the defendant. In this case, admittedly, the suit agreement was entered as early as in the year 1994 and the plaintiff has given a police complaint only in the year 2010 followed by the alleged panchayat and issuing of suit notice on 26.07.2010. Nothing is there on record to show as to what was she doing in between 1994 and 2010. Such inordinate delay of 16 years, undoubtedly, show that the plaintiff was not ready and willing to perform her part of the contract and on the other hand, she has allowed the agreement to get lapsed long ago. It is to be noted at this juncture that performance of the contract showing readiness and willingness consists of more than one action and one of such action is the filing of suit before the Court immediately at the appropriate time once the denial from the other side is evident. Therefore, I find no question of law, more particularly, a substantial one arises for consideration before this Court, even to entertain the appeal for further hearing to decide the matter on merits. Accordingly, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge,
   Ariyalur.

2. The District Munsif,
   Jayamkondam.

+1cc to Mr.A.Murughan, Advocate, S.R.No.33781
+2cc's to Mr.S.Balasubramanian, Advocate, S.R.No.33818

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