

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.605 of 2016

and

C.M.P.No.11361 of 2016

1. S.Mallika
W/o Late A.M.Srinivasan
2. S.Rajkumar,
S/o Late.A.M.Srinivasan
3. S.Balaji Kumar,
S/o A.M.Srinivasan

Appellants 1 and 3 are represented by
their General Power of Attorney agent
2nd appellant.

... Appellants/Plaintiffs

vs.

1. R.Saravanan,
S/o raman
2. S.Anandhi,
W/o M.Rajendran

... Respondents/Defendants

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 29.11.2013 made in AS.No.6/2011 on the file of Principal District Judge, Krishnagiri, confirming the judgment and decree dated 11.11.2010 in O.S.No.67 of 2005 on the file of Principal Subordinate Judge, Krishnagiri.

For Appellants : Mr.P.Jagadeesan

For Respondent : Mr.S.Thirumavalavan for R1

J U D G M E N T

The plaintiffs are the appellants. They lost before both the Courts below in a suit for specific performance of an agreement of sale. Their claim is that though they have paid Rs.4 lakhs out of the total sale consideration of Rs.4,05,000/- as advance, the Courts below erred in law in rejecting their claim on the reason that they were not ready and willing to perform their part of the contract,

especially, when the agreement stipulated three years as the time limit for performance and only a sum of Rs. 5,000/- was to be paid as the balance sale consideration. The defence taken by the defendants is that the agreement was not intended towards any sale transaction and on the other hand, it is an outcome of a loan transaction.

2. The trial court dismissed the suit on the reason that the transaction between the parties was only a loan transaction. The appellate Court dismissed the appeal by observing that the plaintiffs have not proved their readiness and willingness from the date of execution of the agreement till the proceedings are initiated before the Court.

3. Heard Mr.P.Jagadeesan, learned counsel appearing for the appellant and Mr.Thirumavalavan, learned counsel appearing for the Caveator and perused the materials placed before this Court.

4. The plaintiffs are aggrieved against the concurrent finding of the Courts below in dismissing their suit for specific performance. Based on the facts and circumstances of the present case and the findings rendered by the Courts below, unless there exists a substantial question of law, the plaintiffs are not entitled for the indulgence of this Court to entertain this Second Appeal for further hearing on such substantial question of law. In this case, it is claimed by the plaintiff that the entire sale consideration agreed between the parties is Rs.4,05,000/-, out of which, they paid Rs.4 lakhs as early as on the date of agreement, namely, 10.5.2002. No doubt, it is true that three years time limit is stipulated for the performance of the contract. Therefore, for paying the balance sum of Rs.5,000/- and getting the sale deed executed, one will not wait for three years and ask the vendor to execute the sale deed at the end of third year. It does not appear to be with any sense or sound reasoning that parties to the agreement, who, are really intending to effect the sale, would give such a long time of three years for paying the balance sum of Rs.5,000/-, more particularly, owing to the fact of escalation of actual estate market every year. Needless to mention that any time limit fixed is to show the upper time for execution and not to be construed as the actual time for execution. Therefore, within the time limit, the plaintiffs should have come forward to get the sale deed executed at the earliest point of time, more particularly, when the balance amount payable, in this case, is only Rs.5,000/-. Absolutely, there is no justification or explanation given by the plaintiffs for waiting for such a long period of three years and issuing the notice only on 02.03.2005 demanding specific performance. Therefore, it is abundantly clear that the entire transaction between the parties appears to be a loan transaction and therefore, the trial Court has rightly directed the defendant to repay the sum of Rs.4 lakhs received and referred to under the agreement.

5. The very issue with regard to the readiness and willingness has been considered by this Court in very many decisions, out of which, the recent one is reported in 2016(2) TLNJ 629, Johnson vs E.Pushpavalli, wherein under similar circumstances, the claim for specific performance was rejected by observing in paragraph No.8 and 9, as follows:

8. In a suit for specific performance of an agreement of sale, the following are the necessary factors to be pleaded and proved by the plaintiff:

(a) that there is a valid agreement entered into between the parties in respect of the suit property; (b) that the plaintiff is always ready and willing to perform his part of the contract, whereas the defendant is not doing so within the time prescribed for completion of the transaction; (c) that the suit is filed within the period of limitation; and (d) that there is no inordinate or unexplained delay in filing the suit from the date of expiry of the time prescribed under the agreement for the purpose of completion of contract, even though, the suit is filed within the period of limitation. The inordinate or unexplained delay referred to above, though may not be relevant for the purpose of deciding the question of limitation in filing the suit, however, the same would be very much relevant for the purpose of deciding the issue as to whether the plaintiff is always ready and willing to perform his part of the contract from the date of the agreement till the date of filing the suit.

9. In this case, it is true that the suit was filed within the period of limitation. At the same time, the undisputed fact is that six months time was shown as the maximum time limit in the agreement for the parties to perform their respective obligation under the contract and thus, it is evident that time is the essence of the contract. It is not the case of the plaintiff that the defendant by his own conduct altered the terms of the contract to presume that the time was not the essence of contract. On the other hand, it is contended that the defendant was evasive. Even though an attempt is made by the plaintiff to contend that though a draft sale deed was sent in the month of September 2003 to the defendant, it is seen that such contention was not proved before the Courts below by adducing any evidence and thus, such contention of the plaintiff was not accepted by the courts

below. Therefore, the only evidence available to show the readiness and willingness by the plaintiff is the suit notice dated 06.07.2004 which was admittedly sent after one year from the date of the agreement. Therefore, nothing is there on record or evidence to show that the plaintiff was ready and willing to perform his part of the contract not only within the stipulated period and also thereafter. In fact, the notice sent by the plaintiff was immediately replied by the defendant under Ex.A5 on 16.07.2004, denying his liability. Therefore, the very filing of the suit on 15.12.2006 i.e., after 2 1/2 years from the date of receipt of the said reply notice would show that the plaintiff was not at all ready and willing to perform his part of the contract and on the other hand, he slept over the matter beyond the time limit fixed in the agreement. At this juncture, it is to be noted that the readiness and willingness on the part of the plaintiff in performing his part of the contract would consist of several actions at different point of time commencing from the date of the agreement. One of such action showing such readiness and willingness would be the filing of the suit itself within the shortest time immediately after the denial by the other side. In other words, the bonafide of readiness and willingness must be evident apparently from every action of the plaintiff after the agreement. At the same time, it should not be mistaken as if this Court holds that not filing the suit immediately after the denial even though limitation period has not expired, has to be construed as fatal to the case of the plaintiff. If there is a long time gap between such denial and filing of the suit and the same is properly explained with convincing reasons, the Court can always decide such issue based on the facts and circumstances of each case. It is well settled that in a suit for specific performance, the bounden duty of the plaintiff is to prove that he is ready and willing to perform his part of the contract all throughout the proceedings commencing from the date of agreement till the date of the decree and such readiness and willingness must be specifically pleaded and established by adducing evidence and not by making mere pleading alone. In this case, even by way of pleading, the plaintiff has not stated as to why there was a delay of one year in issuing

the suit notice and further delay of 2 1/2 years in filing the suit. Therefore, I find that the Courts below have rightly rejected the case of the plaintiff and dismissed the suit, more particularly, when the relief of specific performance is the discretionary one. At this juncture, it is relevant to note the decision of this Court reported in 2007 (1) CTC 243 (Ramalingam,G. vs. T.Vijayarangam) wherein at paragraph Nos.19 and 20, it has been observed as follows:

19. Even assuming that the plaintiff had enough means to complete the sale transaction that itself is not sufficient unless the plaintiff established that he was ready and willing to pay the balance sale consideration and complete the sale transaction right from the date of the execution till the date of decree. As laid down by the Apex Court, the plaintiff has not proved his continuous readiness and willingness at all stages from the date of agreement till the date of hearing of the suit.
(emphasis supplied)

This Court finds that the above decision is squarely applicable to the case on hand also.

6. Thus, I find no substantial question of law arising for consideration to entertain this Second Appeal. Accordingly, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/
सत्यमेव जयते

Sub Asst. Registrar

To

1. The Principal District Judge, Krishnagiri
2. The Principal Subordinate Judge, Krishnagiri.

+1 cc to Mr.P.Jagadeesan, advocate,sr.40028

+1 cc to mr.S.Thirumavalavan, advocate,sr.40055.

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