

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2017

PRONOUNCED ON : 07.04.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.117 of 2011 & M.P.No.1 of 2011

1. R.Lakshmi Bai
2. Rajesh

... Appellants

Vs.

M.V.Rani

... Respondent

Appeal filed under Section 96 Code of Civil Procedure to set aside the judgment and decree dated 30.06.2010 made in O.S.No.360 of 2006 on the file of the learned Additional District Judge, Fast Track Court - I, Chengalpet.

For Appellants : Mr.H.Nazirudeen

For Respondent : Mr.T.Sri Krishna Bhagavat
for Mr.P.Subba Reddy

J U D G M E N T

Aggrieved over the decree and judgment of the learned Additional District Judge, Fast Track Court No.I, Chengalpet granting specific performance of the agreement dated 26.1.2004, the unsuccessful defendant filed the present appeal.

2. The parties are arrayed as per their ranking before the trial Court for the sake of convenience.

3. The brief facts of the plaintiff case is as follows :

The defendants executed agreement dated 26.01.2004 for sale to an extent of 14.95 acres for a total sale consideration of Rs.5,37,500/- and received an advance of Rs.one lakh on the date of agreement. They have also agreed to produce encumbrance certificate and other documents within 30 days. They also failed to survey the land as agreed. Therefore, the plaintiff issued a legal notice dated 30.06.2006. However, the defendants

issued a reply with false allegations. The plaintiff is always ready and willing to perform his part of the contract from the inception. Hence, the suit.

4. Brief contentions of the defendants are as follows :

It is the case of the defendants that one Ramesh Babu, who is the son-in-law of the plaintiff approached the defendants and shown interest to purchase the schedule mentioned property for a total sale consideration of Rs.6,37,500/-. Since, the said Ramesh Babu was introduced by one I.S.Yuvaraj. The defendants have signed the sale agreement on 26.01.2004 at 10.00 p.m., believing the words of the said Ramesh Babu even before receiving a copy of the sale agreement. They have not seen the plaintiff in person nor received a copy of the sale agreement dated 26.07.2004. In the sale agreement two months time was stipulated to complete the agreement. After obtaining the signature of the defendants, the said Ramesh Babu nor the plaintiff approached the defendants to complete the sale proceedings. It is the further contention of the defendants that on 30.06.2006, after receipt of the legal notice from the plaintiff counsel, they have come to know that the sale agreement was executed in favour of the plaintiff and not in favour of Ramesh Babu as presumed earlier. It is stated by the defendant that on 19.11.2005, the defendant has issued a legal notice along with a cheque for Rs.one lakh drawn in favour of one Pdamaja wife of Ramesh Babu. She is none other than the daughter of the plaintiff. After the receipt of the above letter, they kept quiet for six months, thereafter, a reply was written by the said Padmaja stating that she is no way connected with the agreement. It is the contention of the defendants that the above said letter was sent by the defendants to the said Padmaja stating that the agreement itself was cancelled. They also issued a public notice on 26.05.2006 to that effect. The plaintiff was never ready and willing to perform her part of the contract. Hence, prayed for dismissal of the appeal.

5. On the basis of the above pleadings, the followings issues were framed by the trial Court :

1. Whether the plaintiff is entitled to specific performance of the contract as prayed for?

2. Whether the plaintiff was always ready and willing to perform her part of the contract?

3. To what other relief, the plaintiff is entitled?

6. On the side of the plaintiff, P.W.1 and 2 were examined and Ex.A.1 to A8 were marked. On the side of the defendants, D.W.1 was examined and Ex.B.1 to B.5 were marked.

7. On the basis of the evidence and materials on record, the learned trial Judge decreed the suit for specific performance. Aggrieved over the same, the present appeal came to be filed by the unsuccessful defendant.

8. The learned counsel for the appellant submitted that admittedly, the sale agreement was executed in the night hours at the instance of one Ramesh Babu and Yuvaraj. The appellants were not aware of the purchaser's name at the relevant time. In fact, they were under the impression that the agreement was executed in favour of the Ramesh Babu's wife one Padmaja. The time stipulated in the agreement is two months to complete the transaction. Whereas, after a lapse of 30 months from the date of agreement, the plaintiff issued a legal notice and only after receipt of legal notice they came to know that the purchaser's name is shown as plaintiff. Till such time, they bonafidely believed that they have signed the document only in the name of Ramesh Babu's wife Padmaja. Therefore, it is the contention of the learned counsel for the appellants/defendants that after two months of the agreement, they cancelled the agreement by sending a letter to the said Padmaja along with a cheque drawn for a sum of Rs.one lakh. The said Padmaja is none other than the plaintiff's own daughter. They were all residing together. Having received the communication from the appellant cancelling the agreement, the plaintiff has sent a legal notice on 30.06.2006 as if she was always ready and willing to purchase the property. Earlier, the communication sent by the appellants has been suppressed by the plaintiff. This fact clearly indicate that the plaintiff has not come to the Court with clean hands. The entire agreement was executed on a misrepresentation on the part of Ramesh Babu, who is the son-in-law of the plaintiff herein. There is no consensus ad idem between the parties. Hence, submitted that the learned Trial Judge has not considered this aspect and decreed the suit. Hence, prayed for allowing the appeal.

9. Whereas, it is the contention of the learned counsel for the respondent that having admitted the execution of the document and receipt of Rs.one lakh advance, the appellants have not fulfilled their part of the contract by producing necessary encumbrance certificate and land survey register as agreed in the agreement within the time. Whereas, the plaintiff was always ready and willing to perform his part of the contract. The intention to purchase the property on the side of the plaintiff has been clearly established. The plaintiff is already having several lands in and around the suit properties. Only due to escalation of price, the defendants/appellants have delayed the performance of the agreement. It is the further contention of the learned counsel that merely sending some communication to the person who is unconnected with the

agreement will not relieve the appellants from performing their part of the contract. Hence, submitted that the plaintiff has established the agreement and her readiness and willingness to perform her part of the contract. The plaintiff/respondent also established through evidence about her capacity to raise funds. The evidence of P.W.1 and P.W.2 clearly shows that the agreement is a genuine one. Hence, it is the contention of the learned counsel for the respondent that the learned trial Judge has considered the entire pleadings and has rightly come to the conclusion and granted decree for specific performance. Hence, prayed for dismissal of the appeal.

10. In the light of the above submissions, now the points that arise for consideration are :

1. Whether the agreement was executed under the misrepresentation, if so, there was a consensus ad idem between the parties?

2. Whether the plaintiff was ready and willing to perform his part of the contract?

11. Point Nos.1 and 2 :

This suit has been laid to enforce the contract said to have been entered between the plaintiff and the defendant on 26.01.2004. It is the case of the plaintiff that the defendants executed the agreement after receiving Rs.one lakh as an advance on 26.01.2004 and also agreed to produce the encumbrance certificate for a period of 30 years and land survey register and other documents within 30 days from the date of the agreement and also undertook to survey the lands. However, the defendant did not take any steps as agreed in the agreement. Therefore, the plaintiff was constrained to issue a notice dated 30.06.2006 calling upon the defendant to execute the document.

12. Whereas, it is the specific case of the defendants that they have signed the agreement at 10.00 p.m. in their house at the intervention of one Ramesh Babu, who was introduced by one Yuvaraj. The defendants did not know the name of the purchaser, in favour of whom, the agreement was executed at the relevant time. They bonafidely presumed that the agreement was executed in favour of the said Ramesh Babu's wife Padmaja. As agreed between the parties, neither the said Ramesh Babu nor the plaintiff has come forward to pay the balance sale consideration and also to give a copy of the agreement to the defendant. The defendant sent a notice to the said Padmaja along with a cheque for a sum of Rs.one lakh and also communicated that the agreement stood cancelled.

12. In the light of the above background, Ex.A.1 agreement dated 26.01.2004 when carefully seen, the signing of the document has not been denied by the defendants/appellants. Their only contention is that they signed the document in their house at 10.00 p.m. and received an advance amount of Rs.one lakh from one Ramesh Babu. In this regard, normally, the parties cannot go against the contents of the document, once, execution of the document is admitted by them. But, at the same time, as per Proviso to Section 92 of the Indian Evidence Act, oral evidence is permissible to prove if the contract is a result of fraud, intimidation, illegality, want of due execution, want of capacity in any contradicting party, want of consideration or mistake in fact or law. It is the contention of the defendant that they signed the contract under the belief that they have executed the contract only in the name of the said Ramesh Babu's wife Mrs.Padmaja.

13. In this regard, the evidence of P.W.1 namely, the plaintiff herein, assumes significance as to the execution of the contract. Though in her chief examination, she has stated as if the agreement was executed and entered between the plaintiff and the defendants at Chennai, in her cross examination, she has categorically admitted that she has never seen the defendants directly and only her husband and son-in-law prepared the agreement. The husband of the plaintiff was examined as P.W.2. Their son-in-law name is Ramesh Babu. Both of them went to the defendants' house and obtained the signature of the defendants. It is also admitted by P.W.1 that her daughter is Padmaja and she is also residing with her. The evidence of P.W.1 clearly probabilise the defence case that they never signed the document in favour of the plaintiff at the relevant time and they have not seen the plaintiff and only Ramesh Babu paid the amount. In fact the defendants were under the impression that the contract was executed in favour of Ramesh Babu's wife.

14. It is the further case of the defendants that the said Ramesh Babu has not even given a copy of the agreement, even after paying Rs.one lakh advance. The evidence of D.W.1, in this regard when seen she has specifically stated in her chief examination that the copy of the agreement is not given to them by the said Ramesh Babu. The above specific evidence of D.W.1 is not even denied in the cross examination. Therefore, the same can be taken as deemed admission on the part of the plaintiff. Further, P.W.2 evidence also show that the agreement was executed by the defendants in their house. P.W.2 and his son-in-law went to the defendants' place and obtained the

signature. These facts clearly indicate that there is no consensus ad idem between the plaintiff and the defendants for executing the contract. In fact, the plaintiff and the defendants never met each other at the relevant point of time and the contract was executed at 10.00 p.m. in the house of the defendants. A prominent role was played by P.W.1's son-in-law, Ramesh Babu and husband of P.W.2. Therefore, the same clearly probabalise the defendants case that they have bonafidely believed that the document was executed in favour of the said Ramesh Babu's wife Padmaja, who is none other than the plaintiff's daughter. Non furnishing a copy of the document also clearly show that the defendants have signed the document under misconception as if they are executing the contract only in favour of the said Padmaja. When the person entering into the contract has not come forward with true facts and without clearly mentioning the facts as to whose favour the contract for sale is executed and merely obtaining the signature at 10.00 p.m. in the house is nothing but misrepresentation. Therefore, the contention of the defendants that they bonafidely believed that they have signed the document only in favour of the wife of the person who took active role in obtaining signature is more probabalised.

15. In the above background, Ex.A.1 agreement, when carefully seen, the duty is cast on the defendants to produce the encumbrance certificate within a period of 30 days and all the original documents for the scrutiny of the plaintiff's lawyer and also to produce Land Survey Register and to complete the survey within a period of 30 days and thereafter, the sale shall be completed within 60 days from the date of the agreement. Even assuming that the defendants are bound by the condition agreed in the contract, the conduct of the plaintiff assume significance. If really, the plaintiff was ready and willing to purchase the property as agreed in the agreement, they ought to have taken some steps within the agreed period to compel the defendants to furnish the relevant document allegedly agreed in the agreement. But, till 30.06.2006, when the legal notice was issued, no other materials, whatsoever, is available on record to show that the plaintiff has taken some steps and called upon the defendants to survey the land. The conduct of the person who intend to purchase the property, in keeping quite, even without visiting the suit property for the purpose of survey is also against normal human conduct. Whereas, till the legal notice was sent, nothing is available on record to show that the plaintiff has taken some steps to compel the defendants to perform their part of the contract within the agreed period. Though, as far as immovable properties are concerned time is not an essence of the contract, specific time agreed between the parties in the agreement cannot be ignored

altogether.

16. It is to be noted that the defendants, immediately on 17.05.2006, have sent a letter to the said Padmaja, wife of Ramesh Bau and daughter of the plaintiff along with a cheque for a sum of Rs.one lakh. The above letter was served on the plaintiff's daughter. The same has been marked as Ex.B.2. In Ex.B.2 dated 19.11.2005, the defendants have taken a stand that they are all along under the the impression that they have executed the document in favour of one Padmaja, wife of Ramesh Babu. Wherein, they have categorically pleaded that since the sale consideration has not been paid within two months as agreed in the agreement and also they have not furnished a copy of the agreement and she has not come forward to perform her part of the contract for the past 18 months, they have cancelled the agreement by way of Ex.B.1 and also enclosed a cheque for Rs.one lakh towards advance money received by them. Though this letter was addressed to one Padmaja, instead of the plaintiff, the said communication was received by the said Padmaja and she is none other than the daughter of the plaintiff. Both the plaintiff and her daughter are residing together. Having received Ex.B.1, no reply whatsoever is forth coming from the said Padmaja. Whereas, the said Padmaja has written a letter dated 17.05.2006 stating that she is not the agreement holder and since she has misplaced the cheque, she is returning back the cheque. This letter is marked as Ex.B.3. The letter addressed by the plaintiff is dated 19.11.2005. Almost, 6 months later, the plaintiff's daughter has sent the communication.

17. It is to be noted that the plaintiff and her daughter are all residing in the same house as per the evidence of P.W.1. Where as, the plaintiff in her evidence is ignorant about any such letter sent by the defendants to her daughter. This fact clearly show that the evidence of P.W.1 cannot be reliable in that aspect for the simple reason that when the daughter and mother are living in the same house and admittedly, notice received by the daughter, particularly with regard to the property which was intended to be purchased by the mother and the above said agreement is sated to be cancelled, it is the normal conduct of the daughter would be to bring to the notice of the mother. Therefore, the conduct of P.W.1 and 2 in this regard clearly go against the normal human conduct of ordinary people, which itself is sufficient for this Court to presume that having knowledge of the cancellation of the agreement in the year 2005 itself, the plaintiff having slept over and subsequently developed the case by sending a legal notice on 30.06.2006 as if they are ready and willing to purchase the property. The factum of suppression of the communication cancelling the agreement and issuing a legal notice at a later

date, clearly show that the plaintiff, in fact suppressed the material facts and not come to the court with clean hands.

18. It is further to be noted that the defendants have already issued a public notice with regard to the cancellation of the agreement in a Tamil daily dated 26.05.2006 which is marked as Ex.B.5. After issuance of public notice, a legal notice dated 30.06.2006 came to be issued for the first time as if the plaintiff was always ready and willing to perform her part of the contract. Till such time, the plaintiff have not made any efforts to take steps to demarcate the boundaries or insist the defendants to survey the land etc. All these facts clearly show that the plaintiff having knowledge of the cancellation of the agreement on 19.11.2005 itself, has built up their case, suppressing the same, to show as if they are always ready and willing to purchase the property.

19. Therefore, this Court is of the view that the plaintiff, who has come to this Court by suppressing the material facts and with unclean hands cannot succeed in getting equitable relief of specific performance. Merely, because the plaintiff hold some properties in and around the suit properties, that itself is not a determinative factor to infer readiness and willingness on the part of the plaintiff and that cannot be a ground for granting a decree for specific performance. Similarly, the plaintiff has also filed the bank statement to show that she has capacity to mobilize funds. Mere having capacity to mobilize funds without taking any efforts to get the sale deed within the time as agreed in the agreement, the plaintiff cannot succeed in getting the equitable relief. Readiness and willingness must be established not only from the date of agreement and it must be continuous one till the agreement culminated into execution of the sale deed.

20. Therefore, this Court from the materials and the evidence available on record, is of the view that first of all the contract between the plaintiff and the defendants is without any free consent and signatures were obtained in the night hours by the plaintiff's son-in-law and her husband. The plaintiff never met the defendants at the relevant point of time. These facts clearly show that there is no consensus ad idem between the parties. Similarly, the manner in which the signatures are obtained at 10.00 p.m. in the house without the parties to the contract meeting each other and gave an impression to the defendants as if the contract was entered only in favour of the plaintiff's daughter clearly probabalise the case that the contract is in fact vitiated by misrepresentation of facts. Any such contract executed under misrepresentation, without free consent is voidable at the option of the party whose signature

was obtained by way of misrepresentation of facts. The defendants rightly exercised their choice of having the contract cancelled and sent a communication to the plaintiff's daughter and the plaintiff's daughter is also residing with the plaintiff. Though an attempt was made by the P.W.2 in his evidence, in his cross examination, to show that her daughter never informed him about the letter dated 19.11.2005, such evidence is also against the normal human conduct. When the daughter and mother are residing in the same house, any problem and any communication touching the right of the parents with regard to the immovable properties, which she intend to purchase, it is a normal conduct of the daughter to immediately to inform the same to her parents.

21. Therefore, having regard to all these facts, this Court is of the view that the plaintiff has not come to this Court with clean hands and readiness and willingness has not established from the very beginning, the learned trial Judge has not assessed the evidence in proper manner and decreed the suit and the plaintiff is not entitled to the relief of specific performance and the judgment and decree of the trial Court is required to be interfered. Accordingly, the points are answered.

In the result, the judgment and decree passed in O.S.No.360 of 2006 by the Additional District Judge, Fast Track Court No.1, Chengalpet is hereby set aside and the appeal is allowed. There is no Order as to cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vrc

To

The Additional District Judge,
Fast Track Court No.I,
Chengalpattu.

+2cc to Mr.P.Subba Reddy, Advocate, S.R.No.21167

+1cc to Mr.Haribabu, Advocate, S.R.No.21160

A.S.No.117 of 2011

AD(CO)

RS(30/05/2017)