

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18..01..2017
CORAM
THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR. JUSTICE N.AUTHINATHAN
Appeal Suit No.215 of 2016
and
C.M.P.Nos.3078 of 2016 & 13013 of 2016

M.Sakthivel
and Rep.by Power Agent
Mr. M. Moorthi
S/o. MuthuKrishnan

... Appellant/Plaintiff

-Versus-

1.J.Dakshinamoorthy
2.J.Thiyagarajan
3.D.Jaganathan
4.M.Kamala
5.P.Valarmathi
G.Kasiammal (Died pending trial)

... Respondents/Defendants 1 to 5

... 6th Defendant

Appeal under Section 96 of C.P.C. against the judgement and decree dated 21.12.2015 made in O.S.No.10 of 2009 by the learned Principal District Judge, Tiruvarur, Tiruvarur District.

For Appellant : Mr.K.A.Ravindran
Respondents : Mr.B.Ramamoorthy for RR 1, 2, 4 & 5
Mr.Thamizhavel for R3

JUDGMENT

(Judgement of the Court was delivered by S.NAGAMUTHU. J.)

The plaintiff in O.S.No.10 of 2009 on the file of the learned Principal District Judge, Tiruvaur, is the appellant herein. The respondents 1 to 5 are the defendants in the suit. The 6th defendant-Mrs.G.Kasiyammal died pending trial. It was the suit filed for specific performance of contract of sale of immovable property entered into by the the defendants 1 and 2 in favour of the plaintiff. According to the plaintiff, the sale consideration was agreed upon at Rs.40,68,660/- out of which, a sum of Rs.10,00,000/- was received by the defendants 1 and 2 by way of advance. The sale agreement is dated 19.02.2008. According to the appellant, though he was ready and willing to perform his part of contract, the defendants 1 and 2 did not perform their part of contract. Despite legal notice issued,

there was no positive response from the defendants 1 and 2 and therefore, according to the plaintiff, the present suit was filed.

2. The defendants 1 and 2 have admitted the execution of the sale agreement, sale consideration fixed and the advance of Rs.10,00,000/- paid under the agreement. But, they have stated that since the plaintiff was not ready and willing to perform his part of contract, the defendants 1 and 2 repaid the advance sum of Rs.10,00,000/- to the plaintiff and thus, the sale agreement cannot be enforced now.

3. The 3rd defendant is the father of the defendants 1, 2, 4 and 5. In his written statement, he stated that first item of the suit property belongs to Govindasamy Vanniyar and he in turn executed a Will creating life estate to his wife Kasiyammal. After the demise of Govindasamy Vanniyar on 21.08.1993. Mrs.Kasiyammal was in possession of the property. Mrs.Kasiyammal purchased the second item of the suit property on 06.10.1976. She died intestate subsequently. Thus, on the demise of Mrs.Kasiyammal, according to the defendants, there is an undivided share available for all the respondents. Thus, according to the 3rd defendant, defendants 1 and 2 did not have independent title to convey to the plaintiff as it is sought for. The respondents 4 and 5 have also taken the similar stand.

5. Based on the above pleadings, the trial court framed as many as five issues and one additional issue which read as follows:-

Issues:-

(1) Whether the plaintiff is entitled to get the relief of Specific Performance?

(2) Whether the plaintiff received back the advance amount is correct?

(3) Whether the suit filed by the plaintiff's power agent is maintainable?

(4) Whether the plaintiff was ready and willing to perform the contract as per the agreement?

(5) Whether the plaintiff entitled to get the alternative relief?

Additional Issue:

(1) Whether the defendants had no right in the suit property as per the statement of 3rd defendant?

6. Before the trial court, on the side of the plaintiff, he was examined as P.W.1 and as many as 13 documents were exhibited and on the side of the defendants, 3 witnesses were examined as D.Ws.1 to 3 and as many as 8 documents were exhibited. Having

considered all the above, the trial court dismissed the suit, however, directed the defendants 1 and 2 to refund a sum of Rs.10,00,000/- to the plaintiff representing the advance amount paid under the agreement of sale. Aggrieved over the above said dismissal decree and judgement, the plaintiff is before this court with the present appeal suit.

7. In this appeal, inter alia, it is contended by the appellant/plaintiff that the trial court has miserably cumulatively answered all the issues framed regarding which the evidences, both oral and documentary, were let in by the parties. The learned counsel also made other arguments which we do not want to extract in view of the nature of the order that we now pass.

8. The learned counsel for the respondents 1, 2, 4 and 5 and the learned counsel for the 3rd respondent have got no satisfactory explanation in this regard.

9. Based on the above materials, this court frames the following point for consideration?

(1) Whether the trial court was in error in not answering all the issues framed independently by analysing the evidences, both oral and documentary?

10. We have heard the learned counsel on either side and also perused the records carefully.

11. A perusal of the judgement of the trial court would go to show that the trial court cumulatively had made an attempt to answer all the five issues and also the additional issue, but has not at all answered many of the issues. For instance, though there was a very serious issue between the parties as to whether the plaintiff was willing to perform his part of contract on time, we are at a loss to find any adjudication on this issue which will quite naturally have a bearing in the ultimate conclusion arrived at in the case. Similarly, for the other issues also, there is no specific finding. In such view of the matter, we are of the view that the judgement of the trial court deserves to be set aside and the matter needs to be remanded back to the trial court for appreciation of both oral and documentary evidences with reference to each issue independently and to pass a fresh judgement on merits.

12. At this juncture, the learned counsel for the appellant/plaintiff submitted that the plaintiff has deposited a sum of Rs.30,58,660/- to the credit of the original suit before the trial court and the said amount may be ordered to be returned to him on getting an undertaking that he would deposit

the amount at any time as directed by the trial court.

13. We are not inclined to go into the said question inasmuch as it is for the trial court to decide after affording sufficient opportunity to both parties. Thus, we leave this open.

14. In the result, the appeal suit is allowed. The decree and judgement dated 21.12.2015 passed by the learned Principal District Judge, Tiruvarur, in O.S.No.10 of 2009 dismissing the suit are hereby set aside and the suit in O.S.No.10 of 2009 is remanded back to the file of the learned Principal District Judge, Tiruvarur, who shall dispose of the suit within a period of two months from the date of receipt of a copy of this judgement. It is further directed that the learned Judge shall go into all the issues independently with reference to the evidences, both oral and documentary, let in by both parties, and then pass appropriate judgement on merits. Considering the facts and circumstances of the case, both parties shall bear their respective costs throughout. Consequently, connected CMPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

- 1.The Principal District Judge, Tiruvarur, Tiruvarur District.
- 2 The Section Officer, VR, Section, High Court, Madras

+1cc to Mr.Ravindran, Advocate, S.R.No.3787
+1cc to Mr.Ramamurthy, Advocate, S.R.No.3685
+1cc to Mr. Thamizhavel, Advocate, Sr.No.3597

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