

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered on : 07.12.2017

CORAM

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

Appeal Suit No.434 of 2011

and

M.P.No.1 of 2011

M.P.No.1 of 2015

and

Cross-Objection No.16 of 2014

1.Chakravarthy
2.Jayabalan
3.Dayalan
4.Manoharan
5.Kumar
6.Saroja
7.Sakunthala
8.Santhanalakshmi
9.Vijaya ... Appellants/Defendants 1 to 9

vs.

1.Jayaraman ...1st Respondent/Plaintiff
2.Venkatesan ...2nd Respondent/10th Defendant
Jayaraman ... Cross Objector/Plaintiff

vs.

1.Chakravarthy
2.Jayabalan
3.Dayalan
4.Manoharan
5.Kumar
6.Saroja
7.Sakunthala
8.Santhanalakshmi
9.Vijaya
10.Venkatesan .. Respondents/Defendants

Appeal suit filed under Section 96 read with Order 41 Rule 1 and 2 of Civil Procedure Code, 1908 against the judgment and decree dated 24.06.2011, passed by the Principal District Court, Cuddalore, in O.S.No.37 of 2009.

Cross-Objection filed under order 41 Rule 22 of CPC against the dis-allowed portion of the judgment and decree dated 24.6.2011 passed by the Principal District Judge, Cuddalore, in O.S.No.37 of 2009.

For Appellants in A.S.No.434 of 2011
and for R1 to R9 in
Cross-Obj.16 of 2014 : Mr.V.Srikanth

For 1st Respondent in
A.S.No.434 of 2011
and for Cross-Objector in
Cross-Objection No.16 of 2014 : Mr.N.Suresh

No appearance for R2 in A.S.No.434 of 2011
No appearance for R10 in Cross-Objection
No.16 of 2014

COMMON JUDGMENT

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

This Appeal Suit has been directed against the judgment and decree dated 24.06.2011 passed in O.S.No.37 of 2009, by the Principal District Court, Cuddalore.

2.The respondent herein, as plaintiff, has instituted O.S.No.37 of 2009, on the file of the trial Court, praying to pass a decree of specific performance in pursuance of sale agreement dated 11.09.2006, wherein, the present appellants have been arrayed as defendants 1 to 9.

3.The material averments made in the plaint are that the suit property is the absolute property of the defendants 1 to 9 and they agreed to sell the same for a sum of Rs.32 lakhs in favour of the plaintiff and to that effect, a sale agreement has come into existence on 11.09.2006 and on the date of its execution, an advance amount of Rs.3 lakhs has been given. Further it is agreed to the effect that the plaintiff should pay balance of sale consideration within a period of 10 months and get a sale deed registered from the defendants 1 to 9. On 22.2.2007, a sum of Rs.1,00,000/- has been given to the first defendant and to that effect an endorsement has been made on the suit sale agreement. Likewise, on 31.05.2007, a sum of Rs.50,000/- has been given to the first defendant and on 27.11.2007 another sum of Rs.50,000/- has been given to the first defendant and to that effect also endorsements have been made on the suit sale agreement. The plaintiff has always been ready and willing to perform his part of contract. The defendants 1 to 9 have failed to perform their part of contract

as stipulated in the suit sale agreement. Under the said circumstances, a legal notice dated 18.2.2009 has been issued by the plaintiff and after receipt of the same, a reply notice dated 28.2.2009 has been given, wherein a total denial has been made in respect of execution of the suit sale agreement dated 11.09.2006. Further, the defendants 1 to 9, after removing crops, have measured the suit property only in the year 2009. Since the defendants 1 to 9 have refused to execute a registered sale deed in favour of the plaintiff, even after receipt of legal notice, the present suit has been instituted for the relief sought therein.

4. In the written statement filed by the first defendant and adopted by the defendants 2 to 9 it is averred that on 11.09.2006, a sale agreement has come into existence between the plaintiff and defendants 1 to 9, wherein total sale consideration has been fixed at Rs.32 lakhs and on the date of its execution, the defendants 1 to 9 have received a sum of Rs.3 lakhs. In the suit sale agreement it has been specifically stipulated to the effect that on or before 10.07.2007, the plaintiff ought to have paid the remaining sale consideration and to get a sale deed registered from the defendants 1 to 9. But the plaintiff has not paid the balance of sale consideration on or before 10.07.2007. Further it is averred in the written statement that on 22.02.2007, a sum of Rs.1 lakh has been received by the first defendant; on 31.05.2007, another sum of Rs.50,000/- has been received by the first defendant and on 27.11.2007, another sum of Rs.50,000/- has been received by the first defendant and even after receipt of the said amounts, the plaintiff has not come forward to pay the balance of sale consideration to the defendants 1 to 9 and to get a sale deed registered from them. The present suit is barred by limitation and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the divergent pleadings raised on either side, the trial Court has framed necessary issues and after analysing both oral and documentary evidence, has decreed the suit only in respect of 1 acre 36 cents. Against the judgment and decree passed by the trial Court, the present Appeal Suit has been filed by the defendants 1 to 9 and against the disallowed portion, Cross-Objection No.16 of 2014 has been preferred by the plaintiff.

6. The sum and substance of the case of the plaintiff is that in between the plaintiff and defendants 1 to 9, the suit sale agreement has come into existence on 11.09.2006, whereby total consideration has been fixed at Rs.32 lakhs and on the date of its execution, the defendants 1 to 9 have received a sum of Rs.3 lakhs. Further it is agreed that the plaintiff should pay balance of sale consideration within a period of 10 months and

to get a registered sale deed from the defendants 1 to 9. On 22.02.2007, the plaintiff has paid a sum of Rs.1,00,000/- to the first defendant; on 31.05.2007, the plaintiff has paid another sum of Rs.50,000/- to the first defendant and on 27.11.2017, he has paid another sum of Rs.50,000/- to the first defendant and to that effect, endorsements have been made on the suit sale agreement and since the defendants 1 to 9 have failed to adhere nor follow the conditions mentioned in the suit sale agreement, a legal notice has been issued on 18.2.2009, whereby called upon them to discharge their obligation and also to execute a registered sale deed and even after receipt of the same, the defendants 1 to 9 have not come forward to execute a registered sale deed in favour of the plaintiff and further on 28.2.2009, the defendants 1 to 9 have given a false reply notice. The plaintiff has always been ready and willing to perform his part of the contract from inception of the suit sale agreement dated 11.09.2006. Under the said circumstances, the present suit has been instituted for the relief sought therein.

7.The main defence put forth on the side of the defendants 1 to 9 is that even though in the suit sale agreement time for execution has been fixed and the same expires on 10.07.2007, the plaintiff has not evinced his interest in paying remaining amount of sale consideration and to get a registered sale deed from them. Under the said circumstances, the plaintiff has not shown his readiness and willingness from inception of the suit sale agreement dated 11.09.2006 and therefore, the relief of specific performance cannot be granted.

8.The learned counsel appearing for the appellants/defendants 1 to 9 has repeatedly contended to the effect that the suit sale agreement dated 11.09.2006 has been marked as Ex.A1, wherein, a specific condition has been stipulated to the effect that the plaintiff ought to have paid the balance of sale consideration within a period of 10 months and the said period expires on 10.07.2007 and even after expiry of the said date, on 27.11.2007, the first defendant has received a sum of Rs.50,000/- and even after 27.11.2007, the plaintiff has not come forward to pay balance of sale consideration and after lapse of 16 months, the plaintiff has issued a legal notice dated 18.2.2009. Under the said circumstances and also from the conduct of the plaintiff, the Court can easily discern that the plaintiff has not shown his readiness and willingness as per Section 16(c) of the Specific Relief Act, 1963. But the trial Court, without considering the aforesaid factual aspects, has erroneously decreed the suit in respect of 1 acre 36 cents and therefore, the judgment and decree passed by the trial Court are liable to be set aside.

9.To resile the contentions put forth on the side of the appellants/defendants 1 to 9, the learned counsel appearing for

the respondent/plaintiff has sparingly contended to the effect that even in Ex.A1-suit sale agreement, a specific condition has been mentioned to the effect that after harvesting existing crops, the defendants 1 to 9 ought to have surveyed the suit Survey Number, but as agreed, they have not done it till the year 2009. Under the said circumstances, the plaintiff has not been able to pay the balance of sale consideration. Since there is a clear refusal on the part of the defendants 1 to 9 in complying with the condition mentioned in the suit sale agreement, the present suit has been instituted and the trial Court, after considering the available evidence on record, has decreed the suit only in respect of one acre 36 cents and erroneously dismissed the same in respect of 4 cents. Under the said circumstances, Cross-Objection No.16 of 2014 has been filed and therefore, Appeal Suit deserves to be dismissed and Cross-Objection is liable to be allowed.

10.On the basis of the rival contentions raised on either side, the Court can easily deduce the following factual and also legal aspects.

(1)Whether the plaintiff has always shown his readiness and willingness to perform his part of the contract in pursuance of the suit sale agreement dated 11.09.2006(Ex.A1)?

(2)Whether the defendants 1 to 9 have performed their part of contract as mentioned in Ex.A1?

(3)Whether the plaintiff is entitled to get equitable relief of specific performance?

(4)Whether the plaintiff is entitled to get a decree of specific performance in toto?

11.As mentioned supra, the suit sale agreement dated 11.09.2006 has been marked as Ex.A1. The endorsements dated 22.2.2007, 31.05.2007 and 27.11.2007 have been marked as Exs.A2 to A4. The copy of legal notice has been marked as Ex.A5 and reply notice has been marked as Ex.A8.

12.It is an everlasting principle of law that in a suit like this, as per Section 16(c) of the Specific Relief Act, 1963, it is the bounden duty of the plaintiff to aver and plead his or her readiness and willingness to perform his or her obligation.

13.In the instant case, on the side of the plaintiff, throughout the pleading and also in the evidence, it has been specifically stated that the plaintiff has always been ready and willing to perform his part of the contract. But the defence is

otherwise. Since the defence is otherwise, the entire burden lies upon the plaintiff to prove that as per Ex.A1, he has always been ready and willing to perform his part of the contract.

14.It is true that in Ex.A1 it has been specifically recited to the effect that within a period of 10 months from 11.09.2006, the plaintiff is bound to pay balance of sale consideration and to get a sale deed registered. It is also equally an admitted fact that the said period expires on 10.07.2007.

15.It is an admitted fact that Ex.A2 has come into existence on 22.02.2007; Ex.A3 has come into existence on 30.05.2007 and Ex.A4 has come into existence on 27.11.2007. Therefore, it is quite clear that even after expiry of 10.07.2007, the first defendant has received a sum of Rs.50,000/- from the plaintiff.

16.The main argument put forth on the side of the appellants/defendants 1 to 9 is that after expiry of 16 months from the date of Ex.A4, Ex.A5 notice has been given on 18.2.2009 and therefore, the plaintiff has not shown his readiness and willingness to perform his part of the contract.

17.At this juncture, the learned counsel appearing for the respondent/plaintiff has accentuated the Court to look into the evidence given by D.W.1, coupled with the conditions mentioned in Ex.A1.

18.In Ex.A1, it has been clearly recited to the effect that after harvesting the existing crops, the defendants 1 to 9 are bound to survey the suit property and to give a vacant possession to the plaintiff.

19.The first defendant has been examined as D.W.1. Even during the course of cross-examination, he has clearly admitted to the effect that the suit property has been surveyed only in the year 2009. Therefore it is quite clear that as per the terms mentioned in Ex.A1, the defendants 1 to 9 have failed to perform their part of contract and in fact, survey of the suit property has been done only in the year 2009.

20.Considering the aforesaid factual aspects this Court can very well come to a conclusion that even though the plaintiff has always been ready and willing to perform his part of the contract, the entire embargo has been created only by the defendants 1 to 9. Since the defendants 1 to 9 have not surveyed the suit property, after removing existing crops, it is needless to say that only the defendants 1 to 9 have caused interdiction for getting a sale deed registered.

21.As pointed out earlier, in a suit like this, the entire

burden lies upon the plaintiff to prove that he has always been ready and willing to perform his part of the contract. In the instant case, as narrated earlier, abundant evidence is available on the side of the plaintiff for the purpose of holding that the plaintiff has always shown his readiness and willingness to perform his part of the contract. Since the defendants 1 to 9 have failed to adhere nor follow the condition mentioned in Ex.A1, the main defence taken on the side of the appellants/defendants 1 to 9 is sans merit.

22.It has already been pointed out that the suit sale agreement has been marked as Ex.A1, wherein, total consideration has been fixed at Rs.32 lakhs and on the date of its execution, the defendants 1 to 9 have received a sum of Rs.3 lakhs by way of an advance and even after expiry of 10 months, Ex.A4 has come into existence on 27.11.2007 and further, on 18.2.2009, Ex.A5-legal notice has been issued by the plaintiff. After receipt of the same, the defendants 1 to 9 have given a reply notice, viz., Ex.A6 wherein, a total denial in respect of factum of execution of Ex.A1, receipt of advance money and subsequent payments have been made. Therefore, it is needless to say that the defence put forth on the side of the defendants 1 to 9 is nothing but frivolous and the same cannot be accepted.

23.It is an admitted fact that the suit Survey Number is ad-measuring 1 acre 40 cents. But the trial Court, without considering the title of the defendants 1 to 9 in respect of entire extent, has erroneously excluded an extent of 4 cents. Considering the fact that the trial Court has erroneously excluded an extent of 4 cents and also considering that the defendants 1 to 9 are having title to the entire extent, this Court is of the view that the decree passed by the trial Court in respect of dis-allowed portion is not correct. Under the said circumstances, Cross-Objection No.16 of 2014 is liable to be allowed.

24.The learned counsel appearing for the appellants/defendants 1 to 9 has also pointed out Clause (v) of the result portion of the judgment passed by the trial Court and the same reads as follows:

"v)in the event of failing to comply with the above terms of the decree by the defendants, it is hereby ordered that the defendants 1 to 9 jointly and severally pay a sum of Rs.5,00,000/- only along with interest at 12% per annum, to the plaintiff on and from 27.11.2007 till the date of realization."

25.As rightly pointed out by the learned counsel appearing

for the appellants/defendants 1 to 9, clause (v) of the result portion of the judgment passed by the trial Court is totally erroneous and the same is liable to be set aside.

In fine, Appeal Suit No.434 of 2011 is allowed in part without costs and clause (v) of the result portion of the judgment and clause (7) of the decree passed by the trial Court are set aside. The remaining portion of the judgment and decree passed by the trial Court are confirmed.

In fine, Cross-Objection No.16 of 2014 is allowed without costs and Original Suit No.37 of 2009 is decreed in toto.

Connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CS.VII)

True Copy

Sub-Assistant Registrar

msk

To

1. The Principal District Judge
Cuddalore
2. The Section officer
VR Section, High Court, Madras(2 copies)

+1 Cc to Mr.N. Suresh, Advocate sr 87471.

Appeal Suit No.434 of 2011
Cross-Objection No.16 of 2014

GP(CO)
SP(27/02/2018)

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