

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.12.2017

Delivered on : 14.12.2017

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.481 of 2011

and

M.P.No.1 of 2013

1.Mrs.Ulagambal

2.Mr.N.Raghu

3.Mrs.Ramani

4.Mrs.Rama

... Appellants/Defendants 1, 2,4 & 5

vs.

1.Mr.J.Vijaya Raj

2.Mr.N.Ramesh

... Respondents/Plaintiff & 3rd Defendants

Appeal suit filed under Section 96 read with Order 41 Rule 1 of Civil Procedure Code, 1908 against the judgment and decree dated 13.05.2011, passed by the Additional District and Sessions Judge (Fast Tract Court No.3) Chennai, in O.S.No.11773 of 2010.

For Appellants : Mr.M.V.Krishnan

For Respondents: Mr.M.Vivekanandan for R1

Mr.R.Murali for R2

JUDGMENT

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

This Appeal Suit has been directed against the judgment and decree dated 13.05.2011, passed in O.S.No.11773 of 2010, by the Additional District and Sessions Court (Fast Track Court No.No.3), Chennai.

2.The first respondent herein, as plaintiff, has instituted O.S.No.11773 of 2010, on the file of the trial Court, praying to pass a decree of specific performance of the sale agreement dated 09.05.2004, wherein, the present appellants and the second respondent have been arrayed as defendants.

3.The material averments made in the plaint are that the

suit property is the absolute property of the defendants. One Nithyanandam has purchased the property and he passed away on 20.03.2001, leaving behind him, the defendants 1 to 5 as his legal heirs. The defendants have approached the plaintiff so as to sell the suit property for a sum of Rs.16,40,000/-. The plaintiff has also agreed to purchase the same. Under such circumstances, an agreement of sale has come into existence between the plaintiff and defendants on 09.05.2004 and on the date of its execution, Rs.2,00,000/- has been given as an advance to the defendants. Further it is agreed that the plaintiff has to pay balance of sale consideration and get a registered sale deed from the defendants within a period of 90 days. Before that period, the defendants are bound to produce original documents of title to the plaintiff for having legal opinion. But, as agreed, the defendants have failed to produce original documents of title to the plaintiff. Under the said circumstances, a legal notice dated 06.08.2004 has been given. Even after receipt of the same, the defendants have not come forward to execute a sale deed in favour of the plaintiff. In the meanwhile, the defendants have lodged a police complaint, wherein forcibly the signature of the plaintiff has been obtained as if he is not willing to claim any right over the suit property and subsequently, various legal notices have been issued to the defendants. But the defendants have not come forward to execute a sale deed in favour of the plaintiff. The plaintiff is always ready and willing to perform his part of the contract. Under such circumstances, the present suit has been instituted for getting the relief sought therein.

4. In the written statement filed on the side of the defendants 1, 2, 4 and 5 it is averred to the effect that both the plaintiff and defendants have entered into the suit sale agreement, wherein total sale consideration has been fixed at Rs.16,40,000/- and on the date of its execution, the plaintiff has paid a sum of Rs.2,00,000/- by way of an advance. It is false to aver that the plaintiff has always been ready and willing to perform his part of the contract. In the suit sale agreement, 90 days period is fixed for execution of registered sale deed and within that period, the plaintiff has failed to give balance of sale consideration. Since the plaintiff has failed to perform his part of the contract, he is not entitled to get equitable relief of specific performance. The present suit is barred by limitation and the same is not legally maintainable, as per sale agreement dated 9.5.2004. There is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the rival pleadings raised on either side, the trial Court has framed necessary issues and after analysing both oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by

the trial Court, the present Appeal Suit has been preferred at the instance of the defendants 1,2, 4 and 5.

6.Before contemplating the rival submissions made on either side, the Court has to look into the following admitted facts.

7.It is an admitted fact that on 09.05.2004, the suit sale agreement has come into existence between the plaintiff and defendants, whereby the defendants have agreed to sell the suit property for a sum of Rs.16,40,000/- and on the date of its execution, the plaintiff has paid a sum of Rs.2,00,000/- by way of an advance. It is agreed by the plaintiff that he should pay balance of sale consideration within a period of 90 days for getting a registered sale deed. Further it is agreed that before that period, the defendants are bound to give original documents of title to the plaintiff for obtaining legal opinion.

8.The suit sale agreement has been marked as Ex.A1. Legal notices and a copy of complaint have been marked as Exs.A2 to A9.

9.The learned counsel appearing for the appellants/defendants has vehemently contended to the effect that in Ex.A1, it has been specifically mentioned to the effect that the plaintiff has to pay balance of sale consideration within a period of 90 days and within that period, he has not evinced any interest to pay balance of sale consideration. Under the said circumstances, the plaintiff has not shown his readiness and willingness from inception of Ex.A1 and therefore, the plaintiff is not entitled to get the equitable relief of specific performance.

10.In support of his contention, the following decisions are relied upon:

(1)2011(4) CTC 640-Saradamani Kandappan vs. S.Rajalakshmi & Others, wherein the Hon'ble Supreme Court has observed that in a case like this, the plaintiff has to aver and prove his readiness and willingness to perform his part of the contract.

(2)2011-5-LW 44-Coromandel Indag Products (P) Ltd., vs. Garuda Chit & Trading Co.P Ltd & another, the Hon'ble Supreme Court has observed that if there is any breach of contract on the part of the plaintiff, he is not entitled to get equitable relief of specific performance.

11.To repudiate the contentions put forth on the side of the appellants, the learned counsel appearing for the first respondent has contended to the effect that as per terms mentioned in Ex.A1, the defendants are bound to give original

documents of title to the plaintiff for getting legal opinion. But they failed to produce the same. Under such circumstances, a legal notice has been issued and the same has been marked as Ex.A2. After receipt of the same, they have given a false police complaint, wherein unnecessary panchayats have been conducted and subsequently, the plaintiff has issued several legal notices and since the defendants have failed to give original documents of title to the plaintiff, he has not been able to pay the balance of sale consideration within a period of 90 days, even though he is always ready to perform his part of the contract and ultimately the present suit has been instituted and the trial Court, after considering the overall evidence available on record, has rightly decreed the suit and therefore, the judgment and decree passed by the trial Court do not require any interference.

12.It is a settled principle of law that in a case like this, as per Section 16(c) of the Specific Relief Act, 1963, the plaintiff has to aver and prove his readiness and willingness from inception of sale agreement. Under the said circumstances, the following legal aspects are become emerged.

(1)Whether the plaintiff has shown his readiness and willingness to perform his part of the contract from execution of Ex.A1?

(2)Whether time mentioned in Ex.A1 is an essence of contract?

13.The entire argument put forth on the side of the appellants/defendants is that even though stipulated time of 90 days has been mentioned in Ex.A1, within that period, the plaintiff has failed to prove his readiness and willingness to perform his part of the contract.

14.In fact this Court has perused the entire recitals found in Ex.A1, wherein, it has been clearly recited to the effect that within a period of 90 days, the plaintiff has to pay balance of sale consideration for getting a sale deed registered. Further it is recited that within that period, the defendants have to produce original documents of title to the plaintiff for getting legal opinion.

15.The main gravamen expressed on the side of the plaintiff is that as mentioned in Ex.A1, the defendants have not produced documents of title to the plaintiff.

16.At this juncture, the Court has to look into the evidence given by D.W.1.

17.The second defendant has been examined as D.W.1 and his specific evidence is that his brother, viz., 3rd defendant

has taken away all documents of title. From a clear admission made by D.W.1, the Court can easily come to a conclusion that as agreed in Ex.A1, the defendants have not produced documents of title to the plaintiff. In fact, after knowing the evil desire of the defendants, the plaintiff has issued a legal notice. After receipt of the same, they preferred unnecessary police complaint, wherein, so many panchayats have been conducted.

18.Considering the overall factual circumstances available in the present case, the Court can unflinchingly come to a conclusion that from inception of suit sale agreement, the plaintiff has always been ready and willing to perform his part of the contract. But the defendants have adopted various dilatory methods so as to defeat the legal rights of the plaintiff.

19.Even though in Ex.A1, a specific time has been mentioned, considering the factual circumstances of the present case, the Court can easily come to a conclusion that time is not the essence of contract and further, only due to conduct of the defendants, the delay has been caused in paying balance of sale consideration. Therefore, viewing from any angle, this Court is of the view that the plaintiff has always shown his readiness and willingness to perform his part of the contract and as per Ex.A1 he is entitled to get equitable relief of specific performance.

20.The trial Court, after considering the overall evidence available on record, has rightly decreed the suit. In view of the discussion made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellants and altogether the present Appeal Suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed with costs. The judgment and decree passed in O.S.No.11773 of 2010 by the trial Court are confirmed. Connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

msk

To

The Additional District and Sessions Judge
(Fast Tract Court No.3) Chennai

Copy to

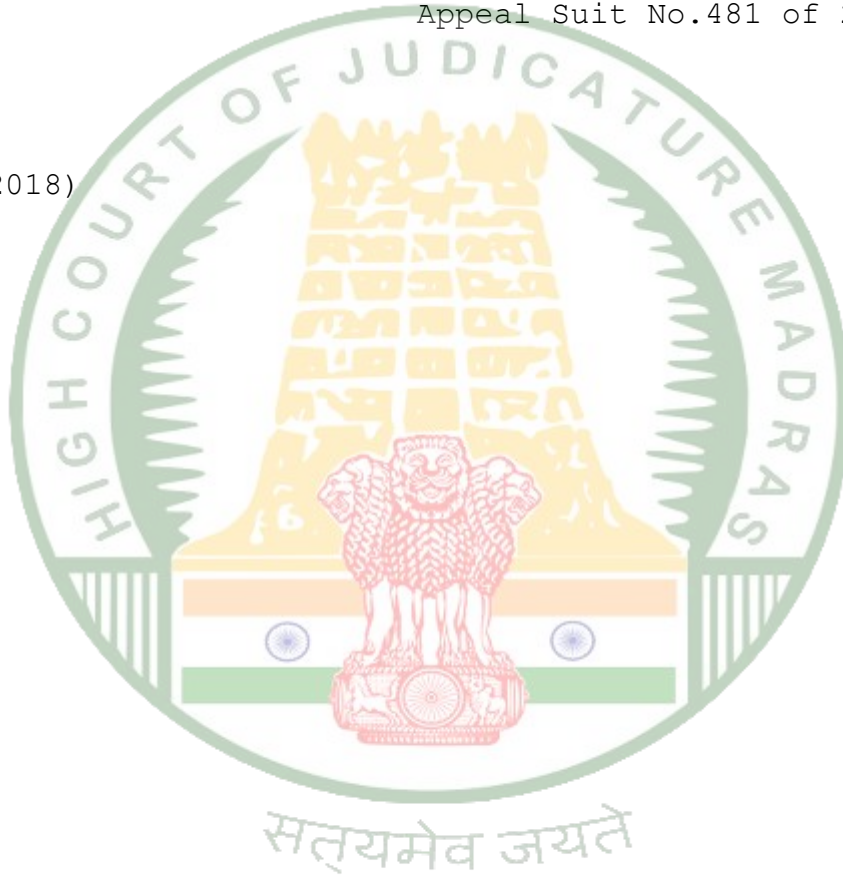
The Section Officer,
VR Section, High Court,
Madras.

+lcc to Mr.V.Krishnan, Advocate SR.No.89115

+lcc to Mr.Vivekandan, Advocate SR.No.89105

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