

Judgment Reserved on: 23.03.2017

Judgment Pronounced on : 03.04.1017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Coram:

The Hon'ble Mr.Justice N.SATHISHKUMAR

Appeal Suit No. 612 of 2011

and

M.P.No.1 of 2011

Smt.Pushpammal Appellant/Respondent

Versus

Thiru.S.Pawan Kumar Respondent/Plaintiff

Appeal Suit filed under Section 96 read with Order 41 Rule (1) of Civil Procedure Code, against the Judgment and decree dated 09.02.2010 passed in O.S.No.73 of 2006 by the learned Additional District Judge (Fast Track Court-II), Poonamallee.

For Appellant ... Mr.V.Bhiman

For Respondent .. No Appearance

JUDGMENT

This appeal has been filed by the unsuccessful defendant in a suit filed for specific performance. The parties are arrayed as per their own ranking before the trial Court.

2. Brief facts of the plaintiff's case is as follows:- The defendant being the owner of the suit property entered into an agreement dated 17.08.2005 to sell the suit property for a total consideration of Rs.13,44,000/-, received advance of Rs.3.00 lakhs on the date of agreement itself and agreed to complete the sale within 11 months from the date of agreement. The plaintiff also paid a further sum of Rs.1,50,000/- to the defendant on 27.09.2005, Rs.10,000/- on 17.12.2005, Rs.40,000/- on 26.12.2005 and Rs.40,000/- on 27.02.2006. Thus the plaintiff has totally paid a sum of Rs.5,40,000/- to the defendant towards sale consideration and he was ready and willing to pay the balance

sale consideration. But the defendant failed to execute the sale deed. Therefore, he has issued a legal notice dated 26.05.2006. In spite of receipt of notice, the defendant neither executed the sale deed nor given any reply. Hence the suit.

3. The defendant admitting the execution of the sale agreement to sell the suit property for a total consideration of Rs.13,44,000/- and the advance amount and various other amounts paid by the plaintiff. The contention of the defendant is that the suit property was purchased in the name of this defendant by her husband R.Kasi. After the agreement the defendant's husband and her children have not agreed for the same and all of them started demanding shares in the suit property. Only in the said circumstances the defendant could not honour the agreement. After receipt of notice, the defendant also met the plaintiff and explained her position and offered to return Rs.5,40,000/-. But the plaintiff was not accepted this offer and he has chosen to file the suit. Hence, she prayed for dismissal of the suit.

4. On the basis of the above pleadings, the following issues were framed for consideration by the learned trial Judge:-

1. Whether the suit property is not belong to the defendant?
2. Whether the plaintiff is entitled to get the registered sale deed with the defendant?
3. To what relief the plaintiff is entitled?

5. On the side of the plaintiff examined himself as P.W.1 and Ex.A1 to A10 were marked. Ex.A1 is the original sale agreement dated 17.08.2005; Ex.A2 is the Xerox copy of the sale deed dated 12.3.1997, in favour of the defendant; Ex.A3 is the Xerox copy of the Chitta; Ex.A4 is the Xerox copy of the Adangal; Ex.A5 is the Xerox copy of the Kist Receipt; Ex.A6 to Ex.A8 are the Xerox copy of the Encumbrance Certificates; Ex.A9 is the Notice issued by the plaintiff dated 26.5.2006; Ex.A10 is the Acknowledgment. On the side of the defendant no one was examined and no document was marked.

6. Based on the oral and documentary evidence and materials, the learned trial Judge granted decree for specific performance. Aggrieved over the same, the present appeal came to be filed.

7. Learned counsel appearing for the appellant submitted that though the property stand in the name of the appellant in fact it was purchased by her husband. She is only the house wife and after executing the agreement, the family members demanded share in the property. Therefore, she could not execute the sale. It is the contention of the learned counsel that the agreement is of the year 2005. Though 11 months time is agreed

the plaintiff was not ready and willing to perform his part of contract and there is also escalation of price. Merely because the suit was filed by the plaintiff in time, ready and willingness of the plaintiff to perform his part of the contract, cannot be inferred. Hence submitted that the learned trial Judge has not decided the issue with regard to the ready and willingness. Hence, prayed for allowing the appeal. The learned counsel also placed reliance upon the Judgment reported in Citadel Fine Pharmaceuticals v. Ramaniyam Real Estates P. Ltd., & Another (2011 (6) CTC 112).

8. In the light of the above submissions, the only point that arises for consideration in this appeal is:-

Whether the plaintiff is always ready and willing to perform his part of contract?

9. It is admitted case of both sides that the defendant entered into an agreement for sale dated 17.08.2005 agreeing to sell the suit property to the defendant for a total sale consideration of Rs.13,44,000/- on the date of agreement, advance of Rs.3.00 lakhs was received by the defendant. This fact is not even denied in the written statement. It is further case of the plaintiff that he has paid Rs.2,40,000/- on different dates from 27.9.2005 to 27.02.2006, totaling to Rs.5,40,000/-. The receipt of the above amount also has not been disputed by the defendant in her written statement.

10. P.W.1 in his evidence also clearly stated that he has paid a sum of Rs.5,40,000/- to the defendant on various dates from the date of agreement and he was always ready and willing to purchase the property and he is also businessman and he had capacity to mobilize funds. The evidence of P.W.1 with regard to the readiness and willingness to purchase the property and capacity to raise funds is not even resisted in the cross-examination. Further it is the specific pleadings of the plaintiff that he was always ready and willing to perform his part of contract from the date of the agreement, is not denied by the defendant in the written statement. Receipt of advance amount was also not denied. Evidence also clearly show that the defendant's daughter and son also signed as one of the attesting witnesses in the agreement and another son of the defendant also signed as witness for receiving further sum of amount. Except stating that the husband has filed the suit claiming to be the owner of the property. The evidence of P.W.1 with regard to the performance of his obligations, agreement was not denied in the cross-examination. Ex.A1 is the agreement when carefully seen the parties have in fact agreed to complete the sale within 11 months from the date of agreement. Ex.A1 was executed on 17.8.2005 on the date of agreement 3.00 lakhs advance was received by the defendant and subsequently, on various

endorsements, she received a sum of Rs.2,40,000/- for which not only the defendant but also her children signed in the endorsement found in the agreement itself. It is the case of the plaintiff that Xerox copies of title deeds were given at the time of agreement. The above documents have been filed on the side of the Plaintiff. Plaintiff has also issued a legal notice dated 26.5.2006 under Ex.A9 which is also received and replied by the defendant under Ex.A10.

11. The defendant has not come before the Court nor filed any document except filing the written statement, which would show that the defendant has failed to perform her part of contract. The entire agreement and receipt of payment were also admitted in the written statement. The evidence of P.W.1 was also not denied. The only defence taken in the written statement is that the suit property was purchased by her husband in the name of the defendant. She is a house wife and she was only name vendor. Except that no circumstances whatsoever has been pleaded by the defendant to non-suit the agreement.

12. The evidence of P.W.1 and pleadings clearly show that from the date of agreement that is 17.8.2005 the plaintiff was continuously expressed his readiness and willingness to perform his part of contract and paid further sum of Rs.2,40,000/- towards balance sale consideration from 27.09.2005 to 27.02.2006. He also sent a legal notice dated 26.05.2006 calling upon the defendant to perform her part of contract. Thereafter, he has filed the suit on 21.07.2006, immediately after the agreement period is over. From the nature of the payment made by the plaintiff and the undisputed facts in the pleadings and in the evidence of P.W.1 coupled with the recitals in the Ex.A1 agreement, it can be easily inferred that the plaintiff was ready and willing to perform his part of contract from the beginning and in fact the defendant alone was delaying the performance of her part contract on the ground that her children also demanded share, that cannot be the ground for non performance of the contract on the part of the defendant.

13. Hence, this Court is of the view that the plaintiff has clearly established his readiness and willingness to perform his part of contract from the inception of the agreement. It is also pertinent to note that when the Court has enquired the appellant's counsel to know about the deposit of sale consideration in the Court, the learned counsel for the appellant has fairly stated that the plaintiff has already deposited the remaining sale consideration in the Court immediately after passing of the decree. All these facts cumulatively taken into consideration, would clearly prove that the plaintiff was ready and willing to perform his part of contract from the beginning, whereas, the defendant was delaying

the performance of her part of contract. Hence, I am of the view that the judgment and decree of the learned trial Court is a well balanced one and it does not require any interference. Accordingly, these points are answered against the appellant.

14. In the judgment relied upon by the appellant in Citadel Fine Pharmaceuticals v. Ramaniyam Real Estates P. Ltd., & Another (2011 (6) CTC 112) it has been held as follows:-

"Specific Relief Act, 1963 (47 of 1963), section 20- Agreement to purchase Immovable Property- Whether price rise in property is factor to be considered in Suit for specific performance of immovable property - Property located in Metropolitan City Chennai - Court can take judicial notice of fact that in city of Chennai price of Real Estate is constantly escalating and from terms of contract it is clear that time is essence of Contract- In commercial nature of transaction surrounding circumstances can also be taken into consideration to hold whether time is essence of contract or not - Law laid down in K.S. Vidyanandam and others v. Vairavan, 1997 (3) SSC 1 followed and applied."

15. No doubt, the Hon'ble Supreme Court has held that price escalation is also one of the factor to be considered in a suit for specific performance of immovable property. However, in the said case, the Hon'ble Supreme Court declining the relief of specific performance on the ground of suppression of material facts by the plaintiff. Whereas facts in the given case is entirely different. However, taking into consideration of the fact that the agreement was entered into between the plaintiff and the defendant in the year 2005, to sell the property situate at Poonamallee Taluk, Tiruvallore District, this Court is of the view that by this time there would have been escalation of price from the price agreed between the plaintiff and the defendant at the time of agreement in the year 2005. Though the Court cannot substitute the terms of contract, this Court cannot ignore the reality of constant and continuous rise in the value of the urban properties.

16. Taking into consideration of the element of discretion vested with the Court, in a suit for specific performance, though the plaintiff has made out a case for specific performance as per the agreement, this Court taking into consideration of the fact that the defendant is the house wife and by this time, she lost her husband, as per the suggestion put to the plaintiff/P.W.1, this Court is of the view that the plaintiff can be directed to pay a further sum of Rs.7.00 lakhs to the defendant and the defendant shall execute a sale deed in

favour of the plaintiff, after receipt of the additional sum of Rs.7.00 lakhs. In the event of failure to receive the amount by the defendant, the plaintiff shall deposit the said sum of Rs.7.00 lakhs to the credit of O.S.No.73 of 2006 on the file of the Additional District Judge, (Fast Track Court-II) Poonamallee within three months from this date.

17. With the above modification, the appeal stands dismissed. No costs. Consequently, M.P.No.1 of 2011 is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Judge,
Fast Track Court V, Ponamallee.

+1cc to Mr.R.Bhiman, Advocate Sr.19663

A.S.No.612 of 2011

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