

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM

THE HON'BLE Mr. JUSTICE R.SUBRAMANIAN

A.S.No.203 of 2010
and MP Nos. 1 and 2 of 2010

R. Ramasubbu

... Appellant

Vs.

1. T. Pirashanna

2. Parameswari Thevaraja

... Respondents

Appeal Suit filed under Article 96 & Order XLI Rule 1 of Code of Civil Procedure to set aside the Decree and Judgment dated 04.12.2009 in O.S. No.401 of 2006 on the file of Additional District Judge, Fast Track Court No.1, Chengalpattu by allowing the Appeal.

For Appellant : Mr.N. Anand Venkatesh
for Ma.Pa. Thangavel

For Respondents: Mr.T. Sri Krishna Bhagavat
for M/s P. Subba Reddy

J U D G E M E N T

The Plaintiff, who filed the suit for specific performance, which was dismissed by the Trial Court, is the appellant. According to the plaintiff, he entered into an agreement for sale with the defendants on 25.03.2006 in an by which they agreed to sell the property measuring an extent of 9657 sq.ft of land for a total consideration of Rs.7,60,000/-. On the date of the agreement, an advance of Rs.1,25,000/- was paid and period of 45 days was fixed for performance of the contract. The second defendant, as the power of attorney agent of the first defendant, had executed the sale agreement. The second defendant has received a sum of Rs. 1,35,000 on 30.04.2006 and further a sum of Rs.3,40,500/- on 28.05.2006. Since the defendants did not come forward to execute the sale deed, despite the fact that the plaintiff was ready and willing to perform his part of contract he issued a legal notice on 22.06.2006. The defendants sent a reply on 09.07.2006, claiming that the notice itself is vague and since the plaintiff did not perform his part of the transaction within a time frame fixed

under the agreement, they are unable to comply with the demand of the plaintiff. Thereafter, the plaintiff filed the present suit on 22.09.2006 seeking specific performance.

2. The said suit was resisted by the defendants contending that the suit agreement has been materially altered. According to the defendants, the price agreed was Rs.7,60,000/- per ground and not Rs.7,60,000/- for the entire extent of 9657 sq. ft of the land. It was also contended that agreement was materially altered to suit the convenience of the plaintiff. The defendants also raised the plea of the plaintiff not being ready and willing to perform his part of the contract.

3. On the above pleadings, the learned District Judge Chengalpet framing the following issues:-

- (i) Whether the agreement dated 25.03.2006 enforceable?
- (ii) Whether the material alteration in the agreement as pleaded by the defendant is true?
- (iii) Whether the time is the essence of the contract?
- (iv) Whether the plaintiff is entitled to the suit (decree) for specific performance as prayed for?

4. PW1 to PW3 were examined and Ex. A1 to Ex. A14 were marked on the side of the plaintiff. On the side of the defendants DW1 namely the power of attorney agent of the 1st defendant was examined and Ex.B1 to Ex.B4 were marked.

5. The learned Trial Judge considering both the oral and documentary evidence concluded that the suit agreement has been materially altered to suit the claim of the plaintiff. The relief of specific performance, being a equitable relief, the learned Trial Judge held that the plaintiff has come to Court with unclean hands and hence he is not entitled to relief as prayed for. The learned Trial Judge also concluded that the plaintiff was not ready to perform his part of the contract. The claim of the plaintiff that the alterations in the extent of property, the survey number relating to the property and the consideration were made with the knowledge of defendants 1 and 2 was also rejected by the Trial Court. On the above findings, the Trial Court dismissed the suit for specific performance. Hence the plaintiff is on appeal.

6. I heard Mr. N. Anand Venkatesh for Mr.Ma.Pa.Thangavel, the learned counsel appearing for the appellant and Mr. T. Sri Krishna Bhagavat for M/s.P.Subba Reddy, learned counsel appearing for the defendant.

7. Mr. N. Anand Venkatesh, learned counsel appearing for the plaintiff would contend that the plaintiff cannot be said to have altered the agreement materially to his advantage. In

support of the above submissions, the learned counsel would rely upon the following circumstances.

8. Apart from Ex. A1 agreement there were three agreements entered between the plaintiff and the the second defendant as the power of attorney agent of the first defendant on the same day i.e. 25.03.2006. In all the four agreements, there were corrections relating to the consideration as well as the Survey numbers of the properties. The learned counsel would also point out that as far as the other 3 agreements, sale deeds have been executed by the second defendant in favour of PW2 as well as his nominees. He has taken me through the evidence of DW1, particularly the cross examination, to contend that the theory of correction is an after thought invented by the defendants.

9. Mr. T. Sri Krishna Bhagavat, learned counsel appearing for the respondents would contend that there is no relationship between the consideration mentioned in the agreements marked as Ex. A10 and Ex.A11 and the sale deeds marked as Ex. A13 and Ex. A14. The learned counsel would point out that under Ex. A10 land of an extent of 8618 Sq. ft. has been shown to have been sold for Rs.3,87,810/- whereas under Ex.A13 land to an extent of 8618sq.ft of land agreed to be sold for Rs.7,60,000/-. Similarly under Ex.A11 agreement of sale an extent of 9990 sq.ft. of land has been agreed to be sold for Rs. 7,60,000/-. Whereas under Ex. A14 the extent of 9990 sq.ft. was to be sold for a sum of Rs. 4,49,550/-.

10. On the above rival contentions the following point arises for determination in this appeal:

"Whether the conclusion of the Trial Court that the alterations in Ex.A1 were made by the plaintiff without the knowledge of the defendants' power of attorney and as such would dis entitle the plaintiff from seeking specific performance ?"

11. It is clear that the parties have not adhered to the price fixed at the time of sale. Surprisingly the sale price is lower than the one agreed by both the parties. The defendants have produced the Ex. B2 and Ex. B3 agreements in favour of the plaintiff in which there are no corrections. As per the Ex. B2 and Ex. B3 the consideration agreed is Rs. 7,60,000/- per ground and not Rs.7,60,000/- for the entire area. Of course, as rightly pointed out by the learned counsel appearing for the appellant there are certain blanks in Ex.B2 and the said blanks relates to the date and number of the power of attorney as well as the date of settlement deed which has nothing to do with the enforceable part of the agreement. But the corrections made in Ex. A1 as well as Ex.A10 and Ex. A11 are in the enforceable part of those agreements which relate to extent of the land and consideration to be paid. Despite his best efforts the learned

counsel for the plaintiffs is unable to point out any admission in the evidence of DW1 which would persuade this Court to presume that corrections made with the knowledge of 2nd defendant the power agent of the first defendant.

12. Apart from the above, the plaintiff had issued the notice on 22.06.2006 prior to the institution of the suit. The said notice does not even disclose the price agreed or the advance paid or the balance consideration which are very much essential in a notice issued by a counsel seeking specific performance. The said notice does not even reflect the date of the agreement. Therefore, these deficiencies in the case of the plaintiff would probabilies the case of the defendants that the suit agreement was materially altered with reference to the price payable for the land in question, to suit the convenience of the plaintiff. Ofcourse the plaintiff has been able to show that the other agreements also contain the corrections. But it cannot be presumed that those corrections were accepted by the second defendant by executing sale deeds as the consideration in the sale deeds is different from the price agreed under those agreements. None of the sale deeds said to have been executed pursuant to the Ex. A10 and Ex.A11 namely Ex.A13, Ex. A14 the value is shown as in Ex. A10 and Ex. A11. Therefore this Court is unable to countenance the submissions of the learned counsel for the appellant regarding the material alteration in the suit agreement executed in favour of the plaintiff. The plaintiff having come to court with unclean hands cannot seek any equitable decree. Therefore both the point framed for determination answered against the plaintiff. The appeal is dismissed with costs confirming the judgment and decree of the trial Court.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

jv/nl
To

The Additional District Judge,
Fast Track Court No.1,
Chengalpattu.

+ 1 cc to M/s.Ma.P.Thangavel, Advocate,SR.48205
+ 1 cc to M/s.P.Subba Reddy, Advocate,SR.47767

A.S.No.203 of 2010

CNR (CO)
NR 07/08/2017