

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.239 of 2010

A.Sivasubramaniam

... Appellant/Plaintiff

Vs

1.T.Samblingam
2.M.P.S.Mani
3.Sundaram
4.Venkatachalam
5.K.V.Suchindera Kumar
6.Sukumaran
7.S.Vadivel
8.K.Pandiyan
9.Vaiyapuri
10.Santhi

... Respondents/Defendants

This appeal is filed under Order 41 Rule 1 of CPC r/w Section 96 of C.P.C. against the judgment and decree dated 23.01.2009 passed in O.S.No.349 of 2004 on the file of the Additional District Judge/First Fast Track Court, Salem.

For Appellant : Ms.J.Vijayakumari
for Mr.V. Udayakumar
For Respondents : Mr.R.Siddharth
9&10 for Mr.T.R.Rajaraman

J U D G E M E N T

The plaintiff whose suit for specific performance was dismissed by the Trial Court is the appellant.

2. According to the plaintiff the suit property was originally belonged to one Sannackkammal, who had bequeathed the same to the 1st defendant under the Will dated 17.05.1985. On 03.09.1993, the 1st defendant had entered into an agreement with the defendants 2 to 6 agreeing to sell the suit property for a total consideration of Rs.6,52,000/- and received an advance Rs.1,60,000/-. A period of 11 months was fixed for performance of the contract.

3. Subsequently on 25.01.1994, the 1st defendant had received further advance of Rs.2,00,000/- by way of demand drafts from the defendants 2 to 6. On the same day i.e. on 25.01.1994, the defendants 2 to 6 have entered into an agreement of sale with the defendants 7 & 8 with the knowledge of the 1st defendant. The period for performance of the agreement dated 25.01.1994 was fixed at 8 months. It is further claimed that the defendants 2 to 6 received a sum of Rs.3,00,000/- on 25.01.1994. Possession of the property was handed over to defendants 2 to 6 by the 1st defendant to enable them to divide the same into house sites and sell them in favour of intending purchasers.

4. On 11.10.1995, it is claimed that defendants 7 and 8 had executed an agreement of sale in favour of the plaintiff agreeing to sell the suit properties for a consideration of Rs.3,40,000/- per acre. The plaintiff claimed to have paid advance Rs.3,00,000/- on the said date with the knowledge of the 1st defendant. On 30.09.1998, it is claimed that the defendants 7 and 8 received the further advance Rs.1,00,000/- from the plaintiff. Period of performance of the agreement dated 11.10.1995 was fixed at 11 months and it expired on 10.09.1995.

5. The plaintiff also claimed that he was put in possession of the land. Since there were acquisition proceedings over the said properties, writ petition was filed before this Court. Finally on 28.09.1996, this Court quashed the land acquisition proceedings. It is also stated that the 1st defendant has executed a gift deed in favour of the Government in respect of 2 acres on 05.02.2003 and the suit was brought for remaining 4.77 acres.

6. Though the defendants 2 to 8 were always ready and willing to perform their part of the contract, according to the plaintiff the 1st defendant has been dodging them and had sold the property to the defendants 9 and 10 during June, 2003. It appears that the plaintiff had also filed a suit in O.S.No.116 of 2003 on the file of the District Munsif, Omalur seeking injunction restraining the 1st defendant from alienating the properties. The present suit for specific performance came to be filed on 14.07.2003.

7. The defendants 1 to 4 and 6 to 8 remained exparte. 5th defendant filed written statement denying the validity of all the three agreements. The defendants 9 and 10 adopted the written statement of the 5th defendant. It was contended by the 5th defendant that the plaintiff was never ready and willing to perform his part of the contract and the suit itself is barred by limitation. Apart from the above pleadings, the defendants 9 and 10 also took a plea that they are bonafide purchasers for

the value without notice. They have also sold the properties to various individuals by plotting out the properties and as such the purchasers are also necessary parties to the suit.

8. Upon the above said pleadings, the learned Additional District Judge/First Fast Track Court, Salem framed the following issues:

- 1) Whether the suit sale agreement dated 03.09.1993 is true and valid?
- 2) Whether the Assignment of sale agreement in favour of the defendants 7 and 8 and later on in favour of the plaintiff dated 25.01.1994 and 11.10.1995 are valid?
- 3) Whether the suit is barred by limitation as claimed by the defendants 5, 9 and 10?
- 4) Whether the plaintiff is entitled to the decree for specific performance of the agreement dated 03.09.1993 which had been assigned in favour of the plaintiff by means of a assignment deed dated 11.10.1995?
- 5) To what other relief is the plaintiff entitled to?

9. The plaintiff was examined as PW1. The 1st defendant was examined as PW2. The 3rd defendant was examined as PW3. The 7th defendant was examined as PW4. Exs.A1 to A17 were marked. On the side of the defendants 15 witnesses were examined. 5th defendant was examined as DW1. 9th defendant was examined as DW2. Exs.B1 to B44 were marked.

10. The learned Additional District Judge/First Fast Track Court, Salem, upon consideration of oral and documentary evidence, came to the conclusion that agreement dated 03.09.1993 and the assignments dated 25.01.1994 and 11.10.1995 are not valid. On issue No.3, regarding the limitation, the learned Trial Judge concluded that the suit is barred by limitation. On the aforesaid findings, the learned Trial Judge came to the conclusion that the plaintiff is not entitled to any relief in the suit. Hence, the suit was dismissed.

11. Aggrieved by the said judgement and decree, the plaintiff has come forward with this appeal.

12. I have heard Ms.J.Vijayakumari, learned counsel appearing for Mr.V.Udhayakumar, learned counsel for the appellant and Mr.R.Siddharth, learned counsel appearing for Mr.T.R.Rajaraman, for the respondents 9 and 10 namely, the purchasers from the 1st defendant.

13. Points for determination arise in this appeal.

1. Whether the suit sale agreement dated 03.09.1993 and subsequent assignment dated

25.01.1994 and 11.10.1994 are true and valid?

2. Whether the suit is barred by limitation?

3. Whether the plaintiff is entitled to the relief of specific performance?

14. The 1st defendant was examined as PW2, he supports the case of the plaintiff. It is claimed that the 5th defendant has pressurized him to execute the sale in favour of defendants 9 and 10. The 3rd defendant who was examined as PW3 has also spoken about the agreements. One vadivel the 7th defendant was examined as PW4. He has also supported the case of the plaintiff. On the strength of the above oral evidence, the learned counsel for the appellant would contend that the 5th defendant and defendants 9 and 10 are not entitled to deny the right of the plaintiff to claim specific performance. It was also contended that though acquisition proceedings were initiated they have been subsequently quashed by this Court and hence, the 1st defendant would be bound to honour the agreement invoking the principle "feeding the grant by estoppel" enshrined under Section 43 of the Transfer of Property Act. It was also contended that the sale in favour of defendants 9 and 10 came to be executed during the pendency of the injunction suit in O.S.No.116 of 2003 on the file of the District Munsif, Omalur and hence, it is hit by Section 52 of the Transfer of Property Act.

15. Per contra, Mr.R.Siddharth, the learned counsel appearing for the respondents 9 and 10 would submit that respondents 9 and 10 are bonafide purchasers for value without notice. In any event, the learned counsel would contend that the suit is barred by limitation. The last assignment itself is dated 11.10.1995, 11 months period was fixed in the said agreement. It ended on 10.09.1995. The suit having been filed only on 14.07.2003, is hopelessly barred by limitation, according to the learned counsel for the respondents 9 and 10.

16. I have considered rival submissions. In Ex.A1 dated 03.09.1993, 11 months time was fixed. 11 months period expired on 03.08.1994. During the interregnum the 1st assignment dated 25.01.1994 was executed. The assignment dated 25.01.1994 prescribed a period of eight months for performance that is till 24.09.1994. The assignment dated 11.10.1995 has come up one year after the assignment dated 25.01.1994. By the time the assignment dated 11.10.1995 was executed, the time fixed for performance under Ex.A2, namely assignment dated 25.01.1994 had expired. Therefore, the defendants 7 and 8 who are the assignees under the assignment dated 25.01.1994 had no right to execute the assignment deed dated 11.10.1995. The plaintiff wants to take advantage of pendency of the land acquisition proceedings,

I am afraid the pendency of land acquisition cannot confer any right on defendants 7 and 8 to assign the right under the agreement dated 25.01.1994, since the period of performance had expired on 24.09.1994 itself. Hence, the Trial Court has rightly held that the assignment dated 11.10.1995 is not valid. The 1st defendant who had sold the property to defendants 9 and 10, now supports the case of the plaintiff. This by itself would raise doubts in the mind of the Court regarding the intention of the 1st defendant and the actual state of affairs.

17. On the question of limitation it is contended by the learned counsel for the appellant that last payment under the assignment dated 11.10.1995 marked as Ex.A3 was made on 05.09.2001 and therefore, the suit filed within three years from 05.09.2001 is in time. The said contention over looks the settled position of law that Limitation once starts running, cannot be stopped by the act of parties.

18. I have gone through the endorsement that has been made evidencing the payment on 25.09.2001. It does not extend the period for performance of the contract. In the absence of such extension, I do not think that I can countenance the plea of the learned counsel for appellant that time for filing the suit should be taken as three years from the date of last payment.

19. Therefore, the learned Trial Judge rightly concluded that the suit filed on 14.03.2003 is hopelessly barred by limitation. The suit being one specific performance, the plaintiff should also establish that he was ready and willing to perform the part of the contract dated 11.10.1995 which prescribes the period of 11 months for performance. There is no evidence on record to show that the plaintiff was ready and willing to perform his part of the contract within 11 months or thereafter. The cause of action had arisen even on the date of filing of suit for injunction in O.S.No.113 of 2003 on the file of the District Munsif, Omalur. This suit was filed only on 14.07.2003. Therefore, the plaintiff had remained silent for nearly 6 ½ years and after the expiry of time fixed under the agreement. He cannot claim that he has been ready and willing to perform his part of the contract. On this score also I find the suit must fail.

20. Hence, I do not find any ground to interfere with the judgement and decree of the Trial Court, which had rightly dismissed the suit. In fine the appeal is dismissed confirming

the judgement and decree dated 23.01.2009 passed in O.S.No.349 of 2004 on the file of the Additional District Judge/First Fast Track Court, Salem. However, there will be no order as to costs. Consequently the connected M.P.No.2 of 2010 is closed.

s/d-
Assistant Registrar (CS-II)

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Sub-Assistant Registrar

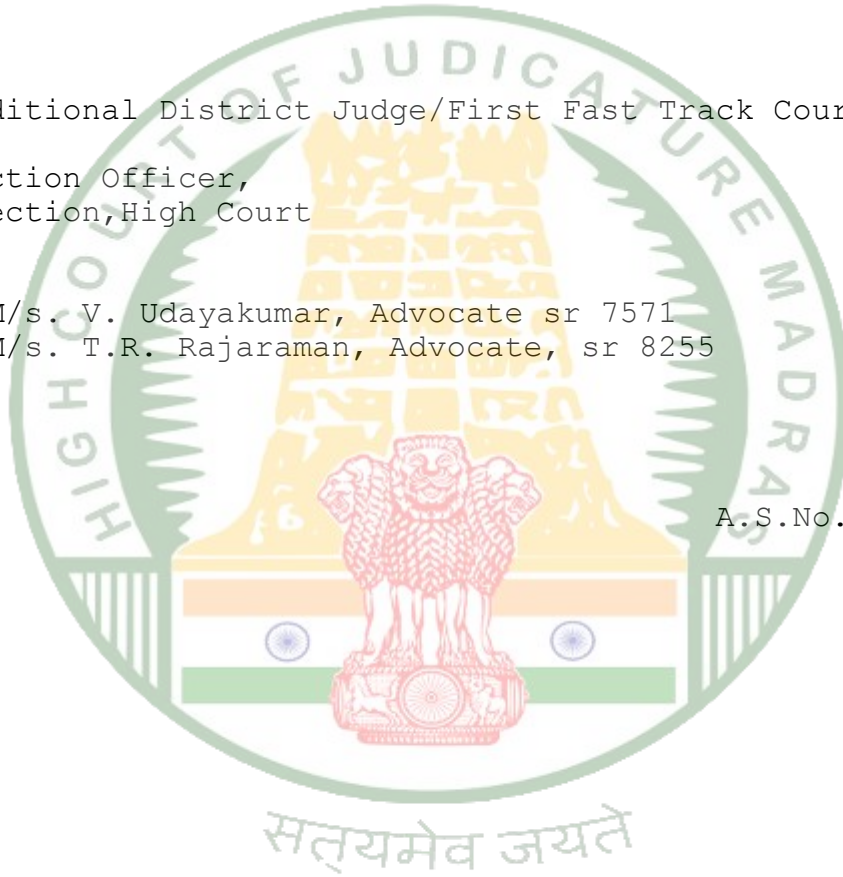
To

1. The Additional District Judge/First Fast Track Court, Salem.
2. The Section Officer,
V.R. Section, High Court
Madras

+1 CC to M/s. V. Udayakumar, Advocate sr 7571
+1 CC to M/s. T.R. Rajaraman, Advocate, sr 8255

A.S.No.239 of 2010

SAI (CO)
sp/27/2



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