

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.04.2017

PRONOUNCED ON : 21.04.2017

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.590 of 2010

and

M.P. No.1 of 2010

D. Rajagopal ... Appellant/Plaintiff

Versus

Radha ... Respondent/Defendant

Appeal Suit filed under Section 97 of Civil Procedure Code against the judgment and decree dated 27.04.2010 passed in O.S. No.486 of 2006 on the file of the Fast track Court No.I (Addl. District Judge), Coimbatore.

For Appellant : Mr.K.Goviganesan

For Respondent : Mr.K.Bijaisundar

JUDGMENT

This appeal is filed as against the dismissal of the suit filed by the appellant for specific performance.

2) For the sake of convenience, the parties are arrayed as per the ranking before the trial court.

3) The brief facts of the appeal are as follows :-

a) The defendant being the owner of the suit property executed an agreement for sale of the suit property for a consideration of Rs.7,45,000/- in favour of the plaintiff on 01.04.2005. On the date of agreement the plaintiff has paid an advance of Rs.3,00,000/- and fixed the date for sale as 18 months and handed over possession of the property. The plaintiff was always ready and willing to perform his part of the contract.

b) While so, on 18.09.2006, the defendant has issued a notice for which a reply was issued by the plaintiff in 27.09.2006. Subsequent to the exchange of notice, the defendant failed to execute the sale deed. Hence the suit.

4) Admitting the agreement, it is contended by the defendant that if the plaintiff deposit the balance sale consideration within 7 days from the date of filing written statement she is ready to execute sale deed. To avoid payment to the financial institution, she has agreed to sell the property and time is also specifically fixed. The plaintiff was not ready to purchase the property. Hence prayed for dismissal of the suit.

5) On the basis of the above pleadings, the trial Court framed the following issues :-

i) Whether the plaintiff is ready and willing to perform the part of the contract as alleged?

ii) Whether the plaintiff is entitled to the relief of specific performance as contract, as prayed for?

iii) Whether the plaintiff is entitled to the permanent injunction as prayed for?

iii) To what relief is the plaintiff entitled?

6) On the side of the plaintiff, PW1 was examined and Exs.A1 to A10 were marked. On the side of the defendant, DW1 was examined and Exs.B1 was marked. On the basis of the materials and evidence available, the trial Court dismissed the suit for specific performance and also declined to grant the alternate relief. As against the judgment and decree passed by the trial court, the present appeal is filed.

7) The learned counsel for the appellant submitted that the plaintiff was the tenant in the suit property. He has agreed to purchase the suit property for a total sale consideration of Rs.7,45,000/- and paid Rs.3,00,000/- as advance. The specified time agreed by the parties to complete the sale was stated as 18 months and he was ready and willing to perform his part of contract. But the defendant has failed to produce the original documents. The defendant evaded to enforce the contract, hence, it is submitted that the judgment of the learned trial Court is not on the basis of proper appreciation of evidence and law.

8) The learned counsel appearing for the respondent submits that the plaintiff was originally the tenant in the suit

property and the agreement itself was executed only to avoid interest on the amount payable by the defendant to the financier with whom she has deposited title deeds. The plaintiff never shown any interest to pay the remaining sale consideration in order to enable the defendant to clear the amount to the housing finance. Even in the written statement, it was specifically pleaded by the defendant to the effect that if the plaintiff pays the balance sale consideration within 7 days from the date of filing of written statement, the defendant is always ready to execute the sale deed after redeeming the title deed. However, the plaintiff has not come forward to deposit the amount and it clearly indicates that he was not performing his part of the contract from the very beginning. Taking note of the above aspects it was held that the appellant is squatting even without paying any interest. The trial Court has rendered a well balanced decision and it does not require any interference.

9) In the light of the above submission now the point arise for consideration is

Whether the plaintiff was ready and willing to perform the contract ?

10) Ex. A1 is the sale agreement entered into between the parties dated 01.04.2005. The execution of agreement for Rs.3,00,000/- is not disputed. On careful perusal of the entire agreement, it is very clear that the agreement holder namely the appellant herein was very much aware of the loan availed by the defendant from Sundaram Home Finance, Coimbatore by pledging the title deed. One of the conditions set out in the agreement is that title deed should be redeemed by the vendor and to be handed over to the purchaser. The time agreed by the parties is only 18 months. The plaintiff was fully aware of the fact that the title deeds were deposited with the financier. The plaintiff having entered into an agreement, slept over without paying the balance sale consideration to the defendant to enable her to redeem the documents. It is further to be noted that having agreed to pay, as per sale agreement within 18 months, he has to pay the remaining sale consideration, but he has not taken any steps or called upon the defendant to receive the amount.

11) The entire evidence with reference to the claim made by the plaintiff indicate that he has not even sent a legal notice within the time agreed between the parties. Explanation given by the plaintiff in that aspect is to the effect that he was not aware of the whereabouts of the defendant, hence he did not sent any legal notice. Such explanation on the part of the appellant would only shows that he has not come with clean hands.

12) Further the evidence on record shows that the plaintiff has no capacity to mobilise remaining sale consideration. In spite of the categorical assertion of the defendant in the written statement to deposit the remaining sale consideration within 7 days, the plaintiff has not taken steps to tender the balance sale consideration or to get sale deed executed in his favour. Further to show that he is having ready money in his hands from the date of agreement no other document whatsoever is filed.

13) Of course, as far as immovable properties are concerned, time is not an essence of contract. At the same time, specific time agreed between the parties in the agreement cannot be ignored altogether. Having known the fact that the title deeds are deposited and the defendant had availed the loan, if really he was intended and ready to purchase, plaintiff ought to have paid the remaining sale consideration enabling the defendant to clear all the mortgage executed by her. The readiness in fact is a capacity to mobilise the funds. The entire evidence of PW1 if carefully seen, clearly indicate that he has not filed any document to show that at the relevant point of time he had ready money in his hands or in his bank account or he was able to mobilise such funds. The willingness in fact is virtually means mental attitude to purchase the property. Only when the readiness and willingness proved together and established before the Court of law, the plaintiff can succeed in getting an equitable relief. The plaintiff, having been aware of the fact that the title deed is not available and deposited to avail housing loan, had not taken any steps either to redeem the documents by paying the balance sale consideration to the defendant. This aspect clearly exhibit that willingness is totally absent on the part of the plaintiff. Therefore merely because the suit was filed on 25.10.2006, it cannot be construed that the plaintiff was always ready and willing to purchase the property. It is to be noted that on 18.09.2006 itself, the defendant has issued notice to the plaintiff terminating the contract. Only subsequent to the above notice the plaintiff has issued legal notice Ex.A2 on 18.09.2006, wherein, he called upon the defendant to comply with the term of the agreement. As per Ex.A1 agreement of sale dated 01.04.2005 the last date for payment of balance sale consideration is on or before 30.09.2006. Infact, the defendant has issued a notice dated 18.05.2006 calling upon the plaintiff to perform his part of contract. Even after receipt of the above notice he has not paid the remaining sale consideration, whereas plaintiff issued legal notice under Ex.A3, dated 27.09.2006 stating that since the original documents are not handed over the sale could not be proceeded. Thereafter, he filed the suit on 25.10.2006. Even in the trial Court he has not deposited the remaining sale

consideration whereas under Ex.A3 reply notice dated 27.09.2006, the plaintiff requested the defendant to clear the mortgage over the suit property and hand over the documents. Whereas evidence of the plaintiff does not indicate any action taken by him to show that he has taken steps to discharge the mortgage as per Ex.A1 agreement of sale.

14) Therefore, merely because an agreement was entered into between the parties, plaintiff cannot contend that he is entitled to the relief for specific performance or to seek an equitable relief first. It should be established that he was ready and willing to perform his part of the contract. Readiness and willingness is a continuous process and should be present from the date of agreement till the end. Even after the legal notice issued by the defendant, in this case, requesting the plaintiff to pay the remaining sale consideration, the plaintiff has not taken any steps to pay the remaining sale consideration. On the other hand, he has filed the suit straight away by issuing reply notice to the notice of the defendant. Even in the suit when the defendant specifically shown her readiness to perform her part of the contract, the plaintiff has not deposited the amount. The plaintiff was very much aware of the mortgage deed, he has not taken steps to get the title deeds redeemed and to complete the sale transaction. All these facts cumulatively lead to only interference that the plaintiff was never ready and willing to perform the contract. Therefore, he cannot succeed in getting an equitable relief in the Court of Law. Hence, this Court does not find any reason to interfere with the decree and judgment of the Court below. Accordingly the point arise for consideration is answered.

15) In the result, the appeal is dismissed. The judgment of the lower Court is confirmed. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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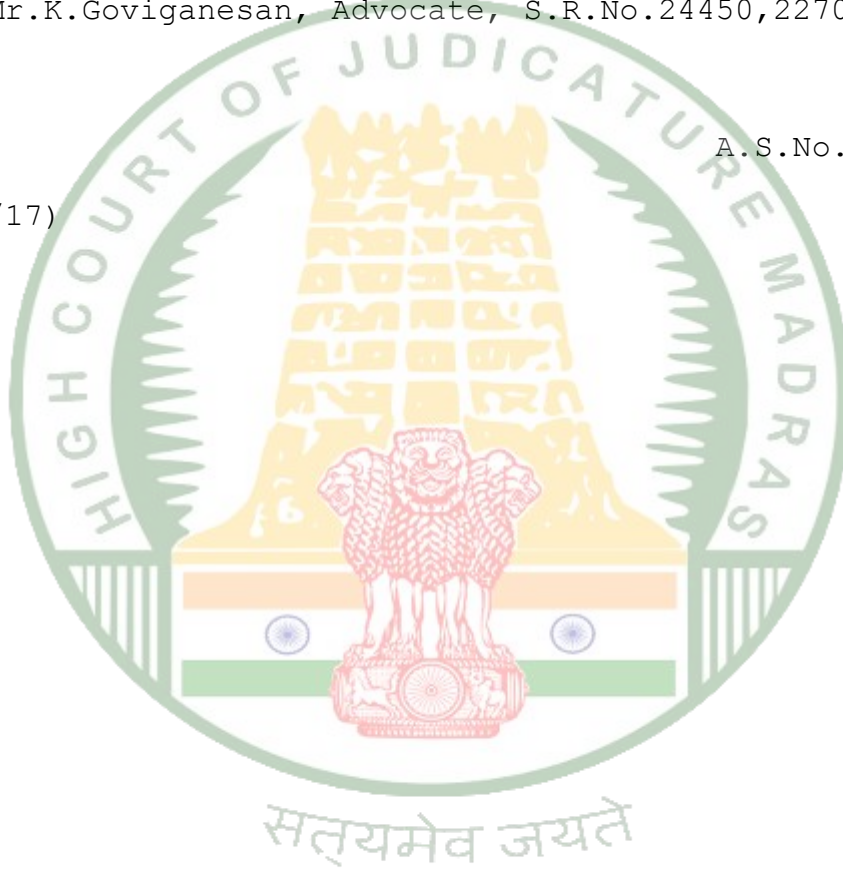
1.Fast track Court No.I (Addl. District Judge),
Coimbatore.

2.The Record Keeper, V.R Section,
High court, Madras.

+2ccs to Mr.K.Bijai sundar, Advocate, S.R.No.24173,22592
+2ccs to Mr.K.Goviganesan, Advocate, S.R.No.24450,22706

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