

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.04.2017

PRONOUNCED ON : 18.04.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

C.S.No.239 of 2011

V.Balaji ... Plaintiff

Jayasundari Jeeva Vs. ... Defendant

For Plaintiff : Mr.V.Chandrakanthan

For Defendant : Mr.S.Umapathy

JUDGMENT

The suit has been laid by the plaintiff for specific performance and permanent injunction.

2. The averments contained in the plaint are briefly stated as follows:

The defendant is the owner of the suit property. The defendant approached the plaintiff and offered to sell the suit property to the plaintiff. The plaintiff accepted the offer of the defendant and entered into a Memorandum of Understanding on 25.06.2007, which was

prepared by the defendant. As per the Memorandum of Understanding, the price of the suit property was fixed at Rs.9,00,000/- per ground, which works out to Rs.50,17,500/-. The plaintiff has paid an advance amount of Rs.10,00,000/- on 25.06.2007 while signing the Memorandum of Understanding, which was acknowledged by the defendant. The plaintiff, thereafter, developed the suit property by clearing all the encroachments, obstacles and hindrances and made the suit property visible, which was all along water logged and requested the defendant to receive the balance sale consideration amount of Rs.40,17,500/- and execute the sale deed in favour of the plaintiff. The plaintiff was always ready and willing to complete the sale transaction by performing his part of the contract and in spite of repeated requests and demands, the defendant has failed and neglected to complete the sale transaction for the reasons best known to the defendant, which are untenable and unjust. While so, instead of complying with the plaintiff's demand to execute the sale deed, the defendant, during the last week of May, 2008, attempted to alter the nature of the suit property and in this connection, the plaintiff immediately preferred a police complaint against the defendant and the police, after enquiry, on seeing that the matter is civil in nature, advised the parties to amicably sort out the issues. Even thereafter,

on 04.06.2008, the defendant illegally attempted to alter the nature of the suit property in order to deprive the plaintiff's rights. Further, the defendant also made arrangement to sell the suit property to the third party suppressing the agreement in order to enrich herself and the same will not bind the plaintiff in any manner. Therefore, the plaintiff issued a legal notice on 04.06.2008 along with the copy of the Demand Draft for the balance sale consideration amount in the name of the first defendant calling upon her to fix a date convenient to her for the registration of the sale deed of the suit property. The plaintiff also gave objection to the sub-registrar not to register any documents pertaining to the suit property submitted by the defendant. The plaintiff had been advised to approach the civil court with reference to the same. The plaintiff has also made the public notice in newspapers on 04.06.2008 calling upon the general public not to deal with the suit property with the defendant. Despite all these acts, inasmuch as the defendant attempted to encumber and alienate the suit property and also, alter the nature of the suit property, the plaintiff, left with no other alternative, was constrained to file the suit for appropriate reliefs.

3. The averments contained in the written statement filed by the defendant are briefly stated as follows:

The suit is not maintainable either in law or on facts. It is true that the defendant is the owner of the suit property. It is false to state that the defendant approached the plaintiff and offered to sell the property. The Memorandum of Understanding was entered into between the defendant and the plaintiff on 25.06.2007 and the price was fixed for the property at Rs.9,00,000/- per ground. Under the Memorandum of Understanding, both the parties have specifically come to the understanding that the same is valid for four months from the date of execution i.e. 25.06.2007 and thereafter, it shall get automatically terminated. The said clause has been suppressed by the plaintiff in the plaint. The advance amount of Rs.10,00,000/- agreed to be paid in the Memorandum of Understanding has not been paid. Under the Memorandum of Understanding, it has been specifically mentioned that the possession of the property will be handed over only after the registration of the sale. Hence, there is no question of the plaintiff improving the suit property by clearing all the encroachments, obstacles and hindrances as claimed in the plaint. It is false to state that the suit property was water logged and cleared by the plaintiff. The plaintiff never requested the defendant to receive the balance sale

consideration and execute the sale deed as claimed in the plaint. It is false to state that the plaintiff was always ready and willing to complete the sale transaction by performing his part of the contract. The defendant never neglected to complete the sale consideration as alleged in the plaint. The plaintiff specifically agreed to complete the transaction within four months from the date of Memorandum of Understanding and he never was ready to pay the balance amount and complete the sale transaction under the Memorandum of Understanding. The discretion is granted only to the defendant to extend the period for a period of 45 days provided an escalation of 10% on the agreed rate is accepted. The defendant never exercised the discretion beyond 120 days and the above clause had also been suppressed by the plaintiff. The first communication received from the plaintiff was only under the legal notice dated 04.06.2008 nearly one year after the MOU. Immediately, the plaintiff has also filed a civil suit in District Munsiff Court, Ambattur and the present suit with leave petition, without giving time to the defendant to issue a reply. The plaintiff with an intention of creating the records has caused paper publication etc., It is false to state that the defendant attempted to alter the suit property and also attempted to sell/encumber the suit property as claimed in the plaint. The alleged police complaint with

reference to the same is only a make-believe affair in order to strengthen the false case of the plaintiff. The tender of the balance sale consideration by way of DD along with the legal notice would not in any manner help the plaintiff to improve his case. It is false to state that the MOU was entered into Chennai. The MOU was entered into only at Ambattur and the same does not fall within the jurisdiction of this court. Further, the property involved is also situated in Ambattur Taluk beyond the jurisdiction of this Court. This court has no jurisdiction to try the suit. The plaintiff has already filed the civil suit for permanent injunction in respect of the same property before the District Munsif Court, Ambattur. However, for the present relief, the plaintiff has chosen this court and filed the false suit. The plaintiff is not entitled to obtain the reliefs sought for in the plaint. Hence, the suit is liable to be dismissed.

4. On the basis of the above pleadings, the following issues are framed for determination:

***" 1. Whether this Hon'ble Court
has got jurisdiction to try this suit?***

2. Whether the Memorandum of Understanding dated 25.06.2007, entered between the plaintiff and the defendant has any force on the date of filing the suit?

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

4. Whether the plaintiff has performed his part of obligation under the MOU within the time specified?

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

6. To what relief the parties are entitled to?"

5. In support of the plaintiff's case, PW1 has been examined and Exs.P1 to 15 were marked. On the side of the defendant, DW1 has been examined and no document has been marked.

6. Issue Nos.2 to 5

The suit has been laid by the plaintiff for specific performance in respect of the Memorandum of Understanding dated 25.06.2007, which has been marked as Ex.P6. It is not in dispute that the suit

property belonged to the defendant. It is also not in dispute that the Memorandum of Understanding marked as Ex.P6 has been entered into between the plaintiff and the defendant in respect of the suit property on 25.06.2007. Claiming that the defendant had agreed to sell the suit property to the plaintiff under the above mentioned Memorandum of Understanding and also claiming that the plaintiff has parted a sum of Rs.10,00,000/- to the defendant on the date of Memorandum of Understanding itself and further, claiming that the plaintiff has made improvements, removed the encroachments etc., in respect of the suit property and further claiming that the plaintiff has always been ready and willing to perform his part of the contract for completing the sale transaction and further claiming that though the plaintiff was always ready and willing to pay the balance sale consideration to the defendant right from the inception of the above mentioned Memorandum of Understanding and also, within the time stipulated therein and even thereafter, according to the plaintiff, inasmuch as the defendant has not come forward to execute the sale deed in respect of the suit property in favour of the plaintiff as stipulated under Ex.P6 Memorandum of Understanding, it is stated that the plaintiff has been necessitated to lay the suit for appropriate reliefs.

7. As adverted supra, the fact that Ex.P6 Memorandum of Understanding has been entered into between the plaintiff and the defendant in respect of the suit property has not been controverted by the defendant. However, according to the defendant, the parties have specifically agreed that the Memorandum of Understanding marked as Ex.P6 should be valid only for four months from 25.06.2007 and in case, the transaction could not be completed within the time stipulated above, it is the contention of the defendant that the Memorandum of Understanding shall stand automatically terminated and both parties shall revert to the position they were in prior to the Memorandum of Understanding. Further, according to the defendant, as per the Memorandum of Understanding, only the defendant has been given the discretion to extend the period for a further period of 45 days provided an escalation of 10% on the agreed land rate value is accepted. The above mentioned clauses are incorporated in Ex.P6 and not assailed. As seen from the recitals found in the Memorandum of Understanding, it is noted that the parties have agreed for the sale of the suit property at the rate of Rs.9,00,000/- per ground. It is also found in the Memorandum of Understanding that the defendant shall register plots in favour of the plaintiff only after receiving the sale

consideration as agreed and only thereafter, will handover the possession of the suit property, after the registration is completed. It is also stipulated in the Memorandum of Understanding that the defendant will not sign any documents/applications/forms without receiving the sale consideration. It is the specific case of the defendant that though he was always ready and willing to complete the sale transaction as per the Memorandum of Understanding Ex.P6, inasmuch as the plaintiff did not perform his part of the contract within the time stipulated under the Memorandum of Understanding, it is his case that on the expiry of 120 days stipulated under the Memorandum of Understanding, the Memorandum of Understanding stands terminated automatically and in such view of the matter, according to the defendant, the plaintiff as such is not entitled to enforce the Memorandum of Understanding marked as Ex.P6 and it is her specific case that the plaintiff has not been ready and willing to perform his part of the contract as prescribed under Ex.P6 and therefore, it is stated that the plaintiff is not entitled to seek and obtain the reliefs as claimed in the plaint.

8. In such view of the defence projected by the defendant, it is for the plaintiff to establish that he has been always ready and willing

to perform his part of the contract as stipulated under Ex.P6. As adverted supra, Ex.P6 Memorandum of Understanding is dated 25.06.2007. The parties are very particular about the time stipulation as regards the completion of the transaction and accordingly, it is found that they have specifically stipulated the time limit of 120 days for completing the sale transaction. Further, stressing that the time factor is the sine-qua-non for the Memorandum of Understanding, it is also specifically mentioned in the Memorandum of Understanding that after the time stipulated therein i.e. after the period of 120 days, the parties shall be reverted back to their original position. It is therefore clear that once the sale transaction contemplated under the Memorandum of Understanding is not completed within 120 days from 25.06.2007, it could be seen that the Memorandum of Understanding as such cannot be enforced.

9. As seen from the evidence of the plaintiff examined as PW1, he has specifically admitted in his cross examination about the recitals found in the Memorandum of Understanding particularly as regards the time limit and the other various recitals referred to above. That apart, it is also found that PW1 has specifically admitted that Ex.P6 has been signed by him after the contents therein were explained to him by his

brother and believing the same, he has subscribed to the same by affixing his signature. Therefore, it is found that the plaintiff is well aware of the recitals contained in Ex.P6, particularly, the time stipulation found therein. In such view of the matter, when the defendant is disputing the claim of the plaintiff that he has been always ready and willing to perform his part of the contract, it is for the plaintiff to establish that he has been ready to part with the balance sale consideration and been always ready and willing to complete the sale transaction right from the inception of Ex.P6. However, it is found that the plaintiff has failed to establish that he has been ready and willing to perform his part of the contract as claimed by him.

10. The plaintiff in his plaint has not specifically stated as to on what dates before the time stipulated under Ex.P6, he has been ready and willing to perform his part of the contract i.e. part with the balance sale consideration to the defendant so as to complete the sale transaction. However, he would aver in the plaint that he has been always ready and willing to perform his part of the contract. But as seen earlier, the said case of the plaintiff is challenged by the defendant. During the course of cross examination, according to the

plaintiff, he had approached the defendant with the balance sale consideration on 11.09.2007 and 24.09.2007 and further according to him, the defendant had refused to receive the same and execute the sale deed. If on those dates, the plaintiff had been particularly ready and willing to complete the sale transaction, as rightly argued, the said dates would have been mentioned in the plaint. That apart, if according to the plaintiff, he was ready on those dates, but the defendant has not evinced the interest to complete the transaction, then as rightly argued, as a prudent person, the plaintiff would have taken further recourse available to him under law. But, even thereafter, it is found that the plaintiff has not taken any steps to call upon the defendant to receive the balance sale consideration and complete the sale transaction in tune with the terms of Ex.P6. It is therefore found that the plaintiff for the purpose of this case has mentioned that he was ready to pay the balance sale consideration to the defendant on 11.09.2007 and 24.09.2007.

11. It is seen that for the first time, the plaintiff has moved his little finger to complete the sale transaction by issuing the legal notice on 04.06.2008 marked as Ex.P9. It is therefore found that belatedly much later after the time stipulated in Ex.P6, only on 04.06.2008, the

plaintiff has caused a legal notice calling upon the defendant to receive the balance sale consideration and execute the sale deed. Even in the said notice, it has not been specifically mentioned by the plaintiff that he was ready to part with the sale consideration to the defendant on 11.09.2007 and 24.09.2007 as testified by him during the course of cross examination. Not a shred of evidence has been projected by the plaintiff to show that he was ready and willing to perform his part of the contract prior to Ex.P9. Therefore, it could be seen that the plaintiff has miserably failed to establish that he has been always ready and willing to perform his part of the contract. The above ingredients are very essential to be complied with when a person is seeking the discretionary relief of specific performance. The plaintiff having failed to establish the same, it is found that the plaintiff cannot obtain the relief of specific performance as prayed for.

12. The plaintiff in his plaint has claimed that he has made improvements in the suit property, removed the encroachments , obstacles and hindrances, etc., and according to him, thereby the possession of the suit property was with him. However, as seen from the recitals found in Ex.P6, the possession of the suit property has not been handed over to the plaintiff by the defendant under Ex.P6. It is

specifically mentioned that it is only the defendant, who will retain the possession of the suit property until the entire sale consideration is paid and the registration is completed. No proof has been placed by the plaintiff to establish that he had been put in possession of the suit property and thereby made improvements, removed the encroachments etc., as claimed in the plaint. It is therefore found that the plaintiff has set up a false plea that the suit property is in his possession and he has taken various steps to make the improvements removed the encroachments etc. It is therefore found that the plaintiff, for the purpose of this case, has set up a false plea that the possession of the suit property had been handed over to him by the defendant under Ex.P6.

13. It is also found that only on 04.06.2008, the plaintiff has also caused a publication in newspapers regarding the Memorandum of Understanding and also found that he has issued a notice to the sub-Registrar of the registration department not to allow the defendant to encumber the suit property to any one. It is also found that only after the issuance of the legal notice and the above said acts, the plaintiff has instituted a suit against the defendant in respect of the suit property before the District Munsif Court, Ambattur in O.S.No.276 of

2008 to restrain him from alienating the property. According to the defendant, all these actions have been taken by the plaintiff for the purpose of this case in order to show that he was ready and willing to complete the sale transaction. However, when these acts are found to have come into existence, much after the time stipulated under Ex.P6, as rightly put forth by the defendant's counsel, those acts, would not, in any manner, be adequate and sufficient to hold that the plaintiff has been ready and willing to perform his part of the contract within the time allowed under Ex.P6.

14. Once it is found that the plaintiff has miserably failed to establish the performance of his part of the contract within the time stipulated under Ex.P6, as per the recitals contained therein, it is noted that the parties would be reverted back to their original position and in such view of the matter, it is found that the Memorandum of Understanding will not have any legal validity after the expiry of the time limit stipulated therein i.e. 120 days from 25.06.2007. The discretion to extend the time to another 45 days has been given only to the defendant and not to the plaintiff. It is the specific case of the defendant that he has not exercised the above said discretion conferred on him under Ex.P6. This fact has also been admitted by the

plaintiff during the course of evidence. In the light of the above position, it is found that the plaintiff is not legally entitled to enforce the Memorandum of Understanding after the time stipulated thereunder is over, particularly when he is at fault.

15. In support of the plaintiff's case, the following decisions reported in **2004 (4) CTC 150 (P.D'Souza Vs. Shondrilo Naidu), (2010) 1 Supreme Court Cases 83 (Grasim Industries Limited and another Vs. Agarwal Steel), AIR 1988 MADRAS 84 (N.B.Namazi Vs. Central Chinmaya Mission Trust), 2010 (2) CTC 751 (B.Nemi Chand Jain and another Vs. G.Ravindran and four others) and 2008 (5) CTC 690 (Chokkammal and 3 others Vs. K.Balraj)** were relied upon by the plaintiff's counsel . In support of the defendant's case, the decisions reported in **(2012) 8 MLJ 407 (T.Janagan Vs. A.Nandagopal) and (2012) 4 MLJ 807 (R.Krishnamurthy Vs. Vel Jayakumar and Others)** were relied upon. The Principles of Law enunciated in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

16. In the light of the above discussions, I hold that the plaintiff has not performed his part of the obligation under the Memorandum of Understanding Ex.P6 within the time specified therein. I further hold that the plaintiff has failed to establish that he has been always ready and willing to perform his part of the contract as claimed by him. I further hold that the plaintiff is not entitled to enforce the Memorandum of Understanding Ex.P6 after the expiry of the time stipulated therein. I therefore hold that the plaintiff is not entitled to obtain the relief of specific performance as claimed in the plaint. Accordingly, Issue Nos.2 & 5 are answered.

17. Issue No.1.

It is not in dispute that the suit property is situated at Ambattur within the jurisdiction of Thiruvallur District. The plaintiff is also residing at Ambattur. It has been admitted by the plaintiff that the place of execution of Ex.P6 is not mentioned therein. It is also found that the plaintiff has laid a suit in District Munsif Court, Ambattur, in respect of the suit property as against the defendant in O.S.No.276 of 2008 prior to the filing of this suit. In such view of the matter, according to the defendant, this Court has no jurisdiction to entertain the suit. It is contended that the suit for specific performance being a

suit for land and further as the plaintiff has also sought for other reliefs, the plaintiff is not entitled to lay the suit in this court and therefore, it is stated that this Court has no jurisdiction to try the suit.

18. Per contra, it is the case of the plaintiff that though the suit property is situated at Ambattur, part of the cause of action, according to the plaintiff, i.e. the Memorandum of Understanding was entered into within the limits of this Court, therefore, the suit laid by the plaintiff in this court is maintainable. Further, according to the plaintiff, in any event, he has obtained the leave of the Court to institute the suit in this court. Further, according to the plaintiff, inasmuch as the suit has been laid simpliciter for specific performance, the same cannot be construed as a suit for land and in such view of the matter, according to him, this Court has territorial jurisdiction to entertain the suit. With reference to the above contention, the decision reported in **(2001) 7 Supreme Court Cases 698 (Adcon Electronics Pvt. Ltd., Vs. Daulat and another)** is relied upon. No doubt, as per the above decision, a suit for specific performance simpliciter cannot be construed as a suit for land in the absence of any relief as regards possession etc. But as rightly contended, the above decision would not be applicable to the case at hand as the present

suit is not simpliciter for specific performance as the plaintiff has also sought the relief of permanent injunction as against the defendant in respect of the suit property. In such view of the matter, it is found that the suit is laid for land i.e. for the property situated at Ambattur, within the limits of Thiruvallur District.

19. However, it is argued by plaintiff's counsel that once when the leave is obtained for the institution of the suit in this Court, the defendant is not entitled to canvass the question of jurisdiction in the suit and in this connection, he placed reliance upon the decision reported in **(2006) 3 MLJ 345 (Bharat Overseas Bank Limited, represented by its Branch Manager, Chennai – 1 Vs. Kanniappa Gramani, Sole Proprietor, Virgo Plastics and Others)**. No doubt, in the above decision, it has been held that the jurisdictional issue could not be questioned, when once leave has been granted to institute the suit in this Court. However, it is argued by the defendant's counsel that as per the Code of Civil procedure, he is entitled to raise the question of jurisdiction on entering appearance and accordingly, he is well founded and has the authority in law to raise the question of jurisdiction and according to him, once the question of jurisdiction is raised, dehors the grant of leave by this

court to institute the suit, the question of jurisdiction can be agitated during the course of trial and in such view of the matter, according to him, the said issue should be decided by this Court on the basis of the evidence adduced in the matter. In this connection, strong reliance is placed on the decision reported in **(2013) 7 MLJ 42 (Raghavan Vs. Kalanithi Maran)**.

20. In the above said decision relied upon by the defendant's counsel, it is found that in the case covered in the said decision, leave had been granted and thereafter, the defendant preferred an application to revoke the leave and the same had been dismissed. The defendant has challenged the same by way of appeal. Accordingly, in the said decision, it has been held by the Division Bench that the question of jurisdiction being dependent on facts pleaded and the evidence adduced in a particular suit, accordingly, directed the parties to agitate the issue before the trial Court, as a preliminary issue or at the time of the trial of the suit. Accordingly, it is noted that in the above said decision, even though application to revoke the leave had been dismissed, still, the Court has held that the question of jurisdiction can be re-agitated during the course of trial and the same could be determined either as a preliminary issue or as one of the

issues during the course of trial on the completion of the recording of the evidence. Following the said decision, it is found that the argument put forth by the plaintiff's counsel that once the leave is granted the defendant is barred under law to raise the question of jurisdiction as such cannot be countenanced.

21. Now coming to the question of jurisdiction, admittedly, the suit property is situated at Ambattur and not within the limits of this Court. It has not been established by the plaintiff that the Memorandum of Understanding Ex.P6 has been entered into within the limits of this court. There is no recital to that effect in the Memorandum of Understanding. The plaintiff is also residing at Ambattur. Therefore, it could be seen that the plaintiff has failed to establish that any part of the cause of action arose within the limits of this court. As adverted supra, the plaintiff has also sought the relief of permanent injunction in respect of the suit property. As seen above, in respect of the suit property, the plaintiff has earlier invoked the jurisdiction of the District Munsif Court, Ambattur against the defendant for claiming the relief of permanent injunction. In such view of the matter, it is found that the suit being one for land, I hold that the obtainment of leave by the plaintiff would not debar the defendant

in law to raise the issue of jurisdiction in the main suit as one of the issues. In the light of the above position and discussion, I hold that this Court has no jurisdiction to try the suit. Accordingly, issues No.1 is answered.

22. Issue No.6

The suit is dismissed with costs.

Index : Yes/No
Internet: Yes/No
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T.RAVINDRAN,J.

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Pre-delivery Judgment in
C.S.No.239 of 2011

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