

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.03.2017

PRONOUNCED ON : 12.04.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.831 of 2010 & M.P.No.1 of 2010

Pandian Chemicals Ltd.,
17-A, Vallabhai Road,
Madurai - 2
Rep. by the Company Secretary
K.Sathiavan

... Appellant/Plaintiff

Vs.

1. Punithavalli
2. Thirupurasundari

... Respondents/Defendants

Appeal filed under Section 96 Code of Civil Procedure against the Judgment and Decree dated 05.07.2010 made in O.S.No.62 of of 2009 on the file of the Additional Judge, Puducherry at Karaikal.

For Appellant : Mr.N.S.Manoharan
For Respondents : Mr.N.Sathiyamoorthi

J U D G M E N T

Aggrieved over the dismissal of the suit filed for specific performance, the present appeal came to be filed by the unsuccessful plaintiff.

2. The parties are arrayed as per their ranking before the learned trial Court for the sake of convenience.

3. The brief facts of the plaintiffs case is as follows :

The plaintiff is a reputed manufacturer of potassium chloride. With a view to start their unit in Karaikkal, they purchased large extent of lands in T.R.Pattinam. However, the

Government have acquired the lands to develop growth centre. Therefore, the plaintiff was looking after alternative lands. When the matter stood thus, the plaintiff entered into an agreement of sale with one S.Subramanian on 26.12.2007 for purchase of the suit property at the rate of Rs.1,150/- per kuzhi. Unfortunately, the said Subramanian died within a few days after the agreement leaving behind the defendants as his legal heirs. The plaintiff issued a legal notice on 26.05.2008 and the notice was replied by the defendants. The plaintiff also sent a rejoinder immediately. Hence, the suit.

4. Brief contentions of the defendants are as follows :

Denying the agreement said to have been executed by the husband of the first defendant and father of the second defendant, it is the contention of the defendants that they do not know the alleged sale agreement, as the said Subramanian did not inform them about the sale agreement during his life time. It is also denied by the defendants that the plaintiff approached them and demanded to execute the sale deed. The suit notice issued on 26.05.2008 was suitably replied by the defendants on 01.07.2008 and the suit has been filed in the year 2009. The defendants have no other property except the suit property and they have no intention to sell the suit property. Hence, prayed for dismissal of the suit.

5. On the basis of the above pleadings, the following issues were framed:

1. Whether the plaintiff is entitled to the relief of specific performance as prayed for?

2. Whether the plaintiff is always ready and willing to perform his part of the contract in this suit?

3. Whether the plaintiff is entitled to the alternative relief of compensation for Rs.2 lakhs and Rs.5000/- given as advance?

4. To what relief?

6. On the side of the plaintiff, P.W.1 to P.W.3 were examined and Ex.A.1 to A.10 were marked. On the side of the defendants, first defendant was examined as D.W.1 and no documents were marked on their side.

7. On the basis of the evidence and material available on record, the learned trial Court dismissed the suit for specific performance. Aggrieved over the same, the present appeal came to be filed.

8. According to the learned counsel appearing for the

appellant, the plaintiff is a company and through their authorised representative, they have entered into an agreement dated 26.12.2007 with one Subramanian. Unfortunately, he died within 10 days from the date of the agreement. The plaintiff has requested the defendants, being the legal heirs of the said Subramanian, to complete the contract. The defendants at that time were mourning and bereavement and requested to wait for some time to execute the document. However, the defendants did not come forward to execute the document. The evidence of P.W.1 to P.W.3, not only prove the execution, but also plaintiff's readiness and willingness from the beginning and submitted that they are entitled for specific performance. In support of his arguments, relied upon the judgment reported in AIR 1965 Supreme Court 1405 [Mademsetty Satyanarayana Vs. G.Yelloji Rao and others], 100 LW page 483 [N.B.Bamazi Vs. Central Chinmaya Mission Trust, by its Trustee, Mrs.Leela Nambiar], AIR 2004 Madras 18 [Smt.Sushila Vs. Nihalchand Nahata] and AIR 1991 Madras 137 [P.Lakshmi Ammal Vs. S.Lakshmi Ammal and others]. D.W.1 in his evidence has admitted the return of the advance amount. That itself clearly show that Ex.A.1 is a genuine one. Hence, prayed for decree of specific performance.

9. It is the contention of the learned counsel for the defendants that the manner in which the agreement is executed is itself doubtful. The plaintiff's authorised representative has not entered into an agreement. Whereas, one Selvaraj is the agreement holder. The agreement itself clearly show that the agreement is to sell the property to the nominee of the said Selvaraj. That being the case, the contention of the appellant counsel that the agreement was entered in favour of the company cannot be countenanced. Though the agreement was dated 26.12.2007 and the legal notice was sent by the plaintiff on 26.05.2008. This suit has been filed in the year 2009 with inordinate delay. Further, there was no evidence to show that under what circumstances, the agreement was entered with the said Subramaniyam. Hence, submitted that the trial Court considering all these aspects dismissed the suit.

10. In the light of the above submissions, now the points that arises for consideration are

1. Whether the agreement dated 26.12.2007 is true and valid one?
2. Whether the plaintiff was always ready and willing to purchase the property?

12. Point Nos.1 & 2:

Ex.A.1 agreement dated 26.12.2007 is said to have been executed by one Subramaniyam in favour of M/s.Pandian Chemicals Limited represented by one Selvaraj. The advance amount of Rs.5000/- is said to have been paid to the vendor. It is not in dispute that immediately after execution of the agreement, the vendor Subramaniyam has died. The defendants are only legal heirs of the said Subramaniyam. The agreement dated 26.12.2007 shows that Rs.5000/- advance is said to have been paid by one Selvaraj. The recitals in the agreement shows that the vendor shall produce all the documents within 60 days from the date of the agreement and thereafter, within three months, after obtaining the legal advice from the lawyer, the sale shall be completed. The recitals clearly show that the sale shall be executed to the nominees of Selvaraj. The entire agreement shows as if one Selvaraj is said to be the representative of the plaintiff company. But, in the entire agreement, there is no whisper whatsoever with regard to the authorisation given to the said Selvaraj by proper resolution by the plaintiff's company.

13. Be that as it may. The plaintiff has laid the suit alleging the fact that within few days of the agreement, the said Subramaniyam has died. They requested the defendants to execute the document. Therefore, they sent a legal notice on 26.05.2008, which was replied by the defendants. Ex.A.2 is the legal notice dated 26.05.2008. Wherein it is stated by the plaintiff that after the death of the said Subramaniyam, they contacted the defendants and since they were in mourning, the plaintiff has waited patiently for execution on their part. Their legal notice was replied by the defendants on 01.07.2008. Wherein, they have clearly stated that they do not know or have any knowledge about the alleged sale agreement, executed by the said Subramaniyam and in fact they specifically requested the plaintiff to furnish a copy of the alleged sale agreement to verify the genuineness, truth and veracity of the document and also admitted that if it is really a genuine document, they are ready to return the earnest money to them. Only after the receipt of the said reply notice, the plaintiff has furnished a copy of the agreement to the defendants along with their rejoinder dated 08.06.2009 and requested the defendants to conclude the sale.

14. Admittedly, the said Subramaniyam is said to have been entered into an agreement for sale of 300 kuzhis, which is his only property at the relevant point of time. The first defendant is the wife of the said Subramaniyam and the second defendant is his daughter. The suit is filed before the trial

Court on 15.09.2009. Though time is not an essence of the contract, when the plaintiff has specifically put a condition to complete the contract within a period of five months, it is the duty cast on the plaintiff to follow the contract and perform his obligation from the very beginning. If really, the plaintiff was interested to purchase the property, the plaintiff being a company and in a dominant position, nothing prevented them in verifying the encumbrance and other title deeds in the revenue records, they need not have cast obligation on the defendants. Though the plaintiff appears to be registered company and authorised one D.Marimuthu to depose as P.W.1 and the evidence of P.W.1 when entirely read, his evidence goes to show as if he was also present at the time of executing the document by the said Subramaniam. In his cross examination, he has admitted that he was also present at the time of executing the agreement. If P.W.1 claims to be an officer in the plaintiff company, he could have signed on behalf of the company at the relevant point of time. These facts also creates serious doubt about the nature of the contract. The entire cross examination of P.W.1 clearly show that only through some land broker, they have entered into an agreement and one Mayilvaganan, who is the Planning Officer of the company also signed in the document as witness. His further evidence also shows that he has never seen the defendants at any point of time. This admission clearly falsifies the pleadings of the plaintiff that the plaintiff had repeatedly requesting the defendants through their authorised agents to execute the sale deed. Whereas, P.W.1 himself has stated in his evidence that he never met the defendants at any point of time.

15. P.W.2, who is a land broker, has stated that the agreement was entered in his presence. According to him, the said Selvaraj was the Manager of the company. He has also admitted that except the suit property, the defendants do not have any other property. His evidence also clearly show that the entire agreement was prepared in the office of the plaintiff. P.W.3, the planning officer of the company, in his evidence has stated that the agreement was entered through one Selvaraj and P.W.1 and P.W.2 were also present at the time of execution of the agreement. But, the agreement does not show their presence at the time of execution of the alleged agreement. Further, there is no evidence to show that under what circumstances, the said Subramaniam has entered into the said agreement. He died within a few days of the agreement. All these facts also shows that the agreement cannot be enforced for the equitable relief of specific performance. Further, the evidence of P.W.1 itself clearly show that he never met the defendants at any point of time. Therefore, the contention of the plaintiff that as the defendants were mourning and hence

they could not finalise the agreement cannot be countenanced. Further, non furnishing of a copy of the agreement to the defendants immediately is also one of the factors cannot be ignored altogether.

16. Admittedly, the agreement is said to have been executed on 26.12.2007 and the legal notice was issued by the plaintiff on 26.05.2008. Thereafter, the plaintiff kept quite till filing of the suit, except sending a rejoinder on 08.06.2009 and the suit was filed on 15.09.2009. Though time is not an essence of the contract as far as immovable properties are concerned, specific time agreed in the contract cannot be ignored altogether. A lethargic attitude on the side of the plaintiff, even from the date of legal notice till the filing of the suit clearly shows that the readiness and willingness on their part is totally absent. The plaintiff being a company, if really intended to purchase the property, it should have done in proper manner. The evidence of P.W.2 clearly indicate that except the suit property, the defendants have no other property for their livelihood and the circumstances under which the agreement came to be executed itself has not been established. If such a contract is enforced, it will give an unfair advantage to the plaintiff over the defendants. The first defendant is a widow and her only property is the subject matter of the alleged agreement. The pleadings of the plaintiff itself clearly show that their huge property has already been acquired by the Government and the plaintiff is a chemical manufacturing company. The evidence of P.W.1 and 2, who claim to have been present at the time of executing the agreement stated in their evidence, in their cross examination have stated that after verifying all the documents, it was handed over to the company and they entered into an agreement. If their evidence was true, a copies of the document have not seen the light of the day. There is no reason as to why those documents were seen the light of the day. This is also one of the factor which create some doubt about the honesty of the transaction. Even if there is a slightest doubt over the honesty of the transaction, equitable relief of specific performance cannot be granted. The plaintiff being the company, said to have been entered into an agreement through some land brokers, without any valid resolution, as normally required, is also one of the factors which cannot be ignored altogether.

17. In the judgment reported in 100 Law Weekly 582 [B.B.Namazi Vs. Central Chinmaya Mission Trust, by its Trustee, Mrs.Leela Nambiar], it has been held as follows :

"Specific Performance, Specific Relief Act,
Ss.20(2)(2) and 22 and Contract Act, Ss.30 and 55 -
Escalation in price and allegation of long delay on

the part of the Purchaser in fulfilling the contract, as a defence in a suit for specific performance - Purchaser, (a Trust) not being responsible for the delay which was due to their (Purchaser's) request for exemption from stamp duty - Payment of almost entirety of sale consideration - Purchaser held, not responsible for delay due to supervening circumstance - Inadequacy of consideration due to increase in price cannot be ascribed to Purchaser so as to constitute giving him any unfair advantage - Contingent contract, what is."

18. Similarly in the judgment report in AIR 1965 Supreme Court 140(1) [Mademsetty Satyanarayanan Vs. G.Yelloji Rao and others] it has been held that

"(A) Supreme Court - Practice - New point - Mixed question of law and fact - Plea not raised in pleadings - Point cannot be raised for first time in Supreme Court.

(B) Specific Relief Act (1 of 1877), S.22 - Discretion of Court to grant specific performance Exercise of - While mere delay extending up to period of limitation not sufficient ground to refuse relief, proof of waiver or abandonment of right not precondition for its refusal - Field of discretion cannot be defined but Court would not grant relief if it would be inequitable Distinction between English and Indian - Law stated."

19. In the case reported in AIR 2004 Madras 18 - Smt. Sushila Vs. Nihalchand Nahata it has been held that :

"(A) Limitation act (36 of 1963), Art.54 - Specific performance - Suit for - Filed within 3 years - No third party acquiring any right over property before filing suit - Conduct of plaintiff proving before filing suit - Conduct of plaintiff proving that she never waived her right over property - Held, suit not barred by limitation nor bad for delay in filing it.

(B) Specific Relief Act (47 of 1963), S.10 - Agreement for sale - Land in excess of ceiling limit - Stipulation in agreement that transfer shall be effected only after getting exemption from competent authority - Agreement is valid and enforceable - It is not agreement for sale purchase.

(C) Specific Relief Act (47 of 1963), S.10 -

Agreement to sell immovable property - Executed by constituted attorney on behalf of owner of property - Specific performance - Suit filed against owner represented by his attorney hold irrevocable power of attorney - Suit as framed is not defective.

(D) Civil P.C. (5 of 1908), 0.6, R.2 - Court Fee - Undervaluation - Objection as to - Defendant should seek decision of the Court on the point before the witnesses are examined.

(E) Specific Relief Act (47 of 1963), S.10 - Readiness and Willingness - Agreement to sell immovable property - One of the conditions therein that purchaser should obtain exemption from ceiling limit - Not committing breach thereof - Nor of any other conditions - Ceiling authority granting exemption to one-third of land proposed to be purchased from ceiling limit - Decree for specific performance of one third exempted land granted."

20. Similarly In the judgment reported in AIR 1991 Madras 137 [P.Lakshmi Ammal Vs.S.Lakshmi Ammal and others], it has been held that :

(A) Specific Relief Act (47 of 1963), S.16(c) - Readiness and Willingness of purchaser - Proof - Neither specifically denied in written statement nor deposed to by defendant - Readiness and willingness of purchaser was proved.

(B) Specific Relief Act (47 of 1963), S.19 - Bonafide purchaser for value without notice - Merely because purchaser is owner of adjacent land it cannot be said that he is not bonafide purchaser for value.

(C) Transfer of Property act (4 of 1882), S.52 - Lis Pendens - Principle of applicability - It is applicable to suits for specific performance of contract to transfer immovable property.

(D) Specific Relief Act (47 of 1963), S.9 - Suit seeking specific performance of contract - Defence - agreement for sale of immovable property - Escalation in price is no defence."

21. The judgments relied on by the appellants are with regard to the readiness and willingness on the side of the plaintiff to execute the contract and escalation in price is no defence in a suit seeking specific performance. But in this case, the alleged vendor died within a few days of the agreement and it is the only property of the defendants and they are eking out their livelihood from the above property.

Further, only a meager sum of Rs.5000/- has been paid as an advance and no further payment was made, and the further there is a delay in furnishing the copy of the agreement to the defendants. Considering all these facts, this Court is of the view that the plaintiff has not made a case for specific performance. Accordingly, the points are answered.

22. In the result, the judgment and decree passed in O.S.No.62 of 2009 by the Additional District Judge, Puducherry at Karaikkal is hereby confirmed and the appeal is dismissed. There is no Order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vrc

To

The Additional District Judge,
Puducherry at Karaikkal.

+1cc to Mr.Manoharan, Advocate, S.R.No.2477

A.S.No.831 of 2010

KGK (CO)
RS (24/04/2017)

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