

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2017

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

A.S. No. 184 of 2012

K.P. Palaniappan

..Appellant

Vs.

Mrs. Athi Vinayagi

..Respondent

Prayer: Appeal filed under section 96 CPC against the judgment and decree dated 12.08.2011 made in O.S. No. 813 of 2007 on the file of the Principal District Court, Coimbatore.

For Appellant :: Mr.S. Gunalan

For Respondent :: Mr.K.S. Karthik Raja

J U D G M E N T

The Appeal Suit has been preferred by the defendant as against the decree for specific performance and permanent injunction granted in the suit filed by the plaintiff/respondent in O.S. No. 813 of 2007 on the file of Principal District Court, Coimbatore.

2. The averments in the plaint are as hereunder:

The defendant/appellant is the absolute owner of the suit property, bearing Plot No. 125, measuring an extent of 2400 sq.ft or 5 cents 222 sq.ft along with Mangalore-Tiled house constructed thereupon. According to the plaintiff/respondent, the defendant offered to sell the suit property and the plaintiff agreed to purchase the same for a total price of Rs.12,75,000/-. According to the plaintiff, the defendant offered to sell the suit property since the defendant had mortgaged the suit property with Coimbatore City Co-operative Bank, Pappanaickenpalayam Branch and the defendant told the plaintiff that he has to pay Rs.4 lakhs to the said Bank to redeem the mortgage. On the plaintiff agreeing to purchase the suit property, the parties entered into an agreement on 11.07.2007 and thereby the plaintiff paid an advance of Rs.4 lakhs on the said date and the defendant had also acknowledged the receipt of the advance amount in the agreement for sale

itself. Out of the said advance amount of Rs.4 lakhs, the defendant redeemed the mortgage on 12.07.2007 and handed over the original title deeds to the plaintiff. Thereafter, on 18.07.2007, the defendant informed the plaintiff that he wants a further advance of Rs.2 lakhs to redeem the usufructuary mortgage of two portions in the residential house and accordingly, the plaintiff, without any hesitation, paid Rs. 2 lakhs on 18.07.2007 and in respect of the same, an endorsement was made by the plaintiff and the defendant on the backside of the agreement for sale dated 11.07.2007. Pursuant to the payment of the amount of Rs.2 lakhs, the defendant had redeemed the usufructuary mortgage and during the first week of September, 2007, the plaintiff informed her readiness to purchase the suit property with remaining sale consideration of Rs.6,75,000/- and after deliberations, the date of execution of the sale deed was fixed as 13.09.2007. Accordingly, the plaintiff purchased the stamp papers in her daughter-in-law's name and typed the original sale deed and requested the defendant to come to the Registrar's Office. However, the defendant was evasive and on one pretext or the other, he was delaying the execution of the sale deed and to the letter sent by the plaintiff on 16.10.2007, the defendant sent a reply telegram dated 19.10.2007 unilaterally terminating the agreement of sale dated 11.07.2007. Subsequently, the plaintiff sent a legal notice on 23.10.2007 to which a reply notice was sent by the defendant 29.10.2007. Thereafter, the suit came to be filed on 19.11.2007.

3. The averments made by the defendant in the written statement are as hereunder:

It is admitted that the defendant is the lawful and absolute owner, who is in possession and enjoyment of the suit property. It is also admitted that the defendant entered into an agreement of sale with the plaintiff in respect of the suit property on 11.07.2007 for a total sale consideration of Rs.12,75,000/- and paid an advance of Rs.4 lakhs on the said date and a further sum of Rs.2 lakhs on 18.07.2007 towards the sale consideration. As per the agreement of sale, three months time was stipulated to complete the sale in all respects. After redeeming the mortgage created over the suit property on 12.07.2007, though the defendant was always ready and willing to execute the necessary sale deed in favour of the plaintiff, the plaintiff did not come forward with the remaining sale consideration and therefore, he could not execute the sale deed in favour of the plaintiff. According to the defendant, the allegations made by the plaintiff that he had been evasive and adopting dilatory tactics to avoid execution of the sale deed are false and actually, it was the plaintiff, who was not ready and willing to perform her obligations under the agreement of sale, by paying the balance sale consideration, within three months, as stipulated in the said agreement.

4. Based on the above pleadings, the Trial Court framed the following issues:

(i) Whether the plaintiff is entitled to a decree for specific performance, as prayed for, in the suit?

(ii) Whether the plaintiff is entitled to a decree for permanent injunction as prayed for?

(iii) Whether the suit is maintainable?

(iv) Whether there is any cause of action for the plaintiff to file the suit?

(v) To what other reliefs, the plaintiff is entitled to?

5. The plaintiff examined herself as P.W.1, her son as P.W.2 and her husband as P.W.3 and marked as many as 18 documents as Exs-A1 to A18 while the defendant examined himself as D.W.1 and his son as D.W.2 and no documents were marked on their side.

6. The Trial Court, on appreciating the pleadings and evidence on record, found that the suit had been filed within time and that the plaintiff was ready and willing, by having sufficient funds, to perform the terms of the agreement and decreed the suit. As against the said decree, the present Appeal Suit has been filed by the defendant.

7. Heard Mr.S. Gunalan, learned counsel for the appellant/defendant and Mr. Karthik Raja, learned counsel for the respondent/plaintiff.

8. Mr.S. Gunalan, learned counsel for the appellant would firstly submit that the suit came to be filed beyond the period stipulated in the agreement Ex-A1 and secondly, there is no proof to show that the respondent/plaintiff was having sufficient funds and was always ready and willing to purchase the property in question.

9. On the other hand, learned counsel for the respondent would submit that the Trial Court went into the pleadings and evidence carefully and based on materials on record, had rightly decreed the suit.

10. A perusal of the judgment of the Trial Court would reveal that the suit property belongs to the appellant/defendant, who entered into an agreement of sale with the respondent/plaintiff, by way of sale agreement dated 11.07.2007 marked as Ex-A1. It is admitted by both the parties that a sum of Rs.4 lakhs was paid by the respondent/plaintiff, on the date of agreement, as advance and a further advance of Rs.2 lakhs was paid on 18.07.2007 and three months' time was fixed for performance of the agreement and the date of execution

of the sale deed was fixed as 13.09.2007 between the parties. Though it was argued before the Trial Court as well as before this Court that within three months' time, the respondent/plaintiff was not ready and willing, the Trial Court went into the issue carefully and found that as per Ex- A3, telegram given by the respondent/plaintiff, the appellant/defendant had been informed on 18.10.2007 itself that the respondent/plaintiff was ready with the balance amount and called upon the appellant/defendant to execute the sale deed. The said Ex-A3 met with a reply telegram dated 19.10.2007 from the appellant/defendant. Subsequently, on 23.10.2007, the respondent/plaintiff gave Ex-A-6 notice to the appellant/defendant for which the appellant gave a reply through Ex-A7 dated 29.10.2007. In the legal notice dated 23.10.2007, the respondent/plaintiff had categorically stated that after consulting the appellant/defendant, she had purchased stamp papers in the name of her daughter-in-law and called upon the appellant/defendant to execute the sale deed, as agreed between them, on 13.09.2007. The Trial Court after going through Ex-A6 notice dated 23.10.2007 sent by the respondent/plaintiff and Ex-A7 reply notice dated 29.10.2007 given by the appellant/defendant, found that there was no denial of the statement made by the respondent/plaintiff that she was ready and willing to purchase the suit property as she had also purchased the stamp papers in the name of her daughter-in-law. Even in the evidence, it has been emphatically stated that for a sum of Rs. 15,000/-, stamp papers were purchased. Further, the above evidence was denied only in the written statement and not in the reply given by the appellant/defendant and therefore, the Trial Court rightly found that the respondent/plaintiff was always ready and willing to execute the sale deed within the time period mentioned in the agreement.

11. One another aspect which is to be considered is handing over of original documents by the appellant/defendant to the respondent/plaintiff on 12.07.2007 and through notice Ex-A4, the appellant/defendant had called upon the respondent/plaintiff to return the original documents. Further, the Trial Court took note of the fact that the appellant/defendant never called upon the respondent/plaintiff to perform the terms of the contract and get the sale deed executed in her favour before the expiry of the period stated in Ex-A1 agreement except simply stating that the respondent was not ready and willing to perform the terms of the contract and that she was not having sufficient funds to get the sale deed executed within the period stipulated in the agreement.

12. Though it is contended by the appellant/defendant that the respondent/plaintiff was not ready and willing and was not having sufficient funds, it is proved before the Trial Court,

from Ex-A2, Bank Statement of HDFC Bank standing in the name of Ramasubramanian, who is none other than respondent's/plaintiff's son, a sum of Rs.12 lakhs had been given credit to, as on 10.08.2007 and the application made by the said Ramasubramanian to withdraw a sum of Rs.12 lakhs from his account has been marked as Ex-A13 and the transfer of a sum of Rs.12 lakhs from the account of Ramasubramanian to the account of Balarajamanickam, who is the husband of the plaintiff is evidenced by Ex-A16, Pass Book of Balarajamanickam. Out of the said amount of Rs. 12 lakhs, a sum of Rs.7 lakhs had been withdrawn on 12.09.2007, which was intended to be paid to the appellant/defendant. Therefore, the very fact that the respondent's/plaintiff's son had Rs.12 lakhs in his account and the said amount had been transferred to the account of P.W.3, the husband of the respondent, lends support to the case of the respondent/plaintiff and therefore, the Trial Court rightly found that the respondent/plaintiff was having sufficient funds to discharge her obligation under the agreement.

13. As stated above, it is the respondent/plaintiff, who had issued the telegram Ex-A3 on 16.10.2007 calling upon the appellant/defendant to perform the terms of the contract. Further, through notice dated 23.10.2007, Ex-A6, the respondent/plaintiff alone called upon the appellant/defendant to execute the sale deed by receiving the balance sale consideration from her. The evidence of P.W.1/plaintiff, P.W.2, the son of the plaintiff and P.W.3, husband of the plaintiff, would also prove the fact that the plaintiff was always ready and willing to perform the contract by having sufficient funds within time limit stated in the Ex-A1 agreement. Though the appellant was examined as D.W.1 and his son as D.W.2, no document was filed on their side. The Trial Court, considering all these aspects and the pleadings and evidence, including documentary evidence, rightly decreed the suit and therefore, there is no occasion for this Court to take a different view. Hence, the appeal suit fails and the same is dismissed. No costs.

14. It has been submitted by the learned counsel for the respondent that the balance amount had already been deposited before the Trial Court as per the decree and the respondent acted as per the decree.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

nv

To

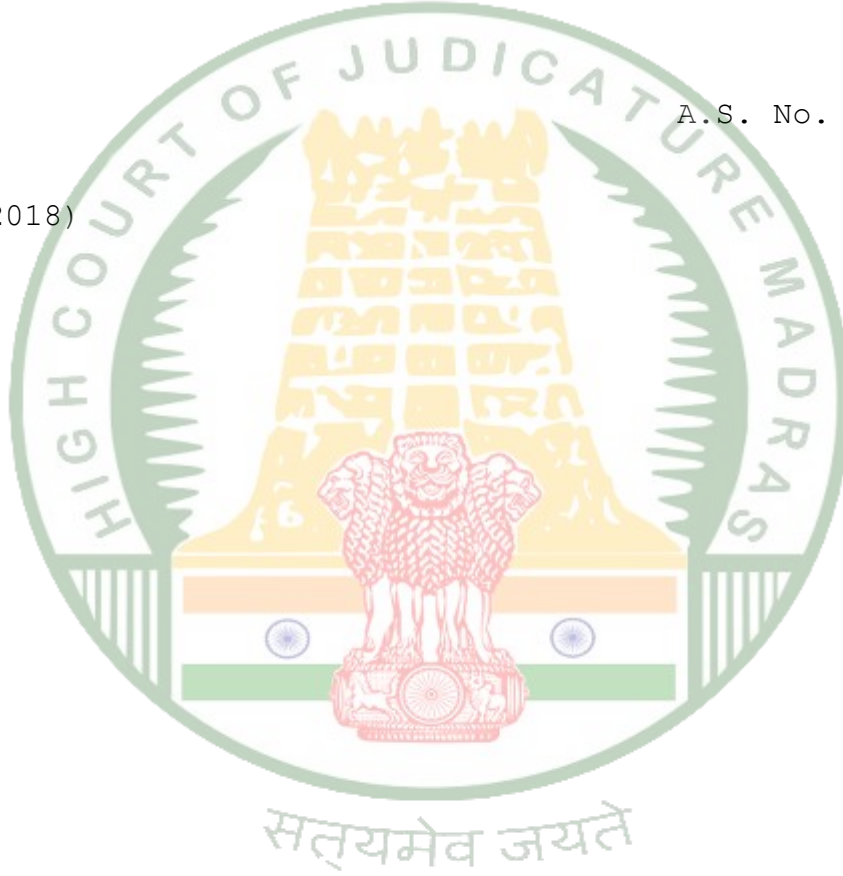
The Principal District Judge,
Coimbatore.

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+lcc to Mr.Gunalan , Advocate SR.No.9352
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MG (CO)
GN(13/02/2018)



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