

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.10.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

A.S.No.694 of 2009

&

M.P.No.1 of 2009

1.Mr.N.Venugopal
2.Mrs.N.Punithavalli ... Appellants/Defendants

Vs

1.Mr.N.D.Sukumar
2.Mr.P.Subramanim
3.Mr.M.Mangalasundaram ... Respondents/Plaintiffs

First Appeal preferred under Section 96 CPC against the judgment and decree dated 22.01.2009 made in O.S.No.165 of 2007 on the file of the Additional District and Sessions Judge Court, Fast Track Court III at Coimbatore, dated 22.01.2009.

For Appellants : Mr.A.Thiagarajan
Senior Counsel
for Mr.D.Veerasekaran

For Respondents: Mr.N.Anand Venkatesh
for Mr.V.Nicholas

JUDGMENT

[Judgment of the Court was delivered by A.SELVAM, J.]

Challenge in this appeal suit is to the judgment and decree dated 22.01.2009 passed in O.S.No.165 of 2007 by the Fast Track Court No.III, Coimbatore.

2.The respondents herein, as plaintiffs, have instituted Original Suit No.165 of 2007 on the file of the trial Court praying to pass a decree of specific performance in pursuance of sale agreement dated 11.03.2006 or alternatively to pass a decree in respect of return of advance amount with 24% interest per annum and also for the relief of perpetual injunction, wherein the present appellants have been arrayed as defendants.

3.The material averments made in the plaint are that the suit property is the absolute property of the defendants. The defendants have agreed to sell the same in favour of the plaintiffs for a sum of Rs.64 lakhs. Under the said circumstances, the suit sale agreement has come into existence on 11.03.2006 and on the date of its execution, an advance amount of Rs.5 lakhs has been received by the defendants and subsequently on various dates, another sum of Rs.5 lakhs has been paid to the defendants and in aggregation, the plaintiffs have paid a sum of Rs.10 lakhs. After execution of sale agreement dated 11.03.2006, a Power of Attorney Deed has been executed by the defendants in favour of the plaintiffs so as to change classification of the suit property. In pursuance of Power of Attorney Deed, the plaintiffs have made various efforts to change the classification of the suit property. But, all of a sudden, the defendants have cancelled the Power of Attorney Deed on 28.02.2007. The plaintiffs have always been ready and willing to perform their part of contract. Since the defendants have evaded in executing a sale deed after receipt of balance of sale consideration, a legal notice dated 09.03.2007 has been issued to them, whereby called upon them to come to Registrar Office on 15.03.2007. Under the said circumstances, the present suit has been filed for getting the reliefs sought therein.

4.In the written statement filed on the side of the defendants, it is averred to the effect that the plaintiffs have approached the defendants to purchase the suit property for a sum of Rs.64 lakhs and to that effect, an agreement has come into existence on 11.03.2006. On the date of its execution itself, the defendants have received a sum of Rs.5 lakhs and subsequently on various dates, the first defendant has received a sum of Rs. 2 lakhs and to that effect, endorsements have been made on the sale agreement, but the second defendant, due to demise of her mother-in-law, has not put her signatures. It is false to aver that on 20.06.2006, an acknowledgment has been made by the second defendant after receipt of Rs.3 lakhs. Further, the plaintiffs have played a fraud under the guise of getting the Power of Attorney Deed so as to change classification of the suit land. It is equally false to aver that the plaintiffs are always ready and willing to perform their part of contract and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of divergent pleadings raised on either side, the trial Court has framed necessary issues and after perpending both the oral and documentary evidence, has decreed the suit in respect of the main relief sought in the plaint. Against the judgment and decree passed by the trial Court, the present appeal suit has been preferred at the instance of the defendants, as appellants.

6.The sum and substance of the case of the plaintiffs is that the suit property is the absolute property of the defendants and both of them have agreed to sell the same in favour of the plaintiffs for a sum of Rs.64 lakhs, which culminated in execution of sale agreement dated 11.03.2006 and on the date of its execution, the defendants have received a sum of Rs.5 lakhs and subsequently on various dates, they received another sum of Rs.5 lakhs and in aggregation, they received Rs.10 lakhs and despite of best efforts made by the plaintiffs, the defendants have evaded in executing a sale deed in favour of the plaintiffs and therefore, the present suit has been filed for getting the reliefs sought therein.

7.The defence put forth on the side of the defendants is that under the guise of changing the classification of suit property by way of getting the General Power of Attorney Deed from the defendants, the plaintiffs have played a fraud and further with regard to two acknowledgments, the second defendant has not put her signature and in respect of acknowledgment made on 20.06.2006, the second defendant has not put her signature and further, the plaintiffs are not having sufficient means to pay the balance of sale consideration and therefore, the present suit deserves to be dismissed.

8.The trial Court, as mentioned supra, after considering the available evidence on record, has decreed the suit in respect of the main relief sought in the plaint.

9.The learned counsel for the appellants/defendants has raised the following points so as to set aside the judgment and decree passed by the trial Court:-

i) On the side of the plaintiffs, Exs.A3 to A5 have been filed. In Exs.A3 and A4, the signature of the second defendant is not found place. In Ex.A5, the alleged signature of second defendant is found place, but actually it is not her signature and therefore, the Court cannot rely upon Exs.A3 to A5.

ii) Even though in the plaint it has been specifically pleaded to the effect that the plaintiffs are always ready and willing to perform their part of the contract, even on the date of filing of the suit, the plaintiffs are not having sufficient means to pay balance of sale consideration. Under the said circumstances, the plaintiffs have not proved that they are always ready and willing to perform their part of contract. But, the trial Court has failed to look into Section 16(c) of the Specific Relief Act, 1963 and therefore, the judgment and decree passed by the trial Court are liable to be set aside.

10.In order to remonstrate the contentions put forth on the side of the appellants/defendants, learned counsel appearing for the respondents/plaintiffs has sparingly contended to the effect that after execution of the sale agreement dated 11.03.2006, the defendants have executed a General Power of Attorney Deed on

27.03.2006 in favour of the plaintiffs so as to change the classification of the suit land and in pursuance of the same, the plaintiffs have obtained necessary permission from the concerned authorities, but the defendants have abruptly cancelled the Power of Attorney on 28.02.2007 and further, the second defendant has been examined as DW2 and she has categorically admitted in her evidence to the effect that they received subsequent payments made by the plaintiffs and with regard to readiness and willingness, on the side of the plaintiffs, replete documentary evidence has been let in. The trial Court, after considering the overwhelming evidence available on the side of the plaintiffs, has rightly decreed the suit in respect of the main relief sought in the plaint. Further, in the present case, conduct of the defendants must also be looked into. Under such circumstances, the judgment and decree passed by the trial Court are not liable to be interfered with and altogether the present appeal suit deserves to be dismissed.

11. Before contemplating the rival submissions made on either side, the Court has to perorate the following admitted facts:

It is an admitted fact that on 11.03.2006, an agreement has come into existence between the plaintiffs and defendants. On the date of its execution, the defendants has received a sum of Rs.5 lakhs. It is also equally an admitted fact that subsequent to the sale agreement, another sum of Rs.5 lakhs has been given by the plaintiffs. Further, it is an admitted fact that on 27.03.2006, a general Power of Attorney Deed has been executed by the defendants in favour of the plaintiffs for changing classification of the suit land

and in pursuance of the same, the plaintiffs have made various efforts to change classification of the suit property.

12. The first and foremost point urged on the side of the appellants/defendants is that in the subsequent acknowledgments, the second defendant has not put her signature and especially in the acknowledgment dated 20.06.2006, the signature of the second defendant has been forged.

13. At this juncture, as rightly pointed out on the side of the respondents/plaintiffs, the Court has to look into the oral evidence adduced by the second defendant. The second defendant has been examined as DW2. During the course of cross-examination, she has clearly admitted the subsequent payments alleged to have been made by the plaintiffs. Therefore, the clear admission made by the second defendant has made a death knell to the first contention urged on the side of the appellants/defendants.

14. The second contention put forth on the side of the appellants/defendants is that even though in the plaint, it has been specifically pleaded to the effect that the plaintiffs have always been ready and willing to perform their part of contract, but actually they are not having sufficient source to pay the balance of sale consideration and therefore, the plaintiffs are not entitled to get discretionary relief of specific performance.

15. For the purpose of disproving the second contention put forth on the side of the appellants/defendants, in fact, on the side of the respondents/plaintiffs, various documents have been filed and especially in Ex.A15, during April 2007, more than 51 lakhs has been dealt with and further on the side of the plaintiffs, some more documents have been filed so as to prove necessary source of the plaintiffs. Further, it is seen from the records that as per the direction given by the trial Court, the plaintiffs have deposited balance of sale consideration into Court. Under such circumstances, there is no incertitude in coming to the conclusion that the plaintiffs are having sufficient means and they are always ready and willing to perform their part of contract and therefore, the second contention put forth on the side of the appellants is sans merit.

16. The Learned counsel appearing for the appellants/defendants has relied upon the decision in Syscon Consultants Private Limited Vs. Primella Sanitary Products Private Limited and another reported in (2016) 10 SCC 353, wherein the Hon'ble Supreme Court has held that in a suit for specific performance, the plaintiff must always be ready and willing to perform his or her part of the contract.

17. It is an everlasting principle of law that as per Section 16(c) of the Specific Relief Act, 1963, in a suit for specific performance, the plaintiff must plead and prove his readiness and willingness from inception of sale agreement.

18. In the instant case, abundant evidence is available on the side of the plaintiffs to prove their readiness and willingness to get a sale deed registered from the defendants from the date of execution of the suit sale agreement, which has been marked as Ex.A1.

19. The learned counsel appearing for the respondents/plaintiffs has relied upon following decisions:

i) Silvey and others Vs. Arun Varghese and another reported in (2008) 11 SCC 45, wherein at paragraph 14 it is observed that conduct of the defendant cannot be ignored while weighing the question of exercise of discretion for decreeing or denying a decree for specific performance.

ii) Zarina Siddiqui Vs. A.Ramalingam alias R.Amarnathan reported in (2015) 1 SCC 705, wherein at Paragraph No.33, Hon'ble Supreme Court has observed as follows:

"33.The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misleads the court then such discretion should not be exercised by refusing to grant specific performance."

20.From a conjoint reading of the decisions referred to supra, it is easily discernible that in a suit for specific performance the conduct of the defendant must also be looked into. In the instant case as stated earlier, after giving a Power of Attorney Deed for changing the classification of the suit property, abruptly the defendants have cancelled the same and after receipt of subsequent payments, the second defendant has taken a different stand. Therefore, it is needless to say that the defendants have adopted a vulnerable conduct in the instant case.

21.The trial Court, after considering the over all evidence available on record, has rightly decreed the suit in respect of the main relief sought in the plaint.

22.In view of the foregoing elucidation of both factual and legal aspects, this Court has not found any acceptable force in the contentions put forth on the side of the appellants/defendants and therefore, the present appeal suit deserves to be dismissed.

In fine, the appeal suit is dismissed with costs. The judgment and decree passed in Original Suit No.165 of 2007, by the Additional District and Sessions Judge Court, Fast Track Court III, Coimbatore, are confirmed. Connected miscellaneous petition is also dismissed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

gpa

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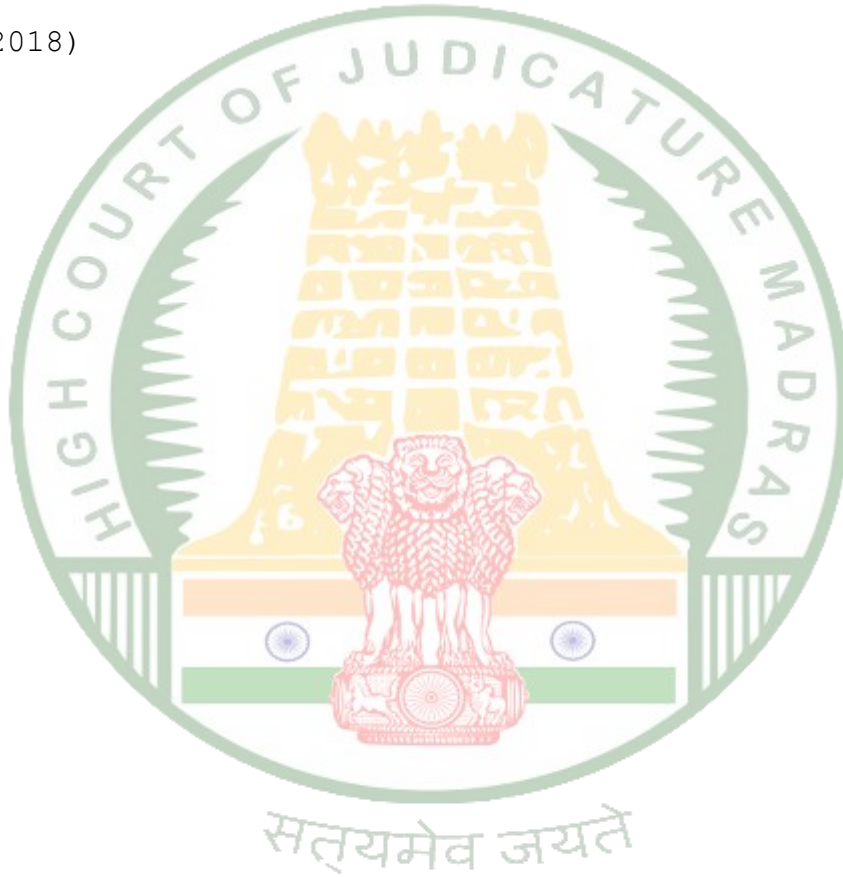
The Additional District and Sessions Judge Court,
Fast Track Court III, Coimbatore

+1 CC to Mr.D. Veerasekaran, advocate sr 71253.

+1 CC to Mr.V. Nicholas, Advocate sr 71293.

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SP (12/04/2018)



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