

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

Coram

The Hon'ble Mr. Justice **M.M.SUNDRESH**

Second Appeal No.773 of 2015

N.Mani .. Appellant

Vs

G.Natarajan .. Respondent

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 09.12.2014 passed in A.S.No.30 of 2013 on the file of the Principal District Judge, Vellore, confirming the judgment and decree dated 26.08.2013 passed in O.S.No.300 of 1999 before the Subordinate Judge, Vellore.

For Appellant .. Mr.P.Seshadri

For Respondent .. Mr.S.Raghavan

JUDGMENT

The unsuccessful plaintiff in a suit for specific performance,

having lost before the Courts below, is the appellant herein. The appellant has filed this second appeal by framing the following substantial questions of law:

(i)Whether the lower appellate Court is right in dismissing the appeal filed by the plaintiff confirming the judgment and decree of the Trial Court dismissing the suit filed by the plaintiff for specific performance of agreement of sale under Ex.P1?

(ii)Whether the lower appellate Court is right in holding that the plaintiff was not ready and willing to perform his part of the contract by tendering the balance of sale consideration when the Trial Court clearly found that the time is not essence of the Contract?

(iii)Whether the lower appellate Court is right in holding that since the plaintiff has not deposited the balance consideration at the time of filing the suit, and therefore, he is not ready and willing to complete the transactions?

(iv) Whether the Courts below are right in holding that the plaintiff is not ready and willing to perform his part of contract when the plaintiff has clearly expressed his readiness in several correspondence to complete the sale transactions?

(v) Whether the Courts below are right in holding that the plaintiff is not ready and willing to complete the transaction in terms of Ex.P1 when the defendant had not come forward to complete the sale?

2. An agreement has been entered into under Ex.A1 between the appellant and the respondent dated 24.06.1996. On the very same day, a registered power deed has been executed between the parties. This power deed has been cancelled within a few weeks' thereafter – 03.07.1996. Thereafter, there was a series of exchange of notices between the parties. In one of the notices, the respondent has stated that he is ready and willing to perform his part. By way of reply, the appellant has stated that in view of the pendency of the suit filed for

partition in O.S.No.293 of 1990, the remaining amount will be paid only after disposal. The respondent has stated that if on the specified date mentioned in the legal notice, the appellant does not turn up, the agreement would stand cancelled. It appears that thereafter, the agreement got cancelled though unilaterally by the respondent. Thereafter, the present suit has been filed in the year 1999 with the averment that the appellant being the plaintiff is ready and willing to perform his part of the agreement all along. It is to be noted that Ex.A1 gave a specific time – 3 months for the execution of the sale deed over the suit property. Incidentally, a portion of the suit property was sold by the appellant using the power deed before its cancellation in favour of the third party, who is stated to be his close relative. The appellant has also deposed that he has entered into an agreement pursuant to the power deed with various parties with the intention of selling the suit property by dividing it into several portions.

3.The Courts below declined to grant discretionary relief of specific performance on the premise that the appellant was not ready and willing all along. The suit has been laid in the year 1999 though the period mentioned under Ex.A1 expired in the year 1996 itself. If the appellant is ready and willing despite the pendency of the suit even

at the time of its filing, the said averment would be contrary to the stand taken earlier. Therefore, it cannot be construed that the appellant is ready and willing all along.

4.The learned counsel appearing for the appellant submits that the suit has been laid by the sons of the respondent, for which, the appellant cannot faulted. The appellant was always ready and willing as there was a cloud over the title, the legal notice was issued, stating that after the pending suit in O.S.No.293 of 1990 is disposed of in favour of the respondent, the remaining amount would be paid, followed by execution of sale deed. Therefore, the entire facts will have to be seen on their own context.

5.Learned counsel appearing for the respondent submits that the appellant has not proved his readiness and willingness. The power deed was duly cancelled, over which, there is no challenge. The Courts below have rightly exercised their discretion in declining the relief. The appellant has taken a contrary stand through the legal notice issued and in his pleadings. As rightly observed by the lower appellate Court, there is no reference about the suit in O.S.No.293 of 1990 in the pleadings in the present suit. Even at the time of filing the present

suit, the same position continued. The persons with whom the agreement stated to have been entered into by the appellant have not been added as parties. There is no reference about the sale consideration, if any, pursuant to the sale effected over a smaller extent of the suit property in favour of the third party by the appellant during the currency of the power deed. Therefore, no interference is required.

6.The relief under the Specific Relief Act seeking execution is discretionary in nature. Such a discretion is a judicial one. Therefore, the Court will have to see whether such a discretion has been exercised rightly or not.

7.Ex.A1 specifically speaks about the time limit. The cancellation of power deed has never been questioned though the execution on the very same day of Ex.A1. Despite the fact that the respondent has informed the appellant about the pendency of the suit and his readiness to execute the sale deed, the appellant apart from issuing the legal notice, stated that the remaining sale consideration would be paid only after disposal of the pending suit and thus has not taken any stand at that point of time that he is ready and willing to execute the

sale deed. Now, after the notice issued by the respondent indicating the cancellation of the agreement, in the event of non-compliance by the appellant within the time stipulated in the legal notice by appearing before the office of the Sub Registrar followed by the cancellation, the appellant has waited for two more years. Now there is no reference about the earlier suit in the pleadings available before this Court. If the appellant has taken a stand earlier about the cloud created over the suit property, the same will not be cured after two years. In such eventuality, the approach of the Courts below on readiness and willingness appears to be legally sound and correct. The appellant has not produced any evidence to show that the amount was received pursuant to the sale effected to a smaller extent of the suit property in favour of the third party and the amount received pursuant to the agreement entered with 15 others. This Court does not find any perversity in the findings rendered by the Courts below. There is no substantial question of law involved in the appeal, warranting interference. Accordingly, the second appeal is dismissed. No costs.

03.01.2017

Index:Yes/No
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M.M.SUNDRESH, J.

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To

- 1.The Principal District Judge,
Vellore.
- 2.The Subordinate Judge,
Vellore.

S.A.No.773 of 2015

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