

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :11.07.2017

CORAM

THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

A.S.No.628 of 2012
& M.P.No.1/2012

Mahboob Hussain

...Appellant/ Plaintiff

..Vs..

1.G.Manoharan
S/o Govindasamy Naidu

2.M.Vinothkumar
S/o. Manoharan

...Respondents/Defendants

Prayer: This appeal is filed under Section 96 of C.P.C. Against the judgment and decree dated 20.12.2011 passed in O.S.No.120/2010 on the file of the Principal District Judge, Villupuram.

For Plaintiff : Mr.R.Akilesh

For Defendants : Ms.Sri priya
for M/s.V.Raghavachari

JUDGMENT

The Plaintiff in the suit in O.S.No.120 of 210 is the appellant herein. According to the plaintiff, the first defendant had agreed to sell the suit property measuring to an extent of 1 acre 20 cents in Survey No.229/5A at Karungaalipattu Village, Villupuram District, for total consideration of Rs.11,64,000/- at the rate of Rs.9,700/- per cent. On the date of agreement, the first defendant has received an amount of Rs.50,000/- and agreed to execute the sale deed on receipt of balance amount of Rs.11,14,000/-. However, he failed to execute the sale deed, which compelled the plaintiff to file the present suit for specific performance impleading the son of the first defendant as second defendant, since the first defendant executed a gift deed in favour of his son on 02.11.2009 in respect of the suit property. Even in the plaint, the plaintiff has stated that he is a Real Estate Agent and Broker. The suit was filed as an indigent person, after obtaining an order for exemption from paying Court Fee.

2.The suit was resisted by the defendants contending that the alleged sale agreement dated 21.10.2009 cannot be treated as an agreement, since the same is not a bilateral document. It is also claimed that the plaintiff was not ready and willing to perform his part of contract. It is also pleaded that the plaintiff has agreed to complete the transaction within two weeks, but he failed to comply with the same. Therefore, according to the defendants, the plaintiff is not entitled to the relief of specific performance. The first defendant had also issued a legal notice dated 07.11.2009 calling upon the plaintiff to return the agreement and to take back the advance amount. Though the plaintiff has received a cheque for Rs.50,100/-, he has not encashed the same. Thus, the sum and substance of the written statement is that the plaintiff was not ready and willing to perform his part of the contract and he does not have means to pay the remaining sale consideration.

3.On the above pleadings, the learned Principal District Judge, Villupuram framed the following issues:

[i] Is it true that the sale agreement was made on 21.10.2009 between the plaintiff and 1st defendant regarding the suit property?

[ii] Is it true that to execute a sale deed no time frame was fixed?

[iii] Whether the plaintiff was having sufficient means to purchase the suit property?

[iv] Whether the plaintiff was ready and willing to perform his part of contract?

[v] Whether the plaintiff is entitled to get the sale deed executed after paying the balance of sale consideration to the defendants.

[vi] In case defendants refused to execute the sale deed whether the plaintiff will be entitled to deposit the balance of sale consideration into court and get the sale deed executed through court?

[vii] To what relief the plaintiff is entitled to?

4.On the side of the plaintiff, he was examined as PW1, one Neelakandan was examined as PW2 and Sankaran (Village Administrative Officer) was examined as PW3 and exhibits A1 to A3 were marked. The first defendant was examined as DW1 and Exhibits X1 and X2 were marked as third party documents.

5.Upon consideration of the oral and documentary evidence,

the trial Court came into the conclusion that the plaintiff has not proved his readiness and willingness to perform his part of the contract. The trial Court held that Ex.A1 agreement was not a completed contract between the plaintiff and the defendants and there were other conditions to the effect that the plaintiff had agreed to complete the transaction within one week after verifying the revenue records and other documents. The trial Court held that the plaintiff was not ready and was not capable to purchase the property and therefore, the plaintiff is not entitled to a decree for specific performance. Aggrieved against the same, the plaintiff has come forwarded with this appeal. This appeal has also been filed by the plaintiff as indigent person.

6.I have heard Mr.R.Akilesh, learned counsel for the appellant and Ms.Sri priya, learned counsel for the respondents.

7.The following points arise for determination in the appeal:

1.Whether the trial Court is right in dismissing the suit for specific performance on the ground of absence of readiness and willing on the part of the plaintiff?

2.Whether plaintiff could be allowed to claim specific performance of part of the contract and seek a decree in respect of 5 cents of land on the basis of the fact that he has paid an advance of Rs.50,000/-.

8.Learned counsel for the appellant pointed out that the trial Court without considering the material evidence, arrived at a conclusion against the plaintiff with respect to the readiness and willingness on the part of the plaintiff.

9.The very fact that the plaintiff had filed the suit itself as an indigent person and he has admitted that he is only a land broker, would reveal that, on his own showing, he was not ready and willing to perform his part of the contract within a stipulated time. The plaintiff is not entitled to a specific performance of contract, since he was not ready and willing to perform his part of contract. Hence, I do not find any illegality or irregularity in the judgment of the trial Court on this point. With regard to second point, learned counsel for the appellant would contend that under Section 12(3) of the Specific Relief Act, it is open to the plaintiff to give up part of his claim and seek part performance of the contract. Learned counsel for the appellant would further submit that he has paid an advance amount of Rs.50,000/- and entered into an agreement fixing the value of the land at Rs.9,700/- per cent. Therefore,

there should be a decree for specific performance for five cents alone invoking Section 12(3) of the Specific Relief Act. Learned counsel for the appellant would contend that Where a party to a contract is unable to perform the whole of his part of it, the court may, at the suit of other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and a case falling under clause (b), 1[pays or had paid] the consideration for the whole of the contract without any abatement; and in either case, relinquishes all claims to the performance of the remaining part of the contract.

10. Learned counsel for the appellant would rely upon the judgment of this Court in SANTHAMANI V. USHA reported in 2017-3-L.W.293, wherein this Court held that in the suit filed to enforce contract in respect of 2/3rd share of the defendant relinquishing the claim in respect of remaining 1/3rd share is enforcing the contract only in respect of 2/3rd share of the defendant. Once relinquishment is made by the party even during the trial, remaining part of the contract can be enforced. I do not think that the said contention of the learned counsel could be countenanced. Even in the judgment referred to by the learned counsel, the sister of the vendor had filed a suit and obtained a decree for 1/3rd share. Therefore, the plaintiff sought for specific performance in respect of the remaining 2/3rd share, which belonged to the defendant. Learned counsel would attempt substantiate his contention by relying on the Judgments which are referred to by the learned Judge viz., 1. Surinder Singh v. Kapoor Singh [2005-3-L.W.696 = 2005 (5) SCC 142], P. Alagesan v. A. Mariadas [1993-1-L.W.599]. The Hon'ble Supreme Court held that where the plaintiff has relinquished his right in respect of the remaining part of the contract, specific performance can be granted in respect of other part of the contract. I do not think this judgement in any manner to support the case of the plaintiff who is found to be not ready and willing to perform his part of contract. Therefore, the plaintiff is not entitled succeed seeking a decree for specific performance of five cents of land alone. Hence, the decree of the court below rejecting the claim of the plaintiff for specific performance is hereby confirmed.

11. The trial Court has granted a decree for refund of advance amount, but the trial Court has not granted any interest for the said advance amount. Though it is claimed that the defendant had sent a cheque for Rs.50,100/- on 20.11.2009 and it is also admitted by the plaintiff, the same was not encashed. Therefore, the advance amount will bear interest at 6% p.a. from the date of agreement till the date of repayment.

12.Except the said modification, the judgment and decree of the trial Court are confirmed. In fine, the appeal suit is partly allowed. The first defendant shall repay the advance amount of Rs.50,000/- along with interest at 6% p.a. from the date of agreement till the date of repayment. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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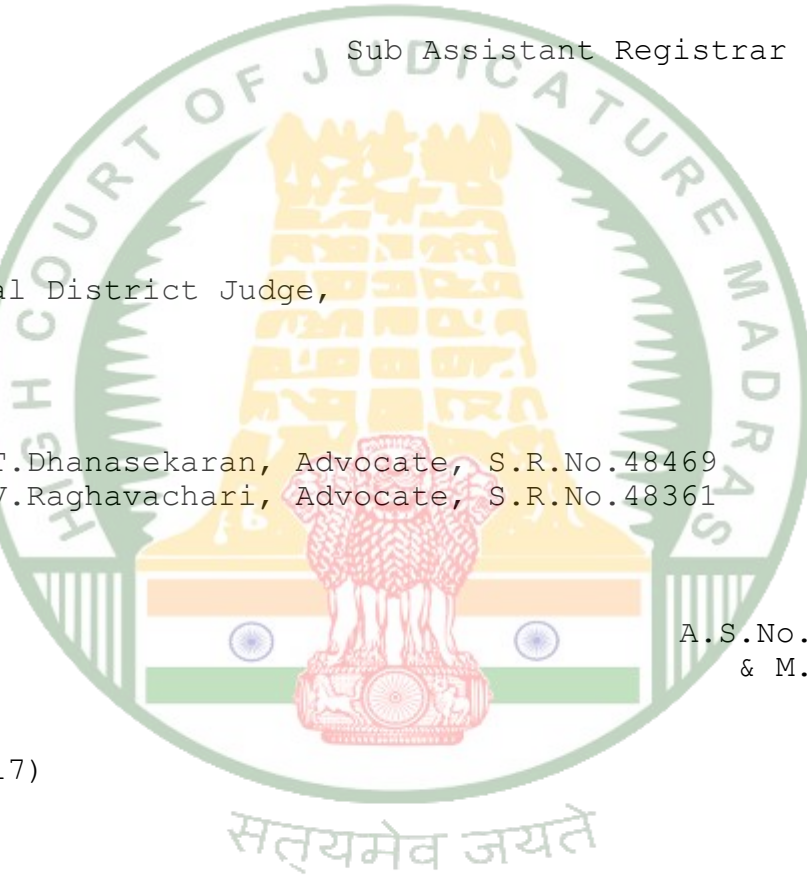
To

The Principal District Judge,
Villupuram.

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.48469
+1cc to Mr.V.Raghavachari, Advocate, S.R.No.48361

A.S.No.628 of 2012
& M.P.No.1/2012

GJ(CO)
GN(28/08/2017)



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