

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.11.2017

Delivered on : 13.11.2017

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.807 of 2012

1.Gajendran
2.Rajendran
3.Ravichandran Appellants/Defendants

Cause title accepted vide order
of court dated 14.06.2012 made
in M.P.No.1/2012 in AS.SR.6235/2012.

Thangavel Vs.
.. Respondent/Plaintiff

Prayer:- Appeal suit filed under Section 96 of Code of
Civil Procedure, 1908, against the Judgment and decree passed by
the Principal District Court, Puducherry, dated 06.09.2011 made
in O.S.No.7 of 2007.

For Appellants : Mr.S.Subramanian
For Respondent : Mr.A.Tamilvanan

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This Appeal Suit has been preferred against the judgment
and decree dated 06.09.2011 passed in O.S.No.7 of 2007 by the
Principal District Court at Puducherry.

2. The respondent herein as Plaintiff has instituted
O.S.No.7 of 2007 on the file of the trial court, praying to pass
a decree of specific performance in pursuance of sale agreement
dated 16.12.2006, 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 Plaintiff for a sum of Rs.16,30,000/- and to that effect, the suit sale agreement has come into existence on 16.12.2006 and on the date of its execution, the plaintiff has advanced a sum of Rs.3,00,000/-. The defendants have agreed to execute a registered sale deed within a period of 30 days. During second week of January 2007, the plaintiff has approached the defendants to produce original title deeds and also encumbrance certificates so as to fix a date for registering a sale deed. But the defendants have not produced the same. The Plaintiff is always ready and willing to perform his part of the contract, by way of paying the balance of sale consideration of Rs.13,30,000/-. The defendants have issued a notice dated 29.01.2007 and the same contains false allegations. On 05.02.2007, the plaintiff has issued a suitable reply notice. Since the defendants have failed to perform their part of the contract, the present suit has been instituted for the relief sought therein.

4. In the written statement filed on the side of the defendants, it is averred that in the suit sale agreement, 30 days time has been fixed for paying balance of sale consideration and also to get a registered sale deed. During that period, the plaintiff has not come forward to pay balance of sale consideration and in the said circumstances, on 29.01.2007, the defendants have issued a legal notice. After receipt of the same, the Plaintiff has issued a false reply notice. The suit properties is worth about Rs.25,00,000/- and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the rival pleadings raised on either side, the trial court has framed necessary issues and after analysing both the oral and documentary evidence, has decreed the suit as prayed for. 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 Plaintiff is that on 16.12.2006, the suit sale agreement has come into existence between the Plaintiff and defendants, whereby, the defendants have agreed to sell the suit property for a sum of Rs.16,30,000/- and on the date of its execution, the Plaintiff has paid a sum of Rs.3,00,000/-. Further it is agreed by both parties that within a period of 30 days, the defendants are bound to produce original sale deeds and encumbrance certificates and during second week of January 2007, the

Plaintiff has approached the defendants for getting original documents and encumbrance certificates, but the defendants have not produced the same. On 29.01.2007, the defendants have issued a vexatious legal notice and the same has been properly replied by way of giving a notice dated 05.02.2007. The Plaintiff has always been ready and willing to perform his part of the contract and under the said circumstances, the present suit has been instituted for getting the relief sought therein.

7. Per contra, it is contended on the side of the defendants that in the suit sale agreement, 30 days time has been fixed for paying balance of sale consideration and to get a registered sale deed. But during that period, the plaintiff has not shown any interest in paying balance of sale consideration and therefore, the defendants have chosen to issue a legal notice dated 29.01.2007 and even after receipt of the same, the Plaintiff has not shown his readiness and willingness and therefore, the relief sought in the present suit cannot be granted and altogether, the present suit deserves to be dismissed.

8. The trial court, after considering the rival evidence available on record has decreed the suit as prayed for.

9. On the basis of the divergent contentions put forth on either side, the Court has to analyse the following factual and legal points:-

(1) Whether the Plaintiff has shown his readiness and willingness from inception of suit sale agreement dated 16.12.2006 ?

(2) Whether the Plaintiff is entitled to get equitable relief of specific performance ?

10. The learned counsel appearing for the appellants/defendants has repeatedly contended to the effect that the suit sale agreement has been marked as Ex.A.1. The legal notice issued by the defendants on 29.01.2007 has been marked as Ex.A.3 and the reply notice dated 05.02.2007 has been marked as Ex.A.2. In Ex.A.1, period of 30 days has been fixed for paying balance of sale consideration and to get a registered sale deed. Within that period, the plaintiff has not shown any interest in paying balance of sale consideration and therefore, Ex.A.3 has been given whereby, the defendants have cancelled the suit sale agreement. Since the Plaintiff has not shown his readiness and willingness to perform his part of the contract, equitable relief of specific performance cannot be granted and the trial court, without considering the available evidence on record properly, has erroneously decreed the suit and therefore, the judgment and decree passed by the trial court is liable to

be set aside.

11. The learned counsel appearing for the respondent/plaintiff has sparingly contended to the effect that in Ex.A.1, 30 days time has been fixed for paying balance of sale consideration and also to get a registered sale deed. Further in Ex.A.1, it is recited to the effect that within that period, the defendants are bound to give title deeds and encumbrance certificates and during second week of January 2007, the Plaintiff has approached them and asked original documents and encumbrance certificates, but they failed to give the same. The Plaintiff has always been ready and willing to perform his part of contract and the trial court, after considering the overall evidence available on record, has rightly decreed the suit and the judgment and decree passed by the trial court do not require any interference.

12. For considering the rival submissions made on either side, the court has to meticulously analyse the recitals found in Ex.A.1. It is an admitted fact that in Ex.A.1, 30 days time has been fixed for paying balance of sale consideration and also to get a registered sale deed. Further in Ex.A.1, it is recited to the effect that during that period, the defendants are bound to give original documents of title and encumbrance certificates.

13. The specific case of the Plaintiff is that even though the Plaintiff has always been ready and willing to perform his part of contract and even during the second week of January 2007, the Plaintiff has approached the defendants, they failed to give the documents mentioned in Ex.A.1.

14. On the side of the Plaintiff, the Plaintiff has been examined as P.W.1 and his specific evidence is that during second week of January 2007, he approached the defendants. But the defendants have failed to give original documents of title and encumbrance certificates. At this juncture, it would be more useful to look into the evidence given by D.W.1. During the course of cross examination, D.W.1 has clearly admitted to the effect that original documents of title and encumbrance certificates have not been given to the plaintiff.

15. As mentioned supra, in Ex.A.1, it is clearly recited to the effect during the period of 30 days, the defendants are bound to give original documents of title and also encumbrance certificates. Since the defendants have failed to give those documents mentioned in Ex.A.1 to the Plaintiff and since the Plaintiff during second week of January 2007, approached the defendants for getting those documents, the court can easily discern that in pursuance of terms of Ex.A.1, the Plaintiff has

shown his readiness and willingness to perform his part of the contract and further on 29.01.2007, the defendants have issued a legal notice, whereby no mention has been made with regard to further recitals mentioned in Ex.A.1. Further Ex.A.3 is nothing but a vexatious notice and the same has been given as if the defendants have always shown their readiness and willingness. After receipt of Ex.A.3, the Plaintiff has given Ex.A.2, reply notice suitably. Therefore, viewing from any angle, the defence taken by the defendants cannot be accepted.

16. The learned counsel appearing for the appellants/defendants has relied upon the decision reported in (2013) 15 SCC 27 [I.S.Sikandar (Dead) by LRS. Vs. K.Subramani and Others], wherein, the Honourable Supreme Court has held that in a suit for specific performance if the Plaintiff has failed to perform his part of the contract and the same has been terminated at the instance of the defendant, relief of declaration with regard to termination of contract is very much essential.

17. In the instant case, as pointed out earlier, there is no failure on the part of the Plaintiff to perform his part of the contract. But on the contrary, the defendants, without following the conditions mentioned in Ex.A.1, has chosen to issue a feigned legal notice dated 29.01.2007. Since the legal notice itself is nothing but frivolous and since the Plaintiff has always shown his readiness and willingness to perform his part of the contract, the decision relied upon by the defendants cannot be followed in the present case.

18. It has already been discussed in detail that from inception of Ex.A.1, the Plaintiff has shown his readiness and willingness to perform his part of the contract. It is not an exaggeration to say that there is no mistake nor failure on the part of the Plaintiff and in the said circumstances, the Plaintiff is entitled to get equitable relief of specific performance.

19. The trial court, after evaluating the available evidence on record has rightly decreed the suit.

20. In view of the discussions made earlier, this court has not found any error nor illegality in the judgment and decree passed by the trial court and therefore, this appeal suit deserves to be dismissed.

In fine, this Appeal Suit is dismissed with costs. The judgment and decree dated 06.09.2011, passed in O.S.No.7 of 2007, by the Principal District Court, Puducherry, are confirmed.

Sd/-

Assistant Registrar(CS-vi)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Principal District Judge, Puducherry.

2.The Section Officer,
V.R.Section, High Court, Madras.(2 copies)

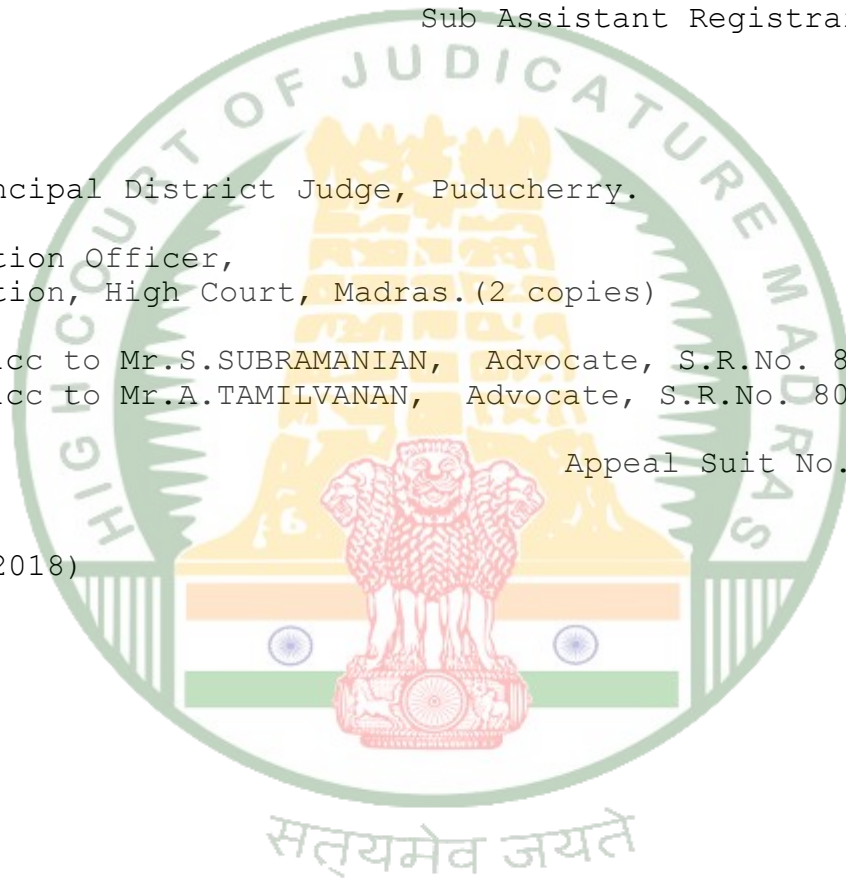
+1cc to Mr.S.SUBRAMANIAN, Advocate, S.R.No. 80315

+1cc to Mr.A.TAMILVANAN, Advocate, S.R.No. 80390

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