

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 15.02.2017
PRONOUNCED ON : 21.02.2017
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S. A.No.672 of 2011
and
M.P.No.1 of 2011

1. V.Rajmanohar
2. R.Kannan
3. S.Veerasekaran ...Appellants / Plaintiffs

Vs.
V.Mohamed Sadiq
Rep.by his Power of Attorney
Agent, Mr.K.Mohamed Ali ...Respondent/Defendant

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 22.02.2011 passed in A.S.No.11 of 2009 on the file of the District Court, Thiruvarur, reversing the judgment and decree dated 28.04.2009 passed in O.S.No.28 of 2008 on the file of the Sub Court, Mannargudi.

For Appellants : Mr.A.Sundaravadhanan
for M/s.P.T.Rama devi

For Respondent : Mr.P.Sesubalan Raja

JUDGMENT

In this second appeal, the plaintiffs have impugned the judgment and decree dated 22.02.2011 passed in A.S.No.11 of 2009 on the file of the District Court, Thiruvarur, reversing the judgment and decree dated 28.04.2009 passed in O.S.No.28 of 2008 on the file of the Sub Court, Mannargudi.

2. The second appeal has been admitted and the following substantial question of law is formulated for consideration in this second appeal;-

" Whether the judgment and decree of the first appellate court in dismissing the suit laid by the plaintiffs including the alternative prayer for refund of advance amount are based upon perverse findings and conclusions and misdirected against the evidence on record "

3. The suit has been laid by the plaintiffs for specific performance or in the alternative for the refund of the advance amount.

4. It is not in dispute that the plaintiffs and the defendant through his power of attorney agent had executed the sale agreement dated 08.05.2007, as regards the suit property for a sum of Rs.2,80,000/-. It could be seen that as per the said sale agreement marked as Ex.A1, the power of attorney agent of the defendant agreed to sell the suit property to the plaintiffs and accordingly, it is also found that the plaintiffs have paid a sum of Rs.35,000/- as advance towards the sale consideration as agreed to and it is also found that the parties have agreed that the remaining sale consideration of Rs.2,45,000/- should be paid by the plaintiffs on or before 31.08.2007 and it is also found that the defendant should measure the suit property individually to the plaintiffs and also prepare the necessary documents for the due execution of the sale deed and as regards the above fact of the specific time having been fixed between the parties concerned to complete the sale transaction i.e. on or before 31.08.2007, there is no issue.

5. Now, as regards the readiness and willingness on the part of the plaintiffs to complete the sale transaction, it is the case of the plaintiffs that they were ready from the inception and according to them, inasmuch as the defendant had not come forward to measure the suit property individually to the plaintiffs and on the other hand postponing the sale transaction on some pretext or the other with a view to sell the suit property at a higher price, it is pleaded by the plaintiffs that the plaintiffs left with no other alternative issued a notice dated 24.06.2008 to the defendant calling upon him to receive the balance sale consideration and complete the sale transaction. However, it is stated that to the above said notice, the defendant sent a reply containing false allegations and hence, according to the plaintiffs, they have been necessitated to lay the suit for specific performance.

6. The case of the plaintiffs that they were always ready and willing to perform their part of the contract as per Ex.A1 has been vehemently disputed by the defendant. It is stated that the plaintiffs have not been ready and willing to pay the balance sale consideration within the time stipulated in the sale agreement and it is also stated that the time is essence of the contract and therefore, it is the case of the defendant that the sale agreement got rescinded and therefore, the plaintiffs are not entitled to seek the relief of specific performance. It is also pleaded by the defendant that the suit property, as

such, had been measured for the plaintiffs and the parties have agreed to purchase the undivided extent in the suit survey number and it is also pleaded that the copies of the original deeds pertaining to the suit property have already been furnished to the plaintiffs and only after the plaintiffs having become satisfied with the title of the suit property, they had entered into the sale transaction with the defendant and therefore, it is contended that only on the failure to the plaintiffs to perform their part of the contract, as per the sale agreement, the transaction could not be gone through and hence, the plaintiffs' suit should be rejected.

7. As seen from the evidence adduced in the matter, it is clearly found that the parties have stipulated that time should be the essence of the agreement and accordingly, had fixed 31.08.2007 as the time limit for completing the sale transaction. It has to be, therefore, seen whether the plaintiffs have been ready and willing to perform their part of the contract as per Ex.A1 for obtaining the discretionary relief of specific performance. It is the specific case of the defendant that the property had been measured and even the xerox copies of the documents had already been furnished to the plaintiffs and therefore, the case of the plaintiffs that on the failure of the defendant to measure the suit property, the sale transaction could not be proceeded with further, as such, is false. Even though the plaintiffs have pleaded that they were ready to perform their part of the contract right from the date of sale agreement i.e. 08.05.2007, it could be seen that, as regards the above case, there is nil material. It has not been established by the plaintiffs as to on what dates and under what mode and in whose presence and to whom they had expressed their readiness and willingness to perform their part of the contract. It could therefore be seen that the plaintiffs without any basis have put forth a case that they were always ready and willing to perform their part of the contract from the inception. As regards the above case of the plaintiffs, we have only the interested testimony of the first plaintiff, who has been examined as PW1. The plaintiffs' case is that they had issued the legal notice dated 24.06.2008 marked as Ex.A2 on seeing that the defendant is delaying the completion of the sale transaction and therefore, it could be seen that only after the expiry of the time limit stipulated under Ex.A1, the plaintiffs have issued the legal notice marked as Ex.A2. To the same, as adverted to earlier, the defendant has sent a reply which has been marked as Ex.A3. In Ex.A2, there has been no reference about the failure of the defendant to measure the suit property individually to the plaintiffs as put fourth in the plaint. Therefore, it could be seen that the plaintiffs case that only on account of the failure of the defendant to measure the suit property individually the sale transaction could not be

completed, as such, cannot be accepted in any manner.

8. It is also found from the evidence of PW1, as also observed by the first appellate court, that he has claimed to have met the defendant several times even before the time limit stipulated under Ex.A1 to complete the sale transaction and the defendant responded by demanding higher sale price and therefore, if according to the plaintiffs, as spoken through PW1, the plaintiffs were aware of the attitude of the defendant in demanding higher price for the suit property subsequent to A1 and also the plaintiffs were made aware of the said stand of the defendant prior to the time stipulated under Ex.A1, it does not stand to reason as to why the plaintiffs should wait even thereafter for taking further action as per the sale agreement. On the other hand, it is found that much after the time limit under Ex.A1 expired i.e. 31.08.2007, the plaintiffs have issued the legal notice only on 24.06.2008. This itself would go to show that the plaintiffs have come forward with inconsistent pleas as regards their case of readiness and willingness. It is also found that the plaintiffs, even after the receipt of the reply notice issued by the defendant dated 04.07.2008, has chosen to lay the suit only on 20.08.2008. Therefore, from the conduct of the plaintiffs and also, the inconsistent pleas put forth by them, it could be gathered that the plaintiffs have come forward with a false case alleging readiness and willingness on their part in the completion of the sale transaction.

9. In the light of the above position, as rightly found by the first appellate court, the plaintiffs' endeavour to issue paper publication etc., would not, in any manner, be adequate to sustain the plaintiffs' case with reference to the readiness and willingness on their part. The balance sale consideration is Rs.2, 45,000/- and that had to be paid on or before 31.08.2007. It has not been established by the plaintiffs that they were having adequate means to pay the said sum before the stipulated period. In this connection, the first appellate court has rightly analysed the evidence projected by the plaintiffs as regards the documents marked as Ex.A10 to 13 and found that those documents, are not, in any manner, useful to hold that the plaintiffs are having sufficient capacity to pay the balance amount of Rs.2,45,000/- and the reasonings and conclusions arrived at, by the first appellate court for not placing reliance upon Ex.A10 to 13 do not call for any interference by this Court. It is therefore evident that the plaintiffs were not possessed with adequate means to complete the sale transaction before the stipulated period.

10. As rightly found by the first appellate court, inasmuch as the plaintiffs were not ready to proceed with the sale transaction as per Ex.A1 and did not have the means to pay the

amount, it is found that the plaintiffs, thereafter, have come forward with the case that only on the failure of the defendant, the sale transaction could not be completed. However, considering the above facts, it is found that the defendant is not at fault in getting the sale transaction completed. On the other hand, it is found that only on the failure of the plaintiffs to perform their part of the contract, within the stipulated period, the sale transaction could not be completed and in such view of the matter, the first appellate court has rightly held that the plaintiffs have miserably failed to establish their readiness and willingness to complete the sale transaction. No ground is made out to interfere with the above reasonings and conclusions of the first appellate court. The principles of law adumbrated in the decision reported in (1996) 4 Supreme Court Cases 526 (His Holiness Acharya Swami Ganesh Dassji V. Sita Ram Thapar) relied upon by the defendant's counsel are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

11. The plaintiffs counsel lastly contended that the first appellate court has failed to consider the entitlement of the plaintiffs to get the refund of the advance amount paid by them, particularly, when they have also pleaded for the alternative relief. As regards the same, it is found that the plaintiffs have sought for the alternative relief as regards the refund of the advance amount and it is fairly admitted by the defendant's counsel that the plaintiffs are entitled to get back the amount paid as advance under the sale agreement. It is therefore found that the first appellate court has erred in not granting the alternative relief sought for by the plaintiffs and to the above limited extent alone, the judgment and decree of the first appellate court requires to be modified.

12. In the light of the above discussions, it is found that the first appellate court has given proper reasonings and conclusions based upon the proper appreciation of the evidence on record in declining the relief of specific performance sought for by the plaintiffs and it is found that the first appellate court has erred in declining the relief of alternative prayer sought for by the plaintiffs. Accordingly, the substantial question of law is answered.

The Judgment and decree dated 22.02.2011 passed in A.S.No.11 of 2008 on the file of the District Court, Thiruvavur declining the relief of specific performance to the plaintiffs are confirmed, however, the plaintiffs are granted the relief of the refund of the advance amount with interest at 12% per annum from the date of sale agreement till the date of decree of the trial court and with subsequent interest at 6% per annum till the date of realization. Accordingly, the second appeal is partly

allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms

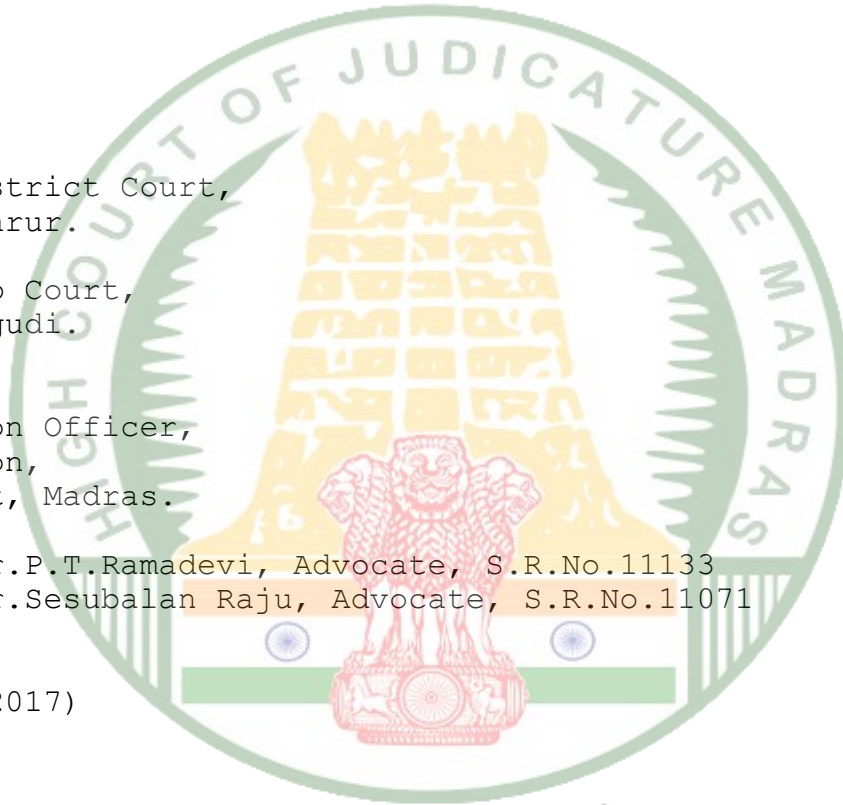
To

1. The District Court,
Thiruvavarur.
2. The Sub Court,
Mannargudi.

Copy to:
The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.P.T.Ramadevi, Advocate, S.R.No.11133
+1cc to Mr.Sesubalan Raju, Advocate, S.R.No.11071

BR(CO)
Rs (20/03/2017)



सत्यमेव जयते

Pre-delivery Judgment in
S. A.No.672 of 2011
and
M.P.No.1 of 2011

WEB COPY