

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.957 of 2008

R.Jothi

..Appellant/Defendant

vs.

N.Neelavathi

..Respondent/Plaintiff

This appeal is filed under Section 96 of C.P.C. against the judgement and decree passed by the learned District Judge cum Additional District Judge (Fast Track Court No.II) Cuddalore in O.S.No.10/2005 dated 19.09.2007.

For Appellants : Ms.P.Sreelekha
for Mr.D.Rajagopal

For Respondent : Mr.R.Gururaj

J U D G E M E N T

The defendant who has suffered a decree for specific performance is the appellant.

2. According to the plaintiff, the defendant agreed to sell the suit property for a consideration of Rs.7,50,000/- and a registered agreement for sale was entered into between the parties on 02.05.2003. On the date of the said agreement, the plaintiff has paid advance of Rs.7,00,000/- and three months' time was fixed for performance. Since defendant did not come forward to execute the sale deed, despite oral requests, the plaintiff has come forward with the present suit.

3. The suit was filed on 26.07.2003 i.e. within three months of the agreement. The defendant resisted the suit contending that the agreement came to be executed under certain invalidating circumstances. According to her, her husband Rajkumar and one Kalidasan were doing business of TVS two wheeler service center at Vadalur. Her husband had borrowed money from the husband of the plaintiff namely Mr.Sivasubramanian. Towards the said borrowing, he was liable to pay a sum of Rs.10,00,000/- to the plaintiff's husband. Under those circumstances, the plaintiff who happens to be the

daughter of a former member of the Legislative Assembly, using her influence forced the plaintiff to sign in the suit agreement and also got it registered. On consideration of the above pleadings, the learned Trial Judge, Additional District Court (Fast Track Court No.2), Cuddalore framed the following issues:

1) Whether the registered agreement entered into between the plaintiff and defendants to the suit properties is true and valid in law?

2) Whether the plaintiff was ready and willing to perform her part of the contract?

3) Whether the plaintiff is entitled to a decree for specific performance?

4) To what other relief the plaintiff is entitled to?

4. The plaintiff examined herself as PW1 and one Dhanusu, who is the scribe of the agreement dated 02.05.2003 marked as Ex.A1, was examined as PW2. On the side of the defendants, the defendant's husband was examined as DW1 and the defendant herself was examined as DW2. The notice issued by the counsel for the husband of the plaintiff was marked as Ex.B1.

5. I have heard Ms.Sreelekha, learned counsel representing Mr.D.Rajagopal, the learned counsel for the appellant and Mr.R.Gururaj, learned counsel appearing for the respondent.

6. The following points emerge for determination in the appeal.

1. Whether the defendant has proved that the sale agreement Ex.A1 came into existence under certain invalidating circumstances as alleged by her?

2. Whether the plaintiff was ready and willing to perform her part of the contract?

7. Ms.Sreelekha, learned counsel appearing for the appellant took me through the oral evidence as well as the contents of Ex.B1. Pointing out that the claim of the defendant that there were financial transactions between the husband of the plaintiff and her husband has been established. The learned counsel would contend that on that ground alone her case that the sale agreement came into existence under threat and coercion should be presumed.

8. On the other hand, Mr.R.Gururaj, learned counsel appearing for the respondent would contend that there were financial transactions between the husband of the plaintiff and

her husband prior to the suit agreement and in fact a notice demanding payment of Rs.10,00,000/- was issued by the husband of the plaintiff to the husband of the defendant only after execution of the agreement. As such there is no basis for the claim that the agreement was obtained by coercion and undue influence.

9. Two attestors of the agreement are husband of the plaintiff and the husband of the defendant. Therefore, the plaintiff had examined the Scribe of the document, who has deposed that the agreement came into existence under normal circumstances and there was no coercion as claimed by the defendant. The agreement is a registered document. There is a presumption under Section 60 (2) of the Registration Act that a certificate under Section 60(1) signed by the Registering Officer shall be admissible for the purpose of proving that the document has been duly registered in the manner provided under the Act, and the facts mentioned in the endorsements referred to in Section 59 have occurred as therein mentioned.

10. Some tangible and reliable evidence is required to dislodge the presumption created under Section 60(2) of the Registration Act. In the case on hand, apart from the evidence of defendant and her husband, there is no other material to show that there was coercion and force employed by the plaintiff or by her husband at the time of entering into the agreement.

11. The agreement was entered into on 02.05.2003. The suit came to be filed on 26.07.2003. Written statement was filed on 13.06.2005. Neither the defendant nor her husband chose to deny the validity of the suit agreement, prior to the filing of the present suit. They have neither lodged a compliant nor issued any notice to the plaintiff claiming that the suit agreement has been extracted from the plaintiff by coercion or undue influence.

12. In the above circumstances, I am of the opinion that the defendant has not proved that the sale agreement was brought about by force or coercion and the same is true and valid. Point No.1 is answered against the defendant. Point No.2.

13. It is contended by the learned counsel for the appellant that the plaintiff was not ready and willing to perform her part of the contract. The learned counsel would rely upon the judgement of this Court in K.M.Rajendran vs. Arul Prakasam and another reported in 1998 (III) CTC 25. Inviting my attention to the observation made in paragraph 23, the learned counsel would contend that the plaintiff had not proved that she was ready and willing to perform her part of the contract.

14. In the case on hand, it is seen that the agreement is dated 02.05.2003. The period of three months was fixed for performance of the agreement. The suit came to be filed on 26.07.2003 i.e. within the period fixed under the agreement. The readiness and willingness of the plaintiff was not seriously questioned. Balance sale consideration payable under the agreement is only Rs.50,000/-. The plaintiff has deposed that she is ready and willing to perform her contract.

15. I conclude that the plaintiff was ready and willing to perform her part of the contract, since nothing has been elicited in cross-examination in order to discredit her testimony regarding readiness and willingness. Point No.2 is also answered against the defendant.

16. Considering the above, this appeal is dismissed confirming the judgement and decree passed by the learned Additional District Judge (Fast Track Court No.II) Cuddalore in O.S.No.10/2005 dated 19.09.2007. However, there will be no order as to costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vk
To

1. District Judge cum Additional District Judge
(Fast Track Court No.II) Cuddalore.
 2. The Section Officer, VR Section, High Court, Madras.
- + 1 cc to Mr.D. Rajagopal, Advocate Sr.7040

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