

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.11.2017

PRONOUNCED ON: 24 .11.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.1517 of 2001

Gnanasekaran

... Appellant/Defendant

Vs.

Gurumurthy

.... Respondent/Plaintiff

Prayer:- Second Appeal is filed under Section 100 of C.P.C., against the judgment and Decree dated 22.03.2000 made in A.S.No.65 of 1999 on the file of the Principal Subordinate Court, Mayiladuthurai reversing the judgment and decree dated 30-07-1999 made in O.S.No.137 of 1996 on the file of the Additional District Munsif Court, Mayiladuthurai.

For Appellant : Mr.A.Muthukumar

For Respondent: Mr.S.Sounthar

J U D G M E N T

In this second appeal, the judgment and Decree dated 22.03.2000 made in A.S.No.65 of 1999 on the file of the Principal Subordinate Court, Mayiladuthurai reversing the judgment and decree dated 30-07-1999 made in O.S.No.137 of 1996 on the file of the Additional District Munsif Court, Mayiladuthurai, is being impugned.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for specific performance.

4. The case of the plaintiff, in brief, is that the property described in 'A' Schedule is the last item of the properties described in 'B' Schedule and the 'A' Schedule property is the suit property, which was owned by Renganayaki Ammal and she had leased out the same along with the other properties to the father of the defendant, namely, Muthu Padaychi and he was cultivating the same as a cultivating tenant and as Muthu Padayachi had become obliged to the co-operative society, the Co-operative society initiated proceedings against him and at that juncture, Muthu Padayachi took a loan for a sum

of Rs.300/- from the plaintiff and put him in possession of suit property and after his death, the defendant, who is his son, continued the above said arrangement and accordingly, the plaintiff continued to cultivate the suit property and in the year 1990, the defendant expressed his desire to purchase the suit property as well as the other properties of Renganayaki and as he was in need of money, for the same, for paying an advance amount to Renganayaki, he had sought the assistance and help of the plaintiff with the assurance that he would get the suit property conveyed in the name of the plaintiff himself by Renganayagi and the plaintiff also agreed to the above said course and accordingly, the plaintiff and the defendant entered into an agreement of sale in respect of the suit property on 07.05.1990, whereunder, the parties had agreed that the sale price should be at the rate of Rs.110/- per kuli i.e. at Rs.16,500/- and the defendant had taken an advance amount of Rs.12,000/- from the plaintiff on the date of the agreement itself and it is mentioned and agreed to between the parties that the above said advance is taken only for the purpose of paying as advance amount to Ranganayaki, the owner of the suit property and the other properties and it is also agreed between the parties that on payment of the balance sale consideration of Rs.4,500/-, the defendant would ensure registration of the suit property in the name of the plaintiff on his own responsibility and it is also stated that the suit property had been entrusted in the possession of the plaintiff pursuant to the sale agreement and thus, the plaintiff had come to be in possession of the suit property pursuant to the sale agreement and though the plaintiff was always ready and willing to pay the balance sale consideration and get the sale deed executed, the defendant could not make up the balance sale consideration payable by him to Renganayaki in respect of the other properties till August, 1992 and in August, 1992, the defendant informed the plaintiff that he had made ready the balance amount for completing the sale transaction with Ranganayaki and accordingly, informed the plaintiff to get the sale deed effected in respect of the suit property either in his name or in the name of his nominee directly from Renganayaki and on the above said understanding, the plaintiff had obtained the sale deed in respect of the suit property in the name of his brother Natarajan and despite all the preliminaries above stated being completed, the defendant suddenly demanded higher price from the plaintiff for completing the sale transaction and as the same has not been accepted by the plaintiff and as the plaintiff found that the defendant had taken the suit property also as one of the item of the properties purchased from Renganayaki in his favour on 14.08.1992 and the sale transaction had come to be registered on 07.12.1992, according to the plaintiff, inasmuch as he has been always ready and willing to perform his part of the contract and as the defendant has now become the full owner of the suit

property and thus according to him, the defendant is liable to convey the sale deed in respect of the suit property and as the defendant had not acted in terms of the sale agreement, it is stated that the plaintiff had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that no doubt, the suit property originally belonged to Renganayaki and the same had been cultivated by his father Muthu Padayachi as the cultivating tenant and the defendant has denied the proceedings initiated against his father by the Co-operative Society and further, admitted that the purchase of the entire 'B' schedule properties in his name, but, for the same, according to the defendant, he did not approach the plaintiff for any financial help and also did not agree to give a conveyance in respect of the suit property in the name of the plaintiff directly from the land owner and no such agreement took place between the parties at no point of time. On the other hand, according to the defendant, he has been in possession of the suit property from the days of his father and he had not entered into any sale agreement with the plaintiff on 07.05.1990 as put forth in the plaint and it is false to state that the defendant had received a sum of Rs.12,000/- as advance out of the sale price fixed at Rs.16,500/- and on the other hand, according to the defendant, he wanted to usufructuary mortgage the suit property to the plaintiff and towards the same, he obtained a sum of Rs.12,000/- as loan from the plaintiff and as the defendant was asked to sign blank stamp paper by the plaintiff representing that he would fill up the same subsequently, believing the representation of the plaintiff, the defendant signed the blank stamp paper and the defendant now understood that the plaintiff had maneuvered and created the sale agreement and there is no agreement between the parties to convey the suit property in favour of the plaintiff by the defendant and the defendant had purchased the 'B' schedule properties inclusive of the suit property from the original owner Renganayaki and it is false to state that the plaintiff has been always ready and willing to perform his part of the contract and complete the sale transaction. It is false to state that the defendant had refused to receive the balance sale consideration and execute the conveyance in favour of the plaintiff. There was no representation on the part of the defendant that he had instructed the plaintiff to be ready with the completion of the sale transaction from the owner in respect of the suit property. The plaintiff had made use of the stamp paper purchased in the name of his brother Natarajan and laid the suit falsely. The defendant is prepared to pay the sum of Rs.12,000/- received from the plaintiff under the usufructuray mortgage agreement and the plaintiff is bound to surrender the possession of the suit property back to the defendant and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 and 2 were examined and Exs. A1 to A3 were marked. On the side of the defendant's, DWs1 and 2 were examined and Ex.B1 has been marked.

7. The trial Court, on an appreciation of the materials placed and the submissions made, dismissed the suit laid by the plaintiff. On appeal, the first appellate Court, considering the materials placed, accepted the plaintiff's case and thereby, allowing the appeal preferred by the plaintiff, decreed the suit in favour of the plaintiff for the relief of specific performance. Challenging the same, the defendant has preferred the present second appeal.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (a) When Ex.A1 is only in the nature of an agreement, in and by which, the defendant undertook to have the property mentioned in that agreement conveyed to the plaintiff by the original owner, can that agreement be enforced as an agreement of sale against the defendant himself though the defendant might have become of the owner of the property by subsequent purchase?

(b) What is the legal remedy available to the plaintiff on the basis of Ex.A1, namely, whether the said agreement can be enforced as an agreement of sale or a remedy of damages alone is available to the plaintiff?"

9. It is not in dispute that the suit property along with other properties described in the "B" schedule originally belonged to Renganayaki. It is also found that the plaintiff's father had taken on lease the suit property from Renganayaki Ammal and cultivating the same, as a cultivating tenant. It is further found that the defendant had purchased the suit property along with the other properties from Renganayaki on 14.08.1992 and this could be evidenced from the copy of the sale deed marked as Ex.A3/B1. Now, according to the plaintiff, as the defendant had expressed his desire to purchase the properties of Renganayaki and as he had no amount to pay Renganayaki in connection with the same, according to the plaintiff, the defendant has sought his assistance and also promised that the plaintiff would be conveyed the suit property and accordingly, believing his representation, it is the case of the plaintiff that he and the defendant entered into a sale agreement in respect of the suit property on 07.05.1990 agreeing the sale

price at Rs.16,500/- and accordingly, it is stated that the plaintiff had paid a sum of Rs.12,000/- to the defendant as advance and the remaining sale consideration has been agreed to be paid by the plaintiff and on such payment, the defendant should convey the suit property in favour of the plaintiff. The sale agreement entered into between the parties has come to be marked as Ex.A1. The defendant has not disputed his signature found in Ex.A1. It is further found that the defendant has not disputed the receipt of the sum of Rs.12,000/- from the plaintiff pursuant to Ex.A1. Now, according to the defendant, he had usufructuarily mortgaged the suit property in favour of the plaintiff and accordingly, received a sum of Rs.12,000/- from the plaintiff in respect of the said transaction and put the plaintiff in possession of the suit property and at that point of time, as the plaintiff insisted him to put up his signature in blank stamp paper, the defendant believing his version, put his signature in blank stamp paper and therefore, according to the defendant, the plaintiff making use of the same had created the sale agreement, as if the defendant had agreed to convey the suit property in his favour for a sum of Rs.16,500/-. Thus, according to the defendant, there is no consensus ad idem between the parties for sale of the suit property in favour of the plaintiff by the defendant for a sum of Rs.16,500/- and hence, Ex.A1 cannot be determined as a sale agreement validly entered into between the parties and the same is only the document evidencing the transaction of usufructuary mortgage and in such view of the matter, according to the defendant, the plaintiff is not entitled to enforce the alleged sale agreement marked as Ex.A1 and that, the defendant is ready to pay the amount of Rs.12,000/- received from the plaintiff pursuant to the usufructuary mortgage arrangement and hence, the plaintiff should not be granted the relief of specific performance.

10. Inasmuch as the defendant has admitted his signature found in Ex.A1 and the receipt of the sum of Rs.12,000/- pursuant to the same, as rightly determined by the first appellate Court, it is for the defendant to establish that he had received the sum of Rs.12,000/- in respect of the usufructuary mortgage transaction as put forth by him and accordingly, only on account of the same, he had affixed his signature in Ex.A1. However, the recitals found in Ex.A1 do not confirm or support the case of the defendant. Still, the trial Court on the premise that the terms of the document marked as Ex.A1 failed to satisfy the requirements of a legal sale agreement, accordingly, did not accept the plaintiff's case. However, as rightly found by the first appellate Court, it is found that the trial Court has misled itself into holding that Ex.A1 is not a sale agreement. As found and wrongly determined by the trial Court, which cannot be accepted, the nomenclature of the document does not assume importance for determining the

true character of the document. In such view of the matter, the mere fact that Ex.A1 has not been specifically styled as a sale agreement by itself would not render the document as not being a sale agreement or being a document otherwise. Therefore, it is found that the absence of the words sale agreement in specific in Ex.A1 would not lead to the conclusion that Ex.A1 is not a sale agreement as such. On the other hand, a perusal of the contents of Ex.A1 in toto would go to show that it is only a sale agreement entered into between the parties in respect of the suit property agreeing to convey the property for a sale price of Rs.16,500/-. The trial Court has further disbelieved Ex.A1 on the footing that there is no specific time limit mentioned in the document for completing the sale transaction. It is found that Ex.A1 pertains to immovable property. Therefore, it is seen that the fixation of time limit is not essential as such for completing the sale transaction. Be that as it may, even if, no time limit in specific has been incorporated in Ex.A1 that by itself would not lead to the conclusion that it is not a sale transaction. On the other hand, as rightly held by the first appellate Court, even if no specific time has been fixed between the parties for completing the sale transaction as per law, the parties should engage themselves to complete the transaction contemplated under the document within a reasonable time. Therefore, it is found that the failure of the mentioning of a specific time limit for completing the transaction in Ex.A1 by itself would not lead to the conclusion that it is not a sale agreement.

11. Further, it is found that the trial Court has also proceeded to disbelieve Ex.A1 on the footing that on the date of the said document, the defendant was not the real owner of the suit property. No doubt, on the date of the sale agreement, admittedly, the defendant was not having a valid title for the suit property as such, but, the fact remains that the defendant was enjoying the suit property as the cultivating tenant from the real owner Renganayaki ammal at that point of time. Accordingly, it is found that as the defendant had expressed his desire to purchase the suit property as well as the other properties from Renganayaki ammal and also apprised the same to the plaintiff and sought his help with reference to the same for paying the amount to Renganayaki ammal with an assurance to the plaintiff that he would convey the suit property to the plaintiff and it is found that the plaintiff had favorably accepted to the same and accordingly, it is the case of the plaintiff that the parties had endeavoured to proceed with the sale agreement marked as Ex.A1. On a perusal of Ex.A1, it is found that necessary recitals with reference to the same are conspicuously mentioned in the document, accordingly, it is found that necessary recitals are incorporated in Ex.A1 reciting that the defendant had received a sum of Rs.12,000/-

from the plaintiff for the payment of the amount to Renganayaki for completing the sale transaction with her and also further it is seen that the parties had also agreed to fix the sale price as regards 'A' Schedule property at Rs.16,500/- fixing the above said rate at Rs.110/- per kuli and accordingly, it is seen that as the parties had endeavoured to go for a sale transaction in respect of the suit property, it is seen that they had fixed the sale price with reference to the same as such in the document. Now, it is seen that the admitted case of the parties pursuant to Ex.A3/B1 is that the defendant had acquired title to the suit property plus the other properties of Renganayaki. It is seen that subsequent to Ex.A1, the defendant had acquired a valid title to the suit property. By way Ex.A1, the defendant claiming to purchase the suit property plus the other properties from Renganayaki ammal, had ventured in to the said arrangement with the plaintiff for a sale transaction in respect of suit property and accordingly, it is seen that purporting to be the owner of the suit property, the defendant had entered into the sale agreement with the plaintiff under Ex.A1 and now, since he has become the title holder of the suit property subsequent thereto, it is seen that as rightly held by the first appellate Court, as per Section 43 of the Transfer of Property Act, it is found that, the plaintiff as such would be entitled to acquire the right of conveyance from the defendant under Ex.A1, inasmuch as the defendant had become the title holder of the suit property subsequent thereto. This right is also available to the plaintiff under Section 13 (1)(a) of The Specific Relief Act. Therefore, it could be seen that inasmuch as it is now not in dispute that the defendant has become a valid owner of the suit property during the transit of the sale agreement Ex.A1, it is seen that the plaintiff is entitled to enforce the sale agreement as such against the defendant. Therefore, the reasonings of the trial Court that Ex.A1 could not be a sale agreement as at that point of time, the defendant had no title to the suit property as such cannot be accepted and rightly discarded by the first appellate Court.

12. It is further seen that the trial Court has not accepted the plaintiff's case on the footing that the suit property has not been properly described in Ex.A1. No doubt, the suit property has not been described in a separate schedule by giving boundaries etc., However, it is found that the suit property has been described with the local land name as understood by the parties in the document and it is found further that the parties have agreed that it is only the suit property, which is referred to under the document as according to the plaintiff, only in respect of the suit property, the sale agreement has come to be executed under Ex.A1 and according to the defendant, only in respect of the suit property, he had agreed to enter into a usufructuary mortgage arrangement with

the plaintiff and accordingly, put his signature in the blank stamp paper i.e. Ex.A1 and the parties have thus not disputed that only considering the suit property, they have entered into the arrangement as put forth by them respectively. It is found that the trial Court has erred in holding that Ex.A1 could not be a sale transaction as the description of the suit property has not been clearly mentioned in the document.

13. That apart, as rightly held by the first appellate Court, when the defendant has admitted his signature in the document Ex.A1 and also the receipt of a sum of Rs.12,000/- under the said document, it is for the defendant to establish, at the inception, that the document Ex.A1 is an usufructuary mortgage arrangement as pleaded by him. However, the recitals found in Ex.A1 would not in any manner be held to be pointing to the same as an arrangement of usufructuary mortgage and therefore, it is seen that only on the understanding that the suit property should be conveyed, it is seen that the parties have entered into sale agreement under Ex.A1.

14. It is further found that the trial Court has non-suited the plaintiff on the footing that the sale agreement Ex.A1 has come to be incorporated in a document i.e stamp paper of the year 1988 and therefore, the parties would not have entered into such an arrangement in the year 1990 on the said document. However, as per the plaintiff's case, as the parties have agreed to enter into a sale agreement in respect of the suit property and as at that point of time, the stamp paper of the year 1988 was available to the plaintiff and accordingly, it is found that the parties had agreed to incorporate their arrangement in the said stamp paper/document and the above said fact cannot be taken as an exception as if the parties had not arrived at a settlement to enter into the sale transaction. Therefore, the above factor also would not belittle to the plaintiff's case claimed under Ex.A1.

15. In the light of the above discussions, as rightly found and determined by the first appellate Court, it is found that Ex.A1 is found to be a legal conveyance entered into between the parties with reference to the sale of the suit property and it has not been shown to be suffering from any other vices described under law for disbelieving the same and accordingly, it is seen that the first appellate Court has correctly held that Ex.A1 is only a sale agreement entered into between the parties and accordingly, the plaintiff is entitled to enforce the same on the payment of balance sale consideration of Rs.4,500/-.

16. It is further seen that the value of the suit property agreed to by the parties is on a reasonable basis and

considering the value of the properties in all given under Ex.A3/B1 and considering the value of the suit property mentioned in Ex.A1, as rightly put forth by the plaintiff's counsel, it is seen that the value fixed in Ex.A1 cannot be in any manner held to be on the lower side and on the other hand, it is found to be a reasonable price at that point of time. Therefore, it is seen that the parties have correctly fixed the sale price under Ex.A1.

17. It is however contended by the defendant's counsel that even assuming that Ex.A1 is a sale agreement, inasmuch as the plaintiff has not established his readiness and willingness to complete the sale transaction from the inception of the sale agreement and the said factor being essential to enable the plaintiff to claim the equitable remedy of specific performance, according to him, the first appellate Court has erred in accepting the plaintiff's case without holding that the plaintiff has been ready and willing to perform his part of the contract. On the other hand, as rightly contended by the plaintiff's counsel, it is found that the first appellate Court has also pointed out that aspect of the matter and after finding that the plaintiff has always been ready and willing to perform his part of the contract right from the inception, accordingly, held that he is entitled to obtain the equitable relief of specific performance. In this connection, it has to be seen that the plaintiff has to pay the balance sale consideration of Rs.4,500/- to the defendant for completing the sale transaction. Now, according to the plaintiff, as averred in the plaint also, he has been always ready and willing to pay the balance sale consideration for completing the sale transaction. Further, according to the plaintiff, inasmuch as the defendant had not been ready to complete the sale transaction with the real owner Renganayaki, his sale transaction could not be completed at the earliest, and only after the representation of the defendant that he is likely to conclude the sale transaction with Renganayaki ammal during August, 1992 and had accordingly directed the plaintiff to be ready with the balance sale amount for completing the sale transaction in respect of suit property, it is the case of the plaintiff that he had accordingly made ready the stamp paper for getting the conveyance in respect of the suit property in the name of his brother and to establish the above said fact, the plaintiff has also filled the stamp paper made ready by him for completing the sale transaction in the name of his brother Natarajan, which has come to be marked as Ex.A2. A perusal of Ex.A2 would go to show that, as pleaded by the plaintiff, he had made ready the stamp papers in respect of the suit property as if the same to be conveyed by Renganayaki ammal and this would only probabalise the case of the plaintiff that based on the above said representation of the defendant, he had made ready

the stamp papers for completing the sale transaction and this conduct of the plaintiff would go to show that he had been always ready and willing to part with the balance sale consideration right from the inception and only as the defendant was unable to complete the sale transaction with the previous owner Renganayaki ammal, it is found that the plaintiff could not complete the sale transaction at the earliest. Thereafter, it is seen that the defendant, instead of enabling the plaintiff to get the sale deed in respect of the suit property in the name of his brother Natarajan, had taken the sale deed in his name from Renganayaki ammal in respect of the properties inclusive of the suit property under Ex.A3/B1 and according to the plaintiff, as the defendant demanded higher price for completing the sale transaction and as the same had not been accepted by him, it is the case of the plaintiff that the defendant had purchased the suit property also in his name under Ex.A3/B1 from Renganayaki ammal forgetting to keep his assurance under Ex.A1. The facts discussed above would only go to show that the defendant, contrary to his assurance and promise made under Ex.A1, had taken the sale deed from the previous owner Renganayaki ammal in respect of the suit property also and accordingly, it is seen that the plaintiff, left with no other alternative, has been constrained to lay the suit for specific performance. It is thus found that as determined by the first appellate Court, as also seen from the facts and circumstances of the case, the plaintiff has been always ready and willing to perform his part of the contract and therefore, on the above ground, the plaintiff's case cannot be thrown out as put forth by the defendant's counsel. In this connection, the counsel for the plaintiff relied upon the decision reported in (1993) 1 Supreme Court Cases 519 (Chand Rani (Smt) (Dead) By Lrs. Vs. Kamal Rani (Smt) (Dead) By Lrs) for the proposition that in the case of sale of immovable property, time is never regarded as an essence of the contract and in fact, there is a presumption against time being the essence of the contract and accordingly, in the above said decision, it has been concluded that time is not the essence of the contract in the case of sale of immovable property and accordingly, it is contended that applying the above principle to the facts at hand, inasmuch as the plaintiff has laid the suit immediately on the completion of the sale transaction by the defendant with Renganayaki ammal and also, the plaintiff having established his readiness and willingness to complete the sale transaction right from the inception, when it is further seen that the time factor is not the essential sine qua non for completing the sale transaction in respect of the immovable property, it is seen that the first appellate Court was right in upholding the plaintiff's case and rightly granted the equitable relief of specific performance in favour of the plaintiff. The principles of law enunciated in the decision reported in CDJ 1990 MHC 160 (P.Lakshmi Ammal Vs.

S.Lakshmi Ammal and others) are also taken into consideration as applicable to the case at hand.

18. In the light of the above discussions, it is found that inasmuch as Ex.A1 is only an agreement of sale entered into between the parties, it is found that the same could be enforced against the defendant as he had become the title holder of the suit property subsequent thereto and it is therefore held that the plaintiff having exhibited his readiness and willingness to complete the sale transaction as required under law, the plaintiff is entitled to enforce the sale agreement and accordingly, the substantial questions of law formulated for consideration in this second appeal are answered.

19. In conclusion, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mfa/sms

To

- 1.The Principal Subordinate Judge,
Mayiladuthurai.
2. The Additional District Munsif,
Mayiladuthurai.

Copy To
The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.S.Sounthar, Advocate SR.No.83732
+1cc to Mr.A.MuthuKumar, Advocate SR.No.83787

S.A. No.1517 of 2001

VD(CO)
GN(13/02/2018)