



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2017

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.691 of 2014

and

M.P(MD)No.1 of 2014

P.Jesuraj

... Appellant/Appellant/Plaintiff

Vs.

1.R.Anantha Narayanan

2.P.A.Ramasubramanian

... Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 04.12.2013 made in A.S.No.12 of 2012 on the file of the Principal District Court, Tuticorin, confirming the Judgment and Decree dated 11.04.2012 made in O.S.No.126 of 2007 on the file of the Sub-Court, Tuticorin.

For Appellant : Mr.S.Kadarkarai

For Respondent 2 : Mr.A.R.M.Ramesh

For Respondent 1 : No Appearance

JUDGMENT

The above Second Appeal arises against the Judgment and Decree, dated 04.12.2013 passed in A.S.No.12 of 2012, on the file of the Principal District Court, Tuticorin, confirming the Judgment and Decree, dated 11.04.2012 passed in O.S.No.126 of 2007, on the file of the Sub-Court, Tuticorin.

2.Challenging the Judgment and Decree of the Courts below refusing to grant a decree for specific performance, the plaintiff has preferred the above Second Appeal.

3.The property mentioned in the plaint belonged to the first defendant. The second defendant is the father of the first defendant. The first defendant had executed a registered power deed in favour of the second defendant enabling the second defendant to sell the suit properties on his behalf. On the



strength of the power deed, the second defendant had entered into an agreement with the plaintiff on 11.08.2004 agreeing to sell the suit properties to the plaintiff. The conditions mentioned in the suit agreement are:-

i) The rate of Rs.21,000/- per acre was fixed and the time for completing the transaction should be on or before 15.09.2004. An advance of Rs.11,000/- was paid to the agreement.

ii) The second defendant had to obtain a patta pass-book in the name of the first defendant and also to measure the suit property before the date fixed.

iii) Both the parties had agreed on the above terms in the sale agreement, dated 11.08.2004.

4.The plaintiff had claimed that he had already been ready and willing to pay the balance of the sale consideration and he complained that the second defendant had failed to obtain patta pass-book in the name of the first defendant and also to measure the suit properties. Hence, a legal notice was issued on 28.07.2007 calling upon the second defendant to complete the sale transaction, as per agreement. Apprehending that the defendants were trying to alienate the suit properties to third parties, the plaintiff has also issued a public notice in Dinamalar Tamil Daily. Even thereafter, the defendants failed to perform their part of contract. Hence, the suit had been filed.

5.The second defendant had contested the suit by filing the written statement, which was adopted by the first defendant also.

6.The defendants have stated that for the notice issued by the plaintiff, dated 28.07.2007, they had properly replied on 30.07.2007, which was suppressed by the plaintiff. The second defendant has stated that he had received a sum of Rs.10,001/- as advance and the sale consideration was fixed at Rs.2,50,000/- as per the revised sale agreement. According to the defendants, time is essence of the contract and the plaintiff having failed to come forward to get the sale executed, cannot get any indulgence from the Court of law. The defendants also had the computer patta in their favour in the date of the execution of the agreement and the property was also measured, before the plaintiff decided to purchase the same. The plaintiff was never ready and willing to perform his part of the contract, he had only issued a notice before the expiry of three years period and prayed for dismissal of the suit.

7.Before the trial Court, on the side of the plaintiff, he himself has been examined as P.W.1 and Exs.A.1 to A.3 were marked and on the side of the defendants, D.W.1 to D.W.4 have been examined and Exs.B.1 to B.7 were marked and Ex.C.1 was also marked.



8. Based on the above facts and considering the documents and evidence, the Courts below have dismissed the suit filed by the plaintiff.

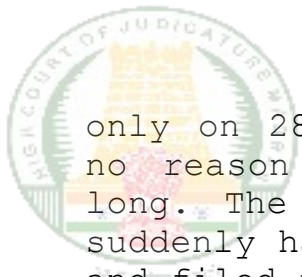
9. When the Second Appeal was filed challenging the same, only notice was ordered.

10. The question that would arise for consideration in the Second Appeal is whether the plaintiff is entitled for a decree as prayed for, based on Ex.A.1.

11. The execution of Ex.A.1 is admitted by both the parties. According to the defendants, the suit property is an ancestral property and the second defendant was acting as a power agent for the first defendant in the process of sale of the property. The time fixed under the sale agreement for the purpose of the contract is, on or before 15.09.2004. The plaintiff complains that though in Ex.A.1 it is specifically mentioned that the suit property has to be measured and that the first defendant has to get the patta pass-book in his name before the completion of the sale, however, it is contended by the learned counsel for the respondents/defendants that even as per the agreement, the suit properties are already sub-divided and having distinct survey numbers. The Field Map Book is also produced, as per Exs.B.1 and B.2 relating to the suit Survey Nos.422 and 423. A perusal of which would go to show that there is already a sub-division made and the suit Survey No.422/2A and other Survey No.423/1C are separate and distinct property. The measurements of all sides are mentioned for all the suit properties which fact has been specifically admitted by the plaintiff in the cross-examination. Therefore, the question of measuring the property does not arise in this case.

12. The other contention raised by the defendants is that Ex.B.3 is the patta standing in the name of the second defendant. Ex.B.4 is another patta, dated 31.03.2010 which also stands in the name of the second defendant. Admittedly, the properties were joint family properties and they are standing in the name of the second defendant and patta is also in his name as evidenced by Exs.B.3 and B.4. The said two conditions of measuring the property and producing the patta pass-book are satisfied by the defendants. Even otherwise, these clauses are only formal clauses which are normally included in a sale agreement.

13. The plaintiff, who has to pay the balance of sale consideration and to show his readiness and willingness throughout the agreement period, ought to have come forward before the date fixed under Ex.A.1. Even presuming that the said two conditions are not satisfied by the defendants, the plaintiff could have called upon them by issuing a notice either before or after the expiry of the time fixed. But the plaintiff has issued a notice



only on 28.07.2007 almost 2-1/2 years later. There is absolutely no reason forthcoming from the plaintiff for keeping quite so long. The plaintiff, who had been in a lackadaisical attitude, suddenly had issued a notice just before the expiry of three years and filed the suit.

WEB COPY

14. It is the contention of the learned counsel for the appellant/plaintiff that there is an agreement only to obtain a patta pass-book and not the computer patta which was shown and available on the date of agreement.

15. In this regard, D.W.3 was examined. D.W.3 is the Junior Assistant in the Sub-Registrar Office, Pudukottai. D.W.3 has specifically stated that in the patta pass-book there will be an entry with respect to the extent of sale and no sale would be registered without the patta pass-book, even if the computer patta is sufficient for the purpose of registration. However, it is not the case of the plaintiff that the defendants did not have their patta in their favour. They did possess a computer patta even on the date of agreement and without even making an attempt to perform his part of contract by getting the sale registered, the plaintiff has been accusing the defendants of not producing the patta pass-book. Even from the evidence of D.W.3, it is clear that if it is for the purpose of registration even with the computer patta, the registration can be done. Thus, the measurements of the suit property and the patta for the same were very much available even on the date of execution of Ex.A.1. The plaintiff had paid only a meagre sum of Rs.11,000/- as advance. When there was a specific time fixed for the execution of sale deed, having failed to come forward to perform his part of contract, the plaintiff is not entitled to a decree for specific performance.

16. The learned counsel appearing for the appellant/plaintiff relied on a decision of the Apex Court in K.S.Vidyanadam and others Vs. Vairavan reported in (1997) 3 SCC, for the purpose of limitation. As per the said decision, even though time is not the essence of contract of sale of immovable property and the suit can be filed within three years as provided under Article 54 of the Limitation Act, it should be performed within a reasonable time having regard to the terms of the contract prescribing a time limit and nature of the property. In fact, in the very same Judgment, it is stated that when the agreement specifies a period within which the plaintiff has to produce the stamp papers and be ready for the purpose of the contract, the total inaction for 2-1/2 years after initial payment of small amount as earnest money would be a circumstance which would weigh against exercise of discretion for grant of specific performance of the agreement in favour of the plaintiff.

<https://hcservices.ecourts.gov.in/hcservices/>

17. It is relevant to refer to the recent Judgment of the Honourable Supreme Court in Madina Begum and another Vs. Shiv



Murti Prasad Pandey and others reported in 2017 (4) CTC 99, which has considered the use of the expression "date" used in Article 54 of the schedule of the Limitation Act, 1963 is suggestive of a specific date in the calendar or not, wherein in paragraph No.19 it has been held as follows:-

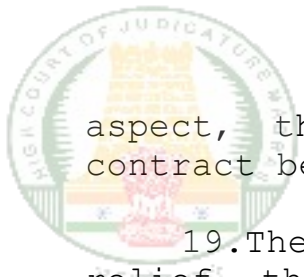
WEB COPY

"19.While answering this question on a reference made to the Three-Judge Bench, this Court considered the meaning of the word "date" and "fixed" appearing in Article 54. Upon such consideration, this Court held that the expression "date fixed for the performance" is a crystallized notion. When a date is fixed it means there is a definite date fixed for doing a particular act. Therefore, there is no question of finding out the intention from other circumstances. It was reiterated that the expression "date" is definitely suggestive of a specified date in the calendar. Paragraphs 11 & 12 of the report in this regard are of importance and they read as follows:

"11.The inevitable conclusion is that the expression "date fixed for the performance" is a crystallized notion. This is clear from the fact that the second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on "when the plaintiff has notice that performance is refused". Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances.

12.Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression "date" used in Article 54 of the Schedule of the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits."

18.Sofar as the present appeal is concerned, the agreement between the plaintiff and the defendants under Ex.A.1 specifies a sale on a date, namely 15.09.2004, as date fixed for the purpose of execution of sale. Therefore, the plaintiff ought to have noticed that performance is refused on the date fixed. Even in that



aspect, the plaintiff was not ready to perform his part of contract before the specific date fixed.

19. The relief of specific performance being an equitable relief, the plaintiff should be ready and willing to perform his part of the contract throughout the agreement period. More so, when a specific date is fixed, the time becomes the essence of contract. Having failed to prove the readiness and willingness, the Courts below also have declined to grant the decree in favour of the plaintiff. There is no error warranting any interference in the absence of any question of law arising in that regard.

20. Accordingly, the Second Appeal fails and the same is dismissed confirming the Judgment and Decree of the Courts below. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge,
Thoothukudi.
2. The Sub Judge,
Thoothukudi.

+1cc to M/S. S.KADARKARAI, Advocate, SR.No.71768.

S.A (MD) No.691 of 2014

10.08.2017

ps

SDS/SV/SAR 2/31.08.2017/6P/4C