

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

A.S.No.1118 of 2015
and C.M.P.No.15166 of 2016
and M.P.No.1 of 2015

P.Chandrasekaran .. Appellant / 1st Defendant

Vs.

1. V.Annamalai Respondent / Plaintiff

2. The Director
Cooperative Audit Department
No.5, Kamarajar Salai,
Slum Clearance Board Complex,
Chepauk, Chennai - 600 005.
... Respondent / 2nd Defendant

Appeal Suit filed under Section 96 r/w Order 41 Rule 1 of
the Code of Civil Procedure against the Judgment and Decree,
dated 30.06.2015 passed in O.S.No.299 of 2009 on the file of
the Principal District Court, Kancheepuram @ Chengalpet.

For Appellant : Mr.S.Parthasarathy, Senior counsel
for Mr.S.Udhayakumar

For Respondent : Mr.V.Vijay Shankar for R1
No Appearance for R2

JUDGMENT

(Judgment of the Court was delivered by P.KALAIYARASAN, J)

This Appeal Suit is directed against the Judgment and
Decree of the Principal District Court, Chengalpet, dated
30.06.2015 in O.S.No.299 of 2009, granting the relief of
specific performance and permanent injunction at the instance
of the first defendant as appellant.

2. The plaint averments are as follows :

(i) The plaintiff entered into an agreement of sale of
the suit property with the first defendant on 09.07.2006 for a
sale consideration of Rs.16,00,000/- and the first defendant
received an advance of Rs.3,00,000/-. Three months time was
fixed for the completion of sale transaction. The first
defendant agreed to obtain necessary permission from the
Government for selling his property as he is a Government
employee and to produce the title deed and encumbrance

certificate within 15 days from the date of sale agreement. But the first defendant had not complied with the above condition in spite of repeated request resulting to issuance of legal notice on 02.10.2006 by the plaintiff.

(ii) The plaintiff was ready and willing to pay the balance sale consideration and complete the sale transaction. The first defendant issued a reply containing false averments. When the plaintiff wrote a letter to the Government on 12.10.2006 seeking particulars as to whether permission was given to the first defendant for sale of the property, the employer replied on 16.10.2006 stating that the first defendant had not made any application seeking permission.

(iii) The plaintiff on his verification of his bank account found that Rs.3,00,000/- has been credited in his account on 31.07.2007 by the first defendant. As instructed by him the said amount was returned to the first defendant. The plaintiff also lodged police complaint against the first defendant. The first defendant is making all arrangements to sell the property to third person. Therefore the plaintiff has come forward with the present suit.

3. The first defendant averred in his written statement as follows :

(i) The plaintiff entered into an agreement of sale dated 09.07.2006 with the first defendant for purchasing the suit property for a sale consideration of Rs.16,00,000/- and paid an advance of Rs.3,00,000/-. Three months time limit was fixed subject to the necessary permission obtained from the Government to foreclose the loan and clear the mortgage. There is no privity of contract between the plaintiff and the second defendant and as such the suit suffers by misjoinder of party.

(ii) Since the plaintiff has not complied with the conditions of agreement of sale, the first defendant returned the advance amount of Rs.3,00,000/- to the plaintiff. The first defendant furnished all the copies of title deed pertaining to the suit property to the plaintiff as per the agreement of sale and the first defendant did not agree to produce the original title deeds. The first defendant applied for permission to foreclose the house building advance loan on 03.10.2005 well before the agreement of sale to clear the mortgage to pave the way for selling the suit property.

(iii) The plaintiff gave a false complaint before the employer of D1 and also with the police. The premature legal notice, dated 02.10.2006 did not show the readiness and willingness of the plaintiff to perform his part of the contract. Though the first defendant expressed his readiness and willingness to perform his part of contract, in his reply, dated 05.10.2006, the plaintiff did not come forward to complete his part of the transaction.

(iv) Only based on the instructions of the plaintiff, the first defendant returned the advance amount by depositing by way of Banker's cheque. The plaintiff has not paid the advance amount to the first defendant as alleged in the plaint. The first defendant decided to sell the suit property to meet out the educational expenses of his children and for hospital and surgical treatment expenses and the purpose was not solved due to the delay in completing the sale transaction by the plaintiff. The first defendant does not make any arrangement to sell the suit property to any third parties as alleged by the plaintiff. In fact the plaintiff has no sufficient funds to purchase the suit property at that time. On the complaint given to the employer, department initiated departmental action and on the complaint lodged with the police, case was registered and charge sheet was laid.

(v) In the meantime, the employer gave permission to foreclose the house building advance by letter dated 14.03.2007. In the above circumstances, the first defendant issued legal notice on 18.05.2007 calling upon the plaintiff to complete his part of the transactions as per agreement of sale, dated 09.07.2006 and the same was returned as refused. When the plaintiff closed all his doors of amicable settlement, the first defendant again issued legal notice, dated 29.05.2007 by cancelling the agreement of sale along with banker's cheque for Rs.3,00,000/- and the same was also returned as refused. Therefore the suit is to be dismissed.

4. The second defendant in his written statement states that he is the employer of the first defendant and he is unnecessary party to the suit, as the suit is between the plaintiff and first defendant over the issue of sale of immovable property. There is no cause of action to file the suit as against the second defendant.

5. The learned trial Judge framed necessary issues and after analysing both the oral and documentary evidence, decreed the suit as prayed for. Aggrieved by the same, the first defendant has preferred this Appeal Suit.

6. The learned Senior counsel appearing for the appellant argued that the appellant / first defendant wanted to sell the property mainly for the educational expenses of his children and for medical treatment and therefore time is essence of the contract. It is further contended that the plaintiff has not performed his part of contract by paying the balance sale consideration within the time stipulated in the agreement and the plaintiff has not even whispered in his notice that he was ready and willing to perform his part of contract as he was not in possession of any fund to pay the balance sale consideration. It is further argued that the plaintiff sent letters to the superiors of the appellant / first defendant and also lodged complaint with the police resulting departmental action and criminal case as against the appellant

without performing his part of contract and therefore, the plaintiff is not entitled to the discretionary relief of specific performance.

7. The learned counsel appearing for the first respondent / plaintiff inter alia argued that as per the agreement the appellant / first defendant has to obtain permission from his employer to sell the property and furnish the title deeds within 15 days from the date of agreement and he has not performed his part of contract. The appellant / first defendant even in his notice, dated 18.05.2007 stated that he will execute the sale deed after clearing the loan and therefore time is not essence of the contract. It is further argued that since the appellant suppressed the loan dues over the suit property, the plaintiff had to write to the employer and also lodge complain with the police and the trial Court after analysing the evidence has rightly decreed the suit and the same does not require any interference.

8. There is no dispute that the sale agreement was entered into between the plaintiff and the first defendant on 09.07.2006, whereby the first defendant agreed to sell the suit property to the plaintiff for a sale consideration of Rs.16,00,000/- and the first defendant received advance of Rs.3,00,000/-. Three months time was fixed for the execution of the sale deed.

9. Normally time is not essence of the contract in the contract relating to sale of immovable property. If time is made the essence of contract, it must be in unmistakable language and it may also be inferred from the nature of the property agreed to be sold, conduct of the parties and surrounding circumstances at or before contract. In this case on had it cannot be presumed that time is made essence of the contract.

10. The learned counsel appearing for the first respondent / plaintiff brought to the notice of this Court, Ex.A.20, the explanation given by the first defendant to his department for the show cause notice issued on the basis of the complaint given by the plaintiff. In this explanation, the appellant / first defendant has said that he intended to sell the suit property for the expenses towards the higher education of his children. But sale agreement, Ex.A.1 does not bear such recitals. It does not spell out the reason for which the property was intended to be sold or why time is made essence of the contract.

11. As rightly pointed out by the learned counsel appearing for the first respondent, the appellant / first defendant in his notice given to the plaintiff after about 10 months from the date of sale agreement under Ex.B.12, dated 18.05.2007 expressed his willingness to execute the sale deed

to the plaintiff with the proper permission from his office after clearing the loan to the Government and after receiving the balance sale consideration of Rs.13,00,000/-. The appellant / first defendant got permission to foreclose the loan only under Ex.B.11, dated 14.03.2007. Thus after getting permission to clear the loan, the appellant / first defendant himself informed the plaintiff about his readiness to execute the sale deed as per the agreement and therefore time is not essence of the contract.

12. The relevant clauses in the agreement for disposal of this Appeal are extracted below :

"11. The vendor agrees to produce the title deeds within 15 days from this day for verification by the Legal Adviser of the purchaser after clearing all the dues payable to the parent department towards any loan or advance, if availed.

12. The vendor being the Government servant agrees to obtain necessary permission from the authorities concerned towards this transaction within this 3 months (90 days) period."

13. Thus as per the above terms, the appellant / first defendant has to produce the title deeds within 15 days after clearing all the dues payable to the parent department towards any loan or advance if availed. Necessary permission from the employer is also to be obtained within three months by the appellant / first defendant. The date of sale agreement is 09.07.2006. When three months period was nearing, the plaintiff issued notice on 02.10.2006 focussing the above clauses in the agreement. Though the appellant / first defendant gave a letter seeking permission to settle the loan amount well prior to the sale agreement, under Ex.B.4, dated 03.10.2005, he could not get the permission within three months from the date of agreement. Since the first defendant did not give particulars as to the stage of permission, the plaintiff sent a letter to the higher authorities of the first defendant and received a reply under Ex.A.5, dated 16.10.2006. In this letter, the higher authority of the first defendant informed that the first defendant has not applied for permission to sell the suit property till 16.10.2006 and there are dues from the first defendant over the suit property.

14. Only on 14.03.2007 under Ex.B.11, the authority accorded sanction to the first defendant to foreclose the loan. Thus it is clear that the first defendant has not performed his part of contract as per the above terms of the agreement by clearing the loan dues and furnishing the title deed with the permission to sell the property from his employer.

15. The plaintiff pleaded and averred that he was always ready and willing to perform his part of contract. Ex.A.11 to Ex.A.15, the Fixed Deposit receipts show that the plaintiff

had been in possession of the requisite amount to execute the sale deed as per the agreement. Thus the plaintiff has established that he had been in possession of the funds throughout.

16. On the side of the appellant / first defendant, it is contended that the appellant / first defendant returned the advance amount of Rs.3,00,000/- only at the instance of the plaintiff and the same is not acceptable, in the light of the criminal complaint and complaint to the department higher ups presented by the plaintiff.

17. Another contention as to harassment due to police complaint and departmental action cannot be given much credential, in view of the fact that since the first defendant refused to divulge the stage of the permission, the plaintiff had to approach the department and since the first defendant had not disclosed the loan dues the plaintiff was forced to lodge the complaint.

18. For the aforesaid reasons, the trial Court has rightly decreed the suit and the same does not warrant any interference by this Court and accordingly, this Appeal Suit is liable to be dismissed.

In the result this Appeal Suit is dismissed, confirming the judgment and decree, dated 30.06.2015 passed in O.S.No.299 of 2009 on the file of the Principal District Court, Kancheepuram @ Chengalpet. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

tsvn
To

The Principal District Judge,
Kancheepuram @ Chengalpet.

+ 2 ccs to Mr. S. Udhayakumar, Advocate Sr.15618
+ 1 cc to Mr. V. Vijayashankar, Advocate Sr.16970

A.S.No.1118 of 2015

TM(CO)
EU(22/03/2018)