

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.01.2018

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

A.S.No.492 of 2011
and M.P.No.1 of 2011

1.K.Muthukumarasamy
2.M.Kaviarasu

.. Appellants/Defendant

Vs

P.Sellamuthu

.. Respondent/Plaintiff

First Appeal preferred under Order 41 Rule 1 read with Section 96 of the Code of Civil Procedure, 1908, against the judgment and decree dated 21.09.2011 made in O.S.No.631 of 2009 by the Additional District and Sessions Court, Fast Track Court-I, Coimbatore.

For Appellants : Mr.T.V.Ramanujam,
Senior Counsel
for Mr.T.V.Krishnamachari

For Respondent : Mr.M.S.Krishnan
Senior Counsel
for M/s.Sarvabhauman Associates

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM, J.]

This Appeal Suit has been directed against the judgment and decree dated 21.09.2011 passed in O.S.No.631 of 2009 by the Additional District and Sessions Court [Fast Track Court-I], Coimbatore.

2.The respondent herein, as plaintiff, has instituted O.S.No.631 of 2009 on the file of the trial Court, praying to pass a decree of specific performance in pursuance of sale agreement dated 09.10.2006 or alternatively to pass a money decree in respect of advance amount with subsequent interest, wherein, the present appellants, have been shown as defendants.

3.The material averments made in the plaint are that the suit property is the absolute property of defendants 1 and 2 and both of them have entered into an agreement with the plaintiff to sell the same for a sum of Rs.1,36,50,390/- and to that effect, a suit sale agreement has come into existence on 09.10.2006. On the date of its execution, the defendants have received a sum of Rs.40,00,000/- as an advance. Further, it is recited in the suit sale agreement that the plaintiff should pay balance of sale consideration within a period of six months and the defendants are bound to execute a registered sale deed in favour of the plaintiff. Despite of repeated demands made by the plaintiff, the defendants have not come forward to receive balance of sale consideration and to execute a sale deed in favour of the plaintiff and at such circumstances, the present suit has been instituted for the relief sought therein.

4.In the written statement filed on the side of the defendants, it is averred to the effect that the first defendant is the father of the second defendant. The first defendant has derived half-share in suit survey number by virtue of partition which has taken place in the year 1993. The plaintiff has agreed to purchase the western half portion of suit survey number for a sum of Rs.1,36,50,390/- and to that effect, a suit sale agreement has come into existence, wherein, it has been clearly recited to the effect that the plaintiff should pay balance of sale consideration within a period of six months. Since the plaintiff has not shown his readiness and willingness in paying balance of sale consideration, a legal notice has been issued to the plaintiff on 16.04.2007 and even after receipt of the same, he has given a reply notice dated 19.04.2007. After giving reply notice, the present suit has been instituted in the year 2009. The plaintiff has not shown his readiness and willingness from execution of the suit sale agreement dated 09.10.2006. Since he has not come forward to pay balance of sale consideration within the stipulated period of six months, the advance amount paid by the plaintiff is liable to be forfeited and there is no merit in the suit and the same deserves to be dismissed.

5.On the basis of the divergent pleadings raised on either side, the trial Court, has framed necessary issues and after analysing both oral and documentary evidence, has decreed the suit in respect of relief of specific performance without costs. The judgment and decree passed by the trial Court are being challenged in the present Appeal Suit.

6.The learned Senior Counsel appearing for the appellants/defendants has raised the following points:

1. In the suit sale agreement, it has been specifically mentioned that the plaintiff should pay balance of sale consideration within a period of six months for getting a sale deed registered. But, from inception of suit sale agreement, the plaintiff has failed to show his readiness and willingness and therefore, he is not entitled to get discretionary relief of specific performance.

2. On the side of the plaintiff, certain documents have been filed for the purpose of showing the source of money of the plaintiff and in fact, those documents are not at all relevant for the purpose of deciding that the plaintiff has possessed of sufficient means to pay balance of sale consideration.

7. To controvert the contentions put forth on the side of the appellants/defendants, the learned Senior Counsel appearing for the respondent/plaintiff has contended to the effect that even in the suit sale agreement, it has been specifically mentioned to the effect that the defendants are having undivided western half-share in the suit survey number and since the defendants have not effected partition between themselves and brother of the first defendant by name Kannappan, the plaintiff has not been able to pay balance of sale consideration and further, on the basis of other documents filed on the side of the plaintiff, the Court can easily discern that the plaintiff is having sufficient means to pay balance of sale consideration and the trial Court, after considering the overwhelming evidence available on record on the side of the plaintiff, has decreed the suit in respect of specific performance and therefore, the contentions put forth on the side of the appellants/defendants cannot be accepted and altogether, the present Appeal Suit deserves to be dismissed.

8. On the basis of the divergent submissions made on either side, the Court has to meticulously analyse the following points:

1. Whether the plaintiff has shown his readiness and willingness to pay balance of sale consideration from the date of execution of the suit sale agreement ?
2. Whether the plaintiff is having sufficient means to pay the balance of sale consideration ?

9. The suit sale agreement dated 09.10.2006 has been marked as Ex.A2. In Ex.A2, it has been clearly mentioned to the effect that the total consideration is Rs.1,36,50,390/-. Further, it is recited in Ex.A2 that the plaintiff should pay balance of sale consideration within a period of six months and on the date of execution of Ex.A2, the defendants have received a sum of Rs.40,00,000/- by way of advance.

10.It is true that in Ex.A2, it has been clearly recited to the effect that the defendants have intended to sell western half-share of suit survey number to an extent of 3.90 acres.

11.It is an admitted fact that on 16.04.2007, the defendants have issued a legal notice, whereby, called upon the plaintiff to pay balance of sale consideration and the same has been marked as Ex.A3. After receipt of Ex.A3, the plaintiff has given a reply notice dated 19.04.2007 and the same has been marked as Ex.A4, wherein, it has been simply stated that since the defendants have not effected partition between themselves and brother of the first defendant by name Kannappan, the plaintiff has not been able to pay balance of sale consideration.

12.As adverted to earlier, in Ex.A2, it has not been specifically mentioned to the effect that the plaintiff is bound to pay balance of sale consideration. Only partition is effected between the defendants and brother of the first defendant. Therefore, it is quite clear that such defence taken on the side of the plaintiff in Ex.A4, is not found place in Ex.A2. Since such recital is not found in Ex.A2, the defence taken on the side of the plaintiff cannot be accepted.

13.The main argument put forth on the side of the appellants/defendants is that even though in Ex.A2, a specific period of six months has been mentioned for paying balance of sale consideration, the plaintiff has not shown his readiness and willingness to perform his part of the contract.

14.Considering the fact that the defence taken on the side of the plaintiff is not on the basis of recitals found in Ex.A2, it is needless to say that the plaintiff has not shown his readiness and willingness to perform his part of the contract from execution of Ex.A2. Therefore, the first and foremost contention put forth on the side of the appellants/defendants is really having merit.

15.Now, the Court has to look into as to whether the plaintiff is having sufficient means to pay balance of sale consideration.

16.The trial Court, on the basis of Ex.A7 to A13 has come to a conclusion to the effect that the plaintiff is having sufficient means to pay balance of sale consideration. In fact, this Court has closely analysed Ex.A7 to A13. In some of the documents, the plaintiff has acted as Power Agent and in some of the documents, one Sundaravadivelu has acted as Power Agent.

17.Considering the aforesaid factual aspects, it is very clear that Ex.A7 to A13 are not at all sufficient documents to find out the alleged wherewithal of the plaintiff. Therefore, it is very clear that on the side of the plaintiff, it has not been positively established to the effect that the plaintiff has sufficient means to pay balance of sale consideration. Therefore, the second contention put forth on the side of the appellants/defendants is also having merit.

18.As pointed out earlier in the plaint, the plaintiff has sought an alternative relief in respect of return of advance money.

19.Considering the fact that the plaintiff has advanced a huge sum of Rs.40,00,000/- by way of an advance and also considering the date of advancement, this Court is of the view to direct the appellants/defendants to pay a sum of Rs.45,00,000/- to the respondent/plaintiff and to that effect, a decree can be passed in the present appeal.

In fine, this appeal is allowed without costs. The judgment and decree passed in O.S.No.631 of 2009 by the trial Court are set aside and suit filed in O.S.No.631 of 2009 is dismissed in respect of relief of specific performance, instead the same is decreed without costs in respect of alternate relief as stated infra.

The appellants/defendants are directed to pay a sum of Rs.45,00,000/- to the respondent/plaintiff and the same should be paid within a period of six months. Connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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The Additional District and Sessions Court,
Fast Track Court-I,
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VR Section, High Court, Madras.(2 copies)

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and
M.P.No.1 of 2011

AD(CO)
SP(14/02/2018)



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