

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date 23.11.2018

Coram:

The Hon'ble Mr. Justice N.SATHISHKUMAR

S.A.No.180 of 2012

Rose Lilly

...Appellant /1st Respondent/
Plaintiff

Versus

1. Valliammal

...1st Respondent/Appellant/
1st Defendant

2. Mani Arul

...2nd Respondent/2nd Respondent/
2nd Defendant

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree dated 31.10.2011 made in A.S.No.6 of 2011 on the file of the District Judge, Karaikal, reversing the Judgment and Decree of Principal District Munsif, Karaikal, dated 04.02.2011 made in O.S.No.169 of 2007.

For Appellants : Mr.S. Sounthar

For Respondent : Mr.R. Natarajan for
M/s A.V. Arumugam for R1
R2 - ex-parte

JUDGMENT

Aggrieved over the Judgment and Decree of the learned District Judge, Karaikal, reversing the Judgment and Decree of the learned Principal District Munsif, Karaikal, the present Second Appeal has been filed.

2. While admitting the Second appeal, this Court has framed the following questions of law:

i) Whether Rule 60 of Pondicherry Land Reforms (Fixation of Ceiling of Land and Disposal of Surplus Lands) Rules 1976 prohibits transfer of title or only makes assignment vulnerable for cancellation?

ii) Whether assignment deed in favour of first respondent's father will not confer title on him?

iii) Whether first respondent having agreed to convey suit property, is not bound to convey whatever title she has?

3. On hearing both sides, the questions framed as Substantial Questions of Law are required to be re-framed. On perusal of the written statement and submission of the parties and findings of the Courts below, this Court is re-framed the questions of law as follows:

i) Whether the Court below is erred in giving findings without proper evidence as to Ready and Willingness?

ii) Whether the Court below has rendered a finding without Ex.A.1 has not properly properly proved in the manner known to law?

4. The brief facts of the Plaintiff's case is as follows:

4.(a) The suit property originally assigned to one Murugaiyan by the Government of Puducherry. The First Defendant is daughter of said Murugaiyan. It is the case of the Plaintiff that on 12.08.2002 the First Defendant along with her mother and husband entered into an agreement for sale of suit property at Rs.300/- per kuzhi approximately 31,000 sq.ft.for a total sale consideration of Rs.64,800/-. As per the Plaintiff at the time of entering into the agreement Rs.40,000 was paid and thereafter Rs.15,000/- was paid on 17.08.2004 and only Rs.9,800/- was balance. The Plaintiff was always ready and willing to perform his part of contract. In the agreement it is specifically agreed that the Plaintiff has to clear the encumbrance i.e, liability towards tax. As the Plaintiff has not produced the no dues certificate from the concerned authorities the sale could not be completed. The Plaintiff is always ready and willing to perform his part of contract. In the meanwhile the First Defendant has entered into an agreement with the Second Defendant., the Plaintiff sent a legal notice and thereafter laid the Suit.

4.(b) Admitting the title of the property it is the contention of the First Defendant that they never entered any written agreement. However, there was a oral agreement entered between her and the Plaintiff. The receipt of Rs.40,000/- paid as advance and subsequent payment of Rs.15,000/- is not in dispute. The main contention of the Defendant is Ex.A.1 is

created after the death of the mother of the First Defendant. Time is essence of oral contract. Hence, prayed for dismissal of the suit.

5. The trial Court has framed the following issues for trial:

1. Whether the suit agreement dated 12.08.2002 is genuine and enforceable document?
2. Whether the Plaintiff is ready and willing to perform his part of contract?
3. Whether the plaintiff is entitled to decree as prayed for?
4. Whether the Plaintiff is entitled for interest as prayed for?
5. To what other relief the Plaintiff is entitled?

6. On the side of the Plaintiff P.W.1 to P.W.3 were examined and Ex.A.1 to Ex.A.6 were marked. On the side of the Defendants D.W.1 and D.W.2 were examined and Ex.B.1 was marked. The trial Court based on the evidence and materials decreed the suit in favour of the Plaintiff. Against which the First Defendant has filed appeal before the First Appellate Court and after hearing both sides, the First Appellate Court allowed the appeal modifying the decree granted by the trial court. Aggrieved over the same the present Second Appeal came to be filed by the Plaintiff.

7. Learned counsel for the Appellant/Plaintiff is submitted that though the written sale agreement was disputed, there was no dispute with regard to the receipt of money advanced to the Plaintiff towards the sale consideration and subsequent advance amount paid on 17.08.2004. The Plaintiff however come forward to clear the encumbrance. The evidence of P.W.1 to P.W.3 clearly established that 85% of the sale deed have been paid and there was no time limit is fixed under the agreement. The trial Court has rightly and fairly exercised its discretion and the same does not require any interference. Hence, submitted that the Plaintiff is entitled for decree.

8. The learned counsel for the Respondent submitted that the Appellant has not appeared before the court and entered into the box for giving evidence, only her husband has come to the Court; Ex.A.1 has also not established on record. The ready and willingness has also not established by the Appellant before the trial Court. Therefore, the discretion exercised by the trial

Court without any evidence is nothing but perversity. Therefore, the appeal is liable to be dismissed.

9. I have perused the submissions of both the learned counsels and entire materials. The suit has been laid on the basis of the Ex.A.2 written agreement said to have been executed by the First Defendant and her husband in favour of the Plaintiff. On perusal of the same indicates that on 12.08.2002 the agreement said to have been executed between the parties. It is the specific defence of the Defendant that they never executed any written agreement. However, they agreed to sell the property orally and not based on the written contract. When the Plaintiff has filed the suit based on the agreement, the execution of the agreement specifically denied by the Defendants the burden is on the part the Plaintiff to establish the execution of the written contract. Admittedly, the Plaintiff has not come before the Court. Only her husband was examined. The entire evidence of P.W.1, the husband of the Plaintiff, it is seen that he did not aware of the entire transaction. In fact he has categorically admitted that there is no witness signed in the agreement. P.W.3 said to be the witness in the agreement, has examined. His evidence cannot be relied for the simple reason that his signature as witness has not found in the agreement. It is the normal human nature when the person present during the execution of any contract he used to sign in the contract as a witness. In view of the same, the evidence of P.W.3 cannot be relied upon. Therefore, Ex.A.1 has not been proved by the Plaintiff by convincing evidence. Accordingly, the substantial question of law is answered against the Plaintiff.

10. With regard to the other aspects the ready and willingness, the trial court held that the Plaintiff was always ready and willing to perform his part of contract. On perusal of the finding of the trial court I am of the view that the same is nothing but perverse without any proper appreciation. Though the agreement said to have been executed on 12.08.2004 and a sum of Rs.40000/- advanced on the same day, there was no time limit fixed. It is the contention of the Plaintiff's side that though the plaintiff agreed to clear the encumbrance of the property, time was not stipulated in the agreement. Even assuming that the contention is proved, it is to be noted that the Plaintiff being the agreement holder, he should have shown some readiness and willingness to perform his part of contract. Readiness and Willingness of contract only means mental attitude and capacity of mobilising the funds. Only when two conditions go together it can be said that there exist readiness and willingness. Till the legal notice dated 25.01.2017 no steps of efforts were taken by the Plaintiff to verify what are the nature of the encumbrance attached to the property proposed to be purchased.

Only for the sake of filing the suit, after seven years he has issued such legal notice. Therefore, any advance amount paid itself cannot be ground to determine that he is ready and willing to perform his part of obligations. Hence, I am of the view that the Readiness and Willingness is totally absent. Hence, the Plaintiff is not entitled for the decree of specific performance. The Substantial Quations of law are answered against the Plaintiff/Appellant.

11. Though this Court has held that Ex.A.1 is not established, the admission of the Defendants that there was a oral agreement between the parties and they have received a sum of Rs.55,000/- is not in dispute, the alternate decree granted by the First Appellate Court in favour of the Plaintiff/Appellant herein is liable to be confirmed. In view of the specific admission on the part of the Defendants as to the return of amount, I am of the view that the findings rendered by the First Appellate Court need not be disturbed. With the above observation, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

ggs.

To

- 1) The District Judge,
Karaikal.
- 2) The Principal District Munsif,
Karaikal.

+1 cc to Mr.S.Sounthar, Advocate, S.R.No.80199

+1 cc to Mr.R.Natarajan, Advocate, S.R.No.79876

Judgment in:
S.A.No.180 of 2012

GJ-II(CO)
SSM(25/03/2019).