

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2018

PRONOUNCED ON : 19.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1489 of 2003

and

CMP.No.13515 of 2003

1. Thangaraj (Deceased)
2. T.Rasathi
3. S.Minnal kodi
4. M.Rajeswari
5. R.Mahalakshmi
6. T.Balasubramanian

... Appellants

(Appellants 2 to 6 brought on record as Lrs of the deceased appellant vide order of the Court dated 24.01.2018 made in CMP No.12459/17) in S.A.1489 of 2003

Vs.

1. Radhakrishnan .. Respondent/1st Respondent/Plaintiff
2. Ramasamy .. Respondent/2nd Respondent/4th Defendant
3. Nachayammal .. Respondent/Appellant/2nd Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 18.03.2003 made in A.S.No.50 of 2002 on the file of the Additional District Sessions Judge cum Chief Judicial Magistrate, Namakkal confirming the judgment and decree dated 30.04.1996 made in O.S. no.37 of 1996, on the file of the Principal District Munsif Court at Namakkal.

For Appellants : Mr.T.Dhanyakumar

For R1 & R2 : Mr.A.Paramasivam

For R3 : Given up

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 18.03.2003 passed in A.S.No.50 of 2002, on the file of the Additional District & Sessions Judge cum Chief Judicial Magistrate Court, Namakkal, confirming the judgment and decree dated 30.04.1996, passed in O.S. no.37 of 1996, on the file of the Principal District Munsif Court, Namakkal.

2. The 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 plaintiff schedule property belonged to the first defendant by way of a sale deed dated 25.08.1942. The second defendant is the wife of the first defendant and the defendants 3 and 4 are the sons of the first defendant and the defendants agreed to convey the suit property in favour of the plaintiff for a sum of Rs.15,500/- and executed a sale agreement dated 31.07.1985 and received a sum of Rs.15,000/- on the date of the sale agreement and agree to receive the balance sum of Rs.500/- on or before 30.07.88 and executed the sale deed in favour of the plaintiff in respect of the suit property and thereafter, on 30.07.88, as agreed to between the parties, the time for the execution of the sale deed was extended for a further period of one year till 30.07.89 and though the plaintiff was always ready and willing to perform his part of the contract and obtain the sale deed, the defendants did not come forward to execute the sale deed in favour of the plaintiff nor return the amount received from the plaintiff by way of the sale agreement and though the defendants had been promising to execute the sale deed or return the amount received from the plaintiff, later took a different stand that they would convey only half share in the suit property and cannot convey the entire suit property for the amount paid by the plaintiff and left with no other alternative, the plaintiff issued a legal notice dated 09.07.91, calling upon the defendants to perform their part of the contract and despite the receipt of the notice, the defendants did not send any reply nor come forward to execute the sale deed or return the amount received from the plaintiff by way of the sale agreement and the plaintiff had also paid the balance sale consideration of Rs.500/- at the time of the marriage of the third defendant's daughter even before 30.07.88 and the parties had agreed that time is not an essence of the contract and as the defendants failed to act as per the terms of the sale agreement, according to the plaintiff, he has been constrained to lay the suit for specific performance.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the defendant had executed the sale agreement in favour of the plaintiff in respect of the suit property on 31.07.1985 and the sale agreement projected by the plaintiff is false and the defendant had executed a sale agreement in respect of the suit property in favour of one Kandasamy muthuraja and later the said sale agreement had been cancelled and the defendant in order to discharge the amount received from Kandasamy muthuraja, accordingly obtained a sum of Rs.8,500/- from the plaintiff as debt and only in consideration of the same, the defendants had executed a mortgage deed in favour of the plaintiff and only after receipt of the notice, the defendants came to understand that the document executed by them in favour of the plaintiff is not a mortgage deed and a sale agreement and on being questioned, the plaintiff had assured to return the document on paying amount received from him and at the time of the execution of the document, the value of the property would be more than Rs.20,000/- and the defendant did not receive Rs.15,500/- as claimed in the plaint and only for Rs.8,500/- received, they had executed the document and further, the suit property is the joint family property of the parties and therefore, the time extension endorsement projected by the plaintiff for completing the sale transaction is false and on the other hand, the plaintiff had mis-used the endorsement of the defendant in repaying the borrowed sum as time extension endorsement and hence, the suit is barred by limitation and the plaintiff with a false motive had created a sale agreement and hence not entitled for the relief of specific performance and the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 to 5 were examined, Exs.A1 to A10 were marked. On the side of the defendants, DW1 was examined, no document was marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and decreed the suit as prayed for. Aggrieved over the same, the present second appeal has been laid.

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

1. Whether the suit is barred by limitation?
2. Whether the plaintiff is entitled for return of money only in view of Ex.A6,

legal notice?

3. Whether the plaintiff is entitled to the relief of specific performance?

9. The suit has been laid by the plaintiff for specific performance based on the sale agreement dated 31.07.1985. The sale agreement above stated has been marked as Ex.A1. Now, according to the plaintiff, by way of Ex.A1, the defendants had agreed to convey the suit property to him for a sum of Rs.15,500/- and on the date of the sale agreement itself, he had paid Rs.15,000/- to the defendant and the parties had agreed to complete the sale transaction within three years thereafter i.e., on or before 30.07.88 and further according to the plaintiff, the time for completing the sale transaction was extended for a period of one year on 30.07.88 i.e., till 30.07.89 and further, according to the plaintiff, he has paid the balance sum of Rs.500/- at the time of the marriage of the third defendant's daughter prior to 30.07.88 itself and despite the same, inasmuch as the defendants had failed to execute the sale deed in favour of the plaintiff, despite several demands and the readiness on the part of the plaintiff to complete the sale transaction, according to the plaintiff, he has been necessitated to institute the suit for specific performance.

10. The defendants in their written pleas had disputed the sale agreement projected by the plaintiff. According to them, in brief, they had executed a sale agreement in respect of the suit property in favour of one Kandasamy muthuraja and after cancelling the said sale agreement, as they had to repay the amount borrowed from Kandasamy muthuraja, they had received a sum of Rs.8,500/- from the plaintiff and only in lieu of the same, they had executed a mortgage document and only after the receipt of the notice from the plaintiff, they had come to understand that the said document is a sale agreement and therefore, according to the defendants, they are not liable to be executed the sale deed in favour of the plaintiff by way of the said document and no time extension was agreed by the defendants for completing sale transaction as putforth in the plaint and the time extension endorsement is false and fabricated and the plaintiff is therefore not entitled to obtain the relief of specific performance as he had come forward with the suit on the basis of a fabricated document.

11. The Courts below, on the basis of the evidence of the plaintiff examined as PW1 and the attestors of the sale agreement examined as PWs 2 and 3 and the attestors of the time extension endorsement marked as Ex.A5, as PWs 4 and 5 have come to the determination that the defendants had executed the sale agreement in favour of the plaintiff, agreeing to convey the

suit property for a sum of Rs.15,500/- as putforth in the plaint. As regards the above said determination of the Courts below, I do not find any reason to interfere with the same. It is found that the Courts below had, on a proper appreciation of the oral and documentary evidence adduced by the plaintiff with reference to the same rightly come to the conclusion that the defendants had indeed executed the sale agreement Ex.A1 in favour of the plaintiff, agreeing to convey the suit property in favour of the plaintiff for a sum of Rs.15,500/-.

12. Based on the above said conclusions, it is also noted that accordingly the Courts below had proceeded to hold that inasmuch as the plaintiff has been always ready and willing to perform his contract and also noting that the plaintiff had also paid the balance sale consideration of Rs.500/- as putforth by him and despite the issuance of the notice by the plaintiff dated 09.07.91, marked as Ex.A6, inasmuch as the defendants having not come forward to complete the sale transaction, accordingly, the Courts below had decreed the suit as prayed in favour of the plaintiff. However, as rightly putforth by the defendants' counsel, the Courts below have erred in holding that the plaintiff has been always ready and willing to perform his part of the contract and accordingly, entitled to obtain the discretionary relief of specific performance sought for by him.

13. It is noted that the sale agreement has come to be executed on 31.07.1985 and as per the terms of the sale agreement, it is seen that the defendants had agreed to convey the suit property in favour of the plaintiff for a sum of Rs.15,500/-. Further, as per the case of the plaintiff, on the date of the sale agreement itself, he has paid the sum of Rs.15,000/- to the defendants. It is thus found that only a paltry sum of Rs.500/- remains to be paid by the plaintiff for completing the sale transaction. If really, the defendants had agreed to convey the suit property to the plaintiff for a sum of Rs.15,500/- by way of Ex.A1 and if really the plaintiff had also paid a sum of Rs.15,000/- on the date of the sale agreement, even though in the sale agreement the parties had agreed to complete the sale transaction within a period of three years from the date of the sale agreement, if really the plaintiff had been always ready and willing to complete the sale transaction, nothing prevented the plaintiff from paying the paltry sum of Rs.500/- remaining to be paid immediately for completing the sale transaction and get the sale deed immediately executed from the defendants. On the other hand, it is found that despite the time limit agreed to between the parties for completing the sale transaction for a period of three years, it is seen that the plaintiff has not placed any valid material to show that he has been always ready and willing to perform his part of the contract right from the date of the sale agreement by paying the

balance sale consideration and obtain the sale deed executed from the defendants. It is found that for the first time the plaintiff has expressed his readiness and willingness to complete the sale transaction only by way of a notice dated 09.07.91, marked as Ex.A6. According to the plaintiff, on 30.07.88, the parties had agreed to extend the time for completing the sale transaction for a period of one year and thus, it is stated that the sale transaction is agreed to be completed on or before 30.07.89. It is found that within the above said extended time agreed to between the parties for completing the sale transaction, there is no material placed on the part of the plaintiff to show his readiness and willingness to complete the sale transaction within the extended time, other than his ipse dixit evidence. It is found that only on 09.07.91, he has chosen to issue the notice with reference to the same, which has been marked as Ex.A6. It is thus found that nearly on the expiry of the two years period of time after 30.07.89, the plaintiff has chosen to issue the legal notice, marked as Ex.A6. It is thus found that much after the expiry of the time agreed to between the parties for completing the sale transaction, only two years thereafter, the plaintiff had come forward to show his readiness and willingness to complete the sale transaction and it has not been established by the plaintiff as to why he has not evinced interest to complete the sale transaction either prior to 30.07.88 or even prior to 30.07.89 as pleaded by him.

14. That apart, in the notice issued by the plaintiff marked as Ex.A6, a perusal of the same would go to show that the plaintiff is not serious in obtaining the sale deed from the defendants in respect of the suit property as per the sale agreement marked as Ex.A1. On the other hand, the recitals of the notice would go to show that the plaintiff has been complaining only about the inaction on the part of the defendants in not returning the amount received from him at the earliest, or in the alternative, executed the sale deed as promised by them by way of the sale agreement. It is thus found that the plaintiff's complaint in the notice seems to be that the defendants had been evading to return the amount received from him as well as also refusing to execute the sale deed as per the sale agreement executed by them. It is thus found that the endeavour of the plaintiff, by way of the issuance of the legal notice marked as Ex.A6, is only to get the amount back from the defendants advanced by him by way Ex.A1. Accordingly, it is found that even in the plaint, the plaintiff has averred that despite the execution of the sale agreement, even though he has been always ready and willing to perform his part of the contract, the defendants had neither returned the amount nor executed the sale deed as promised by them, pursuant to the sale agreement and accordingly, it is his case that he has been

necessitated to lay the suit for specific performance. It is thus found that a reading of the pre-suit notice as well as the averments contained in the plaint would go to show that the plaintiff is only eager to receive the amount advanced by him to the defendants by way of Ex.A1 and not serious in getting the sale deed from the defendants based on the sale agreement Ex.A1. This being the intention of the plaintiff right from the inception, accordingly, it is seen that though the plaintiff has paid the major part of the sale consideration agreed to amounting to Rs.15,000/- to the defendants on the date of the sale agreement and only a paltry sum of Rs.500/- remained to be paid, he has not evinced interest to get the sale deed executed from the defendants by paying the balance sale consideration. On the other hand, it is found that nearly for a period of six years, from the date of the sale agreement, the plaintiff has not evinced any interest to show his readiness and willingness to complete the sale transaction and for the first time only on 09.07.91, he has chosen to issue the legal notice calling upon the defendants, that too, complaining that they have neither returned the amount received from him nor executed the sale deed as promised by them and accordingly, calling upon them to execute the sale deed. Similarly, the same recitals had also incorporated in the plaint by the plaintiff and accordingly, it is seen that from the above said conduct of the plaintiff, it is seen that he has not been ready and willing to complete the sale transaction pursuant to the recitals found in Ex.A1 and on the other hand, it is seen that his endeavour is only to get the amount advance by him to the defendants by way of Ex.A1.

15. Though it is pleaded by the plaintiff that he has also paid the balance sale consideration of Rs.500/- on or before 30.07.88, it has not been explained as to why even thereafter, the plaintiff had been keeping mum and not taking steps to obtain the sale deed from the defendants in respect of the suit property. On the other hand, for the first time on 09.07.91 only, the plaintiff has chosen to issue the legal notice. This attitude of the plaintiff would only go to expose that inasmuch as the plaintiff has never been ready and willing to perform his part of the contract, it is seen that he has not evinced any interest to demand the defendants to execute the sale deed immediately on the payment of the entire sale consideration and on the other hand, keeping inactive for more than two years and only belatedly issued the notice pertaining to the same. Not stopping there, even after the issuance of the legal notice dated 09.07.91, marked as Ex.A6 and when according to the plaintiff, despite the issuance of the same, the defendants had failed to execute the sale deed in his favour in respect of the suit property, it is found that even thereafter, the plaintiff seems to be not interested in obtaining the sale deed immediately from the defendants by way of instituting the

necessary civil action against them. On the other hand, the plaintiff has chosen to lay the present suit only two years after the issuance of the legal notice Ex.A6, for the relief of specific performance. As to why the plaintiff has not chosen to lay the suit immediately after the issuance of the Ex.A6 notice, there is no explanation forthcoming on the part of the plaintiff. It is thus found that the plaintiff has come forward with the present suit for specific performance eight years after the execution of the sale agreement, particularly, when according to the plaintiff, he has paid the major part of the sale consideration on the date of the sale agreement and also the paltry balance amount of Rs.500/- on or before 30.7.88 and all these facts seen cumulatively would go to show that only the plaintiff has failed to establish his readiness and willingness to complete the sale transaction and on the other hand, as his intention and endeavour right from inception has been only to get back the amount paid by him by way of Ex.A1 sale agreement and not obtaining the sale deed from the defendants as such and accordingly, it is seen that the plaintiff is very very lethargic and indifferent in taking steps immediately to obtain the sale deed from the defendants pursuant to the sale agreement projected in this matter.

16. The relief of specific performance being the discretionary relief, it is not necessary to grant the same, merely, because the party who seeks the same, has made out a case for entitling the same. In a suit for specific performance, the Court has to meticulously consider all the facts and circumstances of the case, particularly, the readiness and willingness on the part of the plaintiff in seeking the said relief. When it is noted, as above discussed, the plaintiff has failed to establish his readiness and willingness right from the date of sale agreement to obtain the sale deed from the defendants and on the other hand, for the first time issued a legal notice two years after the agreed extended time and even thereafter failed to institute the suit immediately and on the other hand, laid the suit nearly two years thereafter for obtaining the discretionary relief of specific performance and when there is no plausible and acceptable explanation offered by the plaintiff with reference to his inaction, as rightly argued by the defendants' counsel, in the light of the principles of law enunciated in the decisions relied upon by him reported in 2008(4) CTC 385 (S.Vijayakrishnan Vs.Jayaprakash) (S.Vijayakrishnan Vs. Rani and another), 2010-1-LW.422 (Bhaskaran Nadar (died) Vs. Kesavan Nadar (died) & others), 2014-4-LW247 (Lourdhu Mary Vs. B.Arokiya Mary), 2012-2-LW917 (A.S.M.Balasubramanian Vs. S.P.Swaminathan), (2003) 2 MLJ 231 (Subbanna Gounder (deceased) and two others Vs. Subbayammal and six others), it is found that the plaintiff is found to be not entitled to the discretionary relief of specific performance and

the Courts below having failed to consider the vital aspects of the readiness and willingness on the part of the plaintiff to complete the sale transaction at the earliest point of time and considering the inaction, sluggishness and lethargy on the part of the plaintiff in completing the sale transaction, in my considered opinion, the discretionary relief of specific performance is not needed to be granted in favour of the plaintiff and accordingly, it is found that the Courts below have erred in granting the said relief in favour of the plaintiff.

17. The principles of law enunciated in the decision reported in 2018 AIR CC 387 (MAD) (M.R.Subramaniam Vs. G.S.Abimunissa) are taken into consideration and followed as applicable to the case at hand.

18. In view of the above said reasons, though it is found that the suit is not strictly barred by limitation, however, it is found that for the reasons aforesaid, the plaintiff is not entitled to the relief of specific performance and at the best, the plaintiff would be entitled only for the return of the amount paid by him to the defendants by way of sale agreement Ex.A1. The substantial questions of law formulated in the second appeal are accordingly answered.

19. At the end, both the judgment and decree dated 18.03.2003, passed in A.S.No.50 of 2002, on the file of the Additional District & Sessions Judge cum Chief Judicial Magistrate Court, Namakkal, confirming the judgment and decree dated 30.04.1996, passed in O.S. No.37 of 1996, on the file of the Principal District Munsif Court at Namakkal are set-aside and instead, the plaintiff is granted the relief of the recovery of the sum of Rs.15,500/- from the defendants with interest thereon at 9% from the date of the sale agreement till the date of the institution of the suit and thereafter at 6% till the date of the repayment and accordingly, the suit laid by the plaintiff in O.S.No.37 of 1996 is decreed in favour of the plaintiff. The second appeal is disposed of accordingly. Considering the facts and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District & Sessions Judge
cum Chief Judicial Magistrate Court,
Namakkal,
2. The Principal District Munsif Court,
Namakkal.
3. The Section Officer,
V.R.Section,
High Court, Madras. (2 Copies)

+1cc to Mr.T.Dhanyakumar, Advocate, S.R.No.20708

+1cc to Mr.A.Paramasivam, Advocate, S.R.No.20777

S. A.No.1489 of 2003

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CS/17/04/18



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