

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.08.2018

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.2172 of 2001

1.Marriammal
2.Ayyamuthu
3.Somasundaram
4.Chinnasamy

... Appellants/Defendants

Vs.

S.Sathyabama

... Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of C.P.C against the decree and judgment dated 22.11.2000 passed in A.S.No.218 of 1998 on the file of the learned First Additional District Judge Erode reversing the decree and judgment dated 15.07.1998 on the file of the Additional Subordinate Court, Erode, made in OS.NO.290/97.

For Appellants : Mr.S.K.Ragunathan

For Respondent : Mr.Mukundan

for M/S.SARVABHAUMAN ASSOCIATES

JUDGMENT

The appellants are the legal heirs of the deceased defendant Marimuthu. The respondent/plaintiff Sathya Bama filed a suit for specific performance of contract dated 31.01.1994 in O.S.No.290 of 1997 before the Court of Subordinate Judge, Erode against the defendant Mr.C.Marimuthu. The defendant was set ex-parte by the learned Additional Subordinate Judge. However, the suit was dismissed on 15.07.1998 by the learned Subordinate Judge, Erode on the ground that the respondent/plaintiff Sathya Bama did not deposit the balance sale consideration before the Court and instead prayed for granting two months' time for depositing the balance sale consideration.

2 Aggrieved over the said judgment dated 15.07.1998, the plaintiff preferred an appeal in A.S.No.218 of 1998 before the I Additional District Judge, Erode and the appeal was allowed on 22.01.2000 on the following grounds:-

(i) When the plaintiff as PW.1 in his deposition has specifically averred that she is ready to pay the balance sale consideration, the learned I Additional Subordinate Judge has erroneously dismissed the suit.

(ii) No endorsement was made either by the defendant or his counsel that the plaintiff prayed for grant of two months' time to deposit balance sale consideration into the Court.

(iii) As per the decision of the Hon'ble Supreme Court in Nathulal Vs. Phoolchand reported AIR 1970 SCC 546, the plaintiff need not produce money before the Court unless it is specifically directed by the Court.

3 Now, the second appeal is filed by the legal heirs of the defendant Marimuthu contending that the decision in AIR 1970 SCC 546 has no application in the instant case and that there is no evidence to show that the respondent/plaintiff was ready and willing to perform her part of the contract. According to them, the respondent/plaintiff did not also satisfy the requirement of Section 16(c) of the Specific Relief Act.

4 The following substantial questions of law are framed by this Court:

(1) Whether the judgment and decree of the lower appellate Court is vitiated by its failure to consider the provision contained in Section 16(c) of the Specific Relief Act?

(2) Whether the lower appellate Court is right in accepting the statement of the plaintiff that time was not sought for in the trial Court in the absence of any petition or memo before the trial Court especially when the trial Court stated that time was sought for depositing the balance of sale consideration.

5 Mr.S.K.Ragunathan, learned counsel appearing for the appellants would contend that the respondent/plaintiff had never showed her readiness and willingness to purchase the suit property right from the date of the sale agreement dated 31.01.1994 and that the fact that the learned Additional Subordinate Judge has recorded that the respondent/plaintiff prayed for two months' time to deposit the balance sale consideration in his judgment dated 15.07.1998 is sufficient to conclude that the respondent/plaintiff was never willing to perform her part of the contract.

6 Per contra, Mr.Saravanakumar, learned counsel appearing for the respondent/plaintiff would contend that the trial Court was not right in dismissing the suit on the ground that the plaintiff had failed to prove her readiness and willingness to perform her part of the contract by not depositing the balance sale consideration into the Court. He also pointed out that the defendant failed to contest the suit by filing a written statement and the evidence of the plaintiff has also remains un rebutted. His specific contention is that the first appellate Court is right in decreeing the suit. It is further contended by him that there is no necessity on the part of the respondent/plaintiff, who sues for specific performance of contract to deposit the amount into the Court except when so directed by the Court. Reliance was also placed on the decision in Adilingam, Sankaralingam Vs. Narayanan and others reported in 2011 (3) MWN (Civil) 559 in this regard.

7 At the out set, it may be observed that the date of the agreement is 31.01.1994 (Ex.A1) and the time specified for completion of contract is three years from the date of agreement. The total sale consideration was fixed at Rs.75,000/- out of which, Rs.60,000/- was paid on the date of agreement. Therefore, the balance was only 15,000/-. The respondent/ plaintiff had issued a notice dated nil-Ex.A3 to the defendant (since deceased) and the postal receipt shows that the notice was sent on 21.01.1997 i.e. within the period of three years from the date of agreement Ex.A1. It is also mentioned in the agreement Ex.A1 that, if the defendant does not come forward to execute the sale deed, the plaintiff can deposit the balance sale consideration of Rs.15,000/- into Court and file a suit for specific performance of contract. At this juncture, it is relevant to extract Section 16(c). of the Specific Relief Act, 1963 which reads as under:-

Sec.16: Personal bars to relief.-Specific performance of a contract cannot be enforced in favour of a person-

(a) Who would not be entitled to recover compensation for its breach; or

(b) Who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential term of the contract which are to be performed by him, other than terms the performance or which has been prevented or waived by the defendant. Explanation - for the purpose of clause (c),

(i) Where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court.

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

8 In the decision in Adilingam, Sankaralingam Vs. Narayanan and others, it has been held that

14. Further it is also against the provisions of Section 16(c) and the Explanation attached to that Section. As per Section 16(c) of the Specific Relief Act, where a contract involves payment of the money it is not essential for the Plaintiff to actually tender to the Defendant or to deposit in Court any money except when so directed by the court. Therefore, the Section specifically says that there is no necessity on the part of the Plaintiff, who sues for Specific Performance, to deposit the amount into Court and it is the well known proposition that no one can enter into an agreement against the statute. When the statute does not prescribe or does not compel a person to deposit the balance sale consideration before filing a Suit for Specific Performance, even though there is a clause in the Agreement of Sale that the party, who applies for Specific Performance, has to deposit the amount in Court, there is no necessity on the part of the party to deposit the amount and if he is capable of proving that he has got the means to pay the balance sale consideration, that is sufficient and there is no necessity on the part of the Plaintiff, who files the suit for Specific Performance, to deposit the amount.

9 The respondent/plaintiff in the instant case apart from contending that she was always ready and willing to perform her part of the contract also deposed before the trial Court that she was ready to pay the balance sale consideration into Court. It is also relevant to point out in this context that the defendant (since deceased) was set ex-parte and he did not choose to contest the suit. In fact, a perusal of the notes paper in O.S.No.290 of 1997 shows that the defendant though engaged a counsel to defend the suit did not file a written statement even after a lapse of six months and he was set ex-parte on 08.06.1998. The case was subsequently posted on 15.07.1998. Even on the said date, the defendant did not file a petition to set aside the ex-parte order passed against him. However, the suit was dismissed by the learned Subordinate Judge, Erode. In the first appeal, the learned counsel who appeared on behalf of the defendant (since deceased) raised a contention that the respondent/plaintiff has not proved her readiness and willingness to complete the contract.

10 At this juncture, it is relevant to note that, when the sale consideration was fixed at Rs.75,000/-, 80% of the sale consideration was paid on the date of agreement itself and within the time mentioned in the agreement, the respondent/plaintiff also issued a notice to the defendant (since deceased) and all these aspects were not disputed by the appellant even before the first appellate Court. It is also submitted that the respondent/plaintiff had already deposited the balance sale consideration into the Court.

11 This Court taking into consideration the fact that the respondent/plaintiff had expressed her desire to purchase the suit property by paying 80% of sale consideration even at the time of sale agreement (Ex.A1) and also showed her readiness and willingness to purchase the property by issuing notice within the period mentioned in the agreement (Ex.A1) she also filed the suit to enforce the contract without any delay and the evidence of respondent/ plaintiff as PW.1 before the trial Court also remained un rebutted. In the facts and circumstances of the present case, the appeal filed by the appellants is liable to be dismissed.

12 In the result,

(1) The appeal is dismissed. No costs.

(2) The decree and judgment dated 22.11.2000 passed by the learned I Additional District Judge, Erode is upheld.

(3) The suit in O.S.No.290 of 1997 on the file of Subordinate Judge, Erode is decreed as prayed for with costs. Since, it is represented that balance sale consideration is already deposited into Court, no time need be granted for payment of balance sale consideration.

(4) Consequently, connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar(CS v)

//True Copy//

Sub Assistant Registrar

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To

- 1.The First Additional District Judge
Erode.
- 2.The Additional Subordinate Judge
Erode.
- 3.The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.S.K.Ragunathan , Advocate SR.No. 56633

+1cc to M/S.SARVABHAUMAN ASSOCIATES SR.No. 56567

S.A.No.2172 of 2001

ASK(16/10/2018)

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