

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

S.A.No.771 of 2018

S.Venkatesa perumal ... Appellant/Appellant/Plaintiff

Vs.

S.Arputhammal ... Respondent/Respondent/Defendant

Prayer:

Second Appeal is filed under Section 100 of C.P.C. against the judgment and decree passed in A.S.No.12 of 2013 dated 16.08.2018 on the file of the Additional District Judge, Namakkal confirming the judgment and decree passed in O.S.No.293 of 2001 dated 23.01.2013 on the file of the Subordinate Judge, Namakkal.

For Appellant : Mr.A.Thiyagarajan,
Senior Counsel,
For Mr.M.Nallathambi

For Respondent : Mr.Deepan Uday for Caveator.

J U D G M E N T

The plaintiff in a suit for specific performance is the appellant before this court.

2. It is the case of the plaintiff that on 10.11.2000 he had entered into an agreement with the defendant for purchasing the suit property for the total sale consideration of Rs.4,00,000/- and advance of Rs.50,000/- was paid on the said date and the time for performance of the contract was fixed on 26.04.2001. It is the case of the plaintiff that on 26.04.2001 he had informed the defendant that the land on site was less than the extent stated in the agreement and had requested for a proportionate reduction in the price. The defendant had orally agreed for an extension of the time for performance till

26.10.2001. The case of the plaintiff is that he was put in possession of the property when the agreement was executed.

3. However, contrary to the assurance given, the defendant had sent a notice dated 30.04.2001 informing the plaintiff that the sale had to be completed on or before 15.05.2001. To this the plaintiff had sent a reply dated 14.05.2001 narrating the facts and the extension of the agreement dated 26.10.2001. The defendant sent a rejoinder on 24.05.2001 refuting the statement contained in the reply notice dated 14.05.2001. Since the defendant was attempting to evict the plaintiff from the suit property, the plaintiff had come forward with the suit for specific performance.

4. The defendant on entering appearance had filed a detailed counter, inter alia contending that the defendant was not put in possession as alleged in the plaint and that the plaintiff has been putting off the sale on one pretext or the other. The defendant had refuted the allegation of the plaintiff that the extent of the suit property on site is less than what is stated in the petition. The defendant had also contended that the plaintiff was neither ready nor willing to go ahead with the sale deed and was putting across evasive reasons for not going ahead with the sale. The defendant had particularly denied the oral extension till 26.10.2001. In the notice dated 30.04.2001 the defendant had informed the plaintiff that the sale had to be completed on or before 15.05.2001 and reply to this had been sent only day before the expiry of the period mentioned in the agreement, which clearly shows that the readiness and willingness is lacking on the side of the plaintiff. A reply statement was filed by the plaintiff refuting these allegations.

5. The learned Subordinate Judge, Namakkal, by her judgment and decree dated 23.01.2013 dismissed the suit on the ground that the plaintiff has not come forward to complete the sale by 26.04.2001, which was the agreed date and also that the shortage of the land should have been taken up at the first instance and not just when the date for performance of the contract had come to an end. The Court has also taken note of the fact that even pending the suit the defendant had agreed to have the sale deed executed, however the plaintiff did not come forward to have the sale executed and registered. This judgment and decree was taken up on appeal by the plaintiff in A.S.No.12 of 2013, on file of the Additional District Judge, Namakkal. The learned District Judge also confirmed the decree of the learned Subordinate Judge, Namakkal, aggrieved thus the plaintiff is before this Court.

6. Heard Mr.A.Thiyagarajan, learned senior counsel on behalf of the appellant, the learned senior counsel would argue that the court below after coming to the conclusion that there was a novation of the contract. The trial court erred in observing that the suit which was filed on the basis of Ex.A.1 agreement of sale was not maintainable and therefore the decree passed by the courts below had to be set aside.

7. Heard, the counsel and perused the papers. It is seen that both the courts below have proceeded on the basis that the agreement of sale dated 10.11.2000, marked as Ex.A.1 had fixed a time for performance of the contract on 26.04.2001. The plaintiff has not shown any evidence whatsoever to show that he was ready and willing to perform the contract from 10.11.2000 to 26.04.2001. In fact the notice has been issued first by the defendant informing the plaintiff that the sale had to be completed on 15.05.2001. It is only after the receipt of this notice that the plaintiff has come forward with the case that the extent on site was less than the extent shown in the agreement Ex.A.1 and that he had asked for the proportionate reduction of the sale consideration which was not complied with by the defendant.

8. It is also seen from the judgment that even during the pendency of the suit the defendant was willing to complete the sale deed, however the plaintiff had not come forward. It is also seen that the plaintiff continues to be in possession of the property into which he had been put in possession on paying the advance of Rs.50,000/-. The defendant had specifically pleaded that the plaintiff is not having the necessary where with all to complete the sale and that he is putting off the sale under one pretext or the other to continue to squat on the property without paying any rent. The fact that the plaintiff has not been able to make the payment from 10.11.2000 to date clearly proves that he is neither ready nor willing to proceed with the sale. The courts below have rightly dismissed the suit on appreciation of the evidence on record.

9. I find no infirmity in the same. The appellant has not been able to make out any question of law warranting interference of this Court under Section 100 of the Code of Civil Procedure.

10. In the result, the second appeal therefore stands dismissed. The judgment and decree passed in A.S.No.12 of 2013

dated 16.08.2018 on the file of the Additional District Judge, Namakkal confirming the judgment and decree passed in O.S.No.293 of 2001 dated 23.01.2013, on the file of the Subordinate Judge, Namakkal, is confirmed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

msvm

To

- 1.The Additional District Judge,
Namakkal.
- 2.The Subordinate Judge,
(Civil Judge, Senior Division)
Namakkal.

+1cc to Mr.Deepan Uday, Advocate SR.No.85678

+1cc to Mr.M.Nallathambi, Advocate SR.No.85036

SJ (CO)
GMY (05/02/2019)

S.A.No.771 of 2018

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