

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 25.09.2019
PRONOUNCED ON : 14.10.2019
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
A.S.No.139 of 2011

E.V.Perumal Samy Reddy ... Appellant/Plaintiff

Vs.

1. M.K.Seetharama Mudaliar,
2. Bakiyalakshmi
3. M.S.Rajagopal
4. M.K.Jayabalan
5. J.Senthil Kumar
6. Akila
7. Sarala ... Respondents/Defendants

Prayer: Appeal Suit filed under Order 41 Rule 1 r/w Section 96 of Civil Procedure Code as against the judgment and decree dated 31.08.2010 made in OS No.44 of 2007 on the file of Court of Additional District & Sessions Judge, Fast Track Court-I, Poonamallee.

For Appellant : Mr.M.Anandraj

For Respondents: Mr.S.Vijayakumar

JUDGMENT

Aggrieved over the judgment and decree dated 31.08.2010, passed in O.S. No.44 of 2007, on the file of the Additional District & Sessions Judge, Fast Track Court-I, Poonamallee, the plaintiff has preferred the First Appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for specific performance and permanent injunction.

4. The case of the plaintiff, in brief, is that the defendants who are the owners of the plaint schedule properties offered to sell the same in favour of the plaintiff for a sale

price of Rs.13,63,500/- and the plaintiff having accepted the said offer, accordingly, it is put forth that a confirmation letter dated 11.08.2004 has come to be executed between the parties with reference to the same and a sum of Rs.1,00,000/- was paid by the plaintiff on the same date and following the same, the plaintiff and the defendants entered into a sale agreement dated 04.10.2004 qua the sale of the suit property for the abovesaid sum and the parties had fixed a time limit of 18 months to complete the sale transaction. However, according to the plaintiff, time was not the essence of contract and further put forth the case that the defendants agreed to permit the plaintiff to survey the suit property and clear them and fill the pits and make the same suitable for forming the house sites and the defendants also put the plaintiff in the possession of the suit property for the abovesaid purpose and also agreed to execute a power of attorney in favour of the plaintiff or his authorised representative. It is also stated that after the receipt of Rs.4,00,000/- as advance, the plaintiff was put in the possession of the suit property and the power of attorney was also executed in favour of the plaintiff's representative and based on the same, the plaintiff requested the defendants to provide the title documents and other receipts qua the plaintiff schedule properties for obtaining the legal opinion and also to enable the plaintiff to apply for Encumbrance certificate. However, the defendants failed to produce the abovesaid documents and the plaintiff had started all the works relating to the development of the suit property and engaged surveyors for the purpose of survey and the plaintiff had been in constant touch with the defendants and expressed his readiness and willingness to complete his part of the contract under the sale agreement. However, the defendants failed to comply with his demand and postponing the sale transaction one way or the other and failed to discharge their obligation under the sale agreement and hence, the plaintiff also by way of a letter dated 12.01.2006 requested the defendants to furnish the documents as required by his counsel and the defendants did not show any interest to complete the sale and left with no other alternative, according to the plaintiff, he had issued a legal notice on 09.11.2006. Despite the receipt of the same, the defendants did not come forward to complete their obligation and instead sent a reply dated 24.11.2006 containing false allegations as if the plaintiff is responsible for the delay and also falsely claimed that the plaintiff is liable to forfeit the advance amount and the defendants had also sent a notice on 09.02.2007 purporting to cancel the power of attorney executed in favour of the plaintiff's representative and the said act is unlawful and in breach of the terms of the sale agreement and hence, according to the plaintiff, he has been necessitated to

lay the suit against the defendants for appropriate reliefs.

5. The defendants resisted the plaintiff's suit contending that the plaintiff's suit is not maintainable either in law or on facts and contended that the plaintiff has agreed to bind by the terms of the agreement and complete his part within the stipulated period and contended that they had not received Rs.1,00,000/- on 11.08.2004 and further put for that the agreement entered into on 11.08.2004 can never be a concluded contract and the same is unenforceable. According to them, the plaintiff, to cheat the defendants, had prepared the agreement of sale and without reading over the contents of the same, had obtained the signature of the defendants in the agreement and the plaintiff had failed to complete the sale transaction within the time fixed under the sale agreement and denied the case of the plaintiff that he has been always ready and willing to perform his part of the contract and contended that it is only the plaintiff who had committed the breach of the contract and disputed the claim of the plaintiff that he had done developmental works in the suit property. According to the defendants, the plaintiff was not put in the possession of the suit property and by a deed of cancellation dated 29.01.2007, they had cancelled the power given to the plaintiff. After the lapse of 18 months from 04.10.2004, the defendants convened a meeting between them and the plaintiff and informed them that they had rescinded and cancelled the agreement and furthermore, the price of the land and suit property has steeply increased and inasmuch as the plaintiff has never been ready and willing to perform his part of the contract at any point of time, according to the defendants, the plaintiff is not entitled to the reliefs as prayed for and hence, the suit is liable to be dismissed.

6. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for determination:

1. Whether the plaintiff is entitle for specific performance of sale agreement dated 14.10.2004 as prayed for?

2. Whether the plaintiff is entitle for permanent injunction as prayed for?

7. In support of the plaintiff's case, PW1 was examined, Exs.A1 to A7 were marked. On the side of the defendants, DW1 was examined, Exs.B1 and B2 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the

trial Court was pleased to decline the relief of specific performance as well as the relief of permanent injunction prayed for by the plaintiff. However, held that the plaintiff is entitled to receive the advance amount of Rs.4,00,000/- from the defendants with interest at the rate of 9% per annum from the date of the sale agreement and accordingly disposed of the plaintiff's suit. Aggrieved over the judgment and decree of the trial Court, the plaintiff has preferred the first appeal.

9. The following points arises for determination in the First Appeal:

1. Whether the plaintiff has been always ready and willing to perform his part of the contract?
2. Whether the plaintiff is entitle to the relief of specific performance in respect of the sale agreement dated 04.10.2004 ?
3. Whether the plaintiff is entitle to the relief of permanent injunction as prayed for?
4. To what relief the plaintiff/appellant is entitled to?
5. To what relief the defendants are entitled to?

Point Nos.1 to 3:

10. From the materials placed on record, it is found that the plaint schedule properties belong to the defendants. It is also noted that the sale agreement had been entered into between the plaintiff and the defendants qua the sale of the suit property for a sum of Rs.13,63,500/- and the sale agreement had been executed on 04.10.2004, which document has been marked as Ex.A2. Prior to the sale agreement Ex.A2, it is also noted that a token advance agreement had been entered into between the parties on 11.08.2004, marked as Ex.A1. It is also found that out of the abovesaid sale price, in toto, the plaintiff has paid a sum of Rs.4,00,000/- as advance to the defendants. It is further noted that the power of attorney had also been executed in favour the plaintiff's representative by the defendants pursuant to the sale agreement which document has been marked as Ex.A3. It is also admitted that the parties had agreed to complete the sale transaction within 18 months from the date of the sale agreement.

11. According to the plaintiff, time is not the essence of the contract. However, according to the defendants, the plaintiff is bound to perform his obligations under the sale agreement within the stipulated period, failing which, he would forfeit the advance amount paid by him and also would be deprived of enforcing the sale agreement. Though time may not

be the essence of the sale agreement in respect of the immovable properties, when the parties had endeavoured to fix the time limit for completing the sale transaction, the same cannot be easily discarded. Accordingly, it has to be seen whether the plaintiff had been always ready and willing to perform his obligations under the sale agreement from the inception and endeavoured to pay the balance sale price to the defendants for the purpose of completing the sale transaction.

12. According to the plaintiff, the defendants had failed to produce the title documents pertaining to the suit property for the purpose of obtaining the legal opinion and it is put forth that despite the letter issued by him to the defendants on 12.01.2006, the defendants did not come forward to supply the documents called for. The abovesaid letter dated 12.01.2006 has been marked as Ex.A4. On a perusal of Ex.A4, as rightly held and determined by the trial Court, the letter does not clearly point out as to what are the documents sought for by the plaintiff for the purpose of the legal opinion said to have been obtained by the plaintiff from his counsel. At the foremost, the plaintiff has not come forward with the legal opinion offered by his counsel qua the suit property. When the plaintiff after satisfying with the title of the defendants had proceeded to enter into the sale agreement with the defendants on 04.10.2004, in such view of the matter, the claim of the plaintiff that on account of the failure of the defendants to furnish the title deeds and other documents pertaining to the suit property, he is unable to go ahead with the completion of the sale transaction, as such, cannot be believed and accepted. As held by the trial Court, considering the various clauses furnished in the sale agreement, particularly, clauses 7 and 8, when by way of the same, the plaintiff and the power of attorney would be entitled to secure the documents concerned pertaining to the suit property on their own, in such view of the matter, the blame put forth by the plaintiff on the defendants that they had failed to furnish the documents called for under Ex.A4 cannot be readily accepted and when Ex.A4 does not clearly point out the documents with reference to which, the so called opinion said to have been obtained from his counsel, and furthermore, if there is any clog in the title of the defendants, the sale agreement also enables the plaintiff to get back the advance amount, in such view of the matter, in all, the case of the plaintiff that the delay had occurred in the completion of the sale transaction only on account of the defendants to furnish the requisite documents, as such, cannot be believed and accepted and the abovesaid case of the plaintiff has been rightly disbelieved by the trial Court.

13. The plaintiff is found to have issued the legal notice only on 09.11.2006 i.e., much after the stipulated time period of 18 months. Even by way of the abovesaid notice, the plaintiff has not made out clearly as to what are the documents required by him and in such view of the matter, it is found that the plaintiff, with a view to conceal his inability to complete the sale transaction one way or the other, has attempted to find fault on the part of the defendants without any basis and accordingly is found to have put forth the case that on account of the non production of the requisite documents by the defendants, the sale transaction could not be completed. However, as above pointed out, when the clauses under the sale agreement empowers the plaintiff and the plaintiff's representative to secure the documents on their own and the plaintiff has not come forward clearly as to what are the documents actually required by him from the defendants and if according to the plaintiff, there is a clog in the title of the suit property, when it is found that he is entitled to get back the advance amount, in all, it is found that the plaintiff, with a view to conceal his readiness and willingness to complete the sale transaction, has projected the case as if the delay had occurred on the part of the defendants to furnish the requisite documents.

14. Furthermore, as found by the trial Court, even if there is any delay on the part of the defendants, when as per the sale agreement the plaintiff is required to pay the balance sale consideration in the Government bank and secure the sale deed, the plaintiff having not endeavoured to deposit the balance sale consideration in the bank account or into the Court, in all, the abovesaid factors would only expose the inability of the plaintiff in paying the balance sale consideration. Accordingly, the plaintiff has not endeavoured to proceed with any of the above course to show his readiness and willingness to perform his part of the contract.

15. As above pointed out, the time limit fixed by the parties in the sale agreement cannot be easily ignored. The plaintiff has failed to establish that he is possessed of sufficient solvency to pay the balance sale consideration and has expressed his readiness and willingness to complete the sale from the inception of the sale agreement. On the other hand, without any basis, is found to have blamed the defendants for the incompleteness of the sale transaction. When the case projected by the plaintiff for the delay on the part of the defendants is found to be untenable and without any basis and

found to be made only with a view to conceal his failure to pay the balance sale consideration at the earliest point of time, in such view of the matter, the plaintiff having expressed his readiness and willingness much after the stipulated time, in all, it is found that, as rightly determined by the trial Court, the plaintiff has failed to establish his readiness and willingness to complete the sale transaction and accordingly, the plaintiff is found to be not entitled to the relief of specific performance as prayed for.

16. Likewise, it is also found that the plaintiff is not entitled to obtain the relief of permanent injunction as against the defendants as put forth in the plaint. Accordingly, the point Nos.1 to 3, formulated in the First Appeal are answered in favour of the defendants and against the plaintiff.

17. In this connection, the decision relied upon by the defendants, rendered by the Supreme Court, dated 11.09.2019, Civil Appeal Nos.7424-7425 of 2011 Surinder Kaur (D) Thr.LR.Jasinderjit Singh (D) Thr. Lrs. Vs. Bahadur Singh (D) Thr.Lrs. is taken into consideration and followed as applicable to the case at hand.

Point Nos.4 & 5:

18. In the light of the abovesaid discussions, the judgment and decree dated 31.08.2010, passed in O.S. No.44 of 2007, on the file of the Additional District & Sessions Judge, Fast Track Court-I, Poonamallee are confirmed and resultantly, the First Appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

सत्यमेव जयते Assistant Registrar(CO)

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Sub Assistant Registrar

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To:

The Additional District & Sessions Judge,
Fast Track Court-I, Poonamallee.

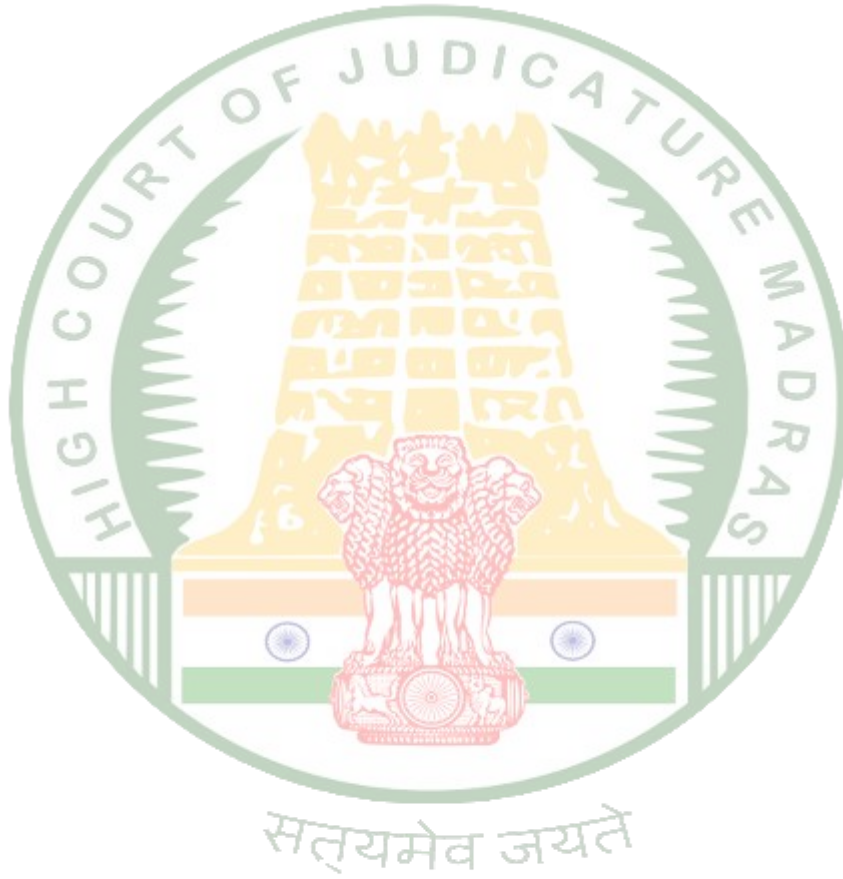
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The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S.Vijayakumar, Advocate sr.85683

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