

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2019

PRONOUNCED ON : 12.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.278 of 2013

K.Gowri

...

Appellant/Defendant

Vs.

Venkatarama Chettiar (died)  
represented by his legal  
representatives

1.Indra @ Indrabai

2.Latha @ Pouchepalila

3.Usha @ Uma

4.Geetha @ Sandirabaye

5.Meena @ Bama

6.Sinou @ Sinou Chettiar  
rep. by his Power agent  
Sathyanarayanan

...

Respondents /Plaintiff

Prayer:- First Appeal has been filed under Section 96 of CPC against the judgment and decree dated 03.07.2009 passed in O.S.No.40 of 2005 on the file of the Third Additional District Court, Pondicherry.

For Appellant : Mr.R.Prabhakaran  
for Mr.M.K.Raja

For Respondent : Mr.V.Raghavachari  
Nos.1 to 5

For Respondent : No appearance  
No.6 set exparte vide order  
dated 25.11.2019

JUDGMENT

Aggrieved over the judgment and decree dated 03.07.2009 passed in O.S.No.40 of 2005 on the file of the Third Additional

District Court, Pondicherry, the defendant 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.

4.The case of the plaintiff in brief is that the suit property belongs to the defendant by way of a registered deed dated 05.02.2001 and the defendant approached the plaintiff and offered to sell the suit property for a sum of Rs.5,95,000/- and the parties had reduced the agreement for sale into writing on 04.11.2004 and the plaintiff paid a sum of Rs.50,000/- as advance on the date of the sale agreement to the defendant and the parties agreed that time shall be the essence of the contract and the obligation of the defendant is to sell the suit property within one month from the date of the sale agreement and within the abovesaid period, the defendant should furnish all the original title deeds, nil encumbrance certificate, patta copy, tax receipt and measurement report from the surveyor etc., and thereupon, the plaintiff has to pay the balance sale consideration and obtain the sale deed executed from the defendant. However, the defendant did not take further steps as per the terms and conditions of the agreement and though the plaintiff has been always ready and willing to pay the balance sale consideration and obtain the sale deed, the defendant had failed to produce the original documents as agreed upon and thereafter, sought for the extension of time for the execution of the sale deed and accordingly, on 30.11.2004, the renewal was made on the reverse side of the agreement by way of which the time for the completion of the sale transaction has been extended by four months from 30.11.2004 and even thereafter, though the plaintiff had several times approached the defendant to come forward and accept the balance sale consideration and execute the sale deed, however, the defendant failed to respond to the same and subsequently, in the month of June, 2005, the defendant agreed to execute the sale deed and believing her words, the plaintiff had also purchased the stamp papers in the name of his daughter viz., Bama on 02.02.2005 and informed the same to the defendant. However, even thereafter, the defendant had not turned up and also failed to produce the original documents and not measured the property till date. The plaintiff approached through mediators to settle the issue. However, the defendant gave evasive reply and therefore, the plaintiff issued a legal notice on 28.02.2005 informing about his readiness and willingness to pay the balance sale consideration and complete the sale transaction and called upon the defendant to produce the necessary documents as above stated and also the measurement report from the surveyor. However, the defendant did not come forward to comply with the abovesaid payment and on the other

hand, on 03.03.2005 gave an evasive reply alleging that the plaintiff had not purchased the stamp papers and the plaintiff had not approached him through the mediator and it was only the plaintiff, who had been delaying the completion of the sale transaction. However, the abovesaid allegations put forth by the defendant are false. It is only the plaintiff, who has been always ready and willing to perform his part of the contract and hence, according to the plaintiff, the suit has been laid for appropriate reliefs.

5.The defendant resisted the plaintiff's suit contending that the sale agreement dated 04.11.2004 had been entered into between the parties with reference to the sale of the suit property for Rs.5,95,000/- and also admitted the receipt of Rs.50,000/- under the sale agreement and further, admitted that originally, the time had been fixed by one month for completing the sale transaction, however, the sale had been mutually extended for a period of four months commencing from 30.11.2004. It is put forth by the defendant that even before the execution of the sale agreement, she had handed over the photocopy of her title deed and other documents pertaining to the suit property and only after verifying the same, the plaintiff had entered into the sale agreement. According to the defendant, she has been always ready and willing to receive the balance sale consideration and execute the sale deed and on the other hand, it is only the plaintiff, who had not come forward to perform his part of the contract. The plaintiff issued a legal notice on 28.02.2005 as if he has been always ready and willing to perform his obligations under the sale agreement. To the same, the defendant sent a reply dated 03.03.2005 containing the true facts and also enclosed along with the reply notice the copy of the sale deed in her favour, the sale deeds in favour of her vendor and predecessor in title, patta copy and encumbrance certificate and called upon the plaintiff to verify the original documents at her residence and also informed that the suit property had been measured, demarcated with boundary stones and the same could be cross checked by the plaintiff and expressed her unconditional willingness to receive the balance sum and execute the sale deed on or before 31.03.2005. However, it is put forth that instead of complying with the abovesaid tasks, the plaintiff has levied the suit prematurely on 28.03.2005. The defendant issued the legal notice on 05.04.2005 cancelling the sale agreement and intimated the plaintiff that advance amount paid by him stands forfeited. The plaintiff issued a reply notice to the same on 09.04.2005 with false allegations. The plaintiff has failed to perform his obligations under the sale agreement and it is only the defendant, who had been always ready and willing to act as per the terms of the sale agreement and performed his tasks in all and therefore, as the sale agreement stands cancelled, the suit laid by the plaintiff is

not maintainable and 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 consideration:

" (1). Whether the plaintiff was ready and willing to perform his part of contract?

(2). Whether time is essence of contract?

(3). Whether the plaintiff is entitled for the relief of specific performance of the contract of sale?

(4). To what relief?"

7. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs. A1 & A7 were marked. On the side of the defendant, DW1 was examined and 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 grant the reliefs in favour of the plaintiffs as prayed for. Impugning the same, the first appeal has been preferred by the defendant.

9. The following points arise for determination in this first appeal:

"(1). Whether the plaintiff has been always ready and willing to perform his part of the contract?

(2). Whether the plaintiff is entitled to obtain the relief of specific performance in respect of the sale agreement dated 04.11.2004?

(3). To what relief the plaintiff is entitled to?

(4). To what relief the defendant/appellant is entitled to?"

10. Point Nos. 1 to 2

The suit property belongs to the defendant and it is admitted that the plaintiff and the defendant entered into a sale agreement on 04.11.2004, whereunder, the defendant had agreed to sell the suit property to the plaintiff for a sum of

Rs.5,95,000/- and it is agreed that on the date of the sale agreement, the defendant had received Rs.50,000/- as advance from the plaintiff. The parties had agreed to complete the sale agreement within one month from the date of the agreement, however, the parties had mutually agreed to extend the time by another four months from 30.11.2004. The aforesaid facts are not in issue.

11.Now, according to the plaintiff, as per the terms and conditions set out in the agreement Ex.A1, the defendant is obliged to furnish the title deed, nil encumbrance certificate, patta copy, tax receipt, measurement report etc., within the agreed period and thereupon, the plaintiff should pay the balance sum and obtain the execution of the sale deed from the defendant. According to the plaintiff, though he has been always ready and willing to pay the balance sale consideration and obtain the sale deed, the defendant had failed to perform her obligations abovestated under the sale agreement and delaying the matter. Accordingly, it is the case of the plaintiff that he had issued the legal notice to the defendant on 28.02.2005 marked as Ex.A4 calling upon the defendant to perform her obligations under the sale agreement and receive the balance sale consideration and execute the sale deed in his favour. To the abovesaid notice, the defendant had issued the reply notice on 03.03.2005 marked as Ex.A5. According to the defendant, she had been always ready and willing to execute the sale deed by receiving the balance sale consideration from the plaintiff and also put forth that prior to the sale agreement, she had given a copy of her title deeds to the plaintiff and also put forth that along with the reply notice Ex.A5, she had enclosed the copies of the title deeds and other documents as well as the measurement report and called upon the plaintiff to verify the same and pay the balance sale consideration and obtain the sale deed executed before 30.03.2005, it is put forth that however even prior to the abovesaid period, the plaintiff has levied the suit on 28.03.2005.

12.The case of the defendant that she had enclosed the various documents along with the reply notice Ex.A5 as well as measurement book has not been admitted by the plaintiff as such. Despite the same, to sustain her case that she had been keeping ready the title deeds, nil encumbrance certificate, tax receipt, measurement report etc., by 30.03.2005, there is no valid and acceptable material forthcoming on the part of the defendant and the defendant has not come forward clearly as to when the suit property had been measured, whether the same had been measured in the presence of the plaintiff and what steps had been taken by the defendant with reference to the same, through whom the same had been taken, when the same had been taken and with reference to all the abovesaid factors absolutely, there is no

plea or material on the part of the defendant. Inasmuch as the defendant had failed to perform her obligation under the sale agreement, it is seen that it is only the plaintiff, who had chosen to issue the legal notice on 28.02.2005 and only thereafter by way of the reply notice Ex.A5, the defendant would plead that she had been keeping ready the title deeds and other documents as well as the measurement book. However, as above pointed out, with reference to her readiness abovestated, there is absolutely no reliable material forthcoming on the part of the defendant. Accordingly, it is found that on noting the evasive attitude of the defendant in failing to perform her obligations under the sale agreement, left with no other alternative, the plaintiff had chosen to levy the suit on 28.03.2005. In such view of the matter, when it is found that the plaintiff had approached the Court at the earliest point of time that too within the extend period of time as agreed to between the parties under the sale agreement and when prior to the same, there is no material on the part of the defendant to establish that she had performed her obligations as required to be done under the sale agreement and had produced the necessary documents to the plaintiff as required and called upon by the plaintiff, in such view of the matter, it is seen that the conduct of the defendant in not responding to the plaintiff at the earliest point of time as well as not furnishing the relevant documents to the plaintiff within the stipulated period, it is evident that as rightly determined by the trial Court, left with no other alternative, the plaintiff had chosen to take appropriate steps to enforce the sale agreement by issuing the legal notice on 28.02.2005 marked as Ex.A4 and subsequently, had laid the suit on 28.03.2005.

13.It is also put forth by the plaintiff that the defendant at one point of time expressed her readiness to execute the sale deed and believing her words, the plaintiff had also purchased the stamp papers in the name of his daughter Bama and the same had been established by the plaintiff through the documents marked as Exs.A6 & A7. Though the plaintiff is found to have not produced the entire stamp papers for the execution of the sale deed at the agreed value, however, the abovesaid earnest and action taken by the plaintiff would only go to show that he has been always ready and willing to go ahead with the sale transaction and accordingly, endeavoured to purchase the stamp papers in the name of his daughter and on account of the failure of the defendant to positively respond to the same, it is seen that the plaintiff was necessitated to proceed further for the completion of the sale transaction.

14.It is contended by the defendant's counsel that the plaintiff has failed to come forward and peruse the documents kept ready by the defendant as mentioned in the reply notice and

therefore, according to her, it is only the plaintiff, who is at fault and failed to express his readiness and willingness to abide by the terms and conditions of the sale agreement. However, when it is found that he has been always ready and willing to perform his part of the contract right from the inception and expressing the same and when the defendant had chosen to express his readiness only after the issuance of the legal notice on the part of the plaintiff and to sustain his case, as above noted, the defendant having not placed the documents alleged to have been kept ready by him in the matter, all put together, would only go to show that it is only the defendant, who has not been ready and willing to perform her part of the contract and delaying the sale transaction one way or the other.

15.The defendant's counsel would contend that the defendant had subsequently cancelled the sale agreement by way of the legal notice dated 05.04.2008 marked as Ex.B1 and therefore, the plaintiff's suit is not maintainable. However, even before the alleged cancellation of the sale agreement on the part of the defendant, when it is seen that the plaintiff has already instituted the suit for enforcing the sale agreement and as above pointed out, when the plaintiff has established her readiness and willingness in toto right from the inception of the sale agreement, in such view of the matter, when the plaintiff is not required to tender the balance sale price into the Court except when so projected by the Court, in all, it is found that as determined by the trial Court, the plaintiff has been always ready and willing to perform his part of the contract and it is only the defendant, who had been evading the same on some pretext or the other.

16.In the light of the abovesaid discussions, the trial Court is found to have analysed the materials placed on record, both oral and documentary in the right perspective as well as by applying the correct principles of law pertaining to the issues involved between the parties and rightly upheld the plaintiff's case and granted the relief prayed for.

17.In the light of the abovesaid position, I hold that the plaintiff has been always ready and willing to perform his part of the contract. I therefore hold that the plaintiff is entitled to obtain the relief of specific performance in respect of the sale agreement dated 04.11.2004. Accordingly, the point Nos.1 & 2 are answered.

18.Point Nos.3 & 5

For the reasons aforestated, the judgment and decree dated 03.07.2009 passed in O.S.No.40 of 2005 on the file of the Third

Additional District Court, Pondicherry, are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms

To

The Third Additional District Court,  
Pondicherry.

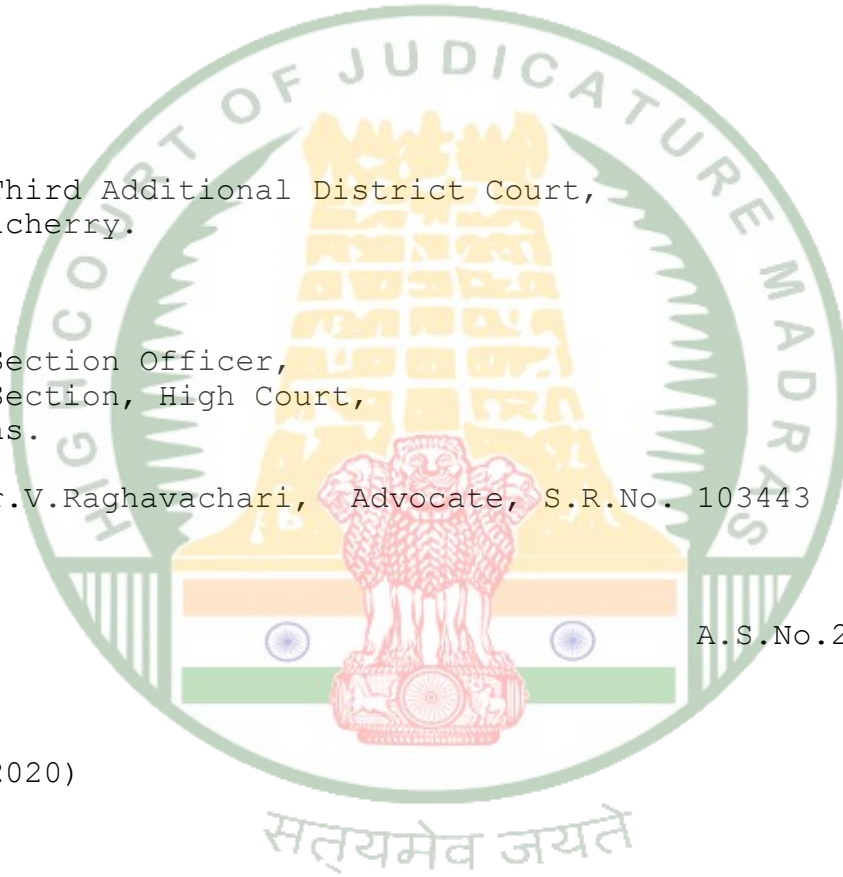
Copy to

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

+1cc to Mr.V.Raghavachari, Advocate, S.R.No. 103443

A.S.No.278 of 2013

TM (CO)  
GN (22/09/2020)



WEB COPY