

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Appeal Suit No.256 of 2011

Pandian Chemicals Limited,
rep by its Company Secretary
K.Sathiavan.

.... Appellant/Plaintiff

Vs..

1.Jeevarathinam

2.D.Thillairaj

....Respondents/Defendants

Appeal Suit filed under Section 96 C.P.C., 1908 against the
Judgement and Decree dated 09.12.2010 passed in O.S.No.18 of
2004 on the file of the District Judge, Karaikal.

For Appellant : Ms.R.Divya
for Mr.N.S.Manoharan

For Respondents : Mr.S.Balamurugan
(for first respondent)
Mr.R.Asokan (for second respondent)

JUDGMENT

The judgement and decree dated 09.12.2010 passed in
O.S.No.18 of 2004 is under challenge in the present First
Appeal.

2.The plaintiff is the appellant and the defendants are the
respondents in the First Appeal. The contention of the
appellant/plaintiff before the Trial Court was that the
plaintiff intended to purchase lands for their factory and the
first defendant offered to sell the suit schedule property for a
price of Rs.930/- per kuzhi. The first defendant agreed to sell
an area to an extent of 2 Mahs 79 Kuzhies 27/64 and the
plaintiff agreed to purchase the same after measuring the
property. Accordingly, an agreement was entered into between the
parties on 07.11.2003. The defendant had undertaken to get ready
with all his documents including legal heir declaration from the

Court, encumbrance certificate for 30 years within 60 days. He also measured the land and to pay all kists and taxes. After 60 days and within 30 days from that date, the defendant will have to get legal opinion and execute and register the sale deed in favour of the plaintiff. The plaintiff has paid Rs.5,000/- as advance. The defendants has also given photo copies of the title deeds. However, the land was not measured and the other conditions such as legal heir certificate from the Court has not obtained. Thus, the plaintiff contended that the defendant failed to produce certificate and the plaintiff wanted the defendant to extend the time on the agreement date itself. But the defendant was not willing to execute the sale deed and therefore the plaintiff approached the Trial Court for a suit for specific performance. It is contended that the plaintiff was all along ready and willing to execute his portion of the contract. The defendant, he who expressed his willingness and produced agreed documents and also failed to perform his part of the contract.

3.The first defendant filed a written statement stating that the suit was filed by suppressing certain material facts. It was admitted by the first defendant that the sale agreement was signed between the parties on 07.11.2003. In spite of the knowledge that there is a legal problem which is arisen out of the release deed dated 08.12.1988 and the release deed dated 25.11.1988, the plaintiff has suppressed these facts. The first defendant states that on coming to know about these legal problems, the plaintiff avoided his performance of the contract. The plaintiff demanded for the return of the advance amount of Rs.5,000/-. On seeing the paper publication in Dina Malar, Tanjore Edition dated 30.03.2000 regarding the publication that the plaintiff had purchased the suit property, he immediately replied through his advocate notice dated 01.04.2004. The first defendant returned the advance amount along with notice. The plaintiff refused to receive the notice and instituted the suit. As the plaintiff had refused to purchase the suit schedule property, the first defendant entered into a sale agreement on 31.03.2004 with the second defendant and one Mr.Thillairajan contacted the first defendant and threatened to take legal action against him. Infact, Mr.Thillairajan had completed the entire sale process and therefore the plaintiff has not come out with clean hands.

4.The Trial Court framed the issues as to whether the enforcement of the sale agreement dated 07.10.2003 is barred by limitation? Whether the plaintiff is entitled for judgement and decree, specific performance of the contract of sale of the suit property and delivery of possession? Whether the plaintiff is entitled for the alternate relief claimed by him?

5.The plaintiff examined himself as P.W.1 and marked Exs.A.1 to A.11 and during his cross examination, Ex.A.12 to A.18 have been marked. On the side of the defendants, the first defendant examined himself as D.W.1 and marked Exs.B.1 to B.3 and the second defendant marked himself as D.W.2 and marked Exs.B.4 to B.8.

6.In respect of Issue No.1, the Trial Court found that the sale agreement has been marked as Ex.A.3 and same was executed on 07.11.2003 and the date fixed for execution was 60 days. Considering the time fixed for execution, the suit has been laid well within the period of limitation. Thus, the suit is not barred by limitation.

7.With reference to Issue No.2 and additional Issue, the Trial Court elaborately considered the facts with reference to the documents and evidence filed by the respondent parties to the suit and arrived at a conclusion that the second defendant is a bonafide purchaser of the suit property without notice for valuable consideration. The entire evidence reveals that the first defendant has given all his antecedent documents to the plaintiff and the plaintiff had received all those documents and the legal opinion. However, the plaintiff had not initiated any steps for the execution of the sale deed before filing of the suit. In the meantime, the first defendant executed the sale deed in favour of the second defendant who inturn completed the process of sale. The Trial Court further found that during the cross examination of D.W.1, it is evident that he had sold the suit property at Rs.930/- per kuzhi as found in Ex.A.3. Thus, it cannot be stated that the first defendant has sold the property for higher price and his intention was to gain out of sale in favour of the second respondent. This deposition is a clinching fact as the sale of the suit schedule property in favour of the second defendant was not for a higher price and therefore, there is no reason whatsoever for the first defendant to deny execution of the sale in favour of the plaintiff. In fact, the plaintiff was not ready and willing to complete the sale as the plaintiff had got a doubt in respect of legal issues, which came to his knowledge.

8.The plaintiff even at the time of entering into a sale agreement received the photo copies of all the antecedent documents and verified the same. In spite of all these facts, the plaintiff has not come forward to execute the sale deed as per the terms of the agreement. Under these circumstances, the first defendant agreed to sell the suit schedule property to the second defendant and executed the sale deed and the second defendant is a bonafide purchaser of the suit property and under these circumstances the Trial Court came to the conclusion that the plaintiff had not established his case nor fulfilled his

portion of contract in time more specifically readiness and willingness.

9. With reference to the Issue No.3 the Trial Court found that the plaintiff, he who had not established the readiness and willingness and under these circumstances the plaintiff is not entitled for any damages for breach of contract. There is no breach of contract established on the side of the first defendant and infact the plaintiff has not established his readiness and willingness for the purpose of execution of the sale as per the terms of the agreement. Thus, the third issue is also held against the plaintiff by holding that the plaintiff is not entitled for damages as prayed for.

10. At the outset, the agreement between the parties were admitted before the Trial Court. The photo copies of the antecedent documents were produced by the first defendant at the time of signing the agreement. Thus, the plaintiff must be ready and willing to execute the sale as per the time fixed in the agreement. The time fixed in the agreement was 60 days. However, the plaintiff has not expressed his readiness and willingness in order to fulfil the terms and raised legal issues more specifically regarding the release deed dated 08.12.1988 and the release deed dated 25.11.1988. When a doubt regarding title is raised by the plaintiff, it has to be construed that he is not ready and willing to comply with his portion of the contract. Based on the documents and evidences produced, the Trial Court also made a clear finding that the first defendant has not committed any breach of contract and the plaintiff has not established readiness and willingness for the purpose of complying with his portion of the agreement as agreed.

11. This being the factum established before the Trial Court and the Trial Court rightly ordered for return of advance amount to the plaintiff, the plaintiff is not entitled for any other relief as prayed for in the suit.

12. This Court is of the opinion that the relief of specific performance is a discretionary relief and as well as an equitable one. The Court must consider the equity and the intention of the parties with reference to the contract. As far as the lis on hand is concerned, the plaintiff could not able to establish his case for grant of relief of specific performance. Further the fact remains that the suit schedule property was sold in favour of the second defendant and the second defendant became the bonafide purchaser of the suit property. This apart the selling price was also the same and the Trial Court arrived at a conclusion that the first defendant did not sold the suit schedule property for higher price nor he had an intention to avoid execution of sale deed with the first defendant.

13.These being the facts and circumstances of the case, this Court has no hesitation in coming to the conclusion that there is no perversity or infirmity as such and therefore the judgement and decree dated 09.12.2010 passed in O.S.No.18 of 2004 is confirmed and the Appeal Suit stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The District Judge,
Karaikal.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.N.S.Manoharan, Advocate Sr.106761

A.S.No.256 of 2011

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