

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 27.08.2019
PRONOUNCED ON : 27.09.2019
CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.311 of 2011

Subbammal ... Defendant/Appellant

Vs.

M.Mani ... Plaintiff/Respondent

Prayer:

First Appeal filed under Section 96 of C.P.C., against the judgment and Decree dated of the Additional District Judge & Fast Track Court, Namakkal, dated 28.02.2011 in O.S.No.111 of 2008.

For Appellant : Mr.T.Dhanyakumar

For Respondent : Mr.C.Jagadish

J U D G M E N T

Aggrieved over the judgment and decree dated 28.02.2011 passed in O.S.No.111 of 2008 on the file of the Additional District Judge & Fast Track Court, Namakkal, 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 as detailed in the plaint and the defendant offered to sell the suit property to the plaintiff and accordingly both the plaintiff and the defendant entered into a sale agreement on 31.03.2006 with reference to the same by way of which the sale consideration has been fixed at Rs.3,35,000/- per acre and on the date of the sale agreement, the plaintiff has paid Rs.2,00,000/- as advance and the parties

had agreed that the balance sale consideration should be paid within two months from the date of the sale agreement and the plaintiff has been always ready and willing to perform his part of the contract in paying the balance sale consideration and obtaining the sale deed from the defendant. The defendant had agreed to measure the suit property and also agreed that in any case the extent of the suit property is found to be less, the value of the suit property should be accordingly fixed at Rs.3,350/- per cent. The defendant had handed over the title deeds pertaining to the suit property on the date of the sale agreement and though the title deeds projected by the defendant disclosed that the plaintiff is only entitled to an extent of acres 4.88, however in the sale agreement, the extent has been mentioned as acre 5.24 and when the plaintiff questioned the defendant with reference to the same, the defendant had assured that she has got documents to sustain the extent of acres 5.24, however as agreed to, the defendant had not taken the steps to measure the suit property within the time stipulated by the parties. Hence the plaintiff sent a telegram on 31.05.2006 calling upon the defendant to receive the balance consideration and execute the sale deed and even thereafter the defendant did not come forward to execute the sale deed and on being questioned, the defendant insisted that the sale deed should be taken for the extent mentioned in the sale agreement and the plaintiff sent a notice on 13.06.2006 calling upon the defendant to receive the balance sale consideration and execute the sale deed, however the defendant did not respond to the same. The defendant insisted for the payment of the sale consideration for the extent of acre 5.24, however the defendant is entitled only to an extent of acres 4.88 as per her title deeds and the defendant is not entitled to convey more extent than what she is entitled to. Hence according to the plaintiff, the need for the suit for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts. The defendant has admitted the execution of the sale agreement dated 31.03.2006 qua the suit property for the sale consideration at Rs.3,35,000/- per acre and also acknowledged the payment of Rs.2,00,000/- by the plaintiff on the date of the sale agreement, however disputed the case of the plaintiff that he has been always ready and willing to perform his part of the contract in paying the balance sale consideration within the stipulated period. According to the defendant, the plaintiff has not been ready and willing to perform his part of the contract. The defendant also admitted that she should execute the sale deed as per the available extent and put forth the case that her title deeds were entrusted to the plaintiff

much prior to the execution of the sale agreement and also disputed that the extent of acres 5.24 had been incorporated in the sale agreement at the instance of the defendant. The defendant did not insist for the conveyance of the property measuring an extent of acres 5.24 and despite the efforts of the defendant to measure the suit property, the plaintiff did not come forward with reference to the same and further according to the defendant, she had measured the suit property through surveyor by name Arivazhagan on 27.05.2006 and also entrusted the plan to the plaintiff and informed that the total extent available is only acres 4.88 and therefore disputed the case of the plaintiff that the defendant insisted for the execution of the sale deed for the extent of acres 5.24. In fact, the defendant sent a telegram on 30.05.2006 calling upon the plaintiff to be present in the Registrar's Office on 31.05.2006 and complete the sale transaction, however the plaintiff did not come forward to pay the balance sale consideration and complete the sale transaction and disputed the case of the plaintiff that he had sent a telegram to the defendant calling upon her to execute the sale deed after receiving the balance sale consideration. In such view of the matter, the plaintiff had failed to perform his part of the contract within the stipulated period, hence the sale agreement stands canceled and thereafter the plaintiff is not entitled to enforce the sale agreement as put forth in the plaint, the plaintiff has not come forward with the clean hands and only with a view to grab the suit property, the plaintiff has laid the suit falsely. The plaintiff is not entitled to seek the reliefs prayed for and accordingly prayed for the dismissal of the plaintiff's suit.

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.

i. Whether the plaintiff was ready and willing to perform his part of the agreement or the defendant was ready and willing to perform his part of the contract?

ii. Whether the agreement is unenforceable from 31.05.2006?

iii. Whether the plaintiff is entitled for decree for specific performance of agreement for sale?

iv. To what relief the plaintiff is entitled to?

7. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A7 were marked. On the side of the defendant, D.Ws.1 and 2 were examined. Exs.B1 to B5 were marked. Exs.X1 to X5 were also 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 decree the suit in favour of the plaintiff as prayed for by granting the relief of specific performance. Impugning the same, the defendant has preferred the first appeal.

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

i. Whether the plaintiff has been always ready and willing to perform his part of the contract in respect of the sale agreement dated 31.03.2006?

ii. Whether the plaintiff is entitled to seek the relief of specific performance in respect of the sale agreement dated 31.03.2006?

iii. To what relief the plaintiff is entitled to?

iv. To what relief the defendant/appellant is entitled to?

Point Nos.1 and 2:

10. It is not in dispute that the suit property belongs to the defendant. It is also not in dispute that the plaintiff and the defendant entered into a sale agreement on 31.03.2006 with reference to the sale of the suit property whereunder the defendant had agreed to convey the suit property in favour of the plaintiff by fixing the sale price at Rs.3,35,000/- per acre. It is found that the plaintiff had advanced the sum of Rs.2,00,000/- to the defendant on the date of the sale agreement and it is also further seen that the parties had agreed to complete the sale transaction within the period of two months from the date of the sale agreement. The sale agreement has been marked as Ex.A1. Therefore, as per the terms of the sale agreement, it is found that the parties had agreed to complete the sale transaction on or before 31.05.2006.

11. On a perusal of the sale agreement Ex.A1, it is found that the defendant had assured to measure the suit property before the stipulated period and complete the sale transaction. It is also found that the parties had agreed that the sale price

should be fixed as per the extent available on ground, on the measurement of the same, at the rate of Rs.3,350/- per cent. A perusal of Ex.A1 sale agreement go to disclose that the same had been entered into between the parties for the extent of acres 5.24. However, it is found that as per the title deeds standing in the name of the defendant marked as Exs.A6 and A7, it is found that the defendant is only entitled to the extent of acres 4.88 and not acres 5.24. However, the parties had chosen to incorporate the extent of 5.24 in the sale agreement and with reference to the same, according to the plaintiff, when he questioned the defendant as regards the same, according to him, the defendant had assured that she has got title to the extent of acres 5.24 and that shw would establish the same at the time of the conveyance and therefore according to the plaintiff only at the insistence of the defendant, the extent had been incorporated in the sale agreement as acres 5.24 instead of acres 4.88. In this connection, the defendant seems to have placed reliance upon the sale deed marked as Ex.A5 dated 15.05.1951. However when as per Exs.A6 and A7, the defendant is found to be only entitled to the extent of acres 4.88 and not acres 5.24, the defendant cannot be allowed to rely upon Ex.A5 deed standing in the name of her mother for sustaining that she is entitled to the extent of acres 5.24. Be that as it may, as per the terms of the sale agreement Ex.A1, the defendant had assured that she would measure the suit property and accordingly the parties had also agreed to fix the sale price on the available extent on ground. However, it is found that though the defendant had assured to measure the suit property within the stipulated period, there is no material on the part of the defendant evidencing that she had taken steps to measure the suit property and entrust the plan etc., with reference to the same to the plaintiff. Though the defendant in the written statement would claim that she had measured the suit property with the help of the surveyor by name Arivazhagan and entrusted the plan to the plaintiff, however no material is forthcoming on the part of the defendant to point out the same. The surveyor Arivazhalagan through whom the land is stated to be measured has not been examined. There is no material on the part of the defendant evidencing that the suit property had been measured by the surveyor as sought to be made out by the defendant. Therefore, it is found that the defendant has not endeavored to measure the suit property as agreed to between the parties under Ex.A1 sale agreement.

12. As rightly held by the trial court, the parties are not definite as regards the extent to be conveyed by way of Ex.A1 sale agreement . According to the plaintiff, inasmuch as, the defendant owns title to the extent of acres 4.88 alone and

on the other hand, as the defendant had been insisting for the completion of the sale transaction for the extent of acres 5.24, the plaintiff was unable to go ahead with the enforcement of the sale transaction and it is only the defendant who had been delaying the matter on that pretext. Per contra, according to the defendant she had not been insisting to complete the sale transaction to the extent of 5.24 acres and on the other hand, only insisting the completion of the sale transaction for the extent of acres 4.88 and accordingly would contend that the plaintiff has never been ready and willing to perform his part of the contract in paying the balance sale consideration and obtain the sale deed from her. However, considering the materials placed on record, when the defendant has failed to substantiate that she is entitled to an extent of acres 5.24 and on the other hand her title deeds pointed out that she is only entitled to the extent of 4.88 acres and not more than that, despite the above position, it is found that still the defendant is found to have preferred a Caveat petition for the extent of acres 5.24 and even in the reply notice dated 19.06.2006 marked as Ex.B3, she would claim for the completion of the sale transaction for the extent of acres 4.98 and therefore it is found that inasmuch as, the defendant had not been ready to convey the sale deed for the extent of acres 4.88 to which she is actually entitled to and on the other hand been insisting for the completion of the sale transaction of a larger extent, as above pointed out, it is found that the plaintiff was unable to go ahead with the performance of the sale agreement and in such view of the matter, in all, the trial court is correct and justified in holding that only on account of the delaying tactics adopted by the defendant in insisting the plaintiff for the completion of the sale transaction for a larger extent than what she is entitled to, the plaintiff was prevented from going ahead with the enforcement of the sale agreement.

13. As could be seen from the materials placed on record, it is found that the plaintiff has issued the telegram on 31.05.2006 marked as Ex.A2 calling upon the defendant to receive the balance sale consideration and execute the sale deed. The receipt of Ex.A2 has not been controverted by the defendant. Even thereafter the defendant has not come forward to perform her part of the contract. As above noted, inasmuch as, the defendant had been insisting for the completion of the sale transaction for a larger extent as above pointed out, the plaintiff was unable to proceed further in paying the balance sale consideration for the available extent i.e., acres 4.88 and complete the sale transaction. Thereafter, it is found that the plaintiff has also issued the legal notice dated 13.06.2006 marked as Ex.A3, and to the same, the defendant had sent a reply

marked as Ex.B3 whereunder, she would insist for the completion of the sale transaction for the extent of acres 4.98 instead of 4.88. As above noted, even in the Caveat petition Ex.B1, the defendant would claim for the larger extent i.e., acres 5.24. Therefore on the whole, it is found that the plaintiff has been always ready and willing to perform his part of the contract, and inasmuch as, the defendant has not endeavored to measure the suit property to fix the extent actually available on ground to proceed further for the completion of the sale transaction and on the other hand, when the defendant is found to be insisting for the completion of the sale transaction for a larger extent than what she is actually entitled to, in all, it is found that the above factors seem to be to the bottleneck in preventing the plaintiff from going further with the sale transaction and in such view of the matter, on the facts and circumstances of the case, as held by the trial court, the plaintiff cannot be stated to be at default in performing his part of the contract.

14. It is mainly putforth by the defendant's counsel that despite the reply notice marked as Ex.B3, the plaintiff has not endeavored to institute the suit immediately and on the other hand, according to him the plaintiff has laid the suit only on 21.08.2008 just prior to the completion of the limitation period and on that score alone, according to the defendant's counsel, the plaintiff should be held to be not ready and willing to perform his part of the contract and therefore the plaintiff should be held to be not entitled to enforce the sale agreement Ex.A1. No doubt, the plaintiff is found to have not laid the suit immediately after the receipt of the reply notice from the defendant marked as Ex.B3, however, according to the plaintiff's counsel, inasmuch as, the defendant had been insisting for the completion of the sale transaction for a larger extent, the plaintiff was unable to proceed further and thereby the delay had occurred. As above pointed out, the defendant has not taken steps to measure the suit property within the stipulated period and on the other hand, the conduct of the defendant would only go to point out that she has been insisting for the completion of the sale transaction of a larger extent as above pointed out. In such view of the matter, according to the plaintiff's counsel mere delay in the laying of the suit by itself would not dis-entitle the plaintiff from claiming the relief of specific performance and in this connection, the plaintiff's counsel had relied upon the decision of the Apex Court reported in 2019 SCC Online SC 907 [R.Lakshmikantham Vs. Devaraji]. Accordingly, it is found that merely on the factor of the delay on the part of the plaintiff in laying the suit, however when it is found that the plaintiff has laid the suit within the prescribed period of limitation, as

held by the Apex Court, the plaintiff's suit cannot be dismissed on that score alone, particularly when no question of equity arises. Following the abovesaid decision, in my considered opinion, on the facts and circumstances, the mere factor of the delay on the part of the plaintiff in laying the suit by itself would not lead to the conclusion that the plaintiff has not been ready and willing to perform his part of the contract. On the other hand, considering the facts and circumstances of the case, when it is found that the performance of the contract could not be done on account of the insistence of the defendant for the completion of the sale transaction for a larger extent than what she is actually entitled to, though the plaintiff has been ready and willing to perform his part of the contract and taken every endeavors to complete the sale transaction within his limits, in such view of the matter, the mere delay in the laying of the suit cannot be projected against the plaintiff for declining the relief to which he is otherwise entitled to.

15. The plaintiff's counsel in support of his contentions placed reliance upon the decision reported in 2015 (1) SCC 705 [Zarina Siddiqui Vs. A.Ramalingam Alias R. Amarnathan]. Per contra, the counsel for the defendant placed reliance upon the decisions reported in 2012 (2) LW 917 [A.S.M.Balasubramanian Vs. S.P.Swaminathan], 2014 (4) LW 72 [K.Nirmala Vs. Sellamuthu] and the judgment of this Court dated 29.03.2012 passed in S.A.No.710 of 2011 [J.Baskaran Vs. T.Pappa]. The principles of law outlined the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

16. For the reasons aforesaid, it is held that the plaintiff has been always ready and willing to perform his part of the contract in respect of the sale agreement dated 31.03.2006 and consequently I further hold that the plaintiff is entitled to seek the relief of specific performance in respect of the sale agreement dated 31.03.2006 as determined by the trial court. Accordingly the point Nos.1 and 2 are answered.

Point Nos.3 and 4:

17. In the light of the abovesaid discussions, the judgment and decree dated 28.02.2011 passed in O.S.No.111 of 2008 on the file of the Additional District Judge & Fast Track Court, Namakkal are confirmed and resultantly the First Appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

MEMORANDUM OF COSTS
AS.No.311 OF 2011

Respondent (	) Costs	Rs. P.
Stamp for Vakalatnama	...	--
Advocate's fee on rupees (F.C Not filed)	...	107.00
Translation Printing Charges	...	Nil

Typing		
To be paid to the Respondent (	) -----	107.00
by the Appellant (	) -----	

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mfa

To

The Additional District Judge,
Fast Track Court,
Namakkal.

Copy to

The Section Officer,
VR Section,
High Court.

+1cc to Mr.T.Dhanyakumar, Advocate, S.R.No.83326

SVI (CO)
CS/05/06/2020

A.S.No.311 of 2011