

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.09.2019
PRONOUNCED ON : 15.10.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.406 of 2011
and
M.P.No.1 of 2011

J. AkilandamAppellant/Defendant

Vs.

S.ParvathiRespondent/Plaintiff

Prayer: First Appeal filed under Order Section 96 of Civil Procedure Code and Order 41 Rule 1 of CPC, against the judgment and decree dated 25.08.2010, passed in O.S.No.65 of 2009 on the file of the Principal District Court, Namakkal.

For Appellant : Mr.K. Govi Ganesan.

For Respondent : Mr. C. Jagadish.

JUDGMENT

Aggrieved over the judgment and decree dated 25.08.2010, passed in O.S.No.65 of 2009, on the file of the Principal District Court, Namakkal, the defendant has come forward with 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 the sale deed dated 10.09.1987 and the defendant had agreed to convey the suit property in favour of the plaintiff for a sum of Rs.10,10,000/- and accordingly, the parties had entered into a sale agreement with reference to the same on 24.12.2008 and the plaintiff had paid a sum of Rs.3,00,000/- on the date of sale agreement. The parties had agreed to complete the sale transaction on or before 23.03.2009 and though the plaintiff had been always ready and

willing to pay the balance sale consideration to the defendant and obtain the sale deed, the defendant, with a view to vacate the suit property, sought further time for the completion of the sale transaction and accordingly, the time fixed under the sale agreement had been extended by a period of one more month from 24.03.2009 to 23.04.2009 and an endorsement with reference to the same has also been made in the sale agreement. The plaintiff had been having the cash in her hands and willing to pay the balance sale consideration to the defendant, however, it is only the defendant who had been delaying the same on some pretext or the other and hence according to the plaintiff, he had been necessitated to issue the legal notice on 04.05.2009 and the defendant had not responded to the same. However, it is stated that the defendant had sent a notice on 04.05.2009 containing false allegations and the case of the defendant that the sale agreement had become time barred on account of the failure of the plaintiff to pay the balance sale consideration in time is incorrect and legally not sustainable and hence according to the plaintiff, she has been necessitated to lay the suit against the defendant for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that the plaintiff's suit is not maintainable either in law or on facts and admitted that a sale agreement had been entered into between the parties on 24.12.2008 qua the sale of the suit property for a sum of Rs.10,10,000/- and also the receipt of Rs.3,00,000/- by her on the date of the sale agreement. Further put forth the case that the plaintiff should pay the balance sale consideration on or before 23.03.2009 and complete the sale transaction and disputed the case of the plaintiff that she had been always ready and willing to pay the balance sale consideration and according to the defendant, inasmuch as the plaintiff had not been possessed of sufficient funds and sought further time for the completion of the sale transaction, the time was extended till 23.04.2009 and an endorsement had been obtained with reference to the same in the sale agreement and disputed the case of the plaintiff that it is only the defendant who had sought extension of time for vacating the suit property. According to the defendant, the plaintiff has never been ready and willing to perform her part of the contract and at no point of time, the plaintiff had expressed her readiness and willingness to the defendant and therefore, according to the defendant, she had sent the legal notice to the plaintiff on 04.05.2009 and thereafter, the plaintiff had issued the legal notice on the same date and instituted the suit and therefore, according to the defendant, on account of the failure of the plaintiff in performing her obligations under the sale agreement, the agreement stands cancelled automatically and the same had also been apprised to the plaintiff by the defendant by way of the legal notice dated 04.05.2009 and hence according to

the defendant, the plaintiff is not entitled to seek any relief based on the sale agreement and therefore, the suit is liable to be dismissed.

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

- 1) Whether the plaintiff is entitled for the relief of specific performance of the contract dated 24.12.2008 between the plaintiff and the defendant?
- 2) To what relief, if any, the plaintiff is entitled to?

7. In support of the plaintiff's case P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. On the side of the defendant, D.W.1 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 relief of specific performance in favour of the plaintiff as prayed for. Impugning the same, the defendant has preferred the first appeal.

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

1. Whether the plaintiff has been ready and willing to perform her part of the contract under the sale agreement dated 24.12.2008 as put forth in the plaint?
2. Whether the plaintiff is entitled to obtain the relief of specific performance in respect of the sale agreement dated 24.12.2008?
3. To what relief the plaintiff is entitled to?
4. To what relief the defendant/appellant is entitled to?

Point Nos. 1 and 2

10. It is not in dispute that the defendant is the owner of the suit property. It is also not in dispute that the defendant and the plaintiff had entered into the sale agreement with reference to the same, whereunder the defendant had agreed to convey the suit property in favour of the plaintiff for a sum of Rs.10,10,000/-. The abovesaid sale agreement has been marked as Ex.A1. It is also not in dispute that the plaintiff had paid a sum of Rs.3,00,000/- on the date of sale agreement.

11. On a perusal of Ex.A1 sale agreement, it is found that, by way of the same, the parties had specifically agreed to complete the sale transaction within three months from the date of the sale agreement. Accordingly, it is found that even the plaintiff has pleaded in the plaint that as per the terms of the sale agreement, she should pay the balance sale consideration on or before 24.03.2009. Though the plaintiff would claim that she was having the balance sale consideration readily and willing to pay the same to the defendant, it is put forth that it is only the defendant who had been delaying the same for one reason or the other. As per the pleas set out by the respective parties, it is found that the parties had agreed to extend the period of completion of the sale transaction by one month and accordingly, an endorsement had also been made on the reverse side of the sale agreement, which endorsement has been marked as Ex.A2. By way of Ex.A2, it is found that the parties had agreed to complete the sale transaction on or before 23.04.2009. As regards the endorsement Ex.A2, according to the plaintiff, the same had come to be made only at the instance of the defendant, as according to the plaintiff, the defendant sought time for vacating the suit property and accordingly prayed for the extension of time and made an endorsement Ex.A2. No doubt, recital to that effect has also been incorporated in Ex.A2 endorsement. Per contra, according to the defendant, inasmuch as the plaintiff sought for further time in paying the balance sale consideration, the abovesaid endorsement had come to be effected by the parties and thereby, according to the defendant, the plaintiff has never been ready and willing to perform her part of the contract.

12. On a perusal of Ex.A1 sale agreement, there is nothing contained in the same that the defendant should vacate the suit property before the stipulated time. The sale agreement contains the usual clause that the defendant should execute the sale deed and hand over the possession in favour of the plaintiff on the payment of the balance sale consideration within the stipulated period. In such view of the matter, in my considered opinion, the contention that the defendant had made the abovesaid endorsement for the purpose of seeking time to vacate the suit property, as such, cannot be accepted, when it is found that no such recital had been incorporated in the original sale agreement Ex.A1. Be that as it may, by way of Ex.A2 endorsement the parties had agreed to complete the sale transaction on or before 23.04.2009. As per the sale agreement, the plaintiff is obliged to pay the balance sale consideration of a sum of Rs.7,10,000/-. To establish that the plaintiff was possessed of the abovesaid amount readily and she had been willing to part with the same in favour of the defendant within

the stipulated period, absolutely, there is no material projected on the part of the plaintiff. Though the plaintiff would claim that she had been keeping the cash ready with her and willing to pay the same within the stipulated period and also within the extended period and it is only the defendant who had been evading the same for one reason or the other, if the abovesaid case of the plaintiff has any element of truth, on noting the evasive attitude of the defendant in not accepting the balance sale consideration and executing the sale deed in her favour, as a prudent person, the plaintiff should have endeavoured to immediately enforce the sale agreement in the manner known to law and the plaintiff should have endeavoured to issue the legal notice immediately on noting the abovesaid attitude of the defendant calling upon her and demanding her to receive the balance sale consideration and execute the sale deed. On the other hand, there is no material worth acceptance on the part of the plaintiff to evidence that she was having the balance sale consideration in her custody on or before 23.04.2009 and she had been ready and willing to pay the same to the defendant as claimed by her. On the other hand, the recitals in the sale agreement go to disclose that in the case of the failure of the plaintiff to pay the balance sale consideration within the stipulated period, she stands forfeited to loose the advance amount paid by her and the sale agreement also would stand automatically cancelled. Accordingly, it is found that considering the attitude of the plaintiff in not coming forward to pay the balance sale consideration within the stipulated period, left with no other alternative, it is found that the defendant had issued a notice to the plaintiff informing the abovesaid position on 04.05.2009 and the said notice has been marked as Ex.A5. With reference to Ex.A5, the plaintiff examined as P.W.1 has admitted that, even prior to the issuance of her notice dated 04.05.2009, it is only the defendant's advocate who had issued the notice on 04.05.2009 and the same is marked as Ex.A5 and admitted that she had received the same by way of an acknowledgment card marked as Ex.B1. Further admitted that she had sent the notice dated 04.05.2009 marked as Ex.A3. Therefore, a reading of the abovesaid evidence tendered by the plaintiff, it is found that it is only the defendant who had first issued the notice Ex.A5 informing that the plaintiff had never been ready and willing to perform her obligations under the sale agreement and accordingly apprised her about the factum of the sale agreement becoming cancelled and unenforceable and only thereafter, it is found that on the same date, the plaintiff had chosen to issue the notice marked as Ex.A3 to the defendant as if she had also been ready and willing to perform her part of the contract. If really the plaintiff had been always ready and willing to perform her obligations under the sale agreement and it is only the defendant who had been adopting the delay tactics as alleged by

the plaintiff, as rightly put forth, the plaintiff should have endeavoured to take appropriate steps against the defendant as per law at the earliest point of time, particularly on noting the evasive attitude of the defendant in not coming forward to execute the sale deed and on the other hand, considering the conduct of the plaintiff in issuing the legal notice after the stipulated period, that too, after the issuance of the legal notice on the part of the defendant informing about the automatic cancellation of the sale agreement on the failure of the plaintiff to discharge her obligations under the same and furthermore, when there is no material worth acceptance, whatsoever, on the part of the plaintiff to sustain her alleged solvency in paying the balance sale consideration within the stipulated period as well as her willingness to part with the same in favour of the defendant within the stipulated period or within the extended period, in all, it is found that the plaintiff has miserably failed to establish her solvency in paying the balance sale consideration to the defendant within the agreed time as well as her willingness to part with the same to the defendant within the stipulated time and in such view of the matter, when the absence of readiness and willingness on the part of the plaintiff is found to be glaring at the face of the plaintiff and the same being the sine qua non factor for enabling the plaintiff to seek and obtain the discretionary relief of specific performance, in all, it is found that the plaintiff has miserably failed to establish that she has been ready and willing to perform her obligations under the sale agreement.

13. The abovesaid factors had been failed to be appreciated by the trial court and on a reading of the judgment and decree of the trial court, it is found that there is no discussion at all on the part of the trial court in considering the issue whether the plaintiff had been ready and willing to perform her obligations under the sale agreement as pleaded by her and on the other hand, the trial court is found to have vaguely upheld the plaintiff's case merely on the basis of the consideration of the materials placed on record and however, as above pointed out, when the materials placed on record do not point out in any manner that the plaintiff has been possessed of sufficient means to pay the balance sale consideration and been willing to part with the same in favour of the defendant within the stipulated period or within the extended period, in such view of the matter, the determination of the trial court that the plaintiff has been ready and willing to perform her part of the contract is found to be totally perverse and illogical and without any basis and in such view of the matter, the abovesaid determination of the trial court is liable to be set aside in toto. Resultantly, it is found that the further determination of the trial court that the plaintiff is entitled to obtain the

relief of specific performance based on the sale agreement dated 24.12.2008 cannot at all be sustained and liable to be set aside.

14. The plaintiff's counsel in support of his contentions placed reliance upon the decisions reported in

1. (2004) 1 SCC 12 (Citi Bank N.A vs. Standard Chartered Bank and others)
2. (2002) 2 SCC 686 (P.Purushottam Reddy and another vs. Pratap Steels Ltd.)

The defendant's counsel in support of his contentions placed reliance upon the following decisions reported in

1. (2013) 15 SCC 27 (I.S. Sikandar (dead) by Lrs. vs. K. Subramani and others)
2. AIR 1999 Supreme Court 3381 (Balraj Taneja and another vs. Sunil Madan and another)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

15. In the light of the abovesaid discussions, I hold that the plaintiff has miserably failed establish her readiness and willingness in performing her part of the sale agreement and resultantly, I further hold that the plaintiff is not entitled to obtain the relief of specific performance in respect of the sale agreement dated 24.12.2008 and accordingly, the point Nos.1 and 2 are answered against the plaintiff and in favour of the defendant.

Point Nos. 3 and 4

16. For the reasons aforesaid, the judgment and decree dated 25.08.2010, passed in O.S.No.65 of 2009, on the file of the Principal District Court, Namakkal, are set aside and resultantly, the suit laid by the plaintiff in O.S.No.65 of 2009 is dismissed with costs. Accordingly, the first appeal is allowed with costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar(CS VIII)

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To

The Principal District Judge,
Namakkal.

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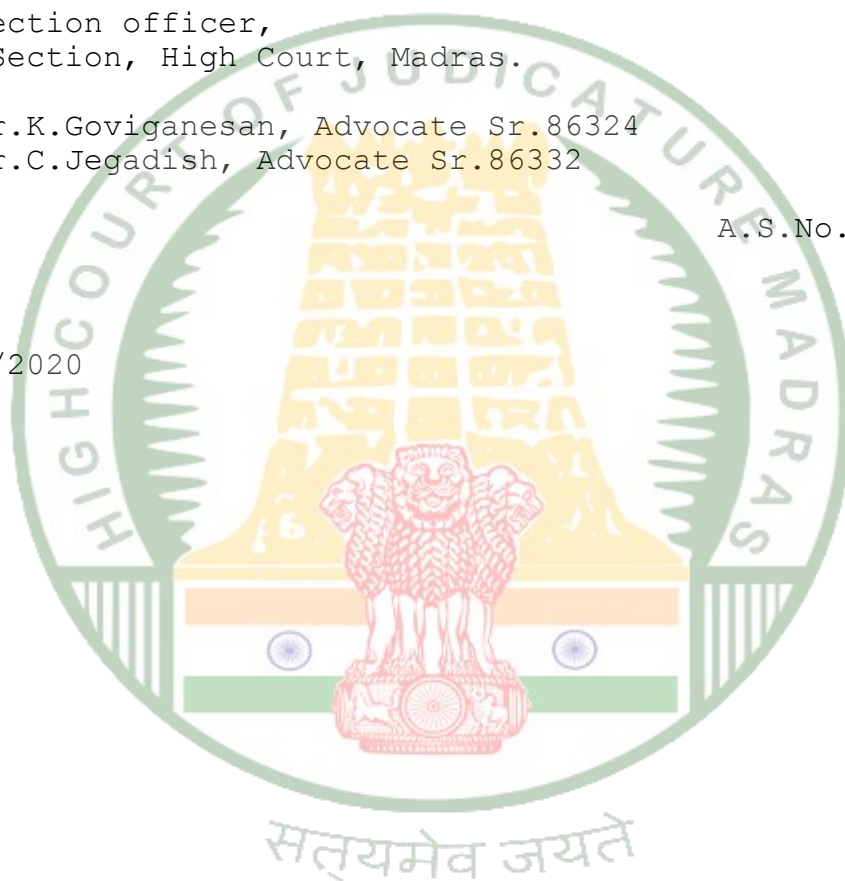
The Section officer,
V.R. Section, High Court, Madras.

+1cc to Mr.K.Goviganesan, Advocate Sr.86324

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