

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.09.2019

PRONOUNCED ON : 01.10.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.79 of 2011

Lakshmanan Sekar

.... Appellant

Vs.

1. I.Baheem
2. Mujamilkhan
3. M.Maheswari

.... Respondents

Prayer: Appeal Suit filed under Section 96 r/w order 41 Rule 1 & 2 of Civil Procedure Code as against the judgment and decree dated 10.08.2010 made in O.S. No.8 of 2008 on the file of the Additional District Judge, Fast Track Court, Thirupattur, Vellore.

For Appellant : Mr.K.V.Ananthakrushnan

For R1 : Mr. V.Raghavachari

For R2 : Mr. S.Ashok kumar
for M/s.V.Jeevagiridharan

JUDGMENT

Aggrieved over the judgment and decree dated 10.08.2010, passed in O.S.No.8 of 2008, on the file of the Additional District Judge, Fast Track Court, Thirupattur, Vellore, 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 or in the alternative for the refund of the sum of Rs.5,00,000/-with interest at 12% from the date of the agreement till realisation and also for permanent injunction.

4. The case of the plaintiff, in brief, is that the first defendant agreed to convey the suit property in favour of the plaintiff for a sum of Rs.38,00,000/- and the parties had entered into an agreement of sale with reference to the same on 23.12.2005 and the plaintiff paid a sum of Rs.25,000/- as advance on the date of the sale agreement and the parties had agreed to complete the sale transaction within 18 months and as per the terms of the agreement, the plaintiff paid a sum of Rs.1,75,000/- on 04.01.2006 and the first defendant should entrust the possession of the suit property to the plaintiff and the

plaintiff paid a sum of Rs.25,000/- on 11.01.2006 at the request of the first defendant and endorsement had been obtained in the sale agreement. Further, for other necessities, the first defendant received a sum of Rs.1,25,000/- from the plaintiff on 21.02.2006 and made an endorsement with reference to the same in the sale agreement and further a sum of Rs.1,00,000/- was paid on 11.07.2006 to the first defendant and endorsement has been made in the sale agreement pointing to the same and in toto, the first defendant has received a sum of Rs.5,00,000/- towards the sale price and the plaintiff has been always ready and willing to perform his part of the contract. Thereafter, the plaintiff and the first defendant agreed to reduce the sale price to Rs.34,00,000/- and when the first defendant requested more sum for evicting the tenants, the plaintiff had agreed to convey his property at Uthangarai for a sum of Rs.8,00,000/- in favour of the first defendant and with reference to the same, an agreement was entered into between the plaintiff and the first defendant on 12.07.2006 and thereafter, though 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, the first defendant had been postponing the same for one reason or the other and on account of the evasive attitude of the first defendant, the sale transaction could not be completed and hence, the plaintiff issued a legal notice on

18.01.2007 and to the same, the first defendant sent a reply notice dated 03.03.2007 containing false allegations and the plaintiff sent a rejoinder to the reply notice denying the allegations and even thereafter, the first defendant did not cooperate to come forward and receive the balance sum and execute the sale deed and the plaintiff came to know that the first defendant is attempting to alienate the suit property to the second and third defendant and on verification, the plaintiff came to know that the first defendant had entered into the sale agreements with the defendants 2 and 3 on 08.03.2007. However, the sale agreements executed by the first defendant in favour of the defendants 2 and 3 are not true, valid and binding on the plaintiff and the first defendant is attempting to further encumber the suit property without any authority and he is bound to execute the sale deed in favour of the plaintiff after receiving the balance sale consideration and hence, according to the plaintiff, the need for the suit for appropriate reliefs.

5. The first defendant resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and admitted the execution of the sale agreement between the plaintiff and the first defendant on 23.12.2005 qua the suit property for a sum of Rs.38,00,000/- and the receipt of Rs.25,000/- as advance on the

date of the sale agreement and further admitted, in toto, the payment of Rs.5,00,000/- by the plaintiff towards the sale price and the endorsements made with reference to the same on various dates and according to the first defendant, other than the sum of Rs.5,00,000/-, the plaintiff has not come forward to pay the balance sale price and complete the sale transaction and on account of the delaying tactics adopted by the plaintiff, the first defendant had been put to loss and hardship and despite the endeavours made by the first defendant to complete the sale transaction, it is only the plaintiff who has been evading the same and the plaintiff expressed the difficulty in completing the sale transaction for Rs.38,00,000/- stating that he has no means to pay the said amount and the party had agreed for the reduction of the sale price to Rs.34,00,000/- and in this connection, an agreement has been entered into between the parties on 12.07.2006 and the plaintiff is bound to pay the balance sale price on or before 10.11.2006 and complete the sale transaction, failing which, the plaintiff would forfeit the amount paid by him and the sale agreement would also stand cancelled and therefore, the plaintiff has not been ready and willing to perform his part of the contract and hence, the suit laid by the plaintiff for enforcing the sale agreement is not maintainable and the plaintiff has also not come forward to convey the property at Uthangarai and caused loss and hardship to the first

defendant and the sale agreement dated 23.12.2005 and 12.07.2006 are not legally enforceable. The first defendant had sent a suitable reply to the legal notice issued by the plaintiff and the first defendant has been necessitated to enter into sale agreements with the defendants 2 and 3 and the same cannot be prevented by the plaintiff and the plaintiff has no cause of action and the suit is liable to be dismissed.

6. The second defendant challenged the plaintiff's case by contending that the second defendant is not aware of the sale agreements dated 23.12.2005 and 12.07.2006 said to have been entered into between the plaintiff and the first defendant and the first defendant agreed to convey the extent of 5.5 acres in S.No.114/1 to the second defendant and in this connection, the agreement of sale was entered into between the first defendant and the second defendant on 08.03.2007 for a sum of Rs.3597000/- and the second defendant has paid a sum of Rs.25,00,000/- as advance and the balance sale price should be paid within six months and the second defendant had entered into the abovesaid sale agreement bonafidely without having any knowledge about the sale agreement between the plaintiff and the first defendant. The suit laid by the plaintiff is without any basis and prayed for the dismissal of the plaintiff's suit.

7. The third defendant resisted the plaintiff's suit contending that she is not aware of the sale agreements dated 23.12.2005 and 12.07.2006 effected between the plaintiff and the first defendant. The first defendant entered into a sale agreement, with reference to the suit property with the third defendant on 08.03.2007 for a sum of Rs.13,08,000/- and receive a sum of Rs.10,00,000/- as advance and the sale agreement has been registered and the third defendant has been always ready to enforce the said agreement and on account of the pendency of the present suit, the third defendant is unable to complete the sale transaction pursuant to the sale agreement dated 08.03.2007 and the plaintiff has no cause of action to institute the suit and therefore, the suit is liable to be dismissed.

8. On the basis of the above pleas set out by the respective parties, the following issues had been framed by the trial Court for consideration:

1. Whether the sale agreements dated 23.12.2005 and 12.07.2006 are true and valid?

2. Whether the plaintiff has been always ready and willing to perform his part of the contract? Whether the

defendants 2 and 3 are correct in challenging the plaintiff's suit along with the first defendant?

3. Whether the plaintiff is entitled to seek the relief of specific performance as prayed for?

4. Whether the plaintiff is entitled to seek the alternative relief of the refund of the sum of Rs.5,00,000/- with interest at 12% per annum as claimed?

5. To what relief the plaintiff is entitled to?

9. In support of the plaintiff's case, PWs 1 and 2 were examined, Exs.A1 to A8 were marked. On the side of the defendants, DW1 was examined, Exs.B1 and B2 were marked.

10. 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 alternative relief of the refund of Rs.5,00,000/- in favour of the plaintiff without interest and accordingly, directed the first defendant to pay the said sum within three months and dismissed the plaintiff's suit in other aspect. Aggrieved over the same, the first appeal has been preferred by the plaintiff.

11. The following points arises for determination in this First Appeal:

1. Whether the plaintiff has been always ready and willing to perform his part of the sale agreements dated 23.12.2005 and 12.07.2006?

2. Whether the plaintiff is entitled to seek the relief of specific performance as prayed for?

3. Whether the plaintiff is entitled to seek the refund of the sum of Rs.5,00,000/- from the first defendant

with interest at 12% per annum from the date of the sale agreement till realisation?

4. To what relief the plaintiff/appellant is entitled to?

5. To what relief the defendants are entitled to?

Point Nos. 1 to 3:

12. It is not in dispute that the suit property belongs to the first defendant. It is also not in dispute that the plaintiff and the first defendant had entered into the sale agreements dated 23.12.2005 and 12.07.2006 with reference to the selling of the suit property by the first defendant in favour of the plaintiff. It is further seen that though the sale price had been originally fixed at Rs.38,00,000/- however, the parties had subsequently agreed for the reduction of the sale price to Rs.34,00,000/-. From the materials placed on record, it is found that the parties had agreed to complete the sale transaction within a particular time limit. The sale agreements dated 23.12.2005 and 12.07.2006 have been marked as Exs.A1 and A2. As per Ex.A1, the parties should complete the transaction within 18 months from the

date of the said agreement. As per Ex.A2 sale agreement, the parties had agreed to complete the sale transaction on or before 10.11.2006. Be that as it may, as could be seen from the pleas set out by the respective parties and the materials placed on record, towards the sale price, in all, it is found that the plaintiff has paid a sum of Rs.5,00,000/- to the first defendant on various dates and endorsements had been obtained with reference to the same in the sale agreement. Other than the sum of Rs.5,00,000/-, the plaintiff has not paid the remaining sale price to the first defendant within the stipulated period and completed the sale transaction. Though the plaintiff would claim that he has been possessed of sufficient means and always been ready and willing to part with the balance sale price to the first defendant and obtain the sale deed, however, it is found that other than the payment of Rs.5,00,000/- in piecemeal, the plaintiff has not endeavoured to pay the balance sale price to the first defendant within the stipulated period. The plaintiff examined as PW1 has clearly admitted that he has not paid the sums to the first defendant within the specified dates as agreed to between the parties and in particular admitted that he has not paid Rs.1,75,000/- on 04.01.2006, Rs.5,00,000/- on 04.02.2006, Rs.6,00,000/- on 15.05.2006 and Rs.4,00,000/- on 27.07.2006 and also admitted that he had not come forward to execute the sale deed in favour of the first

defendant with reference to his property at Uthangarai and further admitted that he had alienated his property to third parties. Therefore, as rightly held by the trial Court, on the basis of the abovesaid admission on the part of the plaintiff, it is found that he had not evinced interest to pay the balance sale price to the first defendant as agreed to on specified dates and also had not come forward to execute the sale deed in favour of the first defendant with reference to his property at Uthangarai. Therefore, as rightly held by the trial Court, the inevitable conclusion that could be arrived at on the abovesaid conduct of the plaintiff would only be that inasmuch as the plaintiff is not possessed of sufficient funds and accordingly, it is found that he has not evinced interest to pay the sale price as agreed to the first defendant within the stipulated period and though the plaintiff would claim that he has been possessed of sufficient funds and it is only the first defendant who had been evading to receive the same and complete the sale transaction, however, with reference to his claim of adequate solvency in paying the balance sale consideration, as held by the trial Court, rightly there is no acceptable and reliable materials forthcoming on the part of the plaintiff. Therefore, it is found that the trial Court is justified in holding that the plaintiff has not been able to perform his part of the contract on account of his inability to pay the balance sale price to the first defendant as agreed to and on the other

hand come forward with the false case as if he had been possessed of sufficient funds and had been ready and willing to perform his part of the contract. On the other hand, it is found that the plaintiff had chosen to issue legal notice only on 18.01.2007, calling upon the first defendant to receive the balance sale price and execute the sale deed. Therefore, it is seen that very belatedly the plaintiff has issued the legal notice, that too much after the expiry of the stipulated period fixed by the parties for completing the sale transaction. The legal notice sent by the plaintiff had been suitably repudiated by the first defendant and the same could be gathered from the reply notice marked as Ex.A4. Even thereafter, it is found that the plaintiff has not laid the suit immediately and preferred the suit only on 15.08.2007 and the abovesaid conduct of the plaintiff, in toto, would only go to show that it is only the plaintiff who has not been ready and willing to perform his part of the contract out of his inability to mobilise the funds to pay the balance sale price to the first defendant as agreed to and in this connection, the claim of the plaintiff that he has been always ready and willing to perform his part of the contract and it is only the first defendant who is delaying the matter, as such, cannot be accepted and rightly disbelieved by the trial Court. Though time may not be the essence of the contract insofar as the immovable property is concerned, however, considering the reasonings which necessitated

the first defendant to alienate the suit property in favour of the plaintiff and when according to the first defendant, he had agreed to convey the suit property in favour of the plaintiff only for meeting his family needs and debts and the educational expenses of his children and accordingly, the parties had also chosen to fix a particular time period for completing the sale transaction and the plaintiff is also aware of the cause of the first defendant in venturing to sell the suit property, in such view of the matter, the plaintiff cannot be allowed to contend that time is not the essence of the contract and seek the enforcement of the sale agreement as and when he desires and when the parties had agreed to complete the sale transaction within the particular time limit, as held by the trial Court, the abovesaid stipulation cannot be easily ignored and accordingly, the plaintiff, being the agreement holder, should ensure that he has performed his part of the contract at least within the reasonable time and complete the sale transaction. On the other hand, when as above pointed out, the plaintiff has miserably failed to establish his capacity or means to pay the balance sale price and further agreed that he has not paid the various sums on various dates as agreed to and also not proceeded further in conveying his property at Uthangarai in favour of the first defendant as agreed to and further, the conduct of the plaintiff in issuing the legal notice beyond the stipulated period and also his further conduct of instituting

the suit belatedly and though the institution of the suit may not be time bared, however, considering the abovesaid conduct of the plaintiff in entirety, it is found that there are total laches and inaction on the part of the plaintiff in enforcing the sale agreement and in such view of the matter, as held by the trial Court, the plaintiff cannot be extended the discretionary relief of specific performance on account of the abovesaid conduct and accordingly, it is found that the trial Court is justified in declining the relief of specific performance prayed for by the plaintiff and I do not find any valid reason to disturb or interfere with the abovesaid determinations of the trial Court.

13. The plaintiff, in toto, has paid a sum of Rs.5,00,000/- to the first defendant pursuant to the sale agreement. The receipt of Rs.5,00,000/- from the plaintiff has not been denied by the first defendant. The abovesaid sum of Rs.5,00,000/- has been paid by the plaintiff in piecemeal on various dates. In such view of the matter, when the agreement for sale involved in the matter could not be enforced further only due to the laches and inaction on the part of the plaintiff and the first defendant is found to be not the defaulting party and when the materials placed on record go to show that despite the readiness and willingness on the part of the first defendant, it is only the plaintiff who had not evinced interest to complete the sale

transaction on account of his inability to mobilise the sale price, in all, it is found that as determined by the trial Court, the plaintiff would not be entitled to seek the interest on the refund amount as prayed for and as held by the trial Court. Considering the facts and circumstances of the case, at the most, the plaintiff would be entitled to only receive the return of the sum of Rs.5,00,000/- without interest from the first defendant and accordingly, it is found that the trial Court is justified and correct in holding that the plaintiff is entitled to seek the refund of the sum of Rs.5,00,000/- alone from the first defendant without interest and the trial Court had rightly negated the other reliefs prayed for by the plaintiff.

14. In the light of the above discussions, the plaintiff is held to be not ready and willing to perform his part of the contract and resultantly, the plaintiff is held not entitled to seek the relief of specific performance as prayed for. Furthermore, the plaintiff is found to be held entitled only to claim the refund of the sum of Rs.5,00,000/- without interest from the first defendant and accordingly, it is seen that the reasonings and conclusions of the trial Court in declining the relief of specific performance and the other reliefs and granting only the relief of the refund of the sum of Rs.5,00,000/- without interest in favour of the plaintiff do not warrant any interference and accordingly,

the point Nos.1 to 3 are answered.

Point Nos.4 and 5:

15. In the light of the above discussions, the judgment and decree dated 10.08.2010, passed in O.S.No.8 of 2008, on the file of the Additional District Judge, Fast Track Court, Thirupattur, Vellore are confirmed and resultantly, the First Appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

01.10.2019

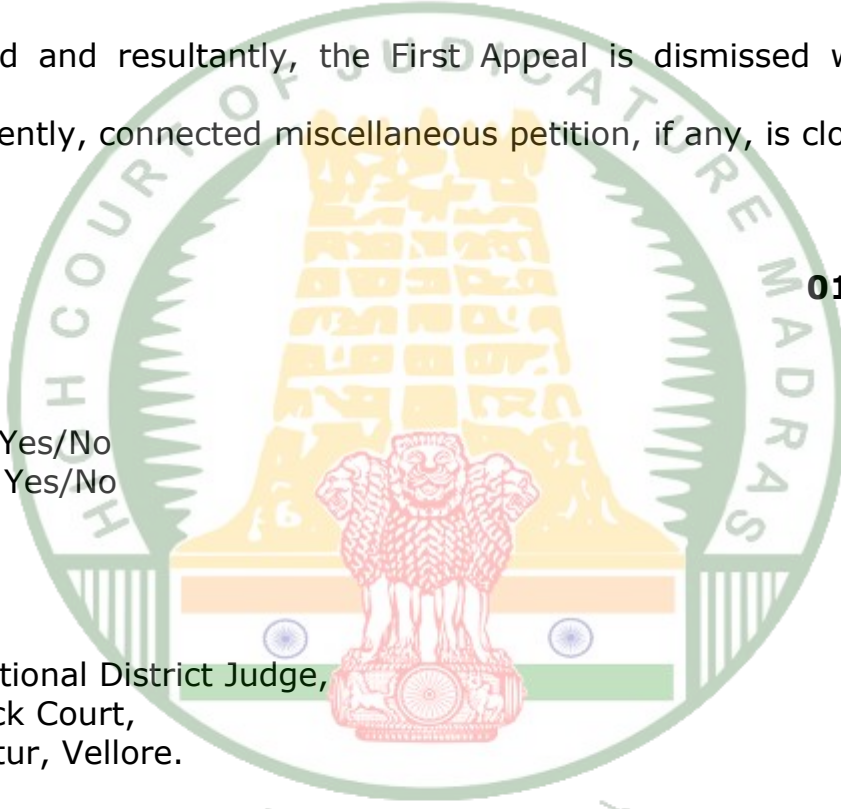
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