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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1056 of 1999

1.N.C.R.Venkatesan (deceased) ..3rd Defendant/Appellant/Appellant
2.R.V.Chandra
3.R.V.Sampath
4.R.V.Mohan
5.N.Santha
6.P.Reeta
7.M.Rosy
8.S.Sheela
9.R.V.Ravi
(Appellants 2 to 9 are brought on record as LRs of
the deceased 1st appellant as per the order of Court
dated 12.07.2001 made in C.M.P.Nos.13430 to
13432/2000) .. Appellants

...Versus...

1.Rajagopal (Deceased) ..Plaintiff/1st Respondent/Respondent
2.Mehaboob
3.Noorjahan ..Defendants 1 & 2/Respondents 2 & 3/Respondents
(RR2&3 are exparte in the Lower Court)
4.Poongavanam
5.Selvi
6.Latha
7.Kavitha
(RR4 to 7 brought on record as LRs of the
deceased 1st respondent vide order of Court
dated 10.01.2013 made in C.M.P.Nos.1015 to
1017/2012 in S.A.No.1056/1999) .. Respondents

PRAYER: This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.9 of 1997 dated 20.03.1998 on the file of the Appellate Court (Sub Court) Krishnagiri confirming the judgment and decree made in O.S.No.71 of 1993 dated 24.11.1994 on the file of the District Munsif Court, Krishnagiri.



For Appellants

:: Mr.R.G.Narendiran

For Respondents

:: No appearance

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J U D G M E N T

The third defendant in the suit O.S.No.71 of 1993 is the appellant herein.

2. The first respondent herein filed the suit seeking the relief of specific performance of the suit sale agreement dated 25.08.1975 executed by the first defendant in the suit, who is the husband of the second defendant on the ground that the entire sale consideration of Rs.6,000/- was already paid on the date of the agreement itself and the registration of the sale deed alone has been deferred, since he is not having sufficient money for the stamp duty and hence, the suit.

3. The first defendant being the owner of the property, remained ex-parte and his wife has entered appearance by filing vakalath. However, she has not filed any written statement. The third defendant in the suit, the appellant herein filed a written statement alleging that on 21.12.1977 under Exhibit B1-sale deed, the third defendant has executed a sale deed for valuable consideration in respect of the plaintiff and hence, the suit is bad-in-law and further stated that he has already filed a suit in O.S.No.337 of 1983 against the plaintiff herein for a bare injunction on the ground that he is the owner of the property based upon Exhibit B1.

4. Before the Tribunal, the plaintiff was examined as P.W.1 and attesor of the suit sale agreement was examined as P.W.2 and Exhibits A1 to A4 were marked. On behalf of the defendants, the third defendant, the appellant herein was examined as D.W.1 and Exhibit B1 sale deed executed in favour of the plaintiff was mared.

5. The Trial Court has framed issues as to whether the suit sale agreement is true and genuine; whether the plaintiff is entitled for relief of specific performance; whether the suit is barred by limitation; whether there is any cause of action in filing the suit and for what other relief the plaintiff is entitled to?

6. The trial Court has held that the suit sale agreement Exhibit A1 is true and genuine and the plaintiff is entitled to



the relief of specific performance and suit is not barred by limitation and the trial Court decreed the suit and the First Appeal was preferred by the third defendant, and after contest, the First Appeal was dismissed as against him in A.S.No.9 of 1997 on the file of the Sub-Judge, Krishnagiri and hence, the Second Appeal is preferred by the third defendant.

7. At the time of admission of the Second Appeal on 15.07.1999, the following substantial question of law was framed:

"Whether the plaintiff had knowledge about refusal of the performance of the contract of sale much earlier in point of time than the one alleged in the plaint and if so the suit filed three years after such knowledge is barred by limitation?"

8. The learned counsel for the appellant has made submissions on the substantial question of law framed above.

9. It is seen from the evidence of P.W.1 that though the suit sale agreement Exhibit A1 was dated 25.08.1975 and suit was filed only on 1.02.1993 and there was no explanation for the delay of 18 years. All that the P.W.1 plaintiff could say in his evidence that his entire sale consideration was fixed as early as on 25.08.1975 and he was put to be in possession of the property and he is unable to make over the stamp duty and registration charges. The registration has been deferred and when he was called upon, the plaintiff has to pay the amount to execute the sale agreement under Exhibit A-1, but he refused and hence, he filed the suit. However, from lower Court records, it is seen that there is no pre-suit notice was issued by the plaintiff and there was no written communication calling upon the first defendant/owner of the property to execute the sale deed and demanding his registration before the S.R.O office has been filed before the Court. Except the plea that the entire sale consideration has been paid as early as on 1975 and no proper explanation was further coming from P.W.1 for the delay of 18 years in filing the suit.

10. For the grant of the relief of specific performance the plaintiff has to plead and prove that he was always ready and willing his part of agreement and while he has chose to file the suit to demonstrate that he is ready and willing to perform his part of the contract throughout the alleged period of 18 years. There is no iota of evidence that he was ready and willing and there is no evidence available on record to show the such long delay in approaching the Court also caused doubt about the genuineness of Exhibit A1 suit sale agreement.



11. It remains to be stated that it is the specific case of the appellant/third defendant before the Trial Court that in the year 1987, he filed a suit in O.S.No.337 of 1983 seeking injunction against the very same plaintiff from not to interfere with his possession based upon Exhibit B1 sale deed and when that being the case, the plaintiff had the knowledge of the sale deed executed by the first defendant in favour of the third defendant, the appellant herein and hence, it amounts to knowledge of refusal of executing the suit sale agreement by the first defendant in favour of the plaintiff and hence, this Court finds that the long delay of 18 years in filing the suit for specific performance appears, on the fact of it, is highly belated.

12. At the risk of repetition, it has to be stated that in view of the earlier suit in O.S.No.337 of 1983 filed by the third defendant-appellant herein against the plaintiff, the plaintiff had the knowledge about the refusal of the performance of contract of sale (Exhibit A1) much earlier in point of time than the one alleged in the plaint and taking into consideration the fact that the said suit earlier filed was of the year 1983 and in the present suit, specific performance relief sought has been filed in the year 1993. It is clear behind by 3 years and hence, in view of the fact that the plaintiff had a knowledge of the sale deed in favour of the third defendant-appellant herein in the year 1983 itself, the present suit having been filed in the year 1993 (1.2.1993), this Court finds that the substantial question of law is answered in affirmative in favour of the appellant/third defendant.

13. On the above factual matrix, this Court finds that though the suit sale agreement is dated 25.08.1975 and the suit has been filed on 01.02.1993 after a period of 18 years and furthermore, the plaintiff/respondent having been a party in the previous suit in O.S.No.337 of 1983 filed by this appellant against the respondent/plaintiff in respect of very same property claiming his title based on Exhibit B1 sale deed dated 21.12.1977 and hence, this Court holds that the plaintiff had the knowledge of the suit in O.S.No.337 of 1983 in the year 1983 itself and filed the present suit only on 01.02.1993, which is barred by limitation.

14. Taking into consideration the fact that the plaintiff has not taken any steps even after the earlier suit filed by the appellant in O.S.No.333 of 1983, wherein the sale deed in favour of the appellant has been mentioned, this Court is of the considered view that the respondent/plaintiff has abandoned his claim by not taking any steps within the stipulated period after the suit sale agreement dated 25.08.1975 and therefore, I am of



the considered view that the plaintiff is not entitled for the discretionary relief of specific performance of the suit sale agreement and the suit is barred by limitation as raised by the third defendant which is upheld.

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15. Accordingly, the Second Appeal is allowed and the judgment and decrees of the Courts below are set aside. Consequently, O.S.No.71 of 1993 shall stand dismissed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

- 1.The Sub Court, Krishnagiri
2. The District Munsif Court, Krishnagiri.
3. The Section Officer,
V.R.Section, High Court, Madras.

+lcc to Mr.R.G.Narendiran, Advocate SR.No.55723

S.A.No.1056 of 1999

PVS (CO)
GMY (22/10/2019)