

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:26.11.2018

Delivered on:13.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.915 of 2009

&

M.P.No.1 of 2012

1.S.Devi

2.S.Gopinath@ GopiAppellants/Defendants 1 & 2

Vs

1.V.Anburaj ...1st Respondent/Plaintiff

2.S.Rajesh ...2nd Respondent/3rd Defendant

PRAYER: Appeal suit is filed under order XLI Rule 1 of CPC R/w under Section 96 of the Code of Civil Procedure against the Judgement and Decree dated 04.12.2008 passed by the Honourable VI Additional Judge, City Civil Court, Chennai in O.S.No.4735 of 2007.

For Appellants : Mr.V.Premkumar

For Respondent 1 : Mr.P.Raja

For Respondent 2 : No appearance

JUDGEMENT

The defendants 1 and 2 are the appellants before this Court. The first appeal is filed challenging the Judgement and Decree in O.S.No.4735 of 2007 on the file of the VI Additional Judge, City Civil Court, Chennai in granting the relief of specific performance in respect of A-Schedule property and ordering recovery of possession of the A-Schedule property and also directing the symbolic possession of the C-Schedule property. The property in question consist of three schedules and is a building bearing Door No.31/155, plot No.76, Chandrasekar Nagar, 4th street, Manali Road, Kodungaiyur, Chennai 600 118 within specified boundaries measuring an extent of 600 Sq.ft that is 20 feet x 30 feet. The B-Schedule property forms part of the A-

Schedule property and measure 18 Sq. meter together with a house and electricity connection within specific boundaries and the C-Schedule property was a small portion in the A-Schedule property measuring 15.0 Sq. meter in which the plaintiff was carrying on business.

2.Plaintiff's case:

2.1.It is the case of the plaintiff that on 29.03.1995 the A-Schedule property which was a vacant land was allotted to the 1st defendant. The sale deed has also been obtained by the 1st defendant after clearing the payments to the Tamil Nadu Slum Clearance Board. It was the further case of the plaintiff that in January 2002 the plaintiff had been inducted as a tenant in respect of the C-Schedule property where he was carrying on business in vending vegetables and using it as a provisions store. At the time of entering into tenancy the plaintiff had paid a sum of Rs.20,000/- as an advance and on 03.05.2005 a further advance of Rs.20,000/- was paid. the plaintiff was in occupation of an extent measuring 22 ft. X 20 ft.

2.2.Since the 1st defendant was in dire need of funds he had offered to sell the entire suit property, the plaintiff who was sentimental about the suit property agreed to purchase the property and the sale consideration was at a sum of fixed price of Rs.6,50,000/-. On 28.05.2006, the agreement was reduced into writing and an advance of Rs.1,00,000/- was paid. The time for completion of the sale deed was three months on the defendant getting the sale deed from the Tamil Nadu Slum Clearance Board. Since the 1st defendant was in need of further funds a sum of Rs.12,500/- on 17.07.2006 and another sum of Rs.50,000 on 27.09.2006 was paid by the plaintiff.

2.3.It is the case of the plaintiff that the 1st defendant's daughter was residing in a portion of the A-Schedule property and at the time of executing the sale deed the 1st defendant had assured that vacant possession would be delivered to the plaintiff. The case of the plaintiff was that the 1st defendant kept postponing the execution of the sale deed by stating that there had been some administrative glitch at the office of the Tamil Nadu Slum Clearance Board till December 2006. The plaintiff had been regularly paying the rent and in December 2006 the 1st defendant informed him that since the sale deed was to be executed shortly there was no necessity to pay the rents and that the rental advance would be adjusted.

2.4.However to the shock and surprise of the plaintiff, in the month of March 2007, the 1st defendant informed the plaintiff to vacate and handover the vacant possession of the property and to receive back the advance amount since she was not willing to sell the property. On 08.03.2007, the plaintiff therefore issued a notice calling upon the 1st defendant to execute the sale deed, however, there was no response despite the receipt of the notice.

2.5.The plaintiff also came to learn that on 16.03.2007 the sale deed was executed by the Tamil Nadu Slum Clearance Board in favour of the 1st defendant and the sale deed had not been released as proceedings under section 47(A) of the Indian Stamp Act was pending. Infact, the sale deed was presented for registration only on 21.03.2007 and without obtaining the return of the sale deed the 1st defendant had executed the settlement deeds in favour of the defendants 2 and 3 on 22.08.2007 which clearly shows her intention to deprive the plaintiff of the property, despite the fact that the plaintiff has been ready and willing to proceed with the execution of the agreement. In addition to this, the 1st defendant had also refused to receive the rent sent for the months of January 2007 to May 2007 at the rate of Rs.1,300/- per month. The plaintiff thereafter followed the procedure contemplated under Section 8 of the Tamil Nadu Buildings (Lease And Rent Control) Act. The plaintiff had made it clear that he was ready to deposit the balance sale consideration into the Court as and when directed and also pleaded that in the event of the Court not been willing to grant the decree for specific performance to at least grant an alternative relief of refund of money.

3.Written statement filed by the defendants 1 and 2:

The defendants 1 and 2 had admitted the tenancy between the plaintiff and themselves and had also admitted agreement of sale but had contended that the agreement of sale was time bound and had to be completed on or before 27.08.2006. They denied the receipt of the further sum of Rs.12,500/- and Rs.50,000/- and had also contended that the requisite of obtaining the sale from the Tamil Nadu Slum Clearance Board in favour of the 1st defendant was not contemplated in the agreement of sale. The defendants would contend that the legal notice has been issued beyond the period of three months that is nine months from the date of the agreement of sale. They would contend that the plaintiff was not ready and willing since no steps were taken to deposit balance sale consideration into Court. Infact, the plaintiff had agreed to receive back the sale advance before the Police Authority but had however gone back on the assurance. They therefore sought for the dismissal of the suit.

4.Written Statement of the 3rd defendant:

The 3rd defendant would contend that he is not residing in portion of the A-Schedule property and that he had not participated in the negotiations preceeding the agreement. He further contended that the plaintiff had paid the rent from 22.03.2007 to 31.08.2007 on 24.09.2009 to the 3rd defendant due to the sudden ill health of the 1st defendant.

5.Trial Court:

5.1.The Honourable VI Additional Judge, City Civil Court, Chennai had framed over five issues and had examined the plaintiff as P.W.1 and Ex.A.1 to Ex.A.13 were marked on the side of the plaintiff and on the side of the defendants the 1st defendant had entered box as D.W.1 and no documentary evidence was filed by the defendants.

5.2.The learned VI Additional Judge on consideration of the evidence both oral and documentary had allowed the suit directing the defendants to execute the sale deed in respect of the A-Schedule property in favour of the plaintiff on payment of the balance sale consideration. After deducting there from the amount deposited by the plaintiff. The plaintiff was directed to take proper proceedings for taking possession of the suit property after obtaining the sale deed. The learned Judge had also proceeded to grant a decree for permanent injunction restraining the defendants, their men, agents or servants from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff. It is challenging this Judgement and Decree that the appellants are before this Court.

6.Submissions:

6.1.Heard, Mr.V.Premkumar, learned counsel for the appellants/defendants and Mr.P.Raja, learned counsel for the 1st respondent/plaintiff. The counsel for the appellants would argue that the agreement of sale dated 28.05.2006 was time bound and the plaintiff had not taken any steps what so ever to have the sale deed executed which would clearly show that the plaintiff was neither ready nor willing to proceed further with the agreement of sale. In the absence of this mandatory requirement as contemplated under Section 16 (c) of the Specific Relief Act the plaintiff was not entitled to the relief of specific performance. The learned counsel would submit that the suit is not maintainable.

6.2.Per contra, Mr.P.Raja, learned counsel appearing on behalf of the 1st respondent/plaintiff would argue that the agreement of sale stipulating the time for performance was qualified by the fact that the plaintiff should first obtain the sale deed from the Tamil Nadu Slum Clearance Board as on the date of the agreement he was yet to receive the sale deed in his favour and therefore the defendants cannot be allowed to say that the plaintiff had not come forward to have the sale deed executed in his favour. The counsel would further draw the attention of this Court to the agreement of D.W.1 on 30.06.2008, wherein, he has admitted that the sale deed was obtained recently and that the agreement of sale was made much earlier. He would further contend that the sale deed which was executed by the Tamil Nadu Slum Clearance Board in favour of the 1st defendant was presented for registration only 5 days later; that

is, on 21.03.2007. He would also contend that pending the suit the entire sale consideration had been paid. He would also contend that the defendants had not taken any steps to get sale agreement executed and they cannot find fault with the plaintiff.

7.Points for Consideration:

On hearing the arguments and perusing the papers this Court is framing the following points for consideration:

1)Whether the 1strespondent/plaintiff has proved his readiness and willingness to go ahead with the sale?

2)Whether the time was the essence of the contract?

8.From a perusal of the papers, it is seen that though the defendants had stated that the sale deed had to be executed within a period of three months from the date of the agreement, they have not taken any steps to terminate the agreement on the expiry of the period given under the agreement. The defendant have also accepted the execution of the agreement of sale and their only grievance is that the plaintiff had not come forward to complete the sale within the agreed time. Therefore according to the plaintiff time was never contemplated as essence of the contract, further, it is the admitted fact that the defendants had not obtained the sale deed from the Tamil Nadu Slum Clearance Board on the date of the agreement which once again was a requirement for having the sale deed executed in favour of the plaintiff even if there is no stipulation to this effect. The right to convey the property would accrue to the defendants only upon receiving the sale deed from the Tamil Nadu Slum Clearance Board and therefore it can be safely concluded that time was never contemplated as a stipulation for the contract.

9.Considering the issue as to whether the plaintiff was ready and willing to proceed with the contract, it is agreed by the 1st defendant that the sale deed will be executed in favour of the plaintiff on receipt of the balance sale consideration within a period of three months from the date of the agreement. It is also seen that the sale deed had been executed by the Tamil Nadu Slum Clearance Board in favour of the 1st defendant only on 16.03.2007 and the defendant had not informed the plaintiff about the same. The plaintiff has come forward to file the suit immediately on coming to learn about the sale in favour of the 1st defendant therefore the readiness and willingness has to be read in consonance with the execution of the sale deed in favour of the defendant and handing over vacant possession to the plaintiff. It is also admitted that pending the suit the plaintiff had also deposited the entire sale consideration.

10. In view of the above and also relying upon the Judgement cited by the respondent in Balasaheb Dayandeo Naik (Dead) through Lrs & others Vs. Appasaheb Dattatraya Pawar reported in CDJ 2008 SC 114 this Court is of the opinion that time was never contemplated as the essence of the contract and further the plaintiff had been ready and willing to perform the contract but had to wait till the sale deed was executed in favour of the defendant and it is further seen that within 6 months of this sale deed being executed in favour of the 1st defendant, the plaintiff had come forward with the suit for specific performance which clearly shows the bonafides of the plaintiff/purchaser.

I answer both points for consideration in favour of the plaintiff and confirm the Judgement and Decree of the VI Additional City Civil Judge, Chennai in O.S.No.4735 of 2007. In the result, the First Appeal stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

To,

1. The VI Additional Judge,
City Civil Court,
Chennai

2. The Section officer
VR Section, High Court, Madras 104.
+1 CC to Mr.V.Premkumar, Advocate sr 23988.
+1 CC to Mr.P.Raja, Advocate sr 23711.

RJI (CO)
SP(07/06/2019)

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