

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE C.SARAVANAN

A.S.No.814 of 2012
and
M.P.No.1 of 2012

S.M.Jaya Saravanan ...Appellant/Plaintiff

Vs

G.Joyce Mary ...Respondent/Defendant

Appeal preferred under Section 96 C.P.C. against the judgment and decree dated 22.03.2012 made in O.S.No.92 of 2008 on the file of the Principal District Judge, Krishnagiri.

For Appellant ... Mr.V.Nicholas

For Respondent ... Mr.T.P.Manoharan,
Sr. Counsel
for Mr.Mukund R.Pandiyan

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The unsuccessful plaintiff in a suit for specific performance is the appellant before us. The trial Court, after holding that the agreement entered into between the parties is true and genuine and time is not the essence of the contract, exercised discretion by invoking Section 20 of the Specific Relief Act, by granting the alternative relief of payment of advance amount with interest. Seeking a decree of specific performance, the present appeal has been filed. We may note that the respondent has not filed any appeal but deposited the amount in tune with the judgment and decree of the trial Court.

2.It is the case of the appellant/plaintiff that the agreement was entered into between the parties on 07.02.2007 under Ex.A1. Pursuant to the same, a sum of Rs.10 lakhs was paid by the appellant to the respondent. Four months' time was fixed for execution of the sale deed. However, the respondent/defendant was not coming forward to execute the sale

deed. The appellant/plaintiff became suspicious and made enquiries thereafter. The enquiries reveal that the suit property was shown in the municipal records as Park. The respondent/defendant told the appellant/plaintiff that it is a mistake which would be rectified. However, the same was not done. So, a notice was issued under Ex.A2 asking the respondent/defendant to execute the sale deed. A reply was given by the respondent/defendant under Ex.A3 stating that time is the essence of the contract. Under those circumstances, the appellant/plaintiff filed the suit.

3.The respondent/defendant filed a written statement, inter alia, contending that time is the essence of the contract, while admitting the sale agreement entered into between the parties. The respondent/defendant also states that he has got title to the suit property. It is the case of the respondent/defendant that there is no need to measure the suit property.

4.Before the Trial Court, the following issues and additional issue were framed for consideration:

- 1.Whether the plaintiff is entitled to the relief of specific performance?
- 2.Whether time is essence of agreement?
- 3.To what relief the plaintiff is entitled?

Additional Issue:

Whether the plaintiff is entitled to get alternative relief as prayed for?

5.On behalf of the appellant/plaintiff, four witnesses were examined and Exs.A1 to A5 have been marked. Ex.A4 is the town planning sketch and Ex.A5 is the Town Planning Inspector's Report. P.W.4 is the Town Planning Inspector working in Krishnagiri Municipality.

6.On behalf of the respondent/defendant, two witnesses were examined and Exs.B1 to B4 have been marked.

7.The Trial Court, after holding that the agreement is true and genuine and time is not the essence of the contract, nonetheless declined to exercise the discretion under Section 20 of the Specific Relief Act on the ground that there is a cloud over the title belonging to the respondent/defendant. Accordingly, the alternative relief was granted. Not satisfied with the same, the present appeal is before us.

8.Learned counsel appearing for the appellant/plaintiff would submit that even according to the respondent/defendant, there is no cloud over the title. It is the look out of the plaintiff to deal with the property thereafter. The Court below having held all the issues in favour of the appellant/plaintiff,

decreed the suit as prayed for.

9. Learned senior counsel appearing for the respondent/defendant would submit that even the evidence adduced on behalf of the appellant/plaintiff would clearly show that there is cloud over the title. The respondent/defendant has complied with the decree of the Trial Court by depositing the amount. Granting of specific relief is the discretion to be exercised by the Court in the given circumstance. As the same was rightly exercised, no interference is required.

10. Every case involves a journey towards truth. It is the duty of the Court to find out the underlying truth in a case. In doing so, the Court is not required to go into the respective cases of the parties alone but beyond. The evidence of P.W.4, who is the Town Planning Inspector, has been dealt with by the trial Court in the following manner:

13. P.W.4 was examined on the side of plaintiff, who is working as Town Planning Inspector in Krishnagiri Municipality. He deposed in his evidence that on 20.11.2007 he went for inspection. Project No.2 property was allotted for school play ground and the F.M. sketch was marked as Ex.A5. For approval the document has been sent to the Director of Town Planning office at Chennai. For regulating the property, the plaintiff had paid Rs.2,040/- to the Municipality and the receipt was marked as Ex.A5.

11. It is through P.W.4, who has been examined on behalf of the appellant, Exs.A4 and A5 have been marked. Perhaps, the respondent/defendant must have title originally. Law is quite settled that once lay out has been approved, then the place which has been earmarked for the public purpose, would vest with the local body. That is the reason why, the property in question has been classified as a Park. Secondly, once such a classification is made then it can never be changed thereafter. Therefore, the suit cannot be decreed on two counts (i) the defendant does not have the title and (ii) the public purpose for which the property is earmarked cannot be changed. The appellant/plaintiff was quite aware of this, as could be seen not only from the pleadings but also from the evidence of P.W.4 coupled with P.W.5. In such circumstance, the Trial Court rightly granted the alternative relief.

12. Thus, we are of the view that the appellant/plaintiff should not even venture to file appeal under those circumstance, especially when his own witness has placed correct facts before the Trial Court. Therefore, the issues, in our considered view, have been rightly answered by the Trial Court, which do not warrant any interference.

13. Accordingly the appeal suit stands dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

mmi

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
The Principal District Judge,
Krishnagiri.

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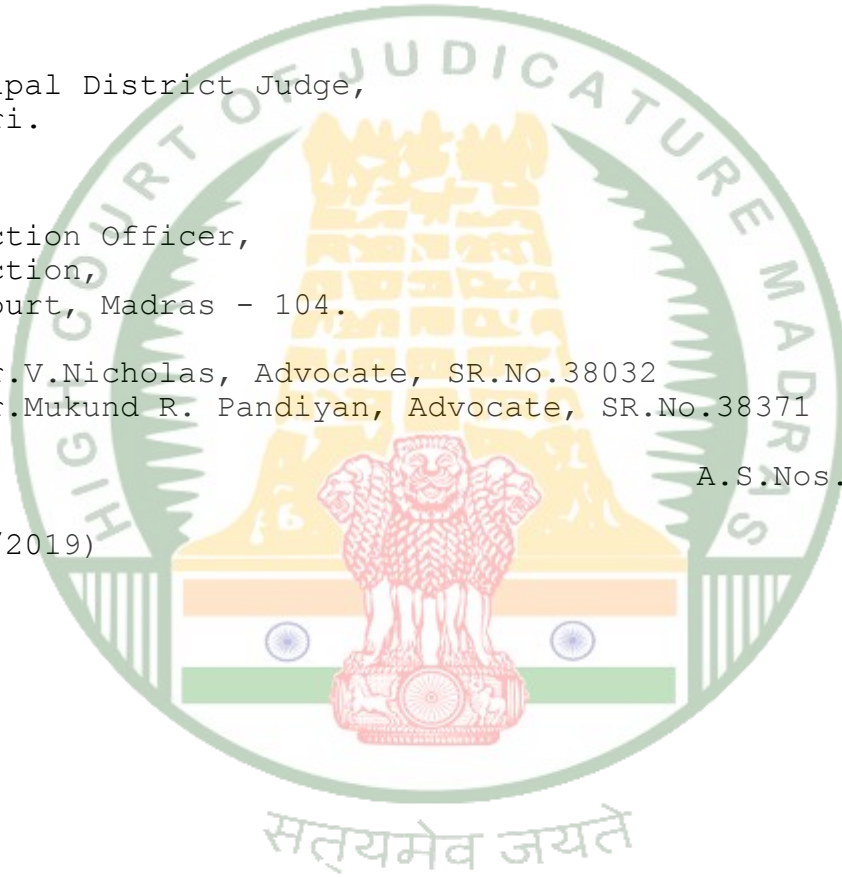
The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.V.Nicholas, Advocate, SR.No.38032

+1cc to Mr.Mukund R. Pandiyan, Advocate, SR.No.38371

A.S.Nos.814 of 2012

Kak(22/07/2019)



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