

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 28.06.2019]

[JUDGMENT PRONOUNCED ON: 23.10.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1024 of 2002

S.Sugirtha ... Appellant/Appellant/Plaintiff

... Vs ...

1. S.George [Died]
[R.1 died. RR-5 to 8 and appellant are recorded as LRs of the deceased R.1 vide order of Court dated 23.10.2019 made in S.A.No.1024 of 2002 as per memo dated 04.01.2017]

2. S.Harris [Deceased]
[R-5 to R-7 are brought on record as L.Rs. of deceased R.2 vide order of Court dated 06.11.2013 made in CMP Nos.996 to 998 of 2012 in S.A.No.1024 of 2002]

3. Yesu Adiyal [Deceased]
[R-8 brought on record as L.R. of the deceased R-3 vide order of Court dated 06.11.2013 made in C.M.P.No.849 of 2012 in S.A.No.1024 of 2002]

4. The Chairman,
Tamil Nadu Slum Clearance Board,
Kamaraj Road, Chepauk, Chennai - 600 005.

...1 to 4 Respondents/Respondents 1to 4/
2 to 5 Defendants

5. Edwin
6. Prema
7. S.Asokan
8. Juliat

... 5 to 8 Respondents

Prayer : Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree made in A.S.No.111 of 1998 dated 20.09.2001 on the file of the VII Additional City Civil Court, Madras, confirming the judgment and decree made in O.S.No.10017 of 1989, dated 31.12.1996, on the

file of the learned II Assistant City Civil Judge, Madras, and prays that the same may be set aside and the appeal be allowed.

For Appellant	: Mr.K.Hariharan
For R-1	: Died - Memo filed
For RR-2 & 3	: Died
For R-4	: R.Sivakumar, TNSCB
For R-5, R-6, R-7 and R-8	: No Appearance

JUDGMENT

The unsuccessful plaintiff is the appellant herein.

2. The appellant herein as plaintiff has filed the suit in O.S.No.10017 of 1989 seeking for the relief of specific performance of the suit Sale Agreement and for permanent injunction restraining the defendants not to interfere with the peaceful possession and enjoyment of the part of the suit property.

3. The plaintiff and defendants 2 to 4 in O.S.No.10017 of 1989 are the brothers and sisters and they are the children of Mariya Backiyam, who is the first defendant in the said suit. The appellant/plaintiff has filed the above said suit for specific performance of an agreement of sale alleging and advertng that the first defendant, who is the mother of the appellant/plaintiff, had agreed to convey the suit property for a sum of Rs.15,000/- and she had parted away a sum of Rs.6,500/- towards sale consideration. The appellant/plaintiff has filed the said suit for specific performance of the Suit Sale Agreement-Ex.A.1, dated 28.07.1987 alleging that due to family circumstances, the first defendant/mother of the plaintiff, has offered to sell the house and she has made an advance amount and Ex.A.1-Sale Agreement was entered into upon between the plaintiff and the first defendant, while the defendants 2, 3 and 4, who are the brothers and sister of the plaintiff respectively, have attested the document and the plaintiff was ready and willing to perform her part of the contract. However, the first defendant/mother of the plaintiff, has not executed the Sale Deed, at the instigation of one of the brothers of the plaintiff and hence, she has filed the above said suit.

4. The first defendant along with other defendants viz., defendants 2 to 4 have filed written statement alleging that Ex.A.1-Sale Agreement is not true and valid and due to the natural calamity happened in the fourth defendant's house, wherein, her daughter died and at that time, the first defendant has borrowed amount and executed the Sale Agreement and it is only due to the force and coercion, the Sale Agreement was entered into between the parties and one of the defendants has not signed the document. It is further stated that the lease

cum Sale Agreement was executed by the fifth defendant/Tamil Nadu Slum Clearance Board [hereinafter referred to as fifth defendant Board] and hence, until the entire EMI has been paid, the fifth defendant-Board alone is the owner of the property and hence, Sale Agreement cannot be executed nor enforced under law and hence, the defendants 1 to 4 have prayed for dismissal of the suit.

5. The fifth defendant-Board has filed written statement before the trial Court stating that the lease cum Sale Agreement was executed as per Ex.B-8 on 12.03.1983, whereby, the first defendant has to make a payment of Rs.39 for 10 years towards development charges. Thereafter only, Sale Deed will be executed in favour of the first defendant viz., the mother of the plaintiff. It is further stated that as on date, there is no encumbrance on the suit property.

6. Before the trial Court, on behalf of the plaintiff, the plaintiff examined herself as P.W.1 and two witnesses were examined as P.Ws.2 and 3 and documents Exs.A.1 to A.19 were marked. On behalf of the defendants, five witnesses were examined as D.Ws.1 to 5 and documents Exs.B.1 to B.26 were marked.

7. The Trial Court, after considering both oral and documentary evidence adduced on either side, has found that Ex.A.1-Suit Sale Agreement dated 28.07.1987 is true, valid and binding on the first defendant. The defendants 2, 3 and 4 are the sons and daughter of the first defendant and they are only formal parties and fifth defendant is the Board, who had made the allotment of site. Since the first defendant/mother of the plaintiff died pending the suit, defendants 2, 3 and 4 are brought on record as legal heirs of the deceased first defendant along with the plaintiff and hence, on the above background, the trial Court has also held that they are necessary parties. Though not prayed for, due to the subsequent development, they are having 1/4th share in the suit property. The Trial Court has further held that though Ex.A.1-Sale Agreement is true, valid and binding upon the first defendant, the same cannot be enforced, for the reasons observed by the trial Court. Aggrieved over the rejection of the relief of specific performance of suit Sale Agreement, the plaintiff has preferred an appeal in A.S.No.111 of 1998 before the VII Additional City Civil Court, Chennai, with regard to the finding of the Trial Court that the suit Sale Agreement-Ex.A.1, being true, valid and binding upon the first defendant. The defendants have not filed any appeal or any cross-objection in the appeal filed by the plaintiff and the same appears to be relevant for the reasons discussed infra.

8. It is seen that since the first defendant in the original suit namely, Mariya Backiyam died, in the appeal in A.S.No.111 of 1998, only four parties are arrayed as respondents and hence, there is a shift in the ranking of the party respondents in the appeal.

9. On a perusal of records, it is seen that the Lower Appellate Court has held that no Sale Deed was executed in favour of the first defendant by the fourth defendant-Board. It is further held that the property, which is yet to be received by the first defendant on the date of the agreement or on the date of the suit, the first defendant has not become the absolute owner of the suit property and having not obtained any Sale Deed from the fourth defendant-Board, the agreement ought not to have been executed and accordingly, dismissed the appeal and hence, the present Second Appeal is preferred by the plaintiff before this Court.

10. At the time of admitting the above Second Appeal on 12.07.2002, the following substantial questions of law were framed for consideration:

"1. The decision of the Courts below that only after execution of Sale Deed by the 5th defendant, the plaintiff and defendants 1 to 4 will become owners thereon is totally erroneous and does not the 1st defendant alone will acquire absolute title and till then, the other defendants or the legal representatives through her will have no other rights in the property?

2. Does the decision of the Court below that the first defendant had no interest in the suit property on the date of suit agreement as well as on the date of suit is not against Section 6 of the T.P. Act and the definition of Section 3 of the Act when once the suit contract is held to be valid, true and enforceable, is it open to the Court below to ignore Section 9 of the Specific Relief Act and still hold that the suit contract is not enforceable?"

11. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the fourth respondent-Board and perused the records.

12. The plaintiff is the daughter of the first defendant and defendants 2 and 3 are the sons while the fourth defendant is the daughter of the first defendant. During the pendency of the suit, the first defendant mother died and the plaintiff along with defendants 2, 3 and 4 were recognised as legal

representatives of the first defendant.

13. It is reported by the learned counsel appearing for the appellant/plaintiff that during the pendency of the second appeal, the second defendant namely, S.George died on 03.12.2016 and the appellant and respondents 5 to 8 were recognized as his Legal Representatives. A memo dated 04.01.2017 has already been filed and the same is recorded.

14. As per Ex.B.8, the fifth defendant in the original suit/fourth respondent herein has made allotment in favour of the first defendant, now deceased, and executed the lease cum Sale Agreement on 12.03.1983, wherein, there is a specif clause that she has to pay a sum of Rs.39 as EMI for 10 years and thereafter, Sale Deed will be executed. The plaintiff examined herself as P.W.1 and she had deposed that to meet the medical expenses of her grand daughter, the first defendant offered to sell the suit property and accordingly, the plaintiff has paid a sum of Rs.5,000/- to the first defendant and the Sale Agreement Ex.A.1 came into force and the terms of the agreement are not in dispute. P.W.1 had further deposed that the balance of sale consideration was Rs.8,000/- and she is ready and willing to deposit the same in the Court. She also made an application in the Court. The suit property is admittedly originally encroached by the first defendant and thereafter, it appears that due to the policy decision of the Government of Tamil Nadu, the land has been taken over by the Tamil Nadu Slum Clearance Board and demarcated and a lay out has been formed and it has been allotted to the first defendant under Ex.B.8. The same is measuring about 0.81.5 sq. meters situated in Krishnadass Road, New Vazhaima Nagar. Though the first defendant has taken a plea that Ex.A.1 was obtained by force and coercion, neither she nor the other defendants viz., defendants 2 to 4 have adduced any evidence for the same.

15. Taking into consideration the entirety of the evidence, the Trial Court has rightly come to the conclusion that Ex.A.1- Sale Agreement entered between the plaintiff/appellant herein along with the first defendant (now deceased) is true, valid and binding upon the first defendant. Since it is allotment from the Board-fifth defendant in the original suit, defendants 2, 3 and 4 have no title or any right over the suit property till the death of the first defendant. However, on the date of the death of the first defendant, along with the plaintiff all other defendants viz., defendants 2, 3 and 4 are entitled to 1/4th share in the suit property. Pending, the second appeal, third defendant/second respondent herein had died and fourth defendant/third respondent herein also died and their legal heirs were brought on record.

16. It is seen from the records that in CMP No.10008 of 2005, this Court, by an order dated 25.08.2005, granted interim injunction against the respondents 1 to 3 herein/defendants 2 to 4. Subsequently, the interim injunction granted was made absolute by this Court on 02.09.2005 and in CMP No.10009 of 2005, this Court has granted permission to the appellant herein/plaintiff to pay the share of respondents 1 to 3 herein to the fourth respondent-Board. As the plaintiff was paying their share, while the other defendants 2 to 4/respondents 1 to 3 have not remitting the share and furthermore, the fourth respondent herein/fourth defendant-Board has refused to receive the amount towards other sharers. By an order dated 25.08.2005, the appellant herein/plaintiff was permitted to pay the entire arrears of EMI and rent as fixed by the fourth respondent-Board and it is submitted by the learned counsel appearing for the appellant/plaintiff that the entire amount due to the fourth respondent-Board has been paid.

17. As stated supra, the trial Court has rendered a categorical finding that Ex.A.1-Sale Agreement is true, valid and binding upon the first defendant (now deceased). On the date of filing of the suit or on the date of entering into the agreement, defendants 2, 3 and 4 have no right or title over the suit property and they were only added as formal parties in the suit. With regard to the said finding, there was no appeal filed by the defendants which assumes significance. The Lower Appellate Court has held that since the Sale deed was not executed by the fourth defendant-Board/fourth respondent herein, agreement of sale cannot be enforced.

18. On a perusal of the evidence of P.W.1 coupled with the documents Exs.A.2 to A.19, the trial Court has categorically given the finding that the appellant herein/plaintiff is ready and willing to perform her part of the contract with ready money with her and at the relevant point of time, she has reiterated her bonafides to pay the balance of sale consideration and thus, the trial Court has rightly come to the conclusion that in the suit for specific performance, the plaintiff has successfully complied with the requirement as contemplated under Section 16 (3) of the Specific Relief Act and hence, this Court finds that the Sale Agreement-Ex.A.1 is covered under Section 13 of the Specific Relief Act. In the absence of any plea being raised by the defendants as to the readiness and willingness on the part of the plaintiff and coupled with the oral evidence of P.W.1/plaintiff and documentary evidence Exs.A.15 to A.18, the appellant herein/plaintiff has demonstrated that she is ready and willing to perform her part of the contract. The said finding recorded by the trial Court is hereby confirmed.

19. On a perusal of Ex.B.8, it is seen that though it is a

lease cum sale agreement, the first defendant-mother having paid installments, she has absolute right to get the property from the fourth defendant Board and after the outstanding EMI amount has been paid, permission has been granted by this Court without prejudice to the rival contention of both the parties. As of now, after the death of the first defendant-mother, none of the defendants viz., sons and daughter of the first defendant has paid their share in EMI to the fourth defendant Board which also assumes significance.

20. Thereby, the appellant/plaintiff has come to this Court by way of Civil Miscellaneous Petition No.10009 of 2005 and this Court, by order dated 02.09.2005, has granted permission to the plaintiff to remit only her share being one of the co-sharer of the property and also permitted to make the other defendants viz., defendant Nos.2, 3 and 4/respondents 2 to 4, which also assumes significance and thus, on completion of payment of installments, the first defendant-mother deemed to be the full owner and non-execution of the Sale Deed is only illegal on the part of the fourth defendant-Board.

21. It is to be stated that once Ex.A.1-Sale Agreement is held to be valid, true and binding upon the first defendant which provides for one time payment to clear the dues of the fourth respondent herein. Right is always with the first defendant and the first defendant will become entitle for the execution on completion of the execution of the Sale Deed from the Board/fourth respondent herein. As such, the interest in the lands is also regarding the proceeding of the property under the Transfer of Property Act and hence, this Court is of the considered view that the present factual matrix of the case falls under the category of enforcement of agreement and accordingly, in view of the above factual matrix coupled with the finding of both the Courts below, this Court finds that the factual matrix of the case falls under Section 13 of the Specific Relief Act and in view of the discussion in the preceding paragraphs, the specific performance now sought for as per the terms of Ex.A.1-Sale Agreement is not prohibited under Sections 12 and 14 of the Specific Relief Act which provides for giving the relief to the plaintiff and Ex.A.1, is, thus, found to be enforceable as per Section 18 of the Specific Relief Act.

22. Taking into consideration of all the above, this Court is of the considered view that the appellant herein/plaintiff is entitled to the relief of specific performance and accordingly, both the substantial questions of law are answered in favour of the appellant/plaintiff and both the substantial questions of law are answered in affirmative. Before parting with, taking note of the fact that during the passage of time, the value of the property could have increased and hence, taking note of the

entirety of the circumstances of the case and also the fact that the parties belonged to the same family, this Court is of the considered view that the plaintiff is entitled for specific performance on payment of balance of sale consideration and besides, on payment of Rs.50,000/- to the legal heirs of the deceased second defendant and Rs.50,000/- to the legal heirs of the deceased third defendant and another Rs.50,000/- to the legal heirs of the deceased fourth defendant before the executing Court.

23. Accordingly, the Second Appeal is allowed and the judgments and decrees of both the Courts below are set aside, on payment of balance of sale consideration as indicated above. In the event of refusal of the legal representatives of the defendants, it is open to the plaintiff to deposit the amount before the Execution Court for getting the Sale Deed executed through the Court. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The VII Additional City Civil Court,
Madras.
2. II Assistant City Civil Judge,
Madras.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1 cc to M/s.K.Hariharan, Advocate Sr.No. 89266

PM(CO)
RMP(05/11/2020)

S.A.No.1024 of 2002

WEB COPY