

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 18.06.2019

JUDGMENT PRONOUNCED ON : 25.09.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1402 of 2002

Sundarambal ... Appellant/ Appellant / Defendant

...Versus...

Subbu Goundar ... Respondent/ Respondent/Plaintiff

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.119 of 2001 dated 31.10.2001 on the file of the II Additional District Judge, Salem confirming the judgment and decree made in O.S.No.355 of 1992, dated 28.02.2001 on the file of the Principal Subordinate Court, Salem.

For Appellant :: Mr.C.Jagadish

For Respondent:: Mrs.A.L.Gandhimathi

for Mr.A.Saravanan

J U D G M E N T

Challenge in this Second Appeal is made to the Judgment and Decree dated 31.10.2001 passed in A.S.No.119 of 2001 on the file of the learned II Additional District Judge, Salem, confirming the Judgment and Decree dated 28.02.2001, passed in O.S.No.355 of 1992, on the file of the Principal Subordinate Court, Salem.

2. The above said suit is filed for Specific Performance.

3. After Trial, the suit was decreed and on appeal filed by the defendant/respondent, the First Appellate Court dismissed the appeal and hence, the Second Appeal by the defendant.

4. The above Second Appeal has been admitted on 03.09.2002

on the following Substantial Question of Law:-

" Whether the Courts below erred in ignoring the fact that the suit was liable to be dismissed on the question of latches? "

5. The averments made in the plaint are as follows:-

The suit property belongs to the defendant/Sundarambal. The plaintiff/Subbu Gounder entered into a sale agreement with the defendant on 30.06.1987. The sale price has been fixed at Rs.50,000/-. Rs.40,000/- has been paid as advance on the date of execution of sale agreement. Balance of Rs.10,000/- is to be paid within three years from the date of agreement of sale and to obtain the sale deed from the defendant. The plaintiff is always ready and willing to perform his part of the contract. Hence, he issued notice through his counsel on 28.03.1992, which was received by the defendant on 30.03.1992. In response to the above notice, he sent a reply notice with false and untenable allegations on 14.04.1992. Again, the plaintiff sent a rejoinder notice to the defendant on 28.04.1992. Thereafter, the learned counsel for the defendant had also accepted the notice, in due course, the plaintiff had also deposited the balance sale consideration of Rs.10,000/- to the account of the Advocate appearing for the defendant on 05.06.1992 in the bank situated within the Court campus and the original acknowledgment was also produced before the Trial Court under Ex.A7. But, the defendant was postponing the same, the plaintiff came to know that the defendant was making attempt to alienate the suit property. Hence, the plaintiff is constrained to file the suit for Specific Performance, or in the alternative, to pay Rs.40,000/- advance amount along with interest from the date of sale agreement till the date of filing the suit.

6. The defendant resisted the relief of Specific Performance inter-alia contended that the defendant has not entered into an agreement of sale with the plaintiff in respect of the suit property and received a sum of Rs.40,000/-. The defendant never entered into any agreement of sale and the plaintiff's son Ganesan was the Managing Partner of a firm "Cholan Finance" and the defendant, her husband P.Ganesan along with one Balasubramaniam were partners of the defendant in a transport business and the defendant's daughters have borrowed amount from the Cholan Finance. At the time of borrowal, the plaintiff's son took the signature of the defendant on a blank general stamp paper, white papers, some blank pronote forms etc and the said firm was closed in the year 1989. As the defendant was unable to repay the loan amount, the plaintiff's son Ganesan with the help of the plaintiff has fabricated the suit agreement and filed the suit.

7. In short, in the additional written statement, it is

stated that the suit agreement is a created document. The same has been fabricated with the help of the signatures of the defendant and her husband on blank papers, stamp papers and blank pronotes obtained in the year 1987. There was absolutely no necessity for the defendant to sell the valuable suit property to the plaintiff for a low price. Only to adjust the time gap between the date of stamp papers and the date of filing of the suit a very long period of three years was fixed in the fabricated agreement and the suit has been belatedly filed in 1992. The questioning of returning the advance amount does not arise in as much as the suit agreement is a fabricated document.

8. With regard to the Substantial Question of Law, the learned counsel for the appellant would contend though the Courts below concurrently held that the sale Deed/Ex.A1 is true and genuine, without appraising or without appreciation of the facts about readiness and willingness of the plaintiff, as contemplated under Section 16 (3) of The Specific Relief Act. He also drew my attention to Ex.A7/Acknowledgement card for payment of Rs.10,000/-, which will show that it was deposited towards the balance sale consideration but it was deposited in the name of the plaintiff's Advocate.

9. Per contra, the learned counsel appearing for the respondent/plaintiff contended that in the written statement, the defendant has raised a plea that the sale agreement is fabricated and the amount said to have been given by the defendant is fraudulent. In connection with the readiness and willingness to perform his part of contract, he relied on Exs.P2 to P7.

10. On a perusal of the finding rendered by both the Courts below, it is seen that the suit agreement is held to be true and valid and the case of the appellant/defendant that the blank general stamp paper that have been given by way of security to the "Cholan Finance" and on its closure has been misused by the respondent/plaintiff and the suit has been instituted was negatived on the ground that non-probabilizing the alleged suggestive case.

11. On perusal of the documents filed before the Court and also and answer elicited in the cross-examination of P.W.1, it is seen that Ex.A1-suit sale Agreement is dated 30.06.1987 whereby, the sale consideration is said to have been fixed at Rs.50,000/- and Rs.40,000/- is already paid. For the payment of remaining balance of Rs.10,000/-, it appears that 3 years period has been fixed and the notice for were execution of the sale deed as emerged from the plaintiff under Ex.A2 is only on 28.03.1992 for which, the appellant/defendant had issued reply on 14.04.1992 and the suit was instituted on 08.05.1992 and balance of sale consideration appears to have been deposited in the account of the Advocate of the plaintiff before the Trial Court on 05.06.1992.

12. On the above factual matrix, the learned counsel for the appellant/defendant contended that due to latches on the part of the respondent/plaintiff is not entitled to the discretionary relief of Specific Performance and accordingly, in the decision reported in (1997) 3 SCC 1 [K.S.Vidyanadam and others v.Vairavan], it was held is as follows:-

"In other words, the Court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised".

"13. In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2 1/2 years in clear violation of the terms of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices and according to the defendants, three times and between the date of agreement and the date of suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff."

and in the decision reported in (2018) 4 MLJ 538 [Thangaraj (Deceased) and others v.Radhakrishnan and others] it was held is as follows:-

16.....When it is noted, as above discussed, the plaintiff has failed to establish his readiness and willingness right from the date of sale agreement to obtain the sale deed from the defendants and on the other hand, for the first time issued a legal notice two years after the agreed extended time and even thereafter failed to institute the suit immediately and on the other hand, laid the suit nearly two years thereafter for obtaining the discretionary relief of specific performance and when there is no plausible and acceptable explanation offered by the plaintiff with reference to his inaction, as rightly argued by the defendants' counsel, in the light of the principles of law enunciated in the decisions relied upon by him reported in (S.Vijayakrishnan v. Jayaprakash) (S.Vijayakrishnan v. Rani and Another) 2008 (4) CTC 385".

13. At this juncture, it is relevant to state that P.W.1 in his cross-examination had observed that "முதன் முதலாக ஒப்பந்தம் ஏற்பட்டதற்கு பிறகு எவ்வளவு நாட்கள் கழித்து கிரையம் செய்து கொடுங்கள் என்று கேட்டேன் என்றால் 3 வருடம் முடிய 10 நாட்கள் இருக்கும் போது நான் போய் கேட்டேன். மேலும், 4 வருடம் முடிந்த பிறகு தான் நான் போய் வக்கீலை பார்த்தேன். "

14. Thus, this Court finds that the plaintiff has failed to establish his readiness and willingness right from the date of sale agreement to obtain the sale deed from the defendant/appellant and from the documentary evidence coupled with the answer elicited in the cross-examination, it is seen that the date of agreement of sale dated 30.06.1987, legal notice dated 28.03.1992, reply dated 14.04.1992, re-joinder dated 28.04.1992, served on the plaintiff dated 08.05.1992 and amount deposited dated 05.06.1992 in the name of the Advocate's account. Only after completion of 2 years and 9 months, he had approached the defendant/appellant regarding the execution of the sale deed and also issued the notice only, thereafter, as could be seen from Ex.A2. Furthermore, the suit has been filed after few months thereafter.

15. In the absence of any plausible and acceptable explanation offered by the plaintiff/respondent with reference to his inaction. It appears that the contention raised by the appellant/defendant counsel regarding readiness and willingness on the part of the respondent/plaintiff appears to be bleak and hence, on the above factual position, this Court is of the considered view that the latches on the part of the plaintiff touching upon the readiness and willingness as required under Section 16 (3) of the Specific Relief Act, this Court is of the considered view that the latches is found to be against the respondent/plaintiff in granting the relief of discretionary relief of Specific Performance of the suit sale agreement and hence, this Court finds that the respondent/plaintiff is not entitled to the discretionary relief of specific performance and with regard to this aspect, it is found to be both the Courts below has not property appreciated the primary condition in before granting the relief of Specific Performance namely readiness and willingness as contained in Section 16 (3) of the Specific Relief Act and hence, in my considered opinion that the discretionary relief of Specific Performance is not needed to be granted in favour of the plaintiff.

16. Accordingly, the finding rendered by both the Courts below in this regard shall stand vacated. Though, it is found that the suit is not strictly barred by limitation. However, on the above factual matrix as extracted above, the plaintiff is not entitled to the relief of Specific Performance and at the best, the respondent/plaintiff can be entitled only for the alternative of refund of advance amount paid by the

respondent/plaintiff by way of sale agreement under Ex.A1. The Substantial Question of Law formulated in the Second Appeal is answered accordingly.

17. In fine,

(i) The finding rendered by both the Courts below regarding the binding nature of Ex.A1 is hereby confirmed. However, grant of the primary relief of Specific Performance is hereby set aside.

(ii) The alternative relief of refund of advance amount along with the interest as contained in the plaint, is hereby ordered.

(iii) This Second Appeal is allowed and the judgment and decree passed in A.S and O.S shall stand modified to the extent indicated above. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional District Judge, Salem

2.The Principal Subordinate Court, Salem.

+1cc to Mr.C.Jagadish, Advocate SR.No. 82980

S.A.No1402 of 2002

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