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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :29.04.2019

PRONOUNCED ON:03.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.102 of 2007

and

M.P.No.1 of 2007

K.Govindarajan

..Appellant/Appellant/
/Plaintiff

.Vs.

1.Subramaniam

2.K.S.Raju

3.K.S.Loganathan

.. Respondents/ Respondents/
/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.35 of 2006 dated 22.08.2006 on the file of the Principal District Judge, Erode confirming the judgment and decree passed in O.S.No.757 of 2000 on the file of the Principal Subordinate Court, Erode dated 20.12.2005.

For Appellant : M/s.Chitra Sampath, SC
for M/s.MA.P.Thangavel

For Respondents : Mr.N.Manokaran

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 22.08.2006 passed in A.S.No.35 of 2006 on the file of the Principal District Court, Erode confirming the judgment and decree dated 20.12.2005 passed in O.S.No.757 of 2000 on the file of the Principal Subordinate Court, Erode.

2.The second appeal has been admitted on the following substantial question of law.

Whether both the courts below were correct in denying the relief of specific performance, after recording a finding that Ex.A2 agreement is one executed by the defendants and is also supported by the amount what is found as advance and the suit is also filed within time?



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3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. Suit for specific performance.

6. It is the case of the plaintiff that the defendants and the plaintiff entered into an agreement of sale on 10.12.1996 in respect of the sale of the suit property for a sum of Rs.3,50,000/- and according to the plaintiff, he has advanced the sum of Rs.3,00,000/- on the date of the sale agreement and the parties had agreed that the remaining sale consideration of Rs.50,000/- should be paid within three years from the date of the sale agreement and the sale transaction should be completed thereupon and according to the plaintiff, though he had been always ready and willing to perform his part of the contract, had approached the defendants for the payment of the balance sale consideration and execute the sale deed, on some reason or the other, the defendants had been postponing the same and therefore the plaintiff issued a legal notice on 06.12.1999 calling upon the defendants to receive the balance consideration and complete the sale transaction and despite the same, as no proper response had emanated from the defendants, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

7. The defendants resisted the plaintiff's suit contending that the second defendant had borrowed a sum of Rs.1,00,000/- from the plaintiff towards the purchase of a lorry and only as security for the abovesaid loan transaction, the sale agreement had been obtained by the plaintiff and therefore, it is stated that no sale agreement had been actually entered into between the plaintiff and the defendants for the sale of the suit property for Rs.3,50,000/- as put forth in the plaint and they had not received Rs.3,00,000/- as advance on the date of the sale agreement and also contended that the time limit of 3 years for paying the balance sum of Rs.50,000/- would speak volumes against the plaintiff and disputed the claim of readiness and willingness on the part of the plaintiff to pay the balance consideration and get the sale deed executed from the defendants and disputed the case of the plaintiff that the defendants had been evading the execution of the sale deed one way or the other and also contended that the suit laid by the plaintiff is barred by limitation and, in all, contended that the suit is liable to be dismissed.



8. Based on the materials placed on record and the submissions made, the Courts below were pleased to declined the relief of specific performance sought for by the plaintiff and granted the relief of refund of advance paid by the plaintiff with interest. Impugning the same, the present second appeal has been laid.

9. As regards the case of the plaintiff that the defendants entered into a sale agreement for the sale of the suit property under Ex.A2 sale agreement for a sum of Rs.3,50,000/-, though the defendants had putforth the case that the said sale agreement had been taken only as a security for the loan transaction, however considering the materials placed on record and the proper appreciation of the same, it is found that the Courts below had proceeded to determine that Ex.A2 sale agreement had been indeed entered into between the plaintiff and the defendants for the sale of the property for the sale price as recited therein and did not accept the case of the defendants that Ex.A2 sale agreement was taken as a security for the loan transaction and accordingly determined that Ex.A2 is only an agreement of sale for the sale of the suit property and the abovesaid determination of the Courts below based on the proper appreciation of the materials available on record and centering on the factual matrix, there is no reason to interfere with the abovesaid determination of the Courts below in this second appeal.

10. The claim of the plaintiff that he has been always ready and willing to perform his part of the contract pursuant to the sale agreement is being seriously challenged by the defendants. The sale price is fixed at Rs.3,50,000/-. The balance sum of Rs.50,000/- is stated and required to be paid within three years from the date of the sale agreement. The plaintiff, being the suitor, having come forward with the suit seeking the relief of specific performance, has to establish his readiness and willingness right from the inception of the sale agreement and his readiness and willingness should continue till the completion of the execution of the sale deed. If really, the plaintiff had intended to purchase the suit property from the defendants, in utmost earnest, as rightly pointed out by the Courts below, there is no need for fixing the time limit of three years for paying the balance paltry sum of Rs.50,000/- for completing the sale transaction. As rightly pointed out by the Courts below, for the payment of the balance sale consideration of Rs.50,000/- , if the plaintiff had been ever ready and willing to perform his part of contract, the same would have been tendered by the plaintiff at the earliest opportunity immediately after the execution of the sale agreement and there is no need to wait for three years to pay the said sum. Though



the plaintiff would claim that he had been ready and willing to pay the balance sum to the defendants right from the inception, however, with reference to the abovesaid case of the plaintiff other than his interested Ipse dixit testimony, there is no other valid material forthcoming on the part of the plaintiff. The case put forth by the plaintiff that due to harvest and cultivation, the defendants had been postponing the execution of the sale deed, as such, cannot be believed. If according to the plaintiff, he had been always ready and willing to pay the balance sum and get the sale deed executed from the inception of the sale agreement and the defendants had been avoiding the same one way or the other, nothing prevented the plaintiff from putting his readiness and willingness in writing at the earliest point of time and calling upon the defendants to receive the balance sum and execute the sale deed. On the other hand, the case of the plaintiff is that he had issued the lawyer's notice on 06.12.1999 nearly at the fag end of three years fixed, calling upon the defendants to receive the balance sum and execute the sale deed. Therefore from 10.12.1996 till 05.12.1999, absolutely there is no proof on the part of the plaintiff evidencing his readiness and willingness to pay the balance sum and get the sale deed executed. In such view of the matter, the case projected by the plaintiff that he has been ever ready and willing to perform his part of the contract since the execution of the sale agreement, as such, falls to the ground and rightly disbelieved by the Courts below. In addition to that, when according to the plaintiff, the defendant had not responded positively to the legal notice sent by him, at least immediately thereafter, the plaintiff would have endeavored to institute the suit against the defendants as per law. On the other hand, it is found that the plaintiff is found to have laid the present suit only on 07.11.2000 nearly one year after the issuance of the legal notice dated 06.12.1999. The abovesaid conduct of the plaintiff would speak volumes of his readiness and willingness in obtaining the sale deed from the defendants and as rightly contended by the defendants' counsel, inasmuch as, the plaintiff had been not ready and willing to perform his part of his contract from the beginning, it is seen that the plaintiff had been taking his own time in moving ahead for the enforcement of the sale agreement and the factum of readiness and willingness on the part of the plaintiff seeking the equitable and discretionary relief of specific performance being the sine qua non for obtaining the said relief, the abovesaid factor being blatantly and conspicuously absent in the present case, in such view of the matter, as determined by the Courts below, on the abovesaid ground alone, the plaintiff's suit for the relief of specific performance cannot be acceded to.

11. The relief of specific performance being an equitable and discretionary relief, unless the plaintiff establishes his



case of obtaining the said relief in all endeavours and in accordance with the principles of law formulated by this Court and the apex court in the various decisions referred to by the respective parties and even though the parties had fixed the time limit of three years for completing the transaction, that alone, by itself, would not entitle the plaintiff to take his own time in proceeding further and on the other hand, the plaintiff should have been vigilant from the commencement of the sale agreement and the abovesaid factor being glaringly absent in the present case as above discussed, in such view of the matter, the right determination of the Courts below that the plaintiff had not been ready and willing to perform his part of the contract and thereby not entitled to the relief of specific performance as prayed for does not merit any interference.

12. One other factor also assume importance in this matter. Admittedly, it is found that the plaintiff had lend loan to the second defendant. And admittedly on the date of the sale agreement, the amount due to be paid by the second defendant to the plaintiff amounts to Rs.70,000/-. In such view of the matter, the plaintiff should have been cautious in deducting the said amount while adjusting the sale consideration fixed between the parties and the abovesaid aspect of the matter also raises a serious suspicion in the case projected by the plaintiff.

13. Furthermore, considering the recitals contained in the partition deed marked as Ex.A1, which had been entrusted to the plaintiff at the time of the execution of the sale agreement, it is highly doubtful whether at all the defendants would be having absolute interest in respect of the suit property and the plaintiff had not endeavored to ascertain the entitlement of the defendants to the suit property by obtaining the encumbrance certificate with reference to the same and when it is found that as determined by the first appellate court in particular, there are other co-sharers in respect of the said property and as the defendants would not be entitled to convey the suit property in entirety to the plaintiff and the plaintiff is found to be not a vigilant purchaser and proceeded to enter into the sale transaction blindly, particularly without ascertaining the title of the defendants to the suit property, in such view of the matter also, as determined by the first appellate court in particular, the plaintiff would not be entitled to obtain the sale deed from the defendants for the entire suit property as claimed in the plaint.

14. Be that as it may, when as above discussed, for seeking and obtaining the relief of specific performance namely the readiness and willingness on the part of the plaintiff being completely absent in the present case, on that ground alone, the plaintiff is found to be dis-entitled to obtain the equitable and discretionary relief of specific performance and accordingly the declinment of the same by the Courts below in favour of the



plaintiff for the reasons aforesaid do not warrant any interference.

15.The plaintiff's counsel in support of her contentions placed reliance upon the decisions reported in 2007 (10) SCC 231 [P.S.Ranakrishna Reddy Vs. M.K.Bhagyalakshmi and another] and 2003 SCC online Mad 133: AIR 2003 Mad 305 : (2003) 1 Mad LJ 694 [M.Ramalingam, deceased by Lrs Vs. V.Subramanyam, deceased by Lrs]

and the defendants' counsel in support of his contentions placed reliance upon the decisions reported in

1. 2012 (4) CTC 100 [Pappammal @ T.Pappa Vs. P.Ramasamy]
2. 2012 (2) MWN (Civil 342) [J.Baskaran Vs. T.Pappa]
3. 2011 (1) SCC 429 [J.P.Builders and Another Vs.A.Ramadas Rao and Another]
4. 2011 (4) CTC 640 [Saradamani Kandappan Vs. S.Rajalakshmi & Others]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

16.In the light of the abovesaid discussions, the substantial questions of law involved in the second appeal is accordingly answered against the plaintiff and in favour of the defendants.

17.In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently connected miscellaneous petition, if any is closed.

mfa

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

To

1. The Principal District Judge,
Principal District Court,
Erode.
- 2.The Principal Subordinate Judge,
Principal Subordinate Court,
Erode.



Copy to
The Section Officer,
VR Section,
High Court, Chennai.

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+1cc to Mr.Ma.P.Thangavel, Advocate, SR.No.45196
+1cc to Mr.N.Manokaran, Advocate, SR.No.44768

S.A.No.102 of 2007
and
M.P.No.1 of 2007

Kak(29/08/2019)