

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.11.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.286 of 2007

1.S.S.M.Natarajan (Deceased)
2.N.Subbulakshmi
3.N.Baskaran
4.N.Chinnakesavan
5.N.Sathyaraj
6.G.Muthulakshmi
7.S.Thenmozhi ... Appellants/Defendant

(Appellants 2 to 7 brought on record as LRs of the deceased sole Appellant vide order dated 10.09.2014 made in M.P.No.1 to 3 of 2012.)

Vs

1.P.Manoharan
2.P.Bhaskaran
3.P.Murugan
4.P.Rathinam ... Respondents/Plaintiffs

PRAYER: Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 27.08.2003 passed in A.S.No.353 of 2002 by the Fast Track Court V, Chennai confirming the decree and Judgement dated 26.11.2001 made in O.S.No.6853 of 1989 by the XV Asst. City Civil Court, Chennai.

For Appellants : Mr.M.Kamalanathan

For Respondents : No appearance

JUDGMENT

This Second Appeal has been filed challenging the Judgement and decree dated 27.08.2003 passed by the Fast Track Court V, Chennai in A.S.No.353 of 2002 confirming the Judgement and decree dated 26.11.2001 passed by the XV Asst. City Civil Court, Chennai in O.S.No.6853 of 1989.

Brief facts leading to the filing of this Appeal:

2. The Appellants are the legal representatives of the defendant and the respondents are the legal representatives of the Plaintiff in the suit O.S.No.6853 of 1989. The suit was filed by the plaintiff against the defendant for specific performance of an agreement dated 16.10.1988. As seen from the plaint averments, according to the plaintiff, the defendant is the owner of the house bearing Door No.180, Mannarswamy Koil Street, Royapuram, Chennai - 600 013. According to the plaintiff, he was a tenant under the defendant in respect of a shop situated in front of the said premises and the said shop measured 9 x 3 feet. According to the plaintiff, he was running a betel nut shop under the name and style of "Balasubramaniam Stores" and paying the monthly rent to the defendant.

3. According to the plaintiff, the defendant in October 1988 approached the plaintiff and represented that he wanted to renovate his house and requested the plaintiff to vacate the shop and hand over possession to the defendant temporarily. It is the case of the plaintiff that the defendant further represented to the plaintiff that he would construct a new shop in the same place measuring 9 x 5 ½ feet and put the plaintiff in possession. Accordingly, an agreement dated 16.10.1988 was entered into between the plaintiff and the defendant and as per the said agreement, the plaintiff agreed to vacate the shop for a period of two months and on completing the construction of the new building, the defendant agreed to put back possession of the shop as per the agreement dated 16.10.1988 to the plaintiff on a revised monthly rent of Rs.250/-.

4. It is also the case of the plaintiff that believing the representation of the defendant and in accordance with the agreement dated 16.10.1988, the plaintiff vacated the shop and handed over possession of the same to the defendant and all his articles which included the stock in trade in the shop were kept in the fourth floor of the premises at No.12, M.S.Koil Street belonging to the defendant. It is the case of the plaintiff that the defendant reconstructed his house only in the month of April 1989 and instead of allotting a shop in the front portion of the premises to the plaintiff as per the agreement dated 16.10.1988, the defendant failed to allot the said shop to the plaintiff in accordance with the said agreement.

5. The plaintiff has pleaded in his plaint that he was always ready and willing to preform his part of the contract. He has also stated that he issued a lawyers notice dated 08.06.1989 to the defendant calling upon him to perform his part of the contract by allotting a shop as agreed upon under the agreement dated 16.10.1988. According to the plaintiff, since the

defendant failed to comply with the agreement dated 16.10.1988, the plaintiff filed a suit for specific performance of the agreement dated 16.10.1988.

6. The defendant in his written statement has denied the allegations contained in the plaint. According to the defendant, as per the agreement dated 16.10.1988, the plaintiff was expected to occupy the shop in the new building within two months from 16.10.1988. According to the defendant, the new construction was completed within the stipulated time of two months and the plaintiff was called upon to occupy the shop in the said premises. It is the case of the defendant that the plaintiff did not evince any interest to occupy the new shop.

7. According to the defendant, he was always ready and willing to perform his part of the contract and it is only the plaintiff who was not ready to occupy the new shop, despite the fact that the new building was completed within two months from 16.10.1988, being the date of agreement. Since the plaintiff did not occupy the shop within the stipulated period as per the agreement dated 16.10.1988, the defendant had no other option left, but to let out the shop to Chinnakesavan Nadar on 14.01.1989.

8. It is also the case of the defendant that notice dated 08.06.1989 sent by the plaintiff calling upon the defendant to comply with the agreement dated 16.10.1988 has been issued after almost 8 months, whereas the agreement stipulates that the plaintiff will have to occupy the shop within two months from the date of agreement. Therefore, it is their case that the plaintiff cannot seek specific performance of the contract dated 16.10.1988 as he was not ready and willing to perform his part of the contract within the stipulated time.

9. The Trial Court by its Judgement and decree dated 26.11.2001 in O.S.No.6853 of 1989 decreed the suit in favour of the plaintiff and granted specific performance of the contract dated 16.10.1988. Aggrieved by the same, the defendant in the suit who is the father of the Appellants herein preferred an Appeal before the Lower Appellate Court viz., XV Assistant, City Civil Court, Chennai in A.S.No.353 of 2002. The Lower Appellate Court also confirmed the findings of the Trial Court and dismissed the Appeal. Aggrieved by the same, this Second Appeal has been filed by the defendant in the suit. During the pendency of this Second Appeal, the defendant was dead and his legal representatives were impleaded as Appellants 2 to 7.

10. This Court at the time of admission of this Second Appeal on 21.08.2008 formulated the following substantial questions of law:

(1) Whether the courts below are right in granting a decree for specific performance directing the defendant to sell the suit property to the plaintiff, when there is no agreement in between the plaintiff and the defendant for sale?

(2) Whether the courts below are right in holding that the plaintiff was all along ready to perform his part of the contract to occupy the demised premises within two months after the construction of the building?

11. Heard Mr.M.Kamalanathan, learned counsel appearing for the Appellants 2 to 7. Despite service of notice on the respondents and their names having been printed in the causelist today, no one has entered appearance on their behalf.

Discussion:

12. Before the Trial Court, the plaintiff has filed three documents namely the agreement dated 16.10.1988, legal notice dated 08.06.1989 and reply dated 10.06.1989 which were marked as Ex.A1 to Ex.A3 and two witnesses were examined on his side viz., the plaintiff himself as PW1 and S.K.Rajarithnam as PW2. On the side of the defendant, the defendant himself was examined as witness (DW1) and no document was filed on his side.

13. It is the case of the plaintiff that the defendant was not ready and willing to perform his part of the contract dated 16.10.1988.

14. This Court has perused and examined the agreement dated 16.10.1988. As per the agreement dated 16.10.1988, Ex.A1, the defendant will have to complete the new construction of the building within two months and the plaintiff will have to occupy the new shop in the newly constructed building immediately thereafter. Even though, it is the case of the plaintiff as seen from the plaint averments that the defendant did not complete the construction within two months and was taking his own sweet time, there is no evidence to prove the said contention.

15. It is the case of the defendant that the construction of the building was completed within two months from the date of the agreement i.e., two months from 16.10.1988. It is also the case of the defendant that since the plaintiff did not come forward to take possession of the premises, despite being aware of the completion of the construction within two months, the defendant let out the shop to one Chinnakesavan Nadar on 14.01.1989. It is also the case of the defendant that all the articles and stock in trade belonging to the plaintiff were kept

in the fourth floor of the premises owned by the defendant and situated in the same street namely M.S.Koil Street. According to the defendant, the plaintiff was also aware of the completion of the building by the defendant within two months from the date of the agreement i.e., Ex.A1. 3

16. While seeking specific performance, the plaintiff must be always ready and willing to perform his part of the contract. There is no evidence whatsoever to establish that the new building was completed by the defendant only in the month of April 1989. If there was a delay in the completion of construction of the building, the plaintiff ought to have sent reminders to the defendant calling upon the defendant to complete the building at the earliest to enable him to occupy the premises. But in the case on hand, there is no reminder letters sent by the plaintiff. It is only for the first time through the legal notice dated 08.06.1989, Ex.A2, the plaintiff has called upon the defendant to perform his part of the contract that too, after the defendant had already inducted a new tenant in January 1989 itself.

17. The agreement clearly stipulates that on completion of the building, the plaintiff will have to take possession of the shop. It is the case of the defendant that the new building was constructed within two months from the date of agreement. This being the case, it can be inferred that the plaintiff was not ready and willing to perform his part of the contract as per the agreement dated 16.10.1988.

18. The Trial Court without taking into consideration all these factors, has erroneously exercised its discretion and decreed the suit in favour of the plaintiff and granted the relief of specific performance. The Lower Appellate Court without proper application of mind and without any independent assessment of the evidence available on record has erroneously confirmed the findings of the Trial Court and dismissed the Appeal.

19. From the evidence available on record, it can be conclusively inferred that the plaintiff was not ready and willing to perform his part of the contract as per the agreement dated 16.10.1988, Ex.A1. The plaintiff is not entitled for the relief of specific performance. The erroneous grant of specific performance will indeed affect the legal rights of the defendant over its property. Hence, substantial questions of law raised in this appeal referred to supra is answered infavour of the Appellants who are the legal representatives of the defendant in the suit.

Conclusion:

20. For the foregoing reasons, this second appeal is allowed. No costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

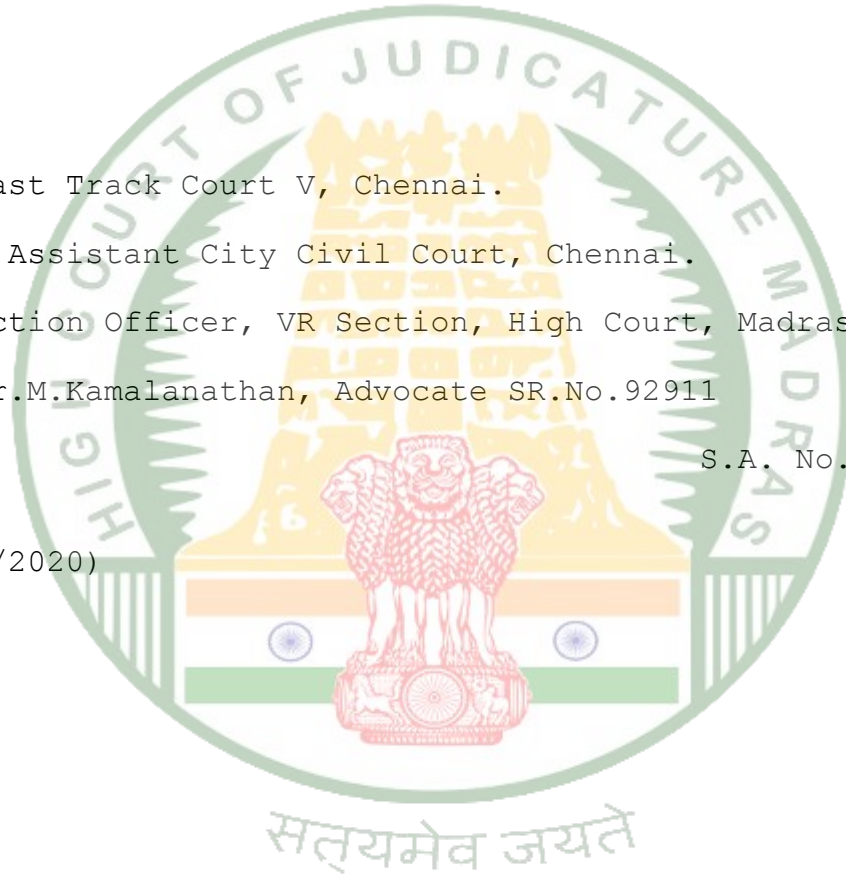
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To

1. The Fast Track Court V, Chennai.
 2. The XV Assistant City Civil Court, Chennai.
 3. The Section Officer, VR Section, High Court, Madras
- +1cc to Mr.M.Kamalanathan, Advocate SR.No.92911

S.A. No.286 of 2007

CNR(CO)
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