

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.12.2018

PRONOUNCED ON: 28.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.506 of 2007

&

MP.No.1 of 2007

Pandu ... Appellant/ defendant

Vs.

Velayudha Padayachi ... Respondent/plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 29.03.2006 passed in A.S.No.106 of 2004 on the file of the Principal Subordinate Judge, Vridhachalam dismissing the appeal and confirming the judgment and decree dated 27.04.2004 passed in O.S.No.160 of 2004 on the file of the II Additional District Munsiff Court, Vridhachalam..

For Appellant : Mr.D.Baskar

For Respondent : Mr.S.Babu for Mr.V.Anand

J U D G M E N T

This second appeal has been filed by the defendant against the Judgment and decree dated 29.03.2006 passed by the learned Principal Subordinate Judge, Vridhachalam in A.S.No.106 of 2004, confirming the judgment and decree dated 27.04.2004 passed in O.S.No.160 of 2004 on the file of the learned II Additional District Munsiff, Vridhachalam. The respondent/plaintiff herein has filed a suit in O.S.No.160 of 2004 on the file of the learned District Munsif, Vridhachalam to direct the appellant/defendant to execute the Sale Deed in respect to the property bearing S.No.73/1 measuring an extent of 0.57 cents and in S.No.73/2 measuring an extent of 1.14 Acres, after receiving the balance sale consideration of Rs.10000/-. The learned II Additional District Munsif, Vridhachalam by the judgment and decree dated 27.04.2004 allowed the said suit with cost. Aggrieved by the same, the appellant/defendant herein has filed an appeal in A.S.No.106 of 2004 on the file of the

learned Subordinate Judge, Vridhachalam. The learned Principle Subordinate Judge, Vridhachalam by the judgment and decree dated 29.03.2006, dismissed the said appeal with cost. Feeling aggrieved, the defendant/appellant has filed the present Second Appeal.

2. For the sake of convenience, the parties are referred to as, as described before the trial Court.

3. The averments made in the plaint, in brief, are as follows:

On 16.02.1996, the defendant entered into an agreement with the plaintiff to sell the suit property for a sum of Rs.80,000/-. On the same day, the plaintiff paid a sum of Rs.70,000/- to the defendant as advance. As per the terms of agreement, after receiving the balance sale consideration of Rs.10000/-, the defendant has to execute a sale deed in favour of the plaintiff. Though time was fixed from 16.02.1996 to 15.02.1998 to perform the part of contract, the parties intended that the time was not an essence of the contract, if the purchaser failed to pay the amount within the stipulated time, an agreement would get not only cancelled but the purchaser would also lost the defence and all rights in respect to the property. The plaintiff was always ready and willing to perform his part of the contract. He approached the defendant several times to execute a sale deed in his favour after receiving the balance sale consideration. The defendant was postponed the execution of a sale deed for the reasons best known to him. Finally, the plaintiff issued a registered lawyer's notice on 18.02.1998, demanding the execution of sale deed in his favour. The plaintiff was having enough money to perform his part of the contract. He was ready and willing to complete the sale as per the terms of agreement from the date of the document till the filing of the suit. Only the defendant was postponed the execution of the sale deed and finally refused to do so. Hence, the plaintiff had filed the above said suit.

4. The defendant filed the written statement and the additional written statement. The averments made in the written statement in brief, are as follows:

The defendant did not receive any amount from the plaintiff. The plaintiff obtained the signature of the defendant in a blank stamp paper and conveniently made as a sale agreement. One day before the alleged sale agreement, on 15.02.1996, the defendant purchased the suit property from on Trisanku, and thereafter, there was no necessity arises to the defendant for selling the suit property. The alleged sale agreement was executed as a security. The defendant was stand

as a surety to the sale transaction happened between one Kanagasabai and the Kandavel. For the loan availed by the above said Kanagasabai from the L.D. Bank, the defendant made a compromise and on belief of Kanagasabai, he executed a sale agreement in favour of the plaintiff. The plaintiff assured to return the sale agreement after repayment of loan availed by one Kanagasabai from L.D. Bank. The plaintiff has no right to compel the defendant for executing the sale deed. In the above said circumstances, the defendant did not receive any advance amount from the plaintiff. After repaying loan availed from L.D. Bank, the defendant was neglected by the Kanagasabi and thereafter, the plaintiff by using sale agreement filed this false case. According to the defendant, the suit filed by the plaintiff is liable to be dismissed.

5. Based, on the above said pleadings, the trial Court has framed the following issues and the additional issues.-

(i) Whether the sale deed executed between the plaintiff and the defendant is a true and genuine one?

(ii) Whether the defendant is liable to execute the sale deed?

Additional issues:

(i) Whether the plaintiff is entitled to the relief of specific performance as prayed for?

(ii) To what other reliefs the plaintiff is entitled to?

6. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as PW1. He has examined three more witnesses as PW2 to 4. Three documents were marked as Exs.A1 to A3 on his behalf. On the side of the defendant, the defendant examined himself as DW1.

7. The learned District Munsif, Vridhachalam, on perusing the materials placed on record, held that since the defendant admitted the registration of the sale agreement, came to the conclusion that the plaintiff proved his case and accordingly, he is entitled to the relief of specific performance. Accordingly, by the judgment and decree dated 27.04.2004, the trial Court decreed the suit. Aggrieved over the above judgment and decree, the appellant/defendant filed an appeal in A.S.No.106 of 2005 before the learned Principal Subordinate Judge, Vridhachalam. The learned Principal Subordinate Judge, Vridhachalam by the judgment dated 29.03.2006, dismissed the appeal and confirmed the judgment and decree passed by the trial Court. Feeling, aggrieved by the same, the present second appeal has been filed.

8. At the time of admitting the second appeal, the following substantial questions of law are formulated for considering this second appeal:

(i) In a suit for specific performance, is it necessary for the defendant to plead the defence of laches?

(ii) Whether the Courts below were right in decreeing the suit for specific performance when there is no pleading or evidence by the plaintiff explaining the laches?

(iii) Whether the Courts below were right in decreeing the suit for specific performance where the defence is that the suit agreement is executed as a security when the plaintiff failed to prove the passing of consideration?

(iv) Is it not the duty of the plaintiff in a suit for specific performance to prove the agreement?

(v) Whether the first Appellate Court was right in deciding the appeal without framing specific issues for consideration?

(vi) Whether the Courts below were right in decreeing the suit when the specific pleading regarding the readiness and willingness is absent in the plaint which is mandatory as per Section 16C of the Specific Relief Act, 1963 and Forms 47 and 48 of the First Schedule CPC?

9. The learned counsel appearing for the appellant would contend that without framing necessary issues, the learned II Additional District Munsiff, Vridhachalam, disposed of the suit in favour of the plaintiff. Even though the sale agreement is a registered one, at the time of deciding the appeal, the learned Subordinate Judge, Vridhachalam without considering the petition filed by the defendant which is for receiving the additional documents, dismissed the appeal in favour of the plaintiff. At the time of dismissing the appeal, she has not stated anything about the document which was required to be received, as a defendant's side document. Further, without any pleadings with regard to the readiness and willingness, the plaintiff filed a suit. Apart from that there is no necessity for executing the sale Agreement in favour of the plaintiff on 16.02.1996, since the said property was purchased by him only on 15.02.1996 for a sum of Rs.41,400/-. Accordingly, for the above said reasons, the learned counsel appearing for the appellant prayed to remit back the suit for further consideration, more over the Courts below did not discuss about to delay and laches in filing the suit.

10. On the other hand, Mr.S.Babu, for Mr.V.Anand, learned counsel for the respondent/plaintiff would submit that the registration of the sale agreement was admitted by the plaintiff. The execution of sale Agreement was proved by the plaintiff by way of examining three witnesses, as PW2 to 4, who were the attestors in the sale agreement. Apart from that in order to show the repayment of loan availed from L.D. Bank, no document was produced on behalf of the defendant. More than that, on the side of the plaintiff in order to prove the fact that the demand notice was issued to the defendant by the plaintiff, the acknowledgment signed by the defendant was marked as Ex.A3. In the said circumstances, both the Courts below having considered all the above, correctly came to the conclusion and passed a well considered judgment in favour of the plaintiff. According to the learned counsel for the respondent, this second appeal is liable to be dismissed.

11. Now upon considering the arguments advanced by the learned counsel appearing on either side, it is an admitted fact that the sale agreement which was marked as Ex.A1, was a registered one. More than that the attestors in the above said sale agreement was examined as PW2 to 4. The evidence given by the above witnesses proves the contents of the sale agreement. In the said circumstances, in a plaint filed by the plaintiff, in paragraph no.4, the plaintiff has specifically pleaded that he was always ready and willing to perform his part of contract.

12. Now, in respect to the substantial questions of law formulated in this second appeal, it is useful to refer the Black's Law Dictionary and the Advanced Law Lexicon, in which, the word 'laches' is defined as follows.-

Black's Law Dictionary: Laches.- Unreasonable delay in pursuing a right or claim-almost always an equitable one-in a way that prejudices the party against whom relief is sought.-Also termed sleeping on rights.

Advanced Law Lexicon: Laches.- A Court of equity refuses its aid to stale demands, where the plaintiff has slept upon his rights and acquiesced for a great length of time. He is then said to be barred by his laches. The defence of laches, however, is only allowed where there is no statutory bar.

'Early in its history, chancery developed the doctrine that where the plaintiff in equity delayed beyond the period of the statute applicable at law, relief would be refused on the ground of laches even though no specific prejudice to the defendant was shown. Today,

in most states, there are statutes of limitations applying to suits in equity. Despite these, however, the doctrine still holds that even if the delay is for a shorter period of time than that of the statute, it may still bar equitable relief if it is unreasonable and prejudicial to the defendant.''

13. Accordingly, any reasonable delay in perusing the right or claim is in a way prejudiced the parties against whom the relief is sought for. Now in the said circumstances, taken note of the fact that after completing two years period i.e., from 16.02.1996 to 15.02.1998, which was fixed in the sale Agreement, the plaintiff has filed the suit only on 15.02.1999, which means after one year from the Agreement date. Even though, the said laches is not pleaded on the side of the defendant, since there is no explanation on the side of the plaintiff in respect to the delay, definitely it would cause prejudice to the defendant. The plaintiff is duty bound to prove the said delay is a bonafide or useful one. But in this case, the reason for the delay has not been explained by the plaintiff.

14. In the said circumstances, it is necessary to refer the judgment of this Court reported in SCC on Line, in the case of V.V.Rathinasabapathi Pillai and 4 Others Vs. T.R. Sriramulu Chettiar, wherein, it has been held as follows:

'Courts have taken note of the delay as a factor contradicting the element of 'readiness and willingness''. Delay and laches on the part of a party in fulfilling the obligations cast on him under the contract, even though the time for their performance had ripened without any lawful excuse therefor will certainly militate against readiness and willingness to perform''. सत्यमेव जयते

15. It is the plea of the defendant that the alleged sale agreement was executed only for the security purpose, so also there was no question of readiness and willingness to perform his part of contract. It was submitted that the respondent/plaintiff herein has obtained the signature of the appellant/defendant in blank papers when at the time he settled the dispute between one Nainar and Trisanku. Even though, the documents relating to the repayment of loan availed by Nainar to the L.D. Bank is with Nainar, it is born-in-mind that in the contract arrived at between the plaintiff and the defendant, 90% of the sale amount was paid at the time of executing the sale

deed. So also fixing a period of two years for paying the balance sale consideration of Rs.10000/-, created a doubt over the case of the plaintiff. It is pertinent to note here that if the suit for specific performance needs a intended purchaser, an agreement holder must always ready and willing to perform his part of contract. As already stated more than 90% of the sale consideration was paid and also two years time was granted to pay the balance sale consideration. The defendant kept quiet all along and only on 18.02.1998, i.e., after completing the contract period, he issued a notice (Ex.A2) to the plaintiff/respondent. The said situation created a doubt over the genuineness of the sale agreement. Further, even after sending a notice on 18.02.1998, the plaintiff has not immediately filed any suit before the competent Court.

16. As rightly pointed out by the learned counsel appearing for the appellant/defendant, even after sending a notice, after a lapse of one year, he was filed a suit. It shows that the plaintiff/respondent was not having any readiness and willingness to perform his part of contract. Now, it is useful and relevant to refer the judgment of this Court reported in 2002(2) LW.422, in the case of K.Jayakumar Vs. Robert and 6 Others in S.A.No.1454 of 1989 dated 01.03.2002, wherein, in paragraph no.42 of the above referred judgment, it was absorbed as follows:

'42. In the instant case, it is clear without an iota of doubt that time was clearly agreed to be the essence of the contract between the parties. The reply notice, the written statement and the plaintiff's own evidence bear this out. It is further apparent from the materials on record that during the relevant time the plaintiff did not express her readiness and willingness to perform her part of the contract and call upon the appellant to complete the sale. Notice was issued more than one year after the date fixed for executing the sale deed and after receipt of the reply notice stating that time was the essence of the contract and that the contract stood terminated, she waited for nearly a year to file the suit. She also did not take up the challenge by the defendant in his pleadings calling upon her to deposit the amount into Court. May be it was not necessary to deposit unless called upon by Court. But then she could have expressed her readiness and willingness to deposit.

17. Further, the Division Bench of this Court in the case of Sushila Vs. Nihalchand Nahata(deceased), rep. by his Power of Attorney Agent, R.Dayachand Savan Sukha Nihalchand Nahata by 4

Lrs. in O.S.A.No.292 of 2003 dated 25.08.2009 reported in 2009 (4) CTC 842, wherein, it is observed as follows:

''....Added further, in the instant case, the Suit was filed after three years from the date of the agreement. In the absence of anything to indicate that the plaintiff was at any point time, ready and willing to make payment of any part of the consideration except coming before the Court and making the averment that she was ready and willing to make the payment of consideration and the defendants owners did not co-operate, this Court is of the view that the contentions of the plaintiff's side should have been rejected by the learned Trial Judge for the simple reason that there was an interval of nearly three years from the time of the agreement till the filing of the Suit, but, no part of the consideration was made. Not even an attempt was made in that regard. It would be quite indicative of the fact that the averment of the plaintiff that she was ready and willing cannot but be false. All the circumstances, would clearly indicate only the inaction on the part of the plaintiff to come before the Court.''

18. Accordingly, by applying the above principles laid down by this Court to the present case, it is seen that the plaintiff without indicating any reason to perform his part of contract, kept quiet for a period of three years from the date of the sale agreement. It appears even though, it was pleaded that the plaintiff/ respondent was having readiness and willingness to perform his part of contract, the circumstances shows that he was not proved his readiness and willingness.

19. Section 16, Sub Clause(C) of the Specific Relief Act, specifically envisages that the performance of a contract cannot be enforced, in favour of a person, who fails to aver and prove that he has performed or has onwards be ready and willing to perform the essential terms of the contract, which are to be performed by him, other than terms, the performance of which has been prevented or waived by the defendants. Even though, the petition filed by the defendant to receive the additional documents was dismissed by the first Appellate Court without any consideration for the reasons already discussed is sufficient to hold the case of the plaintiff that the plaintiff is not entitled to obtain equitable relief of specific performance. In such circumstances, the trial Court ought not to have granted equitable relief of specific performance. The trial Court has not considered the aspects in a proper perspective. Hence, I am of the view that the respondent/plaintiff is not entitled to

equitable relief of specific performance. However, during the course of trial, the plaintiff/respondent proved the sale agreement by way of examining PW2 to 4. As per the said Sale Agreement, the plaintiff/respondent paid a sum of Rs.70,000/- to the defendant/appellant. So also the plaintiff is entitled to receive the same from the defendant. Even though, no specific prayer is found in the plaint for return of the advance amount, this Court directs the defendant/appellant to pay Rs.70000/-, to the plaintiff/respondent within a period of two months from the date of receipt of a copy of this order alongwith interest at the rate of 6% per annum.

20. Accordingly, the substantial questions of law are answered in favour of the appellant/defendant.

21. In conclusion, the Second Appeal is allowed and the Judgment and decree dated 29.03.2006 passed in A.S.No.106 of 2004 on the file of the Principal Subordinate Judge, Vridhachalam, confirming the judgment and decree dated 27.04.2004 passed in O.S.No.160 of 2004 on the file of the II Additional District Munsiff Court, Vridhachalam is set aside. Consequently, the entire suit in O.S.No.160 of 2004 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Vridhachalam

2.The II Additional District Munsiff Court,
Vridhachalam

copy to: The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.D.Baskar, Advocate, S.R.No.6591

+1cc to Mr.V.Anand, Advocate, S.R.No.7096

S.A.No.506 of 2007

RJI (CO)
SSM(28/03/2019) .