

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.01.2019

PRONOUNCED ON : 08.01.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.569 of 2004

1.Moorthy
2.Ravichandran
3.Kirubakaran
4.Sivagami
5.Venrose
6.Kavitha

... Appellants/Defendants

Vs

N.Loganathan ... Respondent/Plaintiff

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 14.08.2001 in A.S.No.42 of 2000 on the file of the learned Principal District Judge, Chengalpet confirming the judgment and decree of the Subordinate Judge, Tiruvallur dated 04.02.1999 in O.S.No.262 of 1993.

For Appellants : Mr.V.Sairam

For Respondent : Dr.Srinivasan s/o Loganathan
appeared in person.

JUDGMENT

The second appeal is against the concurrent finding of the Courts below in the suit for specific performance filed by the respondent herein.

2.The plaint averment in short is that, the suit schedule properties, item Nos.1 to 3 belong to the defendants 1 to 4. The plaintiff entered into an agreement for sale with the defendants on 15.10.1989 for total sale consideration of Rs. 65,170/-. On the day of agreement, the plaintiff paid Rs 10,000/- as advance. The period for completion of the contract was fixed as 11 months. The defendants agreed to measure the land before

execution of sale deed, but, evaded to do so. On 15/12/1990 the first and second defendants received a further sum of Rs 10,000/- towards part of the sale consideration and made endorsement on the back of the sale agreement. Again on 10/10/1991 the defendants 1,2 and 4 received Rs.13,200/- towards balance sale consideration and made endorsement on the back of the agreement. Again on 30/04/1992 the first defendant received Rs.5,000/- and gave a stamped receipt. Having paid a sum of Rs.38,200/- towards the sale consideration, the plaintiff was ready and willing to pay the balance and get the sale deed registered. In spite of several demands made by the plaintiff to receive the balance sale consideration, after measuring and showing the actual extent of the land available, the defendants evading to perform their part of contract.

3.The defendants 1, 2 and 4 have filed common written statement. The 3rd defendant has filed a memo adopting the statement of the other defendants. As per the written statement, the ownership of the suit land is admitted. According to the defendants, the time to perform the contract expired and therefore, the sale agreement is not enforceable. The sale agreement cannot bind the fourth defendant, who was minor, at the time of executing the sale agreement by the other defendants. The plaintiff has wantonly delayed the performance of the contract. If the plaintiff is ready to pay the present market value of the property, the defendants are ready to execute the contract.

4.Based on the pleadings the trial court has framed the following issues:

- "1) Whether the plaintiff ready to complete the contract as per the agreement ?
- 2) Whether the plaintiff is entitled for the relief of specific performance ?
- 3) What relief the plaintiff is entitle ?"

5.The plaintiff, to prove his case, has examined himself as PW-1 and marked 7 documents viz., Ex A-1 to A-7. The 2nd defendant was examined as DW-1. No document filed on the side of the defendants.

6.The trial Court, allowed the suit and granted 2 months time to the defendants to execute sale deed in favour of the plaintiff on receiving the balance sale consideration. On appeal, the first appellate court confirmed the trial court judgment and decree. Hence the present second appeal.

7.At the time of admitting the second appeal, this court has formulated the following substantial questions of law:

"1.Is the learned Principal District Judge right in granting a decree for specific performance on the basis of the agreement executed by the first defendant as guardian of the minor 4th defendant when no permission was obtained by the first defendant to sell the minor's property under Section 8 of the Hindu Minority & Guardianship Act ?

2.Is the learned Principal District Judge right in granting a decree on the ground that the agreement is binding on 4th defendant since it is executed by the first defendant as Kartha of the family when the property is self acquired property of the fourth defendant and the fourth defendant is not made a party to the agreement dated 15.10.1989 ?"

8.The learned counsel appearing for the appellant would submit that, the plaintiff who seek equity relief of specific performance ought to have come to the court with clean hands and unadulterated facts. The courts below failed to appreciate the recitals of the agreement Ex.A-1, the endorsements made in Ex A-1 which are marked as Ex A-2 and A-3, before granting the relief of specific performance. The plaintiff admits that at the time of entering into sale agreement 4th defendant Kirubakaran was a minor. Nowhere in the sale agreement, his name is shown as a party to the document or he is represented by the first defendant Senthamarai as guardian of the minor son Kirubakarn. While so, the first appellant court has gone to the extend of saying on his own that the first defendant as manager and kartha of the joint family representing his minor son 4th defendant.

9.The learned counsel for the appellant submitted that, the alleged sale agreement is not a document worthy of consideration for enforcement. The second defendant in his deposition has clearly explained the circumstances under which the document was executed by him and his father. For the loan received for the marriage expense of the second defendant, Ex A-1 was executed

and the endorsements was obtained. The learned counsel also pointed out that in Ex A-2 and A-3 endorsement for further payment of Rs 10,000/- and 13,200/- Ravichandran (the third defendant) who is the party to the agreement Ex.A.1 is not a signatory.

10.The learned counsel for the appellant's second limb of submission is in respect of inordinate delay in filing the suit for specific performance. He questions the readiness of the plaintiff in performing his part of contract. Pointing out that the agreement Ex A-1 is dated 15/10/1989 and the time to complete the contract expressly mentioned as 15/09/1990 (11 months). The suit notice was issued by the plaintiff only on 08/06/1992. The defendants immediately replied to the notice on 20/06/1992. The plaintiff after issuing his rejoinder notice dated 29/06/1992, presented the suit after 15 months on 23/09/1993. If really the plaintiff was ready and willing to perform his part of contract and the defendants were not ready to honour their commitment, the plaintiff need not have waited for 15 months after refusal.

11.The case of the plaintiff is pegged on the sale agreement Ex.A-1 and the endorsements Ex.A-2 and A-3 found on the back of the sale agreement. Both in Ex A-2 and A-3, the recital reveals the money was received towards expenses. In Ex A-1 sale agreement S.Moorthy, M.Senthamarai and S.Ravichandran are the signatories and they alone are the executants of the sale agreement. In Ex A-2 endorsement found on the back of Ex A-1 we find that it is acknowledgment for the receipt of Rs 10,000/- towards expenses. Date and place are mentioned on the top of the endorsement.The first defendant Senthamarai and his son Moorthy alone have signed in this. On perusal of Ex A-3 endorsement, this court finds that the date is written in pencil. Strangely, in this endorsement the fourth defendant signature is found along with the signatures of first and second defendants. However in both the endorsements Ex A-2 and A-3 the third defendant S.Ravichandran has not signed.

12.Ex.A-1 is dated 15/10/1989. The period to complete the contract is specified in the deed. The recital of Ex A-1 indicates Senthamarai (first defendant) and his sons Moorthy (second defendant) and Ravichandran (third defendant) own the suit property through sale deed dated 13/05/1981. They have agreed to sell the property to N.Loganathan(plaintiff) for a consideration of Rs 65,170/- and received Rs 10,000/- as advance. They have agreed to execute the sale deed to the plaintiff or his nominee in full or in parts on receiving the

balance sale consideration. The recital further say that the sale consideration fixed approximately. After measuring the extend of land upon which the electrical line runs, they will deduct the extend and calculate the exact price and receive the same. It is also pertinent to note that from the recital of the sale agreement, it appears the defendants have handed over the original title deed to the plaintiff along with the possession as part performance.

13. Very strikingly, the plaintiff has not produced the original title deed. Neither he stated anything about it nor handed over the possession of the property. Next, the signatories to this sale agreement are the first, second and third defendant. Two persons have witnessed the execution of the agreement and affixed their signature. The plaintiff has not examined the witnesses to the document. It is not stated in the agreement that the fourth defendant also have a right over the property and he being a minor, he is represented by his father the first defendant. When the recital of the sale agreement does not whisper about the right of the fourth defendant a minor at the time of the sale agreement, and when there is no whisper about who and under what authority the minor is represented, the courts below has erroneously held that the 4th defendant was duly represented by his father.

14. The plaintiff has not stated anything about his attempt to complete the contract within the prescribed period of 11 months by getting the land measured. He has not proved his ready and willingness either by explicit evidence or through his conduct till Ex A-4 notice dated 08/06/1992. Even thereafter, he has unduly delayed in resorting to judicial remedy.

15. The courts below has not only miserable failed to appreciate the documentary evidence and the oral evidence properly, it has erred in not applying the correct law while considering the suit for specific performance involving minors interest. Patently, bonafide as well as ready and willingness lacking in this case. When the sale agreement and the endorsements found on the back of the sale agreement are found to be tainted with legal infirmities, equitable relief of specific performance in a suit laid after 4 years from the date of agreement is unjust and improper.

16. The son of the defendant who was present, represented that pursuant to the decree passed in the trial court his father has already deposited the balance sale consideration in the suit

account. He also pleaded that if the court is not convinced with the plaintiff case of specific performance and the finding of the courts below, the appellants must be directed to return the part sale consideration with interest.

17.If the plaintiff has made an alternate plea to refund the sale consideration, this court would have considered granting the alternate relief. In the given facts and circumstances of the case, this court is convinced that this is not a fit case to grant alternate relief of refund of sale consideration without specific pleadings.

18.At the same time, if any money deposited by the respondent/plaintiff in the suit account towards the balance sale consideration, same may be returned to the respondent/plaintiff on appropriate application.

19.In the result, the second appeal is allowed. The judgment and decree of the trial court in O.S.No.262/1993 as confirmed by the first appellate court in A.S.No.42/2000 is set-aside. No order as to costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jbm
To

1.The Principal District Judge,
Chengalpet.

2.The Subordinate Judge,
Tiruvallur.

Copy To:

The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.V.Sairam, Advocate Sr.No.2065

judgment made in
Second Appeal No.569 of 2004

NMI (CO)
CSL/12.03.2019