

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

SA.No.37 of 2010

and

MP.No.1 of 2010

1.Banumathi

2.Pappathi

... Appellants/Appellants/Defendants 2 & 3

vs.

Arunachalam

.... Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and Judgment dated 08.07.2009 in AS.No.107 of 2007 on the file of the Principal District Court, Coimbatore upholding the decree and Judgment dated 12.09.2006 in OS.No.256 of 2001 on the file of the Subordinate Court, Tiruppur.

For Appellants : Mr.S.Parthasarathy, Senior Counsel
for Mr.P.Udhayashankar

For Respondent : Mr.K.Goviganesan

J U D G M E N T

The appellants are the defendants in OS.No.256 / 2001 on the file of the Subordinate Court, Tiruppur. The respondent / plaintiff filed the above suit for specific performance of contract.

2. The case of the respondent / plaintiff in nutshell is as follows:

(i) The appellants / defendants executed a sale agreement dated 26.06.1998 and the sale consideration was fixed at Rs.2,32,500/- (Rupees Two Lakhs Thirty Two Thousand and Five Hundred only). The respondent / plaintiff paid a sum of Rs.1,10,000/- (Rupees One Lakh Ten Thousand only) on the date of the sale agreement. The period fixed in the sale agreement is six months and the time is the essence of the contract. It was specifically mentioned in the sale agreement that if the parties to the contract do not come forward to perform their respective parts of the contract, both the parties are at liberty to approach the Civil Court. The respondent / plaintiff was always ready and willing to perform his part of the contract. However, the appellants / defendants

evaded. Therefore, the respondent / plaintiff issued a notice dated 20.04.2001 to the appellants / defendants directing them to execute the sale deed in his favour after receiving the balance sale consideration of Rs.1,22,500/- (Rupees One Lakh Twenty Two Thousand and Five Hundred only). However, since the appellants / defendants did not come forward to execute the sale deed, a suit for specific performance is filed by the respondent / plaintiff.

(ii) The second defendant filed her written statement and the same was adopted by the first defendant. In the written statement, it is contended that the sale agreement was executed only as a security for the loan obtained by one Rangasamy, the son-in-law of the first defendant and husband of the second defendant. It is further contended that one Natarajan and the respondent / plaintiff were running a Chit Fund in which the second defendant's husband Rangasamy was also a partner and that Rangasamy had to pay some amount to the respondent / plaintiff and Natarajan towards chit transaction. Since the respondent / plaintiff and Natarajan insisted Banumathi, the second defendant to pay the amount, both the defendants executed a sale agreement dated 26.06.1998 in favour of the respondent / plaintiff. Therefore, the allegations of the respondent / plaintiff that the defendants executed the sale agreement dated 26.06.1998, for the sale of the suit property in his favour is totally false. It is also contended by them that the amount of Rs.1,10,000/- (Rupees One Lakh Ten Thousand only) was paid to the respondent / plaintiff during November 1998 and when the appellants / defendants approached the respondent / plaintiff to return back the sale agreement, the respondent / plaintiff contended that he had lost the sale agreement and he would return it back, the moment he traces it out. However, he filed a suit for specific performance of contract suppressing all the material facts.

(iii) The learned Subordinate Judge, Tiruppur after framing necessary issues, decreed the suit in favour of the respondent / plaintiff vide his decree and Judgment dated 12.09.2006. Aggrieved over the same, the defendants filed an appeal in AS.No.107 of 2007 on the file of the Principal District Judge, Coimbatore. The learned Principal District Judge, Coimbatore after analysing the evidence on record, dismissed the appeal filed by the defendants. Now, the defendants have filed the present Second Appeal under Section 100 of Code of Civil Procedure on the following substantial question of law:

"Whether both the courts below are right in coming to a conclusion that the respondent was ready and willing to complete the sale, in spite of the clause in Ex.A1, dated 26.06.1998, that the time is the essence of the contract and the respondent has not proved that he was ready and

willing to perform his part of the contract within six month, as stipulated in the agreement, having filed the suit only on 30.04.2001 but has issued the legal notice only on 20.04.2001?"

3. Mr.S.Parthasarathy, learned counsel appearing for the appellants / defendants contended that the respondent / plaintiff though pleaded that he was always ready and willing to perform his part of the contract, did not come forward to get the sale agreement executed and both the courts below did not consider this aspect and had decreed the suit in favour of the respondent / plaintiff. He relied on the decision in M.R.Rathindran vs. Saraswathi Narayanan and others reported in 2017 (6) CTC 113 and contended that the respondent / plaintiff has not shown his readiness and willingness to perform his part of the contract, since, the first notice itself was issued by him after two and half years and eventually the time fixed in the contract is six months. He also drew the attention of this court to the Judgments delivered by both the courts and contended that both the courts below did not give importance to the aspect of readiness and willingness on the part of the plaintiff.

4. Per contra, the learned counsel appearing for the respondent / plaintiff contended that there is no specific pleading in the written statement that the respondent / plaintiff was not ready and willing to perform his part of the contract and in fact, the written statement filed by the defendants would go to show that the appellants / defendants have not stressed that aspect.

5. In paragraph no.6 of the written statement filed by the defendants, it is clearly averred that the respondent / plaintiff was not ready and willing to perform his part of the contract. A perusal of the Judgment passed by the learned Subordinate Judge, Tiruppur shows that no issue was framed with regard to the aspect of readiness and willingness on the part of the plaintiff. When the appellants / defendants have clearly averred in the written statement that the respondent / plaintiff was not ready and wiling to perform his part of the contract, the trial court should have framed an issue and also should have given opportunity to both the parties to establish their respective contentions.

6. It is to be pointed out that both the courts below have concurrently held that the sale agreement dated 26.06.1998 is not executed as a security for the loan and have analysed the evidence adduced on both sides on this aspect. Therefore, the only point to be decided is that whether the respondent / plaintiff was ready and willing to perform his part of the contract. Since no issue was framed in this regard by the trial court, the case is remitted back to the learned Subordinate Judge, Tiruppur. The learned Subordinate Judge, Tiruppur is directed to frame the issue as to whether

the respondent / plaintiff was always ready and willing to perform his part of the contract and afford an opportunity to both sides to adduce evidence only in this regard and give his findings afresh on this issue.

7. With the above observations, this Second Appeal is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

8. Since the suit is of the year 2001, the learned Subordinate Judge, Tiruppur is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Court,
Coimbatore.

2.The Subordinate Court,
Tiruppur.

+1cc to Mr.P.Udhayashankar, Advocate, S.R.No. 60600

+1cc to Mr.K.Goviganesan, Advocate, S.R.No. 59916

SA.No.37 of 2010

and

MP.No.1 of 2010

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