



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.412 of 2005

P.A.Narayanasamy Appellant / Appellant / Plaintiff

Vs

1.Alagesan (Died) ... 1st Respondent / Respondent / Defendant

2.A.Boopathy

3.A.Murugaiyan

4.A.Devagi

5.A.Vasanthavadhi

6.A.Arivukodi Respondents 2 to 6

(Respondents 2 to 6 are brought on record as LRs of the deceased

sole respondent Vide order dated 19.06.2019 made in CMP.Nos. 4218, 4220, 4222/2019 in S.A.No.412/2005)

Prayer :- Second Appeal filed under Section 100 of CPC, against the judgment and decree dated 15.10.2004 made in A.S.No.62 of 2004 on the file of the Principal District Judge, Villupuram, confirming the judgment and decree in O.S.No.73 of 1996 on the file of the Principal Sub Judge, Villupuram dated 23.01.2004.

For Appellant : Mr.V.Raghavachari

For Respondents : Mr.N.Suresh

JUDGMENT

The unsuccessful plaintiff before the trial Court in a suit for specific performance has come forward with the present appeal. Parties would be referred to by their rank before the trial Court.

2. The case of the plaintiff is that the suit property originally belonged to the defendant, that on 20.04.1995, the plaintiff and the defendant have entered into a sale agreement, wherein they fixed the sale consideration payable at Rs.1,12,500/- and an advance amount of Rs.22,000/- was paid under the agreement. Time for performance for respective contractual obligation was fixed at four months. On 27.4.1995 and on 11.08.1995, the plaintiff paid Rs.13,000/- and Rs.20,000/- respectively. Necessary endorsements were made in the sale agreement. Thereafter, the defendant delayed to perform his part of the contract with an



intention to cheat the plaintiff. The sale agreement along with two endorsements are marked as Exts.A1 to A3. Subsequently, the plaintiff issued Ext.A-4 suit notice and this was replied to by the defendant on 18.03.1996 (Ext.A5). To his reply, the plaintiff has issued the rejoinder notice dated 06.4.1996 (Ext.A6). The present suit for specific performance was laid subsequently.

3. The significant limb of the plaintiff's case is that while Ext.A1 sale agreement refers to the subject matter of the agreement as the western 25 cents, in the plaint it is shown as the northern 25 cents. In the plaint, the plaintiff pleads an oral novation of the contract in that he would plead that on 12.04.1996, the defendant along with his son visited the plaintiff and on which date, the subject matter of the contract was changed.

4. In his written statement, the defendant denied the novation part of the plaintiff's pleadings, levelled certain accusation against the plaintiff to highlight that the plaintiff has been dragging his feet from performing his part of the contractual obligation arising out of Ext.A1, that at any rate, the plaintiff is not ready and willing to perform his part of the contract.

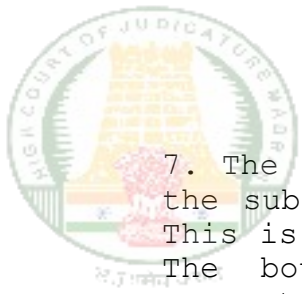
5. The plaintiff's case of novation of contract did not merit consideration of the trial Court. It also found that the plaintiff was not ready and willing to perform his part of the contract. Even as the trial Court dismissed the plaintiff's suit for specific performance, it directed the defendant to return the amounts received under Ext.A1 to Ext.A3 with interest at the rate of 6%. The plaintiff challenged the same before the first appellate Court and it adopted the same line of reasoning of the trial Court and dismissed the appeal. Hence, the present second appeal.

6.The second appeal is admitted on the following substantial questions of law :

a) Whether the Courts below are right in dismissing the suit for specific performance holding lack of specificity, when the parties to the document are fully aware as regard its identity?

b) Whether the Courts below are right in ignoring Ex.A9 and the evidence of P.W.2 when it clearly describes subject matter of the agreement is on the northern side of the property as indicated in Ex.A9?

c) When the defendant had admitted Ex.A1, A2, A3 and A7 whether the Court below was justified in dismissing the suit?



7. The learned counsel for the plaintiff argued that, novation of the subject matter of contract is seen established under Ext.A9. This is a sale deed executed by the defendant in favour of P.W.2. The boundary description of this document states that the property to be sold to P.W.2 is the one to the south of the plot proposed to be sold to the plaintiff by the defendant. This sale deed is dated 15.04.1996, some three days after 12.04.1996, the date on which the plaintiff alleges that the defendant and his son had visited him and when the parties have decided to change the subject matter of intended sale.

8. Heard the learned counsel on both sides briefly. The point here is about performing the contract which parties have entered into. Admittedly, this contract is a written document. Section 91 of the Evidence Act prohibits admission of parole of evidence to vary the terms of a written contract, grant dispossession of the property. In a bilateral contract, where the parties are required to perform their part of the contract, what the Court enforces ultimately, is the contract which is before the Court. It is not a case of uncertainty over the subject matter of the contract, where parties have come forward to adduce oral evidence. It is a case of shifting the western portion to the northern portion. Is the Court now duty bound to look into Ext.A9 which was executed by the defendant to a third party to understand what the terms of contract between him and the plaintiff? If in a given case, if the defendant goes to the Court with a suit for specific performance with a contract such as this, can the Court alter the subject matter of the contract? Therefore, notwithstanding the boundary description in Ext.A9, the fact remains that there is a conscious effort by one of the parties, namely the plaintiff here, to change the terms of written contract. Law grants no licence to either of the contracting parties to alter the terms of a written contract unilaterally.

9. In the result, this Court does not find any merit in this appeal and the substantial questions of law fails. Accordingly, the second appeal is dismissed and the judgment and decree dated 15.10.2004 made in A.S.No.62 of 2004 on the file of the Principal District Judge, Villupuram, confirming the judgment and decree in O.S.No.73 of 1996 on the file of the Principal Sub Judge, Villupuram dated 23.01.2004 is hereby confirmed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

ds



To:

1.The Principal District Judge
Villupuram.

2.The Principal Sub Judge
Villupuram.

3.The Section Officer
VR Section, High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate SR.No.50411

+1cc to Mr.N.Suresh, Advocate SR.No.50339

S.A.No.412 of 2005

RR(CO)
GMY(05/12/2019)