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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal No.1656 of 2011 &
M.P.No.1 of 2011

1. Mr.Thomas Aroquiamarie
2. Mr.Thomas Acharia
3. Mr. Thomas Agophia
4. Mr. Thomas Ouria

Rep. by his Power Agent

Thomas Acharia, the second appellant

...Appellants

Vs

Abener Cessar

... Respondent

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the decree and judgment passed in A.S.No.35 of 2007 dated 14.07.2007 on the file of the II Additional District Court, Pondicherry reversing the decree and judgment passed in O.S.No.510 of 2004 dated 28.02.2007 on the file of the Additional Sub Court at Puducherry.

For Appellants : Mr.V.Manisekaran

For Respondent : Mr.Shailappan

JUDGMENT

Aggrieved over the decree and judgment of the first appellate Court reversing the decree and judgment of the trial Court, the present Second Appeal is filed.

2. In an earlier occasion, when this Second Appeal was listed on 07.03.2019, despite service of notice to the respondent and his name printed in the cause list, as none appeared for the respondent, this Second Appeal has been allowed by this Court. Subsequently, the Second Appeal has been restored on the petition filed by the respondent. Thereafter, this Court heard the learned counsel for the appellants and the learned counsel for the respondent and disposed of this Second Appeal.



3. The parties are arrayed as per their own ranking before the trial court.

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4. It is the case of the plaintiff that the defendants have entered into an agreement on 07.06.2001 for sale of the their property for a sale consideration of Rs.two lakhs and a sum of Rs.1,80,000/- has been paid as an advance on the date of the agreement. In the agreement, the defendants have agreed to produce documents. The defendants have not produced the documents as agreed by them in the agreement. On 01.11.2002, the defendants received a sum of Rs.15,000/- towards the balance sale consideration. Even after the receipt of the amount, the defendants failed to produce the documents. Therefore, the plaintiff issued a legal notice on 31.12.2002. However, the above notice has not been replied by the defendants. Hence, the suit.

5. It is the contention of the defendants in the written statement that they never intended to sell the property and executed the agreement on 07.06.2001. In fact they had received a sum of Rs.2 lakhs to meet out his family expenses. At that time, the plaintiff insisted him to execute an agreement. According to them, the property is worth of Rs.10,00,000/-. Therefore, they never intended to sell the same for Rs.two lakhs. The suit is barred by limitation. Hence, prayed for dismissal of the suit.

6. The trial Court has framed the following issues :

1. Whether the defendants executed a sale agreement with regard to the suit property for a sale consideration of Rs.2,00,000/- and received an advance of Rs.1,80,000/-.

2. Whether the defendants executed the sale agreement as security for the loan received by them and whether they have repaid any amount?

3. Whether the suit property is worth more than Rs.10 lakhs and the sale consideration is meager?

4. Whether the plaintiff is entitled to get the decree for specific performance?

5. To what relief or reliefs the plaintiff is entitled?



7. On the side of the plaintiffs, P.W.1 was examined and Ex.A.1 to A.7 were marked. On the side of the defendants D.W.1 has been examined.

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8. The trial Court dismissed the suit. However, granted alternative relief. The first appellate Court has reversed the finding of the trial Court as against which the present appeal came to be filed.

9. At the time of hearing the second appeal the following substantial questions of law have been framed :

1. Whether the first appellate Court is right in granting specific performance without there being an issue for readiness and willingness?

2. Whether the first appellate Court is right in granting specific performance in the absence of pleading and evidence as to readiness and willingness?

3. Whether the document is not intended for sale of the property?

10. The learned counsel appearing for the appellants submitted that the property is worth about Rs.10 lakhs. Therefore, it is against the normal human conduct to enter into an agreement for sale of the property for two lakhs. That apart, if really the agreement is intended for sale, nobody would wait for three years after the alleged substantial payment of sale consideration on the date of the agreement itself. Further, absolutely there is no evidence whatsoever to show that the plaintiff is always ready and willing to perform his part of the contract.

11. The learned counsel for the respondent submitted that the respondent has entered into an agreement with the appellants for sale of the property. Though the respondent had paid substantial amount of sale consideration, the appellants have not come forward to execute the sale deed in favour of the respondent. The respondent was always ready and willing to perform his part of the contract. The evidence adduced on the side of the plaintiff clearly show that the plaintiff is always ready and willing to perform his part of the contract. Hence, prayed for dismissal of this Second Appeal.



12. The suit has been laid on the basis of the agreement Ex.A.1 dated 07.06.2001. It is the case of the plaintiff that the defendants have executed an agreement for sale of the property for a total sale consideration of Rs.2 lakhs and a sum of Rs.1,80,000/- has been paid as an advance on the date of the agreement itself. Thereafter, the defendants failed to produce the original documents. On 01.11.2002, a further sum of Rs.15,000/- has paid towards the sale consideration under Ex.A.2. Even thereafter, the defendants did not come forward to execute the sale deed.

13. Whereas, it is the contention of the defendants that they never intended to execute any sale agreement and Ex.A.1 is a result of a loan transaction. The worth of the property is Rs.10 lakhs.

14. I have perused the pleadings of the plaintiff. Absolutely, there is no pleading whatsoever in the plaint with regard to readiness and willingness. It is to be noted that the readiness and willingness not only to be pleaded but also proved by the plaintiff. It is infact one of the essential requirement for obtaining a decree for specific performance. Further, even assuming that Ex.A.1 is only a sale agreement, the conduct of the plaintiff clearly indicate that he is never ready and willing to purchase the property. Having agreed to complete the sale within three months from the date of the agreement, he had never taken any steps to complete the sale. Though it is contended under Ex.A.2, that a sum of Rs.15,000/- was paid on 01.11.2002, the remaining sale consideration has to be paid as on the date is only Rs.5000/-. But till 31.12.2002, the plaintiff has not taken any steps to complete the sale. For the first time he had issued a legal notice on 31.12.2002. Thereafter, the suit has been filed in the year 2004 with an inordinate delay. The above fact clearly indicate that he was never intended to purchase the property nor ready and willing to execute the contract.

15. It is curious to note that it is the specific contention of the defendants that the suit property is worth about Rs.10 lakhs. The plaintiff in his evidence has admitted that he never know the value of the property. That itself clearly indicate that Ex.A.1 is not intended for sale of the property. Though in a suit for specific performance in respect of an immovable property, generally, the time is not essence of the contract. But, when the time is agreed between the parties in the agreement, it makes time as an essence of contract. Having agreed to complete the sale within three months, the suit has been filed with an inordinate delay.



16. Further, there is no pleading in the plaint regarding readiness and willingness on the part of the plaintiff. Unless readiness and willingness is pleaded and proved, certainly the plaintiff is not entitled to get an equitable relief of specific performance. The first appellate Court, even without looking into the plaint and without framing any point for consideration, simply decreed the suit on the basis of the agreement, which is per se erroneous. Hence, the substantial questions of law are answered in favour of the appellant.

17. Accordingly, this Second Appeal is allowed and decree and judgment of the first appellate Court is set aside. Consequently, the connected miscellaneous petition is closed. No cost.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

vrc

To

1. The II Additional District Judge,
Pondicherry.
2. The Additional Subordinate Judge,
Pondicherry.
3. The Section Officer,
VR Section,
High Court, Madras-104

+1cc to Mr.V.Manisekaran, Advocate SR.No.59604

+1cc to Mr.Shailappan, Advocate SR.No.61027

Second Appeal No.1656 of 2011

RR(CO)
GMY(27/11/2019)