

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.Nos.320 & 321 of 2012
and
M.P.Nos.1 and 1 of 2012

1.Sampath

2.Mallika .. Appellants in both Appeals/
Defendants 1 & 2

Versus

Krishnaveni .. Respondent in both Appeals/
Plaintiff

PRAYER in S.A.No.320 of 2012:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment dated 22.12.2011 in A.S.No.23 of 2011 on the file of the Subordinate Judge, Harur confirming the judgment and decree dated 16.03.2011 in O.S.No.252 of 2003 on the file of the District Munsif Court, Harur.

PRAYER in S.A.No.321 of 2012:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment dated 22.12.2011 in A.S.No.25 of 2011 on the file of the Subordinate Judge, Harur confirming the judgment and decree dated 16.03.2011 in O.S.No.173 of 2004 on the file of the District Munsif Court, Harur.

For Appellants : Mr.R.Ezhilarasan
(in both S.As)

For Respondent : Mr.A.Jenasenan for Ms.D.Geetha
(in both S.As)

COMMON JUDGMENT

Aggrieved over the concurrent finding of the trial court and the first appellate Court in decreeing the suit for specific performance and dismissing the suit for permanent injunction, both these second appeals have been filed.

2. The second appeal in S.A.No.321 of 2012 is arising out of the suit in O.S.No.173 of 2004 filed for specific performance and the second appeal in A.S.No.320 of 2012 is arising out of the suit in O.S.No.252 of 2003 filed for permanent injunction. This Court admitted the second appeals on the following substantial questions of law :

1. whether the plaintiffs have shown their readiness and willingness from the inception of the agreement till filing of the suit?

2. Whether the agreement is a result of loan transaction and not for sale of the property?

3. Whether the Courts below correct in law in rejecting the relief of permanent injunction, when the appellants/plaintiffs are in possession admittedly?

3. The suit in O.S.No.173 of 2004 has been filed by the plaintiff for specific performance on the ground that first defendant being the owner and the second defendant being wife and their children have entered into an agreement for sale dated 19.09.2001 for sale of the suit property for a sum of Rs.60,000/- and registered the agreement on the same date. It is also agreed to execute the sale deed within a period of two years after receipt of the balance sale consideration of Rs.10,000/-. The plaintiff is always ready and willing to perform her part of the contract. Hence, the suit.

4. The main defence of the defendants is that the agreement, though registered, is not intended for sale of the property and it is out of a loan transaction. They borrowed only a sum of Rs.30,000/- as a loan and they never agreed to sell the property. Hence, disputed the agreement.

5. It is seen that O.S.No.252/2003 has been filed by the plaintiffs for permanent injunction against the defendant.

6. Both the suits are tried together and common evidence was recorded in O.S.No.173 of 2004. On the side of the plaintiff P.W.1 and P.W.2 were examined and Ex.A1 to E.A.4 were marked. On the side of the defendants, D.W.1 to D.W.5 were examined and Ex.B1 to Ex.B.4 were marked and Ex.X1 and Ex.X2 were also marked. The Trial Court decreed the suit in O.S.No.173 of 2004 filed for specific performance and dismissed the suit in O.S.No.252 of 2003 filed for permanent injunction.

The first appellate Court confirmed the decree and judgement of the trial Court as against which the present appeals came to be filed.

7. The learned counsel appearing for the appellants in both the appeals contended that, though the agreement was registered, is never intended for sale and it came in to existence in a loan transaction. Time for completion of the agreement and time to pay the remaining sale consideration of Rs.10,000/- within two years, itself clearly establish the fact that the agreement is nothing but is a result of a loan transaction. Further, it is the contention of the learned counsel that absolutely there is no readiness and willingness expressed on the part of the plaintiff. Whereas the evidence of P.W.1 and her admission clearly establish that the transaction is nothing but a loan transaction. In fact the plaintiff has never established her readiness and willingness. Hence, decreeing the suit for specific performance in favour of the plaintiff in O.S.No.173 of 2004 is not according to law. The trial Court and the first appellate Court have not appreciated the evidence properly and the discretionary relief has been granted without exercising the discretion judicially. Further it is the contention of the learned counsel for the appellants that admittedly the plaintiffs in O.S.No.252 of 2003 were in possession of the suit property. Hence, the suit for permanent injunction ought to have been decreed. Hence, prayed for allowing the appeals.

8. The learned counsel for the respondent would submit that the plaintiffs in order to disprove the agreement had taken various stands, one in the written statement filed in the suit for specific performance and another in the written statement filed in the suit for permanent injunction. That itself clearly show that their intention is only is to defeat the lawful agreement executed by the the plaintiff. The agreement itself is a registered one. Therefore, the defendants now cannot take a contra stand and their stand is clearly barred under section 92 of the Indian Evidence Act.

9. The agreement holder has filed the suit within two years as agreed in the agreement and remaining sale consideration has also been deposited by them. The above fact clearly establishes that the plaintiff is always ready and willing to perform her part of the contract. Hence, submitted that the readiness and willingness have been established and the agreement is a registered one and the plaintiff is entitled to specific performance. The trial Court as well as the first appellate Court properly considered the entire aspects and the above judgments do not require any interference. Similarly, it is

contended that in the suit for permanent injunction, there is no cause of action for the suit.

10. I have perused the entire materials. The suit in O.S.No.173 of 2004 has been laid for specific performance on the basis of the agreement dated 19.09.2001. The agreement has been marked as Ex.P2. A perusal of Ex.A2 agreement, it reveals that there is no dispute with regard to the fact that it is a registered agreement. Further, the above agreement, has been entered into between the plaintiff and the defendants for sale of the suit property for a total sale consolidation of Rs.60,000/-. It appears that on the date of the agreement a substantial portion of sale consideration, more than 90% of the sale consideration, i.e., Rs.50,000/- out of Rs.60,000/- has been paid on the date of agreement.

11. It is curious to note that to pay the remaining paltry amount of Rs.10,000/-, two years time has been fixed in the agreement. Though the agreement is a registered one, the parties cannot go beyond the terms of the contract. But the fact remains that the conduct of the parties cannot be ignored altogether. In the adjudication process, the conduct of the parties assumes significance. Court may presume existence of certain facts taking into consideration of common course of natural events, human conduct etc. Even assuming that Ex.A.2 is actually entered into for purchase of the property, having paid 90% of the sale consideration, the conduct of the plaintiff waiting for another two years to get the property registered in her name by paying paltry sum of Rs.10,000/- is highly probable. Giving such huge time is against normal human conduct. These facts probablize the case of the defendants that agreement is not intended for sale of property but only a loan transaction. This is further fortified by the own admission of P.W.1 herself about loan transaction.

12. After entire scanning of the evidence of P.W.1, this Court to doubt the genuineness of the agreement for sale. P.W.1 having entered into an agreement for purchase of the property is not able to give the description of the property and the nature of the property, which is sought to be purchased by her in her evidence. That is also against normal human conduct. Further, the specific admission of P.W.1 makes Ex.A.2 further doubtful. She has also categorically admitted that the agreement came to be executed in a loan transaction and the plaintiff has advanced Rs.30,000/- loan to the defendants. All these facts coupled with making a provision for two years for paying a paltry sum of Rs.10,000/- as remaining sale consideration, that too in a registered sale agreement, infact fortify the fact that Ex.A.2 agreement is a result of a loan transaction. The above

inference is further strengthened by the fact that the plaintiff had not taken any steps to perform her part of the contract till the legal notice dated 12.08.2003 sent by the plaintiff under Ex.A.5. It is also curious to note that Ex.A.5, though said to be the first notice sent by the plaintiff, above Ex.A.5 has been sent after receipt of the legal notice dated 04.08.2003 sent by the defendant's children. This fact also clearly indicate that till such notice has been issued by the defendant's children, the plaintiff remained mere spectator and she has not taken any steps to enforce the contract or to perform her part of the contract.

13. It should be noted that a person coming for equitable relief must establish readiness and willingness from the very inception of the agreement. The readiness and willingness should be continuously present ever since the date of the agreement till the agreement culminated into sale. Mere pleading of readiness and willingness is not enough to succeed in a suit for specific performance. Readiness and willingness actually means the capacity to mobilise funds and the mental attitude to complete the transaction. Unless both the ingredients go together and established by the plaintiff, she cannot succeed in a the suit for specific performance. The suit itself is filed two years after the agreement. Till such time, no steps have been taken to show that the plaintiff is always ready and willing to perform her part of the contract. In fact, it appears that the plaintiff is not aware of the nature of the property, boundaries etc. That being the position, readiness and willingness cannot be inferred merely on the basis of pleadings in the plaint.

14. A careful perusal of entire evidence and documents, this Court is of the view that readiness and willingness is totally absent in this case. Further, the own admission of the plaintiff itself clearly indicate that the agreement is a result of a loan transaction. Though party to the contract cannot go beyond the terms of the contract, the proviso to Section 92 of the Indian Evidence Act well protect the parties to prove the particular fact that the document is a result of a loan transaction.

15. This Court, after analysing the entire aspects found that the trial Court as well as the appellate Court has not properly appreciated the evidence and granted specific performance and the substantial questions of law 1 and 2 are answered in favour of the appellants and the judgments of the trial court as well as the first appellate court granting specific performance is liable to be set aside.

16. As far as the other appeal is concerned, admittedly the

plaintiffs alone are in possession of property. There is no evidence to show that the defendant had made an attempt to trespass into the property of the plaintiffs. Therefore, without there being any cause of action to maintain the suit for permanent injunction, this court is of the view that the dismissal of the suit for permanent injunction by the trial Court as well as by the appellate Court does not warrant interference and the substantial question of law no.3 is answered against the appellants.

17. Accordingly, the second appeal in S.A.No.321 of 2012 is allowed and the appellants are directed to repay the amount received under Ex.A.2 with interest at the rate of 12% per annum from the date of agreement till the date of deposit. The above amount shall be paid within two months and on failure to pay the amount, there shall be a charge over the property. The second appeal in S.A.No.320 of 2012 is dismissed. No cost. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vrc/arb

To

1. The Subordinate Judge, Harur
2. The District Munsif, Harur.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+2 cc's to M/s.D.Geetha, Advocate Sr.Nos.1315 & 1316
+2 cc's to Mr.R.Ezhilarasan, Advocate SR.Nos.1154 & 1155

S.A.Nos.320 & 321 of 2012
and M.P.Nos.1,1 of 2012

CSL/22.03.2019