

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.02.2019
CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.No.388 of 2012
And
M.P.No.1 of 2012

T.Gunasekaran

... Appellant/1st Respondent/Plaintiff

Vs.

1.Vellaiyan ... 1st Respondent/Appellant/3rd Defendant
2.Perumayee Ammal
3.Dhanapal
4.Palanisamy
5.Muthayee
6.Sellammal
... Respondents 2 to 6/Respondents 2 to 6/Defendants 1, 2, 4 to 6

Prayer:

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 30.11.2010 in A.S.No.24 of 2010 on the file of Subordinate Judge, Rasipuram, reversing the judgment and decree dated 05.03.2010 in O.S.No.81 of 2008 on the file of the District Munsif Court, Rasipuram.

For Appellant : Mr.P.Jagadeesan
For Respondents : Mr.P.Mathivanan

J U D G M E N T

This appeal has been filed challenging the decree and judgment of the first Appellate Court reversing the decree and judgment of the Trial Court granting specific performance of the agreement dated 12.10.2001 and extension agreement 02.09.2004. The First Appellate Court set aside the decree granted by the Trial Court for specific performance, however ordered refund of advance amount with interest at the rate of 9% per annum. Being aggrieved over the same, the present second appeal came to be filed by the plaintiff.

2.The facts leading to the filing of this appeal is as follows: The first defendant has entered into an agreement dated 12.10.2001 for sale of a suit property for a total sale consideration of Rs.85,000/- and received a sum of Rs.40,000/-

as advance. It is specifically agreed between the parties that sale shall be completed within three years from the date of agreement. As the defendants 2 to 6 requested further time to execute the sale deed and the plaintiff also agreed to extend the time for a further period of three years i.e., on or before 10.10.2007 extension agreement came to be executed on 02.09.2004. On that day, the defendants received a further sum of Rs.30,000/-. Accordingly, the plaintiff has paid a sum of Rs.70,000/- out of the total sale consideration of Rs.85,000/- and only a sum of Rs.15,000/- remained to be paid.

3.In the meanwhile, the first defendant died and the plaintiff has requested the defendants 2 to 6, his legal heirs, to execute the sale deed. Despite the repeated requests, they have not come forward to execute the sale deed. Hence, the plaintiff has issued a legal notice dated 19.06.2007 to the defendants. Thereafter, he filed the suit.

4.It is the case of the defendants that the sale agreement dated 12.10.2001 is not intended for sale and the same was executed at the time of borrowal of Rs.40,000/- loan. Thereafter they discharged the above loan on 02.02.2004. At this stage, they were taken to the Registrar Office and were of the impression that the previous sale agreement would be canceled. Only on such impression they went to the Registrar Office and signed. Thereafter, they came to know that extension agreement has been obtained by defendants 2 to 6.

5.Subject matter of the suit is 3 acres of land and the value stated in the sale agreement is very very less. The defendants never intended to sell the property. Before the Trial Court 4 issues were framed and P.W.1 and P.W.2 were examined and Exhibits Ex.A1 to Ex.A7 were marked. The third defendant examined himself as D.W.1 and one another witness was examined as D.W.2 and Exhibits Ex.D1 to Ex.D2 were marked.

6.The Trial Court has decreed the suit for specific performance and directed the plaintiff to deposit the remaining sale consideration within one month. The First Appellate Court set aside the decree for specific performance and granted refund of the advance amount with interest.

7.The learned counsel appearing for the appellant would contend that admittedly, the agreement is a registered one. Though previously time was fixed the first defendant did not come forward to execute the sale deed. Thereafter, at the request of the other defendants, extension agreement came to be executed on 02.09.2004 which is also registered time is extended for a further period of three years. Even thereafter, even after receipt of Rs.70,000/- in total to the sale consideration,

the defendants did not come forward to execute the sale deed. Therefore, the legal notice has been issued by the plaintiff on 19.06.2007 and the suit has been filed in the year 2008.

8.The learned counsel appearing for the appellant would further contend that the plaintiff was always ready and willing. Once the defendant denied the sale agreement, now they cannot contend that the plaintiff was not ready and willing. The First Appellate Court has not considered this aspect and simply allowed the appeal in part. When the sale agreement is established as genuine and the defence of the defendants is found to be false, the plaintiff is certainly entitled to specific performance. Hence prayed for allowing the appeal.

9.The learned counsel appearing for the respondents would contend that the agreement though registered is only a loan transaction. The conduct of the parties fixing six years time to pay the paltry sum of Rs.15,000/- probabalise the defendants case. In any event ready and willingness is totally absent on the side of the plaintiff and further submitted that the judgment of the First Appellate Court does not require any interference.

10.I have heard both sides at the admission stage itself.

11.The suit was laid for specific performance of the agreement dated 12.10.2001 and extension agreement 02.09.2004 and for permanent injunction.

12.It is the case of the plaintiff that the first defendant has agreed to sell the land of 3 acres for a total sale consideration of Rs.85,000/- and received a sum of Rs.40,000/- as advance on the date of sale agreement and agreed to execute sale deed within a period of three years. Thereafter, again the time was extended on 02.09.2004, wherein, defendants 2 to 6 were also party to that extension agreement. Even after, the defendants did not come forward to execute the sale deed. Therefore, he filed the suit.

13.Though the defendants pleaded that the agreement was for a loan transaction, once the document got registered, the burden lies on the defendants to establish that the said transaction was a loan transaction. Though the Court below have not gone to that issue by assessing the conduct of the parties, this Court is of the view that the validity of the agreement is not germane for dismissing this appeal since the Court below found that the agreement is a genuine one.

14.Be that as it may. In a suit for specific performance it is for the plaintiff to establish his readiness and willingness

from the very inception of the agreement. Readiness and willingness is a continuous process. Merely because an agreement was executed, it will not give a automatic right to get specific performance. One of the obligations of the plaintiff is to tender the balance sale consideration within the agreed period or before. In any event, he must show that readiness and willingness was always present on his side from the inception of the agreement.

15. Having paid the advance of Rs.40,000/- three years time was fixed to complete the transaction and to pay the balance sale consideration. However, there is no materials available on record to show that he had capacity to mobilize funds to pay the remaining sale consideration or mobilized the funds to pay the same to defendants within the period of limitation, as agreed in the agreement. Thereafter the admitted fact is that on 02.09.2004 another agreement came to be executed and on that day the plaintiff is said to have paid another Rs.30,000/- and again the time was extended for another period of three years. Within such period also, no attempts whatsoever was made by the plaintiff to pay the remaining sale consideration of Rs.15,000/-.

16. It is also curious to note that though the legal notice was said to have been sent on 19.06.2007, thereafter also the plaintiff has not made any specific reference in the notice to pay the amount. Though the suit is said to have been prepared on 12.11.2007, the suit has been filed only on 23.04.2008 with inordinate delay. Even at the time of filing of the suit, remaining sale consideration has not been deposited. Of-course deposit of remaining sale consideration is not mandatory under Section 16 of the Specific Relief Act. Merely because deposit is not mandatory that would not deter the plaintiff from making the payment.

17. It is curious to note that even after decree was passed by the Trial Court directing the plaintiff to deposit the amount of Rs.15,000/- within one month from the date of decree, the amount has not been deposited till now. Above conduct of the plaintiff makes it clear that he was not ready and willing from the very beginning.

18. It is also curious to note that once the plaintiff failed to comply the order of the Court in depositing the amount, the entire contract itself amenable for rescission under Section 28 of the Specific Relief Act. Therefore, when the plaintiff all along was not ready and willing and has not paid the paltry sum of Rs.15,000/- balance sale consideration for years together, his conduct clearly shows that he is not at all ready and willing to purchase the property. The conduct of extending the

time for six years to execute the sale deed, infact probabilise the defence theory that the sale agreement is not intended for sale in any event.

19.Considering the entire aspects, this Court is of the view that readiness and willingness is totally absent on the side of the plaintiff from the inception of the agreement. Therefore, equitable relief cannot be granted in favour of the plaintiff. The First Appellate Court analyzed the entire aspect in this regard and negatived the relief for specific performance. This Court do not find any infirmity in the order and there is no substantial question of law arise for consideration in this appeal.

20.Accordingly, the second appeal is dismissed. The judgment and decree dated 30.11.2010 made in A.S.No.24 of 2010 passed by the learned Subordinate Judge, Rasipuram, is hereby confirmed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Subordinate Judge,
Rasipuram.
- 2.The District Munsif Court,
Rasipuram.

Copy to:

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

+1cc to Mr.P.Jagadeesan, Advocate sr.16509

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