

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.07.2019

PRONOUNCED ON : 30.07.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No.788 of 2019

R.Karikalan Appellant /Plaintiff

Vs.

1. K.Saravanan
2. S.Muhuzhmathi
3. S.Sugisivam Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 04.12.2018 made in A.S.No.10/2017 on the file of the Principal District Court, Namakkal, confirming the judgment and decree of the Sub court, Namakkal made in O.S. No.256/2004 dated 08/03/2017.

For Appellant : M/s. Girija Velmurugan

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 04.12.2018, passed in A.S.No.10/2017, on the file of the Principal District Court, Namakkal, confirming the judgment and decree dated 08/03/2017, passed in O.S. No.256/2004 on the file of the Subordinate Court, Namakkal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for specific performance.

4. The plaintiff has laid the suit against the defendants seeking the relief of specific performance in respect of the sale agreement dated 13.07.2001 marked as Ex.A1. The execution of the sale agreement Ex.A1 has not been controverted by the defendants. It is found that the sale price had been agreed between the parties with reference to the suit properties in a sum of Rs.3,40,850/- and it is further noted that the plaintiff had paid Rs.1,10,000/- on the date of the sale agreement and

Rs.90,000/- on 25.01.2007 towards the sale consideration. On a perusal of the terms of the sale agreement, it is found that the plaintiff should pay the balance sale consideration within a period of three months from the date of the sale agreement and obtain the sale deed from the defendants. However, according to the defendants, though they had admitted the execution of the sale agreement in favour of the plaintiff and also the receipt of Rs.2,00,000/- from the plaintiff, with reference to the same, according to the defendants, only on account of their urgent needs, they had entered into the sale agreement with the plaintiff and even though the defendants had been always ready and willing to perform their part of their contract and been insisting the plaintiff to come forward and complete the sale transaction, the plaintiff had not responded to the same on the footing that the price value of the suit properties had not gone up and accordingly, evading the completion of the sale transaction one way or the other and according to the defendants, they had been put to loss and hardship and therefore, contended that the plaintiff is not entitled to seek and obtain the reliefs prayed for.

5. The readiness and willingness on the part of the plaintiff is an essential sine qua non factor for entitling the plaintiff to obtain the equitable and discretionary relief of specific performance. In so far as this case is concerned, it is found that the execution of the sale agreement between the parties is not in dispute. Furthermore, the payment of Rs.2,00,000/- by the plaintiff to the defendants pursuant to the sale agreement is also not in dispute. However, it is found that the parties had fixed the time limit of three months for completing the sale transaction. In such view of the matter, as rightly found and determined by the Courts below when the defendants had engaged in the sale agreement only for their urgent needs and accordingly, had also fixed a specific time limit for completing the sale transaction, in such view of the matter, considering the terms of the sale agreement, when it is found that the plaintiff is obliged to pay the balance sale consideration and the time for the performance of the sale agreement has not been extended when the plaintiff made the payment of Rs.90,000/- on 25.01.2007, in such view of the matter, it is found that the plaintiff should have endeavoured to tender the balance sale consideration within the time limit and endeavoured to obtain the sale deed from the defendants. However, the materials placed on record go to show that the plaintiff, though would claim that he had been always ready and willing to pay the balance sale consideration and obtain the sale deed, however with reference to his readiness and willingness to complete the sale transaction, right from the inception of the agreement, absolutely there is no material worth acceptance forth coming on the part of the plaintiff, on

the other hand, it is found that the plaintiff has issued the notice to the defendants only on 04.02.2004, calling upon them to receive the balance sale consideration and execute the sale deed, it is thus found that when as per the terms of the sale agreement, the plaintiff should tender the balance sale consideration on or before 13.10.2001 and the plaintiff having not paid the same and had come forward to issue the notice with reference to the payment of the balance sale sum only on 04.02.2004, nearly two years and three months after the time fixed for the performance of the contract, in such view of the matter, as rightly determined by the Courts below, the plaintiff has miserably failed to establish his readiness and willingness to perform his part of the contract and complete the sale transaction and furthermore, when it is further noted that thereafter the plaintiff has laid the suit only on 20.07.2004, considering the conduct of the plaintiff from the inception of the sale agreement, it is evident that the plaintiff having failed to establish his readiness and willingness from the inception of the sale agreement and throughout, in such view of the matter, the Courts below are found to be justified in holding that the plaintiff is not ready and willing to perform his part of the contract and obtain the sale deed from the defendants.

6. The true reason for the failure of the plaintiff in exhibiting his readiness and willingness could also be gathered from the evidence adduced by the plaintiff in the matter. It is found that originally the plaintiff has laid the suit both for specific performance as well as for the refund of the amount paid by him, however, subsequently, by amending the plaint, had proceeded to delete the alternative relief prayed for him in the suit. As to why he had proceeded to delete the alternative relief claimed by him originally and proceeded with the suit only for the main relief of specific performance, the plaintiff, during the course of cross examination, has admitted that inasmuch as the value of the suit properties had enhanced, he had decided to give up the alternative relief of the refund of the advance amount and proceed with the suit only for the main relief of specific performance and would also state that if the price value of the suit properties had not enhanced, he would have been satisfied if he had been granted the alternative relief alone. Therefore, as rightly contended by the defendants, the plaintiff had been waiting and watching the escalation of the prices qua the suit properties and accordingly, not evinced interest to go ahead with the performance of the sale transaction one way or the other and accordingly, it is found that he had taken his own time in coming forward with the payment of the balance sale consideration as abovenoted, despite the insistence of the defendants to complete the sale transaction at the earliest and

when as abovenoted, the plaintiff had even chosen to delete the relief of the alternative prayer and proceeded with the suit only for the main relief of specific performance on the footing that the price value of the suit properties had escalated, the conduct and the real intention of the plaintiff has come out and accordingly, it is seen that he has not been eager to perform his part of the contract from the inception of the sale agreement and been taking his own time to move ahead and in such view of the matter, when the conduct of the plaintiff, as above pointed out, does not entitle him to seek and obtain the equitable relief of specific performance, in such view of the matter, in my considered opinion, the Courts below are found to be totally justified in not granting the reliefs prayed for by the plaintiff and the reasonings and conclusions of the Courts below for non suiting the plaintiff, being founded on the proper appreciation of the materials on record, both factual wise and legal wise and not suffering from any perversity or irrationality, the same do not warrant any interference.

7. In the light of the above discussions, no substantial question of law is involved in the second appeal and accordingly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
The Principal District Court, Namakkal.
2. The Subordinate Judge,
The Subordinate Court, Namakkal.

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

+1cc to M/s.M.Velmurugan, Advocate sr.65380

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rsi[co]
srg 05/09/2019