

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2019

PRONOUNCED ON : 25.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.679 of 2019

and

CMP No.12752 of 2019

S. Chandrasekar

...Appellant

Vs.

M. Ramachandran (deceased)

P.J.Dravin Paul Raja

..Respondent

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 14.11.2018 passed in A.S.No.219 of 2017 by the XVI Addl. Judge, City Civil Court, Chennai, confirming the judgment and decree dated 31.07.2017 passed in O.S.No.7446 of 2006 by the Hon'ble XVIII Asst. City Civil Court, Chennai.

For Appellant : Mr.L. Dhamodaran

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 14.11.2018 passed in A.S.No.219 of 2017 on the file of the XVI Addl. Judge, City Civil Court, Chennai, confirming the judgment and decree dated 31.07.2017 passed in O.S.No.7446 of 2006 on the file of the XVIII Asst. Judge, City Civil Court, Chennai.

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

3. The suit has been laid by the plaintiff for specific performance, permanent injunction and to declare the settlement deed executed by the deceased first defendant in favour of the second defendant on 13.07.2006 as invalid, null and void and not binding on the plaintiff.

4. According to the plaintiff, in respect of the suit property as described in the plaint, the plaintiff and the first

defendant entered into the agreement of sale on 15.12.2004 for a sale consideration of Rs.1,48,750/- and he had paid a sum of Rs.15,000/- by way of the cheque dated 10.12.2004 on the date of the agreement and another sum of Rs.5,000/- by way of the cheque dated 05.05.2005 and according to the plaintiff, the balance amount payable by him is only Rs.1,28,750/- and according to the plaintiff, he has always been ready and willing to perform his part of the contract, but, it is only the first defendant who had been evading the same for one reason or the other. The plaintiff has been necessitated thereby to issue the legal notice on 01.09.2006 calling upon the first defendant to execute the sale deed as per the terms of the sale agreement. Despite the same, the defendant had failed to comply with the said demand. However, the defendant with the intention of defeating his rights, had settled the suit property in favour of the second defendant on 13.07.2006 and hence according to the plaintiff, he has been necessitated to institute the suit against the defendants for appropriate reliefs.

5. The defendants resisted the plaintiff's suit inter alia disputing the truth and validity of the sale agreement projected by the plaintiff for seeking the relief of specific performance and according to the first defendant, there was no agreement of sale in respect of the suit property and the first defendant had received the cheque payments under the impression that it is for 703 sq. ft., of land which had been sold to the plaintiff and therefore, contended that the plaintiff is not entitled to obtain the relief of specific performance as prayed for and also contended that the first defendant had executed the settlement deed in favour of the second defendant in respect of the suit property and the same is valid and the plaintiff has no cause of action and therefore, the suit is liable to be dismissed.

6. Based on the materials placed on record and the submissions made, the courts below were pleased to dismiss the plaintiff's suit mainly on the footing that the plaintiff has failed to establish his readiness and willingness to perform his part of the contract.

7. As regards the plea put forth by the first defendant, the sale agreement is a fabricated document, the courts below had rejected the abovesaid version of the defendants and held that the sale agreement is a genuine document.

8. However, considering the readiness and willingness on the part of the plaintiff to perform his part of the contract, it has been held by the courts below that the readiness and willingness on the part of the agreement holder being the

essential sine quo non for entitling him to obtain the discretionary and equitable relief of specific performance even in the absence of any plea with reference to the same on the part of the defendants, according to the courts below, the plaintiff has miserably failed to establish his readiness and willingness to perform his part of the contract . Though the plaintiff would rely upon the statement of his bank accounts marked as Ex.A4 to contend that he is having sufficient funds to operate the contract, the same did not weigh with the courts below for the reasons stated by them. Though the plaintiff has pleaded that he has been always ready and willing to perform his part of the contract, he has miserably failed to establish the same as determined by the courts below. As rightly determined by the courts below, from the bank accounts furnished by the plaintiff marked as Ex.A4, it is found that the amount lying to the credit of the plaintiff's account as on 21.03.2005 is only Rs.12,654/- and upto 19.04.2005 i.e. 5 months from the date of sale agreement, the plaintiff did not have sufficient funds and thereafter only he had sufficient balance. No doubt, the plaintiff is found to have also deposited the balance sale consideration in the court and the abovesaid payment, as determined by the courts below, is only pursuant to the order of the court and not on his own volition.

9. Considering the averments contained in the sale agreement, as determined by the courts below, there had been an earlier agreement between the parties concerned with reference to the same of an extent of 1120 sq. ft on 14.09.2004. However, on account of the paucity of funds on the part of the plaintiff, he was unable to proceed further in terms of the abovesaid agreement of sale and had endeavoured to purchase only an extent of 703 ½ square feet and accordingly entered into the sale agreement with reference to the suit property for the sale consideration as above referred to. Therefore, when even as per the terms of sale agreement only on account of the shortage of funds, the plaintiff was unable to proceed further in terms of the sale agreement dated 14.09.2004 and thereafter, the suit agreement had come into existence on 15.12.2004, the plaintiff cannot be heard to contend that he had sufficient funds to purchase the entire property on the date of execution of the sale agreement on 15.12.2004. As rightly found by the courts below, the abovesaid claim of the plaintiff is falsified by the terms contained in the sale agreement itself and the abovesaid aspect of the matter had been rightly considered and determined by the courts below.

10. As per the terms of the sale agreement, the plaintiff should endeavour to pay the balance sale consideration within

three months and obtain the sale deed from the first defendant. As to whether the plaintiff had acted in terms of the sale agreement, it is found that the plaintiff has not established his readiness and willingness with reference to the same. The case of the plaintiff that he had been waiting patiently for the first defendant to execute the sale deed after receiving the balance sale consideration at the request of the first defendant that he required the suit property for some time, cannot be accepted, particularly, when the plaintiff being the agreement holder. If according to the plaintiff he had been always ready and willing to perform his part of the contract, but it is only the first defendant who had been evading to perform his part of the contract, immediately on noticing the abovesaid evasive attitude of the first defendant in not executing the sale deed as per the terms of the sale agreement, the plaintiff should have resorted to immediate action against the first defendant as contemplated under law. On the other hand, the suit had been laid by the plaintiff 21 months after the execution of the sale agreement. That apart, when according to the plaintiff when the original parent deed relating to the suit property had been handed over to him by the deceased Ramachandran, as determined by the courts below, nothing prevented him from executing the draft sale deed and sent to the deceased Ramachandran for his approval and thereby proceed with the culmination of the sale transaction. On the other hand, there is nil material on the part of the plaintiff to evidence his readiness and willingness with reference to the enforcement of the sale agreement i.e. there is nothing to show that the plaintiff had approached the deceased Ramachandran either in person or through letters to come forward and execute the sale deed. Therefore, as found and determined by the court below, absolutely there is no material on the part of the plaintiff evidencing his readiness and willingness in performing his part of the contract. As determined by the courts below, irrespective of the factor as to whether the time is the essence of the contract or not, the agreement holder should always be ready and willing to perform his part of the contract and obtain the sale deed right from the inception of the sale agreement and considering the abovesaid factors, in toto, as determined by the courts below, when there is a complete lack of readiness and willingness on the part of the plaintiff to go ahead with the sale agreement and when it is further seen that he had approached the court for obtaining the relief of discretionary and equitable relief of specific performance belatedly, in such view of the matter, in my considered opinion, the courts below are found to be wholly justified in negating the suit laid by the plaintiff and no interference is called for with reference to the abovesaid determination of the courts below.

11. As regards the abovesaid factors, when the courts below had determined the case of the parties in the right perspective based on the materials placed on record both factualwise and legalwise, when there is nothing to point out any perversity or irrationality in the reasonings and the conclusions of the courts below for determining that the plaintiff has not been ready and willing to perform his part of the contract, in my considered opinion, there is no scope for interfering with the judgment and decree of the courts below. In such view of the matter, in my considered opinion, no substantial question of law is found to be involved in the second appeal.

12. At the time of the admission, the plaintiff's counsel, in support of his contentions, placed reliance upon the following decisions reported in

1. 2003-1-L.W.484 (I.R.Vimalchand and another Vs. I.Ramalingam and others)
2. 1999 (III) CTC 394 (Rathinam Chettiar vs. Embar Naidu and another)
3. AIR 1973 Supreme Court 559 (Dr. Jiwan Lal and others vs. Brij Mohan Mehra and another)
4. 2002 (1) CTC 334 (V.Udayakumar and others vs. Navaneethammal and others)
5. 2010 (8) MLJ 1050 (P.Thulasimani vs. K.G.Chandran)
6. (1999) 6 Supreme Court Cases 337 (Syed Dastagir vs. T.R.Gopalakrishna Setty)
7. 2000(5) Supreme 165 (Motilal Jain vs. Smt.Ramdasi Devi and others)
8. (2004) 6 Supreme Court Cases 649 (P.D'Souza vs. Shondrilo Naidu)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

13. In the light of the abovesaid discussions, no substantial question of law is found to be involved in this second appeal and accordingly, the second appeal is dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The XVI Additional Judge,
City Civil Court, Chennai

2. The XVIII Assistant Judge,
City Civil Court, Chennai

Copy to :- The Section officer,
V.R. Section, High Court, Madras

+1 cc to M/s.L.Dhamodharan, Advocate Sr.No. 52257

AKM/30.01.2020/6P- 5C /

Judgment in
S.A.No.679 of 2019