

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

ORIGINAL SIDE APPEAL NO.147 OF 2019

AND

C.M.P.NO.13230 OF 2019

Archit ... Appellant/Defendant

Vs.

M.Kannan ... Respondent/Plaintiff

Original Side Appeal filed under Clause 15 of the Letters Patent r/w Order XXXVI Rule 1 of the O.S. Rules against the decree and judgment dated 24.08.2018 in C.S.No.542 of 2014.

For Appellant : Mr.T.V.Vineeth Kumar

For Respondent : Mr.V.G.Sureshkumar

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The defendant, who lost before the learned single Judge, in the suit for specific performance to execute the sale deed pursuant to the sale agreement dated 01.11.2013 under Ex.P2 is the appellant.

2.The appellant is the absolute owner of the suit property being a residential flat with a built up area of 1330 sq.ft. along with undivided share. He acquired the suit property by virtue of settlement deed executed by his father dated 27.05.2011 under Ex.P1. Thereafter, the appellant entered into an agreement to sell the property to the respondent for a sum of Rs.1,60,00,000/-. The agreement also stipulated the payment of Rs.25 lakhs in advance so as to enable the appellant to redeem the mortgage. It also stipulated the existence of a car park, though it was not available in the earlier documents. Three months time has been fixed from 01.11.2013 for completion of

sale transaction. The appellant also discharged the mortgage and redeemed the original deed of title.

3. Having found that the car park was not available as agreed upon, the respondent sent communications to the appellant. There was re-negotiation between the parties as could be seen from Exs.D1 and D2, which are the e-mails sent by the son of the respondent, who is residing abroad, dated 27.12.2013 and 30.12.2013. As the appellant did not come forward to execute the sale deed even thereafter sans car park, a legal notice was sent to the appellant dated 26.02.2014. Finding that the appellant was not willing to execute the sale deed, the present suit was filed for specific performance.

4. Before the learned single Judge, the following issues were framed:

1. Whether the defendant has fulfilled the obligations imposed on him under the agreement of sale dated 01.11.2013?

2. Whether the plaintiff has established that he is ready with the balance sale consideration for completion of the sale transaction?

3. Whether the plaintiff is ready and willing to complete the sale transaction?

4. Whether the defendant is ready and willing to complete the sale transaction?

5. Whether the plaintiff is entitled to the relief of specific performance of the agreement of sale dated 01.11.2013?

6. Whether the plaintiff is entitled to damages quantified at Rs.15,00,000/-?

7. To what relief are the parties entitled to?

5. The respondent herein examined himself as P.W.1 and his wife as P.W.2 and marked Exs.P1 to P5. The appellant herein examined himself as D.W.1 and marked Exs.D1 to D4.

6. The respondent contended that he is always ready and willing to complete his part of the contract. There was re-negotiation on the sale consideration and it was accepted by the appellant to reduce the same by Rs.10 lakhs and accordingly, it was fixed at Rs.1,50,00,000/- as against the original amount of Rs.1,60,00,000/-. It was also agreed that once the car park was provided, the respondent would pay the aforesaid sum of Rs.5

lakhs. The respondent was aged about 78 years and his wife was aged about 73 years at the time of filing of the suit. The very purpose of purchasing the suit property is to provide shelter to them by the son, who is residing abroad. The respondent has sufficient means to make the payment.

7.The appellant contended that he was also ready and willing to perform his part of the contract. The respondent was the one who was responsible for the attempts to refix the sale consideration. The appellant did not agree for the same. The car park area was earmarked and the same is available. The communications sent on behalf of the respondent were not replied in view of the ongoing negotiation and the ensuing marriage of the appellant and his brother at that point of time. Therefore, the appellant sought for dismissal of the suit.

8.Learned single Judge was pleased to hold that the respondent was always ready and willing and the appellant was the one who was dragging on the matter. A factual finding has been given to the effect that none of the parent documents including one under Ex.P1 settlement deed, there was a mention about the car park. Therefore, it was wrong on the part of the appellant to include the same under Ex.P2 sale agreement. The communication made between the parties under Exs.D1, D2 and P4 are not disputed. Inasmuch as the respondent's son is admittedly working in U.S.A., there is sufficient means apart from the loan obtained for the extent of Rs.98,50,000/-. Accordingly, the learned single Judge was pleased to decree the suit as against the appellant.

9.Learned counsel appearing for the appellant submitted that it is mandatory on the part of the respondent to show both readiness and willingness put together. The mere fact that no reply was sent to Exs.D1 and D2 and P4 would not take away the duty of the respondent to substantiate his case. Thus, no inference can be drawn against the appellant in this regard. Time is the essence of the contract. As it was breached by the respondent, the learned single Judge ought not to have decreed the suit as prayed for. Therefore, the appeal will have to be allowed.

10.Learned counsel appearing for the respondent submitted that the respondent was ready and willing to pay even the agreed original amount now. On the contrary, the appellant can be directed to return the advance amount with interest at 18%. This statement is made dehors the submission on merit. On merit, it is submitted that the respondent is always ready and willing. Means have been clearly shown including the loan obtained. The fact that his son is gainfully employed in U.S.A. is not in dispute. The agreement is not in dispute and also the payment

made. Only after the receipt of the said payment, the appellant has discharged the loan and redeemed the documents pertaining to the suit property. The learned single Judge considered all these aspects in extenso and decreed the suit. Even during the execution proceedings, the respondent wants to show his bonafide and that is the reason why an application has been filed seeking permission of the Court to deposit the entire amount. Hence the appeal will have to be dismissed.

11. The primary facts are not in dispute. They are to the effect that the earlier Ex.P2 agreement dated 01.11.2013 did not indicate the existence of car park. Similarly, Ex.P2 is also not disputed along with advance amount received by the appellant. Though Ex.P2 makes a mention about the time as three months, the evidence available would show that problem arose between the parties with respect to the identification of the area earmarked for car park. The communications made between the parties under Exs.D1 and D2 would clearly show the aforesaid factum. The appellant has not only chosen to remain silent to the e-mail communication sent by the son of the respondent under Exs.D1 and D2, which have been marked by the appellant himself but also the legal notice issued. The learned single Judge took into consideration the evidence adduced both oral and documentary. Accordingly, it was correctly held that the respondent was having sufficient means and it was the appellant who was dragging on the matter, which occasioned because of the false statement made on the existence of the car park. Therefore, we are inclined to confirm the finding of the learned single Judge with respect to the readiness and willingness of the respondent, especially the fact that the loan has been obtained by the respondent and his son is gainfully employed in U.S.A. To be noted, the appellant did not raise the readiness and willingness issue at any point of time to support his contention that the respondent was dragging on the matter. We are conscious of the fact that it is mandatory duty of the respondent to satisfy the Court on the question of readiness and willingness as required under Section 16 (c) of the Specific Relief Act, which has been duly complied with in the case on hand. We do find lack of bonafides on the part of the appellant. Having received the advance amount from the respondent and after discharging the mortgage and redeeming the title deeds, it is not open to the appellant to contend to the contrary. As aforesaid, there are sufficient evidence to substantiate the subsequent negotiation between the parties. To put it differently, but for the issue pertaining to car park, the respondent would have clinched the deal much earlier. It was only the appellant who dragged on and not the respondent. Therefore, for the wrong committed by him, the appellant cannot advantage of it.

12.In such view of the matter, while answering all the issues in favour of the respondent, as rightly held by the learned single Judge, we are inclined to dismiss the appeal. However, in view of the fair submission made by the learned counsel for the respondent, apart from the fact that valuation of the flats in the city of Chennai has come down drastically, we direct the respondent to stick on to the original sale consideration of Rs.1,60,00,000/-. By way of clarification, we state that the respondent will have to pay the remaining amount after deducting Rs.25 lakhs paid by way of advance.

13.In the result, the Original Side Appeal stands dismissed. The issues are answered against the appellant. However, there is no cost in the appeal while the costs ordered by the learned single Judge stand confirmed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Sub. Asst. Registrar
Original Side, High Court,
Madras.

+lcc to Mr.V.G.Sureshkumar, Advocate, S.R.No.101409

+lcc to Mr.T.V.Vineeth Kumar, Advocate, S.R.No.101435

O.S.A.No.147 of 2019

RSI (CO)
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