

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.08.2019

PRONOUNCED ON : 19.08.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No.197 of 2016

1. Ammasaiammal (Died)

2. R.Kuppusamy

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Appellants/Appellants/Defendants 1 & 2

(1st Appellant died, 2nd Appellant and R2 are recorded as LRs of the deceased 1st Appellant viz., Ammasaiammal vide order of the Court dated 05.08.2019 as per memo daated 02.08.2019 are recorded)

Vs.

1. N.A.Kandasamy 1st Respondent/1st Respondent/Plaintiff

2. R.Palanisamy 2nd Respondent/2nd Respondent/3rd Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 28.01.2013 made in A.S.No.64 of 2012 on the file of the Principal District Judge, Coimbatore confirming the judgment and decree dated 07.12.2011 made in O.S.No.102 of 2007 on the file of the First Additional Subordinate judge, Coimbatore.

For Appellant : Mr.N.Damodaran

For R1 : Hema Sampath, Senior Counsel
for M/s. C.R.Prasannan

For R2 : No appearance set exparte
vide order dated 26.07.2019.

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 28.01.2013, passed in A.S.No.64 of 2012, on the file of the Principal District Court, Coimbatore confirming the judgment and decree dated 07.12.2011, passed in O.S.No.102 of 2007, on the file of the First Additional Subordinate Court, Coimbatore.

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. Briefly stated, according to the plaintiff, the defendants 1 to 3 had entered into a sale agreement with the plaintiff to sell the suit property on 19.12.1996, for a sum of Rs.3,96,000/- and he had paid a sum of Rs.1,50,000/- as advance on the date of the sale agreement and according to the plaintiff, the parties had agreed that the sale transaction should be completed within 45 days from the date of the sale agreement and further, it is stated that the defendants, on 30.01.1997, had agreed to hand over the original title deeds, namely, the parent document, chitta, adangal and encumbrance certificate to the plaintiff and with reference to the same, had also made an endorsement on the agreement. As per the same, the defendants 1 to 3 had agreed to get the abovesaid documents from the District Munsif Court, Coimbatore and hand over the same to the plaintiff and thereafter, the plaintiff is to get the legal opinion and thereafter, within 60 days, the sale has to be completed. The plaintiff has also made various payments towards the sale consideration i.e., 20,000/- on 16.06.1999, Rs.10,000/- on 03.01.2000, Rs.20,000/- on 27.06.2000, Rs.30,000/- on 20.06.2001, Rs.20,000/- on 12.05.2002, Rs.25,000/- on 07.04.2003 and Rs.25,000/- on 01.03.2004 and it is stated that the defendants had acknowledge the receipt of the abovesaid payments and made endorsement in the sale agreement and further, it is put forth by the plaintiff that the defendants had handed over the possession of the suit property on the date of the sale agreement as part performance of the contract and according to the plaintiff, he has been always ready and willing to perform his part of the contract and in this connection, sent a notice dated 01.07.2002, to the defendants and the defendants replied to the same on 06.07.2002 and the rejoinder had been sent by the plaintiff dated 12.07.2002 to the abovesaid reply and thereafter, the defendants have also received certain payments as detailed above towards

the sale consideration and according to the plaintiff, the balance sum to be paid is only Rs.96,000/- and finally, the plaintiff has sent a notice on 20.01.2007, calling upon the defendants, to receive the balance sum and execute the sale deed and the same had been acknowledged by the defendants but no reply has been sent and hence, according to the plaintiff, the suit for appropriate reliefs.

5. The defendants 1 and 2 contested the plaintiff's suit and admitted the execution of the sale agreement and also the receipt Rs.1,50,000/- as advance on the date of the sale agreement and also admitted the payment of Rs.20,000/- on 16.06.1999, Rs.10,000/- on 03.01.2000 and Rs.20,000/- on 27.06.2000. However, challenged the case of the plaintiff that he has made further payments towards the sale consideration after 27.06.2000 and further, according to the defendants, the possession of the suit property was not handed over to the plaintiff on the date of the sale agreement as put forth in the plaint and it is also stated that the photocopy of the documents were handed over to the plaintiff on 27.06.2000 and the original documents could be delivered only at the time of the execution of the sale deed and according to the defendants 1 and 2, following the difference of opinion between the defendants 1 and 2 and the 3rd defendant, the 3rd defendant had colluded with the plaintiff and with a view to defeat the rights of the defendants 1 and 2, on receiving payments from the plaintiff on various dates and made false endorsements and the said endorsement made by the third defendant are not binding upon the defendants 1 and 2 and therefore, the plaintiff cannot take advantage of the said endorsements made by the third defendant to contend that the suit laid by them is within the time allowed by law and according to the defendants 1 and 2, the suit laid by the plaintiff is barred by limitation and accordingly, prayed for the dismissal of the plaintiff's suit.

6. In support of the plaintiff's case, PWs 1 to 3 were examined, Exs.A1 to A27 were marked. On the side of the defendants DWs 1 and 2 were examined, Exs.B1 to B3 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and accordingly, granted the relief of specific performance in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for

consideration:

a) Whether the Courts below erred in law and misdirected themselves in granting the discretionary relief of Specific Performance of Agreement of sale in favour of the first respondent when first respondent herein had failed to prove his readiness and willingness to perform his part of the contract from the date of contract and till date of filing of the suit as per section 16 (c) of the Specific Relief Act, 1963?

(b) Is not the findings of the Courts below in holding that the first respondent herein has always been ready and willing to perform his part of the contract for granting the discretionary relief of Specific performance of the contract of sale perverse and non-est in law especially when the first respondent has not explained the delay for his non-performance of the contract between the period from 01.03.2004, the date of alleged endorsement by the second respondent herein to the date of issuance of notice under Ex.A14 on 20.01.2007 and till the date of filing of the suit on 19.02.2007?

(c) Whether the Courts below erred in law and misdirected themselves in holding that the suit filed by the first respondent/plaintiff is within the period of limitation by reckoning Ex.A14 legal notice, dated 20.01.2007 as the starting point of limitation when admittedly the breach of contract had occurred even when Ex.A5 notice, dated 01.07.2002 and the reply notice dated 06.07.2002 were exchanged between the respective parties and the time to be reckoned from the said date for calculating the period of limitation as per Art.54 of the Limitation Act, 1963?

9. The suit has been laid by the plaintiff against the defendants seeking for the relief of specific performance in respect of the sale agreement dated 19.12.1996 marked as Ex.A1.

It is found that the abovesaid sale agreement Ex.A1 had been entered into between the plaintiff and the defendants 1 to 3. The defendants 2 and 3 are the sons of the first defendant. The execution of Ex.A1 sale agreement has not been disputed by the contesting defendants 1 and 2. It is found that the third defendant had not contested the plaintiff's case and remained ex-parte both in the trial Court as well as in the first appellate Court. It is further seen that the defendants 1 and 2, who are challenging the plaintiff's suit had not disputed the receipt of Rs.1,50,000/- as advance on the date of the sale agreement Ex.A1. The parties had agreed that the sale consideration for the suit property is Rs.3,96,000/-. It is found that the time for the completion of the sale transaction has been fixed as 45 days from the date of the sale agreement. However, on a perusal of the sale agreement Ex.A1, it is seen that on 30.01.1997, the defendants had agreed to hand over the original title deed, chitta, adangal and encumbrance certificate to the plaintiff after obtaining the same from the 3rd District Munsif Court and it is further seen that the defendants, in that connection had made an endorsement in the sale agreement, on 30.01.1997, which has been marked as Ex.A2 and on a perusal of the endorsement marked as Ex.A2, it is seen that by way of the same, the defendants had agreed that after they had handed over the abovesaid documents to the plaintiff, the plaintiff could obtain the legal opinion from his Advocate with reference to the same and thereafter, within 60 days, the sale transaction should be completed. Thereby, it is found that as rightly put forth by the plaintiff, though by way of Ex.A1 sale agreement the parties had agreed to complete the sale transaction within 45 days from the date of sale agreement, however, as the defendants had not handed over the parent title deed as well as the other documents promised by them to the plaintiff, accordingly, it is found that Ex.A2 endorsement had come to be made by the defendants seeking further time for handing over the abovesaid documents to the plaintiff and accordingly, they had agreed for the extension of the period for the completion of the sale transaction as recited in Ex.A2 endorsement. It is found that Ex.A2 endorsement has been signed both by the defendants 2 and 3 and on behalf of the first defendant, the second defendant has signed. As held by the Courts below, the first defendant has not challenged the abovesaid endorsement Ex.A2.

10. According to the plaintiff, he had been always ready and willing to perform his part of the contract and accordingly, he would put forth the case that he has made various payments towards the sale consideration and according to him, the abovesaid payments had been acknowledged by the defendants by making appropriate endorsements in the sale agreement and it is

thus put forth by the plaintiff that he had made the payments of Rs.20,000/- on 16.06.1999, acknowledged by the second defendant by way of an endorsement marked as Ex.A3, Rs.10,000/- on 03.01.2000, acknowledged by the second defendant by way of an endorsement marked as Ex.A4, Rs.20,000/- on 27.06.2000, acknowledged by the second defendant by way of an endorsement marked as Ex.A9, Rs.30,000/- on 20.06.2001, acknowledged by the third defendant by way of an endorsement marked as Ex.A10, Rs.20,000/- on 12.05.2002, acknowledged by the third defendant by way of an endorsement and marked as Ex.A11, Rs.25,000/- on 07.04.2003, acknowledged by the third defendant by way of an endorsement and marked as Ex.A12 and Rs.25,000/- on 01.03.2004, acknowledged by the third defendant by way of an endorsement marked as Ex.A13. According to the contesting defendants, they had received only the payments made by way of the endorsements marked as Ex.A3, A4 and A9. According to them, after 27.06.2000, they had not received any payments from the plaintiff towards the sale consideration and they had not made any endorsement with reference to any further payments said to have been made by the plaintiff towards the sale consideration under Ex.A1 sale agreement. It is found that the further payments had been made by the plaintiff towards the sale consideration as evidenced by Exs.A10 to A13. However, the abovesaid endorsements had only been made by the third defendant. It is further seen that the plaintiff had issued a legal notice to the defendants 1 to 3, dated 01.07.2002, marked as Ex.A5, expressing his readiness and willingness and calling upon the defendants to inform the place, date and time for making the payment of the balance sale consideration and it is further seen that by way of the abovesaid notice, the plaintiff had also reminded the defendants that they had not handed over the original title deeds and other documents as promised by them by way of Ex.A2 endorsement. It is seen that the abovesaid notice had been replied by the defendants 1 to 3 on 06.07.2002, which has been marked as Ex.A6. By way of Ex.A6 reply notice, the defendants 1 to 3 would contend that the plaintiff had no means to pay the balance amount and delaying the sale transaction and accordingly, directed that the plaintiff should register the sale transaction within 7 days i.e., before the expiry of 'Aani' month.

11. Though it is put forth that the third defendant has turned hostile to the interest of the defendants 1 and 2 since 2000, however, the reply dated 06.07.2002, marked as Ex.A6, has been sent on behalf of all the defendants. Furthermore, in the abovesaid reply notice, there is no whisper about the difference of opinion said to have been crept in between the defendants 1 and 2 on the one hand and the third defendant on the other hand.

Though according to the defendants, they had received the title deeds and other documents from the District Munsif Court concern much earlier to the issuance of the reply notice dated 06.07.2002, marked as Ex.A6, however, the abovesaid point has not been disclosed by them in the reply notice. It has also been admitted that the original title deeds and the other documents has not been shown to the plaintiff by the defendants during the course of evidence. For Ex. A6 reply notice, the plaintiff has sent a rejoinder dated 12.07.2002, marked as Ex.A7, wherein he insisted to produce all the original title deeds and other documents and also urged the defendants to complete the sale transaction at the earliest.

12. As abovenoted, the contesting defendants 1 and 2 acknowledged the payments made only up to 27.06.2000. According to them, thereafter no payments had been made by the plaintiff to them. The defendants had not sent any reply to the rejoinder marked as Ex.A7. The payment of Rs.30,000/- on 20.06.2001, marked as Ex.A10 has been acknowledged by the third defendant and the further payment of Rs.20,000/- on 12.05.2002 has also been acknowledged by the third defendant marked as Ex.A11. It is found that after the issuance of the rejoinder Ex.A7, the further payments had been made by the plaintiff towards the sale consideration which had been acknowledged by the third defendant on 07.04.2003 and 01.03.2004 marked as Exs.A12 and 13. In toto, it is found that the third defendant had acknowledged the payment of Rs.1,00,000/- towards the sale consideration. Now, according to the defendants 1 and 2, the acknowledgement of the payments towards the sale consideration by the third defendant would not bind them. When it is found that it is only the second defendant who had made the endorsements for acknowledging the payments made by the plaintiff under Exs.A3, A4 and A9 and when according to the second defendant, the same is binding upon the third defendant, in such view of the matter, as rightly held by the Courts below, equally the acknowledgement of payments made by the third defendant by way of Exs.A10 to A13 would also be binding upon the defendants 1 and 2 and therefore, the defendants 1 and 2 cannot be allowed to avoid the said payments made by the plaintiff and acknowledged by the third defendant by contending that the said endorsements of the third defendant would not bind them as difference of opinion arose between the defendants 1 and 2 and the third defendant. When as above pointed out, the reply Ex.A6 had been sent by the defendants and when the above said reply discloses that the defendants are residing in the same house, in such view of the matter, the case projected by the defendants 1 and 2 that the terms between defendants 1 and 2 and the third defendant since 2000 had not been cordial and therefore, the endorsement made by

the third defendant acknowledging the subsequent payments would not bind them cannot be accepted, particularly, when there is no convincing material to hold that defendants 1 and 2 on the one hand and the third defendant on the other hand are not seeing eye to eye and difference of opinion had arisen between them.

13. In the light of the abovesaid factors, as held by the Courts below rightly, when it is seen that by way of Exs.A11 to A13, the defendants had agreed for the extension of time and furthermore, by way of Ex.A13 endorsement, they had further sought for the extension of time to obtain the original title deeds and the other documents from the District Munsif Court concerned and to that effect had already made the endorsement Ex.A2, in such view of the matter, when there is no material placed on the part of defendants 1 and 2, in particular, that prior to Ex.A13 endorsement, they had entrusted the original title deeds and other documents as promised by them and as abovenoted, though the defendants 1 and 2 would claim that they had obtained the said documents before they had issued the reply to the plaintiff's Advocate notice marked as Ex.A6, however they having not whispered anything about the same in the reply notice, having admitted that the copies of the original documents were not given, but would only claim that the said documents were shown to the plaintiff, which fact has been disputed by the plaintiff, in such view of the matter, when the parties have agreed that the plaintiff is required to obtain the legal opinion based on the documents to be handed over by the defendants, in such view of the matter, considering the various payments made by the plaintiff, as above noticed, towards the sale consideration and the acknowledgements made by the defendants with reference to the same, in such view of the matter, as held by the Courts below, the plaintiff cannot be stated as if he is not ready and willing to perform his part of the contract.

14. As per the case of the plaintiff, the possession of the suit property had been handed over to him by the defendants as part performance of the contract. Ex.A1 sale agreement recites that the possession of the suit property had been handed over to the plaintiff, however, according to the defendants, the possession of the suit property had not been handed over to the plaintiff. But the defendants 1 and 2 have not placed any material worth acceptance to evidence that after Ex.A1 sale agreement, the possession of the suit property remained with them. Furthermore, it is correctly held by the Courts below that the defendants 1 and 2 cannot be allowed to lead evidence contrary to the recitals contained in Ex.A1 sale agreement and the same is found to be not in consonance with the provisions

contained in Section 92 of the Indian Evidence Act.

15. Though by way of Ex.A1 sale agreement, the parties had agreed to complete sale transaction within 45 days from the date of the execution of the same, however when it is found that the defendants had been unable to secure the original title deeds and the other documents from the District Munsif Court and hand over the same to the plaintiff for obtaining the legal opinion and accordingly, had also been periodically extending the time for the performance of the contract by way of the various endorsements made in the sale agreement as above noted and furthermore, when as rightly determined by the Courts below, as regards the sale of the immovable property, there is no presumption as to the time being the essence of contract and insofar as the present case is concerned, time is not the essential condition for the completion of the sale agreement entered into between the parties, therefore, the case projected by the defendants that the plaintiff has not been ready and willing to perform his part of the contract, even after Ex.A6 reply notice, as such, cannot be countenanced. When as abovenoted, subsequent to Ex.A6 notice, the defendants had received further payments towards the sale consideration and by way of Exs.A12 and 13 endorsements had been extending the time for the performance of the contract and also sought for further time for handing over the original title deeds and other documents to the plaintiff for obtaining the legal opinion from his Advocate and in such view of the matter, the plaintiff cannot be held to be not ready and willing to perform his part of the contract as sought to be made out by the defendants.

16. A plea has been made by the defendants that the suit laid by the plaintiff is barred by limitation. However, as determined by the Courts below, when the defendants had been acknowledging the various payments made by the plaintiff and extending time for the performance of the contract and had not handed over the original title deeds and other documents to him as promised by them under Exs.A12 and 13 and accordingly, left with no other alternative, when it is found that the plaintiff had been necessitated to issue a legal notice dated 20.01.2007, marked as Ex.A14, calling upon the defendants for seeking the execution of the sale deed by pointing out the various payments made by him and the extension of time granted by the defendants in toto, in such view of the matter, when the defendants had not chosen to respond to the same, consequently, the suit having been laid by the plaintiff on 19.02.2007, as held by the Courts below, the suit laid by the plaintiff is not found to be time barred and accordingly, the Courts below are justified in holding that the plaintiff's suit is not barred by limitation.

17. Furthermore, it is found that pending the suit, the plaintiff had also deposited the balance sale consideration of Rs.96,000/- into the Court and the same would also disclose the readiness and willingness on the part of the plaintiff in making the payment at the earliest and in all, it is found that the plaintiff has established his entitlement to obtain the relief of specific performance in respect of the sale agreement dated 19.12.1996 marked as Ex.A1.

18. The plaintiff's counsel in support of her contentions placed reliance upon the decisions reported in Civil Appeal No.2420 of 2018 (R.Lakshmikantham Vs. Devaraji) dated 10.07.2019 (2018) 2 SCC 82 (Balwant Vithal Kadam Vs. Sunil Baburaoi Kadam), 2015 (3) CTC 734 (M.Mohammed Ismail (died), rep. by his LRs Vs. K.P. Subbiah (died) rep. by his Lrs), 2004 (4) CTC 150 (P.D'Souza Vs. Shondrilo Naidu) and (2006) 5 SCC 340 (Panchanan Dhara and others Vs. Monmatha nath maity (dead) through Lrs and another). The counsel for the defendants in support of his contentions placed reliance upon the decision reported in 2010 (6) CTC 95 (S.Gananatha Perumal Vs. S.Valliappan). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

19. For the reasons aforesaid, the Courts below are found to have properly assessed and analysed the oral and documentary evidence adduced by the respective parties in the matter and in the light of the same and also after following the principles of law governing the same in the correct perspective, are found to justified in upholding the plaintiff's case and the judgment and decree of the Courts below not suffering from any perversity or irrationality in any manner, in such view of the matter, the same do not warrant any interference. Resultantly, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

20. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS V)

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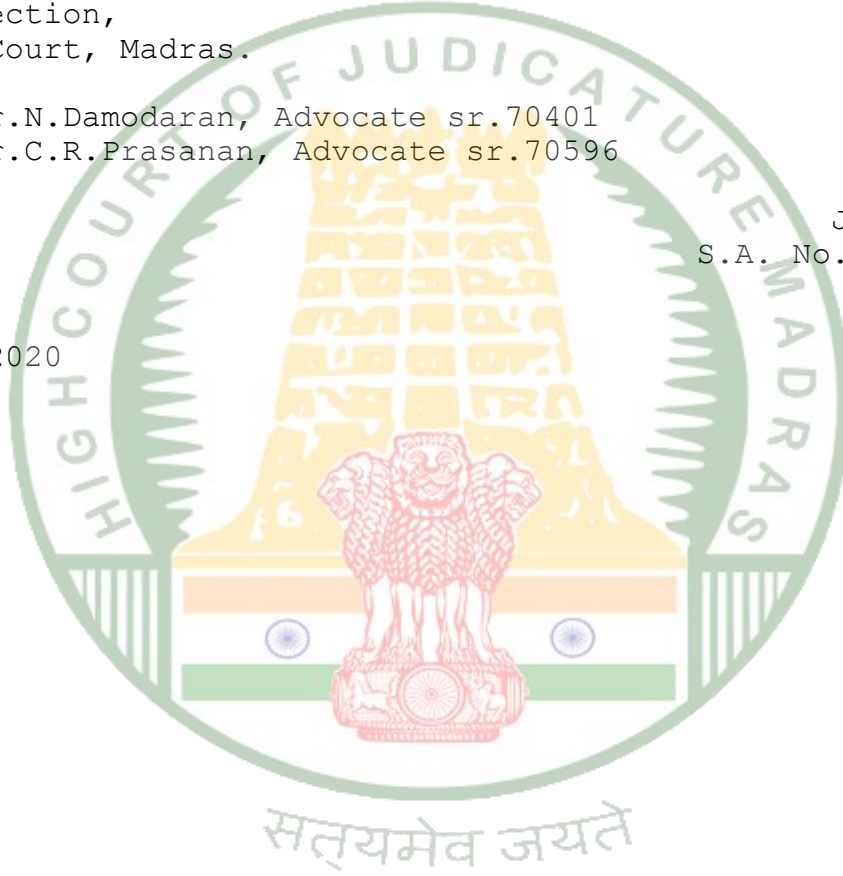
To

1. The Principal District Court,
Coimbatore
2. The First Additional Subordinate Court,
Coimbatore.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.N.Damodaran, Advocate sr.70401
+lcc to Mr.C.R.Prasanan, Advocate sr.70596

Judgment in
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nr 10/02/2020



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