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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2019

PRONOUNCED ON : 24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.237 of 2016

Thanveerr Almas Sayib

..Appellant/Defendant

Vs.

P.Radhakrishnan

..Respondent/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 05.12.2015 passed in A.S.No.8 of 2014 on the file of the 3rd Additional District Court, Vellore, reversing the Judgment and Decree dated 27.08.2012 passed in O.S.No.99 of 2010 on the file of the Subordinate Court, Vaniyambadi.

For Appellant : Mr.V.Raghavachari

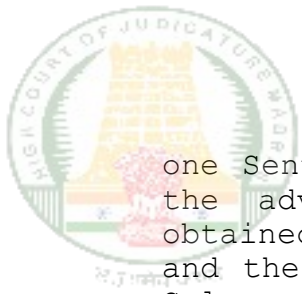
For Respondent : Mr.S.Subbiah
Senior Counsel
for Mr.P.Raja

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 05.12.2015 passed in A.S.No.8 of 2014 on the file of the 3rd Additional District Court, Vellore, reversing the Judgment and Decree dated 27.08.2012 passed in O.S.No.99 of 2010 on the file of the Subordinate Court, Vaniyambadi.

2.The second appeal has been admitted on the following substantial questions of law:

" (a).Whether the lower Appellate Court is justified in decreeing the suit filed against the power agent without even describing the status and further decreeing the suit in the absence of the owner of the property?



one Senthilkumar @ Selvaraj in the year 2009 and at the time of the advancement of the said loan, Senthilkumar @ Selvaraj obtained his signature in blank stamp papers and green papers and the plaintiff is the benami of the abovesaid Senthilkumar @ Selvaraj and the abovesaid Senthilkumar @ Selvaraj also created the General Power of Attorney deed in his favour and the same has been cancelled by the defendant subsequently and the defendant had also levied the suit against him in O.S.No.94 of 2010 on the file of the District Munsif Cosurt, Ambur and the same is pending and there is also a criminal case pending in respect of the cheques issued by the defendant at the instance of one Venkatesan in the Judicial Magistrate Court at Gudiyatham and with a view to grab the suit property, according to the defendant, Senthilkumar @ Selvaraj in connivance with the plaintiff had created the sale agreement by using the signed stamp and green papers and hence, according to the defendant, the plaintiff is not entitled to obtain the relief of specific performance prayed for and the suit is liable to be dismissed.

8.In support of the plaintiff's case, PWs1 & 2 were examined and Exs.A1 to A5 have been marked. On the side of the defendant, no oral and documentary evidence has been adduced.

9.On a consideration of the oral and documentary evidence adduced by the plaintiff and the submissions made, the trial Court was pleased to decline the relief of specific performance sought for by the plaintiff, however, directed the defendant that he is liable to return the advance sum of Rs.1,50,000/- received by him based on the sale agreement projected by the plaintiff with interest at 6% per annum from the date of the plaint till repayment and accordingly, disposed of the plaintiff's suit. Aggrieved over the same, the plaintiff preferred the first appeal. The first appellate Court, on a consideration of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial Court and granted the relief of specific performance in favour of the plaintiff as prayed for as well as the relief of permanent injunction and accordingly, disposed of the appeal preferred by the plaintiff. Impugning the same, the present second appeal has been preferred.

10.The suit has been laid by the plaintiff for specific performance based on the sale agreement dated 11.09.2009. According to the plaintiff, the defendant as the Power of Attorney holder of the owner of the suit property viz. Megajabeev Sahaya, entered into a sale agreement with him on 11.09.2009 for a sum of Rs.2,00,000/- and according to the plaintiff, on the date of the sale agreement, he had paid a sum of Rs.1,50,000/- as advance and further, according to the plaintiff, the parties had agreed that the balance sum has to be

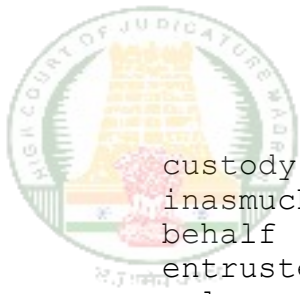


paid within three years and the sale transaction should be completed. As per the case of the plaintiff, inasmuch as the defendant had failed to perform his part of the contract, despite the readiness and willingness on the part of the plaintiff and even had not come forward to execute the sale deed after the issuance of the legal notice and on the other hand, sent a reply with untenable allegations, hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

11.The defendant had disputed the truth and validity of the sale agreement projected by the plaintiff. According to the defendant, he had borrowed a sum of Rs.1,00,000/- from Senthilkumar @ Selvaraj in the year 2009 and at the time of the lending the said loan, the abovesaid Senthilkumar @ Selvaraj had obtained his signature in blank stamp and green papers and with a view to grab the suit property, according to the defendant, Senthilkumar @ Selvaraj in connivance with the plaintiff had fabricated the sale agreement by making use of his signature obtained in the blank papers and hence, according to the defendant, the sale agreement is a fabricated record and on that basis, the plaintiff is not entitled to secure the relief of specific performance as prayed for.

12.As far as the challenge made by the defendant to the truth and validity of the sale agreement dated 11.09.2009 marked as Ex.A1, the Courts below, considering the evidence of the plaintiff examined as PW1 as well as the attestor examined as PW2, had come to the conclusion that the sale agreement had been indeed executed by the defendant in favour of the plaintiff as the power of attorney holder of the owner of the suit property for Rs.2,00,000/- and received a sum of Rs.1,50,000/- as advance and agreed to complete the sale transaction after the receipt of Rs.50,000/- as recited in the sale agreement. Considering the oral evidence adduced by PWs1 & 2, they being acceptable and convincing without any contradiction and moreover supportive to each other and also trustworthy, in such view of the matter, it is found that the Courts below are found to be fully justified in accepting the truth and validity of the sale agreement projected by the plaintiff and no interference is warranted with reference to the abovesaid finding of the Courts below.

13.The defendant has not disputed that he had been granted the General Power of Attorney by the owner of the suit property and the said power deed had been marked by the plaintiff as Ex.A5. The defendant has not explained as to how come the General Power of Attorney executed in his favour had come to the



custody of the plaintiff. Accordingly, it is found that inasmuch as the defendant had entered into the sale agreement on behalf of the principal, accordingly, it is found that he had entrusted the power deed to the plaintiff at the time of the sale agreement and the same had come to be produced by the plaintiff in support of his case.

14.As regards the other defence projected by the defendant that his signature had been obtained in blank stamp and green papers by Senthilkumar @ Selvaraj at the time of the advancement of the loan of a sum of Rs.1,00,000/-, with reference to the abovesaid case, absolutely, there is no material projected on the part of the defendant. If really the abovesaid case of the plaintiff has any semblance of truth, necessary materials pointing to the same, at least, prima facie would have projected by the plaintiff pointing to the same. As above noted, on the side of the defendant, no oral and documentary evidence has been adduced and in the light of the abovesaid factors, the Courts below are found to be justified in disbelieving the abovesaid defence version for challenging the truth and validity of Ex.A1 sale agreement.

15.The sale agreement is dated 11.09.2009. As per the terms of the sale agreement, the parties had agreed that the plaintiff should pay the balance sum of Rs.50,000/- within three years to the defendant and complete the sale transaction. As rightly found by the trial Court, there is no plausible explanation on the part of the plaintiff as to why the period of three years has been fixed for completing the sale transaction. With reference to the same, there is no explanation whatsoever offered by the plaintiff. Though he would claim that only at the instance of the defendant, the period of three years has been fixed for the payment of Rs.50,000/-, however, in the sale agreement, no such reason has been furnished that only at the instance of the defendant, the period of three years had been agreed for the payment of the balance sum of Rs.50,000/-. Therefore, on the face of it, the fixation of the period of three years as the outer limit for the payment of balance sum of Rs.50,000/- and completion of the sale transaction raises a doubt regarding the sale agreement as such. Be that as it may, the plaintiff, in any event, should be always ready and willing to perform his part of the contract right from the inception of the sale agreement and endeavour to pay the balance sum to the defendant at the earliest point of time and call upon the defendant to execute the sale deed as promised by him. On the other hand, though the sale agreement had come to be executed on 11.09.2009 as regards the case of the plaintiff that he had been always ready and willing to perform his part of the contract



from the inception of the sale agreement, with reference to the said case projected by the plaintiff, there is no acceptable materials on the part of the plaintiff, other than his ipsi dixit testimony, and if really, according to the plaintiff, the defendant had been evading to receive the balance sum and execute the sale deed, immediately after the same, the plaintiff should have taken appropriate legal action against the defendant. On the other hand, nearly one year after the execution of the sale agreement, it is found that only on 09.08.2010, the plaintiff has chosen to issue the legal notice calling upon the defendant to receive the balance sum and complete the sale transaction. Inasmuch as the plaintiff had taken his own time in enforcing the sale agreement and when the readiness and willingness on the part of the plaintiff is the sine quo non factor for enabling him to seek and obtain the equitable and discretionary relief of specific performance and when the same is totally lacking in the present case and on the other hand, the plaintiff having taken nearly one year for exhibiting his readiness and willingness and in such view of the matter, as determined by the trial Court, the plaintiff would not be entitled to obtain the relief of specific performance as prayed for.

16.The first appellate Court had accepted the plaintiff's case on the footing that he had come forward with the legal notice within 11 months from the date of the sale agreement. Though time may not be essence of the contract in respect of immovable property, still, the plaintiff as the agreement holder should be always ready and willing to perform his part of the contract and he cannot leisurely take his own time in enforcing the same and in the light of the abovesaid position and as abovenoted, when there is no plausible explanation offered on the part of the plaintiff as to why the parties had fixed the outer limit of three years for completing the sale transaction, considering the principles of law outlined in the decision reported in 2019 (3) CTC 679 (P.Selvaraj Vs. R.Gopal) and in such view of the matter, in my considered opinion, the relief of specific performance as well as the relief of permanent injunction sought for cannot be extended in favour of the plaintiff and it is found that the first appellate Court has failed to consider the aspect of the readiness and willingness on the part of the plaintiff in enforcing the sale agreement in the right perspective for seeking the equitable and discretionary relief of specific performance.

17.Considering the materials placed on record, inasmuch as the plaintiff has established the execution of the sale agreement by the defendant as the power of attorney holder and



also the receipt of Rs.1,50,000/- by him on the date of the sale agreement, in such view of the matter, the trial Court is found to be justified in ordering the refund of the said sum by the defendant to the plaintiff with interest as determined by it and considering the entire facts and circumstances of the case, it is seen that the abovesaid remedy alone been established, the plaintiff would be entitled to obtain the abovesaid remedy only as determined by the trial Court and not the main relief of specific performance and the relief of permanent injunction sought for by him.

18.The counsel for the defendant also contended that the plaintiff is not entitled to seek the relief of specific performance without impleading the owner of the suit property. However, when the materials placed on record go to show that the defendant had entered into the sale agreement as the power of attorney holder of the owner of the suit property and when there is no dispute that the owner of the suit property had executed the power of attorney deed in favour of the defendant marked as Ex.A5, in such view of the matter, it is seen that the plaintiff had chosen to levy the suit against the defendant for appropriate reliefs. Inasmuch as, as above discussed, I have determined that the plaintiff is not entitled to the relief of specific performance and the relief of permanent injunction prayed for by him due to lack of readiness and willingness on the part of the plaintiff in enforcing the sale agreement as well as the plaintiff having failed to dispel the doubt for fixing the outer limit of three years for the performance of the contract and accordingly, the plaintiff is not entitled to obtain the relief of specific performance and in such view of the matter, in my considered opinion, the substantial questions of law (a) & (b) formulated in the matter are not required to be answered, as such, for the disposal of the second appeal.

19.In the light of the discussions made above, the plaintiff having failed to establish his readiness and willingness and also dispel the doubt as regards the fixation of outer limit of three years for performing the contract, in all, the trial Court is found to be fully justified in not granting the relief of specific performance as well as the relief of permanent injunction sought for by the plaintiff and the first appellate Court, without considering the abovesaid aspects, had erred in granting the said reliefs and therefore, it is found that the judgment and decree of the first appellate Court are liable to be set aside, accordingly, the third substantial question of law is answered in favour of the defendant and against the plaintiff.



For the reasons aforesaid, the Judgement and Decree dated 05.12.2015 passed in A.S.No.8 of 2014 on the file of the 3rd Additional District Court, Vellore, are set aside and the Judgment and Decree dated 27.08.2012 passed in O.S.No.99 of 2010 on the file of the Subordinate Court, Vaniyambadi, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sms

To

1.The 3rd Additional District Judge, Vellore at Tirupattur.

2.The Subordinate Judge, Vaniyambadi.

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

+1 cc to Mr.V.Raghavachari, Advocate, S.R.No.51479

+1 cc to Mrs.Elizabeth Ravi, Advocate, S.R.No.51599

Judgment made
in S.A.No.237 of 2016

EV(CO)
SSM(24/10/2019)