



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 1080 of 2019

and

C.M.P.No. 23555 of 2019

Sardar Sait

..Appellant/
1st Respondent/1st Defendant

Vs.

1.Shaheedha

...1st Respondent/Appellant/Plaintiff

2.The Sub-Registrar,
Redhills, Chennai.

..2nd Respondent/2nd Respondent/
2nd Defendant

Prayer in both the appeals: Memorandum of Second Appeals filed under Section. 100 of C.P.C. against the judgment and decree dated 28.03.2019 made in A.S.No. 24 of 2018 on the file of IV-Additional District Court, Ponneri reserving the judgment and decree dated 16.04.2018 made in O.S.No. 234 of 2007 on the file of the Sub-Court, Ponneri.

For Appellant : Mr.M.V.Venkataseshan

For Respondents: Mr. R.Krishnaswamy for Caveator

J U D G M E N T

The first defendant in O.S.No.234 of 2007, who was successful in getting the suit for specific performance dismissed by the Trial Court upon its reversal by the lower Appellate Court has come up with this second appeal.

2. The plaintiff seeks specific performance of the agreement of sale dated 02.02.2007 in and by which the first defendant had agreed to sell his property for a consideration of Rs.7,00,000/- and had received an advance of Rs.2,00,000/-. A period of three months was fixed for performance under the agreement. According to the plaintiff, even though the plaintiff was ready and willing to perform his part of the contract and required the defendant to execute a sale deed on 28.04.2007, the defendant



did not come forward to execute the sale deed. This resulted in issuance of the legal notice on 05.05.2007. The said legal notice was returned with an endorsement "intimation delivered". However, on 16.05.2007, the plaintiff wrote to the Inspector of Police, Kavalankarai Police Station expressing her readiness to pay the balance sale price and for the execution of sale deed. This letter was in response to a complaint made by the defendant. Subsequently, the defendant on 18.05.2007 sent a letter to the plaintiff claiming that he has enclosed a Demand Draft for Rs.2,00,000/- being the advance amount and he had cancelled the agreement. There was no demand draft enclosed. Upon receipt of the same, the plaintiff issued a notice dated 22.05.2007 expressing her readiness and willingness to take the sale deed by paying the balance of sale consideration. The fact that no demand draft was enclosed was also pointed out. Since the defendant did not come forward to execute the sale deed, the plaintiff was forced to approach the Court seeking specific performance.

3. The suit was resisted by the defendant. While admitting the execution of the sale agreement and receipt of the advance, the defendant had claimed that time is the essence of the contract and the plaintiff was not ready and willing to perform his part of the contract within the time stipulated in the agreement and therefore, he had cancelled the agreement. It was also pointed out that the suit is not maintainable, in view of the cancellation of the agreement by the defendant. The Trial Court, on a consideration of the evidence as record agreed with the claim of the defendant that the time is essence of the contract. On the said conclusion, the Trial Court dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No. 24 of 2018.

4. The lower Appellate Court, upon a re-consideration of the evidence came to the conclusion that time cannot be considered to the essence of the contract unless it is specifically agreed between the parties that time should be made the essence of the contract. On a perusal of the terms of the agreement that has been produced as Ex.A1, the lower Appellate Court concluded that it cannot be said the time is essence of the contract. The lower Appellate Court has also taken note of the conduct of the parties and had concluded that the plaintiff was always ready and willing to perform her part of the contract. The conduct of the defendant was also taken note by the lower Appellate Court concluding that the plaintiff would be entitled to decree for specific performance. Aggrieved, the defendant has come with this second appeal.

5. Mr.M.V.Venkataseshan, learned counsel appearing for the appellant.



6. Mr.M.V.Venkataseshan, learned counsel appearing for the appellant would vehemently contend that the agreement dated 02.02.2007 makes the time the essence of the contract. I have perused the agreement. Of course, the agreement fixes a period of three months for performance of the contract but the consequences are not set out in the agreement. It is like any another general sale agreement. The Hon'ble Supreme Court and this Court have repeatedly held that time cannot be considered the essence of the contract in respect of claim relating to sale of immovable property. In view of the law laid down and in the absence of any specific term in the agreement which would support the findings of the Trial Court that the parties intended time to be the essence of the contract, I do not think the conclusion of the Trial Court could be accepted. The lower Appellate Court, on a reading of the agreement concluded that the parties did not intend time to be the essence of the contract. The lower Appellate Court has also taken note of the oral evidence that was available to conclude that the plaintiff always ready and willing to perform his part of the contract.

7. Mr.M.V.Venkataseshan would also contend that since the defendant has cancelled the agreement by issuing Ex.A6 and suit without seeking to set aside the cancellation is not maintainable. The cancellation is an unilateral cancellation. The lower Appellate Court has exercised its discretion in granting the relief of specific performance and I am not able to see any perversity in the conclusions of the lower Appellate Court to enable me to interfere with the findings of the fact recorded by the lower Appellate Court. I do not see any question of law much less a substantial question of law in order to enable me to entertain this appeal. Hence, this appeal fails and accordingly it is dismissed without being admitted.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

kkn

To:-

1. The IV-Additional District Judge,
Ponneri .
2. The Sub-Judge, Ponneri.



+1cc to Mr.M.V.Venkataseshan, Advocate, S.R.No.95887
+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.96331

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S.A.No. 1080 of 2019
and
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SSI (CO)
CB(04/08/2021)