IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-12-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.171 of 2017
And
C.M.P.No.7346 of 2017

Mr.Ajit Siroya ..Appellant/Respondent/Plaintiff

vs.

1.Mr.P.J.Gunasekaran (Deceased)
2.P.G.Sumathi
3.P.G.Sathishkumar
4.P.G.Nagalakshmi
5.P.G.Sureshkumar
6.P.J.Nagaraj @ P.J.Appanraj
7.N.Yamuna
8.N.Karthik
9.N.Dilliganesh ..Respondents/ Petitioners/Defendants
10.P.G.Saraswathi
(R-10 brought on record as LRs of the deceased R-1 vide order of Court made in CMP No.15815 of 2017 dated 14.12.2017) .. 10th Respondents

Appeal Suit is preferred under Section 96 of the Code of Civil Procedure read with Order 41, Rule 1 of Code of Civil Procedure, against the order and decree dated 17.04.2015 made in I.A.No.134 of 2012 in O.S.No.5870 of 2012 on the file of the learned XV Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.V.R.Appaswamee
For Respondent-1 : Died.
For Respondents 2 to 8 : Mr.N.R.Anandha Ramakrishnan
For Respondent-9 : No Appearance

J U D G M E N T

The order dated 17.04.2015 passed by the Trial Court in an Interlocutory Application No.134 of 2012 in Original Suit No.5870 of 2012, is under challenge in the present appeal suit.

2. The appellant in the appeal suit is the plaintiff in the suit and the respondents in the appeal suit are the defendants in the suit.

3. For the sake of convenience, the ranking of the parties in the appeal suit would be referred to as per their ranks in the Trial Court.

4. The suit was instituted for the relief of specific performance. On receipt of summons, the defendants filed Interlocutory Application to reject the plaint under Order VII, Rule 11 read with Section 151 of the Code of Civil Procedure on two grounds. Firstly, the suit is filed beyond the period of limitation. Secondly, the suit is hit by Order II, Rule 2 of the Code of Civil Procedure.

5. The contentions of the defendants before the Trial Court are that the Sale Agreement dated 05.03.1997 was made in favour of the plaintiff and three months time was stipulated for completion of the sale transaction. Time being the essence of contract in respect of the said Sale Agreement dated 05.03.1997.

6. As per the Sale Agreement, the plaintiff was never ready and willing at any point of time to discharge his obligations. In the legal notice dated 21.10.1997 itself, the plaintiff had categorically informed the defendants that the Sale Agreement dated 05.03.1997 could not be completed and had sought for refund of the sale advance made by the respondent. Even the plaint averments would reveal that the limitation for filing the suit had lapsed in the year 2000 itself.

7. The part payments referred are not true. The payments made in the year 2008 towards property tax arrears by the plaintiff could not be construed as sale advances and would not provide any thing for the purpose of institution of the suit for specific performance of Sale Agreement dated 05.03.1997. The fact remains that the suit was instituted in September 2012 for specific performance of Sale Agreement dated 05.03.1997 and therefore, the suit is barred by limitation and is liable to be rejected.

8. Admittedly, the suits filed by Arulmighu Karpaga Vinayagar Temple in O.S.No.1381 of 2003 and O.S.No.2294 of 2005. These suits were of the years 2003 and 2005 and the Sale Agreement was of the year 1997. Thus, the Sale Agreement had become unenforceable.

9. It is contended that the defendants issued a legal notice on 06.03.2010 to the plaintiff to execute and register the Deed of Cancellation of Sale Agreement dated 05.03.1997.

Upon receipt of the legal notice, Smt.Pushpa Devi Siroya realising that the Sale Agreement in her favour was a dead letter and legally unenforceable had amicably cooperated for cancellation of her Sale Agreement. Thereafter, the undivided share of Smt.Pushpa Devi Siroya mentioned in the Sale Agreement was validly conveyed to the 10th defendant in the suit.

10. The plaintiff filed O.S.No.4269 of 2010 against the defendants on the file of the learned IV Assistant Judge, City Civil Court, Chennai for permanent injunction to restrain the defendants from alienating or encumbering the suit property. The cause of action claimed by the plaintiff in the suit is similar to the cause of action claimed in O.S.No.4269 of 2010. Thus, the plaintiff had deliberately omitted to seek the relief of specific performance on the Sale Agreement dated 05.03.1997 in O.S.No.4269 of 2010. There is no fresh cause of action in the suit and accordingly, a petition was filed to reject the plaint.

11. The plaintiff filed counter-statement disputing the contentions raised by the defendants. It is contended that the plaintiff had never sought for refund of the advance amount at any point of time. The limitation is to be calculated from the year 2008 as the plaintiff had paid the property tax in respect of the suit schedule property. Thus, the suit was filed well within the time limit and therefore, the interlocutory application is to be rejected.

12. The points for consideration before the Trial Court are:

> "(1) Whether the suit is barred by limitation ?
> (2) Whether the suit is hit under Order II Rule 2 of Civil Procedure Code ?
> (3) Whether the plaint is deserves to be rejected ?
> (4) To what relief the defendants are entitled ?"

13. The Trial Court with reference to the documents made a finding that admittedly the defendants entered into a Sale Agreement dated 05.03.1997 in favour of the plaintiff regarding the undivided half (½) share in the suit schedule property and the plaintiff was never ready and willing at any point of time to perform his part of the contract under the Sale Agreement. The plaintiff by a legal notice dated 27.10.1997 had categorically informed the defendants that the Sale Agreement dated 05.03.1997 could not be completed and had sought for refund of sale advance made by the plaintiff. Thus, the limitation for filing the suit had lapsed in the year 2000 itself. Admittedly, the suit was instituted in the year 2012

i.e., after the lapse of about 12 years and therefore, the suit is hopelessly barred by the limitation.

14. The other contentions regarding the two suits filed by the Executive Officer of the temple may not have much relevance. In respect of the issue regarding the limitation raised by the respondent/ petitioner. The contention of the appellant/respondent that he paid property tax on 05.09.2008 and therefore the period of limitation is to be reckoned from 05.09.2008 for the purpose of calculating the period of limitation.

15. The Trial Court considered these aspects elaborately with reference to the facts and circumstances placed by the parties and arrived a conclusion that the fact regarding the suit Sale Agreement was admitted as 05.03.1997 and the other contentions that the property tax paid for the year 2008, cannot be construed as a cause of action for the purpose of saving the period of limitation.

16. When the property itself is not transferred in the name of the appellant/respondent, he paying the property tax, would not arise at all. Even in case he paid the property tax and produced the receipt, such would not provide a cause of action for the purpose of institution of the suit. If such a practice is accepted by the Courts, then any party to such Sale Agreement can simply pay the property tax or other taxes in respect of the suit schedule property and claimed that the cause of action should be taken into account from the date of payment of property tax. Once the defendants would not be the owner of the suit schedule property and they are only the agreement holder, then the payment of property tax would not be granted to save the limitation as far as the institution of the suit is concerned, more specifically, for specific performance. Thus, the Trial Court has rightly arrived a conclusion that the payment of property tax cannot be a ground for saving the limitation and accordingly, rejected the contentions of the appellant/respondent.

17. With reference to issue No.2, the Trial Court found that the suit is not hit by Order II, Rule 2 of Code of Civil Procedure. This Court is of the considered opinion that further discussions in this aspect may not be required as the suit is hopelessly barred by limitation and under these circumstances, this Court has no hesitation in coming to the conclusion that the Trial Court has rightly considered the issues with reference to the documents and the facts and circumstances and there is no perversity or infirmity as such.,

18. This being the factum, the fair and decretal order passed in I.A.No.134 of 2012 in O.S.No.5870 of 2012 on the file of the learned XV Additional City Civil Court, Chennai is confirmed and consequently, the present appeal suit stands dismissed. However, there shall be no order as to costs. Consequently, connected civil miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

The XV Additional Judge,
City Civil Court,
Chennai.

Copy to
The Section Officer
VR Section , High Court, Madras.

+1 cc to Mr.V.R.Appaswamee, Advocate Sr.No. 106318

A.S.No.171 of 2017

VGI(CO)
RMP(21/07/2020)