

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-02-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.316 of 2013

1.S.Lakshmi

2. S.Lavakumar

3. Deepthi

Rep by their Power of
Attorney Agent, A.Jayam

.... Appellants/Plaintiffs

vs.

1.Janagammal

2.Kuppammal

3.G.Vasantha

4.Karunabai

5.Krishnamurthi

6.Pankajam

7.Gopi

8.Panneer Selvam

.... Respondents/Defendants

Appeal filed under Section 96 of the Code of Civil Procedure, 1908, read with Order 41, Rule 1 of the Code of Civil Procedure, 1908 against the judgment and decree made in O.S.No.418 of 2006 on the file of the Additional District Judge, Kancheepuram at Chengalpet, dated 28.02.2013.

For Appellant : Ms.AL.Ganthimathi

For Respondents: Mr.R.Thirugnanam (for R1 to R7)

Mr.K.P.H.Thulasiraman (for R8)

J U D G M E N T

The appeal suit on hand is directed against the judgment and decree dated 28.02.2013, passed in O.S.No.418 of 2006. The plaintiffs are the appellants in the appeal suit and who instituted a suit for specific performance.

2. The facts and briefs set out in the brief are as under:-

The suit item 5 to 8 of the properties belonged to the first defendant and item 1 to 4 originally belonged to Balarama Naidu, husband of first defendant, father of defendants 2 to 5 and grand father of defendants 6 to 7. When Balarama Naidu was alive, both himself and No.1 of the defendants offered to sell the suit properties to one Subramania Naidu, husband of first plaintiff and father of plaintiffs 2 and 3, Subramania Naidu agreed to purchase the same and the price was fixed at Rs.10,000/- per cent and Subramania Naidu paid an advance of Rs.2,00,000/- on 28.10.2000. An agreement of sale was executed by Subramania Naidu as Purchaser and Balarama Naidu and first defendant as sellers in respect of the suit properties; A time limit of 11 months was fixed and the sellers must be ready to receive the balance and register the sale deed; Possession was handed over to the purchaser and he was permitted to prepare layouts, obtains licenses for the Same etc., within that period Balarama Naidu and first Defendant received a sum of Rs.50,000/- towards sale price and endorsed the receipt of the same on the agreement on 27.04.2001 again on 09.01.2002 they received Rs.1,50,000/- and endorsed the payment on the agreement. Both of them were postponing the completion of the contract though Subramania Naidu was always prepared to complete the same; It appears that Balarama Naidu was not in good healths Hence, he had executed a will in favour of the first defendant leaving all his properties in her favour. Even otherwise on his demise, she had become co-owner in respect of item 1 to 4 hereunder. Subramania Naidu approached first defendant and requested her to arrange for the sale early. She promised to do so and for her urgent necessity she received Rs.50,000/- on 07.08.2004 and endorsed the said payment also on the agreement Subramania Naidu has been ready to perform the contract throughout. Subramania Naidu passed away and this plaintiff are his legal heirs and have succeed to all his assets and rights inclusive of his rights under the above agreement. Plaintiffs made defendants aware about the passing away of Subramania Naidu and their readiness to perform the contract. But the defendants were evasive and first defendant was not properly responding. Hence, plaintiffs finally issued a registered notice to all the defendants on 29.05.2006 under registered post informing them of the readiness and willingness on the part of the plaintiffs to perform their part of the contract fixing 15.06.2006 as the date for execution and registration of sale deed and informing defendants that no extension of time will be granted. But the notices were returned unserved. Hence plaintiff sent the Notices again by certificate of Post, the notice were returned. The defendants have deliberately avoident receipt of the notice with

ulterior motives. Taking advantage of the recent escalation of prices, they are attempting to wriggle out of the contract. The plaintiffs are therefore filling this suit for specific performance of the above contract.

3. The 5th defendant filed a written statement disputing the contentions and denying the allegations set out in the plain reads as under:-

The suit is unsustainable in law and on facts. The allegations in paragraph III (1) of the plaint are denied. The allegations in Paragraph III (4) of the plaint are false and are denied. The allegations in paragraph III (5) of the plaint are denied. As per the terms of the agreement of sale dated 28.10.2000, it was agreed by late Subramania Naidu, that time was of the essence of the contract, that it had to be performed within 11 months and that the agreement will not be valid after 31.10.2001, Subramania Naidu did not perform his part of the agreement and he defaulted. The allegation that the plaintiffs after the demise of Subramania Naidu, were ready to perform the contract, is false. The late Balarama Naidu and the 1st defendant gave a registered power of attorney, dated 01.11.2000, to Subramania Naidu, for getting approval of layout to be formed. Since Subramania Naidu did not act as per the terms and conditions in the power, the power was revoked by Balarama Naidu and the 1st Defendant, under a registered deed, dated 02.11.2001, This itself would make it clear that Subramania Naidu did not act up to the terms of the agreement. The 1st defendant and Balarama Naidu, through their Advocate, Sri. P.S.Jagannathan, issued a registered notice dated 27.09.2001, to Subramania Naidu, pointing out that a cheque for Rs.50,000/- dated 7.11.2000, and another cheque for Rs.50,000/- dated 12.11.2000 given by Subramania Naidu drawn on the Bank of Baroda, Choolaimedu Branch, Chennai - 94, had bounced back and also mentioned in the notice that the agreement of sale was cancelled, since Subramania Naidu did not perform his part of the contract. Time was of the essence of the contract of sale agreement dated 28.10.2000. Prices have been increasing by leaps and bounds for lands, in the locality. That was the principal reason why time was made the essence of the contract. On 21.01.2004, the 1st defendant executed a registered settlement deed, in favour of the 5th defendant B. Krishnamurthi, settling plaint items 4 to 8 and another item in favour of the 5th defendant and delivered possession to him. Under a registered sale deed and delivered possession to him; Under a registered sale deed dated 04.07.2005, the 5th defendant sold these interns in favour of one K. Panneerselvam son of Kannan, for valuable consideration and delivered possession to him. K. Panneerselvam son of Kannan, for valuable consideration and delivered possession to him K. Panneerselvam has been in possession and enjoyment of these items ever since the purchase. The

allegations in paragraph III (6) and (7) of the plaint are denied. The suit is barred by limitation. The plaintiffs are not entitled to a decree for specific performance, or for refund of the alleged amount of Rs.4,50,000/-. The suit has not been properly valued and proper court fee has not been paid. The plaintiffs are not entitled to any damages. The schedule of property given in the plaint is not correct. The suit is bad for non-joinder of necessary parties. The defendant, therefore prays that this court may be pleased to dismiss the suit with costs.

4. The other defendants 1,4,6 and 7 also filed a written statement by adopting the written statement filed by the 5th defendant. The 8th defendant who is the subsequent purchaser purchased the suit schedule property during the year 2005, filed a separate written statement and his contentions are narrated as under:-

As the purchaser of a portion of the suit property this defendant adopts the written statement of his vendor and predecessor in title viz, the fifth defendant. The defendant had purchased from the 5th defendant krishnamoorthy a total extent of 0.97 cents only comprised in S.Nos.50 B/2,50, B/350, B/6, 50B/7, 52/3 and 53 C/2 under a duly executed sale deed dated 04.07.2005 registered as Document No.5877 of 2005. He is therefore not concerned with the remaining extent of the suit property. The alleged sale agreement dated 28.10.2000 on which the suit is based is neither legal, nor valid nor subsisting on the date when the purchased the aforesaid extent of the suit property. The allegation as to the payment of Rs.50,000/- and endorsement on 07.08.2004 is false and has been deliberately concocted to save limitation. Further there appears to be no such endorsement by any one of the other legal heirs of Balarama Naidu, defendants 2 to 7 in the suit and as such the suit is ex facie barred by limitation and is liable to be rejected even at the threshold. In any event he is a bonafide purchaser for value. It is hereby specifically denied that the plaintiff had informed about the existence of the sale agreement and that this defendant was very well aware of the same and that he played a fraud on the plaintiffs and created a sham and nominal sale deed in his favour. The suit property belonged to the joint family consisting of Balarama Naidu, his wife the 1st defendant and his two sons, 5th defendant herein and the deceased Ranganatha Naidu, whose legal heirs are the defendants 6 and 7 herein. While a portion of the said property measuring a total extent of 0.65 cents and comprised in S.Nos.50/B/4, 50/B/9, 52/1 and 52/3 was inherited as ancestral property, other portions were purchased from and out of the above ancestral nucleus. Though all the said purchases were made in the name of the first defendant they were intended and made for the benefit of the joint family only and

what is more they were thrown in the hotchpotch and treated and dealt with as joint family property. As such any sale agreement and any endorsement made thereon by the deceased Balrama Naidu and the first defendant is invalid and inoperative and will not bind the estate of the joint family and the members there of including the 5th defendant. In the said circumstances the sale made by the 5th defendant in favour of this defendant, pursuance to a settlement deed executed by the first defendant by way of abundant caution is perfectly legal, valid and binding on all including the plaintiffs. The plaintiffs are therefore not entitled to any one of the relief s sought for in the plaint. The defendant therefore prays that the suit may be dismissed with costs.

5. The Trial Court framed issues as to whether the plaintiff is entitled for specific performance of contract as prayed for in the suit, whether the time is essence of contract as pleaded by the defendants, Whether the settlement and sale deeds are binding on the plaintiffs, Whether the suit is barred by limitation and to what relief he is entitled for.

6. Again the Trial Court framed the issues on 08.08.2009 as follows:-

1. Whether the plaintiffs are entitled for specific performance.
2. Whether the plaintiffs are entitled for refund of advance of money with future interest of 12% per annum.
3. Whether time is the essence of contract.
4. Whether the 8th defendant is a bonafide purchaser for value.
5. To what relief he is entitled for.

7. Subsequently, the Trial Court strike of certain issues and recasted issues by framing additional issues 1,2 and 4. Accordingly, the following issues are framed:-

1. Whether the plaintiffs are entitled for refund of advance money with future interest at 12% per annum.
2. Where the 8th defendant is a bonafide purchaser for value.
3. Whether Subramania Naidu had been ready to perform his part of contract.
4. whether the plaintiffs after the demise of Subramania Naidu were ready and willing to perform their part of contract.

8. On the side of the plaintiff, one witness has been examined as PW1 and 7 documents have been marked as Ex.A1 to Ex.A7 and on the defendants side 1st defendant and other two witness have been examined as DW1 to DW3 and 6 documents have been marked as Ex.B1 to Ex.B7. With reference to the issue No.2, the plaintiff contended that the suit item Nos.5 to 8 of the suit properties belonged to the first defendant and the suit item Nos.1 to 4 belonged to her husband Balarama Naidu and that the husband of the first plaintiff and the father of the plaintiff Subramania Naidu entered into sale agreement on 28.10.2000 in respect of the suit mentioned properties and the Subramania Naidu agreed to purchase at the rate of Rs.10,000/- per cent and that he paid the advance of Rs.2,00,000/- on the date of agreement. The plaintiff was in possession of the suit properties and the said suit properties were handed over to the Subramania Naidu, in order to prepare layout and obtain license for the same and that the Balarama Naidu and the first defendant received a sum of Rs.50,000/- on 27.04.2001 and a sum of Rs.1,50,000/- on 09.01.2002 and after the death of Balarama Naidu, the first defendant received further sum of Rs.50,000/- on 07.08.2004 and Subramania Naidu had been ready to perform his part of contract till his death and thereafter, the first defendant and his other legal heirs, defendants 2 to 7 refused to execute the sale agreement after receiving the balance sale consideration amount, as per the terms and conditions of the plaint suit sale agreement.

9. The contentions of the plaintiff was that the time was not the essence of contract, as the defendant had received advance on many occasions in part. Therefore, the suit is to be entertained and the plaintiffs are entitled for the relief of specific performance.

10. Considering the arguments, this Court is of the considered opinion that grant of relief of specific performance is a discretionary one and the Courts are bound to consider all the factual circumstances as well as the conduct of the parties so as to ensure that the plaintiff is entitled for the relief of specific performance. The relief is being a discretionary one, the Courts are bound to ascertain whether the parties have intended to proceed with the sale or not.

11. It is not sufficient the plaintiff to prove that the sale agreement is the registered document and the contract is not voidable. Even in such circumstances, the relief of specific performance can be declined by the Courts as the relief is equitable and if any inequality or prejudice is likely to be caused, then the Courts are empowered to decline the relief of

specific performance. Thus, it is not sufficient for the plaintiff to establish that the contract is not voidable, but it is to be established that the intention and conduct of the parties also with reference to their transaction as well as they have intended to execute the sale. If there is some doubt with reference to the transaction and the nature in which the document are registered as well as the manner in which the sale consideration is fixed, then the Courts are well within its powers to decline the relief of specific performance.

12. In the present case, the husband of the first plaintiff and the father of the plaintiff Subramania Naidu entered into sale agreement on 28.10.2000 in respect of the suit mentioned properties and the Subramania Naidu agreed to purchase at the rate of Rs.10,000/- per cent and that he paid the advance of Rs.2,00,000/- on the date of agreement. The plaintiff was in possession of the suit properties and the said suit properties were handed over to the Subramania Naidu, in order to prepare layout and obtain license for the same and that the Balarama Naidu and the first defendant received a sum of Rs.50,000/- on 27.04.2001 and a sum of Rs.1,50,000/- on 09.01.2002 and after the death of Balarama Naidu, the first defendant received further sum of Rs.50,000/- on 07.08.2004 and Subramania Naidu had been ready to perform his part of contract till his death and thereafter, the first defendant and his other legal heirs, defendants 2 to 7 refused to execute the sale agreement after receiving the balance sale consideration amount, as per the terms and conditions of the plaint suit sale agreement.

13. Looking into the nature of transaction as well as the conduct of the parties and the defense taken by the first defendant who is the owner of the suit mentioned property, this Court is of the considered opinion that the Trial Court has rightly rejected the relief of specific performance as the parties had not intended to proceed with the sale. This apart, it is brought to the notice of this Court that the properties situates in Thailavaram village, Chengalpattu Registration District and the land measuring 1 acre 62 cents. The sale consideration fixed in the sale agreement dated 28.10.2000 is Rs.16,20,000/- and undoubtedly, not in commensuration with the actual market value of the said property. This being the factum, the Trial Court had rightly rejected the relief of specific performance and the appellants would not have intended to proceed with the sale, as the sale consideration itself is not in consonance with the market value prevailing in Thailavaram village, Chengalpattu Registration District, as of now and even at the time of execution of the sale agreement in the year 2000. This apart, the conduct of the plaintiffs establishes that they are not the bonafide purchasers of the suit property and there

was no spontaneous approach in respect of establishing their readiness and willingness.

14. The portion of the suit mentioned property was already sold in favour of the 8th respondent Mr. Panneer Selvam. However, the Trial Court has not considered all these aspects while arriving the findings.

15. Even recently, the Hon'ble Supreme Court of India, in the case of Surinder Kaur Vs. Bahadur Singh, reported in (2019) 8 SCC 575, wherein the Hon'ble Supreme Court held that, "a perusal of Section 20 of the Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the court is not bound to grant him the relief. True it is that the court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub-clause (c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the court can refuse to grant such discretionary relief. Explanation (2) to the section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff."

16. Under these circumstances, this Court is of the considered opinion that in the event of granting the specific performance, it will be inequitable and result in unjust enrichment on the part of the plaintiffs. Under these circumstances, this court is inclined to agree with the finding of the Trial Court as the Trial Court has considered the ground of readiness and willingness in a right perspective and in consonance with the documents and evidences produced by the parties and on the established principles. Thus, the suit is dismissed with reference to the relief of specific performance.

17. As far as the alternate relief of refund of advance amount is concerned, though the plaintiff has prayed for an alternate relief, this Court has to consider the same, in view of the fact that the very same unjust enrichment cannot be permitted on the part of the respondent also. In the event of allowing the respondent to retain the advance amount, the same would amount to an unjust enrichment and therefore under those circumstances the Courts are bound to consider the general relief to be granted based on Order VII Rule 7 of the Code of Civil Procedure which enumerates that "every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for

general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement " and the same Rule shall apply to any relief claimed by the defendant in his written statement. The very spirit of Order VII Rule 7 of Code of Civil Procedure is to be considered. Generally, the practice followed in the plaint relief column is that "granting such other relief or relief as the Court may deem fit, proper, just and necessary in the circumstances of the case and render justice". Such a general relief sought for is to be considered, so as to avoid unjust enrichment by either of the parties. Thus the relief is to be moulded under Order VII Rule 7 for the purpose of refund of advance amount as the same is consequential. When the suit for specific performance is denied, then return of advance could be considered as consequential relief and the same cannot be denied to the respondent in the present case. Under these circumstances, the following orders are passed;

(i) The judgment and decree dated 28.02.2013 passed in O.S.No. 418 of 2006 is partly quashed.

(ii) The appellants are entitled for an alternate relief of refund of the entire advance amount. Accordingly, the respondents are directed to refund the advance amount of Rs.4,50,000/- with interest at the rate of 10% per annum from the date of filing of the plaint till the date of decree and thereafter 6% per annum till the date of realisation of the said amount.

(iii) The respondents are directed to settle the said advance with interest within a period of three months from the date of receipt of a copy of this judgment.

18. With these directions, the Appeal Suit stands partly allowed. No Costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Additional District Judge,
Chengalpattu.

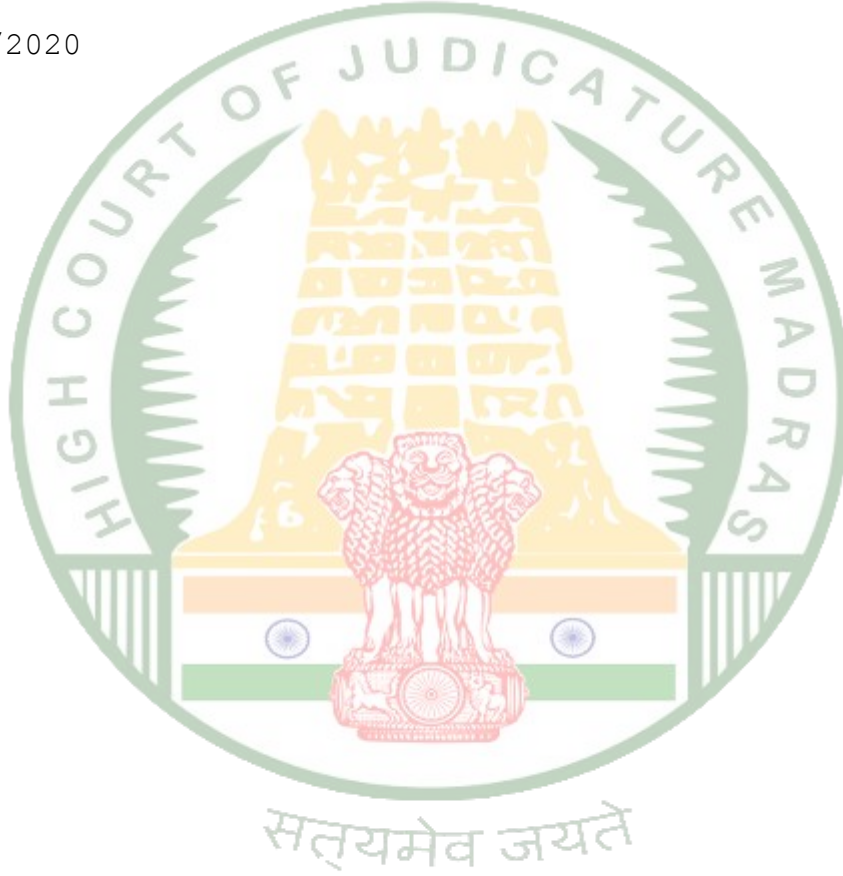
Copy to

The Section Officer,
VR Section, Madras High Court.

+1cc to M/s.R.Thirugnanam, Advocate Sr.13133
+1cc to M/s.A.L.Ganthimathi, Advocate Sr.13644
+1cc to M/s.K.P.H.Thulasiraman, Advocate Sr.13332

A.S.No.316 of 2013

cnr[co]
srg 23/12/2020



WEB COPY