

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.226 of 2016

P.Padmanabhan

...Appellant/Plaintiff

Vs.

1.M.Jothi

2.M.Venkatesh

3.M.Seema

...Respondents/Defendants

Prayer : First Appeal filed against the Judgment & Decree dated 11.09.2015 passed in O.S.No.320 of 2006 on the file of the 1st Additional District Court, Coimbatore.

For Petitioner : Mr.S.Mukunth
for M/s.Sarvabhauman Asso.

For Respondents: Mr.S.Silambanan
Senior Counsel
for M/s.Kaviyasilambanan
Associates for RR 1 to 3

J U D G M E N T

The appeal suit is directed against the judgment and decree dated 11.09.2015 passed in O.S.No.320 of 2006 on the file of the I Additional District Court, Coimbatore.

2. The plaintiff is the appellant in the appeal suit, who instituted a suit for specific performance and also for alternative relief of direction directing the defendants to pay a sum of Rs.11,57,695.00 along with subsequent interest thereon at 24% per annum on Rs.4,95,000/- to the plaintiff from the date of suit till the date of realization and further prayed to grant a decree over the property and for an injunction.

3. The facts in nutshell as narrated in the plaint are that one Mr.C.K.Manickam son of C.M.Krishnan, was the absolute owner of the suit schedule property. He acquired title through registered sale deed Document No.2479 of 1998 dated 27.05.1988 and he was in possession and enjoyment of the property as an

absolute owner. The said Mr.Manickam, had delivered a possession of the property mentioned in the suit, after receiving a sum of Rs.2,50,000/- from the plaintiff on 02.12.1997. Further, the plaintiff has paid a sum of Rs.1,00,000/- on 02.12.1997 and sum of Rs.10,000/- on 01.03.2000. Therefore, the plaintiff has paid a total sum of Rs.3,60,000/- to the said Manickam and the said payment was acknowledged by the receipt executed by Mr.Manickam in favour of the plaintiff on 01.03.2000. The rent payable by the plaintiff for his occupation property is to be adjusted towards the interest payable for the above said amount of Rs.3,60,000/- by the said Manickam. The said transaction was evidenced by the agreement of Bogyam entered between the plaintiff and the said Manickam on 01.03.2000. Accordingly, the plaintiff is in possession of the suit property from 02.12.1997 onwards.

4. The said Manickam approached the plaintiff and offered to sell his property covered under his purchase deed dated 27.05.1988 and the plaintiff also agreed to purchase the suit schedule property from the said Manickam. Accordingly, a sale agreement was entered into between the parties on 21.10.2002. The total sale consideration was fixed at Rs.10,90,000/-. The plaintiff has paid an advance amount of Rs.4,35,000/- on 21.10.2002 and the receipt of the said amount was acknowledged by the said Manickam in the sale agreement dated 21.10.2002. The plaintiff has stated that he had paid a further advance amount of Rs.15,000/- on 19.05.2003, Rs.18,000/- on 07.07.2003, Rs.12,000/- on 23.07.2003, Rs.10,000/- on 05.09.2003, Rs.5,000/- on 18.11.2003 and all these payments are acknowledged by the said Manickam, on the backside of the sale agreement itself. Accordingly, Mr.Manickam had received a sum of Rs.4,95,000/- and it was further agreed between Mancikam and the plaintiff that the sum of Rs.3,60,000/- was received by Mancikam in pursuance of the Bogyam Agreement, shall be adjusted towards the sale consideration, at the time of execution of the sale deed. Thus, the plaintiff has paid a total sum of Rs.8,55,000/- as part of the sale consideration and the balance sale consideration payable is only Rs.2,35,000/- to the said Manickam. The plaintiff further states that he was always ready and willing to perform his part of the contract and demanding for execution of the sale deed. However, the said Manickam, with whom the original sale agreement was entered into, was evading the execution of sale deed and thereafter, the plaintiff was constrained to issue notice to the said Manickam and instituted a suit for specific performance.

5. The said Manickam, even before institution of the suit, passed away. Thus, the suit was instituted against the legal heirs of the said Manickam and the first defendant filed a written statement denying the allegations set out in the plaint. The defence in the written statement are that the first

defendant husband and the father of the defendants 2 and 3, offered to sell the suit property and the plaintiff agreed to purchase the same. The sale price was fixed at Rs.10,90,000/- (Rupees Ten Lakh Ninety Thousand only) and at the request of the plaintiff, the mortgage money of Rs.3,60,000/- was treated as part of advance amount and the plaintiff had given an additional amount of Rs.75,000/- totaling to Rs.4,35,000/- as advance and part of sale consideration and likewise the sale agreement was entered on 21.10.2002. Thus, on the date of the sale agreement, the mortgage dated 01.03.2000 got terminated and the plaintiff had become a tenant in the downstairs portion of the suit property, which is in his occupation and thereby, he is supposed to pay the rent at Rs.4,000/- per month. The plaintiff is in arrears of rent totaling to Rs.1,81,460/- from 21.10.2002 to till date and also liable to pay the further rent till vacation of the portion of house.

6. The first defendant has stated that a further advance payment as detailed hereunder was also received by the defendants in order to meet out late C.K.Manickam's urgent expenses:

SL.NO	DATE	AMOUNT
1.	19.05.2003	Rs.15,000/-
2.	07.07.2003	Rs.18,000/-
3.	23.07.2003	Rs.12,000/-
4.	05.09.2003	Rs.10,000/-
5.	18.11.2003	Rs.5,000/-

7. Accordingly, the plaintiff has paid a total sum of Rs.4,95,000/-, which includes the mortgage money also. It is disputed that the plaintiff had never paid a total sum of Rs.8,55,000/- as part of sale consideration and the other contention raised by the plaintiff was also denied. The first defendant has stated that they expressed their unwillingness to register the sale deed and they have not intended to sell the property to any third party and all such allegations set out in the plaint are false.

8. Based on the facts and circumstances as stated in the plaint as well as in the written statement, the trial Court framed the issues as to whether the suit for specific performance filed in time? whether the plaintiff has paid a sum of Rs.8,55,000/- towards part payment of sale consideration? whether the plaintiff improved the suit property by putting up first floor? whether the endorsement on the back of sale deed agreement, is true and genuine? whether the defendant is entitled for counter claim against the plaintiff for rent and

damages if yes, what is the quantum of counter claim to be allowed? whether the plaintiff is entitled for the alternative relief of refund of advance money with interest? what relief the plaintiff is entitled?

9. The plaintiff examined himself as P.W.1 and marked as Ex.A1 to A14. One Mr.P.Mariappan was examined as P.W.2 and through him, Ex.A15 document was marked. The witness P.W.1 was recalled and Ex.A16 to Ex.A18 were marked. One Mr.Nagarajan was examined as P.W.3 and Mr.Chandrasekar was examined as P.W.4. On the side of the defendants, the first defendant examined himself as D.W.1 and marked Ex.B1 and Mr.Gopalakrishnan was examined as D.W.2 and through him, Ex.B2 document was marked. Shri.N.Parvathi was examined as D.W.3 and the Auditor of Shri Vignesh Jewellery, namely, Mr.Shanmugam was examined as D.W.4, and through him, Ex.B3 and Ex.B4 were marked. During the cross-examination, Ex.A19 and Ex.A20 were also marked. Accordingly, on the side of the plaintiffs, P.W.1 to P.W.4 are examined and on the side of the defendants, D.W.1 to D.W.4 are examined.

10. With reference to issue No.1, the trial Court arrived a finding that the suit was instituted within the period of limitation, as it was filed within the period of three years.

11. As far as the issue No.2 is concerned, the trial Court considered the bogyam amount of Rs.3,60,000/- paid by the plaintiff in favour of Mr.Manickam and further advance amount of Rs.4,95,000/- was also paid, as per the sale agreement. However, the total advance amount as stated in the plaint (i.e.,) Rs.8,55,000/-, has not been stated in Ex.A2/Sale agreement. As per Ex.A2/Sale agreement, the advance amount of Rs.4,95,000/- alone was acknowledged and the said bogyam amount has not been adjusted towards the advance amount paid for the purpose of execution of sale. As per the suit sale agreement, the advance amount of Rs.4,95,000/- was paid to Mr.Manickam by the plaintiff.

12. With reference to issue No.3, regarding the improvements made by the plaintiff in the suit property, the trial Court arrived at a conclusion that there is no such written permission or approval obtained and accordingly, the plaintiff cannot claim any right in respect of any such improvements, if at all made in the suit schedule property.

13. As far as the issue No.4 is concerned, time for execution of the sale deed was extended as per Ex.A1 Sale agreement dated 03.06.2004. The parties to the agreement agreed to extend the time for execution of the sale deed and the said factum was established by the plaintiff. Thus, the trial Court arrived at a conclusion that the extension of time agreed between the parties are true and genuine. Regarding the payment of rent to the defendants by the plaintiff in respect of portion

of the property occupied, the trial Court held in issue No.5 that Rs.3,60,000/- was paid as bogyam and therefore, claiming the rent towards the said portion is not proper.

14. Issue No.6 framed is whether the plaintiff is entitled for alternative relief of refund of advance amount along with interest or not. The Trial Court considered the suit schedule property/Ex.A2 as well as extension of time agreed between the parties and the advance amount of Rs.4,95,000/- mentioned in the suit sale agreement and arrived at a conclusion that the plaintiff is entitled to get the refund of advance amount of Rs.4,95,000/- along with interest at the rate of 12% per annum from the date of plaint.

15. The trial Court found that the plaintiff is not entitled for the relief of specific performance as the plaintiff has not established that he was ready and willing to purchase the suit property and in the absence of any such proof that the plaintiff was ready and willing to purchase the property, the issue was held against the plaintiff. The suit sale agreement was signed between the parties on 21.10.2002 and the sale deed was not executed within the time limit fixed at the first instance. Extension was granted. Extension was agreed between the parties. The suit was instituted on 05.06.2006, after a lapse of more than 3 years from the date of the suit sale agreement. Under these circumstances, the trial Court found that the plaintiff has not established any readiness and willingness so as to grant the relief of specific performance. However, granted the alternative relief of refund of advance amount along with interest at the rate of 12% per annum.

16. This Court is of the considered opinion that the relief of specific performance being discretionary power, the Courts are bound to consider the facts and circumstances as well as the intention of the parties to complete sale transaction.

17. With reference to grant of relief of specific performance, the Supreme Court of India in the case of Surinder Kaur v. Bahadur Singh, (2019) 8 SCC 575, made an observation 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."

18. In respect of present case on hand, the suit sale agreement was admitted between the parties. The advance amount of Rs.4,95,000/- was also admitted and the plaintiff was in possession of the suit property by paying the bogyam amount of Rs.3,60,000/-. This being the factum established and further there was an enormous delay in instituting a suit for specific performance, the trial Court arrived at a conclusion that the plaintiff is not entitled for the relief of specific performance and entitled for the relief of refund of advance amount with interest.

19. It is brought to the notice of this Court that the suit mentioned property situates in the main location of Coimbatore city and the market price is for higher than that of the price agreed between the parties, during the year 2002. At this length of time, in the event of considering the relief of specific performance, inequity would arise in respect of defendants who are all legal heirs of the original owner/late Mr.Manickam, with whom the plaintiff entered into sale agreement. This apart, the original sale agreement was entered into between the plaintiff as well as late Mr.Manickam and the suit itself was filed, after the death of the original signatory to the agreement holder and the legal heirs of late Mr.Manickam have decided not to sell the suit property. This being the factum, this Court is not inclined to grant the relief of specific performance, however, the alternative relief granted by the trial Court is proper and in accordance with law and there is no infirmity or perversity as such. Accordingly, the judgment and decree dated 11.09.2015 passed in O.S.No.320 of 2006 is confirmed and consequently, the first appeal stands dismissed. No costs.

20. The respondents are directed to refund the said amount as per the decree with interest within a period of four months from the date of receipt of a copy of this judgment. On receipt of advance amount with interest, the appellant/plaintiff is directed to vacate the premises and hand over the possession to the defendants.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

ssb

To

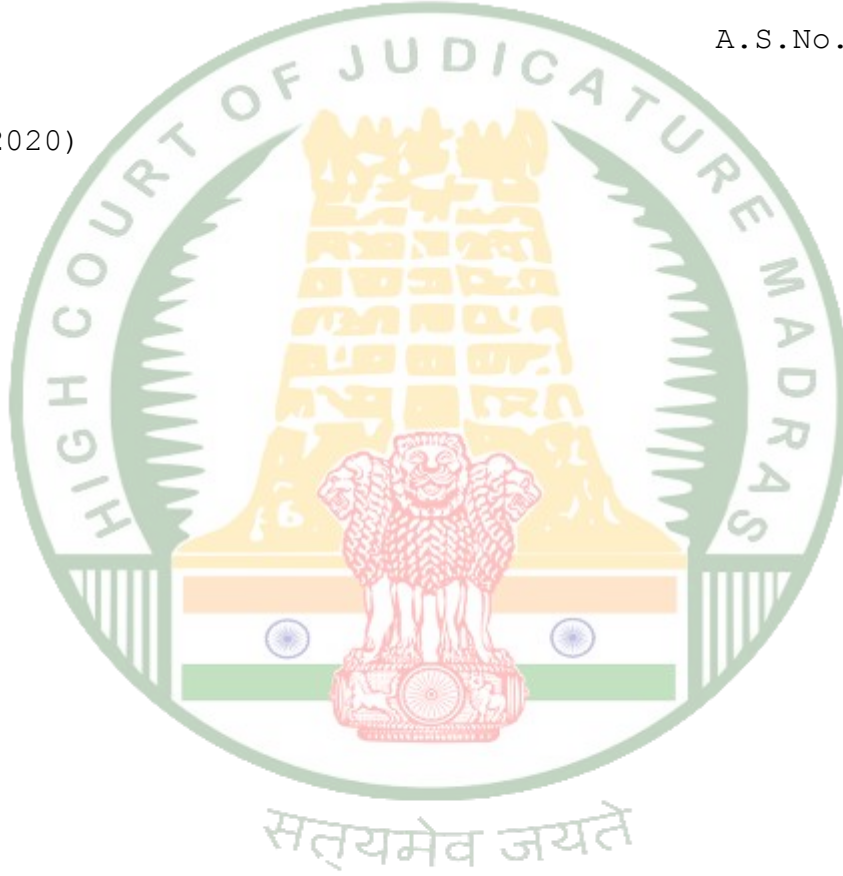
1.The 1st Additional District Court,
Coimbatore.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.Sarvabhauman Associates, Advocate, S.R.No. 16473
+3cc to Mr.Kavvya Silambanan, Advocate, S.R.No. 16179

A.S.No.226 of 2016

CP(CO)
GN(29/10/2020)



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