IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2020

CORAM

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

A.S.No.628 of 2003
C.M.P.No.10286 of 2003

Mohan
..Appellant/Plaintiff

Vs.

1.Devakiammal(Deceased)
2.Padmavathy
3.Djeganadin
4.Andalle
5.Calaiselvy
6.Revathy
7.Gopinathan
8.Thirumurugan ..Respondent/Defendants

(R3 to 8 brought on record as LRS of deceased R1 vide order of Court dated 10/11/2010 made in CMP.1521/2010)

Prayer : First Appeal filed against the Judgment & Decree dated 27.02.2003 passed in O.S.No.278 of 1998 on the file of the Principal Sub Judge at Pondicherry.

For Petitioner : G.Sumithra

For Respondent : R1-Died
Mr.T.Sathiyamoorthy
for M/s.G.M.Mani Associates for R2
Non-appearance for RR3 to 5, 7 & 8

ORDER

The appeal suit on hand is filed against the judgment and decree dated 27.02.2003 passed in O.S.No.278 of 1998, on the file of the Principal Sub Judge at Pondicherry.

2. The plaintiff is the appellant in the appeal suit. The appellant/plaintiff instituted a suit for specific performance to enforce the agreement for sale dated 22.12.1994 with alternative relief of refund of the advance amount along with interest.

3. The facts in nutshell to be considered as narrated by the plaintiff are that the first defendant is the wife and the second defendant is the daughter of one Vaithiyanatha Naicker @ Subbaraya Naicker and they both entered into an agreement with the plaintiff for sale of the suit schedule property at

the rate of Rs.16,000/- per kuzhie. The sale agreement dated 22.12.1994 was registered before the Sub-Registrar, Oulgaret and the defendants/respondents have received a sum of Rs.40,000/- as advance amount. As per the terms and conditions of the said agreement, the defendants should produce their antecedent title deeds, patta, payment of arrears of land revenue and 'nil' encumbrance relating to the suit property within a period of six months from the date of the agreement and on such production of those documents, the sale transaction between the defendants and plaintiff should be completed. From the date of the suit agreement, the plaintiff stated that he was continuously pursuing the matter with the defendants and interested to perform his obligation under the agreement. However, there was no progress. While so, on 19.01.1995, the defendants jointly received a sum of Rs.10,000/- towards the sale consideration by making an endorsement on the agreement itself. Thereafter, the plaintiff came to understand that the defendants were making efforts to sell the suit property in favour of third parties for higher consideration, despite the fact that the plaintiff was always ready and willing to purchase the suit property, after paying the balance sale consideration as agreed upon. The plaintiff sent a lawyer notice and thereafter, the suit was instituted. Apart from the lapses on the part of the defendants in fulfilling their portion of the contract, it was contended that Mr.Vaithiyanatha naicker @ Subbaraya Naicker had two sons by name one Kumar and one Jegannatha @ Babu and a daughter one Andal. When the plaintiff approached the defendants and enquired about the position regarding the additional heirs, the defendants admitted the same and agreed to sell their 2/5th share in all the items of the suit properties. However, the defendants, have not come forward to sell their 2/5th share. According to the plaintiff, the total extent of all the seven items of the suit schedule properties come to 79 kuzhies and 2 veesams and 2/5th share of these defendants comes to 31 kuzhies and 10 veesams and the total consideration for this extent of 31 kuzhies 10 veesams, at the rate of Rs.16,000/- per kuzhie will come to a sum of Rs.5,06,400/-. As per the terms of the agreement, the plaintiff was always ready and willing to purchase the defendants' 2/5th share of the suit properties by paying the balance sale consideration.

4. The defendants disputed the contention raised by the plaintiff and denied the averments. The very execution of the sale agreement was also denied and the receipt of advance was also denied. The defendants made out a defence that the suit filed by the plaintiff is barred by limitation and not maintainable. It was stated that the plaintiff had obtained the suit mentioned document stealthily and mischievously by misleading the defendants on false pretext as if it was only simple mortgage.

5. The Trial Court framed the issues as to whether the suit is barred by limitation? Whether the plaintiff has no

locus standi to file the suit? Whether the suit is properly valued and correct court fees has been paid? Whether the suit is bad for non-joinder of necessary parties? Whether the plaintiff is entitled for an order of permanent injunction as claimed? Whether the plaintiff is entitled for a decree as prayed for? To what relief is the plaintiff entitled?

6. The plaintiff has examined himself as P.W.1 along with three other witnesses as P.W.2, P.W.3, and P.W.4, and Exs.A1 to A5 were marked. On the side of the defendants, the first defendant was examined himself as D.W.1 and no exhibit was marked on their side.

7. With reference to issue No.1, the Trial Court found that the suit sale agreement is dated 22.12.1994 and time fixed for execution of the contract was six months. The suit was instituted on 12.01.1998. Considering the documents, the Trial Court found that the suit was filed by the plaintiff within a period of limitation mentioned in the agreement dated 22.12.1994. Thus, the suit was not barred by limitation and accordingly, issue is held in favour of the plaintiff.

8. As far as the issue No.2 is concerned, the plaintiff is having every right to file the suit for specific performance as against the defendants on the basis of the agreement dated 22.12.1994 and the said issue is answered in favour of the plaintiff.

9. Issue No.3 is concerned, the suit was valued properly and appropriate court fee had been paid and the said issue is also answered in favour of the plaintiff.

10. Issue No.4 is concerned, the suit cannot be dismissed on the ground that the necessary parties are not impleaded. The suit is for specific performance. The plaintiff entered into an agreement with the defendants. Considering the nature of the documents as well as the relief sought for in the plaint, the Trial Court arrived at a conclusion that the suit cannot be rejected for non-joinder of the parties, since the other sharers are not necessary parties to this suit for specific performance.

11. With reference to Issue Nos.5 and 6 are concerned, the Trial Court considered the nature of the documents filed by the respective parties and arrived at a conclusion that considering the evidence in toto, with reference to the pleas taken in the written statement by the defendants, the manner by which the first defendant/D.W.1 has denied all the signatures including those signatures found in the suit summons, vakalat and written statement, the Trial Court came to a conclusion that there is no iota of truth in the defence taken by the defendants in this case. The defendants have totally denied the receipt of advance and execution of the suit sale agreement and terms and conditions of the agreement.

On enquiry, the trial Court found that the statements in the written statement are totally in contradiction. Under these circumstances, the Trial Court came to a conclusion that the defence taken by the defendants are baseless and accordingly, held that the plaintiff had established his case for specific performance of the agreement, in respect of shares of these defendants over the properties, as per the suit sale agreement under Ex.A1. The plaintiff has proved his case that these defendants had received a sum of Rs.40,000/- under Ex.A1 and another sum of Rs.10,000/- under Ex.A2 towards the sale consideration fixed under Ex.A1. While holding the issue in favour of the plaintiff, the Trial Court made a finding that the plaintiff has proved his case for specific performance under Ex.A1 and the defendants are liable to execute the sale agreement in his favour as claimed by the plaintiff. However, the position that the properties remained undivided amongst sharers and since the agreement under Ex.A1 was not entered into by the plaintiff for his personal use of the property, he being a real estate businessman as admitted by him. The Trial Court instead of directing the defendants to execute the sale deed in favour of the plainitff, directed the defendants to refund the advance amount of Rs.50,000/- along with interest at 18% per annum from 19.01.1995 till the date of payment and granted the relief of permanent injunction as sought for in the plaint.

12. The Trial Court rejected the defence of the defendants and arrived at a conclusion that the suit sale agreement was proved by the plaintiff before the Trial Court and the payment was also established. However, the Trial Court arrived at a conclusion that the properties remained undivided among the sharers and since the agreement under Ex.A1 was not entered into by the plaintiff for his personal use of the property, under these circumstances, the Trial Court granted the alternative relief and not granted the relief of specific performance.

13. Even recently, in the judgment of the Hon'ble Supreme Court of India in the case of Surinder Kaur v. Bahadur Singh, reported in 2019 (8) SCC 575 and the relevant paragraph No.14 is extracted hereunder:

> "14. 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."

14. The suit was instituted in the year 1998, alternative relief was granted in favour of the plaintiff in the year 2003. Now, it is taken up for final hearing in the year 2020. The property is situated within the urban limits of Pondicherry. Thus, the prejudice, if any, to be caused should also be considered by this Court for grant of relief of specific performance.

15. It is brought to the notice of this Court that during the pendency of the first appeal, the respondents have executed a sale deed in favor of the appellant, with reference to four items in the suit sale agreement. The sale agreement was executed in respect of 3/4 share in Item Nos.1 to 4 of the suit sale agreement.

16. The third respondent had already released his share in the properties in favour of the respondents 2 and 4 by Release Deed dated 23.03.2011, registered as Document No.140/2011, at the SRO, Uzhavarkarai, Pondicherry.

17. The respondents 2 and 4, thereafter in pursuant to the specific performance agreement dated 22.12.1994, have executed a sale deed registered as Doc.No.1946/2014, at the SRO, Uzhavarkarai, in respect of item Nos.1, 3 and 4 of the suit properties, whereby conveying their shares in the properties in favour of the appellant herein. Thereafter, the said 2nd and 4th respondents herein, who have obtained a release deed as above said, were having 3/4 share in item No.2 of the suit properties, chosen to execute a sale deed dated 18.11.2016, registered as Doc.No.1744/2016. Thus, the share in item No.2 of the suit property was also executed in favour of the appellant. This being the subsequent developments occurred, during the pendency of the first appeal. The issues raised before the trial Court as well as the grounds raised in the appeal suit deserves no further adjudication and in respect of other disputes, it is left open to the parties to negotiate or adjudicate the same.

18. The respondents had already deposited the advance amount before the trial Court as ordered in the decree and they are permitted to withdraw the said deposited amount by filing an appropriate application. As far as the other disputes which arouse on subsequent developments are concerned, the parties are at liberty to redress their grievance in the manner known to law.

19. As far as the present appeal suit is concerned, this Court do not find any infirmity or perversity and consequently, the Judgment and Decree dated 27.02.2003 passed in O.S.No.278 of 1998 is confirmed. Accordingly, the first appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssb

To

1.The Principal Sub Judge,
Pondicherry.

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

+1cc to Mr.G.M.Mani Associates, Advocate, S.R.No.16623
+1cc to Mr.G.Sumithra, Advocate, S.R.No. 16919

A.S.No.628 of 2003
C.M.P.No.10286 of 2003

SR(CO)
GN(29/09/2020)