IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-01-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.568 of 2009

1.S.Gurumurthy (Died) ...Plaintiff
2.G.Lakshmi,
W/o.Gurumurthy
3.G.Subramanian,
S/o.Gurumurthy
(Appellants 2 and 3 brought on record as LRs of the deceased sole appellant vide order of Court dated 03.12.2019 made in CMP Nos.13020, 13019, 13036 and 13044 of 2019) .. Appellants/Plaintiffs

vs.

1.N.Raman ...Defendant
2.Dr.Daniel Jacob
3.Amudha Jacob
(RR-2 and RR-3 impleaded vide order of Court dated 06.01.2020 made in MP No.1 of 2012) .. Respondents/Defendants

Appeal Suit is preferred under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 05.09.2007 passed by the learned VII Additional Judge, City Civil Court, Madras in O.S.No.8706 of 2005.

For Appellants : Mr.Sandeep Shah for M/s.Shah and Shah

For Respondent-1 : Mr.V.Mani

For Respondents 2 & 3 : Mr.M.Ashok

J U D G M E N T

The lis on hand is directed against the judgment and decree dated 05.09.2007 passed by the learned VII Additional Judge, City Civil Court, Madras in O.S.No.8706 of 2005.

2. The suit was instituted for specific performance.

3. The appellants in the appeal suit is the plaintiffs in the suit and the respondents in the appeal suit is the defendants in the suit.

4. 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.

5. The impleaded second and third respondents are the subsequent purchasers of the suit schedule property and at the instance of the appellants, the second and third respondents are impleaded.

6. The plaint was filed by the appellants/plaintiffs. Based on two Sale Agreements entered into between the plaintiff and the defendant, firstly on 12.12.1993, wherein the parties had agreed to sell the property for a consideration of Rs.5,50,000/- and subsequently, the sale consideration was increased at the instance of the defendants and the plaintiffs also agreed to purchase the property at the increased cost of Rs.9,00,000/- and a Sale Agreement was entered into between the parties on 26.11.2000.

7. Relying on the said two Sale Agreements, the learned counsel appearing on behalf of the appellants reiterated that several communications were shared between the plaintiffs and the defendants and the plaintiffs, at all circumstances, expressed their readiness and willingness, so as to execute the Sale Agreement. However, the defendants delayed the execution of Sale Agreement and therefore, there was a delay in institution of the suit for specific performance. Admittedly, the suit was instituted on 09.12.2005, after a lapse of 5 years from the date of second Sale Agreement i.e., on 26.11.2000.

8. Perusal of the list of documents marked by the parties, the plaintiffs marked two Sale Agreements as Exs.A-1 and A-2 and thereafter, the judgment dated 24.02.2003 passed in RCOP No.454 of 2001, which is marked as Ex.A-7 and another judgment dated 09.09.2002 delivered in O.S.No.7005 of 2000, which is marked as Ex.A-9. However, these documents are held as insufficient by the Trial Court for the purpose of considering the delay in institution of the civil suit after a lapse of 5 years.

9. The Trial Court adjudicated the issues as to whether the plaintiffs are entitled for the relief of suit for

specific performance, whether the the Sale Agreements dated 12.12.1993 and 26.11.2000 are genuine and binding on the defendants and whether the plaintiffs are entitled for any other relief. Additional issues were framed as to whether the suit was instituted within the period of limitation and accordingly, the same is maintainable or not.

10. With reference to the genuinity of the Sale Agreements, the Trial Court found that the plaintiffs entered into the Sale Agreements with the defendants during the year 1993 and 2000 respectively. However, there was an enormous delay in execution of the Sale Agreements between the parties and the suit itself was instituted after a lapse of 5 years from the date of second Sale Agreement i.e., on 26.11.2000.

11. Though certain instances were shown and certain judgments were marked as documents, the Trial Court found that those judgments or instances are insufficient to condone the delay in institution of the suit for specific performance.

12. Time is the essence as far as the suit for specific performance is concerned. The parties must be diligent enough in execution of the Sale Agreement and any lapses or delay plays a vital role in rejecting the relief of specific performance. Execution of the Sale Agreement, within the time limit agreed upon or within the reasonable period of time is of paramount importance in view of the fact that there is a possibility of change of circumstances, escalation of cost of the properties etc. Thus, in respect of such Sale Agreements, the essence of time is also an important factor, which is to be considered.

13. In the present case, the first Sale Agreement was entered into between the parties in the year 1993 and after a lapse of 7 long years, the second Sale Agreement was entered into between the parties on 26.11.2000. However, the suit was instituted for specific performance on 09.12.2005, after a lapse of 5 years from the date of second Sale Agreement i.e., on 26.11.2000.

14. However, the over all facts and circumstances reveal that the sale discussions or the sale issues are proceeded with between the parties for more than 7 years from the year 1993 and the suit was instituted in the year 2005. Thus, the parties had not established their bona fide either to sell the property or to purchase the property. It is not only on the part of the plaintiffs but also on the part of the defendants. Even in such cases, where the Sale Agreements are

lawful and genuine, the Court can decline the relief of specific performance if the Court is of an opinion that it would be inequitable in the event of granting the relief of specific performance.

15. Admittedly, the suit schedule property is situated in Kodambakkam, which is the prime location in the City of Chennai. Therefore, the sale consideration fixed in the year 1993 as Rs.5,50,000/- and the sale consideration fixed in the year 2000 as Rs.9,00,000/- would create inequitable circumstances, so as to consider the relief of specific performance, at this point of time, more specifically, in the year 2020.

16. The other factors deserve no merit consideration in view of the fact that efflux of time plays a major role in considering the relief of specific performance in the present appeal suit. This Court would rely upon the recent judgment of the Supreme Court in the case of Surinder Kaur vs. Bahadur Singh [(2019) 8 SCC 575], wherein the Hon'ble Supreme Court of India made observation in unambiguous terms 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."

17. The legal principles cited above can be applied with reference to the facts and circumstances of the lis on hand. The fact remains that the first Sale Agreement was entered during the year 1993 and the second Sale Agreement was entered into on 26.11.2000. The suit for specific performance was instituted on 09.12.2005, after a lapse of 5 years from the date of second Sale Agreement i.e., on 26.11.2000 and the reasons given for belated institution of the suit furnished by the plaintiffs are neither candid nor convincing. Therefore, the mere pendency of litigation, more specifically, the Rent Control Original Petition and other civil suit, would not be a ground to

condone the delay in institution of the suit and in this regard, the Trial Court has not committed any perversity or otherwise.

18. As far as the genuinty of the Sale Agreement is concerned, though the plaintiffs had established the genuinity, the sale consideration fixed in the year 1993 shall not be an appropriate sale consideration. At present, the suit schedule property is situate in the prime location within the City of Chennai and considering all these facts and circumstances, this Court has no hesitation in arriving a conclusion that the relief of specific performance cannot be granted in favour of the appellants/plaintiffs. However, the relief of specific performance, being an equitable relief, the plaintiffs are entitled for reimbursement of the advance amount with interest as the receipt of advance amount was proved by the appellants/plaintiffs and the Ex.A-9 also reveals that the defendant received the advance amount of Rs.3,35,000/- on various dates.

19. The learned counsel for the appellants/plaintiffs made a submission that during the pendency of the appeal suit, he filed a petition to amend the relief, seeking alternate relief of return of advance amount. Therefore, the appellants/plaintiffs would be entitled for the alternate relief of return of advance amount by the respondents and the said petition was allowed.

20. This being the facts established before the Trial Court, the plaintiff would be entitled for return of advance amount paid to the defendants with interest at the rate of 12% per annum. During the pendency of litigation, the defendants sold the suit schedule property in favour of the respondents 2 and 3, who all are impleaded at the appeal stage. Therefore, the respondents 2 and 3, who are also jointly and severally liable for the purpose of return of the advance amount to the appellants/plaintiffs along with interest at the rate of 12% per annum. Thus, this Court is declined to grant the relief of specific performance. However, the appellants/plaintiff are entitled to alternate relief of return of advance amount of Rs.3,35,000/- along with interest at the rate of 12% per annum from the date of filing of the plaint till the actual date of realisation of the abovesaid amount.

21. Accordingly, the respondents are directed to return the advance amount of Rs.3,35,000/- along with interest at the rate of 12% per annum from the date of filing of the plaint till the date of realisation, within a period of four months from the date of receipt of a copy of this judgment.

22. With this modification, the present appeal suit is allowed in part with costs. As far as the relief of specific performance is concerned, the same stands rejected.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

The VII Additional Judge,
City Civil Court,
Chennai.

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