

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-01-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.569 of 2016
And
C.M.P.No.14346 of 2016

S.M.Jayasaravanan

..Appellant/Plaintiff

vs.

1.P.Palaniammal
2.K.Krishnan

..Respondents/Defendants

Appeal is preferred under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 21.04.2016 passed in O.S.No.4 of 2009 on the file of the Additional District Judge, Krishnagiri.

For Appellant : Mr.C.Jagadish
For Respondent-1 : Mr.V.Raghavachari
For Respondent-2 : No Appearance

J U D G M E N T

The appeal suit is directed against the judgment and decree dated 21.04.2016 passed by the learned Additional District Judge, Krishnagiri in O.S.No.4 of 2009.

2. The appellant is the plaintiff in the suit and the suit was instituted by the appellant for the relief of specific performance.

3. The facts, in nutshell, to be considered in this appeal suit are that the appellant entered into a Sale Agreement with the first respondent on 16.07.2006 for sale of immovable property measuring 8 acres and 29 cents for a sale consideration of Rs.22,38,300/-. The appellant had paid Rs.1,00,000/- towards advance and the time fixed for completion of contract was 15 months from the date of agreement i.e., on 16.07.2006. In view of the fact that as per the Sale Agreement, no Sale Deed was executed, the appellant was constrained to institute a suit for specific performance.

4. The learned counsel appearing on behalf of the appellant mainly contended that the appellant always expressed his readiness and willingness to perform his part of the contract and even at the time of agreement, he expressed his readiness to purchase the property. When the appellant was ready and willing to pay the balance sale consideration, enabling the first respondent to execute the Sale Deed, the first respondent had failed to perform his part of the contract and therefore, the appellant was forced to institute the suit for specific performance.

5. The learned counsel for the appellant reiterated that the Trial Court committed an error in appreciating the evidences produced by the appellant as the first respondent committed a fraud in respect of the suit Sale Agreement. The first respondent illegally executed the Sale Deed in favour of the second respondent during the subsistence of the suit Sale Agreement. Thus, the Trial Court ought to have declined the alleged execution of sale as null and void and ordered for the relief of specific performance. The entire appreciation of the evidences as well as the documents and the findings arrived are not only perverse, but are in contradiction with the point of readiness and willingness established by the appellant before the Trial Court. Thus, the appeal is to be allowed.

6. The learned counsel appearing on behalf of the first respondent strenuously disputed the contentions raised by the learned counsel appearing on behalf of the appellant mainly on the ground that the appellant at no point of time established his readiness and willingness to execute the Sale Deed.

7. The first respondent agreed to sell the suit schedule property on account of certain exigencies and he was unable to complete the same on account of the fact that the appellant never expressed his readiness and willingness to pay the balance sale consideration, enabling the first respondent to execute the Sale Deed. Thus, the case of the plaintiff is false and even before the Trial Court, then the plaintiff could not able to establish that he was always ready and willing to perform his part of the contract as per the Sale Agreement dated 16.07.2006.

8. The learned counsel appearing on behalf of the first respondent solicited the attention of this Court that the suit schedule property was sold in favour of the second respondent in May 2007 itself and the appellant was very much aware of these facts. He applied for the certified copy of the Sale Deed in April 2007 itself and the said certified copy was marked as a document in the suit before the Trial Court.

9. When the appellant was very much aware of the sale, which occurred in April 2007 and secured the certified copy of the Sale Deed, which was marked as a document in a suit and in this regard, it is pertinent to note that the suit itself was instituted by the appellant in the year 2009, after a lapse of two years from the date of execution of the Sale Deed by the first respondent in favour of the second respondent. Thus, the appellant, at no point of time, had established his readiness and willingness to perform his part of the contract for the purpose of paying the balance sale consideration.

10. This apart, the appellant/plaintiff was not vigilant and pursuing the contract dated 16.07.2006. In view of the fact that the appellant was not interested in pursuing the contract, the first respondent was forced to sell the property in favour of the second respondent in view of certain exigencies and family circumstances. Thus, the appellant/plaintiff is not entitled for the relief of specific performance and the Trial Court rightly rejected the case of the appellant/plaintiff and there is no infirmity as such.

11. The Trial Court considered the documents as well as the evidences placed by the respective parties to the suit and framed the following issues for consideration:-

- (i) Whether the plaintiff is entitled for the relief of specific performance ?
- (ii) Whether the plaintiff is entitled for the delivery of possession of the suit properties ?
- (iii) To what other relief ?

12. Further, by way of additional issues, the Trial Court framed the following issues for consideration:-

- (i) Whether the plaintiff is already ready and willing to perform his part of contract ?
- (ii) Whether there is any material alteration in the Sale Agreement ?
- (iii) Whether the second defendant is not entitled for any relief under Section 19(b) of Specific Relief Act ?

13. All the issues were tried and based on the materials available on record, the Trial Court arrived a conclusion by considering the evidence of PW-1 wherein the witness admitted that even after the lapse of 15 months, which is the time fixed for completion of sale, the appellant had not issued any notice to the first respondent expressed his readiness and willingness to perform his part of the contract. This apart, as per the terms and conditions of the Sale

Agreement dated 16.07.2006, the appellant has not paid the balance sale consideration, within the period of 15 months, as agreed.

14. Time is the essence of contract. In many number of judgments, the Courts have repeatedly held that time being the essence of contract, the parties must perform their respective portion of the contract within the time limit fixed and only in the event of compliance of the terms of the agreement, the Courts can come to a conclusion that the ground of readiness and willingness is established by such party and not otherwise. Thus, in order to prove the readiness and willingness, the person approaching the Court of Law must establish that he has performed his part of the contract strictly with reference to the terms agreed upon by the parties to the contract. In the absence of any such proof, the Court would not grant the relief of specific performance.

15. The relief of specific performance is the discretionary relief. The relief of specific performance is to be granted considering the facts and circumstances as the relief being equitable one. Even in case if the party has established his lawfulness and the correctness of the agreement and the documents, the Court can refuse to grant the relief of specific performance if the Court is of the opinion that it would be inequitable to grant such relief of specific performance on account of efflux of time and considering the fact that there is a likelihood of prejudice to either of the parties to the suit.

16. This being the principles to be followed in a suit for specific performance, this Court is of an opinion that the plaintiff at the first instance, is expected to establish that he always ready and willing to perform his part of the contract. Such readiness and willingness was established before the Trial Court in clear and unambiguous terms. Only in such cases, the Courts can grant the relief of specific performance.

17. When the evidence of PW-1 categorically enumerates that the suit Sale Agreement was entered into between the parties on 16.07.2006 and the time for completion of contract was fixed as 15 months from the date of agreement. However, it is admitted by PW-1 that he had not issued any notice to the first respondent even after completion of the time limit of 15 months as fixed in the agreement. This apart, he had not paid the balance sale consideration to the first respondent within the period of 15 months.

18. This being the admitted fact by PW-1, the Trial Court is right in arriving a conclusion that the appellant/plaintiff had not established his readiness and willingness beyond any

pale of doubt and accordingly, declined to grant the relief of specific performance.

19. The Trial Court declined to grant the alternate relief of return of advance amount to the appellant/plaintiff on the ground that no such relief is sought for by the appellant/plaintiff in the plaint.

20. This apart, the learned counsel for the appellant reiterated that the alternate relief of return of advance is nothing but a consequential relief and the same cannot be construed as a separate relief. The alternate relief of return of advance amount is to be construed as a consequential relief to the rejection of the relief of specific performance. The Courts in the event of rejecting the relief of specific performance, returning of advance to the party would be a consequential relief and therefore, there is no necessity to seek for such relief and such relief can be construed as a general relief. In the event of not granting such a relief, the appellant/plaintiff would be prejudiced.

21. Keeping in mind the prejudice likely to be caused to either of the parties, this Court is of an opinion that in the event of allowing the first respondent to retain the advance amount it would amount to an unjust enrichment and the Courts cannot allow the party to enjoy any such unjust enrichment on the ground that the relief to the appellant/plaintiff was declined. Therefore, it is relevant to consider the provisions of Order VII, Rule 7 of the Code of Civil Procedure, wherein it is enumerated 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".

22. The very spirit of Order VII, Rule 7 of the Code of Civil Procedure, is to be considered. Generally the procedures followed in the plaint relief column is that "granting such other relief or reliefs as this Hon'ble Court may deem just and necessary in the circumstances of the case and thus render justice". Such a relief sought for is to be considered if there is a likelihood of any prejudice to the either of the parties to the civil suit. The facts and circumstances of each case is to be weighed and in the interest of justice, such reliefs can be moulded under Order VII, Rule 7 of the Code of Civil Procedure, within the scope of the general relief sought for in the plaint by the plaintiff in the suit.

23. This Court has to consider the fact that in the event of rejecting the claim of specific performance, it would be consequential to return the advance amount. Even in case where the parties themselves have agreed to cancel the Sale Agreement, the advance amount would be returned to the owner of the property and accordingly, the Sale Agreement would be cancelled. When the principle of equity and justice require that in the event of cancelling the agreement even by the parties themselves, the advance amount should be refunded in a suit for specific performance, the Courts ought not to have declined such alternate relief of return of advance amount to the parties.

24. Under these circumstances, the alternate relief of return of advance under Order VII, Rule 7 of the Code of Civil Procedure, should be construed as general relief and the same can be considered and granted, taking note of the fact that the rejection of specific performance will provide natural consequence of granting the relief of return of advance amount to the purchaser.

25. This being the principles to be construed, this Court is of an opinion that the appellant/plaintiff has not established a case to grant the relief of specific performance. Accordingly, the Trial Court has not committed any perversity or infirmity in respect of appreciating the evidences and the documents produced by the respective parties before the Trial Court.

26. The learned counsel for the first respondent raised yet another point at this juncture by stating that in the event of not complying with the terms of the agreement, the amount of advance need not be returned as per the terms of the agreement. A forfeiture clause was incorporated in the agreement and therefore the appellant/ plaintiff is not entitled for the alternate relief of return of advance amount.

27. In this regard, the learned counsel appearing on behalf of the appellant/plaintiff reiterated that the date of suit Sale Agreement was on 16.07.2006 and even before the agreed time limit of 15 months, the first respondent executed the Sale Agreement in favour of the second respondent in March 2007, which was admitted by the first respondent himself. Thus, the first respondent himself has violated the time limit fixed for the completion of the sale as per the Sale Agreement dated 16.07.2006 and therefore, he had committed the breach of contract and on this ground also, the appellant/plaintiff would be entitled for the alternate relief of advance amount under Order VII, Rule 7 of the Code of Civil Procedure.

28. This Court is of the considered opinion that the conduct of the first respondent in this regard is also to be taken into account. As rightly pointed out by the learned counsel for the appellant, the Sale Deed was executed by the first respondent in favour of the second respondent in respect of the suit schedule property in March 2007 and admittedly, within the period of 15 months from the date of agreement i.e., on 16.07.2006 and more specifically, during the subsistence of the suit Sale Agreement. Thus, the forfeiture clause now cannot be operated against the appellant/plaintiff as the first respondent also committed the breach of contract. Though the said ground is also a ground to grant the relief of specific performance in view of the fact that the appellant/plaintiff also has not established his readiness and willingness, this Court is of an opinion that the relief of specific performance cannot be granted. However, the appellant/ plaintiff is entitled for the alternate relief of refund of advance amount with interest.

29. Accordingly, the judgment and decree dated 21.04.2016 passed by the learned Additional District Judge, Krishnagiri in O.S.No.4 of 2009 is confirmed with reference to the rejection of relief of specific performance. However, this Court is inclined to grant the alternate relief of return of advance amount to the appellant/ plaintiff and accordingly, the first respondent is directed to return the advance amount of Rs.1,00,000/- along with interest at the rate of 10% per annum from the date of plaint till the date of realisation and the first respondent is directed to settle the abovesaid amount with interest, within a period of three months from the date of receipt of a copy of this judgment.

30. Accordingly, the present appeal suit is partly allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

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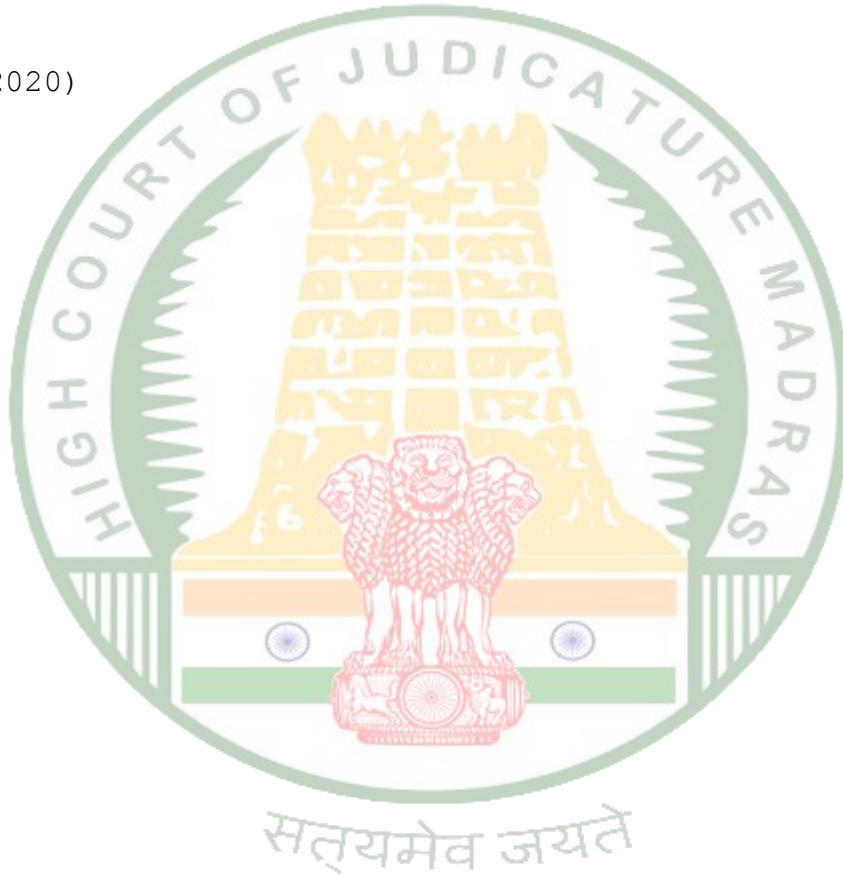
The Additional District Judge,
Krishnagiri

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+1 Cc to Mr.V.Raghavachari, Advocate sr 1711.
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