



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.11.2020	Pronounced on: 24.11.2020
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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.No.144 of 1996

1.Mr.Ramakrishnappa (died)

2.Nathamma

3.Munikrishnappa

4.R.Venkatesan

5.R.Srinivasan

(Appellants 2 to 5 brought on record as LRS of the deceased sole appellant viz., Ramakrishnappa vide order of Court dated 04.02.2020 made in C.M.P.No.227 to 229 of 2012 in S.A.no.144/1996 (GKIJ)) .. Appellants

/versus/

Mrs.P.S.Suguna .. Respondent

Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 24.01.1995 in A.S.no.69 of 1994 on the file of the Additional Special District Judge, Krishnagiri, confirming the judgment and decree in O.S.No.323/80, dated 29.04.93 on the file of the District Munsif Court, Hosur.

For Appellants : Mr.M.V.Krishnan

For Respondent :No appearance

JUDGMENT

(The case has been heard through video conference)

The suit filed for specific performance of the agreement dated 23/09/1976 was dismissed by the trial Court and the same was confirmed by the first appellate Court. Against the concurrent finding, the present Second Appeal is filed.

2.The suit filed on the premise that the plaintiff for his urgent need borrowed money from one P.Nagaraju, who is the husband of the defendant. Since Nagaraju insisted to execute a sale deed in the name of his wife for the loan with an understanding that the property will be re-conveyed on payment of Rs 3,100/-after 3 years but before end of the 4th year from the date of sale. The plaintiff executed sale deed on 23/09/1976 in respect of the suit property for consideration of Rs.3,000/- and the defendant executed the deed of re-conveyance for a sale price of Rs.3,100/-. The property was delivered to the defendant as per the recital of the sale deed. As per the agreement, the right to seek re-conveyance commenced on 23/09/1979 on the end of third year. The plaintiff sought for re-conveyance on 01/09/1980. The defendant and her husband avoided the plaintiff. Though the plaintiff was ready and willing to pay Rs.3,100/- and get back his property, the defendant was not ready. Suit filed without issuing pre-suit notice since the limitation fast approaching .

3.The defendant denied the averments found in the plaint and contested the suit on the premise that, the sale deed was executed not as an accommodation for the loan transaction as alleged. The plaintiff expressed his offer to sell the suit land to discharge his existing debt. He expressed his desire to get back his property if he is able to repay the amount, after three years and within 4 years. The defendant agreed to that and purchased the property on payment of full consideration and took possession. At request of the plaintiff, re-conveyance agreement was also executed for sale consideration fixed at Rs.3,100/- . The time for re-conveyance was fixed between 3rd and 4th year, when there is no crop on the land. The plaintiff never offered the consideration and sought for re-conveyance. At no point of time he was ready and willing to get back the property, after paying the consideration fixed. If he really had money within the period fixed, he would have expressly offered the same and proved his ready and willingness. He could have issued notice before the time prescribed. Filing the suit, without expressing his readiness only indicates that the suit filed not with bonafide intention. The plaintiff has not even offered to deposit the sale consideration pending suit. The agreement for re-conveyance is an unilateral document, not signed by the plaintiff. It is not an agreement executed mutually. The plaintiff, who is not party to the contract, is not entitled to seek for enforcement of the contract.

4.The trial Court based on the pleadings, framed the following issues:-

1.Whether the suit property was sold to the defendant in the circumstances stated in the plaint ?

2. Whether the plaintiff is ready and willing to enforce the re-conveyance agreement, if not whether the suit is maintainable ?

3. Whether the plaintiff is entitled for the relief of specific performance?

4. What other relief the parties are entitled?

5. The plaintiff and one Govinda Gowda was examined as PW-1 and PW-2. The re-conveyance agreement dated 23/09/1976 marked as Ex.A-1. The defendant was examined as DW-1. The sale deed of the suit property dated 23/09/1976, the sale deed executed by the defendant to Sekar and Munirathinamma on 08/09/1980 and the kist receipts for the suit property, were marked as Ex.B-1 to Ex.B-3 respectively.

6. The trial Court dismissed the suit. The reasoning for the dismissal is as below:-

The trial Court noting the contradictions in the evidence of PW-1 and the recital in Ex.B-1, held that the circumstance narrated by the plaintiff for executing EX.B-1 is not true. The contradiction in the evidence of PW-1 and PW-2 regarding the meeting with defendant on 01/09/1980 requesting to re-convey held to be false and unbelievable. The specific averment in the plaint is that the plaintiff went to the defendant house on 01/09/1980 and expressed his ready and willingness for re-conveyance. At that time, the defendant and her husband avoided him. However, in his testimony before the Court, the plaintiff has stated that when he met the defendant along with PW-2 and others for re-conveyance, the defendant said that she will do it after the arrival of her husband. This is a new fact not pleaded. PW-1 in the cross examination has deposed that he went to the defendant's house and asked for re-conveyance a month before Ugathi (Telugu New Year, which normally falls during the month of English month March). Whereas in the plaint, he had stated that he went on 01/09/1980, this again falsify his plea of ready and willingness.

7. Further, taking note of the fact that even after the additional written statement specifically alleging that the plaintiff is not ready and willing to perform his part of contract and he had not offered to deposit the sale consideration in the suit account, the plaintiff has not taken any steps to show his ready and willingness. Also, during the relevant point of time, the plaintiff has sold one of his property under Ex.B-2 dated 08/09/1980. In the recital of the said sale deed marked as Ex.B-2, the plaintiff has stated that he sell the property to meet out the maintenance expenses of his

minor children and to discharge his loan. If really the plaintiff had enough money on 01/09/1980 to pay the sale price when he went to the house of the defendant and sought for re-conveyance, there is no necessity for him to sell his property within 7 days to meet out his family expenses and to clear debt.

8.The plaintiff being aggrieved filed the first appeal. The first appellate Court confirmed the trial Court judgment and decree. The first appellate Judge in addition to the reasoning marshalled by the trial Court had in addition recorded the admission of the plaintiff about the arrest warrant issued against him for the money decree obtained against him by one Muni Venkatappa 10 to 15 years ago and he had sold his properties to Bramacharri, Sakaranandappa and Nanjappa to infer that the plaintiff had no means to get back the property as per the recital of Ex.A-1.

9.Therefore, the Second Appeal is filed by the plaintiff being aggrieved by the concurrent finding of the Courts below resulting in dismissal of his suit.

10.The learned counsel for the appellant submitted that the Courts below erred in equating the suits for specific performance of sale agreement and the suit for specific performance of re-conveyance. The plaintiff, who seek for specific performance need not jingle the coins before the Court at all times. The ready and willingness are inferential facts, which manifest from the conduct of the parties. In this case, by filing the suit within the time prescribed, pleading ready and willingness is sufficient for enforcing the agreement. Unless the Court directs to deposit the sale consideration, there is no statutory mandate to deposit the sale price. Because the plaintiff is not offered to deposit the sale price, the Court cannot draw adverse inference regarding readiness. As per the terms of the agreement Ex.A-1, the right to seek re-conveyance commenced on 23/09/1979. The one year period to enforce the agreement expired on 22/09/1980. The suit was filed on 11/09/1980 well within the time.

11.Heard the learned counsel for the appellant. Perused the records.

12.The submissions made on behalf of the appellant does not carry any merit to interfere the judgments of the Court below, under Section 100 of the Civil Procedure Code. The reasoning of

the Court below for dismissing the suit, which are extracted above, clearly shows that the plaintiff was neither ready nor willing to perform his part of contract, within the time or even thereafter. His eleventh hour suit, without prior notice expressing his readiness, his indifference to the plea regarding deposit of sale price pending suit, the contradiction about the date of visit to the defendant house and his admission about his duress situation forcing him to sell his property, just before filing suit to meet out his family expenses and to clear the debts, clearly establishes the fact that the appellant never had the willingness or wherewithal to purchase back the property. Therefore, the appellant is not entitled for the equitable relief of specific performance. This Court finds no merit in this appeal. Hence, this Second Appeal is dismissed . No order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:-

1.The Additional Special Judge District Court,
Krishnagiri.

2.The District Munsif,
Hosur.

Copy to: The Section officer
VR Section, High Court Madras.

+1cc to Mr.M.V. Krishnan, Advocate, sr no.37648

S.A.No.144 of 1996

SS(CO)
RMP(12/05/2021)

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