



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.571 of 2020

Singaram

... Appellant

Vs.

1. Seethalakshmi
2. Saravanan
3. Mahalingam
4. Latha
5. Sathya
6. Kandasamy

... Respondents

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and decree, dated 25.11.2019 made in A.S.No.79 of 2017 on the file of the Principal Subordinate Judge, Namakkal, by confirming the Judgment and Decree dated 30.06.2017 made in O.S.No.532 of 2008 on the file of the Additional District Munsif, Namakkal.

For Appellant : Mr.Vivek Raghavan for
Mr.S.Senthil

J U D G M E N T

The plaintiff in O.S.No.532 of 2008 whose suit for specific performance was dismissed by the trial Court, upon affirmation of the said Judgment and decree by the appellate Court in A.S.No.79 of 2017 has come up with this second appeal.

2. The plaintiff sought for specific performance of an agreement of sale by 30.03.1994. A notice demanding performance was issued by the plaintiff on 28.08.2008. The plaintiff sought to justify the delay by claiming that the agreement specifically states that there is no time limit fixed under the agreement, since there has been no partition between the agreement vendor namely Shanmugam Son of Palaniappa sevai and his brothers.

3. The suit was resisted by the defendants contending that the agreement itself is not a true and valid. The defendants



would further contend that the plaintiff who is the paternal uncle of Shanmugam, had obtained the suit agreement from Shanmugam, only to grab the property from Shanmugam. It was also claimed that Shanmugam died in 1999 itself. The 6th defendant filed a separate written statement claiming that he had purchased the property and that he is the bonafide purchaser for value without notice for existing agreement.

4. At trial, the plaintiff was examined as PW1 and two other witnesses were examined as Pws 2 and 3. Exs A1 to A8 were marked. The 2nd defendant was examined as DW1, no documents were marked on the side of the defendants.

5. The trial Court upon a consideration of the evidence on record concluded that the suit filed in the year 2008 after lapse of nearly 14 years from the date of the agreement is hopelessly barred by limitation. Even though the agreement does not prescribe any time for performance, the plaintiff in a suit for specific performance, is expected to approach the Court within a reasonable time. The learned trial Judge also pointed out the absence of description of property in the agreement and concluded that the agreement cannot be true and genuine. On the above findings, the learned trial Judge dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.79 of 2017.

6. The learned Subordinate Judge, Namakkal who heard the appeal, upon a reconsideration of the evidence, concurred with the findings of the trial Court. Upon such concurrence, the learned Subordinate Judge dismissed the appeal. Hence this second appeal.

7. I have heard Mr.Vivek Raghavan, learned counsel for the appellant.

8. The learned counsel for the appellant would contend that the Courts below were not right in dismissing the suit on the ground that it is belated, in view of the specific agreement between the parties that there was no time limit for the performance of the agreement and the fact that the entire consideration was paid.

9. I am unable to accept the submissions of the learned counsel for the appellants. The agreement Ex.A1 is dated 30.03.1994. It is with reference to an extent of 20 $\frac{1}{4}$ cents of land in Survey No.167/2A. It says that the agreement is to convey the undivided interest of the vendor Shanmugam in 81 cents of land in Survey No.167/2A. The plaintiff having entered into the agreement, has kept quiet for nearly 14 years and he chose to demand performance by issuing a notice only on



28.08.2008. The Courts below have considered the evidence on record and had come to the conclusion that the plaintiff has not proved that he was always ready and willing to perform his part of the contract, therefore, he is not entitled to specific performance of the agreement.

10. I do not see any reason to interfere with the said findings which are based on material evidence that was available before the Courts below. Despite his best efforts, the learned counsel is unable to project a question of law, much less a substantial question of law in the appeal. In the light of the above, I do not think that the appeal could be entertained. Hence the appeal fails and it is accordingly dismissed without being admitted.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vum

To

1. The Principal Subordinate Judge, Namakkal
2. The Additional District Munsif, Namakkal.

+1cc to Mr.S.Senthil, Advocate, S.R.No.35158

S.A.No.571 of 2020

RLD(CO)
CB(26/08/2021)