



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.12.2020

Pronounced on: 18.12.2020

WEB COPY

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.567 of 2020
and
C.M.P.No.11991 of 2020

S.Muralikumar

.. Appellant/Plaintiff

/versus/

1.Maheswari
W/o.Krishnan

2.Selvamani
W/o.Rajamani

..Respondents/Defendants

Prayer : Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree made in A.S.No.13 of 2012 on the file of the learned Principal District Judge, Dharmapuri, dated 06.03.2020, confirming the judgment and decree made in O.S.No.35 of 2010 on the file Subordinate Judge, Dharmapuri, dated 24.02.2012.

For Appellant : Mr.K.A.Ravindran for
Mr.M.Murthy

For Respondent : Mr.M.Jayachandran for R2
Caveator

J U D G M E N T

(The case has been heard through Video Conferencing)

This Second Appeal is filed by the plaintiff who lost his suit for specific performance before the Courts below.

2. The brief facts of the case as pleaded in the plaint is that the appellant entered into an agreement with the 1st respondent regarding the suit property on 23.10.1996. As per the agreement of sale he paid an advance of Rs.1,00,000/- and for the payment of balance of Rs.5,000/-, 15 months time was granted. The agreement for sale was duly registered. The plaintiff paid the balance of Rs.5,000/- on 27.10.1996. The 1st respondent handed over the original documents on receipt of the entire sale consideration and also handed over the possession of



the property. When he approached the 1st respondent for execution of sale deed she delayed the process stating her family problem and misunderstanding with her husband kept postponing the registration of the sale deed. While so, in the year of 2009, the 2nd defendant along with his men came to the suit property and tried to take possession of the suit property. When he approached the 1st respondent to execute the sale deed as per the sale agreement dated 27.10.1996, she evaded to execute the sale deed. However his possession of the suit property given towards the part performance is protected under Section 53A Transfer of Property Act. Later he came to know that the 2nd defendant has filed a suit in O.S.No.4 of 1999 against the 1st defendant for specific performance based on the fake agreement for sale and got a decree in his favour on 04.07.2006. Through the said sale deed and Court decree, the 2nd defendant cannot have any right over the suit property. Hence sought for specific performance and injunction.

3. The 1st defendant, the vendor of the appellant filed written statement sailing with the appellant. The 2nd defendant in his written statement questioned the maintainability of the suit for specific performance on the ground of limitation and also contested that the possession of the suit property was never with the appellant to take umbrage under Section 53A of the Transfer of Property Act.

4. According to the written statement of the 2nd defendant, the 1st defendant had purchased part of the suit property measuring 405 sq.ft on 29.07.1988 from one Prakasam. 270 sq.ft of land and shop was purchased by the 1st defendant on 03.03.1994. Subsequently from the 1st defendant the entire extent 405 sq.ft., and 270 sq.ft., with two shops was purchased by the 2nd respondent on 09.12.1997 for sale consideration of Rs.2,30,000/-. Rs.2,20,000/- was paid in advance and 12 months time was granted to pay the balance and get the sale registered. Out of 2 shops, the possession of one shop was handed over to the 2nd respondent on 09.12.1997 itself. In the said shop, the 2nd respondent is running a photo studio by name "Sakthi photo studio". The other shop, the 1st respondent vendor Maheswari running a tea shop. When the 2nd respondent requested the 1st respondent to execute the sale deed as per the agreement, she refused. Therefore, he filed O.S.No.4 of 1999 for specific performance against the 1st respondent and decree was passed on 17.06.2004 in the his suit for specific performance. Accordingly he filed REP.No.319 of 2006 and took possession of the shop, in which, the 1st respondent Maheswari was running the tea shop. In so far as 2nd item of the suit property, the 2nd respondent is already in possession and running a photo studio. Therefore, the contention of the plaintiff that the possession of the suit property is with him and he is protected under Section 53A of



the T.P. Act is baseless.

5. The trial Court framed the following issues and examined 3 witnesses on behalf of the plaintiff and 2 witnesses on behalf of the defendants. Exhibits A1 to A10 were marked on behalf of the plaintiff and Ex.B-1 to B-18 were marked on behalf of the defendants.

1. Whether the suit agreement dated 23.10.1996 is true and valid?

2. Whether plaintiff is in possession of the suit property as alleged in the plaint?

3. Whether the suit is barred by limitation?

4. Whether the 2nd defendant is entitled to the suit property as alleged in the statement?

5. Whether the plaintiff is ready and willing to perform his part of contract?

6. Whether the plaintiff is entitled to the relief of specific performance of contract?

7. Whether the plaintiff is entitled to permanent injunction?

8. To what relief?

6. After detailed discussion of the facts and the evidence, the trial Court held that the appellant herein as the plaintiff failed to prove his possession to take umbrage under Section 53A of T.P. Act and exemption from the Limitation Act. Based on the sale agreement dated 23.10.1996, suit for specific performance filed after 14 years is barred by limitation. On appeal, the first appellate Court dismissed the appeal and confirmed the trial Court judgment.

7. The learned counsel for the appellant would submit that the Courts below have failed to properly appreciate Ex.A-9 endorsement in Ex.A-1 and the scope and ambit of Section 53A of the Transfer of Property Act. The possession of the parent title deed with the appellant not been properly appreciated by the Courts below. Having paid the entire sale consideration and on being put into the possession of the property, the subsequent sale agreement and specific performance decree in favour of the 2nd respondent without impleading the previous registered agreement holder is bad in law.

8. The learned counsel for the 2nd respondent submitted that as a bonafide purchaser for the value he examined the encumbrance certificate and he did not find any encumbrance of agreement for sale. After paying the entire sale consideration,



WEB COPY

when the 1st respondent evaded execution of the sale deed, he lawfully approached the Court in time and obtained decree. Also part of the suit property already is in his possession and for recovery of the remaining portion of the property which is in possession of the vendor, he has taken out an execution petition.

9. Heard the rival submissions. To grant the equitable relief of specific performance, the parties who have approached the Court should come with clean hands and within reasonable time. In this case, the sequence of events indicates that the agreement for sale was entered by the appellant with the 1st respondent on 23.10.1996. The suit for specific performance is filed on 21.04.2010. Meanwhile, the 1st respondent herein had entered into the sale agreement with the 2nd respondent in respect of the suit property on 09.12.1997. To enforce the sale agreement, the 2nd respondent has approached the Court by filing of O.S.No.4 of 1999. The decree was passed in the suit on 17.06.2004 Execution Petition filed in year 2006. The vendor after filing an interlocutory application I.A.No.16 of 2009 to set aside the decree passed in O.S.No.4 of 1999, through the appellant had filed the present suit thereafter, knowing well that he may not succeed in the suit filed by the 2nd respondent against him for specific performance. Her intention and conduct clearly seen through her own written statement filing in support of the appellant herein. There is no reason given by her why after entering into agreement for sale with the appellant herein on 23.10.1996, she entered into an agreement with the 2nd respondent on 09.12.1997 and received a sum of Rs.2,20,000/- as advance. Also, the appellant has not explained why after paying the entire sale consideration within a week from the date of agreement did not insist for execution of sale deed and registration of the sale for 14 years. The possession under Section 53A of the Transfer of Property Act, not been established by the appellant. Therefore, he cannot have the advantage of Section 53A of the T.P.Act, to save the limitation under Section 54 of the Limitation Act. The suit for specific performance should have been filed within 3 years from the cause of action. Time fixed for completion of agreement was 15 months. Whereas, the suit is filed nearly after 14 years. Hence, this Court finds no error in the judgment of the Courts below to interfere under Section 100 of C.P.C..

10. Accordingly, the Second Appeal is dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rpl



To

1. The Principal District Judge,
Dharmapuri.

2. The Subordinate Judge,
Dharmapuri.

+1cc to Mr.M.Jayachandran, Advocate, S.R.No.42714

+1cc to Mr.M.Murthy, Advocate, S.R.No.42451

S.A.No.567 of 2020
and C.M.P.No.11991 of 2020

GP(CO)
HS(13/08/2021)