

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.87 of 2014
and
M.P.No.1 of 2014

D.Sivalingam

...Appellant/Plaintiff

Vs.

1.M.Ravi

2.D.Sakthi Kumar

3.S.Parimala

...Respondents/Defendants

Appeal Suit under Section 96 of the CPC, to set aside the judgement and decree dated 03.01.2014 passed in O.S.No.44 of 2013 on the file of the Principal District Judge, Vellore.

For Appellant : Mr.G.Pavendhan (Memo filed)

For Respondents: Mr.D.Raja Gopal for R1
(Change of Vakalat not filed)
Mr.R.Ramesh
(For R.2 & R.3)

JUDGMENT

The Appeal Suit is directed against the decree dated 03.01.2014 passed in O.S.No.44 of 2013.

2.The plaintiff is the appellant in the suit. The suit was instituted for specific performance.

3.The facts in brief set out in the plaint by the appellant/plaintiff is that the first defendant is the owner of the suit schedule property and entered into a sale agreement to sell the property in favour of the plaintiff for a total sale consideration of Rs.22,00,000/- on 20.12.2011. The sale agreement was not registered. The first defendant requested the

plaintiff to pay sale consideration amount to pay for one time settlement to discharge the debt in City Union Bank, Vellore Branch. Accordingly, the plaintiff had paid a substantial amount of Rs.21,60,000/-to the first defendant on the date of agreement. It was agreed that on receipt of the original registered sale deeds, after redeeming the mortgage, the documents are to be handed over to the plaintiff. The balance sale consideration of Rs.40,000/- as agreed, was to be paid to the defendant to execute the sale deed in favour of the plaintiff.

4.The contention of the plaintiff is that the first defendant had received a substantial amount by way of an advance for the purpose of discharging the loan incurred by the first defendant from the City Union Bank, Vellore Branch and thereafter failed to perform his part of the contract as per the suit sale agreement dated 20.12.2011. Thus, the plaintiff issued legal notice on 18.03.2013 calling upon the defendant to execute sale deed in favour of the plaintiff by receiving balance sale consideration and first defendant was evasive and thereafter the plaintiff came to understand that the suit property was sold in favour of defendants 2 and 3.

5.The learned counsel appearing on behalf of the appellant filed a memo stating that the appellant has not co-operated for the purpose of arguing the case. However, the Appeal Suit cannot be adjourned further in view of the fact that First Appeal is filed in the year 2014 and further the learned counsel filed a memo stating that there is no cooperation on the part of the appellant for the purpose of arguing the case.

6.The second defendant filed a written statement denying the averments and allegations set out in the plaint. The first defendant who is the original owner of the suit schedule property has not filed any written statement and remained exparte. The defendants 2 & 3 have stated that the first defendant M.Ravi, was the original owner of the suit property before executing the sale deed in favour of the defendants 2 & 3 on 14.03.2012 in Doc.No.3381 of 2012 on the file of Sub-Registrar Office, Vellore. The defendants 2 & 3 set out defence by stating that whether the bonafide purchasers and they are unconnected with the transactions between the plaintiff and the first defendant. As the property was sold in favour of the defendants 2 & 3 in the year 2012, they became the absolute owner of the suit schedule property and therefore the suit is to be rejected. It is contended by the defendants 2 & 3 that they have purchased the suit schedule property for a valuable sale consideration and were unaware of the fact regarding the earlier

alleged sale agreement. Therefore, the suit filed in respect of the property cannot be entertained at all.

7.The trial Court framed the issues as follows;

"1.Whether the alleged sale agreement dated 20.12.2011 executed between the plaintiff and the first defendant is true, genuine and binding on all the parties.

2.Whether there is any collusion between the plaintiff and D.1 in filing of this suit with respect to the suit property?

3.Whether D.2 & D.3 are the bonafide purchasers for valid consideration in due process of Law?

4.Whether the time is no the essence of contract?

5.Whether the plaintiff is entitled to get relief of specific performance as prayed for?

6.Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

7.To what other reliefs?

8.On the side of plaintiffs, P.W.1 and P.W.2 were examined and Exs.A.1 to A.7 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Exs.B.1 to B.12 were marked. With regard to the Issue Nos.1 & 2, the Trial Court found that the suit sale agreement dated 20.12.2011, for a total sale consideration of Rs.22,00,000/- was agreed and the mortgage with the City Union Bank had also been referred. It was contended before the Trial Court that the defendants 2 & 3 are the innocent bonafide purchasers of the sale deed for a valid sale consideration and they were not aware of the earlier sale agreement dated 20.12.2011 which is alleged to have been entered into between the plaintiff and the first defendant. It was not a registered agreement and therefore, the defendants 2 & 3 raised a doubt in respect of genuity of the suit sale agreement dated 20.12.2011.

9.The Trial Court considered Ex.B.8, legal notice issued by the plaintiff to the defendants 1 to 3 which states that the plaintiff had clearly enlightened the fact concerning to the execution of Ex.A.1 - sale agreement to the first defendant to sell the property and for which the defendants 2 & 3 alone have replied to the plaintiff through reply notice dated 26.03.2013 -

Ex.B.9, which states that after Ex.A.1 had not been executed between the plaintiff and the first defendant, then the first defendant has rebutted the averments made in the legal notice issued by the first defendant. While ascertaining the fact regarding the genuity of the suit sale agreement - Ex.A.1, the Trial Court considered the issue whether the plaintiff was ready and willing to perform his part of the contract.

10. In this regard, the trial Court considered the documents and witnesses and arrived at a finding that there is no scrap of material or oral document to believe that the plaintiff was ready and willing to perform his part of the contract. Ex.A.1 - suit sale agreement is an unregistered sale agreement. The same fact does not find place in the Encumbrance Certificate - Ex.B.5. Therefore, the plaintiff is bound to establish and prove that he was ready and willing to perform his part of contract so as to consider the relief of specific performance. A mere statement that the plaintiff was ready and willing to perform his part of contract is insufficient. The said statement is to be substantiated through some material evidence or through an independent witness or otherwise. There is no material to establish that the plaintiff at any point of time had approached either the first defendant or the City Union Bank so as to redeem the mortgage with reference to the suit schedule property. In the absence of any such proof to establish that the advance amount of sale consideration was paid for redeeming the mortgage and the plaintiff had not established that he had approached the first defendant or the Bank for the purpose of redeeming the mortgage, then the Court had raised a doubt with reference to the bonafide of the plaintiff in respect of readiness and willingness which is to be established for grant of relief of specific performance.

11. The Trial Court ultimately arrived at a conclusion that Ex.A.1, suit sale agreement cannot have any binding effect as far as the defendants 2 & 3 are concerned. The defendants 2 & 3 are the bonafide purchasers of the suit property and said sale has been proved through D.W.2 who is none other than the Bank Official. Ultimately, the Trial Court found that Ex.A.1 cannot have any binding effect as far as the defendants 2 & 3 are concerned. The defendants 2 & 3 had repaid a sum of Rs.23,00,000/- towards debt incurred by the first defendant by mortgaging the suit property in the City Union Bank. The evidence of D.W.2 - Mr.C.Prabakaran, who is none other than Bank Official, apart from the perusal of Ex.B.10 and B.11 i.e., challans of City Union Bank, Vellore dated 14.03.2012, clearly stated that amount of Rs.23,00,000/- towards bank debt has been cleared by defendants 2 & 3, apart from adjusting a sum of

Rs.90,000/- from the account of the first defendant and thereafter released the suit property from the City Union Bank Ex.D.3.

12.Thus, the Trial Court made it very clear that the first defendant was insensitive in defending the suit and he remained exparte. The defendants 2 & 3 are bonafide purchasers of the suit property. They purchased the property in the year 2012 itself and the plaintiff has not established that he is ready and willing to comply with his portion of the contract. This apart, defendants 2 & 3 have settled the debt of the bank amount to Rs.23,00,000/- and the said fact was revealed by the Bank Authority in his deposition. When the defendants 2 & 3 have deposited 23,00,000/- for the purpose of redeeming the mortgage, this Court is of the opinion that the first defendant who has not even defended the suit, the Trial Court has not committed any perversity. The Trial Court also considered the fact that the plaintiff filed the suit without even seeking the relief of cancellation of Ex.B.4 which is the subsequent sale deed executed in favour of the defendants 2 & 3. Thus, the plaintiff had not approached the Court with clean hands and not sought for the appropriate relief. Accordingly, the Trial Court considered that it was the violation on the part of the plaintiff and the said violation has not been justified in any angle. Thus, the suit was dismissed.

13.This Court is of the opinion that in a suit for specific performance, the plaintiff who seeks the relief must establish at the first instance that he was ready and willing to fulfill his portion of the contract. However, in the present case, after institution of the suit by the plaintiff, the first defendant also remained exparte. The plaintiff could not able to establish that he was ready and willing to perform his portion of the contract. The said fact was considered by the Trial Court that the plaintiff at no point of time made an attempt either to approach the first defendant or to approach the Bank for the purpose of redeeming the mortgage by paying loan dues. Thus, the plaintiff has not performed the conditions and not taken any efforts to establish that he is ready and willing to perform his part of the contract. When this being the factum established before the Trial Court the Trial Court was right in rejecting the prayer made by the plaintiff therein.

14.This being the factum, this Court do not find any perversity or infirmity and the decision of the Trial Court is in consonance with the documents and evidences placed before the Trial Court. Accordingly, the decree and judgment dated 03.01.2014 in O.S.No.44 of 2013 on the file of the Principle

District Judge, Vellore stands confirmed and the Appeal Suit stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III-MDU)

//True Copy//

Sub Assistant Registrar

mrm

To

The Principal District Judge, Vellore.

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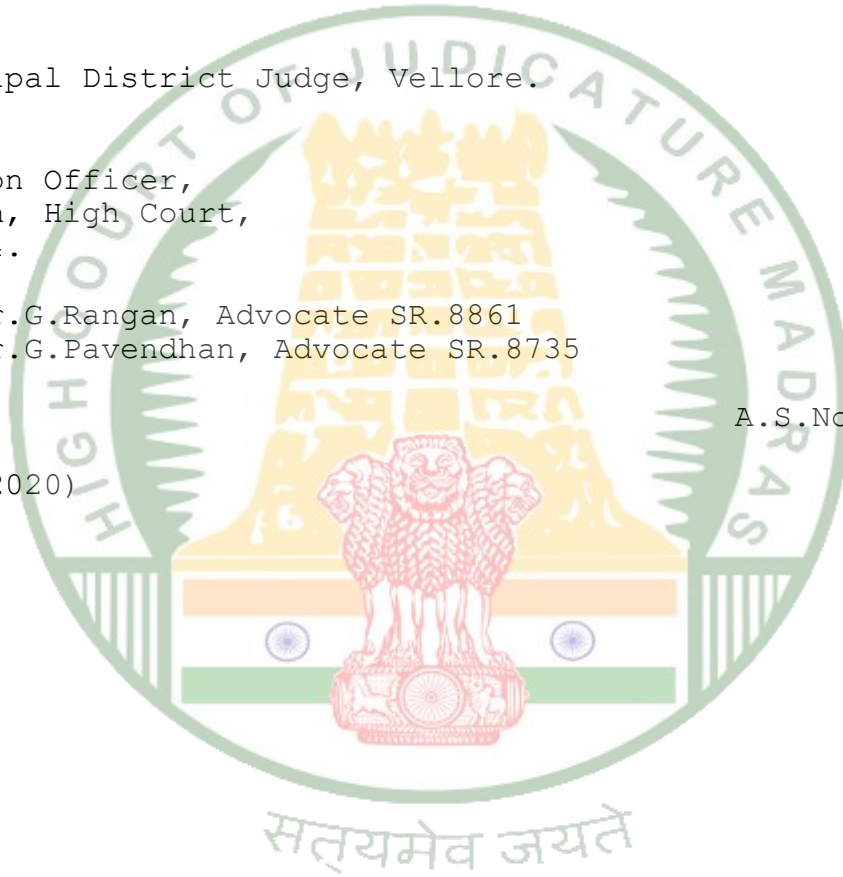
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.G.Rangan, Advocate SR.8861

+1cc to Mr.G.Pavendhan, Advocate SR.8735

A.S.No.87 of 2014

SSD(CO)
CB(15/09/2020)



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