



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.(MD) No.322 of 2020

and

C.M.P.(MD)No.3781 of 2020

WEB COPY

M.Fathima Ghani ... Appellant/Respondent/Plaintiff

vs.

P.Chellammal (died)

1.P.Rajeshkannan

2.P.Sumathi

... Respondents/Appellants/Defendants

PRAYER: This Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 09.01.2020 made in A.S.No.78 of 2019 on the file of the Principal District Judge at Dindigul and pursuant to the Judgment and Degree in O.S.No.213 of 2008 dated 01.07.2016 on the file of the Principal Sub Court at Dindigul.

For Appellant : Mr.K.Krishnan

For Respondents : Mr.T.Lajapathi Roy

JUDGMENT

The plaintiff, who was successful in her suit for specific performance of a contract before the trial court, but suffered reversal before the first appellate Court, has approached this Court with this Second Appeal.

2.The case is not admitted. The respondent, however, has entered appearance. The parties would be referred to by their ranks before the trial Court.

3.1.The Pleadings in brief are as follows:

- The suit property belonged to a certain Pitchai. He is now no more and his heirs are the defendants. On 28.02.1997, under Ex.A1, the plaintiff and Pitchai entered into a registered sale agreement, under which, the plaintiff agreed to purchase the property for a total consideration of Rs.4.0/- lakhs. Under the agreement, a total sum of Rs.2,20,000/- was received and the balance sale consideration of Rs.1,80,000/- was to be paid on or before 04.02.1988. The property was outstanding on a mortgage with Tamil Nadu Electricity Board, and the time for performance is fixed essentially to enable Pitchai to redeem the mortgage.

- Of the balance sale consideration of Rs.1,80,000/- payable by the plaintiff, the defendants had received a sum of Rs.1,20,000/-

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on 26.09.1999, and an endorsement was made to extend the time for performance on 11.10.1999 Vide Ex.A3. The possession of the suit property was also handed over to the plaintiff and ever since the plaintiff has been in possession of the property.

- Be that as it may, since the vendor of the property, Pitchai was continuously ill, the time for performance was further extended by another 8 years Vide Ex.A5 endorsement dated 09.09.2000.
- While so, on 18.06.2006, the said Pitchai passed away. The plaintiff learnt that on his demise, the Tamil Nadu Electricity Board, which is the employer of Pitchai, had recovered the mortgage debts out of the terminal benefits payable to the heirs of Pitchai, and discharged the suit property from encumbrance.
- Thereafter, on 17.06.2008, Vide Ex.A8 legal notice, the plaintiff called upon the defendants to execute the sale deed to which the plaintiff had made a reply on 17.06.2008. The reply is Ex.A10 and this was followed by a rejoinder notice Ex.A.11. As the defendants did not come forward to perform the contract, the suit was laid.
- The plaintiff was residing in the suit property as a tenant even prior to the sale agreement.

3.2. In their written statement, the defendants did not dispute the execution of Ex.A1 agreement. They contended:

- That plaintiff was never ready and willing to perform her part of the contract in time. It was also pleaded by them that the endorsement in Ex.A3 dated 11.10.1999 is false, and the said receipt was issued was not in relation to the sale consideration. They have also denied in Ex.A.5 endorsement, and termed it a fabrication.
- It was further alleged that on 29.12.2003 Vide Ex.B1, the plaintiff had made a demand for performance of the contract, and this was replied to by Pitchai himself Vide Ex.B2 dated 09.02.2004. Exchange of Ex.B1 and Ex.B2 notices were suppressed by the plaintiff. Indeed in Ex.B2, reply, Pitchai himself had intimated the plaintiff that Ex.A1 agreement stood terminated as the plaintiff did not come forward to perform her part of the contract within the time stipulated.

4.1 The matter went to trial. Before the trial Court steps were taken to examine the purported signature of Pitchai in Ex.A3 and Ex.A5 endorsements, and the Forensic Expert, who examined the disputed signature with the admitted signature of Pitchai has come to the conclusion that the impugned signatures of Pitchai in Ex.A3 and Ex.A5 did not bear any similarity to the admitted signature. To state it differently, as per the expert's opinion, Ex.A3 and Ex.A5 are false documents inasmuch as the signature of Pitchai was forged



in that. The trial court, which this Court has to record with a degree of pain, has decreed the suit with a bewilderingly shallow judgment.

4.2 When the matter was taken up in the first appeal in A.S.No.78 of 2019 before the Principal District Court, Dindigul, the same was allowed. The First Appellate Court took a strong exception to the fabrication of Ex.A3 and Ex.A5, and the inordinate delay of 11 years 5 months and 15 days in instituting the suit. It also has referred to several authorities cited on either side.

5. The learned counsel for the appellant strongly canvassed that on 03.03.1997, the plaintiff had purchased another property from Pitchai. However, as regards the purchase of the suit property, Ext.A-1 the agreement was entered into, only because the suit property was outstanding on a mortgage with Tamil Nadu Electricity Board. He submitted that the plaintiff has always been ready and willing to perform her part of the contract, and it is because the mortgage was not cleared in terms of Ex.A1, the contract could not be performed.

6.1. The point herein is not about the plaintiff's initial *bonafide* but how she conducted herself since the time for execution of the contract and till the completion of the trial. Firstly, she had suppressed Ex.B1 and Ex.B2 notices which have been exchanged between the parties in between December, 2003 and February, 2004. It is pertinent here, that under Ext.B-2 notice, dated 09.02.2004, Pitchai, the vendor under Ex.A1, had rescinded the contract. Hence, the time for performance of the contract commences forthwith. In other words, the suit should have been laid on or before 09.02.2006, as per Article 54 of the Limitation Act. However, to get over the delay, she has fabricated Ex.A3 and Ex.A5 endorsements. As already indicated, the Expert's opinion has been that Ex.A3 and A5 are fabricated documents and that the signatures purported to have been made by Pitchai were found to be forged. The plaintiff does not appear to have raised any objection to the expert's report, nor has she cross-examined the Expert.

6.2. This Court hardly needs to state that the litigants, who approach the Court to specifically enforce a contract are under a perennial obligation to demonstrate a conduct which makes them worthy of seeking the relief in equity. The standard of proof required in all such cases is very high and the conduct of the plaintiff should be unblemished right from the inception of the agreement till the decree is passed. He who is blameworthy does not deserve a remedy in equity. Here is the plaintiff, who by her own effort and conduct laid a trap for herself when fabricated documents to circumvent the limitation period for laying her suit for specific enforcement of contract.

<https://hcservices.courts.gov.in/hcservices> can only appreciate the optimism of the plaintiff in



perusing her effort to seek relief from this Court when she ought to know what this jurisdiction is all about.

8. The learned counsel for the respondents/defendants made a statement on instructions, that the defendants are willing to part with a sum of Rs. Rs.3,40,000/- which they have received as per the agreement with such reasonable interest which the court may fix. This statement is recorded.

9. This court does not find any substantial question law to be framed. The appeal is liable to be dismissed. But in view of the statement of the counsel for the respondents, there shall be a decree directing the respondents/defendants to pay a sum of Rs.3,40,000/- payable with interest from the date of the suit till it is paid. On such payment/deposit before the trial Court, the appellant/plaintiff shall deliver vacant possession of the suit property. The decree passed herein can be executed by both the parties as concerning the part that applies to them. No costs. Consequently ,Connected Miscellaneous petition is Closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

CM/msa

To

1.The Principal District Judge
Dindigul

2.The Principal Subordinate Judge
Dindigul

3.The Section Officer, (2Copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.Mr.K.Krishnan,Advocate,SR.No.15342 dated 21/08/2020

+1CC to Mr.T.Lajapathi Roy,Advocate,SR.No.15606 dated 01/09/2020

S.A. (MD) No.322 of 2020
and

C.M.P. (MD) No.3781 of 2020
28.08.2020

NA (CO)

KB(27.01.2021) 4P 7C

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