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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.361 of 2000
& CMP Nos.15740 of 2000, 1502 of 2001
and
C.R.P. (NPD) No.750 of 2002

A.S.No.361 of 2000:

1.Siva Pakkiammal
2.Sokkayeeammal
3.Vanaja

...Appellants/Defendants 1 to 3

Vs

Samsudeen Hazarat

...Respondent/Plaintiff

PRAYER: Appeal filed under Section 96 of CPC to set aside the judgment and decree in O.S.No.65 of 1996 dated 21.06.2000 on the file of the Sub Court, Vridhachalam.

For Appellants : Mr.N.Sankara Vadivel
for Mr.B.Soundarapandian

For Respondents : Mr.N.S.Varadhachari

C.R.P. (NPD) No.750 of 2002

1.Siva Pakkiammal
2.Sokkayeeammal
3.Vanaja
4.Padma
5.Shanthi

6.Amaravathi @ Abirami
(No relief sought against R4 to R6. Hence,
they are not necessary parties)

....Petitioners/Defendants 1 to 3

vs

Samsudeen Hazarat

...Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 C.P.C. Against the order and decretal order dated 08.08.2000 in I.A.No.744 of 2000 in O.S.No.65 of 1996 on the file of the Sub Court, Vridhachalam.



For Petitioner : Mr.N.Sankara Vadivel
for Mr.B.Soundarapandian

For Respondent : Mr.N.S.Varadhachari

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C O M M O N J U D G M E N T

Heard the learned counsel for the appellants and the learned counsel for the respondent.

2. The appeal is directed against the judgment and decree passed by the trial court in the suit filed for specific performance. The aggrieved defendants 1 to 3 are before this Court as appellants.

3.The short point involved in this case is that whether the plaintiff, who succeeded before the trial court, had proved that he was ready and willing to perform his part of contract.

4.The brief facts of the case is that on 03.07.1989, the defendants to the suit agreed to sell the suit schedule property to the plaintiff, who is the respondent herein for a sum of Rs.3,97,000/- and received Rs.36,000/- as advance on the date of agreement. As per the terms of the agreement, the period to complete the contract was fixed as two years. The vendors agreed that they will execute the sale deed of the suit property in whole or part within the said period as per the instructions and requirement of the purchaser. On the last date of expiry of two years period, the plaintiff had caused notice calling upon the defendants to come and execute the sale deed after receiving the balance sale consideration. Thereafter, the defendants 1 to 3 appears to have received part sale consideration in piecemeal as follows:-

The second defendant had received Rs.4,000/- on 05.05.1992 and Rs.5,000/- on 26.06.1993, the first defendant had received Rs.50,000/- on 24.05.1992 and the third defendant had received a sum of Rs.2,000 on 30.05.1992 and Rs.14,000/- on 23.08.1994.

Thus, after causing notice on 03.07.1991, it is the contention of the plaintiff that the defendants 1 to 3 between 05.05.1992 to 23.08.1994, had received Rs.75,000/- in total. On trusting their words, the plaintiff waited for them to execute the sale deed. They failed to execute the sale deed and tried to alienate the property to the third party. Therefore, he instituted the suit before the District Munsif Court for permanent injunction which was followed by suit for specific performance.

5.The first defendant filed written statement which was adopted by the other defendants, wherein the very execution of



the sale agreement and receipt of Rs.36,000/- as advance accepted. The subsequent payments alleged to have been received by the defendants 1 to 3 were denied, particularly, the defendants contended that the plaintiff was not ready and willing to perform his obligation within the time stipulated and the suit is hopelessly barred by limitation.

6.The trial court on considering the submissions made by the respective parties framed the following issues:

"a) Whether the payments alleged to have been made by the plaintiff to the second defendant on 5.5.1992 Rs.4,000/- and 26.06.1993 Rs.5,000/-, to the first defendant on 24.05.1992 Rs.50,000/- and to the third defendant on 30.05.1992 Rs.2000/- and 23.08.1994 Rs.14,000/- are true?

b) Whether the payment alleged to have been made by the defendants on 05.05.1992 and 26.06.1993 to the second defendant, payment on 24.05.1992 to the first defendant and 30.05.1992 to the second defendant are true and genuine?

c) Whether the plaintiff is entitled to the relief of specific performance?"

Additional issue whether the suit is hit by limitation was framed on 09.06.2000.

7.On the side of the plaintiff, four witnesses were examined. 2 Exhibits viz., suit sale agreement and the lawyer notice were marked. On behalf of the defendants, 4 witnesses were examined.

8.The trial Court after appreciating the evidence held in favour of the plaintiff and decreed the suit in so far as the defendants 1 to 3 who have received part sale consideration after the expiry of time prescribed and after the issuance of pre suit notice. As far as the defendants 4 and 5 who are the parties to the sale agreement dated 03.07.1999 but not received any further sum from the plaintiff were exempted from performing the contract. Suit decreed to the extent of 3/5 share held by defendants 1 to 3.

9.Learned counsel for the appellants confined his argument on the point of readiness and willingness. It is submitted by the learned counsel that parties have specifically agreed to complete the contract within a period of two years. The said period expired on 02.07.1991. The plaintiff had chosen to cause notice on the last date calling upon the defendants to execute the sale deed and unilaterally extend the period by one month, which was not agreed upon by the parties. Even if assuming that one month period given to perform his obligation, if really, the



plaintiff was ready and willing with adequate money, he would have filed suit for specific performance within a reasonable time but he had chosen to wait till 03.04.1996 and for the sake of safeguarding limitation, the receipts which are marked as Exs.A14 to Exs.A18 were fabricated. The said receipts are denied by the defendants 1 to 3. The plaintiff has not chosen to prove the genuineness of the said receipts in the manner known to law. Even assuming that the receipts are true and genuine, the suit filed after nearly two years from the last payment again hopelessly barred by limitation and only indicates that the plaintiff was not really ready and willing to perform his part of contract.

10. In addition, the learned counsel for the appellants also pointed out that even after passing of the decree and granting one month time for deposit of balance sale consideration, the plaintiff could not deposit the balance sale consideration and sought further time. When the trial court granted extension of time, same has been challenged by the defendants before this Court in CRP (NPD) No. 750 of 2002 and pending. The conduct of the plaintiff throughout from the date of plaint till the date of decree would clearly expose his inability to perform the contract, while so, the relief of specific performance ought not to have been granted to the plaintiff.

11. Learned counsel appearing for the plaintiff/respondent submitted that the suit property at the time of agreement was under lease with one Anjalaiammal. The suit property being cultivable land and was under cultivation, it was agreed by the parties that as and when the land is fit for sale and prospective buyers are available, the defendants/landlord will execute the sale deed. On the said specific understanding, as found in the recital of Ex.A1, parties entered into agreement and periodical payments were made even after expiry of two years. Without protest, the defendants 1 to 3 have received the money through Ex.A14 to Ex.A18. Therefore, as rightly held by the court below, the suit is not hit by limitation atleast against the defendants 1 to 3 and therefore, to the extent of the shares of the defendants 1 to 3, the decree passed by the trial court has to be confirmed. The respondent had already deposited the balance sale consideration. Therefore, it is needless to test readiness and willingness at this point of time.

12. Relief of specific performance is based on equity. The plaintiff should convincingly establish through evidence that throughout he was ready and willing to perform his part of contract. From his evidence, this Court finds that after execution of Ex.A1 dated 03.07.1989 till the last date of expiry of the period i.e. two years, there was no action on the part of the buyer to discharge his obligation as found in the agreement.



The notice dated 02.07.1991 marked as Ex.A8 was addressed to the defendant at Kaithamalai Street, Pudhupet, Virudhachalam returned unserved. The postal endorsement indicates that the notice was despatched on 02.07.1991, returned with endorsement "unfound". So, from Ex.A9 to Ex.A12, the said notice was not served on the defendants 1, 3 to 5. Only the second defendant, Sokkayeeammal has received the notice. Under the said circumstances, even after causing pre suit notice, the plaintiff had not chosen to file suit for specific performance. Only payment in piecemeal made to the defendants 1 to 3 under Exs.A14 to 18 between 05.05.1992 to 23.08.1994. After causing notice calling upon the defendants to execute the sale deed or he will be constrained to file suit for specific performance on depositing the entire sale consideration in the court, the plaintiff waited for eight months and making piecemeal payments to the defendants 1 to 3 upto 23.08.1994 and even thereafter, the suit was not filed immediately but there was another gap of nearly two years. There is no plausible explanation for his inaction after issuance of notice.

13. Before filing the suit for specific performance, it is also seen from the record that the plaintiff has filed permanent injunction suit on 08.01.1996 and obtained an interim injunction against the defendants on the premise that the possession of the property has already been vested with him. When the suit for permanent injunction filed during the month of January 1996, the cause of action to file suit for specific performance was very much available to the plaintiff, but no leave obtained under Order 2, Rule (2) and (3) of C.P.C. to file a separate suit for the specific performance.

14. Be that as it may, as pointed out by the learned counsel for the appellants, the conduct of the plaintiff never indicates that he was ready and willing to perform his obligation at any point of time. Even after the pre suit notice dated 02.07.1991, he had not sought for enforcement of the contract immediately but harping on the receipts Ex.A14 to Ex.A18 obtained 7 months later to assume extension of limitation and has filed the suit for specific performance after seven years from the date of agreement.

15. This Court, from the suit agreement dated 05.07.1989, finds that the plaintiff has entered into an agreement with an intention to promote the land as plots. So having entered into agreement for carrying out a commercial venture attempt to enforcement of agreement after seven years of the agreement will highly prejudice the land owner and it is against equity. Court cannot uphold plea for specific performance sought after undue delay and without adequate funds to enforce the contract. Therefore, I find merit in the appeal. Hence, the appeal suit



is allowed. The judgment and decree passed by the trial court are set aside.

16. Having held that the plaintiff/respondent has not established his readiness and willingness and equity is not in his favour to enforce the agreement, this Court is also conscious of the fact that the plaintiff/respondent herein has already paid a sum of Rs.36,000/- to the defendants 1 to 5 at the time of agreement. The defendants 1 to 3 subsequently under Exs.A14 to Ex.A18 had received Rs.75,000/- and made the plaintiff to believe he is entitled to enforce the contract. Further, the plaintiff after decree had deposited the balance sale consideration after extension of time for deposit. In such circumstances, it will be fair enough to direct the defendants 1 to 3/appellants to repay the money what they have received from the plaintiff and also, the plaintiff/respondent is permitted to withdraw the balance amount deposited by him in the suit account.

17. In the result, A.S.No.361 of 2000 is allowed. Consequently, CRP (NPD) No.750 of 2002 is dismissed. No order as to costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

vri
To
The Sub Court,
Vridhachalam.

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

+1cc to Mr.B.Soundarapandian, Advocate, S.R.No.11066
+1cc to Mr.N.S.Varadhachari, Advocate, S.R.No.11714

A.S.NO.361 of 2000
and
C.R.P. (NPD) No.750 of 2002

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NSK 01/11/2021