



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :: 17.02.2021

PRONOUNCED ON ::
10.03.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

AS.No.108 of 2015

Jayalakshmi

... Appellant/Plaintiff

Vs.

D.Balaraman

... Respondent/Defendant

Prayer: Appeal filed against the Judgment and Decree dated 07.11.2014 in O.S.No.4523 of 2013 by the XIX Additional Judge, City Civil Court, Chennai.

For Appellant : Mr. T.R. Rajagopalan, SC
for Mr. M. Kamalanathan

For Respondent : Mr. B.Balachander

JUDGMENT

The unsuccessful plaintiff in a suit for specific performance is the appellant before this Court. The facts in brief are as follows and parties are referred to in the same array as in the suit.

2. Plaintiff's Case

a) The plaintiff and the defendant had entered into an agreement of sale dated 14.12.2004, in and by which, the defendant had agreed to sell an extent of 3,670 Sq.ft. in the premises bearing Survey No.98/2A3, Thiruvannamiyur, Chennai- 41. The agreement of sale was executed on 14.12.2004. Under the said agreement, the total sale consideration fixed was a sum of Rs.13,00,000/- and a sum of Rs.8,50,000/- was received on various dates as advance.

b) It is the case of the plaintiff that despite her best efforts, the defendant was refusing to come forward to execute the sale deed and ultimately she had to threaten the defendant that she would be approaching the Court for specific performance.

c) In the year 2005, the defendant had informed the



plaintiff and her father that his siblings and he had certain disputes, in respect to a Partition Deed dated 25.09.2001 executed between the defendant and his brother Ramachandran. The defendant had informed the plaintiff that he will not be in a position to sell the entire extent of 3,670 Sq.ft. Thereafter, when the plaintiff had threatened to file a suit for specific performance, the defendant had agreed to sell 50 per cent of the agreed property, that is; an extent of 1820 Sq.ft. on the southern side, and agreed to complete the registration in respect of the balance extent of 1850 sq.ft. within one year.

d) The plaintiff would contend that trusting this assurance, the plaintiff had registered the sale in respect of an extent of 1820 Sq.ft. in favour of her mother. In the sale deed executed in favour of plaintiff's mother, the sale consideration was shown as Rs.8,50,000/- which was the total amount received by the defendant.

e) After the registration of the sale in favour of the plaintiff's mother, the defendant, on various dates had received over a sum of Rs.4,25,000/- towards the balance sale consideration for the remaining extent of 1850 sq.ft. Although the plaintiff had wanted to enter into a fresh agreement, the defendant had assured the plaintiff that it was not required.

f) While so, it appears that the defendant and his siblings, in collusion, had filed C.S.No.122 of 2008 on the file of this Court for partition in respect of the properties listed therein. One of the items of property included the property which was the subject matter of sale between the plaintiff and the defendant. The plaintiffs in the suit C.S.No.122 of 2008 had also obtained interim orders restraining alienation. In the said suit, the plaintiff's mother had been arrayed as the 14th defendant.

g) The defendant's mother who had entered appearance in that suit had filed a written statement stating that the plaintiffs therein had no right to the property. However, it appears that the plaintiff and his siblings had compromised the dispute and entered into a partition whereby each of the parties were allotted their respective shares. The plaintiff's mother was however not made a party to this compromise. Therefore, the plaintiff would submit that this compromise is not binding on her. In fact, steps have also been taken by her mother to set aside the compromise.

h) The plaintiff would submit that out of the total sale consideration of Rs.13,50,000/-, the defendant had received a sum of Rs.13,25,000/- and only a sum of Rs.25,000/- was payable to the defendant and the plaintiff was ready and willing to pay the same. Since the defendant did not come forward to complete



the sale, the plaintiff had issued a legal notice dated 23.05.2013 calling upon the defendant to execute and register the sale deed. Though the same was received, there was no response. Therefore, the suit for specific performance was instituted on the file of the XIX Additional City Civil Court, Chennai.

3. Defendant's case :

a) The defendant, on entering appearance, would submit that the agreement was entered into only after the plaintiff was fully apprised of the fact that there were other claims to the property.

b) The defendant would submit that after the sale in favour of the plaintiff's mother, the plaintiff had impliedly given up her right to the remaining extent. This factum is known to the plaintiff's mother and the plaintiff's mother ought to have been made a party to the suit. That apart, the defendant had taken out a plea that the suit is barred by limitation. The suit which ought to have been filed on 14.03.2008 is filed only on 01.11.2012, nearly 4 years thereafter. Therefore the suit is clearly barred by limitation.

c) The defendant would further contend that the plaintiff having agreed to purchase a lesser extent, cannot contend that the agreement is still subsisting. The agreement had come to an end when the plaintiff had agreed to purchase a lesser extent. In fact, no fresh agreement was entered into between the plaintiff and the defendant with reference to the remaining extent. Therefore, it can only be deduced that the parties have terminated the agreement of sale dated 14.12.2004.

d) The defendant would further submit that the plaintiff was very much aware about the proceedings in C.S.No.122 of 2008, since the plaintiff's mother was a party to the proceedings but had however not taken any steps to implead herself in the said proceedings.

4. Issues framed by the Trial Court:

" 1) Whether the plaintiff is entitled to get a decree for specific performance as per the suit Sale Agreement dated 14.12.2004 ?

2) Whether the plaintiff is entitled for an alternative relief to direct the defendant to pay a sum of Rs.4,50,000/- to the plaintiff with subsequent interest @ 24 % per annum from the date of Sale Agreement till realisation ?



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3) Whether it is true that the suit Sale Agreement is unenforceable ?

4) Whether it is true that the suit is barred by limitation?

5) Whether it is true that Poongothai is a necessary party for the adjudication of the suit, whether the suit is hit by non-joinder of necessary party ?

6) To what relief the plaintiff is entitled to ?"

5. Trial Court:

a) On the side of the plaintiff, the plaintiff had examined herself as PW1 and marked Exs. A1 to A6. The defendant had examined himself as DW1 and marked Ex.B1.

b) Learned XIX City Civil Judge, Chennai, by his judgment and decree dated 17.11.2014, was pleased to dismiss the suit holding that the suit was hopelessly barred by limitation. The learned Judge had also held that the suit filed without impleading the plaintiff's mother was bad for non-joinder of necessary parties. However, with reference to the defendant's contention that the plaintiff was not ready and willing to perform his part of the contract, the learned Judge has held against the defendant stating that after the sale in favour of the plaintiff's mother, the plaintiff had paid over a sum of Rs.4,25,000/-, which was also received without any demur by the defendant. The plaintiff has only retained a small sum of Rs.25,000/- which clearly shows that the plaintiff was ready and willing to proceed with his part of the contract. However, since the plaintiff had come to the Court after the period of limitation, the learned Judge refused to grant even the alternative relief of refund of the sum of Rs.4,25,000/-. Challenging the said Judgment and Decree, the plaintiff has filed the above appeal.

6. The only point for consideration in the above appeal is "whether the Learned XIX Assistant City Civil Judge, Chennai was correct in law in non-suiting the plaintiffs on the ground of limitation"

7. Submissions

a) Mr. T.R. Rajagopalan, learned Senior Counsel appearing on behalf of the counsel for the plaintiff would contend that in view of the injunction granted in CS.No.122 of 2008 the plaintiff was unable to proceed further with the suit. The learned Senior Counsel also submitted that time was the essence of the contract insofar as an agreement for the sale of immovable property is concerned. He would therefore contend that the finding of the learned Judge that the suit is barred by



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limitation is totally erroneous and is liable to be set aside. In support of this argument, he would rely upon the following judgments:

1. "S. Brahmanand and others vs. K.R. Muthugopal (Dead) and Others reported in [(2005) 12 SCC page 764]"
2. "Panchanan Dhara and Others vs. Monmatha Nath Maity (Dead) Through LRS and others reported in [(2006) 5 SCC page 340]"
3. "Mct. M. Chidambaram Trust vs. V. Ravicahndran reported in [2017 SCC online Mad 1884] "
4. "Pazhaniappa Chettiyar vs. South Indian Planting and Industrial Co, Ltd. and another reported in [AIR 1953 TC 161]"
5. "K. Venkoji Rao vs Abdul Khuddur Kureshi reported in [I.L.R. 1991 KAR 1670]"
6. Dutta Seethamahalakshamma vs. Y. Balaramaiah [DB] reported in [2003 (2) A.P.L.J. 75 (HC)]"
7. "Smt. Saraswathamma vs. H. Sharad Shrikhande and Others reported in [2005 SCC Online Kar 221]"

b) He would further contend that despite the fact that the plaintiff's mother was impleaded as the 14th defendant in the suit she was not made a party to the compromise entered into between the defendant and his siblings. They have overlooked the fact that she hasn purchased 1820 Sq.ft of the suit property. The suit property sold to the plaintiff's mother is also the subject matter of the suit and despite this, the plaintiff therein had not deemed it fit to include her in the compromise. The defendant and his family members had colluded to deprive the plaintiff of the remaining extent undertaken to be sold to her.

c) Per contra, Mr. S. Rajasekhar, learned counsel appearing on behalf of the defendant would contend that the suit for specific performance has been filed only after the compromise decree, much beyond the period of limitation. He would submit that even if the limitation is calculated from the last day of payment namely 17.07.2008, the suit is hopelessly barred by limitation.

d) He would contend that the plaintiff was very much aware about the suit for partition that was filed in C.S.No.122 of 2008 since the plaintiff's mother had been impleaded as the 14th defendant in the said suit and despite being aware of the same, she had not chosen to implead herself either in the said



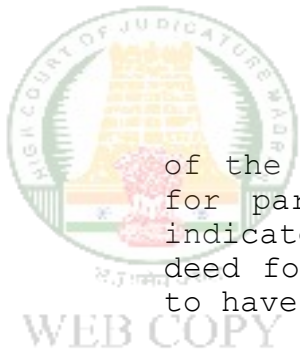
proceedings or file a separate suit for partition. The plaintiff had kept quiet throughout and after the compromise was entered into on 1.11.2012, the plaintiff has come forward to file the instant suit on 13.06.2013, nearly five years after the last payment. The plaintiff is therefore not entitled to the decree or the alternative decree, as the same is clearly time barred and the learned XIX Additonal City Civil Judge has rightly dismissed the suit.

8. Heard the counsels and perused the papers.

9. Discussion:

a) The learned Trial Judge has non-suited the plaintiff on the ground that that the suit is hopelessly barred by limitation and it is this finding that has been challenged by the plaintiff. A few dates are essential for considering the issue on hand. On 14.12.2013, the plaintiff and the defendant had entered into an agreement of sale, in and by which, the defendant had agreed to sell 3670 Sq.ft. of vacant site to the plaintiff and the agreement would state that the balance amount of Rs.4,50,000/- was payable within a period of three months from the date of the agreement.

b) Even according to the plaintiff, it was only on 12.05.2006 that the plaintiff had got the defendant to register 1820 sq.ft. out of the total extent of 3670 Sq.ft. in favour of her mother. The advance of Rs.8,50,000/- received under the agreement was adjusted towards the sale consideration. After the sale of a portion of the agreed extent, the plaintiff and the defendant have not entered into a separate agreement. However, the plaintiff had paid a sum of Rs.4,25,000/- periodically and the last of such payment was on 17.07.2008. There was still a balance of Rs.25,000/- payable. In fact, the last of the payments was made after the suit in C.S.No.122 of 2008 had been filed. The plaintiff cannot feign ignorance about the suit, since her mother is shown as the 14th defendant in the said proceedings. The records would also reveal that the plaintiffs therein had moved an application for injunction restraining the defendant from alienating the property in O.A.No.151 of 2008. Despite being aware about such an application, the plaintiff had not chosen to get herself impleaded in the proceedings nor did she take any steps to file a suit. The injunction order did not prevent the plaintiff from filing the suit for specific performance. Ultimately, the suit has been filed only on 13.06.2013, nearly five years after the last payment by the plaintiff and after the compromise decree had been passed in C.S.No.122 of 2008. It is no doubt true that the time is not the essence of the contract especially when parties have extended the period by executing the sale deed for a portion and thereafter receiving payments. However, the last



of the payment was received in July 2008, by which time, a suit for partition had been filed and these circumstances clearly indicated that the defendant did not propose to execute the sale deed for the remaining extent and therefore, the plaintiff ought to have filed the suit for specific performance immediately.

c) The learned Senior Counsel has relied upon various judgments in support of his contention that under Article 54 of the Limitation Act, the period of limitation would start when the plaintiff becomes aware that the performance is refused. In this case, it is clearly evident after the suit for partition has been filed, that the defendant did not propose to execute a sale deed. Further, during the cross examination, the plaintiff has clearly admitted that even in the year 2008, she was aware about the filing of the suit by the siblings of the defendant.

d) Considering the fact that after 2008, right up to the year 2013, no steps have been taken by the plaintiff to initiate steps to have the sale deed executed in her favour, the suit is clearly barred by limitation and the finding of the learned XIX Additional Judge, Chennai cannot be found fault with. Consequently the Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

mrn

To

XIX Additional Judge,
City Civil Court, Chennai.

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

+2cc to Mr.Ashok Menon, Advocate, S.R.No.15674

AS.No.108 of 2015

VSN-II (CO)
SB(26/07/2021)