IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.07.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

A.S.No.362 of 2011

1. Gandhi
2. Sarojini ... Appellants/ Defendants3 & 4

Vs.

1. K.P.Balakrishnan ..1st Respondent /Plaintiff
2. P.S.Palaniswamy ..2nd Respondent/1st Defendant
3. P.Krishnamoorthy ...3rd Respondents/2nd Defendant

PRAYER: Appeal Suit filed under Section 96 of CPC to set aside the Judgment and Decree dated 30.11.2010 passed in O.S.No.136 of 2004 on the file of the Additional District Judge, Fast Track Court, Namakkal.

For Appellants : Mr.T.Murugamanickam
Senior Counsel,
For Mr.Babu Rangasamy
For Respondents
For R1 : Mr.S.Parthasarathy
Senior Counsel,
For Mr.J.Ramakrishnan
For R2 & R3: No appearance

JUDGMENT

The Appeal Suit is filed as against the Judgment and Decree dated 30.11.2010 made in O.S.No.136 of 2004 on the file of the learned Additional District Judge, Fast Track Court, Namakkal.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The suit is filed for specific performance. The case of the plaintiff is that on 18.04.1994, the plaintiff and the defendants 1 & 2 jointly entered into an agreement for sale to purchase the suit properties at the rate of Rs.2,99,000/- per ground and the defendants 1 & 2 received a sum of Rs.2,00,000/- as advance toward the part of the sale consideration. According to the said agreement, both the parties have to perform their part of their contract within a period of fifteen months from the date of agreement for sale viz., on or before 18.07.1995.

3.1. Thereafter on 12.06.1994, the plaintiff has paid another sum of Rs.9,000/- and on 23.11.1994, paid another sum of Rs.7,00,000/- to the defendants 1 & 2 towards balance sale consideration. Thus, the plaintiff has totally paid a sum of Rs.18,00,000/- to both the defendants 1 & 2. Both the payments were duly acknowledged by the defendants 1 & 2 in written and the same were also attested by the witnesses on the back side of the agreement for sale dated 18.04.1994. In fact on the subsequent payment, possession of the suit properties was handed over to the plaintiff and the plaintiff is in possession and enjoyment of the suit properties.

3.2. Thereafter, on 27.01.1995 the plaintiff issued notice and demanded the defendants 1 & 2 to execute the sale deed in his favour. On receipt of the same, the defendants 1 & 2 issued reply notice dated 04.02.1995 with false averments. On receipt of the reply notice, the plaintiff has sent rejoinder notice on 07.02.1995 denying all the avernments made in the reply notice. On receipt of the rejoinder, the defendants 1 & 2 did not send any reply to the rejoinder. Finally when the plaintiff approached the defendants 1 & 2 on 28.03.1995, they have not replied anything.

3.3. In the meanwhile, the defendants have also filed caveats on 29.03.1995 with regard to the suit properties. Thereafter the plaintiff has sent a registered last warning-cum-pre suit notice dated 12.04.1995 to the defendants 1 & 2. On receipt of the same, the defendants 1 & 2 also issued reply on 19.04.1995 with untenable allegations. Thereafter, the defendants 1 & 2 were seriously trying to negotiate and to deal in respect of the suit properties with third party so as to cheat and defraud the plaintiff. Therefore, on 15.06.1995, the plaintiff is sent notice to the defendants 1 & 2 as well as ten persons including defendants 3 & 4. In fact, on 03.07.1995, the plaintiff also published warning notice to the general public and issued them to the general public of the locality in the form of bit notice. However the defendants 1 & 2 sold out the suit property to the defendants 3 & 4 by the registered sale deed dated 03.07.1995. Hence, the present suit for specific performance.

4. Resisting the same the defendants 1 & 2 filed written statement by denying the very agreement for sale itself and also denied the alleged payments paid by the plaintiff. They also denied subsequent payment made by the plaintiff on 12.06.1994 and 23.11.1994. Further stated that first defendant demanded a sum of Rs.10,000/- for his urgent medical expenses and treatment from the plaintiff during the month of April, 1998. At that time, the plaintiff insisted the first defendant to sing unfilled stamp papers, printed papers and blank papers along with the second defendant. Due to the bad health conditions, the first defendant along with second defendant signed in unfilled stamp papers, printed papers and blank unwritten papers and received a sum of Rs.10,000/-. The

first defendant also promised to pay the said amount with the interest at the rate of 2%. Thereafter, the plaintiff fabricated the agreement for sale dated 18.04.1994 and also forged the alleged payments endorsement on the backside of the agreement of sale as if subsequent to the said deed, the balance sale considerations were received by the defendants 1 & 2. Therefore, there is no merit in the suit and prayed for dismissal of the suit.

5. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

i. "Whether the suit sale agreement is true, valid and binding upon the defendants?
ii. Whether the two payments and concerned two endorsements therefore made by the defendants 1 & 2 in the suit sale agreement are true?
iii. Whether the plaintiff is in possession and enjoyment of the suit properties?
iv. Whether the plaintiff has no means to pay the 3 times advances as alleged by the defendants?
v. Whether the plaintiff is ready and willing to perform his part of the contract?
vi. Whether the suit is barred by limitation?
vii. Whether the defendants 3 & 4 are bonafide purchasers as contended by the defendants?
viii. Whether the plaintiff is entitled to the relief of specific performance as prayed for?
ix. To what relief the parties are entitled?"

6. On the side of the plaintiff, he examined P.W.1 to P.W.6 and marked Ex.A.1 to Ex.A.63. On the side of the defendants, they examined D.W.1 to D.W.3 and no documents were marked. Through witness Ex.W.1 & Ex.W.2 were marked and through Court Ex.X.1 to Ex.X.3 were marked. On perusal of the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made by the learned counsel on either side, the trial Court decreed the suit in favour of the plaintiff. Aggrieved by the same, the defendants 3 & 4 filed this Appeal Suit.

7. The learned Senior Counsel appearing for the appellants raised sole ground that the suit is barred by limitation. In this regard, the Court below framed issue No.6 and answered as against the the defendants 1 & 2. He further

submitted that the alleged agreement for sale was executed on 18.04.1994. Admittedly, the time fixed under the agreement for sale was fifteen months viz., on or before 18.07.1995. The plaintiff caused notice on 27.01.1995, which was marked as Ex.A.13. On receipt of the same, the defendants 1 & 2 sent their reply notice on 04.02.1995. In the reply notice, they categorically denied the agreement for sale. Though they admitted their signature, it was executed only for security purpose for the amount of Rs.10,000/- which was received for his medical treatment. Further replied that the agreement for sale was not executed by them and it was fabricated one by using their signatures, which were obtained in the blank papers and printed forms. Therefore, the denial of the agreement dated 04.02.1995, as such the said date is the setting point for limitation. The plaintiff ought to have filed the suit within a period of three years from the denial of the agreement for sale. Whereas, the suit was filed on 15.07.1998 after the lapse of three years. Therefore, the suit itself barred by limitation.

7.1. He also submitted that Article 54 of the Limitation Act, 1963 is applicable for the suit for specific performance. Accordingly, the date fixed for performance or if no such date is fixed, when the plaintiff has noticed that the performance is denied. The defendants 1 & 2 categorically denied the agreement for sale dated 18.04.1994 by their reply notice dated 04.02.1995, which was marked as Ex.A.16 and therefore the limitation to file suit for specific performance starts from 04.02.1995. Therefore, the suit is barred by limitation and prayed for dismissal of the suit.

8. Per contra, the learned Senior counsel appearing for the first respondent/plaintiff submitted that all the issues framed by the Court below are categorically proved and the plaintiff has proved his case for specific performance. Insofar as the limitation is concerned, the Article 54 of the Limitation Act is applicable for the suit for specific performance. Accordingly, the limitation starts from the date which the period begins to run the date fixed for performance or when the plaintiff has noticed that the performance is refused. In the case on hand, admittedly by the agreement for sale dated 18.04.1994, which was marked as Ex.A.1, the time was fixed as fifteen months to perform the respective part of their contract viz., on or before 18.07.1995. Though by the notice dated 04.02.1995, the defendants 1 & 2 denied very execution of the agreement for sale, it cannot be considered for calculating the limitation.

8.1. He further submitted that there are two limbs in the Article 54 of the Limitation Act. The first one is that the time from which the period begins to run to calculate the period of limitation, when the dated is fixed for the performance. The second limb for calculating the limitation is that, if no such date is fixed, from the date on which the plaintiff noticed that the performance is refused. By the agreement for sale dated 18.04.1994, the time fixed for performing their part of their contract is fifteen months viz., on or before 18.07.1995. Whereas, the suit for specific performance filed on 15.07.1998. Therefore, the suit was well within the time of three years. Therefore, the period of limitation has to be calculated from the time fixed for the performance. If no such time is fixed, then the second limb is came to calculate the period of limitation. Therefore, the Court below rightly allowed the suit and prayed for dismissal of the appeal suit.

9. Heard Mr.T.Murugamanickam, learned Senior Counsel appearing for the appellants and Mr.S.Parthasarathy, learned Senior Counsel appearing for the first respondent. Though notices served, no one is appeared on behalf of the respondents 2 & 3.

10. The appellants are the defendants 3 & 4, the first respondent is the plaintiff and the respondents 2 & 3 are the defendants 1 & 2. The plaintiff filed suit in O.S.No.136 of 2004 for specific performance as against the defendants. The case of the plaintiff is that he intended to purchase the suit properties ad measuring 6.40 acre at the rate of Rs.2.99 lakhs per acre, from the defendants 1 & 2, by the agreement for sale dated 18.04.1994. On the date of agreement, the plaintiff has paid a sum of Rs.2,00,000/- as advanced towards the part of the sale consideration. The time fixed to perform their part of the contract is fifteen months viz., on or before 18.07.1995.

11. Thereafter, on 12.06.1994 the plaintiff paid a sum of Rs.9 lakhs and on 23.11.1994, he paid another sum of Rs.7 lakhs to the defendants 1 & 2. Both the payments were duly acknowledged by the defendants 1 & 2 on the backside of the agreement for sale dated 18.04.1994. Thus the plaintiff has totally paid a sum of Rs.18,00,000/- towards the part of the sale consideration. The total sale consideration was fixed at Rs.19,13,000/- for the suit properties. While being so, the defendants 3 & 4 purchased the suit properties by the registered sale deed dated 03.07.1995. Therefore, the plaintiff filed this present suit.

12. Now the only point for consideration is that whether the suit is barred by limitation or not?

13. In the suit for specific performance Article 54 of the Limitation Act is applicable. Agreement for sale was executed on 18.04.1994 and the time fixed for execution of the sale deed is fifteen months viz., on or before 18.07.1995. After subsequent payment made to the defendants, the plaintiff caused notice on 27.01.1995, which was marked as Ex.A.13. On receipt of the same, the defendants 1 & 2 issued reply notice on 04.02.1995, which was marked as Ex.A.16, thereby denying

the very execution of the agreement for sale and stated that for the purpose of medical treatment, the first defendant requested the plaintiff to pay a sum of Rs.10,000/- as hand loan. On such request, the plaintiff demanded the first defendant to sign some blank stamp papers, printed form and blank papers along with the second defendant.

14. Due to the urgent need of fund, the defendants 1 & 2 had singed the blank stamp papers and printed form. Thereafter, the plaintiff fabricated the alleged agreement for sale and also used the signature obtained from the defendants 1 & 2 and made endorsement on the backside of the sale agreement as if they received subsequent payments on 12.06.1994 and 23.11.1994. Therefore, the defendants 1 & 2 categorically denied the very execution of the agreement for sale by their reply notice dated 04.02.1995. Therefore, the learned counsel appearing for the appellants vehemently contended that the limitation starts from the denial of the agreement for sale and the present suit for specific performance is clearly barred by limitation.

15. In the Article 54 of the Limitation Act, there are two limbs. It is relevant to extract the same as follows :-

"54	For specific performance of a contract	Three years.	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused."

Accordingly, the period of limitation has to be calculated from the date on which the performance was fixed. The next limb is that if no date was fixed for performance, the limitation has to be calculated from the date when the plaintiff noticed that the performance is refused.

16. In the case on hand, admittedly in the agreement for sale dated 18.04.1994, there was specific time fixed for performance viz., within a period of fifteen months viz., on or before 18.07.1995. Therefore, the second limb of the Article 54 of the Limitation Act do not come to rescue the case of the defendants 3 & 4. Accordingly, the time starts from 18.07.1995 to file the suit, within a period of three years. The present suit was filed on 15.07.1998 and it is well within the period of three years from the date fixed in the agreement for sale. Therefore the suit is well within the time and not barred by any limitation. Insofar as the limitation is concerned, the Court below rightly concluded in favour of the plaintiff and decreed the suit as prayed for. This Court finds no illegality or infirmity in the order passed by the Court below.

17. Accordingly, the Appeal Suit stands dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rts
To

The Additional District Judge,
Fast Track Court, Namakkal.

Copy to:
The Section Officer,
VR Section, High Court,Madras.

+1cc to Mr.R.Babu, Advocate SR.No. 34726

RSV(CO)
A.SK(29.09.2021)