

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :26.02.2021

PRONOUNCED ON :09.03.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

A.S.NO.1249 OF 2015

AND

M.P.NO.1 OF 2015

Pattammal (deceased)

1.Senthil

2.Babu

3.Srimathi @ Muniyammal

4.Mekala

... Appellants/
Defendants 1 to 5

/versus/

1.S.Arumugasamy

... 1st Respondent/
Plaintiffs

2.The Sub Registrar,
Sub Registrar Office,
Kamaraj Avenue,
2nd Street, Adyar,
Chennai 600 020.

...2nd Respondent/
6th Defendant

Prayer:-

Appeal Suit has been filed under Section 96 read with Order 41, Rule 1 of the Civil Procedure Code against the judgment and decree dated 15.06.2015 in O.S.No.12779 of 2010 on the file of III Additional City Civil Court, Chennai.

For Appellants :Mr.T.R.Rajagopalan, Senior Counsel for
Mr.S.R.Sundar

For Respondents :Mr.K.Perumal for R1
Mr.T.M.Pappaiah,
Special Government Pleader for R2

J U D G M E N T

The appellants herein are the legal heirs of the deceased Pattammal. The suit was filed against them by one Arumugasamy

seeking relief of specific performance in respect of the suit schedule property and permanent injunction restraining them and their agent from altering the physical features of the suit property or creating any encumbrance or charge over it.

2.The suit was laid on the premises that one late Arumugam was the owner of the suit schedule property, which was purchased by him from Tamil Nadu Slum Clearance Board. He put up construction of three rooms and four shops in the said property. The plaintiff entered into a rental agreement with Arumugam in the year 1987 to run a provision shop in shop No.3. The tenancy was renewed time to time. The plaintiff continue to be in possession and enjoyment of the shop in the said suit property as a tenant. In the year 1999, the said Arumugam fell ill seriously. At the time, Arumugam and his wife Pattammal approached the plaintiff for money to meet out his medical expenses and offered to sell the suit property for Rs.10,10,000/-. The plaintiff agreed to purchase the suit property for the said sum and entered into an agreement with Arumugam on 19.11.1999. With the knowledge of his wife and children, who are defendants 1 to 5, a sum of Rs.5,00,000/- was paid to Arumugam on the date of agreement. Money was received by his wife Pattammal. They agreed to adjust Rs.30,000/- given as advance for the shop towards the sale consideration. Arumugam promised to execute the sale deed, after obtaining the sale document from Tamil Nadu Slum Clearance Board on receiving the balance sale consideration. Due to prolong illness, Arumugam died in the year 2001. He continues to pay rent to the first defendant. The first defendant approached for money and received Rs.50,000/- on 05.05.2002 and another Rs.50,000/- on 01.09.2004. In total, the plaintiff has paid Rs.6,30,000/- towards the sale consideration. While so, suddenly he received notice dated 25.03.2005 from an Advocate on behalf of the 5th defendant claiming rent. Reply was sent to the fifth defendant asking for certified copy of the document under which the fifth defendant is claiming title and rent. Thereafter, in view of rival claim for the rent, he stopped paying the rent to the shop in occupation from the month of April 2005. Since there was no response from the fifth defendant for production of document demanded, the plaintiff paid the withheld rent to the first defendant as before. In the said circumstances, the third parties are visiting the property almost daily and force him to vacate the premises dehors of his agreement with the landlord.

3.On 11.10.2005 at around 10.30 hours, strangers came to the shop and threatened him serious consequences, if he fail to vacate the premises. Hence, he filed suit for permanent injunction fearing threat to his life and enjoyment of the suit property before the City Civil Court, Chennai in O.S.No. 6741/2005 on 14.10.2005. Thereafter, when he tendered the rent

on 10.10.2005, the first defendant refused to receive it. Immediately, on 13.10.2005, the plaintiff sent a notice through his counsel calling upon the first respondent to intimate her bank account number for deposit of the money rent. There was no reply from her. Hence, he sent the rent through money order. But after receiving it, the first defendant returned back the money through another money order. Hence, the plaintiff filed R.C.O.P.No.810/2006 on the file of the Small Causes Court, Chennai for deposit of rent. However, the said petition was dismissed. In the said circumstances, the present suit is filed for enforcing the agreement entered with Arumugam in the year 1999.

4.The defendants 4 and 5 filed written statement wherein contended that the suit is not maintainable and it is an abuse of process of law by fabricating false evidence. The sale agreement dated 19.11.1999 alleged to have been executed by late Arumugam is rank forgery. He never entered into any sale agreement with the plaintiff. Hence, notice was caused by the 5th defendant to him on 25.03.2005 to pay the rent. He did not whisper about the existence of the sale agreement with Arumugam the father of the 5th defendant. In the suit filed for injunction in O.S.No.6741/2005, the plaintiff did not refer about the alleged sale agreement dated 19.11.1999. The present suit for specific performance was filed based on the fabricated document. Arumugam had entered into the rental agreement with the plaintiff in the year 1987 except that, there is no other agreement between the plaintiff and Arumugam. Forgery made by the plaintiff in the alleged sale agreement can be easily found out, if the rental agreement signed by Arumugam is compared with the alleged sale agreement. Neither Arumugam nor the first defendant borrowed any money from the plaintiff for the sale consideration of the suit property. Hence, the suit is liable to be dismissed.

5.Based on the pleadings, the trial Court had formulated the following issues:- सत्यमेव जयते

(1)Whether the plaintiff is entitled for the relief of specific performance by directing the defendants 1 to 5 to receive the balance sale consideration and execute the sale deed?

(2)Whether the plaintiff is entitled for the relief of permanent injunction?

(3)Whether the sale agreement dated 19.11.1999 is true and genuine or fabricated as alleged by the defendants?

(4)Whether the suit is barred by limitation?

(5)Whether the suit is hit by Order 2, Rule 1 of CPC?

(6)what other relief the plaintiff is entitled to?

6.Before the trial Court, on behalf of the plaintiff three witnesses were examined as P.W.1 to P.W.3 and 14 documents were marked as Exs.A1 to A14. On behalf of the defendants, two witnesses were examined as DW.1 and D.W.2 and 16 documents were marked as Exs.B1 to B16.

7.The trial Court allowed the suit granting the relief of specific performance and also granted injunction restraining defendants 1 to 5 from creating disturbance to the peaceful possession of the plaintiff or creating any charge over the property. The injunction relief against the 6th defendant was dismissed.

8.Aggrieved by the said judgment, the defendants have filed the present appeal on the ground that the suit property was purchased by late Arumugam from Tamil Nadu Slum Clearance Board. He constructed shops and buildings in the suit property and let out 80 feet of shop to the plaintiff on 05.04.1987 under Ex.A2 for monthly rent of Rs.300/-. During his life time, Arumugam executed a registered Will on 12.03.1998 bequeathing the suit property in favour of defendants 1 to 5. On his death, on 29.07.2001, the Will came into effect. Notice demanding rent was issued to the plaintiff on 25.03.2005 (Ex.A4) after receiving the notice the plaintiff caused reply notice dated 04.04.2005(Ex.A5) asking for copy of the Will executed by late Arumugam. A re-joinder was sent to the plaintiff and the plaintiff issued reminder notice again seeking certified copy of the Will. In all these communications, the plaintiff never referred about his sale agreement with Arumugam. Only with an intention to grab the suit property, he has created the forged suit sale agreement Ex.A1. The trial Court had missed to note that the said sale agreement was introduced by the plaintiff for the first time only while filing the present suit and not in his earlier litigations or notice.

9.The learned Senior Counsel appearing for the appellants would submit that the trial Court has miserably failed to properly appreciate the evidence and law involved in this case. First of all, the suit in O.S.No.948 of 2006 for specific performance of an agreement dated 19.11.1999 was laid on 22.12.2006 before the High Court of Madras and later transferred on 20.10.2010 and renumbered as O.S.No.12779 of 2010. All through out prior to filing the present suit, the plaintiff was claiming only a tenant in a portion of the suit property. Suddenly, relying upon a forged document alleged to have been executed in the year 1999 by Arumugam, the suit for specific performance is filed, five years after the demise of Arumugam. The reading of the recitals found in the alleged sale agreement of the year 1999 and the rental agreement executed by Arumugam in favour of the plaintiff in the year 1987 will clearly show

that while letting out the premises the landlord Arumugam has meticulously laid down the terms and conditions in writing in the said rental agreement. Whereas the sale agreement is very creptic even without fixing time for completion of contract. The plaintiff not proved the due execution of the agreement and the payment of advance money to Arumugam on the date of agreement and the subsequent payment, alleged to have been made to Pattammal in the years 2002 and 2004. The conduct of the plaintiff clearly disproves his claim of readiness and willingness. He has not filed any lodgement schedule for deposit of balance sale consideration. He first of all waited for seven years from the date of alleged execution of sale deed. He filed a suit for permanent injunction alone without reserving right to file specific performance suit, when the cause of action to file the specific performance suit was very much available to him.

10.The learned counsel appearing for the respondent/plaintiff submitted that the plaintiff entered into the sale agreement with good will and bonafide intention based on the promise given by Arumugam and his wife Pattammal. He waited for Arumugam to execute the sale deed, after he get the sale seed from the Tamil Nadu Slum Clearance Board. That was the cause for the delay in seeking specific performance. After the death of Arumugam and his wife, their legal heirs want to defeat his interest. Therefore, they have come out with false defence. As long as Pattammal was alive, the rent was paid to her. His relationship with her was cordial. he did not force Pattammal to execute the sale deed. He was always ready and willing to pay the balance sale consideration.

11.The point for consideration in this appeal is whether the trial Court erred in holding the sale agreement dated 19.11.1999 is enforcible as prayed in the suit filed on 22.12.2006.

12.The fact that the plaintiff was a tenant of 80 feet area in the suit property for monthly rent to run a provision store on 05.04.1987 is admitted by both the parties. The said rental agreement period was initially fixed as 11 months but the plaintiff continue to be the tenant as holding over. The suit sale agreement is an unregistered document alleged to have been executed by Arumugam on 19.11.1999 in the presence of Gunasekara Perumal and Ramar as witnesses. The agreement holder and the witnesses to the document Ex.A2 have mounted the witness box to speak about the execution of suit sale agreement. The plaintiff, who was examined as PW-1, in the cross examination, admits that he has not obtained any endorsement from Pattammal, wife of Arumugam for payment of Rs.50,000/- each in the year 2002 and 2004. He also admits that there is no reference in the recital of the sale agreement that the agreement will be executed after getting sale deed from Tamil Nadu Slum Clearance Board. The

specific case of the defendants is that the signature in Ex.A2 sale agreement is not the signature of Arumugam. The plaintiff to show that Arumugam signed in Ex.A2-sale agreement. He has examined the attesting witnesses namely, Gunasekara perumal and Ramar as PW-2 and PW-3. Gunasekara perumal who is the first witness to the agreement, in his proof affidavit, had stated that he is the second witness and he saw the subsequent payments made by the plaintiff to Pattammal on 05.05.2002 and 01.09.2004. In the cross examination, he admits that he does not know the name of the other witnesses and when Arumugam gave money to the first defendant in the year 2004, he was standing outside. He has not specifically stated whether he witnessed to the said transaction or not. Furthermore, there is no explanation when subsequently money was given to Pattammal after the death of Arumugam and why the other legal heirs were not put a notice about this payment and why endorsement was not obtained from Pattammal for the receipt of Rs.50,000/- each in the year 2002 and 2004.

13. In the deposition of the other attesting witness Ramar, again there is a contraction in the chief and the cross examination regarding ranking of the witness. In his proof affidavit, in lieu of chief examination, PW-3 claims that he was the broker to negotiate the agreement and received the commission of Rs.5000/- from late Arumugam and Pattammal. No such averment is in the plaint or in the deposition of PW-1. In the proof affidavit, in lieu of chief examination, he say, he is the first attesting witness. He has deposed that he was present on 05.05.2002 and on 01.09.2004 when the plaintiff paid further sum of Rs.50,000/-each to the first defendant Pattammal.

14. From the evidence both documentary and oral, it has been elucidated by the defendants that in the alleged sale agreement there was no time prescribed for completion of contract, there is no pre-condition imposed on the vendor to produce the sale deed issued by Tamil Nadu Slum Clearance Board or an undertaking that he will get the deed from the Tamil Nadu Slum Clearance Board and thereafter, execute the sale deed. Therefore, when there is no time limit prescribed in the document, the limitation to perform the contract regarding transfer of immovable property shall be three years and in this case, the suit has been filed in the year 2006 about 6 years after the sale agreement. The Court below has taken into consideration the averment made in the plaint and the oral evidence of PW-1 to PW-3 that Pattammal received Rs.50,000/- on 05.05.2002 and 01.09.2004. For this oral submission, there is no documentary proof. It is an admitted fact that the plaintiff has not obtained any endorsement or receipt for the said payments. After the death of Arumugam on 29.07.2001, Pattammal was not the only legal heir for Arumugam. Any person, who wants to continue

the agreement and enforce the said sale agreement ought to have ensured the legal heir of the deceased vendor. Moreso, in this case, the agreement holder/the plaintiff is not a stranger but already a tenant under Arumugam. Therefore, the trial Court erred in accepting the payments as true and genuine though there is no evidence to that effect.

15. Further, it is noted that the plaintiff was put to notice on 25.03.2005 (Ex.A4) that under the Will executed by Arumugam, the 5th defendant Srimathi @ Muniammal had informed the plaintiff that her father Arumugam had executed a Will in her favour and the suit property been bequeathed her. Therefore, neither her mother Pattammal nor her brother Babu is entitled to collect the rent exclusively and called upon the plaintiff, who was running a plumbing shop in the premises to tender rent of Rs.1000/- to her. To this notice Ex.A4, the plaintiff has only asked for the details of the Will, but never informed the fourth and fifth defendants that her father had entered into the sale agreement and it is in force and valid and he intended to enforce it and ready and willing to pay the balance sale consideration. It is for the first time in the suit filed for injunction before the Civil Court, the plaintiff had referred about the agreement dated 19.11.999 and even then when the cause of action to seek for specific performance had occurred at that point of time he has not reserved the right to file a separate suit for specific performance or indicated his intention to file such suit. In the said plaint in O.S.No.6741 of 2015, signed on 14.10.2005, the plaintiff has only stated that he is ready and willing to perform his part of contract by paying the balance sale consideration. Before filing the earlier suit or thereafter the plaintiff has not done anything to prove his ready and willingness. In fact, he has admitted that he filed the suit for specific performance, even without calling upon the defendants to come and execute the sale deed, after receiving the balance sale consideration. It is obviously clear that the alleged sale agreement dated 19.11.999 came to light and knowledge of the defendants only from the averment in the plaint filed by Arumugamsamy the respondent herein in O.S.No.6741 of 2005. When there was exchange of notices between the parties regarding collection of rent, the plaintiff has not whispered about the sale agreement. The reading of Ex.A5 and Ex.A6 clearly show that when there was necessity for the plaintiff to mention about the sale agreement in his reply and reminder notice, the plaintiff has not referred the sale agreement Ex.A1. Even when he wrote a letter to the Sub Registrar, requesting him not to allow creation of encumbrance over the suit property, since he is the previous agreement holder. He has not mentioned any date, month or year of his agreement or the person with whom he entered into the said agreement. These omissions are very vital for reckoning the limitation.

16.The trial Court however failed to consider these vital omissions. In the suit for specific performance, it is necessary that the plaintiff should prove his ready and willingness at all time and also should come to the Court seeking the equitable relief within the time prescribed. When the very execution of the sale agreement Ex.A1 by Arumugam is questioned by the defendants, the plaintiff has not taken any steps to prove the authenticity of Arumugam signature in the said agreement. Mere oral evidence of two interested witnesses who have contradicted their own evidence cannot be relied upon to hold the said agreement Ex.A1 is a valid one. Moreso, when the plaintiff has suppressed the sale agreement till he addressed to the Sub Registrar on 13.10.2005. Even in that letter, there is no details which are found in Ex.A1, including the person who executed the sale agreement. Before that, there was exchange of notices for payment of rent. The plaintiff has not whispered about this sale agreement Ex.A1. If really Ex.A1 was true and valid and the plaintiff was ready and willing to pay the balance sale consideration and get it registered, nothing prevented him to do so before the expiry of the limitation period of three years.

17.Even if the explanation given by the plaintiff for cause of the delay is accepted, when he filed the suit for permanent injunction, the cause of action to file the specific performance was also very much available. But, the trial Court by misapplying the dictum of the Hon'ble Supreme Court rendered in Inbasegaran & Anr vs S. Natarajan(Dead) Through LRS reported in (2015)11 SCC 12, had held that in the facts and circumstances of the case, Order 2 Rule 2 of the Civil Procedure Code will not apply. It is a very erroneous observation and the said finding is liable to be interfered. The trial Court erred in holding that in the instant case the cause of action for the permanent injunction suit and the specific performance suit are different. The previous suit for permanent injunction was in respect of the rented premises, which was in his possession. Whereas the suit for specific performance was in respect of the sale agreement. The very same argument placed by the learned counsel appearing for the respondents before this Court emphasising that Order 2, Rule 2 of the Civil Procedure Code have no application in this case. If it is so, a very simple question raise in the mind of this Court that when then the cause of action for specific performance suit of the agreement of sale will arise. The straight answer would be when the refusal to execute the sale deed in spite of offering the entire sale consideration.

18.In this case, the plaintiff alleging that the defendants trying to forcibly evict him from the rented premises, has filed

the suit in O.S.No.6741 of 2005 on 14.10.2005 but it took 14 months thereafter for him to file the suit for specific performance. The said conduct indicate that he was not ready and willing to perform his contract, inspite of threat of eviction. The reasons given by the trial Court for reckoning the limitation and rejecting the plea of bar under Order 2, Rule 2 of the Civil Procedure Code does not go in consonance with the established principle of law. Ready and Willingness has to be established from the date of agreement till the date of filing the suit. In this case, one could easily see that even after expressing his ready and willingness in the previous suit filed for injunction, the plaintiff has not taken any steps to call upon the defendants to come and execute the sale deed after receiving the balance sale consideration. He waited for nearly 1 year 2 months and thereafter, filed the suit for specific performance. There is no evidence to show to prove his readiness and willingness, no application filed for deposit the balance sale consideration. Even assuming, the sale agreement Ex.A1 is true and valid, the respondents ought to have sought for enforcement of the contract on or before 18.11.2002. In this case, the plaint presented only on 22.12.2006.

19. For the sake of saving limitation, the plaintiff has come forward with a story that on 05.05.2002 Pattammal received Rs.50,000/- towards part sale consideration. There is no endorsement or receipt or documentary to proof it. Sofar, the other payment alleged to have made in the year 2004 also, there is no endorsement or proof. While so, when the suit for specific performance, the purchaser should show his bonafide and the readiness and willingness at all time had failed to discharge his burden and have no equitable relief. It is unfortunate, the trial Court had not considered the law or facts properly and allowed the suit. Hence, it is liable to be set aside.

20. Further the alleged two payments of Rs.50,000/- each in the year 2002 and 2004 to Pattammal is not supported by any receipts. Such averment can be made by any person, after the recipient death to save limitation. Even assuming some part payment made towards the sale consideration, it should have been made to all the legal representatives of the deceased Arumugam with whom the plaintiff has entered into the agreement. If any payment he made to Pattammal, cannot be constructed as payment towards the part sale consideration of the suit property. There are other legal heirs to Arumugam. Either he died intestate, or executed any testament. The buyer ought to have ensured, who are the beneficiaries to inherit his estate. In this case, the fifth defendant had come out with the specific case that Arumugam during his life time had executed a Will in the year 1998 in her favour and others and the said Will has also been

probated.

21.In the said circumstances, the suit filed on 22.12.2006 to enforce the agreement dated 19.11.999 is hopelessly barred by limitation. The explanation provided by the plaintiff to save the limitation are not legally sustainable and not supported by acceptable evidence. Further, the cloud over the genuineness of Ex.A1 not cleared by the plaintiff through evidence, which could probablise his contention.

22.In the result, this Appeal Suit is allowed. The judgment and decree dated 15.06.2015 passed by the learned III Additional City Civil Court, Chennai in O.S.No.12779 of 2010 is hereby set aside. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To:

1. The III Additional City Civil Court,
Chennai.
2. The Registrar,
City Civil Court,
Chennai.

Copy To

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

+2cc to Mr.K.Moorthy, Advocate, S.R.No.14714
+1cc to Mr.K.Perumal, Advocate, S.R.No.14699

A.S.No.1249 of 2015
and M.P.No.1 of 2015

GJ(CO)
CS/31/03/2021