



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.02.2021

Pronounced on : 05.03.2021

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CORAM :

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.53 of 2011

AND

M.P.No.2 of 2011 & M.P.No.1 of 2012

1.Mr.Vijaya Ragavan @ Ravi (Died),
Smt.V.Radha @ Kannammal (Died),
2.Ms.Pankajam @ Shanthi,
3.Mrs.V.Sita,
4.V.Smruthi,
5.V.Sudeekshna, ...Plaintiffs / Appellants
Petitioners 3 to 5 are residing at D-2,
Sree Graden Apartments, Aruna Nagar Main,
Vadavalli, Coimbatore - 641 041.

Appellants Nos.3 to 5 brought on record as LR's of the deceased
1st appellant vide order of Court dated 27.02.2020 made in
C.M.P.Nos.3663, 3666 & 3671 of 2020 in A.S.No.53 of 2011 (SMSJ).

/versus/

1. Mr.N.M.Thangavel,
2. Mr.B.Venugopal,
3. Smt.Dhanalakshmi, ...Defendants / Respondents

Prayer : First Appeal is filed under order 41 Rule 1 & 2 of
C.P.C., read with under Section 96 of C.P.C., against the
Judgment and Decree dated 12.02.2008 passed by the Learned
Additional District Judge-cum-Fast Track No.1, Coimbatore in
O.S.No.415 of 2006.

For Appellants : Mr.L.Mouli

For R1 : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

For R2 & R3 : Mr.P.Valliappan



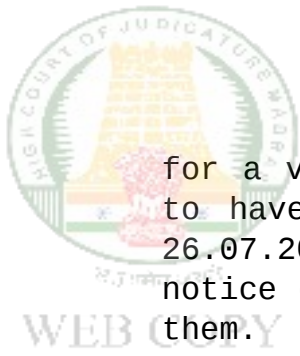


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20.07.2006 neither before his lifetime nor after the lifetime, the plaintiff approached the defendants for the execution of the sale deed tendering the balance sale consideration. Therefore, the contention of the plaintiff that he was always ready and willing to perform his contract is false and contrary to his own conduct. The balance sale consideration as per terms of agreement ought to have been paid on or before 21.02.2003. After agreement, 1st defendant and his deceased father Venkataraman cleared all the tax dues and electricity charges and waiting for the plaintiff to pay sale consideration and get the sale deed executed in his favour. However, the plaintiff failed to show interest in getting the contract completed. After waiting for three years, the defendants 1 to 3 sold the property to defendants 4 & 5 after knowing the fact that the plaintiff is not in a position to complete the said sale. The alleged suit notice dated 26.07.2003 does not disclose whether the plaintiff was ready with money and willing to complete the contract. The suit for specific performance not filed within a period of three years, hence it has to be dismissed on the said ground.

5. In the additional written statement was filed by the defendants 1 & 2 and same was adopted by the 3rd defendant, wherein, it is stated that after the death of Venkataraman, they cannot be a personal decree against his legal representatives. The alleged legal notice dated 26.07.2003 to Venkataraman, who died on 20.07.2006 is non est in the eye of law. The plaintiff, who entered into a sale agreement with specific recital that he will complete the contract within the period of 6 months, failed to perform his part of contract. Therefore, the defendants, who had brought money for their construction were forced to face recovery proceedings from their lenders. Due to breach of contract by the plaintiff, the 1st defendant and his father were forced to undergo great hardship. The plaintiff had no wherewithal to pay the sale consideration therefore, he waited for more than 3 years and after knowing that the property has been sold to third parties just to harass and extract money, the present suit is filed.

6. The 4th and 5th defendants filed written statement stating that suit is filed only to coerce the defendants their vendor namely defendants 1 to 3 never disclosed to them about the existence of alleged sale agreement. They purchased the suit property after verifying the encumbrance certificate and



for a valid consideration on 03.07.2006. The plaintiff alleged to have been issued notice to the defendants 1 to 3 only on 26.07.2006. The suit is not maintainable against them since no notice or intimation regarding the alleged agreement was sent to them.

7. The Trial Court based on the pleadings framed the following substantiate questions of law:-

(i). Whether the sale agreement dated 06.02.2003 is true, valid and enforceable?

(ii). Whether the plaintiff had advanced Rs.3,000/- to 1st defendant and his father Venkataraman on 06.02.2003?

(iii). Whether the plaintiff gave a sum of Rs.7,000/- on 05.03.2003 to the 1st defendant and his father Venkataraman.

(iv). Whether the plaintiff was ready and willing to complete the contract?

(v). Whether the plaintiff is entitled for a specific performance on payment of balance sale consideration?

(vi). Whether the plaintiff is entitled for a specific performance of an agreement dated 06.02.2003 and for a direction to the defendants to execute the sale deed or in failure to do so, the Court should execute the sale deed on behalf of the defendants.

(vii). Whether in alternate the plaintiff is entitled for refund of Rs.10 lakhs with 12% interest.

(viii). What are the reliefs.

8. Before the Trial Court, the plaintiff examined two witnesses and marked 16 Exhibits. The defendants examined two witnesses and marked 18 Exhibits.

9. The Trial Court, after appreciating the evidence held that the 1st defendant and his father Venkataraman had received a sum of Rs.10,00,000/- as advance for selling the suit property. After the death of Venkataraman, the defendants 1 to 3 have inherited the estate of Venkataraman, therefore, the defendants 1 to 3 are liable to refund a sum of Rs.10,00,000/- received as advance by 1st defendant and his father Venkataraman with 6% interest from the date of decree till the date of realisation.

10. The Trial Court held that the plaintiff is not entitled to create charge over the property since there was not transfer of possession.



11. The appeal is filed by the defendants on the ground that the suit is barred by limitation, but the Trial Court has failed to consider the said fact. Under Article 47 & 54 of the limitation Act, the suit should have been filed within three years from the last date fixed for performance of contract. The 1st respondent herein has filed the suit only on 29.08.2006 which is after three years from the last date fixed for performance of the contract. Therefore, the Trial Court judgment has to be interfered and set aside. It was also contended that the award of 6% interest from the date of decree till the date of realisation is also erroneous

12. Heard the submission of the respective Counsels, regarding the merits of the respective case.

13. The Learned Counsel for the appellant emphasis that suit is barred by limitation. Contrarily the learned Counsel for the respondents would state that the suit is not barred by limitation. Transferring suit property to third party pending the sale agreement with the plaintiff create a charge over the property.

14. The Learned Counsel for the respondent citing the list of judgments favouring the proposition that charge of attachment will be created over the property of the seller and the contract of sale will stand with priority over the transfer of property as per under section 55(6) (b) of the Transfer of Property Act, would submit that, after entering into an agreement with the plaintiff on 06.02.2003, the defendants 1 to 3 has sold the property to the defendants 4 & 5 on 03.07.2006 under Ex.B.17. The said transfer should be subject to charge over the property in view of the agreement Ex.A.1 dated 06.02.2003. If the suit is over a property under charge, the period of limitation 12 years.

15. Point under consideration:-

Whether the suit is barred by limitation and if not whether the plaintiff can claim charge over the property?

16. Ex.A.1 is the suit sale agreement dated 06.02.2003 and time to complete the contract was fixed as six months. Out of total agreed price of Rs.18,00,000/-. A sum of Rs.3,00,000/-



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was paid to the 1st defendant and his father on the date of agreement and there is a typed endorsement on the back of Ex.A.1 that, on 05.03.2003 the plaintiff has paid an another sum of Rs.7,00,000/-.

17. This Court also find down below the endorsement, it is written that the period of three months shall be extended for further period three months. But none of the parties have signed under it therefore, it is clear that the period for payment of sale consideration ended on 05.08.2003 and not extended further. The plaint has been presented before the District and Sessions Court, Coimbatore on 04.08.2006. It was returned for deficit Court fees on 08.08.2006. Thereafter, the plaint has been represented with the requisite Court fees on 29.08.2006. From the dates of endorsement found in the original plaint, it is clear that the suit was laid within three years from the date of commencement of limitation. Therefore, the suit is not barred by limitation.

18. Regarding the decree of refund of the advance money, the trial Court has assigned valid reason. The relief of specific performance is an equitable relief. The decision of the Court should render equity for both the parties. The vendor cannot be unjustly enriched due to the default of the purchaser. When there is no wanton default on the part of the purchaser, but the money advanced is only an earnest money for the performance of the contract that can be forfeited. In alternate, if substantial amount is paid as part payment, same cannot be forfeited in toto.

19. In support of this preposition, the Learned Counsel for the respondent rely upon the judgment of the Hon'ble Supreme Court in Satish Batra -vs- Sudhir Rawal reported in 2012 SC Suppl 684.

20. Under Section 54 of Transfer of Property Act, "contract for sale" is defined and it is made clear that, under the provision a contract for sale by itself do not create any interest in or charge on such property. To create a charge over the property which is subject matter of the agreement for sale, there must be a specific recital for creating the charge over the property. For further clarity the said provisions is extracted below:-



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Section 54 of Transfer of Property Act:-

54. "Sale" defined:- "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made. Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale:- A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

21. Section 100 of Transfer of property Act deals with charges. It is clearly spelt out that the charge can be created by the Act of parties or operation of law as security for the payment of money to another. In the instant case in hand neither by operation of law nor by consent of the parties, charge has been created over the suit subject property therefore, the subsequent transfer of the property to defendants 4 & 5 is legally valid. The plaintiff cannot seek charge over the property. The Trial Court has rightly rejected the said plea and no appeal is filed. Hence, the said point is only discussed cursorily out of the academic interest and not otherwise. The respondents also not seriously emphasis this point which was urged to bring the limitation period of 12 years. Since the records indicate the suit presented within 3 years but numbered subsequently will not fall under the mischief of 3 years



limitation. Hence, they have not pressed the plea that the prior agreement to sale will create charge over the property which subsequently transferred.

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22. In the result, the Appeal Suit is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

bsm

To,

1.The Additional District
Judge-cum-Fast Track No.1,
Coimbatore.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.P.Valliappan, Advocate SR.No.14369

+1cc to M/s.L.Mouli, Advocate SR.No.13895

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.13889

A.S.No.53 of 2011

GP(CO)
RVM(01/10/2021)