



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 22.02.2021
Pronounced on 04.03.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.1033 of 2007
and
C.M.P.No.14346 of 2020

Messrs.J.Pee.Tee.Engineering Industry,
Rep. by its Proprietor,
P.T.Jonney,
465-B, Kamarajar Road,
Peelamedu,
Coimbatore 641 004,
Rep. by its Proprietor,
P.T.Johny

...Appellant/Plaintiff

Vs

1.M.R.Ponnusamy

2.Sathyasai
representing M/s.Gold Carbons as its
Proprietor,
202-A, Kamarajar Road,
Peelamedu,
Coimbatore 641 004.

3.C.Rajagopal
Representing Sri Sabari Traders
as its Proprietor,
202-A, Kamarajar Road,
Peelamedu,
Coimbatore 641 004.

...Respondents/Defendants

PRAYER: Appeal filed under Section 96 of CPC to set aside the judgment and decree dated 24.01.2007 in O.S.No.957 of 2004 on the file of the Additional District and Sessions Judge cum Fast Track Court No.2, Coimbatore.

For Appellants : Mr.C.R.Prasannan

For Respondents : Mr.S.Parthasarathy
Senior Counsel
for Mr.J.Ramakrishnan for R1
R2 and R3-Steps not taken



J U D G M E N T

The appeal filed by the plaintiff in the suit for specific performance seeking execution of the sale deed as per the registered sale agreement dated 22.08.1983 or in alternate to repay the advance money Rs.12,32,000/- with future interest at 12% per annum for the principal amount of Rs.11,00,000/-.

2.The trial Court granted the alternate relief of refund of advanced money with interest. Not being satisfied with the relief granted, the present appeal is filed by the plaintiff.

3.The brief facts of the case as stated in the plaint:

The suit schedule properties belongs to the first defendant. He got the property under a partition deed dated 06.12.1982 and a registered sale deed dated 22.08.1983. The suit land is about 4,047 sq.ft. 9 cents and 153 ½ cents. The plaintiff was a tenant under the first defendant in a portion of suit property measuring of 1000 sq.ft. The plaintiff became the tenant in the year 1998 and running an Industry in the said place as a proprietorship concern under the name and style of "J.Pee.Tee.Engineering Industry". He paid Rs.30,000/- as advance and put up a hollow block structure with a cement sheet measuring 37X 17 feet. Besides the hollow block structure, the plaintiff also in occupation of 17X 17 feet vacant site. Rent for the said premise was fixed as Rs.1000/-. The plaintiff regularly paying the rent to the first defendant. The first defendant offered to sell the suit property for sale consideration of Rs.15,00,000/- to the plaintiff and the plaintiff also agreed to buy the same which includes site, which was in occupation of the defendants 2 and 3 besides the plaintiff. On 26.12.2003, a sale agreement was entered into between the first defendant and the plaintiff. The sale agreement deed was registered on 05.01.2004. The first defendant acknowledged the receipt of the advance money and also promised to execute the sale deed within a period of 11 months. The plaintiff has always been ready and willing to perform his part of contract. The first defendant is duty bound to clear certain formalities such as to demolish the structures available in the suit property, to vacate the tenants in the suit property, to produce the original documents for verification, to survey the land and fix the boundaries. The first defendant had not chosen to comply with any of these requirements. The plaintiff has sufficient funds to pay the balance sale consideration and this fact was made known to the first defendant on several occasion. He is ready and willing to deposit the balance sale consideration into the Court as and when the Hon'ble Court directs him to deposit. The plaintiff met the first defendant and requested him to complete the formality and executed the sale deed on the day fixed. The



first defendant has not taken any steps to complete the formality. Therefore, the plaintiff issued notice to the first respondent on 17.11.2004, demanding him to fix a day for execution of the sale deed. The first defendant, though received notice, did not come forward to execute the sale deed. A reply was sent on 23.11.2004, refusing to execute the sale deed.

4. In the reply, the first defendant had stated that there was no consideration passed under the document and the sale agreement is not a valid document. Being a registered document, denying the validity of the said document clearly shows the intention of the first defendant to wriggle out from the contract. In the said reply, the first defendant, beside questioning the validity of the sale agreement also alleged willful default of payment of rent of Rs.3,29,355/-. The second and third defendants are formal parties, who are the tenants under the first defendant. Since the agreement between the plaintiff and the first defendant is to sell the vacant land, the defendants 2 and 3 who are occupying the land are made as formal parties. The plaintiff laid the suit for directing the first defendant to execute the sale deed in respect of the suit property, directing the first defendant to demolish the superstructure available in the suit property and hand over the vacant possession of the suit property to the plaintiff, in alternate, direct the first defendant to pay a sum of Rs.12,32,000/- with future interest at 12% per annum.

Written Statement in brief:

5. The first defendant filed a detailed statement wherein the alleged agreement for sale denied and the plaint averments as false and untenable. The specific stand of the first defendant is that he never agreed to sell his property or received any advance from the plaintiff. The plaintiff took a portion of the suit property on lease. The said portion is measuring 884 sq.ft. of building. He has paid an advance of Rs.30,000/- and rent was fixed at Rs.1850/- per month. Till May 1999, the plaintiff was regularly paying the rent. On 01.06.1999, the plaintiff took a further extent of 1764 sq.ft. of vacant land from the first defendant. The rent for the vacant land was fixed at Rs.1.50/- per sq.ft. and for the constructed building, Rs.3.00 per sq.ft. as such the plaintiff agreed to pay a sum of Rs.5067/- from 01.06.1999 for the land and building. The plaintiff started paying the agreed rent of Rs.5067/- from the month of June 1999. During the month of July 1999, the first defendant was in need of fund. Coming to know about it, the plaintiff approached the defendant and come forward to lend money for 12% interest and agreed to adjust the rent towards the interest payable. With the above



understanding, the defendant received money from the plaintiff to the tune of Rs.7,49,100/-. From July 1999, the defendant stopped paying rent adjusting towards interest. At the end of December 2003, the plaintiff approached the defendant and insisted for repayment of the loan amount. The defendant agreed to execute a registered mortgage in favour of the plaintiff for the amount received but the plaintiff insisted the first defendant to execute a document in the form of an agreement. Believing the assurance that he will not misuse the document or seek any right under the document, the defendant executed the agreement for sale. He executed the document only with an intention to avail loan and not with an intention to sell the property. As on 26.12.2003, when he executed the sale deed the total money payable by him was only Rs.7,49,100/-. The plaintiff further agreed to lend a sum of Rs.3,50,000/- within a period of 7 months. But the plaintiff was able to pay only Rs.12,500/-. He did not receive any money on 26.12.2003 from the plaintiff and he did not agree to sell his property for Rs.15,00,000/-. In the said agreement dated 26.12.2003, there is no mention about the building which is in existence on the suit property for more than 15 years. The description of the suit property given in the suit schedule is not correct. The first defendant had not signed deed with an intention to sell the property. Therefore, the alleged agreement is not a valid document in law, since there is no consensus ad idem between the parties under the agreement dated 26.12.2003. As such, the agreement is not an enforceable document. The defendant always ready and willing to repay Rs.7,49,100/- received from the plaintiff after adjusting the balance rent payable by the plaintiff and also on delivery of the portion of the suit property, which is in occupation of the plaintiff. The first defendant never agreed to sell the property nor agreed to take steps to vacate other defendants from the suit property. He never agreed to measure the land. Therefore, the plaintiff is not entitled to claim the relief.

6. Based on the pleadings, the trial court framed the following issues:

- i) Whether the suit agreement was executed as a security for the loan availed by the first defendant?
- ii) Whether the plaintiff is entitled for the relief of specific performance?

7. Before the trial Court, the two witnesses were examined on the side of the plaintiff. 14 Exhibits were marked in support of his case. On the side of the defendants, three witnesses examined. 12 exhibits were marked.

8. The trial court on appreciating the evidence held that in the sale agreement, there is no reference about the



superstructure whereas the plaintiff had been emphasizing for handing over the vacant site after removing the superstructure. Further, from Exs.B7 to B12, there are evidences to show that the first defendant had borrowed money from the plaintiff in installment and was liable to repay it to the plaintiff and therefore, held that the agreement was executed not with intention to sell the property but as security for the loan availed and therefore, declined to grant relief of specific performance but granted the alternate relief of refund.

9.In the appeal, it is contended that the trial court erred in not granting the relief of specific performance of the suit agreement. The trial Court erred in accepting the defendants case of loan transaction. The trial court failed to note the structures in possession of the second and third defendants are temporary in nature and the same are in hollow bricks covered with cement sheet and the first defendant agreed to remove the superstructure and sell the suit property as a vacant site. These facts has been overlooked by the trial court. The supplementation of the documentary evidence through oral evidence is not barred under law. The trial Court failed to distinguish the evidence adduced by the plaintiff to supplement the written agreement through oral evidence. The defendant executed the sale agreement after reading its content. Therefore, he is estopped from contending against the terms of Ex.A1. The court below erred in holding that the suit agreement is not enforceable as there was no mention about the sale of superstructures, overlooking the fact that there was no issue framed in this regard. The trial court ought not to have relied upon the evidence of D.W.2, who is the son-in-law of the first defendant. He is an interested witness and his evidence does not have any probative value. Exs.B7 to B12 are inadmissible evidence, since it does not contain the signature of the plaintiff or the defendant. There is no whisper about this document in the written statement. These documents were introduced much later. Being a registered sale agreement, the court below ought to have enforced the said agreement. In the income tax return filed by the plaintiff for the year 2004-2005, the advance money paid for the transaction is mentioned. The title documents viz., Exs.A6 and A7 were handed over to the plaintiff and in possession of the plaintiff. The fact that the title documents of the suit property are with the plaintiff goes to show that the parties freely entered into the agreement and the same got registered.

10.Per contra, the learned counsel appearing for the respondents submitted that in case of breach of contract, damages is the rule, specific performance is an exception. Only after 2018 amendment, change was introduced to Section 20, a departure from the existing Act. The law prior to 2018



amendment relied extensively on the discretion of the court to grant relief of specific performance. The present suit is based on the alleged agreement of the year 2003. The amended Act of 2018 cannot be given retrospective application. Operation of the law will be only retrospective, since it will result in creating new liabilities or obligation. Section 10 and Section 20 of the Specific Relief Act expounded the discretionary approach of specific performance. The protection provided under Section 10 and Section 20 cannot be deprived to the defendant in view of the later amendment.

11. In the instant case, the execution of Ex.A1 not denied but the intention for executing Ex.A1 is in dispute. The evidence placed before the Court reveals the relationship of landlord and tenant between the plaintiff and the first defendant had lead to the execution of Ex.A1 for the money borrowed. In the absence of consensus ad idem to sell the property, the plaintiff is not entitled for suit for specific performance, though there is evidence for borrowing Rs.7,47,000/-.

12. The trial court has directed to refund Rs.11,00,000/- with interest taking into consideration the equity. It could be seen from the conduct of the plaintiff that he was not ready and willing to perform his part of contract. When the recital of agreement mandates that before seeking specific performance, the balance sale consideration should be deposited in the Court, the plaintiff has not deposited the sale consideration before filing the suit. Therefore, the learned counsel for the respondents submitted that the contention of the appellant that he is entitled for the relief of specific performance is untenable, without establishing his readiness and willingness and without proving the genuineness of the agreement.

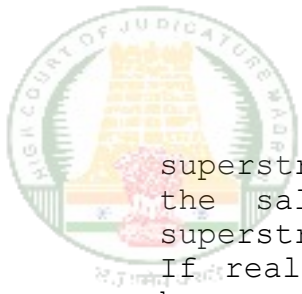
13. Learned counsel appearing for the appellant referring the judgment of this Court reported in 2018(2) MLJ 167, P.K.Subramanian vs. Pongiannan (deceased) and the judgments of the Supreme Court reported in 2011(8) SCC 601, Coromandel Indag Products Private Limited vs. Garuda Chit and Trading Company Private Limited, (2015) 1 SCC 705, Zarina Siddiqui vs A.Ramalingam alias R.Amarnathan, contended that Court cannot refuse the relief of specific performance, when the plaintiff has established the genuineness of the agreement and his ready and willingness. Equitable relief is common for both parties and cannot be denied for the defendant/vendor. Readiness and willingness does not mean placing the money before the Court and jingle it. Since the plaintiff has expressly recorded his readiness and willingness in the plaint itself and waiting for the Court order for deposit of the balance sale consideration, it is in total compliance of Section 16(C) of the Specific Relief Act. The



14. The point for determination is whether the trial Court refusal to grant relief of specific performance and granting the alternate relief is in tune with law and evidence.

16. The judgments relied by the learned counsel for the appellant on fact very clear that the purchaser shall always be ready and willing to perform his contract and the vendor proved to have evaded the due performance of the contract. In such cases, the Courts have held that for a vigilant and bonafide purchaser, the right of specific performance cannot be denied.

<https://hcservices.ecourts.gov.in/hcservices/>



superstructure whether permanent structure or a temporary sheet, the sale agreement does not speak about the existence of superstructure in which plaintiff as one of the tenant occupying. If really, he had intention of getting vacant site, he should have mention about the existence of superstructure and delivery of vacant site as a pre condition for execution of the sale. In the absence of such recital, the plaintiff cannot take such plea of pre-condition as a ruse or excuse for his delay and inaction to enforce the contract.

18.For the reasons stated, this Court holds that the decree of the trial court refusing to grant specific performance but granting the alternate relief of refund is fair and equitable in all sense. Therefore, the judgment and decree of the trial court is confirmed. Accordingly, the appeal suit is dismissed. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

vri

To

Additional District and Sessions Judge
cum Fast Track Court No.2,
Coimbatore.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.C.R.Prasanan, Advocate, S.R.No.13593
+1cc to Mr.P.Dinesh Kumar, Advocate, S.R.No. 14323

A.S.NO.1033 OF 2007

SSV(CO)
GN(19/08/2021)