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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2021

PRONOUNCED ON : 16.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.1370 of 2010

and

M.P.No.1 of 2010

P.Subramaniam

...Appellant/3rd Defendant

Vs.

1. M.Gopala Gounder

...1st Respondent/Plaintiff

2. Sri Rangammal

3. Kamatchiammal

... 2nd & 3rd Respondents/
1st and 2nd Defendants

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 22.07.2010 made in A.S.No.44 of 2006 on the file of the learned Subordinate Judge, Kancheepuram, reversing the judgment and decree dated 02.08.2005 made in O.S.No.12 of 2004 on the file of the learned District Munsif-cum-Judicial Magistrate, Uthiramerur.

For Appellant : Mr.K.Govi Ganesan

For Respondents : Mr.N.Nithyanandam (for R2 & R3)

No appearance (for R1)

J U D G M E N T

This appeal is directed against the Judgment and decree dated 22.07.2010 made in A.S.No.44 of 2006 on the file of the learned Subordinate Judge, Kancheepuram, reversing the judgment and decree dated 02.08.2005 made in O.S.No.12 of 2004 on the file of the learned District Munsif-cum-Judicial Magistrate, Uthiramerur.

2. The 1st respondent/plaintiff herein had instituted the above referred suit in O.S.No.12 of 2004, on the file of the learned District Munsif-cum-Judicial Magistrate, Uthiramerur, seeking the relief of declaration, declaring that the registered



Sale Deed dated 10.03.1997 registered in Document Nos.381 & 382 of 1997 on the file of the Sub Registrar, Uthiramerur, executed by the 1st and 2nd defendants in favour of the 3rd defendant, as null and void; for a direction, directing the 1st and 2nd defendants to perform the contract of sale by executing a sale deed in favour of the plaintiff, after receiving the balance sum of Rs.64,000/-; to put the plaintiff in possession of the suit property and for costs.

3. After elaborate trial, the learned District Munsif-cum-Judicial Magistrate, Uthiramerur, by judgment and decree dated 02.08.2005, dismissed the suit with costs.

4. In the appeal in A.S. No.44 of 2006, the learned Subordinate Judge, Kancheepuram, after elaborate enquiry, by judgment and decree dated 22.07.2010, allowed the appeal with costs. Being dissatisfied with the same, the 3rd defendant in the suit is before this Court with the present Second Appeal.

5. For the sake of convenience, hereinafter the parties are referred to, as per their litigative status before the trial Court.

6. The laconic averments made in the plaint, are as follows:

(i) On 10.03.1993, one Thangavelu Gounder and the 1st defendant entered into a sale agreement, wherein, they agreed to sell the suit schedule property for a sum of Rs.67,000/- to the plaintiff and received Rs.3,000/- as advance. Time fixed was six months for completing the performance of contract. After entering into the said contract, the plaintiff received a notice from one Ramu Ammal, wherein she has stated as she is the wife of Thangavelu Gounder and she has filed a suit against her husband and the 1st defendant in O.S.No.668 of 1990, on the file of the learned District Munsif, Kanchipuram, claiming that she is the original owner of the suit schedule property.

(ii) After knowing the fact that a suit is pending in respect of the suit schedule property, the plaintiff issued a legal notice to Thangavelu Gounder and the 1st defendant. Immediately after the receipt of the said notice, both Thangavelu Gounder and the 1st defendant pacified the plaintiff that they would compromise the said Ramu Ammal and make her to withdraw the suit.

(iii) On 02.12.1994, the said Thangavelu Gounder and the 1st defendant issued a legal notice to the plaintiff wherein, after



suppressing the pendency of O.S.No.668 of 1990, called upon the plaintiff to complete the sale on or before 15.12.1994. After receipt of the said notice, on 14.12.1994, the plaintiff issued a suitable reply. On coming to know that both the proposed vendors attempted to sell the suit schedule property to third parties, the plaintiff filed a suit in O.S.No.320 of 1995 on the file of the learned District Munsif, Kanchipuram, seeking permanent injunction restraining the Thangavelu Gounder and the 1st defendant from alienating the suit schedule property to anyone.

(iv) In the meanwhile, on 21.09.1995, the said Thangavelu Gounder had passed away. The said Ramu Ammal also died in the year 1998 and that the suit in O.S.No.668 of 1990 was dismissed for default on 11.06.1999. Later on 10.08.1999, the plaintiff approached the 1st and 2nd defendants for completing the contract, for which they informed the plaintiff that they sold the suit scheduled property to the 3rd defendant on 10.03.1997 itself. Hence, the suit.

7. Before the trial Court, the 1st and 2nd defendants remained exparte. On the other hand, the 3rd defendant has filed a written statement, wherein, he has averred as follows:

(i) The 3rd defendant is not aware of the sale agreement executed by Thangavel Gounder and the 1st defendant in favour of the plaintiff. Also, he is not aware of the pendency of the suit in O.S.No.668 of 1990. He is unaware about the transaction having by the plaintiff with the deceased Thangavelu and the 1st defendant.

(ii) On 10.03.1997, he purchased the suit schedule property from the defendants 1 and 2, vide two sale deeds for a valuable consideration. He is a bonafide purchaser. The plaintiff's claim is barred by limitation. The plaintiff's claim is hit by delay and laches on his part. Hence, the suit filed by the plaintiff is liable for dismissal.

8. From the above averments, the learned District Munsif-cum-Judicial Magistrate, Uthiramerur, framed necessary issues and tried the suit. On the side of the plaintiff, the plaintiff-Gopala Gounder, examined himself as PW1 and marked ten documents as Ex.A1 to Ex.A10. Similarly, on the side of the defendants, the 3rd defendant-Subramanian, examined himself as DW1 and marked three documents as Ex.B1 to Ex. B3.

9. Having considered the materials placed before him, the learned District Munsif-cum-Judicial Magistrate, Uthiramerur,



dismissed the suit, filed by the plaintiff. In the appeal preferred by the plaintiff, in A.S.No.44 of 2006, the learned Subordinate Judge, Kancheepuram, reversed the findings arrived at by the trial Court, allowed the appeal and decreed the suit, as prayed for.

10. Feeling aggrieved over the findings arrived at by the lower appellate Court, 3rd defendant is before this Court with the present Second Appeal. When the second appeal is taken up for admission, this Court formulated the following substantial question of law.

"1. Whether the lower Appellate Court is correct in reversing the judgment and decree of the trial Court when the suit is barred by limitation as per Article 54 of Limitation Act as found by the trial Court?

2. Whether the present suit is hit by Order 2 Rule 2 of CPC when the earlier suit for bare injunction was also filed by the plaintiff based on Ex.A1 Sale Agreement?

3. Whether the plaintiff is entitled for the discretionary relief of Specific Performance in the absence of mandatory, pleading "Readiness and Willingness", as per Section 16(c) of Specific Relief Act and in consonance with Form 47 and 48 of the C.P.C. and when more particularly not established his means?

4. Whether the lower appellate Court is correct in holding that the appellant is not a bonafide purchaser when he has purchased the suit properties for value and consideration well after the period of limitation and without the knowledge of unregistered Ex.A1 Sale Agreement?"

11. Heard Mr.K.Govi Ganesan, the learned counsel appearing on behalf of the appellant/3rd defendant and Mr.N.Nithyanandam, the learned counsel appearing on behalf of the respondents 2&3/defendants 1&2 and perused the materials available on record.

12. The first and foremost contention raised by the learned counsel appearing for the appellant/3rd defendant is that even after extending the period for performing the contract, the plaintiff, without any reason, kept quite and instead of filing



the suit for specific performance against Thangavelu Gounder and the 1st defendant, he filed a suit for bare injunction. Afterwards, the present suit has been filed in the year of 1999. Therefore, the suit is barred under the provisions of the Limitation Act. The lower appellate Court without considering the period of limitation, concluded the suit that the plaintiff is entitled to the discretionary relief, which is erroneous.

13. Per contra, it is the case of the plaintiff that after entering into the sale agreement though he is ready to perform his part of contract, due to the pendency of the suit instituted by one Ramu Ammal, he is not in a position to complete the same. Therefore, for the delay occurred, he is no way responsible, further, filing of the suit against the Thangavelu Gounder and the 1st defendant for the relief of injunction would extend the period of limitation. Accordingly, the conclusion arrived at by the first appellate Court is well within the settled law and therefore, interference in the findings of the first appellate Court is not necessary.

14. The submissions of the learned counsel on either side, are considered.

15. It is not in dispute, on 10.03.1993, both the plaintiff, the deceased Thangavelu Gounder and the 1st defendant entered into the sale agreement, wherein the deceased Thangavelu Gounder and the 1st defendant agreed to sell the suit schedule property for a sum of Rs.67,000/- to the plaintiff. After entering into the said agreement, the plaintiff paid Rs.3,000/- as advance to the 1st defendant and to Thangavelu Gounder. Period of six months was fixed for performance of contract. Accordingly, on 10.09.1993, the period fixed by either side is completed.

16. It is also not in dispute on 19.05.1993, one Ramu Ammal, who is the wife of the deceased Thangavelu Gounder issued the legal notice to the plaintiff, informing the pendency of O.S.No.668 of 1990, on the file of District Munsif, Kancheepuram, which is a suit relating to the suit schedule property. Afterwards on 02.12.1994, vide Ex.A2, the said deceased Thangavelu Gounder and 1st defendant sent a legal notice to the plaintiff, whereby they extended the time till 15.12.1994 for the completion of the contract.

17. After the receipt of the notice, the plaintiff has not made any arrangement for performing his part. In the meantime, inspite of complying with the request made by the



Thangavelu Gounder and 1st defendant, the plaintiff herein filed a suit in O.S.No.320 of 1995 against the said Thangavelu Gounder and the Ramu Ammal, seeking the relief of permanent injunction restraining the defendants from alienating the suit schedule property. Thereafter, for the reasons best known, on 11.06.1999, the said suit was not pressed by the plaintiff's counsel. Accordingly, in the suit filed by the plaintiff, no relief has been granted in favour of either side.

18. In the meantime, on 21.09.1995 and in the year of 1998, the said Thangavelu Gounder and Ramu Ammal passed away respectively. Further more on 06.03.1997 the suit filed by Ramu Ammal in O.S.No.668 of 1990 was decreed exparte wherein the 1st defendant is restrained to execute the sale deed in favour of the plaintiff. In turn after completion of the above proceedings on 20.09.1999, the plaintiff filed the present suit in O.S.No.289 of 1999 [which is renumbered as O.S.No.12 of 2004] as against defendants 1 and 2 for the relief of specific performance.

19. Though the trial Court has dismissed the claim made by the plaintiff, the lower appellate Court after referring to Section 14 of the Limitation Act, came to the conclusion that the pendency of the suits filed by Ramu Ammal and plaintiff has extended the time and therefore, it has been construed that the suit was filed within the period of limitation.

20. In fact, under Article 54 of the Limitation Act, suit for specific performance has to be filed within a period of three years from the date fixed for the performance.

21. Applying the said article with the case in hand, it is not in dispute that vide Ex.A2, Legal notice, the deceased Thangavelu Gounder and the 1st defendant has extended the time till 15.12.1994. Therefore, in normal course, the plaintiff has to file the suit within a period of three years i.e. on or before 15.12.1997. But, the present suit has been filed on 20.09.1999. Therefore, it is necessary to see whether Section 14 of the Limitation Act, would be applicable to the present facts of the case and accordingly, whether the period of pendency of two suits viz., O.S.No.668 of 1990 and O.S.No.320 of 1995, has to be excluded while calculating the period of limitation.

22. Now, on going through the Section 14 of the Limitation Act, it reads as follows:



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"14 Exclusion of time of proceeding bona fide in court without jurisdiction. –

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature. Explanation.— For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

Accordingly, for applying the said section, the following three pre-conditions are necessary.



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"Pre-conditions - There are atleast three pre-conditions for application of Section 14 of the Act:

(i) parties in the civil suit and in the subsequent proceeding (in which condonation is prayed for) must be the same;

(ii) the suit and the later proceeding much seek the same relief; and

(iii) the Court where the earlier suit was filed unable to entertain it from defect of jurisdiction or other cause of a like nature."

23. Therefore, in applying the said provision to the case in hand, it would be necessary for the plaintiff to file application for exclusion of the time. Further, in the earlier proceedings and the present proceedings, the relief sought for by the plaintiff, is a different one. Therefore, the pre-conditions, which are all necessary to invoke Section 14 of the Limitation Act, are absent in this case. Hence, as rightly pointed out by the learned counsel for the appellant/3rd defendant, application of Section 14 of the Limitation Act, would not be relevant and cannot be made applicable in the present case. The lower appellate Court while applying the said provision, failed to take note of the pre-conditions which are necessary for applying Section 14 of the Limitation Act.

24. Therefore, in the light of the above discussions, this Court is of the view that the suit filed by the plaintiff is barred by Limitation and accordingly, the suit is liable to be dismissed. Accordingly, the Second Appeal is allowed. The judgment and decree dated 22.07.2010 made in A.S.No.44 of 2006 on the file of the learned Subordinate Judge, Kancheepuram, is set aside. The suit filed by the plaintiff in O.S.No.12 of 2004 on the file of the learned District Munsif-cum-Judicial Magistrate, Uthiramerur, is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar



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To

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1.The Subordinate Judge, Kancheepuram.

2.The District Munsif-cum-Judicial Magistrate, Uthiramerur.

Copy to

The Section Officer

VR Section

High Court, Madras 104.

+1 CC to Mr.K.Govi Ganesan, Advocate sr 67680.

S.A.No.1370 of 2010

SSI (CO)

SP(07/01/2022)