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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 08.12.2021

JUDGMENT DELIVERED ON : 16.12.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.NO.1104 OF 2012

K.M.Krishnan

...Appellant/Plaintiff

.Versus.

*** R.Pattu**

...Respondent/Defendant

PRAYER:-

This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.13 of 2011 dated 16.07.2012 on the file of the Principal District Court, Krishnagiri, confirming the judgment and decree made in O.S.No.100 of 2010 dated 01.11.2010 on the file of the Principal Subordinate Court, Krishnagiri.

For Appellant : Mr.Om prakash,
Senior Advocate
For Mr.C.Samivel

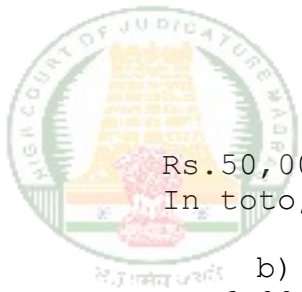
For Respondent : Mr.R.Dhinesh Kumar

J U D G M E N T

The unsuccessful plaintiff is the appellant herein.

2. The brief facts leading to filing of Second Appeal:-

a) The plaintiff has filed a suit in O.S.No.100 of 2010 before the Subordinate Court, Krishnagiri, for specific performance of Ex.A1/Suit Sale Agreement in respect of the schedule mentioned property of an extent of 10 cents in Survey No.283/3B1 and as per the terms of the said Agreement of Sale, he had already paid a sum of Rs.3,00,000/- on the date of agreement viz., 01.09.2006; on 02.09.2006, he has paid a sum of



Rs.50,000/-; on 05.09.2006, he has paid a sum of Rs.1,00,000/-. In toto, Rs.4,50,000/- was paid to the defendant.

b) Originally, the sale consideration was fixed at Rs.6,90,000/- and the plaintiff has already part paid with Rs.4.5 lakhs. Based upon the part payment of sale consideration, the respondent/defendant has discharged the housing loan with Cooperative Department and obtained original sale deed and handed over the original sale deed and other Revenue documents of the land and building in the suit property to the plaintiff/agreement holder. As per Ex.A1, three months time is fixed for payment.

c) Thereafter, Ex.A6/Legal notice was issued by the plaintiff on 18.01.2007 by expressing his readiness and willingness to execute his part of the contract and subsequently, the same was returned on 05.02.2007. The defendant/owner also issued a legal notice that he is willing to refund the advance amount, since the sale had not been completed within the stipulated time as per the terms under Ex.A1/Suit Sale Agreement.

d) Thereafter, the plaintiff has filed the said suit in O.S.No.100 of 2010 with the above prayer and the same was dismissed in respect of the main relief and in view of the willingness expressed by the defendant/owner, it appears that learned Subordinate Judge has granted return of the advance amount paid with interest, though there is no specific prayer in this regard. Aggrieved by the said order, the plaintiff has filed an appeal in A.S.No.13 of 2011 before the District Court, Krishnagiri and the same was dismissed and hence the Second Appeal is filed by the plaintiff.

3. The above Second Appeal was admitted on 21.11.2012 on the following Substantial Questions of Law:

"1. Whether the Courts below are justified in holding that the time is essence of the contract, when the same is not pleaded by the respondent?

2. Whether the Courts below are justified in relying on the evidence of the respondent, which was not pleaded in the written statement, for dismissing the suit?

3. Whether the Courts below are justified in holding that the appellant is not ready and willing to perform his part of contract, when the appellant has proved by documents that he is always ready and willing to perform his part of contract?"



4. Mr.Om Prakash, learned Senior Counsel appearing for the appellant contended that though Ex.A1/Suit Sale Agreement, is for an extent of 10 cents, 2 1/2 cents were already acquired for Highways and available extent of land is 7 1/2 cents. He further contended that, in view of the reduction in the extent of land covered under Ex.A1/Suit Sale Agreement, the sale consideration has come down to Rs.67,500/-, viz. the balance amount to be paid and he is already willing to deposit the said amount and since it is meager amount, non payment of such amount cannot be put against the plaintiff/agreement holder.

5. The terms of Ex.A1/Suit Sale Agreement have been invited to my attention. Based upon the part of the sale consideration paid and received by the defendant, the existing loan in cooperative Bank was discharged on 30.09.2006, as could be seen from Ex.A5/loan discharge receipt.

6. Before the Lower Appellate Court, the factual position is that the property is standing in the name of the defendant alone and not in the joint name of the wife. The Patta Pass Book stands in the name of the respondent/defendant alone. The subsequent payment of Rs.50,000/- and Rs.1,00,000/- on 02.09.2006 and 05.09.2006, have been made a due endorsement on the reverse of Ex.A1/Suit Sale Agreement, though it is not specifically marked, and the defendant has not chosen to dispute the same and hence, the sale consideration so far paid comes out to a sum of Rs.4.5 lakhs.

7. The learned Senior Counsel appearing for the appellant draw my attention to the terms of Ex.A1/Suit Sale Agreement to the effect that there is a specific clause in the said agreement that before the registration of the sale deed, land has to be measured and there was acquisition of lands by the Highways Department, and the same was refuted by the defendant/owner both in the written statement as well as in the evidence that even before Ex.A1/Suit Sale Agreement, the land acquisition proceedings for Highways have been duly complied with and the same was admitted by P.W.1. One of the main reason that was put against the plaintiff is that after acquisition, the extent of land is not of 10 cents and it is only 7.5 cents and 2.5 cents have been taken by the Highways Department.

8. The readiness and willingness on the part of the plaintiff was tested by the Trial Court on the ground that three months period had expired and only thereafter, legal notice was issued and consequently with regard to the alleged shortage of lands, no documents have been produced before the Trial Court at the time of hearing. In the additional typed set of papers, Patta in the name of the respondent in respect of 7.5 cents and rough sketch were filed.



13. Ex.A1 is perused. As per the terms, 3 months' period is stipulated and there is also a specific term in respect of surveying the land before registration. The oral evidence adduced by the defendant/D.W.1 runs contrary to the clause contained in Ex.A1 and hence, I have no hesitation to reject the oral evidence of D.W.1 in this regard.

15. Whether the appellant/plaintiff is ready and willing to perform his part of the contract, as required under Section 16 (3) of the Specific Relief Act, has to be considered. Agreement was entered on 1.9.2006 with 3 months stipulation time' for performance of contract. Within the stipulated period, he has made a further payment of Rs.50,000/- on 2.9.2006 and further payment of Rs.1,00,000/- on 05.09.2006, and the same assumes significance and to substantiate the readiness and willingness on the part of the appellant/plaintiff, the further payment was made by the plaintiff to the tune of Rs.3 lakhs+Rs.1.5 lakhs =Rs.4.5 lakhs. It appears that the defendant had redeemed the loan availed from the Housing Society, as could be seen from Ex.A4 passbook standing in the name of the respondent/defendant issued by the house building society, for which loan discharge receipt was issued under Ex.A5 on 13.9.2006. Thus, I find that pursuant to the agreement, the plaintiff has made further payment of Rs.50,000/- and Rs.1 lakh on 2.9.2006 and 5.9.2006 and thereafter on 13.09.2006, the defendant/land owner has redeemed the existing housing loan with society and also returned the originals of sale deed.



16. The original sale deed was handed over to the appellant/plaintiff and the appellant/plaintiff has filed the same in the Court as Ex.A2. In other words, the original sale deed standing in name of the respondent/defendant, is marked as Ex.A2 by the plaintiff which goes to show that after discharge of the standing loan in the housing building society, and also further amount was paid by the appellant/plaintiff. The loan was discharged and the originals were returned to the owner, who in turn had handed over the same to the plaintiff, which goes to show that the plaintiff had intention to purchase the property, namely willingness to purchase the property had been clearly demonstrated by the plaintiff.

17. Thus, I find that in between 01.09.2006 and 13.09.2006 the transaction that had taken place, as could be seen from Exs.A1 to A5. The plaintiff has demonstrated his readiness and willingness to perform his part of the contract and there is a specific pleading in the evidence in this regard, coupled with the documentary evidence Exs.A1 and A5.

18. Now coming to the second condition in Ex.A1 agreement that before the registration of land, it has to be surveyed and to that extent, there is a specific clause in Ex.A1 sale agreement.

19. It is disputed by the defendant that 10 cents as agreed, which is available on ground and however plaintiff assets that only 7.5 cents are available on ground. Accordingly, he has reduced the sale consideration in that proportion, and after adjusting the amount already paid, namely Rs.4.5 lakhs, balance has to be paid for the land on ground, namely Rs.67,500/-, for which he made a oral demand on 3.1.2007 and subsequently, there was legal notice under Ex.A6 on 18.01.2007, which goes to show that all is not well in the attitude of the defendant.

20. It remains to be stated that as per Exs.A3, A4 and the computerized patta issued, I find that a statement therein that on ground, land available is only 7.5 cents and hence, the stand taken by the defendant appears to be erroneous on factual ground. Thus, I find that the plaintiff has successfully pleaded and proved his readiness and willingness on the part of the contract and he has also made further payment on 2.9.2006 and 05.09.2006 and based upon the further payment, the defendant has cleared the housing loan and also handed the receipt of payment and the got back the original sale deed from society and hand over to plaintiff and he filed the original sale deed as Ex.A2 before the trial Court. Thus, I find that, in view of the specific clause mentioned in the sale agreement/A1, to survey the land before the registration and the legal notice issued by Ex.A6 is found to be correct on the factual ground. Accordingly,



I hold that the plaintiff is entitled for specific performance of the agreement dated 01.09.2006 under Ex.A1. Hence, the judgment and decree of the trial Court is modified.

21. The Substantial Questions of Law and also the points framed by this Court, are answered in the above terms. Accordingly, this Second Appeal is allowed. No costs. The judgment and decree of the Lower Appellate Court are hereby set aside and the judgment and decree of the Trial Court in O.S.No.100 of 2010 is modified into the main relief of specific performance. Time for deposit of balance amount to be paid within a period of one month from the date of receipt of a copy of the judgment. No costs.

Sd/-
Assistant Registrar(CCC)
12/01/2022

*** Corrected Order as per Letter
dated 08/02/2022 by J.R. (J)**

Sd/-
Assistant Registrar(CCC)
09/02/2022

//True Copy//

Sub Assistant Registrar

nvi

To

1. The Principal District Court,
Krishnagiri.
2. The Principal Subordinate Court,
Krishnagiri.

Copy To:-

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

+1cc to Mr.C.Samivel, Advocate, S.R.No.67572

*** Corrected Order to be
Substituted for the
Orders already
already despatched
on 27/01/2022**

S.A.NO.1104 OF 2012

SR(CO)
SP(19/01/2022)
PBS/10/02/2022