

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.12.2021
CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.No.470 of 2012
and
M.P.No.1 of 2012

P.N. Chinnasamy ... Appellant/Plaintiff/ Respondent

Vs.

1.Manisekar
2.Ravichandran
3.Devika
4.Gunasekaran
5.Anandakumar ... Respondents/Defendnats/ Appellants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree made in A.S.No.3/2011 dated 18.01.2012 on the file of the Additional District Judge, (Fast Track Court-II) Gobichettipalayam reversing the judgment and decree in O.S.No.67 of 2010 dated 30.07.2010 passed by the Sub Court, Sathyamangalam.

For Appellant : Mr. S. Parthasarathy

For Respondents : Mr. I.C. Vasudevan

J U D G M E N T

This second appeal is filed against the judgment and decree made in A.S.No.3/2011 dated 18.01.2012 on the file of the Additional District Judge, (Fast Track Court-II) Gobichettipalayam reversing the judgment and decree in O.S.No.67 of 2010 dated 30.07.2010 passed by the Sub Court, Sathyamangalam.

2. Notice of motion alone was ordered. When the matter is taken up, both the counsel are required to address on the following substantial questions of law:

i) Whether the lower appellate Court is right in coming to an conclusion that the suit is barred by limitation when Article 54 of the Limitation Act, clearly states that the Limitation for Specific Performance starts only from the refusal of execution of Sale deed as per sale agreement.

ii) Whether the plaintiff/appellant is ready and

willing to perform his part of the contract as envisaged under Section 116(3) of Specific Relief Act.

3. For the sake of convenience, parties are referred to as per the litigative status of the trial Court.

4. The plaintiff has filed a suit for specific performance of the suit sale agreement under Ex.A1 in O.S.No.67 of 2010, before the learned Subordinate Judge, Sathyamangalam and the same was decreed. Aggrieved against the said decree, the defendant has preferred an appeal in A.S.No.3 of 2011, before the Additional District Court (Fast Track Court-II), Gobichettipalayam, and the same was partly allowed and whereby, the relief of specific performance was negatived, however, refund of advance amount viz., the alternative prayer was allowed. Being aggrieved, the appellant has preferred the second appeal.

5. The suit property is measuring 90 cents of land in S.No.354/4 in Sathyamangalayam Village in Sathyamangalayam Town and Sub District, Gobichettipalayam District, with specific boundaries and the sale consideration is fixed at Rs.5 lakhs and same is filed on the same day. A sum of Rs.5 lakhs is paid. Ex.A1-agreement is entered on 06.08.2001, there is no recital as to the stipulation of time. Though, the contention was raised that the suit was belatedly filed, in view of the recital in the document for laying in the road, no such recital is found on perusal of Ex.A1, assumes significance.

6. Admittedly, the defendants are the joint owners of the property having obtained the property under Ex.B2/partition deed dated 29.09.1986. The relief of specific performance was resisted by the defendants by filing a written statement, denying as to the nature and character of Ex.A1, namely that it is only a receipt for payment of the hand loan of Rs.5 lakhs, for medical expenses and never intended to be the sale agreement.

6(i) Ex.A2 is the legal notice issued on 11.08.2007 and reply notice was issued on 24.08.2007 and suit was filed on 25.07.2008. As stated supra, the entire amount of Rs.5 lakhs for 90 cents are already paid on the date of Ex.A1. The trial Court has allowed the main relief of specific performance and on appeal, it was partly allowed. The relief of specific performance was rejected and modified into alternate relief of refund of amount with 12% interest.

7. The learned counsel for the appellant would contend that since there is no time limit is fixed under Ex.A1/Sale agreement from the date of refusal, in the reply notice Ex.B1 dated 24.08.2007, suit has been filed on

25.07.2008 and hence, it is within, the limitation period of Article 54 of Limitation Act. The contra finding by the lower appellate Court is under challenge.

8. Heard both sides.

9. After going through the evidence of P.W.1 and also taking note of the fact that from the date of Ex.A1/sale agreement namely 06.08.2001, notice was issued on 11.08.2007, namely for six years, there was no steps taken by the plaintiff to show his ready and willingness to perform his part of the contract. P.W.1, in his pleadings and the evidence would state that two of the signatory to Ex.A1/sale agreement Chinnagounder and Palanisamy were approached. As per the pleadings, Chinnagounder died on 16.03.2006, namely the father of the defendant. Palanisamy, one of the elder brother of the defendant died on 12.12.2007.

10. In the absence of any positive evidence, to show that the plaintiff has taken any positive steps to execute sale agreement especially when it is a specific case that the entire amount has been paid.

11. The learned counsel for the appellant would re agitate the point that there was an understanding between the parties that they have to lay a road to reach the suit property. Since they failed to do it, the plaintiff was waiting for the same. As stated supra, in the absence of any recital for laying of the road, the said contention cannot be accepted. Besides, there is no independent evidence to show that there was discussion between the parties to that scope and hence, a such a plea raised by the plaintiff would not be countenanced.

12. In view of the fact that the suit has been filed in the year 2008, after seven years and notice was issued only in the year 2007 and taking into consideration that no positive steps have been taken by the plaintiff for execution of the sale agreement. Despite the fact, Rs.5 lakh, the entire amount being paid which appears to be, he has abandoned the agreement.

13. The lower appellate Court has taken the notice only to the extent of money borrowed namely advance amount under Ex.A1, has rightly ordered for alternate relief, refund of the amount mentioned, appears to be just and correct and the second substantial question of law is held against the plaintiff and first substantial question of law to the extent of refund of money mentioned in Ex.A1 alone is partly accepted.

14. Accordingly, the second appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS I)
//True Copy//

Sub Assistant Registrar

AT

To

1.The Additional District Judge, (Fast Track Court-II)
Gobichettipalayam.

2.The Judge,
Sub Court, Sathyamangalam.

Copy to:

The Section Officer,
VR Section,
High Court, Madras

+1 cc to Mr.I.C. Vasudevan , Advocate Sr.NO.67576

+1 cc to Mr.S. Parthasarathy , Advocate Sr.NO. 67337

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kv(CO)

A.SK(19/07/2022)