

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.02.2021

Pronounced on : 18 .02.2021

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Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.670 of 2018

Laksmi,
W/o.Gurusami,
D-37, Selva Nagar,
Thathampatti Village,
Salem - 636 014.

... Appellant/ Defendant

/versus/

K.M.Anbu,
S/o.Muruthamuthu,
No.21/3, Convent Road,
Azhagapuram Puthur,
Salem - 636 014.

... Respondent/Plaintiff

Prayer: First Appeal is filed under Section 41 Rule 1 and Section 96 of Civil Procedure Code, against the judgment and decree passed in O.S.No.163 of 2014 on the file of the 1st Additional District cum Sessions Judge, Salem, dated 20.02.2018.

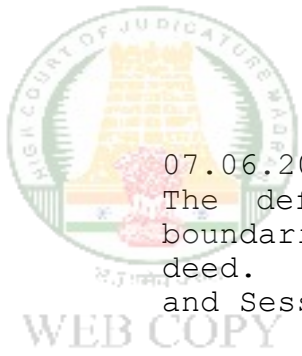
For Appellant : Mrs.Thenkodi Annam Nelson

For Respondent : M/s.Ramalingam Associates

JUDGMENT

The Appeal is directed against the judgment and decree passed by the Trial Court in the suit filed for specific performance.

2. The defendant in the suit is the Appellant before this Court. As per the plaint, on 25.04.2014, the plaintiff and the defendant entered into a registered sale agreement in respect of the suit property for a consideration of Rs.11,85,000/-. A sum of Rs.4,00,000/- was paid as advance and both the parties are agreed to complete the transaction within 40 days from the date of agreement. As per the recital of the sale agreement, the vendor has to measure the land and show the boundaries to the purchaser. Accordingly, the proposed purchaser namely the plaintiff called upon the defendant to show the boundaries of the suit property by causing notice dated



07.06.2014, after his oral request, did not yield the result. The defendant failed to measure the property and show the boundaries and also did not come forward to execute the sale deed. Hence, suit was filed on 30.06.2014 before the District and Session Court, Salem.

3. The defendant filed her written statement stating that, she purchased the property on 09.05.2013 for a sale consideration of Rs.11,85,000/- and it is incorrect to claim that, she agreed to sell the property for the same value to the plaintiff after one year, without any escalation of price. In fact, the suit property is worth nearly Rs.40,00,000/- and she never intend to sell the property. She only borrowed loan of Rs.4,00,000/- to met out her medical expenses and executed the document with an impression that it is only acknowledgement for the loan.

4. The Trial Court formulated following issues:-

- (i).Whether the plaintiff is entitled for a decree of specific performance?
- (ii).Whether the plaintiff is entitled for a relief of permanent injunction?
- (iii).What are the relief?

5. The plaintiff and the attesting witnesses were examined as P.W.1 and P.W.2. Four Exhibits were marked on the side of the plaintiff. No documents were marked or relied by the defendant. No witness examined on behalf of the defendants.

6. The Trial Court, on considering the recital found in the registered sale deed marked as Ex.A.1 and the content of the notice dated 07.06.2014 caused to the defendant marked as Ex.A.3. Also on considering the evidence of attesting witness P.W.2 held that, Ex.A.1 sale agreement is proved and the ready and willing to perform his part of contract proved by the plaintiff. Further, the plaintiff has also deposited (the balance) sale consideration, after exparte decree passed in his favour. On the other hand, the defendant has not proved her defence that the document was executed for the loan of Rs.4,00,000/- and not an agreement to sell. Taking note of the fact that even after causing notice, the defendant has not taken any steps either to recind the contract or repay the alleged loan of Rs.4,00,000/-. The oral evidence contradicting the content of the document Ex.A.1 being hit by Section 92 of Indian Evidence Act, the Trial Court held that, having admitted the execution of the document, the defendant cannot recile the content of the document without adducing any evidence.

7. The Learned Counsel appearing for the appellant would submit that the Trial Court failed to appreciate the fact that the alleged notice Ex.A.3 returned unserved and the



plaintiff was not aware of the said notice. The plaintiff has not proved his ready and willingness and the fact that, he met the appellant personally on 04.06.2014 and 24.06.2014 is not proved. In the absence of any corroboration to the said averments, the Trial Court ought to have held that the respondent was not ready and willing to perform his part of contract. When the terms of contract specifically mentioned 40 days time to perform the contract, failure to perform the contract within the said specified time renders the proposed purchaser ineligible to resort for the equitable relief of specific performance. The due execution of the sale agreement not been proved in the manner known to law. Hence, the judgment of the Trial Court has to be set aside.

8. The Learned Counsel appearing for the respondent would state that the sale agreement is a registered document and due execution has been proved through attesting witness. The appellant has admitted the receipt of Rs.4,00,000/- from the respondent. If really, the appellant received the money as loan transaction, she should have adduced evidence to that effect and also produced evidence to show that she is willing to repay the loan amount or already repaid the loan amount. 40 days time limit is fixed under the agreement was not the essence of the contract. Even otherwise, the respondent was always ready and willing to perform his part of contract and that is why, he caused notice to the appellant for her to identify the boundaries of the land. The respondent ready and willingness has been established by the fact that soon after the exparte decree, he deposited the balance sale consideration. Only thereafter, the appellant herein filed petition to set aside the exparte decree and contested the suit. The averments made in her written statement not being proved by any evidence. The defendant had not come forward to give evidence in support of her pleading. In the said circumstances, there is no reason to interfere the well considered judgment of the trial Court.

Point for determination:-

Whether the trial Court has properly appreciated the evidence before granting the equitable relief of Specific Performance?

9. The case of the plaintiff/respondent is that the agreement holder is entitled to enforce the contract as per the terms of the registered sale agreement dated 25.04.2014. Due execution of the agreement proved by the factum of its registration and by examining the attesting witness (P.W.2). In the written statement, the passing of Rs.4,00,000/- not been disputed. The character of the document Ex.A.1 is disputed by the defendant. When the content of a document is disputed, it is the burden of the defendant to establish that, she did not sign the document knowing that it is a sale agreement. The defendant



failed to appear before the Court and prove her contention averred in her written statement which is contrary to the content of the document. The content of the document will prevail when it is a registered deed and proved through attesting witness. In the written statement it is not the case of the defendant that the plaintiff was not ready and willing to perform his contract within the time prescribed and therefore, he is not entitled for the relief of specific performance. Her contention was about the character of the deed Ex.A.1.

10. Her contention that, the property is worth more than Rs.40,00,000/- and she never intended to sell the property for the price of Rs.11,85,000/-. The alleged sale agreement is not an agreement entered with an intention to sell the property. The said contention is unsustainable it is the fact admitted in the written statement as well as by way of suggestion to P.W.1 the plaintiff, that the property was purchased by the appellant a year before the Ex.A.1 for consideration of Rs.11,85,000/-. For the very same consideration, she has agreed to sell the property to the respondent.

11. In the cross examination, the respondent has deposed that due to fall in real estate and due to dire necessity for the money, to met out her medical expenses, the appellant agreed to sell the property for the very same price prevailing one year before. When this explanation is plausible and satisfactorily explanation, the contention of the appellant that the value of the property which was purchased for Rs.11,85,000/- on 09.05.2013, had increased multifold within a period of one year and the value is Rs.4,00,000/- as on 24.06.2014 clearly proves that the said plea being made in the written statement for the sake of denying the relief to the plaintiff and not with any other intention. If really, the value of the property has escalated multifold as contended in the written statement, the defendant ought to have produced evidence before the Court to appreciate the said contention.

12. Having miserably failed to adduce evidence and substantiate her written statement, mere oral submission at the appellate stage without any pleadings cannot be entertained. For the said reason, this Court finds there is no substance in the appeal. Hence, the judgment and decree passed in O.S.No.163 of 2014 on the file of the 1st Additional District cum Sessions Judge, Salem, dated 20.02.2018 is confirmed. Accordingly, the Appeal Suit is dismissed. No costs.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

bsm



To,

- 1.The 1st Additional District cum Sessions Judge, Salem.
- 2.The Section Officer, V.R.Section, High Court, Madras.

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+2ccs to M/s.Ramalingam Associates, Advocate SR.No. 10154

+1cc to Mrs.Thenkodi Annam Nelson, Advocate SR.No. 9696

A.S.No.670 of 2018

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A.SK(31.08.2021)