



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S. (MD)No.207 of 2018

and

C.M.P. (MD)No.12006 of 2018

WEB COPY

1.K.S.A.Mohamed Mansoor

2.A.Mazooth Ansari

...Appellant/Defendants 1 & 2

Vs.

1.S.Easwaran @ Easwaramurthy

2.M.Liyagath Ali

3.A.Abdul Khadar (Exonerated)

..1st respondent/plaintiff

..2nd and 3rd respondents/

3rd and 4th defendants

PRAYER: This Appeal Suit is filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 11.09.2018 passed in O.S.No.50 of 2012 by the learned Additional District Judge/Fast Track Court, Palani.

For Appellant : Mr.A.Arumugam

for Mr.Kumaravel

For R1 : Mr.I.Sam Jegan

For R3 : Mr.P.Arumugam

JUDGMENT

Aggrieved over the decree and judgment of the trial Court granting decree for specific performance, the present second appeal is filed.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3. The brief facts, leading to the filing of this Appeal Suit, are as follows:-

The defendants 1 and 2 are the owners of the suit properties. They offered to sell the property to the appellant for a sum of Rs.11,34,000/- and accordingly, an agreement dated 10.07.2009 came into existence executed by the power of attorney of the defendants 1 and 2. On the date of agreement, an advance of Rs.1,00,000/- was received. It is agreed between the parties to complete the sale within a period of four months. The plaintiff was always ready and willing to perform his part of the contract. However, the defendants evaded from executing the sale. Therefore, the plaintiff issued a legal notice on 17.12.2012 calling upon the defendants to



come to Sub Registrar Office and execute the sale deed. As the defendants reluctant to receive the said notice and the same was returned as 'unserved'. Whereas the defendants took a stand denying the agreement. Hence, the suit.

(ii) Before the trial Court, on the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A15 were marked and on the side of the defendants D.W.1 was examined and Ex.B1 was marked.

4. The first and second defendants denying the agreement of sale submitted that the fourth defendant is also one of the owners of the suit property. The first and second defendant gave power of attorney to the third defendant only to manage the property and the said power was cancelled on 14.05.2009. Therefore, the agreement executed by the power of attorney is not valid in the eye of law.

5. The third defendant also denying the agreement of sale contended that the power of attorney executed in his favour by the first and second defendant was cancelled on 14.05.2005 and the same was also intimated to him. He further submitted that he has not received a sum of Rs.1,00,000/- from the plaintiff. Only in order to claim interest over the suit property, documents have been created.

6. Based on the above pleadings, the trial Court has framed the following issues:-

- 1) Whether the sale agreement is true?
- 2) Whether the sale agreement was in accordance with the powre of attorney?
- 3)Whether the plaintiff was ready and willing to perform his part of contract?
- 4) Whether the plaintiff is entitled for the relief of specific performance?
- 5) To what other reliefs?

7. The trial Court has answered the issue relating to readiness and willingness, in favour of the plaintiff and granted the decree. As against the same the present appeal is filed.

8. The learned counsel for the appellant submitted that though the sale is agreed to be completed within a period of four months, the plaintiff was never ready and willing to perform his part of contract and he has not taken any steps even to verify the title deed. He kept silent for more than two years and suddenly in the year 2012, issued a legal notice. This itself clearly indicates that agreement is not related for sale of the propety and only it is a loan transaction between the power agent and the plaintiff. The trial Court has not considered these documents and merely on the basis of Ex.A2, legal notice dated 17.02.2012 and subsequent legal notice, inferred the readiness and willingness of



on proper appreciation of evidence. Hence, prayed for allowing this appeal.

9. The learned counsel appearing for the respondents would submit that the alleged cancellation of power deed has not been established. Ex.B1 appears to be a created document, which has been taken note of the trial Court. That apart, it is the contention that once the sale agreement is found to be genuine, the plaintiff is certainly entitled for the relief of specific performance. Exs.A12 and 13 were also produced to show that the plaintiff had capacity to mobilise fund. All these facts were taken note of by the trial Court. Besides, his readiness and willingness is not denied by the defendant. Hence, it is contented that the plaintiff is entitled for specific performance. In support of his submission, the he relied upon the following judgments:-

1.M.Mohammed Ismail (died) and others vs. K.P.Subbiah (died) and others [2015 (3) CTC 734]

2. Narinderjit Singh vs. North Star Estate Promoters Limited [Civil Appeal No.4307 of 2012]

3. R.Leela Ammal vs. V.Gopal [Appeal Suit No.292 of 2011]

10. In the light of the above, now the points arise for consideration in this appeal are:

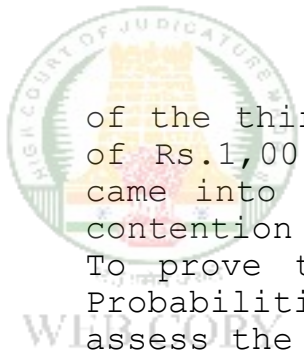
(i) Whether the agreement was merely denied to restrain the plaintiff from proving readiness and willingness?

(ii) Whether the plaintiff had established readiness and willingness from the very inception of the contract?

(iii) To what other reliefs?

11. Admittedly, the suit property belonged to the first and second defendants. It is the contention of the plaintiff that the defendants 1 and 2 through their power agent, namely third defendant, agreed to execute the sale deed in favour of the plaintiff in respect of the suit property within a period of four months. Ex.A1, when carefully seen, it is clear that the third defendant has executed an agreement as a power agent of the first and second defendants. Though the first and second defendants had taken the defence to the effect that the power was not in existence on the date of such agreement, the same was rightly disbelieved by the trial Court. There was no evidence to show that the power was cancelled prior to the agreement. When the power deed is registered, proper way of cancellation by way of registration followed by a legal notice. This has not been done in this case. Therefore, the contention of the defendants that on the date of agreement, the power was not in existence in favour of the third defendant cannot be countenanced.

12. Be that as it may, now it has to be concluded that there is an agreement between the parties. However, it is the contention



of the third defendant that as a power agent, he has received a sum of Rs.1,00,000/- at the relevant point of time and the agreement, came into existence for the said loan transaction. Normally, such contention has to be proved only by the parties who take such plea. To prove the such contention there need not be direct evidence. Probabilities and circumstances can be taken into consideration to assess the respective pleadings.

13. On perusal of Ex.A1, dated 10.07.2009, it is clear that specific time of four months has been agreed between the parties to complete the sale by paying the remaining sale consideration of Rs.10,34,000/-. It is also made clear that within such period, the defendants shall hand over all the original documents to the plaintiff. However, no such things have been taken place as per the contract. Despite specific time has been agreed and the plaintiff was interested in purchasing the property, the plaintiff has not taken any steps immediately after expiry of four months. Generally, though the time is not an essence of contract, when the parties have consciously agreed for such time as an essence of a contract, such time agreed between them cannot be ignored altogether. Such agreement of time also plays vital role in assessing readiness and willingness of the parties concerned to enforce the contract. Similarly, conduct and attitude also assume significance to assess readiness and willingness.

14. P.W.1, though in his evidence stated that the plaintiff intended to purchase the property; he had not seen the original documents and encumbrance over the property. To show that he has verified the documents and he has taken steps from the very inception even to get the certified copies, no evidence is available. Only certified copies of the sale deed have been filed under Ex.A10. Perusal of Ex.A10 makes it very clear, the plaintiff has applied for certified copies of the said documents only on 15.02.2012. This proves that though time of four months had been agreed between the parties to complete the sale, the plaintiff kept silent and only in the year 2012, had issued the legal notice. Further, there is no evidence to show that reasonable inspection was made by the plaintiff before the purchase of the property. Having entered into an agreement of sale, without even putting any efforts to find out the nature of the property i.e., any other encumbrance attached to the property and keeping silent till 2012, the conduct of the plaintiff is against the normal human conduct. That cannot be ignored altogether. If really the plaintiff was intended to purchase the property, his normal conduct would be to verify or make reasonable enquiry as to the nature of the property, atleast even after the agreement came into existence. He has not done so. Therefore, sending legal notice for the first time after more than 2 years of the contract, one cannot contend that he is always ready and willing to perform his part of contract. The readiness and willingness must be established from the very inception of the



15. Further, Exs.A11 and A12 have been filed to show that the plaintiff had capacity to mobilise money. Ex.A12 relates to the property of his wife, which was sold for a sum of Rs.5,34,000/-. Ex.A13 is the partnership agreement entered. These documents are not relevant to assess the readiness and willingness. From the date of agreement till the date of issuing legal notice and filing of the suit, there is no evidence available on record to show that the plaintiff had capacity to mobilise funds. This fact also cannot be ignored altogether. Keeping silent for more than two years without making any enquiry even to verify the title deeds, the readiness and willingness cannot be inferred. Ex.A14 would not prove the fact that the plaintiff had capacity to mobilise fund in the year 2009 itself. Therefore, the above documents, which came into existence latter the agreement, will not be useful to assess the readiness and willingness.

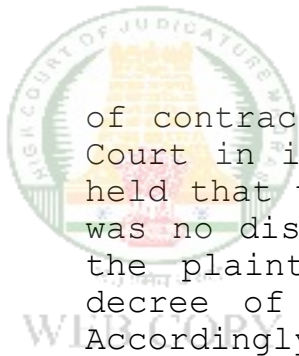
16. It is the further contention of the learned counsel for the respondents that readiness and willingness pleaded by the plaintiff has not been denied. On perusal of the entire written statement, it is made clear that the defendants have not only denied the agreement but also the pleadings as to readiness and willingness to perform the contract. Therefore, their contention cannot be countenanced.

17. In the judgment in the case of **M.Mohammed Ismail (died) and others vs. K.P.Subbiah (died) and others [2015 (3) CTC 734]**, relied upon by the learned counsel for the respondents, this Court has held that there was no specific plea regarding the absence of readiness and willingness on the part of the plaintiff. In addition, a plea was taken in the written statement to the effect that since the suit itself had been filed based on fabricated agreement, the question of readiness and willingness on the part of the plaintiff would not arise.

18. The above judgment cannot be applicable for the present case for the simple reason that here is the case, where not only the agreement is denied, but also performance of obligation set out in the agreement is also denied.

19. In view of the above, this Court is of the view that the plaintiff has not established readiness and willingness. The very conduct of the plaintiff in keeping silent for more than two years, despite specific time was agreed in the agreement even without making any reasonable enquiry as to the property and verifying any title deeds, shows that readiness and willingness cannot be inferred merely on the basis of some weakness in the defence case.

20. Such view of the matter, the finding of the trial Court that the plaintiff was always ready and willing to perform his part



of contract, is not on proper appreciation of evidence. The trial Court in issue No.3, has simply relied upon Exs.A1, A3 and A14 and held that the plaintiff has proved readiness and willingness. There was no discussion as to the nature of the documents and conduct of the plaintiff. Such view of the matter, the judgment granting decree of specific performance has to be necessarily set aside. Accordingly, these points are answered.

21. In the result, this appeal is allowed and decree and judgment of the trial Court in granting specific performance is set aside. In the alternative, the plaintiff is granted a decree for a sum of Rs.1,00,000/- (Rupees One Lakh only) with interest at the rate of 7.5% from the date of agreement till the date of realization. Till such payment is made, there shall be a charge over the property. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSIII)

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Sub Assistant Registrar(CS)

To

1.The Additional District Judge/Fast Track Court,
Palani

2.The Section Officer, (2C)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.KUMARAVEL, Advocate (SR-7403[F] dated 25/02/2021)

+1 CC to M/s.I.SAM JEGAN, Advocate (SR-8023[F] dated 01/03/2021)

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