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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.02.2022

PRONOUNCED ON : 03.03.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

APPEAL SUIT NO.13 OF 2016

AND

C.M.P.NOS.21531 AND 21541 OF 2019

S.Nazeer

.. Appellant/Plaintiff

/versus/

1. Valsa Williams Carey (died)

(1st respondent died. His legal heirs already on record as RR-2 to 5. Same recorded as per memo dated 27/01/2022 made in A.S.No.13 of 2016 and C.M.P.Nos.21531 and 21541 of 2016)

2. Grace Zion Kumari

3. John Banyan Carey

4. Rubus Philip Carey

5. Mercy Queen Carey

...Respondents/Defendants

Prayer: Appeal Suit has been filed under Section 96 of the Civil Procedure Code praying to set aside the judgment and decree dated 26.08.2014 made in O.S.No.80 of 2011 on the file of the Principal District Judge, Krishnagiri by allowing the appeal.

For Appellant : Mr.R.W.H.Ghyaz Ahmed

For Respondents : Mr.S.Doraisamy for
Mr.V.Elangovan for R2 to R5



J U D G M E N T

The appellant herein is the plaintiff before the trial Court. The suit filed for specific performance to direct the defendants to execute the sale deed for 0.98 ½ cent of suit land and to refund the excess amount received as advance or in alternate to refund the entire earnest money with interest.

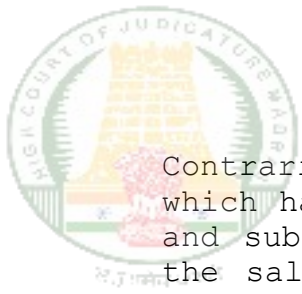
2.Considering the pleadings and the evidence, the trial Court granted the alternate relief of a money decree for Rs.10,06,750/- with interest at the rate of 9% p.a. from the date of suit, till the date of decree and thereafter at the rate of 6% till the realisation of the amount.

3.The appellant being aggrieved by not granting the main relief of specific performance has preferred this appeal.

4.The brief facts of the case as found in the pleadings:
Plaint:

The plaintiff entered into an sale agreement on 02/09/2009 in respect of the suit property for a sum of Rs 15,00,000/- (Rupees Fifteen Lakhs only) and paid advance of Rs.10,00,000/-. Seven months time was fixed for completion of the contract. The extent of land agreed to be sold was 2 acres along with a well and passage right. The plaintiff was ready and willing to complete the sale transaction and approached the defendants to execute the sale deed on receipt of the balance sale consideration. However, the defendants unnecessarily postponed the completion of the contract within the time fixed. Meanwhile, some 3rd parties started claiming right over portion of the suit property and filed suit for injunction. So, the plaintiff caused notice dated 30/03/2010 to the defendants and to those 3rd parties. The defendants, who are vendors, did not reply to the notice. One of the 3rd party purchaser replied asserting right over about 1.84 ½ acres of land out of 2.83 acres of land in S.No.210/18-A through sale deeds executed by the defendants. On the date of the suit agreement, defendants had only 0.98 ½ cents of land, but by misrepresentation entered into sale agreement for 2.00 Acres with the plaintiff and received Rs.10 lakhs as advance.

5.After receipt of the notice, the defendants approached the plaintiff and promised to sell the remaining extent of 0.98 ½ cents left unsold at the rate of Rs.7,500/- per cent and also agreed to refund the difference money Rs.2,61,250/-. Thus, the defendants, after retaining Rs.7,38,750/- from out of the advance of Rs.10,00,000/- received, ought to have returned the balance Rs.2,61,250/- and also executed the sale deed.



Contrarily, the defendants failed to honour the said commitment which has lead to causing notice to the defendants on 03/10/2011 and subsequently, the suit for specific performance to register the sale deed for 0.98 ½ cents and refund Rs.2,61,250/- or in alternate to return the entire earnest money of Rs.10,00,000/- paid towards part sale consideration, with interest at the rate of 9% p.a.

Written Statement:

6.The second defendant admits the suit property belong to one Mr.Pastor John William Carey (First defendant), who purchased it under a sale deed dated 31/10/1994. After his demise, defendants 2 to 5, who are his wife and children, succeeded the same and became the joint owners. Except this the other averments of the plaintiff is absolutely false.

7.The claim of the plaintiff that he entered into a sale agreement with the defendants on 02/09/2009 and advanced Rs.10,00,000/- as against the total sale consideration of Rs.15,00,000/- for 2 acres of land are denied. The plaintiff had never ever approached the defendants and he was not at all ready and willing at any point of time to get the sale deed executed from the defendants. In fact, the alleged sale agreement with the plaintiff was executed only as a security for the loan, as the loan was discharged, there was no necessity to reply the alleged notice dated 30/03/2010 sent by the plaintiff. The averment that part of the land agreed to sell was alienated to third parties are denied. The claim that the defendants orally agreed to sell the remaining 0.98 ½ cents of land at the rate of Rs.7,500/- cents is also denied as false. Since the suit sale agreement itself is not enforceable, the question of executing sale deed in favour of the plaintiff does not arise at all. After keeping silent for long time, belatedly the suit for specific performance with alternate relief is filed. Even assuming the sale agreement is valid, the time for completion of contract was 7 months from 02/09/2009 and the suit filed only on 03/11/2011. This fact is a proof to hold that the plaintiff was not ready and willing to perform his contract. The suit is laid belatedly with concocted version hence, to be dismissed.

8.Based on the pleadings, the following Issues were framed by the trial Court:

(1)Whether the sale agreement dated 02.09.2009 is executed by the defendants in favour of the plaintiff with respect to their hand loan of Rs.5,00,000/- drawn from the plaintiff is true or not?

(2)Whether the suit is bad for non-joinder of necessary parties viz., Jagadeesan, Mudhalaimuthu, Ganesan, Vijayapal, Murugappan?



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(3) Whether the defendants are liable to execute sale deed with respect to 0.98 ½ cents land in Sr.No.210/18A?

(4) Whether the defendants are liable to pay the balance amount of Rs.2,61,250/- out of the advance amount of Rs.10,00,000/- received from the plaintiff with interest at 6%p.a., to the plaintiff?

(5) Whether the plaintiff is entitled for permanent injunction as prayed for?

(6) Whether the defendants are liable to pay Rs.10,06,750/- with interest at 9% p.a to the plaintiff?

(7) to what other relief, the plaintiff is entitled for?

9. Additional Issue:

Whether the plaintiff is always ready and willing to purchase the suit property?

10. To prove his case, the plaintiff was examined as PW-1 and 8 documents were marked. On the side of the defendants, the 2nd defendant was examined as DW-1 and no documents marked on behalf of the defendants.

11. The trial Court partly allowed the suit granting the alternate relief of refund of the advance money with interest, as detailed above.

12. The appeal is laid by the plaintiff for not granting the relief of specific performance and pending appeal, he has also taken out applications C.M.P.No.21531 of 2019 and C.M.P.No.21541 of 2019 to amend the plaint and to raise addition grounds respectively.

13. The learned counsel for the appellant questioning the trial Court judgment submitted that the trial Court ought to have taken note of the fact that the plaintiff by causing notice dated 30/03/2010 marked as Ex.A-2 had categorically expressed his ready and willingness to perform his part of agreement, whereas the defendants were delaying the execution with false promise and excuses. Therefore, the plaintiff cannot be held responsible for approaching the Court, after waiting for a reasonable time, but within the time limit prescribed under the Limitation Act.

14. He also contended, that defendants as vendors suppressed the fact at the time of entering into the agreement for sale that they have alienated substantial portion of the land to the



third parties and what was available is only 0.98 ½ cents, out of 2.82 cents. The said fact came to the knowledge of the plaintiff belatedly. The finding of the trial Court that the defendants have received Rs.10,00,000/- under the suit sale agreement ought to have granted relief of specific performance in respect of the portion of the suit property available at the hands of the defendants. Denial of the specific performance relief, is contrary to law and facts.

15.Per contra, the learned counsel appearing for the respondents/vendors would state that the respondents never intended to sell the property to the plaintiff herein. The money was received by them was only a loan and infact, on the date of entering the sale agreement, they have already disposed of substantial portion of the land by registered sale deed to the third parties. For that particular reason, the suit for specific performance is not maintainable and in respect of the relief of specific performance, the buyer must always be ready and willing to perform his part of contract. Admittedly, time for performing the contract was fixed as 7 months, which expired on 01.04.2010. Just few days before the date of expiry, the plaintiff claims to have issued notice marked as Ex.A2, but there is no proof for such delivery of that notice to the defendants. The plaintiff has relied upon Ex.A3, which is the reply notice purported to have been sent to one T.Vijayapaul. Neither the issuance of such notice nor the content of that notice has been proved through the competent witness. Even according to the plaintiff, the notice calling upon the defendants to execute the sale deed was issued only on 30.03.2011, which is nearly after two years, from the date of the alleged sale agreement. Further, the plaintiff having restricted his claim for specific performance only for 0.98 ½ cents in his plaint and sought for alternate relief of refund, surreptitiously, pending appeal has filed miscellaneous petitions for amendment of the plaint seeking a larger relief of specific performance for 2 acres of land knowingly nearly 1.84 acres already sold prior to the suit agreement and to raise additional grounds, which are only repetition of earlier grounds and nothing more.

16.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.

17.Point for consideration is
Whether Ex.A1-sale agreement dated 02.09.2009 is specifically enforceable?

18.The perusal of Ex.A1(sale agreement) reveals that the first page is a typed document on a non-judicial stamp paper for



Rs.20/- purchased on 01.09.2009. The second sheet is a printed format with blank filled by hand and the third and fourth sheets again typed sheet carrying the details of the suit property. In the sale agreement, 7 months time has been prescribed for performance of the contract. Till the last date of the expiry of the seventh month, there is no evidence to show that the plaintiff was ready and willing to perform his part of contract. The legal notice (Ex.A2) purported to have been sent to the defendants as well as four others. In this notice, it is stated that the plaintiff came to know about the alienation of the part of the property prior to the sale agreement only on receipt of the suit summon in O.S.No.265 of 2009 filed by one E.Jagadeesan against the defendants, plaintiff and three others including one Vijayapaul. The notice Ex.A-2 to Vijayapaul, who is one of the respondents in the prior suit alone replied claiming ownership. Though the notice was addressed to nine persons, the sole reply of Vijayapaul sent through his counsel, Mr.R.Venktataswamy on 14.04.2010 is marked as Ex.A3. The said Vijayapaul neither made a party nor the validity of his sale deed challenged. No postal acknowledgement proof filed to show that Ex.A2 notice was sent to the other recipients mentioned in the notice. In the reply notice Ex.A-3, the said Vijayapaul has disclosed about the pendency of two civil suits in respect of the suit property. One is O.S.No.158 of 2007 on the file of Sub Court, Krishnagiri and another O.S.No.265 of 2009 on the file of the District Munsif Court, Krishnagiri. Though the plaintiff was put to notice about the pendency of the suits, there is no whisper about this, in his evidence or no documentary to show the fate of these suits, when the plaintiff made known that there are other 3rd parties having title or interest in the suit property, he should have impleaded them as a party in the suit or should have explained in the pleadings why they are not necessary parties.

19.At looking into the other documents Ex.A4-encumbrance certificate, it is apparently clear that prior to the registration of the agreement for sale Ex.A-1, a substantial portion of the suit property has been sold to the third parties and the plaintiff herein, who claims to have advanced money to purchase larger extend of land than what his vendor possessed, had not placed the documents before this Court. Any how such contract can be enforced specifically. Further there is no document or evidence to prove that he entered into the sale agreement Ex.A1, bonafiedly believing that the respondents are the owners of the entire extent of land as described in the sale agreement.

20.In the light of the above fact, the very vital point that whether Ex.A1 is a genuine agreement for sale (or) executed as a security for loan advanced has become doubtful and therefore,



the trial Court has rightly granted alternate relief of refunding the money advanced along with interest. This Court, on re-appreciation of evidence, finds no error in the judgment of the trial Court, thereby which requires no interference.

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21. In the result, this Appeal Suit is dismissed. No order as to costs. Consequently, the connected Miscellaneous Petition Nos. 21531 and 21541 of 2019 to amend the plaint by substituting 2.00 acres in the place of 98½ cents in the prayer clause and to receive additional grounds are dismissed as devoid of merits.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To:

The Principal District Judge,
Krishnagiri.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras - 104.

+lcc to M/s. S. Doraisamy, Advocate, S.R.No. 14479

A.S.No. 13 of 2016
and
C.M.P.No. 21531 & 21541 of 2019

SSD (CO)
RLP (30/03/2022)