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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2021

PRONOUNCED ON : 16.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.No.306 of 2015

and

M.P No.1 of 2015

S.A.Elumalai

...Appellant/Plaintiff

Vs

1. A.M.Vinayagam

2. Kavitha

...Respondents/Defendants

Prayer:- This Appeal Suit has been filed, under Order 41 rule 1 r/w 96 of CPC to set aside the judgment and decree dated 27.03.2015 made in O.S.No.98 of 2010 on the file of the Principal District Judge, Vellore District.

For Appellant : Mr. K.S.Gnanasambandan
For M/s.P.Chandrasekar

For Respondents : Mr.T.Dhanyakumar for R1 & R2

JUDGMENT

(This case has been heard through Video Conferencing)

This appeal suit has been filed challenging the judgment and decree dated 27.03.2015 made in O.S.No.98 of 2010, by the Principal District Judge, Vellore.

2. The appellant is the plaintiff in O.S.No.98 of 2010 and the suit has been filed for specific performance and for permanent injunction.

3. For the sake of convenience, the parties herein after are referred to as they were arrayed in the suit.

4. The brief case of the plaintiff is as follows:
The plaintiff and the first defendant entered into a sale



agreement in respect of the suit property on 03.01.2008, for a sale consideration of Rs.19,50,000/- and also the first defendant received a sum of Rs.2,00,000/- towards the advance amount. Time limit is fixed as three months. The first defendant evaded to execute a sale deed and thereby, notices were exchanged between them. Thereafter, the first defendant executed a settlement deed in favour of his daughter, viz., the second defendant for the property, which is found in the sale agreement. Hence, the suit.

5. The first defendant resisted the suit by contending that the suit sale agreement was made by the pressurization of land brokers and enticing with honey words and made him under undue influence, obtained the suit agreement by force without the knowledge and consent of the family members for the lowest sale price. Since the sale price is very low, the first defendant's daughter viz., second defendant issued notice to this defendant and others and thereby, a panchayat was arranged and thereafter, a reply notice was issued on 07.05.2008 to the plaintiff along with a demand draft for a sum of Rs.2,06,100/-, but the counsel returned the demand draft to this defendant's counsel along with rejoinder. He further contended that though time was mentioned as three months, it was orally to complete the transaction within a month and the plaintiff is not at all ready and willing to perform his part of contract and time is essence of contract. In rejoinder, the plaintiff called for this defendant to complete the contract within a week, from the date of receipt of his rejoinder. Due to family reasons, a settlement deed was executed in favour of the second defendant. Hence, he prays to dismiss the suit.

6. On the pleadings of the parties, the following issues were framed by the Trial Court:-

" (i) Whether the sale agreement is true and valid?

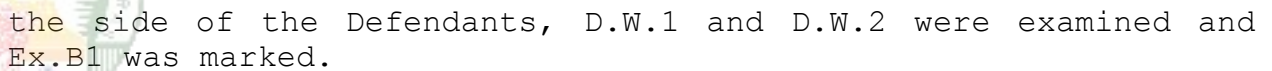
(ii) Whether the suit is bad for non joinder of necessary and proper parties?

(iii) Whether the plaintiff is entitled for specific performance of contract as prayed for?

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

v) To what other relief the plaintiff is entitled?

7. Before the Trial Court, on the side of the Plaintiff, PW.1 and PW.2 were examined and Ex.A1 to Ex.A10 were marked. On



8. On a perusal of the oral and documentary evidence, the Trial Court dismissed the suit as against the plaintiff and the defendant was directed to refund the advance amount of Rs.2,00,000/- with interest at the rate of 12% per annum from the date of agreement till the date of decree. Aggrieved by the same, the plaintiff preferred this appeal suit.

9. Heard the learned counsel for the appellant/plaintiff as well as the learned counsel for the respondents/defendants and also perused the entire materials on record.

10. The learned counsel for the plaintiff would submit that the plaintiff has been always ready and willing to purchase the property, but the 1st defendant has not come forward to perform his part of contract and therefore, the plaintiff was constrained to issue a legal notice to the defendant, for which the 1st defendant sent a reply with false allegations. He would further submit that the court below has wrongly observed that time is essence of contract and the court below having accepted the validity of Ex.A1 agreement of sale dated 03.01.2008, had committed error instead of passing a decree for specific performance. The suit was filed well within the period of limitation. Therefore, he prays to set aside the judgment and decree of the court below and consequently allow this appeal. He would reply on the decision reported in 2017 2 MWN (Civil) 113 [Ameer vs. S.Jayaraman]

11. The learned counsel for the first defendant submitted that the plaintiff approached the Court below with unclean hands. As per the sale agreement, the sale consideration was fixed at Rs.19,50,000/-, in which it was mentioned that a sum of Rs.2,00,000/- was received on the date of execution of agreement for sale and the balance sale consideration was to be paid by the plaintiff within a period of three months from the date of agreement, failing which the agreement for sale shall stand automatically cancelled. He further submitted that the time is essence of the contract and as such, the plaintiff is not entitled for relief of specific performance. That apart, the plaintiff was never ready and willing to purchase the suit property by paying the balance sale consideration within time stipulated in the agreement for sale. Once the first defendant fails to perform his contract, immediately, the plaintiff has to file a suit for specific performance and seek his remedy through court of law. But, the plaintiff has filed a suit for specific performance after lapse of three years from the date of sale agreement. Therefore, the suit filed by the plaintiff is liable to be dismissed.



12. The points that arise for consideration in the present appeal are as follows:-

(i) Whether the plaintiff is ready and willing to perform his part of the contract?
and

(ii) Whether the time is essence of the contract?

13. In this case, there is no dispute over the fact that the sale agreement is true and valid.

14. Admittedly, there was an agreement of sale (Ex.A1) entered into between the plaintiff and the 1st defendant on 03.01.2008 and the sale consideration was fixed as Rs.19,50,000/- and Rs.2,00,000/- was paid as advance. As per the sale agreement, time is essence of contract. The main contention of the plaintiff is that after the agreement period is over, the plaintiff had issued a legal notice, Ex.A2 dated 07.05.2008 to the 1st defendant to receive the balance sale consideration and execute a sale deed in favour of the plaintiff, for which, the 1st defendant sent a reply notice, Ex.A3 dated 28.05.2008, requesting to cancel the agreement of sale and to receive the advance amount paid to him and also enclosed a demand draft for a sum of Rs.2,06,100/-. After receiving the reply notice, the plaintiff sent a rejoinder, Ex.A4 dated 28.03.2008 and returned the demand draft with a request to perform his part of contract within a week from the date of rejoinder notice. On perusal of the plaint, it is found that the suit was filed by the plaintiff only after three years from the date of agreement of sale. Further, even after receipt of reply notice from the first defendant, no action was taken by the plaintiff and even at the time of filing the suit, he has not deposited the balance sale consideration. The plaintiff who is claiming right to execute the sale deed in his favour, cannot maintain the suit for specific performance after a lapse of 3 years from the date of agreement of sale. Therefore, the plaintiff has failed to prove his readiness and willingness to perform his part of the contract as agreed by him. The court below has rightly held that the time is essence of contract and the plaintiff has failed to file a suit for specific performance within the limitation period and therefore, the plaintiff is not entitled for the relief of specific performance. For all the reasons stated above, I do not see any reason to interfere with the findings of the court below. Hence, the appeal is liable to be dismissed.

15. In fine, this first appeal stands dismissed and the judgment and decree dated 27.03.2015, passed by the learned



Principal District Judge, Vellore is confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Vellore District

+1cc to Mr.T.Dhanyakumar, Advocate, S.R.No.10416

+2ccs to Mr.P.Chandrasekar, Advocate, S.R.No.10047

A.S.No.306 of 2015
and
M.P No.1 of 2015

VBM(CO)
SU(07/06/2022)