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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.01.2022

PRONOUNCED ON : 13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.41 of 2015

(Through Video Conferencing)

T.C.Eswaramoorthy

Appellant/Plaintiff

Vs

1.T.K.Ayyannan
2.Palaniammal
3.Shanmugam

Respondents/Defendants

Prayer:- This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC, against the judgement and decree, dated 21.08.2014, made in OS.No.67 of 2012, by the III Additional District and Sessions Court, Salem.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.A.Sundaravadhanan

JUDGEMENT

- 1.This Appeal Suit has been filed, by the Plaintiff, against the judgement and decree, dated 21.08.2014, made in OS.No.67 of 2012, by the III Additional District and Sessions Court, Salem.
- 2.The case of the Plaintiff is that the Defendants 1 and 3 are the husband and the son of the 2nd Defendant, respectively. The 2nd Defendant is the owner of the suit property. The 2nd Defendant had entered into a registered sale agreement with the Plaintiff in respect of the suit property on 30.07.2010, for a sale consideration of Rs.10,00,000/- per acre and an advance amount of Rs.8,00,000/- was paid on that date. The period of the contract was three months. The Plaintiff has always been



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willing and ready to perform his part of the contract. Despite several demands, the Defendants have not taken any steps to measure the suit property and also to perform their part of the contract. When the Plaintiff had taken steps to measure the suit property in March 2012, one Mallika, claiming to be the purchaser of the suit property from one Pappathi, Vijaya, Balamani, Kamala and Mallika, on 12.07.2010, obstructed the Plaintiff from measuring the same. Then, the Plaintiff came to know that pursuant to the decree passed in OS.No.999 of 1996 for partition, the property was sold. The 2nd Defendant, suppressing the said decree, had entered into with the said sale agreement. Since, on demand, the Defendants had refused to return the sale advance of Rs.8,00,000/-, the suit was filed, seeking a decree, directing the Defendants to pay a sum of Rs.10,46,000/- to the Plaintiff with interest at 18% p.a. on Rs.8,00,000/-, from the date of the plaint till realisation.

3.The case of the Defendants, as set out in the written statement filed by the 1st Defendant and adopted by the Defendants 2 and 3 is that the 2nd Defendant had entered into a registered sale agreement to sell the suit property to the Plaintiff for a consideration of Rs.10,00,000/- per acre and the total sale consideration is Rs.17,00,000/-. The 2nd Defendant received a sum of Rs.8,00,000/- as advance. The Plaintiff has verified all the documents and found that the suit property is free from encumbrance. The Plaintiff was not willing and ready to perform his part of the contract right, by paying the balance sale consideration. The alleged obstruction by Mallika from measuring the suit property and decree for partition in OS.No.999 of 1996 are false. The 2nd Defendant filed a suit in OS.No.124 of 2011 to declare the sale deed, dated 11.6.2010 in favour of the said Mallika as null and void. The Defendants issued a legal notice informing that the Plaintiff is not entitled to ask for the advance amount or to get the sale deed registered on 02.07.2011. The Defendants had also caused a public notice on 14.7.2011 in Malaimalar. The Plaintiff is not entitled to ask for any advance amount when he is not ready and willing to perform his part of contract. Hence, the suit is liable to be dismissed.

4.On the pleadings of the parties, issues were framed by the Trial Court. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A3 were marked and PW.1 and PW.2 were examined. On the side of the Defendants, Ex.B1 to Ex.B5 were marked and DW.1 was examined. The Trial Court had dismissed the suit. Aggrieved against the same, this Appeal Suit has been filed by the Plaintiff.

5.This Court heard the submissions of the learned counsel on either side.



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6. The learned counsel for the Appellant has submitted that the suit was filed for refund of the advance sale consideration with interest. Neither the execution of the sale agreement nor the receipt of the advance amount is disputed. The 2nd Defendant has no right to forfeit the advance amount. The Respondents suppressed many material facts. The Respondents failed to take steps to measure the property. Time is not the essence of the contract. Therefore, he prays to allow this appeal. The learned counsel would rely on the decisions reported in 2013 (1) SCC 345 (Satish Batra Vs Sudhir Rawal), 2017 (5) L.W.46 (DB) (N.Sekaran & Another Vs. C.Rajendran), 2018 (4) CTC 13 (DB) (S.Sarojini & Another Vs. P.Mariappan & Another) and 2008 (4) CTC 494 (Fathima Majeed Vs. Subhapratha Ravikumar).
7. The learned counsel for the Respondents would submit that the Appellant has not issued any legal notice, stating that he was ready and willing to perform his part of the contract. In the plaint averments itself, he admitted that the 2nd Defendant is the owner of the property. In the sale agreement itself, it was mentioned that the sale transaction was to be completed within three months and as such, the time is the essence of the contract. Therefore, the Respondents sent a legal notice, but it was not received by the Appellant. The Plaintiff remained silent for two years and filed the suit. The forfeiture clause is in favour of the 2nd Defendant. The Plaintiff was not ready to perform his part of the contract. Therefore, the Trial Court, considering all the aspects and perusing the records, had dismissed the suit. Hence, he prays for dismissal of this appeal. The learned counsel would rely on the decisions reported in 2000 6 SCC 566 (Ajaib Singh Vs. Tulsi Devi) and 2011 12 SCC 18 (Saradamani Kandappan Vs. S.Rajalakshmi).
8. This Court considered the submissions of the learned counsel on either side and also perused the materials available on record.
9. There is no dispute over the execution of the alleged sale agreement and the receipt of the advance amount.
10. The case of the Plaintiff is that the Defendants suppressed the material facts and there was a cloud over the property and hence, he was unable to perform his part of the contract and hence, he would seek for refund of the advance amount with interest.
11. The case of the Defendants is that the 2nd Defendant is the owner of the suit property. Time is the essence of the contract. Three months time was fixed for completing the sale transaction. The Plaintiff was not ready and willing to



perform his part of the contract. So, as per the terms and conditions of the sale agreement, he is not entitled for refund of the advance amount.

12.A perusal of Ex.A1 reveals that there was one conditional clause that the suit property has to be measured within the stipulated time of three months. It was the duty of the Defendants to measure the property as per the terms of Ex.A1. But, it was never stated in the written statement or in the oral evidence, when it was measured. Even the legal notice was sent only on 02.07.2011 and not immediately after the stipulated time of three months period.

13.In the written statement, it is stated as under:-

"Only in the month of November 2010, the 2nd Defendant got knowledge of fraud played by Pappathi, Vijaya, Balamani, Kamala and Malliga in creating sale deed in favour of the said Malliga. Therefore, the 2nd Defendant filed a suit before the Honourable Subordinate Judge, Mettur in OS.No.124 of 2011 to declare the sale deed dated 11.06.2010 in favour of the said Malliga as null and void and unenforceable against the title of the 2nd Defendant herein regarding the suit property. That the suit is pending before the Court.

14.DW.1, in his cross examination, has stated as follows:-

“ஆனால் இன்று வரை தாவா சொத்து யாருடையது என்று தீர்மானமாகாமல் வழக்கு நிலுவையில் உள்ளது..... இந்த சொத்தில் இன்று வரை யாருடையது என்று தீர்மானமாகத்தாலும் வழக்குநிலுவையில் இருப்பதாலும் கிரைய முன்பணத்தை திருப்பிக் கொடுக்குமாறு இந்த வழக்கை தாக்கல் செய்துள்ளார்கள்.”

15.Therefore, it was clearly proved that there was a cloud over the suit property. Stating the same reason, the Plaintiff filed the suit for refund of the advance sale consideration. The Trial Court failed to consider all those aspects and wrongly came to the conclusion, which necessitates this Court to interfere with the impugned judgement. Therefore, this appeal is liable to be allowed.

16.In fine, this Appeal Suit is allowed. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

Srcm



To

1. The III Additional District and Sessions Court,
Salem.

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+1cc to Mr.N.Manokaran, Advocate, S.R.No.25892

AS.No.41 of 2015

AK-II (CO)
UMA (16/06/2022)
UMA (20/06/2022)