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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2021

PRONOUNCED ON : 31.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.142 of 2009

(Through Video Conferencing)

A.Murugesan

Appellant/Plaintiff

Vs

Shanthi

Respondent/Defendant

Prayer:- This Appeal Suit has been filed, under Section 96 of CPC, against the judgement and decree, dated 30.10.2008, made in OS.No.158 of 2007, by the Additional District Judge (Fast Track Court-II) at Kanchipuram.

For Appellant : Mr.G.Murugendran
For Respondent : Mr.S.Balasubramanian
for Mr.G.Sudhagar

JUDGEMENT

- 1.This Appeal Suit has been filed, by the Plaintiff, against the judgement and decree, dated 30.10.2008, made in OS.No.158 of 2007, by the Additional District Judge (Fast Track Court-II) at Kanchipuram.
- 2.The suit was filed for specific performance of the contract, directing the Defendant to receive the balance of sale consideration of Rs.8,15,000/- from the Plaintiff and execute and register the sale deed in respect of the suit property in favour of the Plaintiff and hand over possession of the suit property to the Plaintiff and for costs.
- 3.The case of the Plaintiff is that the Plaintiff was one of the tenants under the Defendant and the Defendant had entered into a sale agreement with the Plaintiff in respect of suit property for a sale consideration of Rs.13,00,000/- on 14.07.2004 and an advance of Rs.5,00,000/- was also paid on that day and since then he has been in possession of the



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suit property. The Defendant told that after discharge of the loan with M/s.Sindhu Benefit Fund Limited, the title deeds would be handed over within three months. The Plaintiff was always ready and willing to perform his part of the contract. On 07.09.2004, a further sum of Rs.1,85,000/- as advance was paid. The Defendant was postponing the execution of the sale deed. Time is not the essence of the contract. The Defendant had created further mortgage in respect of the suit property on 20.2.2005 in favour of a third party. Hence, the Plaintiff had issued a notice on 17.04.2005 to the Defendant. The Defendant had sent a reply dated 02.05.2005, with false allegations. In such circumstances, the suit has been filed, seeking the reliefs, as stated above.

- 4.The case of the Defendant is that the Defendant is the owner of the suit property and the Plaintiff was originally allowed to enjoy the property as a tenant only on a monthly rent of Rs.3000/-. The Plaintiff offered to purchase the property for a sum of Rs.13,00,000/-. The original sale agreement is with the Plaintiff. The Plaintiff is in possession of the suit property only as a tenant. The Plaintiff paid an advance of Rs.3,00,000/- on the date of the sale agreement and a further sum of Rs.1,60,000/- was paid on 07.08.2004, however, an endorsement was made for Rs.1,85,000/-. Thus, in all the Plaintiff paid only Rs.4,60,000/- towards the sale price. Three months time was fixed in the agreement and the Plaintiff was never ready and willing to perform his part of the contract. The Plaintiff was not able to pay the balance sale price amount. The Defendant is ready to return the advance amount. The Defendant had also issued a notice dated 17.10.2004 to the Plaintiff. Subsequently, the Plaintiff issued a notice on 17.4.2005. In view of the non performance of the contract on the part of the Plaintiff, the Plaintiff is not entitled to seek for specific performance of the contract. In such circumstances, the suit is liable to be dismissed.
- 5.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.A5 were marked and PW.1 to PW.3 were examined. On the side of the Defendant, Ex.B1 and Ex.B2 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.
- 6.This Court heard the submissions of the learned counsel on either side.
- 7.The learned counsel for the Appellant has submitted that the time is not the essence of the contract. The Defendant has failed to discharge the mortgage created in favour of M/s.Sindhu Benefit Fund Limited. The Plaintiff has proved that he was always ready and willing to perform his part of the contract. But, the Defendant failed to perform her part of the contract and also created further mortgage in favour of one Devan and it is unjustified. The Plaintiff filed the suit only for the relief of specific performance of the



contract and not for refund of the advance amount and hence, he prays to allow this appeal.

8. The learned counsel for the Respondent would submit that the sale agreement was executed without verifying the original documents and encumbrance certificate. The Plaintiff has no source of fund to pay the balance sale consideration and also he is not ready and willing to perform his part of the contract. Because of his non performance of the contract, the Defendant alone is at loss. The Plaintiff was allowed to enjoy the property only as a tenant. Therefore, the impugned judgement of the court below is proper and hence, he prays for dismissal of this appeal.
9. This Court considered the submissions of the learned counsel on either side and also perused the materials available on record.
10. The case of the Plaintiff is that he has paid an advance amount of Rs.3,00,000/- to the Defendant and executed the sale agreement. Further he has stated that on 07.09.2004, he also paid Rs.1,85,000/-. The Defendant admitted in his written statement in paragraph 6 that towards the sale price amount, the Plaintiff paid an advance of Rs.3,00,000/- on the date of the sale agreement. In Ex.A3, dated 02.05.2005, reply notice given by the Defendant, it is admitted that subsequently she had received Rs.1,85,000/- and also made an endorsement.
11. The Plaintiff states that he has always been ready to perform his part of the contract by paying the balance sale consideration. But, the Defendant evaded to receive the balance sale consideration and execute the sale deed. The Defendant also created another encumbrance.
12. The case of the Defendant is that the time is the essence of the contract. Three months time was fixed in the sale agreement. But, the Plaintiff was never willing to perform his part of the contract in time and therefore, he is not entitled to the equitable relief of specific performance.
13. A perusal of Ex.A1 shows that nothing is whispered about the mortgage of the suit property created in favour of M/s.Sindhu Benefit Fund Limited. Due to the delay and non performance of the Plaintiff in fulfilling the terms and conditions of the sale agreement in time, the Defendant alone is at loss. In Ex.A1, nothing is whispered about the delivery of vacant possession of the suit property, vacating the said tenants.
14. In this case, the Plaintiff has admitted that he has not paid any rent. There is no tri-party agreement between the Plaintiff, Defendant and M/s.Sindhu Benefit Fund Limited. Three months is fixed in the sale agreement, Ex.A1. Three months time expired on 14.10.2004. But, the legal notice Ex.A2 was issued only on 17.04.2005. In Ex.A1, the 5th condition is as follows:-



பார்ட்டியால் தானே ரத்து செய்வதுடன், 2வது பார்ட்டி எவ்விதமான சட்ட நடவடிக்கைகளுக்கு உட்படுத்தமாட்டார் என இதன்மூலம் 2வது பார்ட்டி சம்மதித்து உறுதி கூறுகிறார் "

15.For this condition, no proper explanation was given by the Plaintiff. He has issued the legal notice only on 17.04.2005. If really he was ready and willing to purchase the property, immediately after three months time fixed, he would have issued the notice to the Defendant. But, he failed to do so. If at all he was very much interested to purchase the suit property, he would have entered into a tri-party agreement with M/s.Sindhu Benefit Fund Limited. But, he failed to do so. Even in the cross examination, he admitted that he has not paid any rent to the Defendant. However, there is no provision in Ex.A1 sale agreement to the effect that the intending purchaser/ Plaintiff / tenant need not pay the rent amount. The court below considering all the aspects, had dismissed the suit. Therefore, there is no necessity to interfere with the judgement and decree of the court below and this appeal is liable to be dismissed.

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

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Srcm
To

1.The Additional District Judge (Fast Track Court-II) at
Kanchipuram

Copy to:
The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mr.G.Murugendran, Advocate Sr.NO.22063
+1 cc to Mr.S.Balasubramanian, Advocate Sr.NO.22027

AS.No.142 of 2009

AK(CO)
A.SK(17/05/2022)