



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.02.2022

Pronounced on : 17.02.2022

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Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Appeal Suit No.6 of 2012

K.Kalaiyarasu,
S/o.Kuppan,
No.TF 3, Maragatham Apartments,
Ellapillaichavadi,
Puducherry - 605 005.

...Appellant/Defendant

/versus/

1. R.Sambantham, (Died),
S/o.Radhakrishnan,

2. Mrs.Vijayalakshmi,
W/o.R.Sambantham,

Both are residing at
No.21, Veerabadrasamy Koil Street,
Lawspet, Puducherry - 605 008.

3. S.Renuka,
D/o.Late.R.Sambantham,

4. S.Thiyagarajan,
S/o.Late.R.Sambantham,
RR 3 & 4 residing at
No.73, Lenin Street, Kuyavarpalayam,
Puducherry - 605 013.

...Respondents/Plaintiffs

RR3 & 4 are brought on record as LR's of the deceased R1 vide order of this Court dated 06.12.2019 made in C.M.P.No.21415 of 2019 in A.S.No.6 of 2012.

**R1 died on 01.04.2015. Memo filed to bring R2 as LR's of deceased R1 is recorded by order dated 07.02.2022 (Dr.GJJ).

Prayer:- This Appeal Suit is filed under Section 96 of the Code of Civil Procedure, against the Judgment and decree of the Learned Principal District Judge, Puducherry dated 12.08.2011 made in O.S.No.15 of 2007.

For Plaintiff

: Ms.G.Sumitra



For R2 to R4 : Mr.V.Raghavachari

For R1 : Died

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Appeal by the defendant being aggrieved by the decree passed against him in the suit for specific performance. For the sake of conveniences, parties are referred as per their status in the suit.

2. The case of the plaintiffs is that, on 09.09.2005, the plaintiffs entered into an agreement with the defendant for sale of vacant land at the costs of Rs.6,60,000/-. 45 days time was fixed for completion of contract. However, the defendant failed to comply his part of contract and therefore, a new agreement for sale of vacant land and superstructure to be constructed was entered on 27.03.2006. Since the said agreement did not fructify, on 27.03.2006, they entered into a fresh sale agreement with the defendant for sale of land and construction of a building over the suit property. The consideration for the land and building to be constructed was fixed at Rs.15,75,000/-. Advance of Rs.5,00,000/- was made on the date of agreement. Time for completion of the construction and execution of sale deed was fixed as before 31.08.2006. Alleging that, the defendant had not completed the construction however, trying to alienate the property to third parties, though the title deeds are been mortgaged with bank for availing loan, the present suit is filed for specific performance and mandatory injunction to direct the defendant to produce the original title deeds and permanent injunction restraining the defendant from encumbering the suit property.

3. The contention of the plaintiffs is that he was ready and willing to perform his part of contract, within the time prescribed but the defendant delayed his part of performance so he issued a notice dated 11.01.2007 to the defendant calling upon him to come to Sub Registrar Office, Oulgaret, Puducherry, on 29.01.2007 between 9.00 a.m to 5.00 p.m and he will be waiting with balance sale consideration for getting the sale deed executed.

4. The case of the defendant as pleaded in his written statement is that, earlier the plaintiff on 09.09.2005 entered into a sale agreement for vacant site for a sale consideration of Rs.6,60,000/-. The plaintiff was put to notice about the loan availed by the defendant from State Bank of India, Puducherry and deposit of title deed with the bank as security for the said loan. However, the plaintiffs specifically requested not to mention the deposit of title deed so as to enable them to raise loan from Indian Bank Amudhasurabi Branch. Hence the encumbrance was not incorporated in the agreement for



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sale. The plaintiffs were not able to mobilise money to pay the defendant as per the agreement dated 09.09.2005. Hence, the said agreement got lapsed. The plaintiffs had not come forward to pay the balance sale consideration and purchase the vacant land.

5. The defendant therefore, after getting approval from the Planning Authority, proceeded with the construction in the suit vacant land. At that juncture, the 1st plaintiff again approached the defendant expressed his willingness to buy the land and building. Thus the plaintiffs and the defendant entered into an agreement for sale of land and building to be constructed for consideration of Rs.15,75,000/- and accordingly, they entered into an agreement dated 27.03.2006.

6. The plaintiffs promised to clear the loan with State Bank of India from and out of balance sale consideration and requested not to mention about the deposit of title deed in the sale agreement. With the said understanding and time as essence of contract, the parties entered into an agreement. In the said agreement, the 2nd plaintiff is not a signatory and therefore, he cannot claim a relief of specific performance of an agreement for which he is not a signatory. In the said circumstances, having failed to honour the contract by paying the consideration as agreed, the present suit for specific performance is not maintainable and to be dismissed in lumine.

7. The plaintiffs while the contract was his force, wanted alteration in the plan and agreed to pay additional costs of Rs.2,50,000/- with interest. The said change in terms of contract totally suppressed by the plaintiffs in their plaint. Therefore, the defendant has contended that the suit agreement has been manipulated and there are material alteration. The plaintiffs, who have no wherewithal to pay the consideration and they were not able to mobilise loan from the bank, which has caused delay. Hence, after waiting till the expiry of the period fixed for performing the contract, the defendant had entered into a fresh agreement with one Kumar S/o.Subramanian for consideration of Rs.39,00,000/- and had received advance of Rs.10,00,000/- and handed over the possession of the property as part performance. The plaintiff has proceeded to sell the property to Kumar only after the plaintiffs failed to perform their contract within the stipulated time. Having come to know about the transaction with Kumar in respect of suit property, the plaintiff with the false plea of ready and willingness had come before the Court with unclean hands by making material alteration in the document.

8. The Trial Court based on the pleadings, framed the following issues and additional issues.

1. Whether time is the essence of the suit sale agreement?



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2. Whether the suit sale agreement is not legally enforceable?

3. Whether the plaintiffs are ready and willing to perform their part of contract?

4. Whether the plaintiffs are entitled for the relief of specific performance?

5. Whether the plaintiffs are entitled to the relief of mandatory injunction?

6. Whether the plaintiffs are entitled to the relief of permanent injunction?

7. To what relief, the plaintiffs are entitled?

Additional Issue:-

1. Whether the suit agreement is materially altered?

9. To prove the case, the plaintiffs have examined 5 witnesses and marked 12 Exhibits. On behalf of the defendant, 5 exhibits were marked and 4 witnesses were examined.

10. After trial, on appreciation of evidence, the Trial Court allowed the suit for specific performance and directed the plaintiffs to deposit the balance sale consideration of Rs.13,25,000/- with bank interest from 09.09.2005 till 31.08.2006 on Rs.2,50,000/- as per the terms of Ex.B.2 sale agreement and deposit the same within two months from the date of decree. Further, the defendants were directed to redeem the title deed relating to the suit property from the State Bank of India and hand over the same to the plaintiff at the time of execution of sale deed, on receipt of the balance sale consideration.

11. Aggrieved by the said judgment and decree, the present appeal is filed on the ground that the impugned order of the Trial Court is contrary to law and evidence.

12. The learned counsel for the appellant/defendant submitted that the insertion of the signature of the 2nd plaintiff in the suit agreement Ex.A.1 amounts to material alteration and therefore, the plaintiffs are dis-entitled from seeking discretionary relief of specific performance. In the suit agreement Ex.A.1, the 2nd plaintiff did not affix her signature at the time of execution and P.W.4 had categorically deposed that he did not see the 2nd plaintiff subscribing her signature in Ex.A.1. While so, the conclusion of the trial Court is contrary to evidence. That apart while parties to the contract agreed that the time is essence of contract, the Trial



Court had held in contrary to the terms of the agreement is perverse and liable to be set aside.

13. Even according to the plaintiff, the 1st demand for execution of the sale deed was made only on 11.01.2007 under Ex.A.2. This demand was made nearly 4 months after the expiry of the time fixed under the contract. The plaintiffs who had no wherewithal to pay the sale consideration and who had failed to honour the undertaking given to clear the bank loan of the vendor cannot have the benefit of equitable relief of specific performance.

14. The comparison of Ex.A.1 sale agreement dated 27.03.2006 produced by the plaintiff and the carbon copy Ex.B.2 of the sale deed produced by the defendant and marked Ex.B.2 will show that the plaintiffs have made material alteration in the agreement to suit their convenience. The plaintiffs have admitted that they failed to get loan, despite that the trial Court has held contrary to their own admission regarding the read and willingness. Hence it needs to be reversed and judgment and decree to be set aside.

15. The Learned Counsel appearing for the appellant submitted that the plaintiffs never had money to purchase the property. Earlier, on 09.09.2005 they entered into an agreement for purchasing the vacant plot for a sale consideration of Rs.6,60,000/-, but could not mobilise the money within 45 days as agreed under the contract and allowed the agreement to get lapsed. Thereafter, entered into a new agreement for land and building to be constructed of Rs.15,75,000/- when the construction was proceedings then asked for additional amenities at the costs of Rs.2,50,000/- and agreed to pay additional costs with interest. Endorsement was also made in the agreement Ex.A.1. However, the plaintiff was not able to mobilise funds to pay the balance and get the sale deed registered within the time fixed. Therefore the defendant was forced to sell the property to third parties. Thereafter, coming to know and the sale agreement with one Kumar, pretending as if they have money with them, had filed this vexatious suit.

16. The contention of the plaintiff that they have paid Rs.5,00,000/- as advance and ready and willing to pay balance sale consideration is false and not supported by any evidence. The plaintiff has come to Court with unclean hands making material alteration in the suit agreement. Hence not entitled for the equitable relief of specific performance more so, when they have no wherewithal to honour the contract.

Point for consideration:-

Whether the plaintiff was ready and willing to specifically enforce the sale agreement dated 27.03.2006 as per the terms



of contract?

17. To prove the case, the plaintiff has marked 12 documents. The 1st plaintiff has mounted the witness box and had been examined as P.W.1.

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18. The plaintiffs and the defendant have entered into a written agreement for sale on 27.03.2006 which is now sought to be specifically enforce in the suit. As per the agreement Ex.A.1=Ex.B.2, the sale consideration is fixed as Rs.15,75,000/-, out of which Rs.5,00,000/- paid as advance. The time for completion of contract was by 31.08.2006. The agreement dated 27.03.2006 has been reduced into writing with carbon copy. The original agreement is marked as Ex.A.1 by the plaintiff. The carbon copy is marked as Ex.B.2 by the defendant. This is an agreement which is sought to be specifically enforce and, therefore, it is necessary to scrutinise these documents whether the plaintiff has come to Court with unclean hands to enforce a manipulated agreement as alleged by the defendant. The recital of this documents indicates that it is between Kalaiyarasu the defendant as vendor and Sambantham and his wife Vijayalakshmi, the plaintiffs as purchasers of the property. While the documents produced by the plaintiff contains the signature of all the three parties to the agreement namely Kalaiyarasu (vendor), Sambantham and Vijayalakshmi (Purchasers). The carbon copy given to the defendant, Vijayalakshmi has not signed. When Vijayalakshmi is not a signatory to the agreement, her right to seek enforcement of the contract is questioned by the defendant. Again strangely, in Ex.B.2 on the back of the document, there is an endorsement dated 27.03.2006 signed by Sambantham, the 1st plaintiff alone to the effect that, he is ready to bear the additional expenses with interest calculated from 09.09.2005 to 31.08.2006. The additional construction also mentioned and costs of Rs.2,50,000/- with interest fixed for the additional construction. The said endorsement which was made on the same day on the execution of the sale agreement strangely not found in the original which was produced by the plaintiff. However, the plaintiffs have admitted about the endorsement and agreed to pay the additional costs.

19. In this context since the plaintiff has agreed to pay interest from 09.09.2005 to 31.08.2006, the date on 09.09.2005 gains significance since it has relevance to the earlier agreement for vacant site entered between the parties on that day. The said agreement is marked as Ex.A.10 by the plaintiff. The carbon copy of this document is in possession of the defendant and marked as Ex.B.1, in these two documents this Court finds then again material alteration, particularly, in Ex.A.10 produced by the plaintiff. The price for the vacant land not fixed and left blank. Except acknowledgement of Rs.3,00,000/- as advance and condition to hand over the



documents and complete the execution within the period of 45 days, there is no reference about mortgage of title deed by the defendant. Whereas, the carbon copy produced by the defendant, the sale consideration of Rs.6,60,000/- typed and advance amount is altered as Rs.10,000/- using whitener. Through this document, it is clear that the parties have entered into an agreement on 09.09.2005 (Ex.A.10) in respect of vacant land but thereafter in supersession of that agreement had entered into afresh agreement on 27.03.2006 for land and the building to be constructed in future in the said vacant land.

20. The specific case of the plaintiff against the defendant is that, the defendant not completed the construction as agreed within the time fixed and he has not redeemed the title deed from the bank. Even then, he wants the said agreement to be specifically enforce. The trial Court has accepted the plea and decreed the suit with mandatory injunction to the defendant to redeem the property from the bank and hand over the title deed to the plaintiff.

21. In the said circumstances, one of the legal issue to be addressed is whether the construction contract can be specifically enforce and if so, whether the plaintiff has proved his ready and willingness to perform his part of contract.

22. It is the admitted case of the plaintiff that, on the date of suit, the construction was not completed and in fact the plaintiff has sought for additional construction of building and agreed to pay additional costs of Rs.2,50,000/- with interest from 09.09.2005 to 31.08.2006. But except payment of Rs.5,00,000/- on the date of entering into an agreement, they have not paid any further amount. Obviously due to the fact that the title deed been deposit in the bank by the vendor.

23. Regarding the ready and willingness though the plaintiff has caused notice which is marked as Ex.A.2, dated 31.01.2007 posted on 12.03.2007 but returned as undelivered. In this notice the plaintiff has called the defendant to be present at Oulgaret, SRO, Puducherry, on 21.01.2007 to receive the balance sale consideration and execute the sale deed. This conduct not sufficient to prove ready and willing, for the simple reason that except causing notice, the plaintiff has not produced no other document to show on that on the day when he called upon the defendant to come to Registrar office to execute the sale deed, he was ready with balance sale consideration.

24. The phrase coined by the judgment of the Hon'ble Supreme Court in Saradamani Kandappan vs S. Rajalakshmi reported in [(2011) 12 SCC 18], the purchaser need not jingle the coins to prove his "ready and willingness", will not apply to the instant case when the plaintiff claims that on a particular day, he was waiting in the Registrar Office, for execution of the sale deed and he was ready to perform his part of contract which



means he was ready with balance sale consideration. In such cases, the purchaser should necessarily jingle the coins on the arrival of the vendor to the registration office. Whether the plaintiffs had Rs.13,75,000/- with them on 27.01.2007 when they asked the defendant to come to the Registrar office to execute the sale deed if tested, this Court finds no proof to show the plaintiffs had the money to pay.

25. In the context, it is pertinent to refer the cross examination of P.W.1 where he admits that his application for loan was not sanctioned and therefore, he could not execute the earlier sale agreement dated 09.09.2005 and even thereafter, he has not placed any document to show, he has arranged for loan and he had source to pay the sale consideration. The Court below had miserably failed to look into the failure on the part of the plaintiff to substantially prove his ready and willingness to complete the contract within the time fixed on payment of the balance sale consideration. Hence, the Trial Court judgment is liable to be interfered.

26. At this juncture, this Court wish to rely upon the following observations of the Hon'ble Supreme Court in Bachhaj Nahar v. Nilima Mandal and another reported in [2008 (17) SCC 491] wherein the Hon'ble Supreme Court has indicated when an alternate relief can be granted and when should not be granted.

"22. The observation of the High Court that when a plaintiff sets forth the facts and makes a prayer for a particular relief in the suit, he is merely suggesting what the relief should be, and that it is for the court, as a matter of law, to decide upon the relief that should be granted, is not sound. Such an observation may be appropriate with reference to a writ proceeding. It may even be appropriate in a civil suit while proposing to grant as relief, a lesser or smaller version of what is claimed. But the said observation is misconceived if it is meant to hold that a civil court may grant any relief it deems fit, ignoring the prayer.

23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel,



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acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court cannot grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc."

27. This Court is of the view that in the given facts and circumstances and the evidence let in by the parties, the alternate relief should be granted to the plaintiff though not alternate relief prayed in this suit.

28. Accordingly, the order of the Trial Court is set aside, though the plaintiff has not sought for alteration relief of refund of money advance in the light of the above peculiar facts and circumstances and the appellant is directed to pay a sum of Rs.5,00,000/- with 12% interest from 09.09.2005 till the date of realisation. Accordingly, the Appeal Suit is partly allowed. The parties shall bear their respective costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Principal District Judge, Puducherry

+1cc to Ms.G.Sumitra, Advocate, S.R.No.10324

Appeal Suit No.6 of 2012

RSI (CO)
CT 02/06/2022