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AS.No.528 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2022

PRONOUNCED ON : 17.06.2022

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.528 of 2016

(Through Video Conferencing)

P.K.Rajendiran

Appellant

Vs

P.A.Vinayagam

Respondent

Prayer:- This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC, against the judgement and decree, dated 18.04.2016, made in OS.No.121 of 2011, by the Additional District Judge, Thiruvallur.

For Appellant : Mr.Y.Jyothish Chander

For Respondent : Mrs.Chitra Sampath, SC Mr.R.Bharathkumar

JUDGEMENT

1. This Appeal Suit has been filed, against the judgement and decree, dated 18.04.2016, made in OS.No.121 of 2011, by the Additional District Judge, Thiruvallur.
2. The suit was filed for specific performance of the sale agreement, dated 19.11.2010, failing which, for a direction for execution of the sale deed through the Court and for permanent injunction and for costs.
3. The case of the Plaintiff, as set out, in the plaint is that the Defendant is the



AS.No.528 of 2016

WEB COPY

owner of the suit property. One Nithianandam, who was working in the Plaintiff Company, had introduced the Defendant. The Defendant had entered into a sale agreement, dated 19.11.2009, with the Plaintiff, to sell the schedule property for a sale consideration of Rs.19,05,000/- and the Defendant had received an advance amount of Rs.19,00,000/- and it was agreed that at any time, on payment of the balance sale consideration, the sale should be completed. The Defendant had requested one week time to vacate the suit property and hand over the same to the Plaintiff. In the mean time, the said Nithianandam had committed misappropriation of Rs.41 lakhs in the Company of the Plaintiff and made a confession on 23.11.2009. From then, the attitude of the Defendant has completely changed and he did not come forward to perform his part of the contract, even though the Plaintiff was ready and willing to pay the balance sale consideration. The Defendant caused a notice dated 20.12.2009, with vague allegations against the Plaintiff, alleging forgery. The Plaintiff had sent a reply notice, dated 02.01.2010 and the Defendant had sent a rejoinder notice, dated 07.01.2010. In the meanwhile, the Defendant attempted to alienate the suit property. Hence, the Plaintiff gave an objection to the concerned Sub Registrar on 30.06.2010. The Plaintiff is ready and willing to perform his part of the contract. The Plaintiff had issued a legal notice dated 16.04.2010, calling upon the Defendant to perform his part of contract and the Defendant issued a reply with false allegations. Hence, the suit was filed for specific performance and permanent injunction.



AS.No.528 of 2016

WEB COPY

4. The case of the Defendant, in a nutshell, as set out in the written statement, is that he neither entered into the alleged agreement of sale nor received any advance amount. The Plaintiff had given a criminal complaint against the Defendant before concerned Police and the same was registered in Crime No.1340/2009, dated 23.09.2009, under Sections 389, 403, 413, 420, 506(i) of IPC. The police arrested the Defendant and brought him to the police station. During that time, the Plaintiff obtained his signature in two blank stamp papers by coercion. He had issued a notice, dated 20.12.2009 and the Superintendent of Police to return the above said stamp papers. The alleged sale agreement is a forged one. The Plaintiff has not stated anything about the sale agreement dated 19.11.2009, in his reply notice dated 02.01.2010. The possession of the suit property is not handed over to the Plaintiff and he is not entitled to the relief of specific performance. Hence, the suit is to be dismissed.

5. Based on the pleadings of the parties, the following issues were framed by the Trial Court:-

1. Whether the suit agreement dated 19.11.2009 is genuine and valid and executed for sale transaction?
2. Whether the sale agreement is forged by the Plaintiff as alleged by the Defendant?
3. Whether the Plaintiff was given constructive possession of suit properties?
4. Whether the Plaintiff was always ready and willing to perform his part of contract?



AS.No.528 of 2016

WEB COPY

5. Whether the Plaintiff is entitled to the relief of specific performance of contract against the Defendant?
 6. Whether the Plaintiff is entitled to the relief of permanent injunction?
 7. To what other relief?
6. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A9 were marked and PW.1 to PW.4 were examined. On the side of the Defendant, Ex.B1 to Ex.B6 were marked and DW.1 and DW.2 were examined. The Trial Court had decreed the suit. Aggrieved against the same, this Appeal Suit has been filed by the Defendant.
7. This Court heard the submissions of the learned counsel on either side.
8. The learned counsel for the Appellant has submitted that he is the Defendant in the suit and the suit was filed by the Plaintiff for specific performance of the agreement. On 19.11.2009, no agreement was entered into between the Appellant and the Respondent. The Appellant neither agreed to sell the property nor received the sale consideration. The Respondent obtained the signature in two blank stamp papers by threat and coercion. The Appellant sent a legal notice on 20.12.2009. The Respondent sent a reply. In that reply, he never stated anything about the date and the sale consideration. The suit property does not belong to him and it belongs to Sri Selva Vinayagar Weaving Cooperative Society. The averment that without verifying the parent title deeds and encumbrance certificate and other revenue records, the Respondent entered into the sale agreement is unbelievable. The Respondent issued a legal notice on 16.04.2010. Then, he filed the suit after 16 months.



AS.No.528 of 2016

The delay has not been properly explained. Possession was not handed over to the Respondent. The suit has no cause of action. The Trial Court, without verifying the oral and documentary evidence, came to the wrong conclusion and hence, this appeal is liable to be allowed.

9. The learned counsel for the Appellant would rely on the following decisions in support of his contentions:-

- i. 2020 6 CTC 350 (R.Backialakshmi Vs. K.Pandian), wherein it was held as under:-

“18.Yet another fact also cannot be ignored. Having entered the contract for purchase of a huge property, there was no attempts whatsoever made on the part of the plaintiff even to know the nature of the property. The normal human conduct demands at least reasonable enquiry of the property when he is intended to purchase the property. Having entered the contract in the year 1989, till the finality of the suit, he has not even made an attempt to know who are all the tenants in the property. These facts itself clearly shows that willingness is totally absent and the agreement in fact is not intended for sale of the property. It is further to be noted that in the agreement, there is no whisper about the tenancy. Even in the plaint, only in paragraph No.12, it is pleaded as if the first defendant has agreed to vacate the tenants. Who are all the tenants is not known to the plaintiff. These facts clearly indicate that readiness and willingness is totally absent. The suit has been filed after two [2] years, even after the last payment. The delay, though explained, the explanation, in view of this Court is highly improbable and unacceptable. Therefore, the delay also cannot be ignored at all in assessing the conduct of the plaintiff. Therefore, this Court holds that the plaintiff was not ready and willing to complete the sale consideration.

19.It is the specific case of the plaintiff that the property is an individual property of Rengaraj who has entered into an agreement. Whereas the defendant's specific case is that the property belong to the firm and Rengaraj has no authority to sell the property. In order to show that the firm was in existence, the defendants filed Ex.B.3, Firm Registration Certificate. On a perusal of the same, it indicates that on the date of the agreement, the firm was very much in existence. The partnership firm consists of several partners. It is further to be noted that the original document said to have been handed over to the plaintiff is also filed as



AS.No.528 of 2016

WEB COPY

Ex.A.13. The title deed makes it very clear that the property is not individual property of Rengaraj and in fact, the property itself was purchased for the firm in the capacity of a partner.”

- ii. 2007 1 CTC 57 (A.Ganapathy Vs. S.Venkatesan), wherein it was held as under:-

“17. As rightly held by the learned single Judge, the evidence of P.Ws. 1 to 3 is prevaricating in all respects and it will be wholly unsafe to rely on the said evidence in order to grant the equitable relief of specific performance claimed by the appellant/plaintiff, in this context, it will be appropriate to refer to the following decisions:-

(a) In 1937 The Madras Weekly Notes (i.e. MWN) 1158 Sirigineedi Subbarayadu v. Kopanathi Tatayya and Ors. a Division Bench of this Court has held as under in the penultimate paragraph of the judgement:

“...The relief sought lies in the discretion of the court. The discretion of the court is not arbitrary but sound and reasonable, and must be guided by judicial principles. This is so declared by Section 22 of the Specific Relief Act. Now, in this case the appellant alleged that he tendered the full amount of the purchase consideration Rs. 6,000, within two months of the agreement having been entered into and he supported this allegation on oath in the witness box. The learned trial Judge refused to believe him and we consider that he was fully justified in so doing. A plaintiff who is capable of setting up a false case cannot expect a court of equity to grant him relief.... There are, therefore, two main reasons why specific performance should not be granted in this case. One is that the appellant has given false testimony in the witness box, and the other is that to grant him the relief which he asks for would be doing an injustice to the 4th respondent.”

(b) In the decision S.V.R. Mudaliar (dead) by Legal Representatives and Ors. v. Rajabu F. Buhari (Mrs.) (dead) by Legal Representatives and Ors. the Supreme Court has held as under in paragraph 29:-

“29 ...if the conduct of the respondents is also borne in mind, about which one could say that the same is tainted inasmuch as they departed from truth to bolster their case and went to the extent of not complying with the desire of the trial Judge in allowing aforesaid Kamal to be examined even as a court witness Such parties who play foul with equity cannot be allowed to use the shield of equity to protect them. ”

- iii. 1993 2 LW 86 DB (Nallaya Gounder Vs. P.Ramaswamy), wherein it was



AS.No.528 of 2016

WEB COPY

held as under:-

“Specific Performance, Specific Relief Act, S. 16(c), and C.P.C., O. 6, R. 3, and Appendix A, Forms 47 and 48 – Plaintiff not coming to court with clean hands – Putting forward a false case with regard to receipt for delivery of possession, concocted for the purpose of the case – Relief declined.

Allegation by plaintiff of being ready and willing to perform his part of the contract – Averments as per Forms 47 and 48 – Reference to convening of panchayat wherein defendants agreed before them to execute conveyance, held, would be sufficient compliance with the requirements.”

- iv. 2003 1 CTC 355 (Arunachala Mudaliar Vs. Jayalakshmi Ammal and another), wherein it was held as under:-

“24. In the present case, therefore, the appellant is entitled to urge that the respondent is not ready and willing. Though the respondent had agreed to withdraw the pending cases, she had not only not done that, but also had obtained a decree ex parte. The respondent had also claimed that she was in possession and that the appellant had interfered with her possession on 25-04-1982. The evidence shows that she was neither in possession nor was there any interference with possession. Viewed from this perspective it is clear that respondent is not entitled to a decree.

25. The obvious lacunae in the plaintiff's case have been pointed out above. The plaintiff has not deposited the amount that she should have deposited as per Ex-A7 before filing the suit for specific performance. The defendant had raised the plea that the deposit was not made and it would show the plaintiff's lack of bona fides. In spite of that the plaintiff not only does not deposit the amount before filing the suit, but P.W.1, the plaintiff's husband glibly says in his evidence that he has deposited the amount. The plaint does not even refer to any readiness or willingness to deposit and the suit notice claimed to have been issued has not been proved to have been issued. In the particular circumstance of the case and in view of the specific recitals regarding the deposit the plaintiff cannot be content with citing the explanation to Section 16(c) of the Act without proving his readiness and willingness clearly and beyond doubt.”

10. The learned counsel for the Respondent would submit that the Appellant has admitted the signature, but stated that it was obtained by coercion. The



AS.No.528 of 2016

burden of proof lies on the Appellant that it was obtained by coercion. But, he failed to prove it. Regarding this aspect, the Appellant not even cross examined the Respondent. The suit is not barred by limitation. Possession of the suit property was also handed over to the Respondent. The court below after verifying the oral and documentary evidence, came to the proper conclusion and hence, this appeal is liable to be dismissed.

11.The learned counsel for the Respondent would rely on the following decisions in support of his contentions:-

- i. 1998 3 LW 343 (Vadivelu Mudaliar Vs. Kanni Ammal), wherein it was held as under:-

“in a suit for specific performance, when the person seeking to perform the agreement is prepared to take the sale as it is, the question of title is irrelevant, and the same also should not be considered.”

- ii. 2010 8 Supreme 129 (Alva Aluminium Limited Bangkok Vs. Gabriel India Limited), wherein it was held as under:-

“21. A heavy duty lies upon the party who seeks to avoid a contract on the ground of mis-representation, fraud or coercion to prove any such allegation. Nothing of the sort has been done in the instant case by the respondent. So much so the respondent has not even placed on record any charter of duties and powers of Shri Dabir and Shri Sengupta nor has it chosen to place on record any material to suggest that any action was indeed taken against Shri Dabir for the alleged transgression of the limits of his authority and if so the nature of the disciplinary action taken against him. ...”

- iii. 2017 Supreme Mad 247 (M.Kaja Nijamuddin Vs. A.Rajamani), wherein it was held as under:-

“13. ... True, there is a delay of three months on the part of the plaintiff in approaching the court, that alone cannot be a ground to reject the claim for specific performance, if the plaintiff has otherwise proved his readiness and willingness. I therefore, find that the plaintiff



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had established that he was always ready and willing to perform his part of the contract and the defendant has miserably failed to prove that the plaintiff was not possessed of sufficient means to pay the balance sale consideration and take a sale deed.”

- iv. 2020 15 SCC 731 (Madhukar Nivurutti Jagtap Vs. Pramila Bai Chandulal Parandekar) , wherein it was held as under:-

“13.5. ... when the plaintiffs had the limitation of three years for filing the suit for specific performance, it cannot be said that during the aforesaid period, the plaintiffs were required to show overt act by them in furtherance of the agreement in question. The principles stated in the decisions in Azhar Sultana [Azhar Sultana v. B. Rajamani, (2009) 17 SCC 27 : (2011) 1 SCC (Civ) 761] , Veerayee Ammal [Veerayee Ammal v. Seenil Ammal, (2002) 1 SCC 134] and Pushparani S. Sundaram [Pushparani S. Sundaram v. Pauline Manomani James, (2002) 9 SCC 582] , as relied upon by the learned counsel for the appellants, are not of any doubt or debate but each of the said cases had proceeded on its own facts. ”

12.This Court considered the submissions of the learned counsel on either side

and also perused the materials available on record.

13.PW.1 has deposed that on 19.11.2009, he entered into a sale agreement with

the Defendant for purchase of the suit property for Rs.19,05,000/- and paid an advance amount of Rs.19 lakhs. Possession was also handed over.

14.DW.1 has deposed that he has not entered into any agreement with the

Plaintiff and not received the sum of Rs.19 lakhs and that he was brought to the Police Station and during that time, the Plaintiff had obtained his signature in two blank stamp papers by threat and coercion. Then, he sent a legal notice Ex.B1 dated 20.12.2009 to the Plaintiff. The Plaintiff has sent a reply Ex.B2.

15.In Ex.B2, in paragraph 3, it is mentioned as “My client states that your client executed a sale agreement in favour of my client. But, in this notice, the date



AS.No.528 of 2016

and the sale consideration and the advance amount are not mentioned”.

16.DW.1 has deposed that he sent a legal notice on 20.12.2009. For that, the Plaintiff has sent a reply on 02.01.2010. Thereafter, he sent a legal notice on 16.04.2010 and then, he filed the suit on 28.11.2011. This delay is not properly explained by the Plaintiff.

17.DW.1 has deposed in the cross examination that “ xg;ge;jj;jpy; cs;s brhj;J tPL kw;Wk; tPLkida[k; vd;why; rhpjhd;/ mJ vdf;F brhe;jkhdJ fpilahJ/ vd;idg;bghWj;jtiuapy; me;j brhj;J murh';f K:ykhf brhirl;of;F te;j brhj;J vd;why; rhpjhd;/”

18.Whereas PW.1 in his cross examination has deposed that “ tHf;F brhj;J gl;lh gpupthjp bgahpy; ,y;iy/ brhe;jkhdJ my;y/ _tpdhafh; ifj;jwp TI;Lwt[r';fj;jpd; bgahpy; cs;sJ vd;W brhd;dhy; mJgw;wp ehd; nfs;tpg;gl;nld;/ tHf;Fbrhj;J nfhapYf;F rk;ge;jg;gl;IJ vd;gij ehd;; vdJ tHf;Fiu”hplk; Twpa[s;nsd;/”

19.In this case, the Defendant submitted that without verifying the Appellant's title, encumbrance certificate and other revenue records entered into the sale agreement and it is unbelievable.

20.PW.1 has deposed that “tpf;fpua xg;ge;jk; gj;jpuj;jpw;fhd K:ygj;jpuk; gl;lh ahh; bgahpy; cs;sJ vd;w ehd; ghh;f;ftpy;iy/”

21.It is the duty of the Plaintiff to verify all the records before entering into the sale agreement. The above said answers by PW.1 clearly prove that he never verified any parent title deed and other documents before entering into the



AS.No.528 of 2016

sale agreement. PW.1 had deposed that the Defendant had also handed over possession of the suit property.

22. Section 17(1A) of the Registration Act reads as under:-

“(1A). The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

23. In this case, the sale agreement Ex.A1 is not registered. Hence, as per law,

he cannot claim any right. The court below without verifying the oral and documentary evidence, came to wrong conclusion. Hence, this appeal is liable to be allowed.

24. In fine, this Appeal Suit is allowed. The judgement and decree, dated

18.04.2016, made in OS.No.121 of 2011, by the Additional District Judge,

Thiruvallur, is set aside. The suit is dismissed. No costs.

17.06.2022

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To

1. The Record Keeper, VR Section, Madras High Court.

2. 1st Additional District Judge, Thiruvallur.



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AS.No.528 of 2016

A.A.NAKKIRAN, J.

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Pre-Delivery Judgement in
AS.No.528 of 2016

17.06.2022