

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.11.2021

PRONOUNCED ON : 06.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.792 of 2012

K.Rajendran

Appellant/Plaintiff

Vs

1.A.Mary Gandhi
2.Sasikala
3.Johnson(Deceased)
4.Nalina Veeraraghavan
5.Joy Selvi

Respondents/Defendants

(R1 recorded as LR of R3 & R5 brought on
records as LR of the deceased R3 vide
order of Court dated 12.03.2015 made in MP.No.1 of 2014)

Prayer:- This Appeal Suit has been filed, under Section 96 of CPC, against the the judgement and decree, dated 31.01.2012, made in OS.No.9251 of 2010, by the Additional District III Fast Track Judge, Chennai.

For Appellant : M/s.P.Devadas Associates

For Respondents : Mr.D.Kanga Sundaram-RR1 and 2

: Mr.A.Prabhakaran-R4

: No Appearance-R5
R3 - Died

JUDGEMENT

1.This Appeal Suit has been filed, against the judgement and decree, dated 31.01.2012, passed by the Additional District III Fast Track Judge, Chennai, in OS.No.9251 of 2010.

2.The case of the Plaintiff is that the 1st Defendant is the owner of the suit property and she had entered into a sale

agreement, dated 24.02.2007 with him for a consideration of Rs.13,00,000/- and an advance of Rs.5,00,000/- was paid, by a cheque dated, 24.02.2007. It was agreed that as soon as she gets the sale deed executed in her favour from the Tamil Nadu Slum Clearance Board, she would execute the sale deed in his favour. The copies of the property tax and water tax receipts and the allotment letter were given to the Plaintiff. On 04.03.2007, at the request of the 1st Defendant, a further advance of Rs.2,00,000/- was deposited in the Bank Account of the 2nd Defendant. On 05.03.2007, the 1st Defendant got the sale deed executed in her favour. On 11.03.2007, the Plaintiff had paid a further advance of Rs.1,25,000/- to the 1st Defendant. On 30.03.2007, the Defendants had acknowledged the receipt of the additional advance of Rs.3,25,000/- by making an endorsement in the Sale Agreement. Thus, in all, a sum of Rs.8,25,000/- towards the part payment of sale price of Rs.13,00,000/- was paid. The Plaintiff is always ready and willing to pay the balance sale consideration and to complete the sale transaction. The Defendants had been evading to perform their part of the contract. Hence, a complaint dated 04.04.2007, was made before the Commissioner of Police, Egmore, Chennai 600 008. Thereafter, a legal notice, dated 09.04.2007 was issued and a reply dated 11.04.2007 was sent, admitting the sale agreement and also the payment, but falsely stating that the Plaintiff had agreed to pay a sale consideration of Rs.19,00,000/-. The Plaintiff had sent a rejoinder, dated 14.04.2007. Since the Defendants were attempting to alienate the suit property, the suit had been filed for specific performance and permanent injunction. During the pendency of the suit, in spite of an order of injunction, the 1st Defendant had sold a part of the suit property under a sale deed, dated 23.10.2008 to the 4th Defendant.

- 3.The case of the 1st Defendant is that as per the documents filed by the Plaintiff, the 1st Defendant was not the owner of the suit property and that she did not obtain any sale deed from the Tamil Nadu Slum Clearance Board. The sale agreement was not prepared with clean hands. At the time of getting her signature, she was told by the Plaintiff that the sale consideration would be Rs.19,00,000/- and the 1st Defendant is ready and willing to execute the sale deed if he pays the said amount and in such circumstances, the suit is liable to be dismissed.
- 4.The case of the 3rd Defendant is that he was not present at the time of preparation of the sale agreement. The case of the 4th Defendant is that he is the bona fide purchaser of the suit property and mutation of revenue records took place. As on the date of the sale agreement, the 1st Defendant was not the owner of the suit property and hence, the alleged sale agreement is

not legally sustainable. The Plaintiff was aware of the said transaction. By suppressing the material facts, the suit had been filed. Hence, the suit is liable to be dismissed.

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

- a) Whether the 1st Defendant is the absolute owner of the suit property?
- b) Whether the agreement dated 24.02.2007 is true, valid and binding on the Defendants?
- c) Whether the Plaintiff is entitled for specific performance of the contract?
- d) Whether the Plaintiff is entitled for permanent injunction, as prayed for?

6. On the side of the Plaintiff, Ex.A1 to Ex.A42 were marked and PW.1 was examined. On the side of the Defendants, Ex.B1 to Ex.B8 were marked and DW.1 and DW.2 were examined. The Trial Court, while refusing to grant the reliefs for specific performance and permanent injunction, had directed the 1st Defendant to pay the advance sale consideration of Rs.8,25,000/- and a sum of Rs.10,000/- as compensation, with interest at 12% p.a. from the date of the plaint till the date of realisation and dismissed the suit against the Defendants 2 to 4. Aggrieved against the same, this Appeal Suit has been filed by the Plaintiff.

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

8. The learned counsel for the Appellant has submitted that the 1st Respondent is the owner of the property and that she has also admitted during the cross examination the signature found in Ex.A11 and that after entering into the agreement, she entered into an agreement with the third parties and sold the property to the 4th Respondent. The learned counsel would further submit that the 1st Respondent had entered into the agreement for Rs.13 lakhs and later on, disputed the amount and she also received an additional sum of Rs.6 lakhs and that the Appellant paid Rs.8,25,000/- and that he is ready and willing to purchase the property, but the 1st Respondent had sold the property to the 4th Respondent and cheated the Appellant and that the Trial Court failed to appreciate all those aspects and erroneously dismissed the suit and hence, he prays for allowing this appeal. He would rely on the decisions reported in 2003 10 SCC 200 (Renu Devi Vs. Mahendra Singh) and Manu/SC/0708/1996 (Jote Singh Vs. Ram Das Mahto).

9. The learned counsel for the Respondents 1 and 2 submitted that the description of the suit property is not correct and that at the time of entering into the agreement, the 1st Respondent has not obtained any sale deed from the Tamil Nadu Slum Clearance Board and that the total sale consideration is Rs.19 lakhs, but to cheat the 1st Respondent, the Appellant has stated that the sale consideration is Rs.13 lakhs and that the Appellant is not ready and willing to purchase the property in time and that the 1st Respondent in her reply has clearly stated that she was ready to repay the advance amount and that due to necessity, she had sold the property to the 4th Respondent and that he miserably failed to come forward to execute the sale deed in time. The learned counsel would further submit that at the time of entering into the agreement, the property was not in her name and hence, the suit is a vexatious one and that the Trial Court considered all the aspects and came to the proper conclusion and hence, he prays for dismissal of this appeal.
10. This Court considered the submissions of the learned counsel on either side and also perused the materials available on record.
11. The 1st Respondent had admitted that on 24.02.2007, the sale agreement Ex.A11 was executed and in that agreement, it is mentioned as "GKM Colony, VOC Nagar, 5th Street, Door No.5/63, total extent 1368 sq.ft." But, a perusal of Ex.A14 shows that 990 sq.ft. alone was purchased from one Vijaya on 5.3.2007 and therefore, it clearly proves that at the time of entering into the agreement, 1st Respondent was not the owner of the entire extent of the property as mentioned in Ex.A11.
12. A perusal of Ex.A11 reveals that no proper survey number is mentioned in the Schedule of property and even in that Schedule, Plot No. is not mentioned, whereas in the plaint, it is mentioned as "Plot No.1646A" and this was not properly explained by the Appellant.
13. In Ex.A11, it is stated that they have to complete the sale within three months, but the Appellant had sent the legal notice only on 7.4.2007. Therefore, it shows that the Appellant is not ready and willing to purchase the property in time as he sent the notice very belatedly.
14. The 1st Respondent in her reply notice has stated that there was some dispute regarding the extent of the property and for that, a suit had been filed and so, she was not in a position to sell the property and ready to repay the advance amount. But, the Appellant is willing to purchase the disputed property. In the agreement, the plot no. has not at all been mentioned by the Plaintiff. But, in the plaint, the plot no.

has been mentioned. It is not properly explained by him as to how he came to know the plot no.

15.At the time of entering into the agreement, the Appellant has not verified any title regarding the total extent of the property. Without verifying the total extent, he entered into the agreement with the 1st Respondent and also he tried to purchase the disputed property and it was also informed to the Appellant in the reply statement sent by the 1st Respondent. Having failed to verify the original records, the Appellants entered into the agreement and it is not proper. The Trial Court, after analysing the oral and documentary evidence, came to the proper conclusion and there is no necessity to interfere with the impugned judgement of the court below.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Srcm

To

1.The Additional District III Fast Track Judge,
Chennai

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

+1cc to M/s.A.Prabhakaran, Advocate, S.R.No.32201

+2ccs to M/s.P.Devadass Associates, Advocate, S.R.No.32179

AS.No.792 of 2012

RLD(CO)
UMA(18/07/2022)