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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 08.12.2021

JUDGMENT DELIVERED ON : 10.03.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.Nos.1074 of 2012
and
M.P.No.1 of 2012

1.Kuppayee
2.Mallika
3.Selvarani .. Appellants/Defendants

Vs.

1.P.Subramanian .. 1st Respondent/Plaintiff

2.N.Sundaram .. 2nd Respondent/3rd Party

PRAYER : This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 30.07.2012 made in A.S.No.20 of 2008 on the file of the learned Principal District Judge, Namakkal, in reversing the judgment and decree, dated 30.06.2008 made in O.S.No.73 of 1998 on the file of the learned Subordinate Judge, Namakkal.

For Appellants: Mr.C.Jagadish

For R1 : Mr.P.Valliappan
for M/s.P.V.Law Associates

For R2 : Mr.R.Anbukarasu

JUDGMENT

Defeated defendants are appellants herein. The first respondent is the plaintiff in the suit in O.S.No.73 of 1998, on the file of the Subordinate Court at Namakkal. The suit was filed for specific performance of the sale agreement, dated 16.07.1994 executed by the appellants/defendants

2. As per the suit sale agreement, the property measuring an extent of 1.00 acre out of acre 1.08 in S.No.158/3, Reddipatti Village, Namakkal was agreed to be sold for a total sale consideration of Rs.1,22,000/- and an advance of Rs.10,000/- was paid on the date of the agreement. The balance sale

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consideration of Rs.1,12,000/- was to be paid on or before 31.01.1995. The appellants/defendants 1 to 3 were required to obtain sub-division of the extent of acre 1.00 out of acre 1.08 and thereafter, execute the sale deed. On 16.09.1994, the 1st respondent/plaintiff paid a further sum of Rs.20,000/- towards part of the sale consideration and the appellants/defendants 1 to 3, acknowledged receipt of the same by making an endorsement in the sale agreement.

3. A sum of Rs.30,000/- out of the total sale consideration of Rs.1,22,000/- was paid by the 1st respondent/plaintiff to the appellants/defendants 1 to 3. Though the 1st respondent/plaintiff was already ready and willing to pay the balance sale consideration of Rs.92,000/- and get the sale deed executed, the appellants/defendants 1 to 3 were evasive and lacked bonafide.

4. The 1st respondent/plaintiff issued the legal notice, dated 09.02.1995 calling upon the appellants/defendants 1 to 3 to receive the balance sale consideration and execute the sale deed. The appellants/defendants 1 to 3, having received the legal notice, dated 09.02.1995, issued a reply, dated 17.02.1995, admitted the execution of the sale agreement, dated 16.07.1994 and the receipt of the sum of Rs.30,000/- as part of sale consideration. The 1st respondent/plaintiff had produced Exhibits A1 to A4 material documents and examined three witnesses, including himself. On the contrary, the appellants/defendants 1 to 3 did not produce any documentary evidence.

5. On consideration of both oral and documentary evidence, the trial Judge has hold that the plaintiff has not proved his ready and willingness to perform his part of the contract and the plea of possession is found to be false and there is no recital in Ex.A1 suit sale agreement to the effect that the land has to be certified and to fix the boundary of the property as pleaded by the plaintiff is not found in Ex.A1, accordingly, dismissed, the suit.

6. Aggrieved against the said judgment and decree, the defeated unsuccessful plaintiff preferred A.S.No.20 of 2008 before the learned Principal District Judge, Namakkal. After the disposal of the suit before filing of the appeal, the first respondent-land owner has sold the property to the purchaser, he was impleaded as second respondent before the lower Appellate Court. The lower Appellate Court has hold that the land lord ought not to have sold the property immediately after the dismissal of the suit and hence, same lacks bonafide and allowed the appeal and consequently decreed the suit. Hence, second appeal by the defeated first respondent/plaintiff.

7. The above second appeal is admitted on the following Substantial Questions of Law:

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"1.Whether the lower Appellate Court was right in granting a decree for specific performance in the absence of any allegations in the plaint regarding readiness and willingness on the part of the plaintiff as required under Section 16 (c) of the Specific Relief Act?

2. Whether the lower Appellate Court was right in granting the discretionary relief of specific performance more so when the plaintiff has approached the Court with a false case regarding possession?

3. Whether the lower Appellate Court was right in entertaining evidence relating to a separate oral agreement regarding sub-division of the property more so when it seeks to vary the terms of Ex.A10?

4. Whether the lower Appellate Court was right in assuming readiness and willingness on the part of the plaintiff merely because he had filed the suit just before the 3 years period had expired?"

8. Heard the learned Counsel Mr.C.Jagadish for the appellants and Mr.P.Valliappan for the first respondent and Mr.R.Anbukarasu for the second respondent.

9. Lower Court records reveals the following facts:

* Ex.A1-suit sale agreement is dated 16.07.1994.
* Time fixed for execution and completion of sale transaction is 31.01.1995.
* Ex.A3-legal notice dated 09.02.1995
* Ex.A4-reply on 17.02.1995
* Date of filing of the suit is 29.01.1998
* Last date for filing of the suit is 30.01.1998.

10. On perusal of Ex.A1-suit sale agreement, the sale consideration is fixed at Rs.1,22,000/-. Advance amount of Rs.10,000/- is paid and another Rs.20,000/- was also paid as per endorsement. There is a specific clause in Ex.A1-sale agreement that in the event of sale transaction is not completed within the stipulated time, viz., 31.01.1995, the purchaser has to forfeit advance amount paid.

11. The agreement holder/plaintiff filed a suit for specific performance of the suit sale agreement, dated 16.07.1994. As per Ex.A2, Rs.20,000/- further payment was also made, which has been seen from the endorsement. It is not disputed. Terms of the agreement, payment of advance and receipt of the further advance are not disputed. Admittedly, Ex.A3-legal notice was issued only after the expiry of the date fixed for completion of the sale transaction. For the sake of clarity, last date for completion

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of the sale transaction is 31.01.1995. Legal notice was issued on 09.02.1995 only. Suit was only one day prior to expiry of three years limitation period fixed for the completion of the sale agreement also assumes significance.

12. The plaintiff/PW1 has come forward with a specific plea that there was an understanding between the parties that out of 1.08 acres, the property agreed upon, namely, one acre has to be certified and boundaries has to be fixed before completion of the sale transaction so as to evidence of PW1. He has admitted in the cross-examination that there is no such recital in Ex.A1 agreement. On perusal of Ex.A1-suit sale agreement, I find that there is no such recital besides it is prudent to note that there is a specific recital in the said agreement that out of 1.08 acres after leaving 8 cents, one acre, subject matter of the Ex.A1-sale agreement is specifically given with four boundaries in the schedule of the agreement.

13. On record and come to right conclusion that the plea of the plaintiff that there could be a special clause of fixation of the boundary before the completion of the sale transaction and it was delayed by the defendants/appellants is false. In view of the discussion in the preceding paragraphs, I find that the finding rendered by the trial Court is just and proper and that of the contra finding given by the lower Appellate Court is erroneous. In view of the absence of any recital as stated supra in Ex.A1-sale agreement and admission of PW1 as to no recitals in the document.

14. Yet another point is that the Ex.A1 -sale agreement was entered on 16.07.1994 and the time fixed was on 31.01.1995. Admittedly, Ex.A3-legal notice was issued by the plaintiff on 19.02.1995. In other words, no legal notice expressing his ready and willingness to comply the sale transaction as emerged from the plaintiff. Since the plaintiff was not ready and willing to perform his part of the contract by issuing any notice during the currency of the agreement period and the quantum of ready and willingness on the part of the respondent/plaintiff.

15. Lower Court records reveals that on the date of filing of the suit, the balance of sale consideration was deposited.

16. I find that there is no legal notice during the currency of the agreement period. Legal notice was issued after 8 days of the expiration of the period. Suit has been filed one day prior to the last date of three years to file a suit. Balance of the sale consideration was deposited and there is pleading or evidence of the PW1 regarding the readiness, ready with money and willingness, intention to buy the property as per the terms of Ex.A1-agreement.

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17. Learned counsel for the respondent/plaintiff relied upon the decision reported in 2020 (15) SCC 731 wherein it is held that a question of fact has to be determined with reference to pleading and evidence as also all material circumstances and the question as to whether the plaintiff seeking specific performance has been ready and willing to perform his part of the contract is required to be examined with reference to all the facts and the surrounding factors of the given case. The requirement is not that the plaintiff should continuously approach the defendant with payment or make incessant requests for performance. For the relief of specific performance, which is essentially a species of equity but has got statutory recognition in terms of the Specific Relief Act, 1963, the plaintiff must be found standing with the contract and the plaintiff's conduct should not be carrying any such blameworthiness so as to be considered inequitable.

18(a)He also relied upon the decision of the Hon'ble Supreme Court in 2019(8) SCC 632 [R.Lakshmikantham vs. Devaraji] wherein the Hon'ble Supreme Court has hold that readiness and willingness of the plaintiff to perform his part of the contract, merely from delay in filing of suit after accrual of cause of action, held, it cannot be inferred against the plaintiff that he was not ready and willing to perform his part, if suit was filed within period of limitation and in 2021 (4) CTC 330 [M.Kumar vs. Balan], the Hon'ble Apex Court has held tht mere delay in filing the suit for specific performance cannot be a ground to non-suit the plaintiff, if he is otherwise shown to be ready and willing to perform his part of the Contract. Therefore, the Judgement in Lakshmikantham's case cannot be a precedent to interpret law to the effect that the requirements of readiness and willingness were totally dispensed with. If only the plaintiff had issued notice within the time fixed under the Agreement and filed the suit at the fag end of the limitation period, the decision in Lakshmikantham's case would squarely apply and the plaintiff cannot be non-suited for being not ready and willing.

18(b). The main contention of the respondent/plaintiff is that under Ex.A4, dated 17.02.2015 reply notice, the appellant/defendant/land owner has expressly recited that he has already sold the suit property. When the appellant/defendant is examined as DW1, a specific question was put to him and she has not answered for the suggestion touching upon the alienation of the property by speaking the language of silence.

18(c). After dismissal of the suit before filing the appeal, the said sale deed was registered as could be seen from the finding rendered by the lower Appellate Court. Whether as per the recital in Ex.A4, the appellant/defendant has disposed of the property even on 17.02.2015, namely, before the institution of the case. For the sake of clarity as per Ex.A1-suit sale agreement, dated 16.07.1994 both the parties have agreed the

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terms of the agreement. Further payment was made towards the part sale consideration on 16.09.1994 as per Ex.A2. The same was not disputed by the defendant/land owner. Time stipulated expired on 31.01.1995. Ex.A3-legal notice was issued on 09.02.1995(8 days delay). Reply was issued on 17.02.1995. As stated supra, the defendant/owner has stated he has already sold the suit property. Suit was laid on 29.01.1998 (in time) whether 8 days delay in issuing Ex.A3 can be put against the plaintiff his point for determination.

18(d).The 8 days delay cannot be viewed as a single factor for determination for the specific performance action. The entire conduct of the parties has to be cumulated from the connecting circumstances and attending circumstances. Sale consideration is Rs.1,22,000/-. Advance paid is Rs.10,000/-. Subsequent payment of Rs.20,000/- has also been made, as per Ex.A2 endorsement. It is a specific case of the plaintiff/purchaser/ agreement holder that the land owner is negotiating for a higher price after entering agreement so he could not complete the sale consideration and hence, PW1 made in several attempts to complete the transaction and finally Ex.A3-legal notice for which Ex.A4-reply was given stating the property has been sold without furnishing any details. Ex.A4 is dated 17.02.1995.

18(e). As stated supra, date of sale was not given in Ex.A4-reply notice. When DW1 is in the witness box, she evaded to answer, after dismissal of the suit immediately the sale deed was registered goes to show that the silence on the part of the defendant both in his pleadings and evidence after disclosing the fact that he has sold the property as mentioned in Ex.A4, dated 17.02.1995 have an adverse inference can be drawn against the land owner/defendants/appellants.

18(f). He has sold during the subsistence of the agreement only. Since he does not inclined to disclose the detail of the sales, especially, the date of sale by him in respect of the third party and an adverse inference has to be drawn to the effect that it was sold during the subsistence of the Ex.A1-agreement. In view of the talk in the town, on enquiry by the plaintiff, the appellant/defendant effected the sale deed and hence, the plaintiff cannot be denied the discretion relief of specific performance.

18(g). As per the pleadings and the evidence of PW1 is ready with money to purchase the land and plead the sale transaction and her willingness to purchase the land and complete the transaction and her willingness to purchase the land as per the decision of the Hon'ble Supreme Court in Lakshmikanth's case, mere delay of 8 days in issuance of notice cannot be put against the plaintiff and as per the decision of the Hon'ble Supreme Court in Madhukar Nivrutti Jagtap and Others vs. Pramilabai Chandulal Parandekar (dead) [2020 (15) SCC 731], the question of

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fact is to be determined with reference to pleading and evidence and also all material circumstances. Hence, I find that since the plaintiff has also made further payment as could be seen from Ex.A2 endorsement, which is admitted by the appellant/defendant and non-disclosure of the detail of the sale effected by the appellant/defendant as disclosed by him is Ex.A4-reply notice, silence on the part of the DW1 in not disclosing any statement regarding the date of sale during the cross-examination and when the same is confronted, no explanation was offered as to when the sale was effected by him and hence, I find that the conduct of the defendant/owner appears to be malafide and after completing the sale, he kept quite and issuing the reply notice with factum of selling the property without disclosing the particulars of the sale of the purchasers. After dismissal of the suit, he has registered the sale deed.

18(h). Therefore, I find that in view of the non-cooperation on the part of the defendant/appellant, the sale transaction could not have been completed. The respondent/plaintiff has demonstrated his ready and willingness to perform his part of contract. Mere delay of 8 days in issuing the Ex.A3-legal notice cannot said to be lack of readiness on the part of the respondent/plaintiff.

18(i). For the reasons extracted supra, the appellant/defendant has not willing to cooperate for completion of the sale transaction and hence the order passed by the lower Appellate Court ordering specific performance is just and proper for the different reasoning as discussed supra. Accordingly, the judgment and decree passed by the lower Appellate Court does not warrant any interference. Before parting the suit sale agreement is of the year 1994 and in view of the escalation of the real estate the value of the property could be more as compared to the agreed price and therefore, the decision reported in 2017 (1) CTC 46 in Nagarathinam vs. S.Jaya, wherein this Court has followed the ratio laid down by the Hon'ble Supreme Court and taking note of escalation in Real Estate, has enhanced the sale consideration, land owner cannot be called upon to sell the property for the price agreed in the year 1994 and has to be suitably benefited by enhancing the sale consideration by exercising the power under Section 100 CPC as stated by the Hon'ble Apex Court accordingly, sale consideration of Rs.1,22,000/- fixed in the sale agreement and hence in the interest of justice, the sale consideration is refixed at Rs.11,22,000/- and accordingly, the balance of sale consideration has to be deposited by the respondent/plaintiff in twelve weeks from the date of receipt of a copy of this judgment.

19. In the result, this Second Appeal stands dismissed. The judgment and decree of the lower Appellate Court/learned Principal District Judge, Namakkal, dated 30.07.2012 made in

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A.S.No.20 of 2008 in reversing the judgment and decree of the trial Court/learned Subordinate Judge, Namakkal, dated 30.06.2008 made in O.S.No.73 of 1998 is hereby confirmed. Consequently, the suit in O.S.No.73 of 1998 stands allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

PJL
To
1.The Principal District Judge, Namakkal,

2.The Subordinate Judge, Namakkal.

3.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.P.Valliappan, Advocate Sr.NO. 16473

S.A.No.1074 of 2012

EV(CO)
A.SK(12/04/2022)

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