



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.347 of 2015
and M.P.No.1 of 2015

D.Sundaramoorthy

...Appellant/Plaintiff

Vs.

1.Vedachalam

2.Poongavanammal

3.Mahalingam

4.Durai Velu

5.Savithiri

6.R.Rajendiran

7.R.Ramadoss

8.R.Ganapathy

9.Sivasubramanian

10.Prakasam

11.Parthiban

12.Shanbagavalli

13.Lakshmi

14.Sarojini

...Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 09.07.2014 in A.S.No.30/2010 on the file the District Court - II at Kancheepuram and confirming the judgment and decree dated 16.10.2006 in O.S.No.197 of 1992 on the file of Sub Court, Kanchipuram.

For Appellant : Mr.Kalyana Sundaram,
Senior Counsel
for M/s.V.Umapathi

For Respondents : Service Awaited for R1, R3, R4
R6 and R7
: R2 - Died
: No Appearance [Notice Served]
for R5, R8 to R14



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J U D G M E N T

The plaintiff is the appellant in the Second Appeal.

2. The plaintiff filed the suit for specific performance based on the agreement of sale dated 25.02.1990. The defendants took a stand to the effect that there was an earlier agreement and the plaintiff was not able to complete the contract within the stipulated time and hence the time period was extended and in spite of the extension of time, the plaintiff did not complete his part of the contract. Therefore, the defendants sought for the dismissal of the suit.

3. Both the Courts below on considering the facts and circumstances of the case and after taking into consideration the oral and documentary evidence, came to a categorical conclusion that the plaintiff was not able to complete his part of the contract in spite of extension of time being granted on two occasions and since time was the essence of the contract, the plaintiff has not shown his readiness and willingness to perform his part of the contract. Hence both the Courts below negatived the claim for the relief of specific performance and allowed the alternate prayer of the refund of advance amount. Aggrieved by the same, the present Second Appeal has been filed before this Court.

4. Mr.Kalyanasundaram, learned Senior Counsel appearing on behalf of the appellant submitted that the appellant had formed a layout which consisted of 52 plots. Out of these 52 plots, the defendants 1 to 4 retained 14 plots and 30 plots were sold. Hence 8 plots remained and the defendants refused to convey the same to the appellant. It is these 8 plots which is the subject matter of the present Appeal. The learned Senior Counsel submitted that in so far as immovable property is concerned, time is not the essence of the contract and the Courts below failed to take into consideration this settled proposition of law.

5. The learned Senior Counsel further submitted that it was only due to the attitude of D1 to D4, there was a delay in completing the sale of plots under the first agreement and the



same necessitated entering into the second agreement on 25.02.1990. It was further submitted that the delay in the completion of the sale of the plots was only due to the defendants and the Courts below failed to appreciate these facts and went wrong in granting only the alternate prayer.

6. This Court carefully considered the submissions of the learned Senior Counsel and also perused the judgments of both the Courts below.

7. In so far as the main issue that has been raised by the learned Senior Counsel with regard to whether time can be the essence of the contract for immovable property, there used to be a time when the Hon'ble Supreme Court consistently held that time is not the essence of the contract for immovable property. However, the Hon'ble Supreme Court deviated from this position and started taking into consideration the change in the socioeconomic conditions. Ultimately the Hon'ble Supreme Court in *Saradamani Kandappan and Ors., v. S.Rajalakshmi & Ors.*, reported in 2011 (4) CTC 640, held that even for an immovable property, where the parties have agreed to fix a time limit, time can be the essence of the contract. This judgment was subsequently reiterated by the Hon'ble Supreme Court in *Padmakumari and Ors. v. Dasayyan and Ors.*, reported in 2015 (6) CTC 545. Thus the present position is that the time can be made as the essence of the contract for immovable property if the parties agree to the same in a contract.

8. In the present case, the time was fixed in the agreement and the parties are bound by the time fixed and once the appellant was not able to complete his part of the contract within the time limit fixed, it must be presumed that he is not ready and willing to perform his part of the contract and the equitable relief of specific performance cannot be granted in favour of the appellant.

9. In the considered view of this Court, both the Courts below have appreciated the oral and documentary evidence and rendered their findings and this Court does not find any ground to interfere with those findings. There is no substantial question of law involved in the present Second Appeal.



10. In the result the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

jv/jeni

To

- 1.The District Judge-II,
The District Court - II,
Kancheepuram.
- 2.The Subordinate Judge,
The Sub Court,
Kancheepuram.
3. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

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