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S.A.No.476 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.12 .2022

CORAM

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

S.A.No.476 of 2013

1.Rajendhran

....Appellant

Vs.

1.Dhanajothi

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgement and decree dated 14.08.2012 passed in A.S No.58 of 2011 on the file of the Sub ordinate Judge, Kallakurichi, Confirming the Judgement and decree dated 06.07.2010 passed in O.S No. 954 of 2004 on the file of the 1st Additional District Munsif, Kallakurichi.

For Appellant : Mr.V.Manohar

For Respondent :Mr.P.Valliappan

JUDGMENT

The Appellant herein is the defendant in suit O.S No. 255 of 1999 before District Judge, Kallakurichi, then transfered to Ist Additional District



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Munsif Kallkurichi, and re-numbered as O.S No. 954 of 2004 filed by the respondents herein/plaintiff for the relief of specific performance direct him to execute the sale deed as per the sale agreement in respect of suit property. The contention of the plaintiff is that the suit property was allotted to the defendant by the Cuddalore District Industrial Centre and he was in possession and enjoyment of the suit property. Thereafter the defendant agreed to sell the suit property for sale consideration of 65,000/- and received ten thousand as advance on 22.09.1997 and on the day itself property was handed over to the plaintiff and he is in possession. Thereafter, on two occasions the plaintiff paid remaining consideration but the defendants refused to execute the sale deed. In the mean time, the defendants sent notice dated 18.08.1998 and filed another suit O.S 34/99 against this plaintiff asked to perform the contract as per sale agreement. hence the property was not transferred but the defendants admits the sale agreement but time to perform the contract was fixed as one month within that period the plaintiff is not willing to perform his part. Thereafter, Panchayat was held plaintiff neciciate for huge amount and get signature in the papers to not paid the amount but the defendant is possession and enjoyment of the property hence filed the suit in O.S No. 34 of 1999



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thereafter this vexatious suit filed thereby denied the plaintiffs claim over the suit property. Before the trial Court four issues were framed and on considering the evidence adduced on either side the Trial Court concluded that agreement is valid and the plaintiff also paid entire sale consideration but defendants evaded to execute the agreement hence the suit was decreed in favour of the plaintiff.

2. Aggrieved over the same the defendant preferred an appeal in A.S No.58 of 2011, wherein the lower appellate Judge independently analysed the facts and evidence held that the sale agreement is accepted by the defendants and on two occasion the plaintiff paid the entire sale consideration through Demand Draft and cheque and the same was endorsed. Though the defendant's property was not transferred on the date of the sale agreement, subsequently Small Industries Development Corporation (herein after referred as 'SIDCO') handed over the property to the defendants hence as per Section 43 of Transfer of property (herein after referred as TP Act) he acquired right and title to the suit property thereby the agreement became valid and the defendant is liable to execute the sale agreement. Accordingly appeal was dismissed confirming the findings of the Trial Court.



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3. Challenging the same the defendant preferred this second appeal stating that the Court below failed to take note of the Subject matter of the suit property which was belongs to SIDCO and not owned by the appellant/defendant at that time of entering into the sale agreement. Besides, there is a prohibitory clause with regard to dealing and alienating of property given in allotment with the condition imposed by while considering in the case of the plaintiff the SIDCO as such the clause is not invariably in respect of that suit property was decreed in favour of the plaintiff totally misconception of law and unjust liable to be set aside. This Court admitted the case with the following submistantial questions of law:

i. whether or not the Court below have committed wrong in accepting the agreement as valid and enforceable despite no ownership vested with the appellant/defendant at the time of entering into agreement?

ii. Whether or not the Courts below have deviated from the principle of equity to grant the decree erroneously?

Iii. Whether or not the Courts below committed error or not applying the theory of compensation to mitigate the disputed issue rather to grant the decree against the principle of law?

4. The learned counsel for the appellant/defendant submitted that though the agreement was entered with plaintiff as per Ex.A1 sale agreement but time to perform the contract was fixed as one month as per the sale



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agreement EX.A1 within that period plaintiff was not ready and willing to pay balance sale consideration Rs.50,000 thereby panchayat was held wherein the plaintiff agreed to pay amount and obtained signatures in Ex.A2 on 22.10.1997 but thereafter neither ready and willing to perform his part of the contract nor he was in possession of the properties the Trial Court without appreciating the conduct of the plaintiff and erroneously granted the relief in favour of the plaintiff. Hence he prayed to allow the appeal.

5. By way of reply the learned counsel for the respondent/plaintiff submitted that EX.A1 agreement is admitted by the defendants though he was not having any title over the property on the day of agreement but the defendant promised to transfer the property after getting sanction from the SIDCO but he has not taken any effective steps to get the property from the SIDCO and evaded the agreement. Thereafter it was granted in his favour by the SIDCO having paid the entire sale consideration by the plaintiff he is entitled for the relief as he prayed for thereby Court below rightly appreciated this aspects which needs on interference.

6. Considering the submissions on either side, the facts reveals that the defendant entered into sale agreement with plaintiff in respect of



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suit property for sale consideration of Rs.65,000/- and on the date of first agreement itself Rs.10,000/- was paid as advance and the said agreement was marked as Ex.A1 dated 22.09.1997 and time to perform the contract was fixed as one month which was 22.10.1977 but the defendant failed to obtain transfer of the property from SIDCO. Thereafter, he gave assurance in the Panchayat held on 22.10.1997 to that effect Ex.A2 settlement agreement was executed. But the plaintiff denied Ex.A2 agreement and submitted that the Panchayat was held wherein the plaintiff obtained signatures in the paper and agreed to pay balance amount but not paid. Hence he subsequently filed in O.S 34 of 1999. Thereafter, O.S No. 954 of 2004 was filed by the plaintiff hence he bound to prove his part of the contract and his possession and enjoyment of the property as mentioned in the plaint. Besides, as per the plaint he had paid entire sale consideration and also as per the sale agreement/Ex.A1 the plaintiff has to pay balance amount within one month from the date of agreement, there was Panchayat held according to the plaintiff and to prove the same he produced Ex.A2 another alleged agreement between parties.

7. According to the contention of the plaintiff, at the time of entering into the sale agreement property was not transferred in favour of the



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defendant as it belongs to the SIDCO so the plaintiff was very well known that on the date of the sale agreement suit property was not belongs to the defendant within one month period there was no transfer in favour of the plaintiff with regard to title of the property after one month period plaintiff said that he paid balance consideration on two occasions through cheque and demand draft but the defendant denied the cheque transaction but the plaintiff not produced any such document to show that said amount was realized by the defendant. If really he is ready to perform his part of the agreement he should have filed suit before the Court at earliest point of time but only after filing of suit in O.S No.34 of 1999 by the defemdanat seeking for injunction against this plaintiff not cause interference of his possession and enjoyment of the suit property after filing of the said suit plaintiff approached this Court it is admitted fact.

8.As per the case of the plaintiff is that on the date of agreement itself the possession of the property was handed over to him and he has been spent near about 5,000 to repair the suit property and enjoyed the same on the date of filing of the suit. But during the exmination P.W.1 admits that she was not in possession of the property and not in enjoyment of the property which totally falsify his contention with possession was handed over to him on the



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date of agreement itself. Therefore, the conduct of the plaintiff reveals that she is not in possession of the property by suppressing the real facts she filed the suit for specific performance. But the Court below failed to appreciate the above aspects which needs interference hence the findings of the both the Court below is hereby set aside.

9. Admittedly the suit property is belongs to SIDCO and the same was allotted to the defendant only in the year of 1998 near about one year later from the alleged agreement. Furthermore, it is one of the clause in the allotment order of the property it should not be tranfered to the third party for the five years from the date of allotment of order. Hence the defendants right over the property starts from the date of the allotment order made by the SIDCO sale deed was executed in the name of the defendant by the SIDCO on 17.06.1998 to that effect Ex.B1 document was produced so title was transferred on the date only on 17.06.1998 which clearly denotes that on the date of alleged sale agreement Ex.A7 dated 23.10.1997 defendant has no right and title over the property though it was allotted by the SIDCO in the year 1997 but contention of the plaintiff is that as per the Section 43 of TP Act though the defendant was not having title but after obtaining subsequent sale deed in the year 1998 he is bound to execute the sale agreement. And



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the Court below also held that Section 43 of TP Act support the plaintiff case. But on considering the facts of the case only in the year of 1998 sale deed executed in the favour of the defendant further more on such transfer the condition clause also imposed by the SIDCO the property should not be transferred for five years. Eventhough the property transferred in the name of the defendant but he has no right to transfer the property for another five years. Hence, Section 43 of TP Act not apply to facts of the present case. Hence, the Court below failed to appreciate these facts and decreed the suit in favour of the plaintiff as such is mis-conception of law and facts liable to be set aside.

10. Hence, on considering the entire facts of the case, the defendants has no right to transfer the property. Even assuming that sale agreement is valid one as per the clause imposed by the SIDCO, the defendant has no right to transfer the property for another five years which is invalid under law.

11.As discussed above, the plaintiff not proved his claim as he entitled for equitable relief of specific performance as he prayed in the suit. Accordingly question of law (i) and (ii) and (iii) is answered.Thus the second appeal is allowed. Hence the findings rendered by the Court below



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is set aside and the suit is dismissed as no merits. No Costs.

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12. On seeing the facts the sale consideration was fixed as Rs. 65,000 though the defendant denied the receipt of the amount during the trial he partly received the part of the amount through D.D. with regard to another payment of Rs. 30,000 defendant denied receipt of such amount and there was Panchayat held as per the evidence on record, anyhow the defendant received consideration of Rs. 60,000/- on various occasion therefore this Court directs the defendant to return Rs. 60,000 to the plaintiff with interest at the rate of 12 % from the date of the agreement till filing of the suit from the year 1995, thereafter 6 % from the date of filing of the suit till realization. Time to return the amount was three months from the date of receipt of copy of this Judgement.

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T.V.THAMILSELVI, J.

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To

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1. Sub ordinate Judge, Kallakurichi.
2. The Additional District Munsif, Kallakurichi.
3. The Section Officer,
VR Section.

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