



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.04.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VEKATESH

Second Appeal No.406 of 2014
and MP No.1 of 2014

P.Selvaraj ...Plaintiff/Appellant/Appellant

.Vs.

1.Mathivanan
2.G.Rajendran
3.S.Kumar

...Defendants/Respondents/Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 29.11.2013 made in A.S.No.80 of 2012 on the file of the Sub-Court at Poonamallee by confirming the Judgment and Decree dated 06.08.2012 made in O.S.No.530 of 2010 on the file of the District Munsif Court at Ambattur.

For Appellant : Mr.M.R.Khapali

For Respondents : Mr.G.Prakash
for R3

JUDGMENT

The plaintiff is the appellant in this Second Appeal.

2.The suit was filed by the plaintiff seeking for the relief of Specific Performance of the agreement of sale dated 24.1.1989, marked as Ex.A-1.

3.The case of the plaintiff is that the defendants entered into an agreement of sale with the plaintiff on 24.1.1989 and the total sale consideration was fixed as Rs.25,000/-. The further case of the plaintiff is that an advance amount of Rs.15,000/- was paid to the defendants and the defendants agreed



to execute the sale deed in favour of the plaintiff within 20 months from the date of agreement.

4.The plaintiff further pleaded that he was always ready and willing to perform his part of the contract and accordingly, approached the defendants during the 2nd week of June 1990 and requested the defendants to receive the balance amount and execute the sale deed in favour of the plaintiff. Since the defendants did not come forward to execute the sale deed, a legal notice was issued on 12.07.1990 to the defendants, marked as Ex.A-2. On receipt of the same, the defendants gave a reply notice on 15.7.1990, marked as Ex.A-3 and they denied the very existence of the sale agreement. Left with no other option, the plaintiff filed the suit seeking for the relief of Specific Performance.

5.The 1st and 2nd defendants filed a written statement and they took a stand that the sale agreement was a fabricated document and that the plaintiff has made a false claim against the 1st and 2nd defendants.

6.The 5th defendant filed a written statement and he took a stand that the 4th defendant was the adopted son of the 1st and 2nd defendants and a Will was executed in his favour on 12.8.1987. The genuineness of this Will was tested by the 3rd defendant in OP.No.14/2006 and subsequently, this Petition was withdrawn on 21.7.2010. The 4th defendant sold the property in favour of the 5th defendant by sale deed dated 13.10.2008, marked as Ex.B-6 and thereby, the 5th defendant became the absolute owner of the suit property. Accordingly, the 5th defendant also sought for the dismissal of the suit.

7.Both the Courts below on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, concurrently held against the plaintiff and dismissed the suit. Aggrieved by the same, the plaintiff has filed this Second Appeal.

8.Heard Mr.M.R.Khapali, learned counsel for the appellant and Mr.G.Prakash, learned counsel for the 3rd respondent. This Court also carefully perused the materials available on record and the findings rendered by both the Courts below.

9.This is a very unfortunate case where the plaintiff files the suit in the year 1990 and the 1st and 2nd defendants who were alive then, also filed their written statement. The 1st and 2nd



defendants, considering their advanced age, filed a Petition to advance the hearing of the suit and it was allowed. The plaintiff did not prosecute the suit and hence, it was dismissed for default on 11.10.1995. Thereafter, the 1st and 2nd defendants expired. It is only subsequent to that incident, the plaintiff filed an application in IA.No.375/2004, after nearly 9 years to restore the suit. Even though the 1st and 2nd defendants had alleged that the agreement of sale was a fabricated document, they were not able to substantiate this allegation. The plaintiff was also not able to summon the witness and accordingly, no one knows as to whether the sale agreement was a genuine document or a fabricated one. It is not necessary for this Court to go into this issue.

10.The plaintiff has sought for the relief of Specific Performance and therefore, the plaintiff must establish readiness and willingness to perform his part of the contract from the date of agreement till the date of decree. It must be continuous at all stages right from the date of agreement and the conduct of the plaintiff must be blemishless throughout to entitle him to claim the relief of Specific Performance. Useful reference can be made to the judgment of the Hon'ble Supreme Court in Sita Ram and Others .v. Radhey Shyam reported in 2008 1 CTC 86. Reference can also be made to the judgment of the Division Bench in Shanthi Kawarbai and Others v. Sushila reported in 2009 4 CTC 842.

11.In the present case, the plaintiff left the suit dismissed for default in the year 1995 and filed a restoration petition only in the year 2004. This 9 years delay is fatal to the claim made by the plaintiff. Even though, the learned counsel for the appellant submitted that the delay was condoned and therefore, the delay cannot be put against the plaintiff, the said submission is without any substance. The condonation of delay in restoring the suit has nothing to do with the Court testing the readiness and willingness on the part of the plaintiff to perform his part of the contract in the agreement. Both the Courts below rightly took into consideration this fact and held that the plaintiff was not ready and willing to perform his part of the contract. The plaintiff is seeking for an equitable remedy and both the Courts below exercised their discretion and found that the exorbitant delay in restoring the suit by the plaintiff dis-entitles him from claiming the relief of Specific Performance.



12. In the considered view of this Court, the findings of both the Courts below does not suffer from any perversity and there is no ground to interfere with the Judgment and Decree passed by both the Courts below. In any event, no substantial questions of law are involved in this Second Appeal.

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

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

KP
To

1. The Subordinate Judge,
Sub-Court, Poonamallee
2. The District Munsif,
District Munsif Court, Ambattur.
3. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to M/s. G. Prakash, Advocate Sr. 27094

Second Appeal No. 406 of 2014

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srg 18/05/2022