



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.926 of 2010

WEB COPY

G.Subramanian

... Appellant / Respondent /
Defendant

-Vs-

S.S.Swaminathan

... Respondent / Appellant /
Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.31 of 2009, dated 04.08.2010 on the file of the 1st Additional District Court, Madurai reversing the judgment and decree passed in O.S.No.329 of 2007 dated 01.09.2009 on the file of the Principal Sub Judge, Madurai.

For Appellant : Mr.M.Vallinayagam
Senior Counsel
for Mr.D.Nallathambi

For Respondent : Mr.M.V.Venkataseshan

JUDGMENT

This second appeal arises out of a suit for specific performance.

2. The respondent herein entered into a sale agreement with the appellant for purchase of the suit property. An agreement was entered into on 17.12.2004. It is a registered agreement. The sale consideration was fixed at Rs.1,90,000/-. A sum of Rs.5,000/- was paid as advance. The plaintiff / respondent herein issued notice dated 20.03.2007 calling upon the appellant to come forward for concluding the sale transaction. Though the appellant received notice, he did not favorably respond. Hence, O.S.No.329 of 2007 was filed by the respondent herein on 10.07.2007 before the Principal Sub Court, Madurai for specific performance of the agreement. The respondent stated that he was ready to pay the balance amount of Rs.1,85,000/- and wanted the Court to direct the appellant herein to execute the sale deed conveying the suit property in his favour. The appellant filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed the necessary issues. The



respondent herein examined himself as P.W.1. One Natarajan was examined as P.W.2. Ex.A1 to Ex.A4 were marked. The appellant examined himself as D.W.1. No documentary evidence was adduced on his side. After considering the evidence on record, by judgment and decree dated 01.09.2009, the trial court dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.31 of 2009 before the first Additional District Judge, Madurai. By the impugned judgment and decree dated 04.08.2010, the first appellate court set aside the judgment and decree passed by the trial court and decreed the suit as prayed for. Aggrieved by the same, this second appeal came to be filed. The second appeal was admitted on 22.03.2011 on the following substantial questions of law:-

"1. Whether the judgment of the lower appellate court is not in accordance with Order 41 Rule 31 of Civil Procedure Code insofar as it has failed to frame necessary points for consideration and on the other hands, framed an unnecessary question as the first question for determination in the appeal?

2. Whether the finding of the lower appellate court that there was a breach of contract on the part of the appellant herein / defendant, whereas the respondent / plaintiff had proved his readiness and willingness to perform his part of the contract and hence, he is entitled to the relief of specific performance, is perverse?"

3. The learned Senior Counsel appearing for the appellant reiterated the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgment and decree and restore the decision of the trial court.

4. Per contra, the learned counsel appearing for the appellant submitted that the impugned judgment and decree do not warrant interference.

5. I carefully considered the rival contentions and went through the evidence on record.

6. The basic facts are not in dispute. On 17.12.2004, the parties entered into a sale agreement. The said agreement was marked as Ex.A1. Even though the time for performance of the contract was fixed as three months, the plaintiff did not file the suit within the said period or shortly thereafter. Even the suit notice was given only on 20.03.2007. The learned counsel appearing for the plaintiff / respondent herein submitted that the suit property is an agricultural land and during the relevant time, there was a ban of selling such lands without getting permission from the competent authority. The plaintiff was not in a position to obtain clearance from the competent authority. Even though the plaintiff was always ready and willing to conclude the sale transaction, the sale deed could not be executed.



7. I went through the contents of the sale agreement. As rightly pointed out by the learned senior counsel appearing for the appellant, the contract does not contain any term or condition that vendor must obtain clearance from the competent authority for selling the suit property. It is therefore not open to the plaintiff to adduce evidence contrary to the terms of the agreement. That would be clearly hit by Section 91 of the Indian Evidence Act, 1872.

8. The learned Senior Counsel appearing for the appellant drew my attention to the decision reported in **2022 SAR (Civ) 349 (Shenbagam vs. K.K.Rathinavel)**. The Hon'ble Supreme Court in the said decision had held that the plaintiff by his conduct must exhibit readiness and willingness throughout the transaction. In this case, the conduct of the plaintiff clearly proves his lack of will to perform the agreement. The plaintiff did not want to pay the balance sale consideration of Rs.1,85,000/- without getting No Objection from the competent authority. Even though such a condition was not incorporated in the sale agreement, the fundamental requirement as contemplated under Section 16(c) of the Specific Relief Act was not at all fulfilled by the plaintiff in this case. I therefore answer the second substantial question of law in favour of the appellant.

9. That apart, as rightly pointed out by the learned senior counsel appearing for the appellant, the contract itself appears to be hit by Section 23 of the Indian Contract Act, 1872. The land in question is an agricultural land. The vendor owned 49 cents of land in R.S.No.137/6 in Virattipathu Village. The plaintiff was to buy 5 cents. For parcelling or laying out an agricultural land, clearance from the competent authority was condition precedent. Without doing so, the parties had entered into such transaction. On the very face of it, it is hit by Section 23 of the Indian Contract Act. Thus, looked at from any angle, the suit agreement could not have been enforced. In this view of the matter, the judgment and decree passed by the first appellate court is set aside. At the same time, I cannot approve the conduct of the appellant. The appellant knew fully well that without getting permission from the authority concerned, he could not have entered into the sale agreement for selling the suit property in favour of the plaintiff. He has chosen to do so and received an advance amount of Rs.5,000/- from the plaintiff. Therefore, even while denying the relief of specific performance to the plaintiff, the appellant is directed to pay the said amount of Rs.5,000/- to the plaintiff with interest at the rate of 12 % per annum from the date of agreement till the date of payment.



10. The second appeal is allowed on these terms.

Sd/-

Assistant Registrar (CS III)

// True Copy //

WEB COPY

/06/2022

Sub Assistant Registrar(CS)

rmi

To

1.The 1st Additional District Judge, Madurai.

2.The Principal Sub Judge, Madurai.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.V. VENKATASESHAN, Advocate (SR-19683[F] dated 20/04/2022)

S.A.(MD)Nos.926 of 2010

19.04.2022

MGJ(27.06.2022) 4P 6C