



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.02.2022
DELIVERED ON : 25.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A(MD)No.465 of 2020

S.Raja ... Appellant/Appellant/Plaintiff

Vs

1.SPN.Ramanathan
2.P.Yogarajan ... Respondents/Respondents/Defendants

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 02.03.2020 passed in A.S.No.20 of 2019 on the file of the Sub Court, Aranthangi by confirming the judgment and decree, dated 08.03.2019 passed in O.S.No.167 of 2010 on the file of the Principal District Munsif Court, Aranthangi.

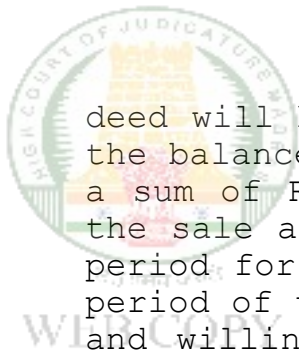
For Appellant : Mr.A.N.Ramanathan
for Mr.M.Suresh
For Respondents : Mr.K.Baalasundaram for R2
No appearance for R1

JUDGMENT

The plaintiff is the appellant herein.

2. The plaintiff filed O.S.No.167 of 2010 before the Principal District Munsif Court, Aranthangi for specific performance to enforce the sale agreement executed by the defendants in favour of the plaintiff on 28.03.2007. The suit was dismissed by the trial Court. The plaintiff filed A.S.No.20 of 2019 before the Sub Court, Aranthangi. The learned Subordinate Judge dismissed the appeal. As against the same, the plaintiff has filed the above Second Appeal.

3. The plaintiff has contended that the suit schedule properties originally belonged to the first defendant and his co-sharer Ramasamy Chettiyar and Vellaiyan Chettiyar. The plaintiff entered into the sale agreement with the first defendant on 28.03.2007. As per the said sale agreement, this total sale consideration was fixed at Rs.10,000/-. The plaintiff paid defendants an amount of Rs.5,000/- on the date of the sale agreement. It was agreed that within a period of one year, the balance sale consideration of Rs.5,000/- will be paid and a sale



deed will be executed by the first defendant. On 25.03.2008, out of the balance sale consideration of Rs.5,000/-, the plaintiff had paid a sum of Rs.3,000/- and the same was endorsed on the back side of the sale agreement. In the said endorsement, it was agreed that the period for performance of the contract will be extended for further period of two months from 25.03.2008. Though the plaintiff was ready and willing to pay the balance sale consideration and get a sale deed executed in his favour, the first defendant has not performed his part of the contract. The plaintiff further contended that as per Exhibit A1 sale agreement, the first defendant has to obtain a registration copy of the original sale deed. Only for the said purpose, one year period was fixed under Exhibit A1 and the same was extended for a period of another two months on 25.03.2008. However, the first defendant is not able to get the registration copy of the parent document and hence, the plaintiff could not pay the balance sale consideration and get the sale deed executed in his favour.

4. The first defendant had remained *exparte*. The first defendant had executed a registered sale deed in favour of the second defendant on 19.05.2008 under Exhibit B19. The second defendant filed a written statement contending that no such sale agreement was executed in favour of the plaintiff. He further contended that the second defendant is a *bonafide* purchaser for valuable consideration without notice of Exhibit A1 sale agreement. The second defendant further contended that possession was handed over to him on the date of Exhibit B19 sale deed in his favour and he is in possession of the suit schedule properties.

5. The trial Court after considering the oral and documentary evidence arrived at a finding that Exhibit A1 sale agreement is true and valid. The trial Court came to a conclusion that the plaintiff has not proved his readiness and willingness during the subsistence of the contract. The plaintiff has not explained the delay from 2008 till 2010 for filing the present suit for specific performance. The trial Court also found that the second defendant is a *bonafide* purchaser for valuable consideration without notice of the previous suit agreement. The trial Court also found that the first defendant has executed a sale deed in favour of the second defendant on 19.05.2008 even before the filing of the suit. Without a prayer for setting aside the said sale deed, the present suit for specific performance is not maintainable.

6. The First Appellate Court also concurred with the finding of the trial Court that Exhibit A1 sale agreement is genuine and a valid sale agreement. However, the First Appellate Court arrived at a finding that there is a delay of 28 months in filing, even in sending a legal notice for specifically enforcing the suit agreement. The plaintiff has not explained the delay in the legal notice or in the plaint. This would clearly show that the plaintiff has not established his readiness and willingness from the date of the sale agreement till the date of filing of the suit. The First



Appellate Court also found that the second defendant was aware of the suit sale agreement and hence he is not a *bonafide* purchaser for valuable consideration. Based upon the said findings, the First Appellate Court dismissed the appeal. As against the concurrent findings, the present Second Appeal has been filed.

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7. The learned Counsel for the appellant contended that both the Courts below have arrived at a concurrent finding that Exhibit A1 sale agreement, dated 28.03.2007 is a valid document. He further contended that the Courts below have also found that the endorsement, dated 25.03.2008 is also a genuine endorsement. He further contended that the First Appellate Court has arrived at a categorical finding that the second defendant is not a *bonafide* purchaser for valuable consideration.

8. The learned Counsel for the appellant further contended that even as per the recitals in Exhibit A1 sale agreement, the first defendant was obliged to get registration copy of the parent document. Only for the said purpose, a period of one year was fixed under the sale agreement. When the period was about to expire, the plaintiff made an additional payment of Rs.3,000/- and the period was extended by another two months. This extension of period was also made only for the purpose of obtaining a registration copy of the parent document. When there was a delay/default on the part of the first defendant in getting a registration copy of the parent document, the plaintiff cannot be faulted with for issuing the legal notice or filing the suit after 28 months. When the first defendant has not performed his part of the contract, the plaintiff cannot be expected to pay the entire sale consideration even before getting a registration copy of the parent document of the property which he is going to purchase.

9. The learned Counsel for the appellant further contended that the delay of 28 months had occurred only due to the default on the part of the first defendant in getting a registration copy of the parent document. The Courts below have not properly appreciated the fact that the first defendant has not performed his part of the contract and any delay is attributable only to the first defendant and not to the plaintiff. Hence, he prayed for allowing the Second Appeal and decreeing the suit as prayed for.

10. Per contra, the learned Counsel for the respondents contended that though the plaintiff has entered into the sale agreement under Exhibit A1 on 28.03.2007, he had taken one year for a payment of a sum of Rs.3,000/- towards valid sale consideration. Even thereafter, the entire amount was not paid, he sought for a further extension for another two months. The extension period had expired on 24.05.2008. Only thereafter, the first defendant has sold the property in favour of the second defendant on 19.05.2008. Hence, the sale deed executed by the first defendant in favour of the



bonafide purchaser for valuable consideration without notice of Exhibit A1 sale agreement.

11. The learned Counsel for the respondent further contended that the plaintiff had issued a legal notice under Exhibit A2 only on 16.07.2010, after a period of two years from the date of endorsement on 25.03.2008. The plaintiff has not explained the delay either in the legal notice or in the plaint. Hence, the Courts below have arrived at a concurrent finding that, the plaintiff was not ready and willing to perform his part of the contract. He further contended that the First Appellate Court had erred in reversing the finding of the trial Court with regard to the issue that the second defendant is not a *bonafide* purchaser for valuable consideration. Hence, he prayed for dismissal of the Second Appeal.

12. I have carefully considered the submissions made on either side.

13. The Courts below have arrived at a concurrent finding that Exhibit A1 sale agreement is a genuine document and it has been validly executed. Out of the total sale consideration of Rs.10,000/-, plaintiff has paid Rs.5,000/- on the date of sale agreement and another sum of Rs.3,000/- on 25.03.2008.

14. The plaintiff had remained silent from 25.03.2008 to 16.07.2010, the date on which he issued a legal notice under Exhibit A2. There is a time gap of two years between the extended period and the issuance of legal notice. Thereafter on 10.11.2010, the suit for specific performance has been filed. There is no explanation whatsoever by the plaintiff either in the legal notice or in the plaint to explain the delay of two years between the time fixed for the performance of the contract and the issuance of legal notice. The only reason that is assigned by the plaintiff is that he waited for the first defendant to obtain a registration copy of the parent document.

15. If really, the plaintiff was interested in getting a sale deed in his favour pursuant to Exhibit A1 sale agreement, he himself would have obtained a registration copy of the parent document. There is no explanation whatsoever for not attempting to get a registration copy of the parent document. This would clearly show that the plaintiff was not ready and willing to perform his part of the contract.

16. The Courts below have concurrently arrived at a finding that the plaintiff has not explained the delay of more than two years in approaching the Court for filing a suit for specific performance after the expiry of period fixed for the performance of the contract. The non-production of the parent document by the first



defendant seems only to be a lame excuse for plaintiff without any intention to purchase the suit schedule properties.

17. In view of the above said discussion, I do not find any question of law much less the substantial question of law arising out of the Second Appeal in order to attract Section 100 of the Civil Procedure Code. Therefore, the Second Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

btr

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Sub Judge,
Aranthangi.

2.The Principal District Munsif,
Aranthangi.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.K.BAALASUNDHARAM, Advocate (SR-8903[F]
dated 25/02/2022)

Judgment made in

S.A(MD)No.465 of 2020

25.02.2022

ks (CO)

GC (08.03.2022) 5P 6C