



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.03.2022

DELIVERED ON : 15.03.2022

CORAM

THE HONOURABLE MS. JUSTICE **R.N.MANJULA**

A.S(MD) .No.57 of 2017

and C.M.P (MD)No.3754 of 2017

WEB COPY

Arumugam

... Appellant/Defendant

Vs.

Parameswari

... Respondent/Plaintiff

Prayer : This Appeal Suit is filed under Section 96 of the Civil Procedure Code against the judgment and decree dated 06.10.2016 made in O.S.No.45 of 2009 passed by the District Court, Sivagangai.

For Appellant : Mr.A.Murugan

For Respondent : Mr.A.Mohan

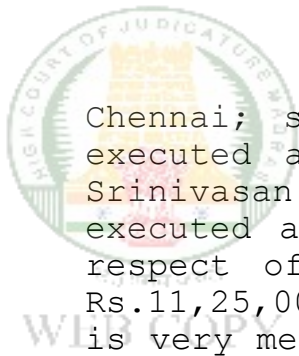
for Mr.A.K.Manikkam

J U D G M E N T

This Appeal Suit has been preferred challenging the judgment and decree of the learned District Judge, Sivagangai, dated 06.10.2016 made in O.S.No.45 of 2009. The appellant is the defendant.

2. The respondent/plaintiff has filed the suit for specific performance. As per the case of the plaintiff, the suit properties belonged to the defendant and he agreed to sell the same in favour of the plaintiff for a sale consideration of Rs.14,00,000/- (Rupees fourteen lakhs only) on 17.04.2018; on the date of sale agreement itself, a sum of Rs.1,00,000/- (Rupees one lakhs only) has been given as advance; it was agreed between the parties that the balance sale consideration of Rs.13,00,000/- (Rupees thirteen lakhs only) should be paid to the defendant after the suit pending between the husband of the plaintiff and the defendant was withdrawn; the alleged suit between the husband of the plaintiff and the defendant was pending in O.S.No.55 of 2007; the said suit was settled in Lok Adalat and an award was passed on 13.07.2008; subsequent to that, the plaintiff demanded the defendant to receive the balance sale consideration of Rs.13,00,000/- (Rupees thirteen lakhs only) and get the sale deed executed; he also sent a legal notice on 17.11.2019 by asking the defendant to be ready at the Sub Registrar's Office at 10.00 a.m on 13.11.2019 to receive the balance sale consideration and execute the sale deed in her favour; but the defendant sent a reply notice with false and frivolous allegations; hence, the plaintiff has filed the suit for specific performance.

3. The defendant contested the suit by stating that he was working as the Sub Inspector of Police in CRPF and had his family at



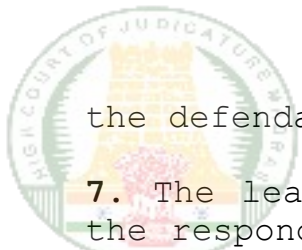
Chennai; since he was posted in several places across India, he executed a power document in favour of the brother of his wife Srinivasan on 16.06.2003; the said Srinivasan misused the power and executed a sale agreement in favour of the plaintiff's husband in respect of the suit property on 05.03.2007 for a sale price of Rs.11,25,000/- (Rupees eleven lakhs and twenty five thousand), which is very meagre; Since the power agent acted against the interest of the Principal, namely, the defendant, he revoked the same on 12.03.2007 and thereafter, the plaintiff's husband filed the suit for specific performance by virtue of the sale agreement dated 05.03.2007 in O.S.No.55 of 2007; the said suit was subsequently compromised by virtue of a Lok Adalat award/Ex.B.6; as per the award dated 30.07.2008, it was agreed by the defendant to execute the sale deed in favour of the plaintiff's husband.; since the plaintiff's husband was not ready and willing to perform his part of contract as per the award, despite the notice sent by the defendant on 29.04.2009, the plaintiff is not entitled to get any decree for specific performance; in fact, the sale agreement dated 17.04.2008 was entered during the pendency of the suit in O.S.No.55 of 2007 and hence, it is hit by the defendant; after receiving the notice from the defendant, the plaintiff's husband came and met the defendant and stated that he was not able to raise Rs.13,00,000/- (Rupees thirteen lakhs only) for the purpose of getting the sale deed registered; without any other alternate, the defendant had entered into a sale agreement with one Muniyandi on 14.11.2009; only after knowing that the plaintiff has chosen to send notice on 19.11.2009, for which, the defendant has sent a suitable reply on 26.11.2009; since the plaintiff's husband failed to make use of the Lok Adalat award and caused unnecessary delay, he is not entitled to the relief as prayed for.

4. On the basis of the above pleadings submitted by the respective parties, the learned trial Judge has framed the following issues:

- i) Whether Ex.B.6 Lok Adalath decree can be binding the parties or not?***
- ii) Whether the suit is bad for non-joinder of necessary party?***
- iii) Whether the land acquisition under Ex.B.10 is binding the parties?***

5. During the course of trial, on the side of the plaintiff, one witness was examined as P.W.1 and four documents were marked as Ex.A.1 to Ex.A.4. On the side of the defendant, one witness was examined as D.W.1 and ten documents were marked as Ex.B.1 to Ex.B.10.

6. At the conclusion of the trial and after considering the materials available on record, the learned trial Judge was pleased to grant the relief for specific performance. Aggrieved over that,



the defendant has preferred this Appeal Suit.

7. The learned counsel for the appellant/ defendant submitted that the respondent/plaintiff has failed to make use of the award passed in Lok Adalat and protracted the time unnecessarily; the learned trial Judge ought to have found that the appellant/plaintiff was not always ready and willing to perform his part; even though the defendant has sent Ex.B.7 notice and called upon the plaintiff to act in terms of the Lok Adalat award dated 30.07.2008, the plaintiff remained silent; only after knowing that the defendant had entered into the sale agreement with one Muniyandi, the plaintiff had chosen to issue a legal notice Ex.A.2; since the plaintiff has not proved her readiness and willingness, she is not entitled to the relief for specific performance.

8. The learned counsel for the respondent/plaintiff submitted that since the balance sale consideration of Rs.13,00,000/- (Rupees thirteen lakhs only) was deposited at the time of filing of the suit itself the learned trial Judge has rightly appreciated the readiness and willingness on the part of the plaintiff; since the National Highways has acquired a portion of the suit property, which was equivalent to 93.56 cents the suit was decreed for the remaining extent of 118.44 cents; the suit has been filed within the period of limitation and hence, it is not wrong on the part of the plaintiff to claim that the plaintiff has not acted in terms of the award of Lok Adalat and the appeal should be dismissed.

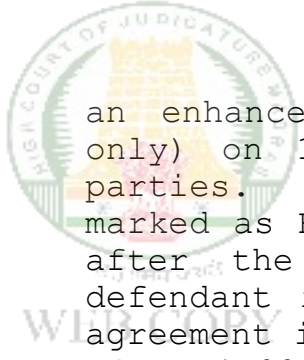
9. On the basis of the above submissions made by the respective parties, I feel that the following points for consideration are essential to appreciate the merits of this Appeal Suit:

i) Whether finding of the learned trial judge as to the readiness and willingness on the part of the plaintiff is correct?

ii) Whether the decree for specific performance for executing the part of the contract is just, proper and valid?

10. The fact that the plaintiff and the defendant are known to each other is not in dispute. Even before executing of the sale agreement between the appellant/defendant and the respondent/plaintiff, an earlier sale agreement was executed by the power agent of the defendant in favour of the plaintiff's husband on 05.03.2007. Since the defendant felt that his power agent had gone against his interest and executed the sale agreement in favour of the plaintiff's husband for a meagre sum, he cancelled the power document on 05.03.2007. Subsequent to that, the plaintiff's husband has filed the suit in O.S.No.55 of 207.

11. During the pendency of the suit, the defendant himself has entered into a fresh sale agreement in favour of the plaintiff for

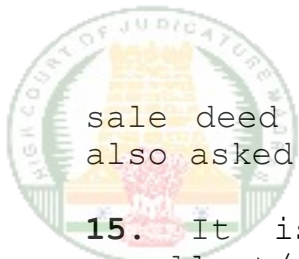


an enhanced sale price of Rs.14,00,000/- (Rupees fourteen lakhs only) on 17.04.2008. These facts also may not be denied by the parties. As per the sale agreement dated 17.04.2008, which is marked as Ex.A.1, the defendant has agreed to execute the sale deed after the suit filed by the plaintiff's husband against the defendant in O.S.No.55 of 2007 was withdrawn. On the date of sale agreement i.e on 17.04.2008, the respondent/plaintiff has paid a sum of Rs.1,00,000/- (Rupees one lakh only) as earnest money. There is no disagreement on these facts also. The suit filed by the plaintiff's husband in O.S.No.55 of 2007 was also settled between the parties and in view of that, Lok Adalat award was passed on 30.07.2008. The said award is marked as Ex.P.6.

12. As per the above compromise entered into between the parties, which fructified as an award of the Lok Adalat, the defendant agreed to sell the suit properties for the same sale consideration, but, in favour of the plaintiff's husband. So, it is to be noted that there is no change in the sale consideration of Rs.14,00,000/- (Rupees fourteen lakhs only), which was agreed between the parties that for the sale deed should be executed in favour of the plaintiff's husband and not in favour of the plaintiff. So, the above said award of the Lok Adalat has substituted the earlier sale agreement dated 17.04.2008. After the award dated 30.07.2008, the parties are expected to act in terms of the award.

13. It is the contention of the appellant/defendant that the plaintiff's husband did not come forward to pay the balance sale consideration of Rs.13,00,000/- (Rupees thirteen lakhs only) as per the terms of the Lok Adalat award and get the sale deed executed and hence, the plaintiff has lost the benefit of the compromise award.

14. The plaintiff cannot have any dispute as to the terms of the Lok Adalat award. Under such circumstances, it is fair to expect from both the parties to act in terms of the award of the Lok Adalat. It is seen from the award that the parties agreed to fulfil its terms within a period of one month. It is not the case of the respondent/plaintiff that she tendered the balance sale consideration of Rs.13,00,000/- (Rupees thirteen lakhs only), to the appellant/defendant immediately after passing of the award and despite the same, the appellant/defendant refused to execute the sale deed in favour of her husband. In fact, it is the appellant/defendant, who sent the first legal notice on 29.05.2009 to both the plaintiff and her husband, which is marked as Ex.B.7. The respondent/plaintiff did not deny the receipt of the above said notice. But her contention is that after receiving the notice they approached the appellant/defendant in person and told him that they are ready to pay the sale consideration. It is mentioned in the legal notice /Ex.A2 19.11.2009 sent by the plaintiff to the defendant that the plaintiff approached the appellant/ defendant after receiving his notice and the appellant assured to execute the

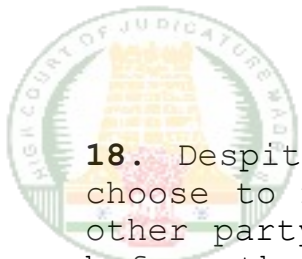


sale deed immediately in the presence of the local natives and he also asked the plaintiff not to send any reply notice.

15. It is the further submission of the plaintiff that the appellant/ defendant had violated his promise and continued to delay the execution of the sale deed and only in view of that, the plaintiff has chosen to send the legal notice on 19.11.2009 and thereafter, he filed this suit. It is to be noted that the interval between the appellant/defendant's notice Ex.B.7 and the plaintiff's notice Ex.A.2 is five months. As per Section 16(c) of the Specific Relief Act, it is burden of the plaintiff to prove that he was always ready and willing to perform his part of contract as per its terms. In fact, the award of Lok Adalat dated 30.07.2008 was substituted or supplemented Ex.A.1 sale agreement.

16. The only condition, which was agreed between the parties at the time of executing Ex.A.1 sale agreement was that the sale deed should be executed immediately after the disposal of the suit pending in O.S.No.55 of 2007 on the file of the District Court, Sivagangai. The suit ended in a compromise and thereafter, there was no hurdle to act in terms of the sale agreement. However, as per the terms of the compromise award, the appellant/ defendant had agreed to execute the sale deed in favour of the plaintiff's husband. Though time is not the essence of contract, it has to be seen in the Lok Adalat award, that the time for compliance is set out as one month.

17. The respondent/plaintiff did not send any reply notice within one month from the date of Ex.B.6 award. The appellant/defendant has sent the first legal notice on 29.04.2009 by stating that the respondent/plaintiff did not act in terms of the award and if the plaintiff did not come forward to execute his part of contract within 15 days, the earnest money would be forfeited. After having waited for five months, the plaintiff has sent a legal notice on 19.11.2009 by alleging that it was only the appellant/defendant, who made delay in executing the sale deed. The only explanation given by the respondent/ plaintiff for 5 months period waited between Ex.B.7 and Ex.A.2 was due to an oral undertaking given by the defendant. It is alleged that only at the request of the defendant, the plaintiff did not send any reply to Ex.B.7. In that case, the burden is on the respondent/plaintiff to prove before the court that an undertaking was given by the appellant/defendant in front of local elders. The plaintiff and her husband knew the fact that they had a litigation between themselves in O.S.No.55 of 2007 for getting the suit property sold in their favour, in accordance with the earlier sale agreement itself. After the suit was over, the urge should be on the part of the respondent/plaintiff to get the sale deed registered at the earliest.



18. Despite of getting a Lok Adalat award if one party did not choose to make use of its benefit and cause unnecessary delay, the other party cannot put under loss. The plaintiff has not proved before the trial court that she was ready and willing to pay the balance sale consideration of Rs.13,00,000/- (Rupees thirteen lakhs only) to the appellant/defendant, at least immediately after the receipt of Ex.B.7 notice. The explanation given for the time delay between Ex.B.7 and Ex.A.2 was also not proved before the court. In such circumstances, the learned trial Judge ought to have weighed the lapse on the part of the respondent/plaintiff with regard to her readiness and willingness. In the suit for specific performance, if the respondent/ plaintiff does not prove his readiness and willingness, he is bound to fail and he cannot get any decree for specific performance. Since readiness and willingness is a fact which has to be seen from the conduct of the parties, it is obligatory on the part of the court to appreciate the conduct of the respective parties and record a finding on this. The learned trial Judge omitted to do the above said exercise and simply decreed the suit.

19. Even though the appellant/defendant has stated in his legal notice Ex.B.7 that the plaintiff would loose his earnest money of Rs.1,00,000/- (Rupees one lakh only) if he did not come forward to execute the sale deed within 15 days, the forfeiture clause of the advance money was not a term agreed between the parties either in the sale agreement Ex.A.1 or in the award of Lok Adalat Ex.B.6. So the appellant/defendant cannot reserve his right to forfeit his advance money even though the plaintiff failed to prove his readiness and willingness to get the sale deed executed. Thus the points 1 and 2 are answered in favour of the appellant. However, the respondent/ plaintiff is entitled to the refund of the earnest money of one lakh paid by him.

In the result, this Appeal Suit is allowed and the judgment of the learned District Judge, Sivagangai. dated 06.10.2016 made in O.S.No.45 of 2009 is set aside. However, the respondent/ plaintiff is entitled to get the refund of the earnest money of one lakh. Time for refunding the earnest money is one month. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

CM



To

1.The District Judge, Sivagangai.

2.The Section Office,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.A.K.MANICKAM, Advocate (SR-12832[F] dated 17/03/2022)

Judgment in

A.S(MD) .No.57 of 2017

and C.M.P(MD)No.3754 of 2017

15.03.2022

SVS(CO)

TR(26.04.2022) 7P 5C