



A.S.No.334 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

A.S.No.334 of 2015
and M.P.No.1 of 2015

A.Kumaran

...Appellant

-Vs-

1. C.Paulson Jacob
2. C.Beena Paulson
3. M.Masilamaniguru
4. R.Haritha Shree
5. Sub Registrar, Redhills,
Chennai.

... Respondents

Prayer: First Appeal filed under Order XLI Rule 1 read with Section 96 of CPC to set aside the Judgment and Decree dated 24th day of November, 2014 made in O.S.No.115 of 2012 passed by the learned Principal District Judge at Thiruvallur.

For Appellant : Mr.G.Thangavel

For R1 and R2 : No appearance

For R3 and R4 : Mr.B.B.Senthil Kumar

For R5 : Mr.T.Chandrasekar
Special Government Pleader (AS)



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JUDGMENT

This appeal suit has been filed to set aside the Judgment and Decree dated 24.11.2014 made in O.S.No.115 of 2012 passed by the learned Principal District Judge at Thiruvallur, thereby dismissed the suit.

2. The appellant is the plaintiff and the respondents are the defendants. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court.

3. The case of the plaintiff is that the defendants agreed to sell their property for a total sale consideration of Rs.16,00,000/- by the agreement for sale dated 09.01.2010. On the date of agreement, the plaintiff had paid a sum of Rs.6,00,000/- as advance and part of sale consideration and the period of contract was fixed as three months from the date of the agreement. Thereafter, the defendants issued a telegram on 02.06.2010 showing that the agreement had lapsed and no refund of advance amount. Thereafter, once again, the defendants 1 and 2 issued notice on 24.08.2010 for which, the plaintiff replied by the reply notice dated



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26.08.2010. On receipt of the same, the defendants 1 and 2 also sent a rejoinder, on 03.01.2011. The further case of the plaintiff is that on 03.04.2012, the plaintiff, along with his witnesses, had issued two cheques in favour of the defendants 1 and 2 dated 03.04.2012 and 07.04.2012. Therefore, even when the plaintiff was ready and willing to perform his part of contract, the defendants failed to perform their part of contract. The defendants 1 and 2 did not present the cheques for collection and as such, the plaintiff caused a publication in the local news paper on 30.04.2012. Even then the defendants 1 and 2 did not come forward to execute the sale deed in favour of the plaintiff. At last, the plaintiff caused legal notice on 27.07.2012 in favour of the defendants 1 and 2, thereby calling upon them to execute the sale deed after receipt of sale consideration. On verification of encumbrance certificate, the plaintiff came to understand that the first defendant had sold out the suit property to an extent of 2400 sq ft to the 3rd defendant by a registered sale deed dated 16.04.2012 vide Document No.5360 of 2012. The defendants 1 and 2 had also sold out the remaining suit property to an extent of 1200 sq.ft to the 4th defendant by the registered sale deed dated 16.04.2012



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vide Document No.5356 of 2012. Hence, the suit was filed for specific performance and declaration declaring that the sale deeds executed in favour of the defendants 3 and 4 are null and void.

4. On receipt of the same, the defendants failed to appear before the Trial Court and they were set exparte.

5. After completion of pleadings, the Trial Court framed the following issues:-

“ 1. Whether the plaintiff is entitled to the relief of Specific Performance of contract of sale as prayed for in the plaint?

2. Whether the plaintiff is entitled for declaration that the two sale deeds executed by the 1st and 2nd defendants in favour of 4th defendants as null and void?

3. Whether the plaintiff is entitled to the relief of permanent injunction against the defendants 3 and 4 as prayed for in the plaint?

4. Whether the plaintiff is entitled to the relief of permanent injunction against the 5th defendant as prayed for in the plaint?

5. To what relief if any the plaintiff is entitled to?”

6. On the side of the plaintiff, they had examined P.W.1 and



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marked Exs.A1 to 16. On the side of the defendants, no one was examined and no document was marked. On perusal of oral and documentary evidence, the Trial Court dismissed the suit. Hence, this Appeal suit.

7. The learned counsel for the appellant/plaintiff would submit that when the plaintiff was ready and willing to perform his part of the contract, the defendants 1 and 2 failed to perform their part of the contract. Therefore, the plaintiff is entitled for the relief of specific performance. While the agreement was very much in force, the defendants 3 and 4 had purchased the suit properties. Without even considering the agreement, the fifth defendant had executed a sale deed in favour of the defendants 3 and 4 in respect of the suit properties.

8. On the submission made by the learned counsel for the appellant, the only point for consideration in this appeal is whether the plaintiff has proved his readiness and willingness to perform his part of contract?



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9. Admittedly, the defendants 1 and 2 owned suit properties. They had offered to sell the suit properties in favour of the plaintiff and had entered into an agreement for sale on 09.01.2010. The total consideration for the suit properties was fixed at Rs.16,00,000/-. The defendants 1 and 2 received a sum of Rs.6,00,000/- as an advance and the period of contract was fixed as three months from the date of the agreement for sale. However, the plaintiff failed to show his readiness and willingness to perform his contract even after lapse of three months. Therefore, the first defendant caused telegram stating that “Your Agreement dated 09.01.2010 requiring two number Flats Flat No.514 and 515 Easwaran Street, Lakshmipuram lapse on 09.04.2010 No refund.”. It was duly received by the plaintiff. Even then the plaintiff did not response and as such, the defendants 1 and 2 caused legal notice on 24.08.2010. On receipt of the same, the plaintiff issued a reply notice dated 26.08.2010.

10. A perusal of the telegram dated 02.06.2010 and notice issued



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by the defendants 1 and 2 revealed that when they were ready and willing to perform their part of contract, the plaintiff did not pay the balance sale consideration. Thereafter, on 03.01.2011, the defendants 1 and 2 had sent a rejoinder for the reply notice along with a demand draft for a sum of Rs.6,00,000/-, thereby returned the advance amount which was received by them. Though the plaintiff returned the demand draft, the plaintiff failed to perform his part of contract. That apart, on 03.04.2012, the plaintiff had issued two cheques in favour of the defendants 1 and 2 dated 03.04.2012 and 07.04.2012 respectively. However, the plaintiff did not even mention the cheque amount and both the cheques were encashed by the defendants 1 and 2. If at all both the cheques were encashed, they would not have issued a telegram on 02.06.2010 and would not have issued a notice on 24.08.2010. It shows that the plaintiff failed to perform his part of contract and he also failed to prove his readiness and willingness to perform his part of contract as per the agreement dated 09.01.2010.

11. That apart, after causing telegram and notice, the defendants 1



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and 2 had no other option than to execute the suit properties to the third parties. Accordingly, they had sold out the suit property to an extent of 2400 sq ft to the 3rd defendant by the registered sale deed dated 16.04.2012 vide Document No.5360 of 2012. The defendants 1 and 2 had also sold out the remaining suit property to an extent of 1200 sq.ft, to the 4th defendant by the registered sale deed dated 16.04.2012 vide Document No.5356 of 2012. Therefore, both the sales are valid and the point for consideration is answered against the plaintiff.

12. In view of the above, the Trial Court had rightly dismissed the suit and this Court finds no infirmity or illegality in the Judgment and Decree dated 24.11.2014 made in O.S.No.115 of 2012 passed by the learned Principal District Judge at Thiruvallur and this appeal suit is liable to be dismissed.



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13. Accordingly, this Appeal Suit is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order
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To

The Principal District Judge at Thiruvallur.



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