



A.S.No.595 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

A.S.No.595 of 2018

K.Mohanasundar

.... Appellant/Plaintiff

Vs

1. A.Saraswathy
2. A.Vijayalakshmi
3. R.Muthulakshmi
4. Minor R.Lokesh
5. Nareshkumar

.... Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of CPC to set aside the Judgment and Decree dated 24.04.2018 made in O.S.No.7 of 2012 on the file of the II Additional District Judge, Chidambaram.

For Appellant : Mr.V.Balaji
for S.Swaminathan

For R1 to R4 : Mr.P.Singaram

For R5 : Mr.S.Balasubramanian



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JUDGMENT

The Appeal Suit has been filed against the Judgment and Decree dated 24.04.2018 made in O.S.No.7 of 2012 on the file of the II Additional District Judge, Chidambaram.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The appellant is the plaintiff and the respondents are the defendants. The plaintiff filed a suit for specific performance. The case of the plaintiff is that the suit property originally belonged to one Arumuga Mudaliar. He died intestate leaving behind the defendants as his legal heirs. When the said Arumuga Mudaliar was alive, the suit property was let out in favour of the plaintiff for running a welding workshop on 14.09.2005. Thereafter, the plaintiff developed the property and also obtained electricity connection. He was regularly paying rent at Rs.750/- per month. During the first week of December 2008, the first defendant offered to sell the property for a total sale consideration of



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Rs.10,50,000/-. The plaintiff agreed to purchase the suit property and entered into an agreement for sale on 22.12.200 and paid a sum of Rs.4,50,000/- as advance. As per the agreement, the balance sale consideration was to be paid within a period of two months from the date of agreement for sale and on receipt of the same the defendants shall execute the sale deed. However the defendants failed to fulfill their part of the contract and as such, the plaintiff caused notice on 21.12.2009. It was returned and as such, the plaintiff caused public notice in the daily newspaper on 28.12.2009. Though the plaintiff is always ready and willing to perform his part of the contract, the defendants failed to fulfill their part of the contract. Therefore, the plaintiff filed a suit in O.S.No.12 of 2011 on the file of the Additional District Munsif, Chidambaram, for specific performance, which is pending. Pending suit, the plaintiff came to know about the sale of the suit property by a sale deed dated 15.04.2011 in favour of the 5th defendant.

4. Resisting the same, the defendants 1 to 4 filed written



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statement stating that they had never offered to sell the suit property to the plaintiff and no agreement for sale was entered between them. They did not receive any advance amount to the agreement for sale. There was no need for them to sell the suit property for a sale consideration of Rs.10,50,000/-. They have not executed any agreement for sale in respect of the suit property. The plaintiff fabricated the agreement for sale in order to grab the property. Even assuming that the agreement for sale is true, the suit itself is barred by limitation and the plaintiff failed to prove his readiness and willingness to perform his part of the contract.

5. The plaintiff became a tenant of the suit property to conduct welding workshop. He was permitted to obtain electricity connection for commercial purpose. In fact, the tenancy was only for a period of 11 months. The lease agreement was not extended Subsequently and as such the plaintiff has become a trespasser. In the month of December 2009, the plaintiff approached the first defendant and represented that the Government authorities required a fresh lease deed on stamp paper for the purpose of granting license. The defendants,



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being illiterate, the plaintiff obtained signature in the blank stamp papers and other papers. Thereafter, the plaintiff prepared a concocted agreement for sale and filed the present suit. The defendants had already made negotiations and arrangement to sell suit property by entering into an agreement for sale with the 5th defendant. Thereafter, it was sold out in favour of the 5th defendant. Therefore the suit for specific performance itself is not maintainable.

6. The 5th defendant filed a separate written statement stating that the agreement dated 22.12.2008 itself is a concocted, created and forged document. No amount was received by the defendants 1 to 4 as advance to sell the suit property in favour of the plaintiff. The defendants 1 to 4 had executed a sale deed in favour of the 5th defendant by a registered sale deed dated 15.04.2011 for a valid sale consideration. Therefore, without challenging the sale deed, the suit for specific performance is not at all maintainable and prayed for dismissal of the suit.

7. On hearing the rival pleadings, the learned trial Judge



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framed the following issues for determination in the suit :-

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"1. Whether the agreement dated 22.12.200 between the plaintiff and the defendants is true or not ?

2. Where the plaintiff is entitled to see the relief of specific performance of contract ?

3. To what relief the plaintiff entitled to? "

8. Further, the Trial Court has framed the following additional issues :-

1. Whether the plaintiff is always ready and willing to perform his part of contract ?

2. Whether the time is essence of the contract ?

3. Whether the sale agreement is forgery ?

4. Whether the 5th defendant is the bonafide purchaser for value without notice ?

9. The Trial Court has also framed the following additional issue :-

1. Whether the sale deed dated 15.04.2011 is true and valid document ?

10. On the side of the plaintiff, he examined P.Ws.1 to 4



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and marked Exs.A1 to A21. On the side of the defendants, they examined D.W.1 and D.W.2 and marked Exs.B1 to Ex.B5. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the Trial Court dismissed the suit. Aggrieved by the same, the present Appeal Suit has been preferred by the plaintiff.

11. The learned counsel for the appellant would submit that after having agreed to sell the property for a total sale consideration of Rs.10,50,000/-, a sum of Rs.4,50,000/- was received as advance on 22.12.2008. Accordingly, the agreement for sale was entered into between them. In order to prove the agreement for sale, the document writer was examined as P.W.3. He categorically deposed that the defendants 1 to 3 signed in his presence and agreed to sell the property in favour of the plaintiff. The own brother of the first defendant had also stood as witness to the agreement for sale. He is the 3rd witness as well as he is own brother-in-law of the 5th defendant. Therefore, the 5th defendant had knowledge about the agreement entered between the plaintiff and the



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defendants 1 to 4. Though time for contract is fixed as two months, in order to produce the legal heirs certificate by the first defendant and other revenue documents, they prolonged the execution of sale. Therefore the defendants dragged on the execution of the agreement for sale. The plaintiff was not able to file a suit immediately after expiry of two months of contract period.

12. The sale deed executed in favour of the 5th defendant is sham and nominal and only to escape from the agreement executed in favour of the plaintiff, it was created in favour of the 5th defendant. Even before purchase, the 5th defendant ought to have verified the possession of the property. The plaintiff is in possession of the suit property. Therefore, the 5th defendant is not a bonafide purchaser without notice. He also categorically admitted in his deposition that at the time of sale, the plaintiff is in possession and enjoyment of the suit property. Therefore, if the subsequent purchaser failed to enquire the person who is in possession, as to the precise character, in which he was in possession at the time when the subsequent sale transaction was entered into and if



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the subsequent purchaser failed to discharge it, he cannot be deemed to have purchased the property in good faith. He further submitted that though the Trial Court dismissed the suit for specific performance, it ought to have passed a decree for refund of the advance amount, since the defendants admitted their signature in the agreement for sale.

13. On the submissions made by the learned counsel for the appellant, the points for consideration arising in this appeal are

“(i) Whether the plaintiff has proved the agreement for sale dated 22.12.2008 as genuine one ?

(ii) Whether the plaintiff has proved his readiness and willingness to perform his part of contract ?

(iii) Whether the plaintiff is entitled for alternative relief of refund of the advance amount ?”

14. Admittedly the defendants 1 to 4 are the legal heirs of one Arumuga Mudaliar who owned the suit property. It was let out in



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favour of the plaintiff for rent. After his demise, the defendants 1 to 4, being the legal heirs, derived title over the property. According to the plaintiff, they had offered to sell the property for a total sale consideration of Rs.10,50,000/- and received a sum of Rs.4,50,000/- as advance and executed an agreement for sale on 22.12.2008. The agreement for sale was marked as Ex.A1.

15. On perusal of the agreement for sale shows that on 22.12.2008 it was executed in Rs.20 stamp paper. It was hand written and unregistered one. Three of the witnesses had signed in the agreement for sale. The third witness is the brother-in-law of the 5th defendant. The specific case of the defendants 1 to 4 is that they never offered the suit property for sale in favour of the plaintiff and they had never executed any agreement for sale. They did not receive any money as advance as alleged by the plaintiff.

16. A perusal of the deposition of P.W.4 revealed that as requested by the plaintiff, he signed in the last page of the agreement and



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he was not shown the other pages. Therefore, he was treated as hostile and he was cross examined by the plaintiff. He signed as witness to the lease deed. It was obtained to grant license by the authorities concerned. It is also corroborated by D.W.1. She also deposed that the plaintiff obtained signature from them to get license from the authorities concerned, he has to produce fresh lease deed. Considering the said request, they had signed in the blank stamp papers and blank papers. Except the unregistered lease deed, the plaintiff also failed to produce any piece of evidence to show that the defendants had received a sum of Rs.4,50,000/- as advance. Normally, when such a huge amount was paid as advance along with agreement for sale, they used to obtain receipt for the amount received as advance and part of sale consideration.

17. Admittedly, the plaintiff was a tenant under Arumuga Mudaliar. In order to renew his license, the plaintiff requested to execute a fresh lease deed and obtained signature from the defendants 1 to 4. The defendants are all illiterate and they did not know the contents found in Ex.A1. That apart, the agreement was not entered in front of the



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witnesses. It was prepared by the plaintiff and subsequently signature from the witnesses was obtained. There was no witness who witnessed the payment of advance amount. The other two witnesses had also signed in the agreement, but they died. One of the witnesses was the own brother of D.W.1. However, P.W.4 did not know who are the other witnesses to the agreement for sale. Therefore, the plaintiff failed to prove the agreement for sale as genuine one.

18. Even assuming that the agreement for sale dated 22.12.2008 is true, the period of contract was fixed at two months to perform their part of contract. As per the agreement, Rs.4,50,000/- was paid as advance and part of sale consideration. The remaining sale consideration to the tune of Rs.6,00,000/- ought to have been paid by the plaintiff within a period of two months from the date of agreement for sale. The plaintiff never had shown his readiness and willingness to pay the remaining balance sale consideration of Rs.6,00,000/-. He caused notice only on 21.12.2009, after a period of one year from the date of agreement for sale. In fact, the said notice was also not received by the



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defendants. That apart, the plaintiff filed a suit only on 05.07.2011 i.e., after the sale deed dated 15.04.2011 was executed in favour of the 5th defendant. Even after filing the suit, the plaintiff did not take any steps to deposit the balance sale consideration before the Trial Court. It shows that the plaintiff, at any point of time, did not show his readiness and willingness to perform his part of contract.

19. Section 1 of the Specific Relief Act provides certain bars to the relief of specific performance. These include, *inter alia*, a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented and waived by the defendant. It is a condition precedent to obtain the relief of specific performance. Therefore, the plaintiff must allege and prove a continuous readiness and willingness to perform the contract on his part from the date of the contract. The onus is on the plaintiff.

20. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has



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to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the Court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. Therefore, the second point is also answered against the plaintiff. When the agreement dated 22.12.2008 itself is not proved as genuine one by the plaintiff, he is not entitled for the remedy of refund of the advance amount. Therefore, the Trial Court has rightly dismissed the suit.

21. In the result, this Appeal Suit stands dismissed. No costs.

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Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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To

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1. The II Additional District Judge,
Chidambaram.

2. The Section Officer,
V.R.Section,
High Court,
Madras.

G.K.ILANTHIRAIYAN, J.

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