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S.A.No.387 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.387 of 2017
and C.M.P.No.8992 of 2017

1.Chenniyammal

2.P.Venkat

3.Poomani

4.Baby

... Appellants

vs.

Venkidusamy

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree passed in A.S.No.20 of 2016 dated 25.01.2017 on the file of III Additional District & Sessions Judge, Gobichettipalayam reserving the Judgment and Decree in O.S.No.22 of 2011 on the file of Sub-Judge, Gobichettipalayam dated 22.06.2016.

For Appellants : Mr.S.Kamadevan

For Respondent : Mr.P.Saravana Sowmiyan

J U D G E M E N T



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The unsuccessful defendants in a suit for specific performance are the appellants. The respondent herein filed a suit for specific performance of Sale Agreement. The Trial Court granted a decree for alternative relief of return of advance amount. Aggrieved by the same, the respondent preferred an appeal and the same was partly allowed and the First Appellate Court granted the main relief of specific performance. Aggrieved by the same, the defendants are before this Court.

2. According to the respondent/plaintiff, he is Assignee of the Suit Sale Agreement dated 16.06.2010. His Assignor-Gnanalakshmi entered into a Sale Agreement with the appellants for purchase of 54 cents of agricultural lands for a sale consideration of Rs.7,70,000/-. On the date of agreement itself, a sum of Rs.50,000/- was paid to the appellants/defendants as advance. The time limit fixed for completion of sale transaction was three months. The said Gnanalakshmi issued a legal notice to appellants on 15.09.2010 calling upon the appellants to come to Sub-Registrar Office, Nambiyur on 20.09.2010 for execution of sale deed. Though the respondent's Assignor-Gnanalakshmi waited in Sub-Registrar Office on the



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date fixed, the 2nd appellant came to Sub-Registrar Office and represented to her that appellants were unable to complete the sale transaction in view of the legal notice issued by one Arukkani, Paternal Aunt of the appellants claiming share in the suit property. Since the appellants failed to execute sale deed as agreed, the aforesaid Gnanalakshmi after receiving valid consideration of Rs.50,000/- from the respondent, assigned the Suit Sale Agreement in his favour on 02.12.2010. Thereafter, the respondent issued a legal notice on 18.01.2011 calling upon the appellants to complete the sale transaction. The appellants came up with a unfavourable reply and therefore, the respondent was constrained to file a suit for specific performance.

3. The 2nd appellant herein filed a written statement denying execution of Suit Sale Agreement by taking a plea that the same was executed as a security for loan transaction. It was further averred by the 2nd appellant that on 20.09.2010, they were present in the Sub-Registrar Office but the Assignor of the respondent namely Gnanalakshmi failed to attend the Sub-Registrar Office on the day as per her notice. It was also averred by the 2nd appellant that immediately they issued a legal notice on 21.09.2010 to Gnanalakshmi rescinding the agreement for her failure to perform her part of



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the contract. The 2nd appellant also claimed that assignment in favour of the respondent was not a valid one and consequently, the suit for specific performance filed by the respondent was liable to be dismissed.

4. Before the Trial Court, the respondent was examined as PW.1 and his Assignor/Original Agreement Vendee-Gnanalakshmi was examined as PW.2. Two other witnesses were examined as PW.3 and PW.4. On behalf of the respondent, 10 documents were marked as Exs.A1 to A10. The 2nd appellant was examined as DW.1 and 5 documents were marked on behalf of the appellants as Exs.B1 to B5.

5. The Trial Court on appreciation of oral and documentary evidences available on record, came to the conclusion that the suit property belong to one Avinashi Gounder-Grandfather of the defendants and hence, the appellants/defendants had no absolute right over the same. By invoking Section 17 of the Special Relief Act, 1963, the Trial Court came to the conclusion that respondent is not entitled to specific performance and consequently, granted a relief of refund of advance amount. Aggrieved by the said judgement, the respondent preferred an appeal in A.S.No.20 of



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2016 on the file of the III Additional District Judge, Gobichettipalayam. The

First Appellate Court on re-appreciation of evidence available on record, came to the conclusion that the respondent was entitled to main relief of specific performance and modified the Trial Court judgement and decree. Aggrieved by the same, the appellants/defendants are before this Court.

6. At the time of admission, this Court formulated the following substantial question of law:-

“Whether the Lower Appellate Court is correct in law in granting the decree for specific performance even in respect of the joint family property overlooking the section 17 of the Specific Relief Act?”

7. The learned counsel appearing for the appellants submitted that when respondent himself admitted suit property belong to one Avinashi Gounder, the appellants cannot be compelled to execute the sale deed in pursuance of sale agreement in view of bar under Section 17 of the Specific Relief Act, 1963. The learned counsel further submitted that as per notice issued by respondent's Assignor, the appellants went to Sub-Registrar Office on 20.09.2010. However, the respondent's Assignor-Gnanalakshmi failed to



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attend and on the next day, on 21.09.2010, the appellants issued a reply notice to the Original Agreement Holder/Gnanalakshmi rescinding the agreement. In such circumstances, the subsequent assignment in favour of the respondent is not valid and suit has been filed long after notice issued by the appellants rescinding the agreement. In such circumstances, the respondent failed to prove his continuous readiness and willingness.

8. Based on the submission made by the learned counsel appearing for the appellants, the following additional substantial question of law is framed:-

“(b) Whether the conclusion reached by the First Appellate Court that respondent was entitled to specific performance of agreement is vitiated in the absence of continuous readiness and willingness on the part of the respondent to perform his/her part of the contract?”

9. The learned counsel appearing for the respondent advanced arguments on both the substantial questions of law. The learned counsel submitted that the appellants asserting their exclusive title over the suit



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property entered into an agreement with Gnanalakshmi for selling their interest in the suit property. Therefore, it is not open to them to say that they have no exclusive title over the suit property. The learned counsel further submitted that the respondent's Assignor is not a stranger and she is only a close relative. It is further submitted by the learned counsel that the appellants are not entitled to rescind the contract unilaterally without any acceptable reason. The learned counsel further submitted that DW.1 himself admitted that on 20.09.2010, Gnanalakshmi was present before the Sub-Registrar Office. Therefore, the continuous readiness and willingness on the part of the respondent's Assignor and respondent had been proved by issuance of legal notices namely Exs.A2 and A6.

10. It is not in dispute that the appellants herein asserting their title over the suit property entered into sale agreement with Gnanalakshmi. However, later on, it appears one of the sharer in the suit property made a claim for partition.

11. Section 17 of the Special Relief Act, 1963 reads as follows:-

“17. Contract to sell or let property by one who has no title, not specifically enforceable.- (1) A contract to sell or let



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any immovable property cannot be specifically enforced in favour of a vendor or lessor-

(a) who, knowing himself not to have any title to the property, has contracted to sell or let the property;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.”

12. A close scrutiny of above said provision would make it clear that Section 17 of the Special Relief Act, 1963 bars specific performance of the agreement by a vendor or lessor, who has no title to the property, which is subject matter of the agreement. Here the suit for specific performance is not filed by vendor or lessor. In the case on hand, the suit for specific performance is filed by assignee of agreement vendee. In such circumstances, Section 17 of the Special Relief Act, 1963 cannot be pressed into service in this case. Accordingly, the first substantial question of law is answered.



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13. It is settled law that in a suit for specific performance, the respondent/plaintiff has to prove his continuous readiness and willingness from the inception of the contract to the date of filing of the suit. In the case on hand, the Assignor of the respondent/plaintiff entered into a suit sale agreement on 16.06.2010. The total agreed sale consideration was Rs.7,70,000/- and an advance amount of Rs.50,000/- was paid on the date of agreement itself. As per the terms of agreement, the remaining balance amount of Rs.7,20,000/- should be paid within a period of three months from the date of agreement. Therefore, the time fixed for performance of agreement expired on 15.09.2010. It appears, the respondent issued a legal notice on the last day of the time fixed for performance calling upon the appellants to be present before the Sub-Registrar Office on 20.09.2010. On the very next day, the appellants issued a reply notice mentioning that Gnanalakshmi failed to turn up before Sub-Registrar Office and due to her failure to perform her part of the contract, the agreement got cancelled. Even after receipt of the notice by appellants cancelling the agreement, the respondent's Assignor failed to file the suit for specific performance immediately. She waited for nearly 2 ½ months and then assigned the



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agreement in favour of the respondent. Thereafter, the respondent issued a legal notice only on 18.01.2011 and then filed the present suit on 15.02.2011. Therefore, absolutely there is no explanation on the part of the respondent why suit for specific performance was not filed immediately on receipt of notice by appellants cancelling the agreement on the ground of non-performance. If really, the respondent's Assignor attended the Sub-Registrar Office on 20.09.2010 with balance amount of Rs.7,20,000/-, on receipt of notice cancelling the agreement, she would have filed a suit for specific performance, without wasting any time. No ordinary prudent person would wait for more than three months after receipt of such notice and then assign the agreement to a third party. In these circumstances, the respondent/plaintiff miserably failed to prove that he and his predecessor namely Gnanalakshmi have been ready and willing to perform their part of the contract from the inception of the agreement to the date of filing of the suit. When this Court comes to the conclusion that the respondent/plaintiff failed to prove his readiness and willingness, the decree for specific performance granted by this First Appellate Court is liable to be interfered with. Accordingly, the second substantial question of is answered in favour of the appellants and against the respondent.



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WEB COPY **In Nutshell:-**

- (a) The Second Appeal is allowed by setting aside the judgement and decree passed by the First Appellate Court.
- (b) The suit filed by the respondent is dismissed with regard to main relief of specific performance.
- (c) The judgement and decree passed by the Trial Court is restored by granting alternative relief of return of advance amount with interest as decreed by the Trial Court.
- (d) Consequently, the connected civil miscellaneous petition is closed.
- (c) In the facts and circumstances of the case, there will be no order as to costs.

17.11.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
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S.SOUNTHAR, J.

dm

To

- 1.The III Additional District & Sessions Judge,
Gobichettipalayam.
- 2.The Sub-Judge, Gobichettipalayam.

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