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S.A.No.751 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.751 of 2017
and
C.M.P.No.18752 of 2017

C.Gurumoorthy

... Appellant

VS.

1.Mohan

2.P.Thirumal

... Respondents

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Decree and Judgment made in A.S.No.14 of 2015 dated 10.02.2017 passed by the learned Principal District Judge, Thiruvarur by confirming the decree and judgment in O.S.No.25 of 2009 dated 16.09.2014 passed by the learned Subordinate Judge, Mannargudi.

For Appellant : Ms.R.Abirami
for M/s.V.Srimathi
Senior Counsel



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For R1 : Mr.P.Bhuvaneswari

For R2 : Mr.D.Vasanthakumar

J U D G E M E N T

The plaintiff in the suit for specific performance is the appellant. The suit filed by the appellant was decreed by the Trial Court. The findings of the Trial Court was reversed by the First Appellate Court and the suit was dismissed. Therefore, the unsuccessful appellant/plaintiff is before this Court.

2. According to the appellant/plaintiff, he entered into Sale Agreement on 25.02.2003 with Power Agent of 2nd respondent for purchase of the property belongs to the 2nd respondent. The agreed sale consideration was Rs.4,03,440/-. On the date of agreement, a sum of Rs.1,00,000/- was paid as advance by the appellant to the 2nd respondent. The appellant also paid a sum of Rs.3,00,000/- under the mortgage transaction with the 2nd respondent and the said mortgage debt was also treated as part of the advance amount



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under the agreement. Therefore, totally the appellant paid a sum of

Rs.4,00,000/- as advance and for payment of balance amount of Rs.3,440/-

and complete the sale transaction, three years time limit was fixed under the agreement. Though the appellant was ready and willing to perform his part of the contract, the 2nd respondent failed to execute the sale deed. Therefore, the appellant issued a pre-suit notice calling upon the 2nd respondent to execute the sale deed on 24.02.2006. Even thereafter, there was no response from the 2nd respondent and therefore, the appellant filed a suit in O.S.No.69 of 2007 on the file of the Principal District Munsif, Valangaiman at Kumbakonam, seeking relief of injunction restraining the respondents from alienating the suit property to the third parties. Subsequently, due to inaction of the respondents, the appellant filed present suit seeking relief of specific performance in O.S.No.25 of 2009 on the file of the Sub Court, Mannargudi.

3. The 1st respondent filed a written statement supporting the case of the appellant.

4. The owner of the subject matter of the agreement namely the 2nd



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respondent filed a written statement and raised a plea that Suit Sale Agreement was a concocted document. It was also contended by the 2nd respondent that the stamp papers utilised for preparing the Suit Sale Agreement was not sold by the stamp vendor-Manimegalai and a criminal case was pending in this regard. It was also averred by the 2nd respondent that as 1st respondent attempted to act against his interest, the power granted in his favour was cancelled by him on 18.07.2003. On these pleadings, the 2nd respondent sought for dismissal of the suit.

5. The Trial Court on appreciation of oral and documentary evidences available on record, came to the conclusion that the Suit Sale Agreement was genuine document and the appellant proved his readiness and willingness to perform his part of the contract. Therefore, the suit was decreed granting the relief of specific performance. Aggrieved by the same, the 2nd defendant preferred an appeal in A.S.No.14 of 2015 on the file of the Principal District Court, Thiruvarur. The First Appellate Court came to the conclusion that the relief of specific performance sought for by the appellant was barred by limitation and consequently, reversed the findings of the Trial Court and dismissed the suit.



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6. The learned counsel appearing for the appellant submitted that the First Appellate Court failed to take into consideration that the appellant proved the due execution of the agreement and his readiness and willingness to perform his part of the contract from the inception and therefore, findings rendered by First Appellate Court as if, the Suit Sale Agreement was not genuine is not correct. The learned counsel further submitted that even as per the terms of agreement, three years time for performance of the sale agreement expired on 24.02.2009 and suit was filed well within three years on 12.06.2008 and therefore, the conclusion reached by the First Appellate Court that the suit was barred by limitation is untenable in law.

7. The findings of the First Appellate Court with regard to the limitation is not acceptable to this Court. The Suit Sale Agreement was entered into on 25.02.2003. As per the terms of agreement, three years time limit was fixed for performance of the sale agreement. The said three years period expired on 24.02.2009. In such circumstances, under Article 54 of the Limitation Act, 1963, the appellant/plaintiff is entitled to file suit within three years time limit from the date of expiry of time fixed for performance



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of the sale agreement. In the case on hand, the suit was filed well within the period on 12.06.2008. In such circumstances, the conclusion reached by the First Appellate Court as if, the suit was barred by limitation is not acceptable to this Court and the same is liable to be set aside. However, it is settled law in a suit for specific performance, a person seeking specific performance of the agreement must plead and prove his readiness and willingness to perform part of the contract from the date of agreement to the date of filing of the suit. In the case on hand, the agreement was entered into on 25.02.2003. The agreed sale consideration was Rs.4,03,440/-. The appellant said to have been paid an advance amount of Rs.4,00,000/- on the date of agreement itself. The remaining amount to be paid by the appellant is only Rs.3,440/- and for payment of balance sum of Rs.3,440/-, the time limit of three years was fixed in the agreement. This particular term of agreement fixing three years time limit for payment of Rs.3,440/- appears very unnatural to this Court.

8. Though the appellant in his plaint pleaded as if, he was ready and willing to pay the balance sale consideration and complete sale transaction, the first notice issued by him calling upon the 2nd respondent to complete the



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sale transaction was dated 24.02.2006. Absolutely, there is no explanation on the side of the appellant/plaintiff why he waited for nearly three years for issuance of first notice calling upon the 2nd respondent to complete the sale transaction. Even though the pre-suit notice was issued on 24.02.2006, the appellant filed the present suit only on 12.06.2008, nearly after 28 months. There is no explanation on the side of the appellant why he waited for more than two years to file the suit even after 2nd respondent failed to execute the sale deed in response to the pre-suit notice issued by him.

9. In such circumstances, the appellant failed to prove his readiness and willingness from the inception of the contract to the date of filing of the suit. Though this Court set aside the findings of the First Appellate Court with regard to the question of limitation, the final conclusion of the First Appellate Court is confirmed on different reasons as indicated above. I do not find any substantial question of law to interfere with the final conclusion of the First Appellate Court. Accordingly, the second appeal stands dismissed.

In Nutshell:-



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(i) The second appeal is dismissed.

(ii) Consequently, the connected civil miscellaneous petition is closed.

(iii) In the facts and circumstances of the case, there will be no order as to costs.

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Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm



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To

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- 1.The Principal District Court,
Thiruvarur.
- 2.The Subordinate Court,
Mannargudi.



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S.SOUNTHAR, J.

dm

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