



A.S.No.179 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :24.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE T.V. THAMILSELVI

Appeal Suit No. 179 of 2019

C.Muthiah (Died)

1.Padmavathi

2.M.Jegatha

.. Appellants

Versus

T.Thilagavathi

.. Respondent

Appeal suit is filed under Section 96 and Order XLI Rule 1 of the Code of Civil Procedure, prayed to set aside the order and Decree dated 05.07.2018 made in O.S.No.20 of 2010, passed by the learned Principal District Judge, Thiruvallur.

For Appellant : Mr. G. Karthikeyan
For Respondent : Mr. R. Prem Narayan

J U D G M E N T

The appellants have preferred this appeal suit against the Judgment and Decree passed by the learned Principal District Judge, Thiruvallur in O.S. No. 20 of 2010 dated 05.07.2018.

2. As the legal heirs of the deceased Muthiah, the appellants have preferred this appeal challenging the findings in O.S.No.20 of 2010 on the file of the Principal District Court, Thiruvallur, against the respondent herein.



A.S.No.179 of 2019

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3. The said suit was filed by the plaintiff / Muthiah for the relief of specific performance directing the respondent/defendant to executed the sale deed as per the sale agreement dated 09.07.2005. The said suit was contested by the defendant stating that there was an agreement on 09.07.2005 between the plaintiff/Muthiah and the defendant and he received a sum of Rs.3 lakhs as advance. As per the agreement, within a period of six months the plaintiff has to perform his part of the contract. i.e., on or before 09.01.2009. But after completion of the said period the plaintiff has not taken any steps. Only on 09.01.2009, after three years he filed the suit thereby the suit is bared by limitation. Further he also contended that the defendant has already issued notice on 16.07.2009 to receive the amount paid by the plaintiff/Muthiah and also asked him to vacate the suit property as they are tenant under her. Therefore, the defendant prayed that the suit is bared by limitation and the plaintiff has not been ready to perform his part of the contract.

4. Before the trial Court, both the parties adduced oral and documentary evidence. Based on that the learned trial Judge framed two main issues. First is whether the plaintiff is entitled for the relief of specific performance and whether the suit is bared under Section 54 of Limitation Act.



A.S.No.179 of 2019

WEB COPY

5. On considering both side evidence the learned trial Judge concluded that there is no proof that the plaintiff was ready and willing to perform his part of the contract. After issuance of the notice by the defendant nearly after lapse of about 4 years of the agreement the plaintiff has filed the suit stating that he was ready and willing to perform the contract as such is totally false. Therefore, the trial court held that the plaintiff/Muthiah was not ready and willing to perform his part of the contract besides that the suit is also bared by Limitation and dismissed the suit. Challenging the said findings the plaintiff has preferred this appeal.

6. The learned counsel for the appellants / plaintiff submitted that the plaintiff was ready to perform his part of the agreement, for which they approached the Court. But the learned trial Judge failed to appreciate the facts of the case and erroneously dismissed the suit.

7. By way of reply the learned counsel for the respondent-defendant submitted that originally plaintiff namely Muthiah (deceased) was a tenant under her. Subsequently he entered into agreement for sale, but he has not complied with the terms of agreement. The agreement provides for



A.S.No.179 of 2019

plaintiff failed to adhere to. However, after four years, he approached the Court as such is totally barred by Limitation.

8. Admittedly the property belongs to the defendant. It is also an admitted fact that an agreement was entered into between the plaintiff-Muthiah and the defendant for sale of the property. It is also an admitted fact that the plaintiff-Muthiah was a tenant. In fact, after entering into agreement to sell the property, the plaintiffs did not pay rent regularly and there is an rental arrears. This fact has also not been denied by the plaintiff. Furthermore only after receipt of the notice issued by the defendant, after expiry of three years of agreement, the plaintiff filed the suit and the same is bared by Article 50, 54 of the Limitation Act. Therefore, the findings of the learned trial Judge is well reasoned and it requires no interference by this Court.

9. According to the plaintiffs/appellants herein, the deceased Muthiah paid Rs.4 lakhs as advance. But the learned counsel for the respondent/defendant submitted that total arrears of rent as on date is Rs.2,41,580/- and the same has to be deducted.

10. Considering the fact that after the demise of original plaintiff



A.S.No.179 of 2019

livelihood and that the defendant also admitted the receipt of the advance amount, but intends to refund it after adjusting the rental arrears, this Court is to direct the defendant to deduct Rs.1 lakh from the advance amount of Rs.4 lakhs and the balance amount of Rs.3 lakhs shall be paid to the appellants herein.. The plaintiffs are also directed to vacate and handover the vacant premises to the respondent-defendant within a period of three months from the date of receipt of a copy of this Judgment. On the date of vacating the premises, the respondent herein shall pay the sum of Rs.3 lakhs to the appellants herein.

11. In view of the above, the Appeal Suit is disposed of
Consequently, connected Miscellaneous Petition is closed. No costs.

24.08.2023

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

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To,

1. The Principal District Judge, Thiruvallur.

2. The Section Officer, VR-Section,
High Court of Madras, Chennai.



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A.S.No.179 of 2019

T.V.THAMILSELVI,J.
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A.S.No.179 of 2019

24.08.2023