



A.S.No.288 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on 10.07.2024	Pronounced on 31.07.2024
---------------------------	-----------------------------

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S. No.288 of 2011

V.Venkatesan
S/o.Vajiravelu Naicker
No.2/267, New Street
Brammapuram Village
Katpadi Post
Vellore Taluk and District

... Appellant

Vs.

1.Dr.M.Manokaran (died)

2.Leena Vatsala
W/o.R.N.Rajashekar
P.17, Priyadarshini Paramount
Behind Aashima Mall,
Hoshangabad Road, Bhopal
State of Madhya Pradesh
Pincode 462 046

3.Revathi Aravind
W/o.J.Aravind Kumar
8, 3rd Cross, Nanjappa Garden
Near Ganesh Temple,
Babusapalya
Kalyan Nagar

1/20



A.S.No.288 of 2011

Bengaluru North
State of Karnataka
Pincode 560 043

... Respondents

[Respondents 2 & 3 are brought on record as per the order dated 12.04.2024 in CMPs5916 to 5919 of 2020]

PRAYER: This Appeal is filed under Section 96 of Civil Procedure Code, against the Judgment and Decree passed in O.S.No.15 of 2009 on the file of the Additional District and Sessions Judge (Fast Track Court), Vellore dated 31.01.2011.

For Appellant : Mr.S.Parthasarathy
Senior counsel
for Mr.K.Muthukumarasamy

For Respondents : Mr.N.C.Thirumalai Balaji (for R2 & R3)
for Mr.P.Subha Reddy

JUDGMENT

This Appeal has been filed against the Judgment and Decree passed in O.S.No.15 of 2009 on the file of the Additional District and Sessions Judge (Fast Track Court), Vellore dated 31.01.2011.

2.The unsuccessful Plaintiff is the Appellant herein. For the sake of convenience, the parties are referred to as per their ranking before the trial



3.The Plaintiff has filed a Suit in O.S.No.15 of 2009 for specific performance of agreement of sale dated 14.09.2006/Ex.A1. Written statement has been filed by the Defendant in the Suit denying that Ex.A1/suit sale agreement was came into force by exercising undue influence and it was stated that the Defendant is at the advanced age related medical issues. It is further stated that in view of the default clause contained in Ex.A1, agreement itself has become cancelled and the advance amount stands forfeited and he is not ready and willing to perform the contract and the description of the property in the agreement is insufficient for specific performance and he prayed for dismissal.

4.After trial, following issues have been framed by the trial Court:

- “1.Whether Plaintiff is entitled for the relief of specific performance as per the sale agreement, dated 14.09.2006?*
- 2.Whether the Plaintiff is entitled for permanent injunction restraining the Defendant , his legal representatives, or agents from alienating the suit property to third parties?*
- 3.To what other relief if any?”*



A.S.No.288 of 2011

WEB COPY

5.During trial, on the side of the Plaintiff, PW1 & PW2 were examined, Ex.A1 to Ex.A3 were marked and on the side of the Defendant , DW1 was examined and no document was marked.

6.On consideration of both oral and documentary evidences, the trial Court come to the conclusion that Ex.A1 sale deed was not executed due to undue influence and Ex.A1/suit sale agreement is true and genuine, however, the trial Court held that the Plaintiff has failed to prove necessary ingredients of specific relief viz., ready and willingness on the part of the Plaintiff and there is no proper description of the property in the schedule. Hence for uncertainty in the schedule of the property, rejected the suit. Hence the Appeal.

7.Heard Mr.S.Parthasarathy, learned Senior counsel, for Mr.K.Muthukumarasamy, learned counsel for the Appellant and Mr.N.C.Thirumalai Balaji, learned counsel for Mr.P.Subba Reddy, learned counsel for R2 & R3. Perused the records of the trial Court.



A.S.No.288 of 2011

WEB COPY

8.The suit was filed on 21.08.2007. The suit sale agreement is on 14.09.2006. As per the terms of the agreement three months time is fixed and hence, the sale transaction ought to have been completed on or before 13.12.2006. Ex.A2 is the legal notice dated 01.03.2007.

9.Learned senior counsel appearing for the Appellant would contend that for Ex.A2/legal notice, there was no reply, however, in the written statement at paragraph No.18, the Defendant chosen to deny the receipt of Ex.A2 on the ground that the address mentioned in Ex.A2, is different from the notice address mentioned in Ex.A1/suit sale agreement. So is the evidence of DW1, who is the wife of the Defendant . The Owner/vendor has not entered the witness box, citing medical grounds and his age, his wife examined as DW1, which is discussed infra.

10.Learned senior counsel for the Appellant further contend that even before the commencement of trial, balance amount of sale consideration was deposited before the trial Court on 18.03.2008.



A.S.No.288 of 2011

WEB COPY

11.Learned counsel for the Respondents 2 & 3 made submission in support of the judgment of the trial Court.

12.After hearing the learned senior counsel appearing on behalf of the Appellant and the learned counsel appearing on behalf of the Respondents 2 & 3, the following points are raised for determination of the issue in hand:

1. Whether Ex.A1/suit sale agreement is true and genuine?
2. Whether Ex.A1/suit sale agreement is executed due to the undue influence by the Plaintiff on the Defendant as pleaded by the Defendant is true?
3. Whether the Plaintiff is ready and willing to perform his part of contract?
4. Whether the schedule of the property is too vague for grant of specific performance decree?
5. Whether the Plaintiff is entitled for specific relief?
6. To what other relief?

13(a).After hearing the rival submissions and after perusing the records, I find that the Plaintiff filed suit for specific performance seeking



A.S.No.288 of 2011

WEB COPY

direction to the Defendant to receive the balance sale consideration of Rs.12,60,000/- and to execute the sale deed duly registered by him. The Plaintiff and Defendant entered into the sale agreement, Ex.A1 on 14.09.2006 and the Defendant received Rs.30,000/- as advance and agreed to sell the property for Rs.12,90,000/- after receiving the balance sale consideration within a period of three months. Since the Defendant did not execute the sale deed, the Plaintiff issued Ex.A2 notice to the Defendant which was received by him under Ex.A3 postal acknowledgement card.

13(b).The case of the Defendant is that the Defendant has not executed any sale agreement in favour of the Plaintiff much less Ex.A1/suit sale agreement, whereas the Defendant has requested the Plaintiff for the arrangement for sale of his properties on commission basis at 2% for the sale price amount. The Plaintiff has paid Rs.30,000/- and assured that he would pay the remaining amount of Rs.12,60,000/- and obtained the signature of his wife and his son-in-law in the document, Ex.A1/suit sale agreement. The further case of the Defendant is that there is no relationship of vendor and vendee is prevailing between the Plaintiff and himself and the sale



A.S.No.288 of 2011

WEB COPY

agreement is not valid in law and as such as the Defendant has alone signed in the document and the Plaintiff has not signed in the same.

13(c).It is also further case of the Defendant that the Plaintiff influenced the Defendant to sign in the agreement and the description of schedule of property is incorrect. It is also the further case of the Defendant that the agreement gets cancelled automatically after the stipulated time limit and the Plaintiff has no financial capacity to complete the sale and nor he is ready and willing to complete the sale. Apart from this, the Defendant has taken a plea that he has not received the notice.

Point Nos.1 to 6:

14.Perused Ex.A1/suit sale agreement dated 14.09.2006. From the recital in the document balance sum of Rs.12,60,000/- to be paid, within a period of three months time and the three months time expired on 13.12.2006. On perusal of Ex.A2/legal notice, it was issued only on 01.03.2007 viz., 2½ months after the time stipulated under Ex.A1/suit sale agreement, assumes significance.



A.S.No.288 of 2011

WEB COPY

15.At this juncture, it remains to be stated that there is a default clause in Ex.A1/suit sale agreement, which reads that within a period of three months, balance sum of Rs.12,60,000/- has to be paid by the agreement holder, so as to execute the sale deed either in his name or in his nominee's name, failing which, the sale agreement stands cancelled and the advance amount paid under the agreement shall stand forfeited. With regard to other clauses, they are regular one. The trial Court records indicated that the balance sale consideration has been deposited before the trial Court on 18.03.2008, (ie.,) before the commencement of the trial proceedings.

16.Admittedly, Ex.A2/legal notice dated 01.03.2007, is 2½ months after the stipulated time under the agreement. Suit was filed on 21.08.2007 viz., six months after the notice and balance amount was deposited on 08.03.2008 viz, another six months from the date of filing of the Suit.

17(a).On the above factual background, this Court finds that in the case of specific performance of contract, time is not the essence of contract.



A.S.No.288 of 2011

WEB COPY

But, in this case, a time limit was fixed as 3 months i.e., from 14.09.2006 to 13.12.2006, the Plaintiff has not proved that he approached the Defendant for performing his part of contract within the said stipulated time as stated earlier. Only after the lapse of 2½ months he sent the legal notice, Ex.A2 to the Defendant. It is true that neither the Defendant has sent any notice to the Plaintiff, terminating the sale agreement, Ex.A1/suit sale agreement nor he had given reply to the Ex.A2 notice.

17(b).The trial Court's records reveals that the court summons were sent to the very same address mentioned in Ex.A2. The Defendant has not entered into the witness box due to medical grounds and his wife was examined as DW1. DW1 in the cross examination admitted that they are residing in Bangalore and not in KGF and address mentioned in agreement, Ex.A3/Postal acknowledgement card shows that they are residing in Bangalore. With regard to the signature contained in the acknowledgement she neither admitted it nor denied it. It remains to be stated that the very same address mentioned in Ex.A2 & Ex.A3, summons were served at the Bangalore address and therefore, the trial Court has rightly come to the

10/20



A.S.No.288 of 2011

WEB COPY

conclusion that the question of non service of Ex.A2 will not arise.

18.In the written statement, stand of the Defendant is clearly established as discussed supra. Person can give an evidence on behalf of the husband as contemplated under Section 120 of Indian Evidence Act. The original Defendant viz., Dr.M.Manokaran is a sick person. DW1 in the cross examination deposed that her husband has signed in Ex.A1/suit sale agreement, without reading the content and they are not aware of the terms of the agreement and admitted that address mentioned in Ex.A3, Bangalore address is a correct one and also admitted that the suit summons were served upon them. Hence, in view of the admission made by DW1, regarding service of the Court summons, pursuant to which they entered appearance before the Court, the said address is the very same address in Ex.A2. Taking note of the fact that signature in Ex.A1/suit sale agreement is as that of her husband, the trial Court come to the conclusion that Ex.A1/suit sale agreement is true and genuine.

19.When the Defendant raised a plea that they were pressurised to



A.S.No.288 of 2011

sign in the document. In the absence of any positive evidence to that effect, the trial Court has rightly negatived the said contention of the Defendant is appears to be just and fair, which does not need any interference at this Appellate stage. Hence, this Court has no hesitation to come to the conclusion that Ex.A1/suit sale agreement is true and genuine. Though it has a signature of the vendor alone, unilaterally signed by the vendor can be enforced specifically under the specific relief act under Section 16. Hence the finding of the trial Court that Ex.A1/suit sale agreement is not defective for want of signature of the Plaintiff is fair. Description of the Plaintiff is specific in Ex.A1/suit sale agreement, signed by the vendor/Defendant. Hence, it is a unilateral agreement which can be enforced subject to satisfaction of the condition contemplated under Section 16 of Specific Relief Act.

20.After hearing the learned senior counsel appearing on behalf of the Appellant on the point of ready and willingness, I find that within the stipulated time, he has not issued any legal notice to express his willingness viz., intention to complete the sale transaction within stipulated time. After

12/20



A.S.No.288 of 2011

WEB COPY

2½ months of expiry of sale agreement, he has issued Ex.A2/legal notice.

21.Learned senior counsel for the Appellant would contend that it is a short delay, which cannot be put against him and relied upon the judgment of the Hon'ble Apex Court in the case of ***R.Lakshmikantham Vs. Devaraji*** reported in ***(2019) 8 Supreme Court Cases 62***. This Court has given anxious consideration for the said contention. As per the terms of the agreement, the sale consideration is fixed at Rs.12,90,000/- for the extent of 3 acres 98 cents and a sum of Rs.30,000/- was paid as advance. As could be seen from the recital in Ex.A1/suit sale agreement, three months time was granted to pay the balance sale consideration. The legal notice was issued after three months, within a period of stipulated time there is a total inaction on the part of the Plaintiff as he has not approached the Defendant within a stipulated time. PW1/Plaintiff admitted in the cross examination that during the stipulated time, he has not contacted the Defendant and he has not rendered the amount within the stipulated time. Further he admitted that there is a default clause and there is an additional condition that in the event of non completion of the sale transaction on or before 13.12.2006, the



A.S.No.288 of 2011

WEB COPY

agreement shall stands automatically cancelled and also there is forfeiting clause that on failure of completion of sale transaction within the stipulated time, the Plaintiff agreement holder has to forfeit the advance amount of Rs.30,000/-. All these conditions have been duly admitted by the Plaintiff in PW1 cross examination and hence, in view of the specific recital in Ex.A1/suit sale agreement, I find that there is a specific stipulation of time and the Plaintiff failed to make payment to move towards completion of sale transaction, which goes against the Plaintiff.

22.It remains to be stated that notice was issued after 2½ months time, suit was filed after nine months, balance sale consideration deposited after 1½ months of filing of suit. To prove whether the Plaintiff is ready with money within the stipulated time or within the reasonable time, there is no positive evidence to show the same. Whether the Plaintiff was willing to perform his part of contract viz., “Intention to complete the transaction” also conspicuously absent. Hence, the trial Court has rightly come to the conclusion that the Plaintiff is not ready and willing to perform his part of contract.

14/20



A.S.No.288 of 2011

WEB COPY

23. In view of the discussion in the preceding paragraphs, the question of non servicing of Ex.A2 will not arise. In view of the admitted position of PW1 regarding the default clause and forfeiture clause, it is not necessary for the Defendant to send separate notice for terminating Ex.A1/suit sale agreement. After the expiry of the time fixed in the agreement since the agreement itself recites that the agreement automatically get cancelled on the expiry of the stipulated time and one step further the Plaintiff has to forfeit the advance amount and thus this Court finds that there is lack of evidence on the side of the Plaintiff to show that from the date of agreement, till the filing of the Suit, he was continuously willing to perform his part of the contract to get the sale deed registered in his name. There is absolutely no reason or explanation was given for delay in filing the Suit. The Plaintiff must plead and prove he is ready and willing to perform his part of contract, as contemplated under Section 16(c)(ii) of Specific Relief Act. The finding rendered by the trial Court that the Plaintiff is not ready and willingness to perform his part of contract is just and fair, which does not require any interference at the Appellate stage, as the same does not

15/20



A.S.No.288 of 2011

suffer from any illegality or irregularity or violation of records.

WEB COPY

24.The next contention of the learned senior counsel for the Appellant/Plaintiff is that the terms of the schedule of the property was not clearly described and it is agreed between the parties as if it is an agreement for undivided share.

25.The details of property mentioned for sale are not properly and perfectly given in a clear and unambiguous focus terms. The properties mentioned for sale are not specifically mentioned with the details of boundaries. The property mentioned for sale is not properly identifiable. The Ex.A1/suit sale agreement neither contains the exact area of the land in each survey number to be sold nor the boundaries thereof. It is well settled law that unless the property in question for which the relief has been sought for is identifiable, no decree can be granted in respect of the same.

26.The Defendant both in the written statement as well as DW1, wife of the Defendant has raised a plea that Ex.A1/suit sale agreement is not



A.S.No.288 of 2011

enforceable for want of description in the schedule of the property in Ex.A1.

WEB COPY

After perusing the schedule of the property, I find that the description of the property as stated in the schedule is undividable. Admittedly, the property mentioned in agreement of sale reads as Acre 3-98 cents approximately in the lands situated in Sevoor Village in S.No.446/1A1 with an extent of Ares 2-36-0 (acres 5-82 cents) in S.No.466/1E with an extent of Ares 0-41-0 (Acre 1-15) and in S.No.466/1F with an extent of Ares 0-04-5 (Acre 0-11 cents) altogether Acre 3-98 cents in the total area of Acres 7-08 cents. The total extent of the entire property is Acres 7.08 cents and agreement mentioned property extent is Acres 3.98 cents and the details mentioned in Ex.A1 is not certain and the description of boundaries had also been not mentioned clearly and in unambiguous terms it is well settled law that a decree cannot be granted if the relief sought is unidentifiable. Thus an agreement is void under Section 29 of the Indian Contract Act of 1872 when its contents are ambiguous and uncertain and hence cannot be clarified.

27.Hence, this Court finds that the schedule of the property is incapable of being executable. The Decree in the specific performance

17/20



A.S.No.288 of 2011

WEB COPY

should have specific extent, survey number, nature of identification and boundaries thereof. Hence, the finding rendered by the trial court that the description of the property in question is unidentifiable and no decree can be granted in respect of the same is hereby confirmed.

28.After perusing the evidence, I find that a sum of Rs.30,000/- was received by the Defendant. The Plaintiff is entitled to receive the same alongwith 12% interest and the balance sale consideration deposited by the Plaintiff before the trial Court is permitted to be withdrawn by the Plaintiff.

29.Hence, I find that there is no error in the judgment rendered by the trial Court seeking interference of this Court. The alternate relief granted by the trial Court in the Decree made in O.S.No.15 of 2009 dated 31.01.2011 in clause No.1 viz., granting refund of Rs.30,000/- alongwith 12% interest per annum to the Plaintiff is hereby confirmed and further clause Nos.2 & 3 of the Decree are also hereby confirmed.

30.All the points raised by this Court are answered in negation

18/20



A.S.No.288 of 2011

against the Appellant/Plaintiff and the Appeal is devoid of merits.

WEB COPY

31. Accordingly, the Appeal stands dismissed, consequently, Judgment and Decree passed in O.S.No.15 of 2009 by learned Additional District and Sessions Judge (Fast Track Court), Vellore on 31.01.2011 is hereby confirmed. No costs.

31.07.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

sai

To
The Additional District and Sessions Judge
(Fast Track Court)
Vellore

19/20



WEB COPY



A.S.No.288 of 2011

RMT.TEEKAA RAMAN, J.

sai

Pre-delivery Judgment made in

A.S.No.288 of 2011

Dated: 31.07.2024