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SA.No.458 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2024

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.458 of 2008

and

MP.No.1 of 2008 & MP.No.1 of 2014

A.S.Muthukumaran

... Appellant

- Vs -

1. Anjalatchi
2. V.Adalarasan
3. Jaya rani
4. U.Noori
5. S.Ganapathy

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 28.11.2007 on the file of the II Additional Sub Court, Cuddalore confirming the judgment and the decree dated 18.01.2007 passed in O.S.No.387/2004 before the Principal District Munsif's Court, Cuddalore.

For Appellant : Ms.Hema Sampath
Senior Counsel
for Ms.R.Meenal

For Respondents : Mr.R.Gururaj for R3 to R5
R1-No Appearance
R2-Not claimed



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J U D G M E N T

The plaintiff is the appellant herein. The defendants are the respondents in the Second Appeal.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3. The brief facts which give rise to the instant second appeal is as follows:-

The suit property originally belongs to the first defendant. The plaintiff entered into a Sale Agreement with the first defendant on 24.03.2002 agreeing to purchase a suit property for a total sale consideration of Rs.90,000/-. On the date of the Sale Agreement, a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) was paid as advance and the remaining sum of Rs.65,000/- [Rupees Sixty Five Thousand only] was agreed to be paid within a period of three months. To put it in other words, the time for performance was fixed as three months from the date of Sale Agreement.

While so, the first defendant appears to have executed a Power of Attorney



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in favour of the second defendant on 04.07.2002 to defeat the right of the plaintiff. Taking advantage of such Power of Attorney, the second defendant executed a Sale Deed in favour of the defendants 3 & 4 vide Sale Deeds dated 23.10.2002 and 08.08.2002 respectively. Apart from the above two sale deeds, the second defendant has also entered into a Sale Agreement with fifth defendant. The plaintiff further states that the Power of Attorney stands in favour of the second defendant was subsequently cancelled by the first defendant on 25.02.2003. It is the further submission of the plaintiff that he was ready and willing to perform his part of the contract. However, the first defendant in collusion with the other defendants has fabricated certain documents and that those documents will not bind upon the plaintiff. Therefore, the plaintiff has come forward with the suit for specific performance.

4. The second defendant has filed a separate written statement. Similarly, the defendants 3 to 5 jointly filed the separate written statement. The sum and substance of both the written statement are that the Sale Agreement stands in the name of the plaintiff dated 24.03.2002 is a rank one forgery and that the first defendant by receiving a total sale consideration of



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Rs.1,00,000/- has executed a Power of Attorney and that by virtue of receipt issued by the first defendant evidencing the receipt of the entire sale consideration, the Power of Attorney dated 04.07.2002 becomes irrevocable as the same is coupled with interest. The defendants 3 to 5 would further submit that since the defendants 1 and 2 failed to execute the Sale Deed as per the Sale Agreement dated 21.02.2003, the fifth defendant filed a suit in O.S.No.73 of 2003 and obtained a decree for specific performance, and through execution proceedings a Sale Deed was obtained by the 5th defendant through Court. Therefore, these defendants submitted that the plaintiff is not at all entitled for a decree for specific performance.

5. In the said suit, the plaintiff has also filed a reply statement, wherein it was contended that O.S.No.73 of 2003 is a fraudulent and collusive suit. Therefore, contended that such decree will in no way deny the rights of the plaintiff.

6. Before the Trial Court, the plaintiff has marked 23 documents as Exs.A1 to A23. On behalf of the defendants, 27 documents have been marked as Exs.B1 to B27. The plaintiff has examined 3 witnesses, whereas



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the defendants 2 to 5 examined 4 witnesses. It appears that the first defendant was set exparte.

7. The Trial Court, after having considered the oral and documentary evidence, has arrived at a conclusion that the plaintiff was not ready and willing to perform his part of the contract. The Trial Court has also found that the transaction between the first defendant and the second defendant was found to be genuine and ultimately, the suit was dismissed. Aggrieved with the same, the plaintiff preferred the First Appeal. The First Appellate Court has also concurred with the finding of the Trial Court and dismissed the First Appeal. Not satisfying with the judgment of the First Appellate Court, the plaintiff is before this Court by way of the instant Second Appeal.

8. At the time of admission on 30.01.2015, this Court has formulated the following substantial questions of law:-

“1. Whether in law the lower appellate court was right in holding that the suit was belated when under Article 54 of the Limitation Act, the time granted is three years and the suit had been filed only one year after the agreement?

2. Whether in law the lower appellate court was right in



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dismissing the suit after holding that the appellant's agreement was true, when the rights of the appellant should have precedence over the alleged transactions which took place subsequently?

3. Whether the finding of the court below that other defendants are the bonafide purchasers for valuable consideration, is based on proper evidence?"

9. The learned Senior Counsel appearing on behalf of the appellants would vehemently contend that the transaction between the defendants 1 and 2 is a collusive one. The learned Senior Counsel would further contend that the findings recorded by the Trial Court that the plaintiff was not ready and willing is, against the evidence available before this Court, and that there was no delay in filing the suit. It was also contended by the learned Senior Counsel that when the Sale Agreement (Ex.A1) between the plaintiff and the first defendant found to be true and valid, then such agreement would get precedence over the subsequent agreement with the defendants. Therefore, the learned Senior Counsel would submit that the judgment of both the Courts below are perverse, hence prayed to interfere with the same. The sum and substance of the submissions of the learned Senior Counsel is that both



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the Courts below have committed concurrent error. Hence, prayed to allow this appeal. The learned Senior Counsel further contended that the defendants have approached the Court with unclean hands and suppressed very many material facts, therefore, they are not entitled to have any remedy under equity. To buttress the contention of the appellant, the learned Senior Counsel relied upon the following judgments:-

1. ***Laxmi Ram (dead) by LR and others Vs. Bietswar Singh and others*** reported in ***(2008) 10 SCC 697***.
2. ***Ahmadsahab Abdul Mulla (dead) Vs. Bibijan and others*** reported in ***(2009) 5 SCC 462***.
3. ***Zarina Siddiqui Vs. A.Ramalingam Alias R.Amarnathan*** reported in ***(2015) 1 SCC 705***.

10. Per contra, the learned counsel appearing for the respondents would vehemently contend that the Sale Agreement between the plaintiff and the first defendant is a rank one forgery, and that the plaintiff approached the Court belatedly after the property has been sold to the defendants 3 and 4, and after the execution of the Agreement in favour of the 5th defendant. Therefore, it was contended by the learned counsel for the defendants that the plaintiff has not approached the Court within the time frame. Therefore,



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submitted that the findings recorded by the Trial Court that the plaintiff was not ready and willing to perform his contract is perfectly justifiable, and is based upon the evidences available before the Court. Therefore, the learned counsel would contend that when there is no perversity in the Judgement of both the Courts below, this Court cannot interfere with the Judgement of the First Appellate Court. Hence, prayed to dismiss the Second Appeal.

11. I have given my anxious consideration to either side submissions.

12. Even according to the plaint averments, the Sale Deed executed in favour of the defendants 3 and 4, and the Sale Agreement stands in the name of the 5th defendant have been referred to. Therefore, the existence of such Sale Deed and Agreement is not in dispute. But the only question, which was focused by the learned Senior Counsel is that, such transaction had taken place only to defeat the rights of the plaintiff accrued through Ex.A1-Sale Agreement.

13. It was the contention of the learned Senior Counsel that, the findings recorded by the Trial Court that the plaintiff has approached the



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Court for specific performance belatedly is contrary to the view of the judgment of Hon'ble Apex Court in *Ahmadsahab's* case. Through which the learned Senior Counsel would contend that when there is no specific date fixed for performance, then the three years period will have to be counted only from the date of refusal.

14. Absolutely, this Court has no quarrel in respect of the well settled legal proposition enunciated in the above rulings. But in the case on hand, the agreement stipulates a specific date for performance. According to the recitals of Ex.A1-Sale Agreement, the remaining sale consideration of Rs.65,000/- has to be paid within a period of three months, failing which, the plaintiff would forfeit his advance amount.

15. At this juncture, it is appropriate to refer the judgment of Hon'ble Supreme Court in *Chand Rani (Dead) by LRs. Vs. Kamal Rani (Dead) by Lrs.* reported in *(1993) 1 SCC 519*, wherein it has been specifically held that even if there is no recital in the agreement as to the time is the essence of the contract, still such factum could be inferred through the recitals of the sale agreement.



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16. While applying the above ratio to Ex.A1-Sale Agreement, the recitals of the said agreement stipulates that the agreement is to be performed within a period of three months, failing which the advance amount would be forfeited. This recital is nothing but the epitome of the time become the essence of the contract. Once this Court arrives at such conclusion, notwithstanding the fact whether the first defendant comes forward to execute the Sale deed or not, and whether the defendant has committed breach of contract or not, cannot be a ground for the plaintiff to delay his performance of contract and take his own time to approach the Court. In this regard, it is appropriate to refer the judgment of Hon'ble Supreme Court in ***Man Kaur (Dead) by LRs Vs. Hartar Singh Sangha*** reported in (2010) 10 SCC 512.

17. Here while seeing the plaint averment, the plaintiff has approached the Court almost after a period of nine months from the completion of the time for performance is fixed. In the meanwhile, there were certain transactions between the defendants, which factum was also within the knowledge of the plaintiff. In spite of such a peculiar circumstances, the delay in filing the suit for specific performance and the delay in calling upon



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the first defendant to execute the Sale Deed, through legal notice, would definitely a proof of absence of willingness of the plaintiff, which would definitely dis-entitle the plaintiff to have a specific performance.

18. Therefore, the submission of the learned Senior Counsel that when Article 54 of The Limitation Act provides three years, the plaintiff can file a suit within a period of three years cannot be countenanced, as the agreement through the recitals stipulated therein the time become the essence of the contract. Therefore, even though there exists a Sale Agreement between the plaintiff and the defendants, since the plaintiff has not approached the Court according to the terms of the agreement and approached the Court with delay, the Trial Court has no other option except to arrive at a conclusion that the plaintiff was not ready and willing to perform his contract.

19. Thus, from the above submissions of the learned Senior Counsel, this Court could not find any justifiable ground to interfere with the judgments of the both the Court below as this Court could not find any perversity over the same. In view of the above discussion, the substantial questions of law are answered in favour of the respondents.



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C.KUMARAPPAN, J

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20. In the result, the Second Appeal is dismissed. There shall be no order as to costs.

10.04.2024

kmi

Index : yes/no

Speaking/Non Speaking Order

Neutral Citation Case: Yes/No

To

1. The II Additional Sub Judge,
Subordinate Court,
Cuddalore.
2. The Principal District Munsif,
Cuddalore.

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