



S.A. No.192 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.02.2024

DELIVERED ON : 01.03.2024

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

S.A. No.192 of 2018
and CMP No.5013 of 2018

R.Rangasamy

.... Appellant

Versus

Subramanian

... Respondent

Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment passed in A.S. No.56 of 2014 dated 02.12.2015 on the file of Sub Court, Sathyamangalam, reversing the judgment and decree dated 16.06.2014 in O.S.No.263 of 2009 on the file of District Munsif Court, Sathyamangalam.

For Appellant : Mr.A.Mohamed Ismail

For Respondent : No appearance

JUDGMENT

The unsuccessful plaintiff in a suit for specific performance of an agreement of sale is the appellant in the present Second Appeal.



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2. The plaintiff filed a suit on the strength of an agreement of sale dated 04.02.2009, under which, the plaintiff had contracted to purchase the defendant's property, measuring 2.5 cents, comprising of land and building for a total sale consideration of Rs.11,000/-. According to the plaintiff, he paid a sum of Rs.10,900/- as advance and only a sum of Rs.100/- was due and payable. According to the plaintiff, the parties have agreed for one year time period to conclude the transaction. The plaintiff contending that he was ready and willing to perform his part of contract, filed a suit, seeking specific performance.

3. The trial Court decreed the suit, directing the plaintiff to deposit the balance sale consideration of Rs.100/- within one month. However, the first appellate Court, on appeal preferred by the defendant, reversed the findings of the trial Court and dismissed the suit for specific performance. Aggrieved by the reversal findings rendered by the 1st appellate Court, the plaintiff has filed the above Second Appeal.



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4. On 16.08.2019, the above Second Appeal was admitted on the following substantial questions of law: -

(a) Whether the sale agreement is required to be compulsorily registered in terms of Section 17(1)(a) of the Registration Act?

(b) Whether a question of fact put forth in the plaint being admitted in the written statement can be observed contra?

5. I have heard Mr.A.Mohamed Ismail, learned counsel for the appellant and there is no appearance for the respondent. I have gone through the pleadings, oral and documentary evidence adduced by the parties before the trial Court as well as the judgments of the trial Court and the first appellate Court.

6. The plaintiff's categorical case is that the defendant offered to sell his property for a total sale consideration of Rs.11,000/- and even on the date



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of the agreement, Rs.10,900/- was paid as advance, leaving only a balance of R.s.100/-, for which, one year time was fixed under Ex.A.1 sale agreement.

7. In the light of the peculiar terms of contract, the defence taken by the defendant would assume significance. The case of the defendant was that one Karuppusamy, son of the 1st defendant did not execute the sale agreement and also did not receive any money as advance much less Rs.10,900/-. It is the further case of the 1st defendant that the value of the property was more than Rs.2,00,000/- and there was also no necessity for Karuppusamy/son of the 1st defendant to sell the property for a throw-away price of Rs.11,000/-. In fact, the case of the plaintiff is that even though the agreement was entered into with Karuppusamy, the said Karuppusamy died on 26.05.2009 and therefore, the suit was filed against the father of Karuppusamy, who is arrayed as 1st defendant. The 1st defendant also died pending suit and therefore, his other son Subramanian was impleaded as second defendant.

8. In the present case, as seen from the discussions herein above, an agreement, entered into was sought to be enforced after the death of the vendor. The specific stand of the 1st defendant is that the vendor, viz., the



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said Karuppusamy would not have been agreed to sell the property for Rs.11,000/- and moreover, when only a sum of RS.100/- was due and payable, one year time period would not have been provided for completion of the transaction. The trial Court found that the agreement of sale under Ex.A.1 is true and genuine and that the defendant has failed to prove that the sale agreement was a forged document. In fact, the trial Court also discussed the evidence of P.W.2, one of the witnesses to the sale agreement, to hold that the plaintiff has proved the execution of the sale agreement with late Karuppusamy.

9. With regard to the “readiness and willingness” of the plaintiff, the Court found from the evidence that one year time period was fixed only to provide death certificate and the legal heir certificate of Lakshmi, the wife of Karuppusamy and the trial Court concluded that there was nothing to show that the plaintiff was not ready and willing to perform his part of contract.

10. However, the first appellate Court, reassessing the oral and documentary evidence, found that the plaintiff claimed to have been put in possession in part performance of the sale agreement and therefore, the



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agreement required to be registered and proceeded to non suit the plaintiff on the ground that the unregistered sale agreement under Ex.A.1 could not be enforced in a Court of law.

11. Further, I find that under Ex.A.1 sale agreement dated 04.02.2009, the plaintiff was not put in possession of the suit property and therefore, the first appellate Court clearly fell in error in holding that the sale agreement was not enforceable in view of the same being not registered. However, I find that the first appellate Court has held the agreement of sale to be true and genuine and concurred with the findings rendered by the trial Court in that regard.

12. The first appellate Court, having dismissed the appeal on the ground that the agreement required registration, did not even go into the aspect of “readiness and willingness” which is *sine quo non* in a suit for specific performance. I am not happy with the findings rendered by the trial Court as well. In a suit for specific performance, there is a personal bar to relief under Section 16(c) of the Specific Relief Act, 1963. Thus, the Courts are bound to arrive at a positive finding that the plaintiff is ready and willing



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or has been ready and willing at all relevant points of time, to conclude the sale transaction. Unfortunately, the trial Court has given a contra finding that there is nothing on record to show that the plaintiff was not ready and willing and the first appellate court also has not dealt with the issue of “readiness and willingness”. Considering that the defendant, who is the sole surviving legal heir of the deceased vendor in the agreement of sale, is also not represented before this Court, I deem it fit and proper to remit the matter to the first appellate Court with a direction to the first appellate Court to render a specific finding with regard to the “readiness and willingness” of the plaintiff and his entitlement to the discretionary and equitable relief of specific performance on the given set of facts. However, at the same time, I confirm the findings that Ex.A.1 sale agreement is a true and genuine instrument. I also hold that the Sale Agreement does not require registration.

13. In fine, the Second Appeal is partly allowed. The judgment and decree passed in A.S. No.56 of 2014 dated 02.12.2015 on the file of Sub Court, Sathyamangalam is hereby set aside and the matter is remitted back to the first appellate Court to be decided afresh, after hearing both the plaintiff and the defendant, insofar as the “readiness and willingness” and entitlement



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of the plaintiff/appellant to the equitable relief of specific performance is alone. The first appellate Court shall issue notice to the parties and decide the appeal within a period of three months from the date of receipt of a copy of judgment.

No costs. Consequently, connected miscellaneous petition is closed.

01.03.2024

Index: Yes/No
Speaking Order/Non-Speaking Order
sr

To

1. The Sub Court, Sathyamangalam
2. The District Munsif Court, Sathyamangalam
3. The V.R.Section, High Court, Chennai.



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P.B.BALAJI,J.

sr

Pre-Delivery Judgment
in S.A.No.192 of 2018

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