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A.S.No.626 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

A.S.No.626 of 2018

C.Lickmi Chand

... Appellants / Plaintiff

Versus

1.R.Kalavathi

2.S.Kanthasamy Chettiyar

3.P.Sathiyavathiammal

... Respondents / Respondents

Appeal Suit filed Under Section 96 r/w of XLI Rule 1 of the Code of Civil Procedure, praying to set aside the Judgment and decree of the learned III Additional District Judge, Vellore, Tirupattur dated 23.10.2017 in O.S.No.12 of 2013.

For Appellant : Mr. T.M Hariharan

For R1 : Mr.R.Vivekanandan

for Mr.R.Subramaniam

For R2 & R3 : No appearance

J U D G M E N T

The appellant has filed this appeal seeking to set aside the judgment and decree in O.S.No.12 of 2013, on the file of the III Additional District Court, Vellore, Tirupattur, dated 23.10.2017.



A.S.No.626 of 2018

WEB COPY

2. Arguments were heard from Mr. T.M. Hariharan, learned counsel for the appellant, Mr. R. Subramaniam, learned counsel for the 1st respondent, and Mr. R. Vivekanandan, learned counsel appearing for respondents 2 & 3. The Court has perused the materials available on record.

3. For ease of reference, the parties herein are referred to as they were designated in the suit.

4. The appellant herein, is the plaintiff in O.S.No.12 of 2013 on the file of the III Additional District Court, Vellore, Tirupattur, filed a suit against the respondents/defendants 1 to 3 for a decree of specific performance, directing the 1st defendant to execute the sale deed in his favor by receiving the balance amount, with consequential reliefs.

5. The 1st defendant contested the suit by filing a written statement denying the plaintiff's claim. He contended that the plaintiff was engaged in money lending, from whom he had borrowed a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as a loan, and that the plaintiff had obtained his signature on blank papers as security. These blank papers, according to the 1st defendant, were subsequently fabricated into a sale agreement for unlawful



A.S.No.626 of 2018

gains. The 1st defendant further argued that he never intended to sell the property with title.

6. Before the trial court, both parties presented oral and documentary evidence. On the plaintiff's side, Ex.A.1 to Ex.A.3 were marked, and the plaintiff was examined as P.W.1, with three other individuals examined as P.W.2 to P.W.4. On the defendants' side, the 1st defendant was examined as D.W.1, though no exhibits were marked. The court also marked documents as Ex.X1 to Ex.X3.

7. Upon considering both the oral and documentary evidence, the learned trial judge framed five issues and ultimately held that an agreement existed between the plaintiff and the 1st defendant, and that the 1st defendant had entered into this agreement on behalf of the 2nd and 3rd defendants through a power of attorney. However, the plaintiff had not paid the balance amount within the stipulated period. Approximately two years later, he issued a notice calling upon the 1st defendant to execute the sale deed, to which the 1st defendant responded with a denial in a reply notice. Nearly seven months later, the suit was filed. Even at the time of filing the suit, the plaintiff did not deposit the balance amount, failing to prove his readiness and willingness to perform his part of the agreement. Thus, the relief of specific performance



A.S.No.626 of 2018

was not granted. However, since the 1st defendant admitted receiving Rs.2,00,000/-, the court ordered that this amount be refunded with interest as an advance payment. Challenging these findings, the plaintiff has now preferred this appeal.

8. The brief facts of the case are as follows: The 1st defendant is the owner of 2.03 acres, while the remaining 4.5 acres belong to the 2nd and 3rd defendants, from whom she had obtained a Power of Attorney, marked as Ex.A1. Based on this, she entered into a sale agreement on 13.12.2009 regarding the suit properties. The sale consideration was set at Rs.6,25,000/- per acre, totaling Rs.12,96,875/- of which Rs.2,00,000/- was paid as an advance. The remaining balance of Rs.10,96,875/- was to be paid within three months. However, the 1st defendant did not take steps to measure the land as agreed and attempted to sell the property to third parties. Upon learning of this, the plaintiff issued a notice on 21.05.2012, calling upon the 1st defendant to execute the sale deed. The 1st defendant / 1st responded with a denial on 20.06.2012. Consequently, the suit was filed due to the delay caused by the 1st defendant in executing the sale deed, and the plaintiff sought relief of specific performance.



WEB COPY 9. The 2nd and 3rd defendants had executed a general Power of Attorney in favor of the 1st defendant. According to the terms of the sale agreement (Ex.A1), the 1st defendant had agreed to sell the suit property for Rs.12,96,875/-, with three months set as the time for contract performance. Ex.A1 was marked as the sale agreement. The 1st defendant, however, denied the sale agreement and contended that she had merely borrowed Rs.2,00,000/- from the plaintiff, who was in the money lending business, and that he had obtained her signatures on blank papers, which were later fabricated into the sale agreement. She maintained that she never intended to sell the properties.

10. Upon considering the submissions from both sides, the points to be decided are as follows:

“i. Whether the Ex.A1 sale agreement between the plaintiff and the 1st defendant is genuine and valid.

ii. Whether the plaintiff was always ready and willing to perform his part of the agreement.

iii. Whether the alleged loan borrowed by the 1st defendant is sustainable or not.”

11. To seek the equitable remedy of specific performance, the plaintiff approached this Court. The initial burden is on the plaintiff to prove the



A.S.No.626 of 2018

existence of a valid agreement with the 1st defendant and to demonstrate his readiness to perform his part of the contract. Accordingly, issues no. 1 and 2 were answered as such.

12. The suit property belongs to defendants 1 to 3, which is an admitted fact. Defendants 2 and 3 gave a Power of Attorney to the 1st defendant, which is also an undisputed fact and was marked as Ex.X1.

13. The contention of the 1st defendant is that she borrowed a loan of Rs.2,00,000/- from the plaintiff, who is a moneylender. At that time, she allegedly signed blank papers, which the plaintiff then fabricated for unlawful gain. During cross-examination, she admitted to the signature but stated that the papers were blank when she affixed her signature. On examining Ex.A1, the signatures found on the document appeared consistent and not suspicious, supporting the authenticity of the agreement. Witness P.W.2, who was examined, deposed that the property details were provided by the 1st defendant, and the description of the properties suggests that without a title deed, such details could not have been specified. The learned trial Judge's findings on this matter are well-reasoned and need no interference.

<https://www.mhc.tn.gov.in/judis> 14. Therefore, the 1st defendant has not proven that the sale agreement,



A.S.No.626 of 2018

Ex.A1, was fabricated by the plaintiff. The findings rendered by the learned trial Judge are valid, and accordingly, issue number 3 is answered.

15. Regarding the plaintiff's entitlement to specific performance, to avail this remedy under Section 16(c) of the Specific Relief Act, the plaintiff must demonstrate that he was always ready and willing to perform his part of the agreement. Since the Court concluded that there was indeed an agreement between the plaintiff and the 1st defendant, as per the recitals, a balance of Rs.10,96,875/- was to be paid by the plaintiff to the 1st defendant within three months from the date of the agreement, dated 13.12.2009. This three-month period ended on 12.04.2010. However, the plaintiff issued a notice only on 21.05.2012, nearly two years after the stipulated period had lapsed. The 1st defendant replied to this notice on 20.06.2012. Both the notice and the reply are marked as Exs.A2 and A3, respectively, which is undisputed. The suit was then filed in February 2013, approximately seven months after the reply notice.

16. Section 16(c) of the Specific Relief Act:

"16. Personal bars to relief:- Specific performance of a contract cannot be enforced in favour of a person -



(a)

(b)

(c) *[Who fails to prove] that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.*

Explanation :- For the purpose of clause (c)

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court;

(ii) the plaintiff [must prove] performance of, or readiness and willingness to perform, the contract according to its true construction."

17. Summing up all the facts, the learned counsel for the defendants argued that the plaintiff failed to prove his readiness and willingness to perform his part of the agreement under the law. The plaintiff is required to show that he was always ready from the date of the agreement until the filing of the suit, which he failed to do. Therefore, the plaintiff is not entitled to the relief of specific performance.

18. In reply, the learned counsel for the plaintiff submitted that the 1st defendant was required to level and measure the property and submit the original records, which he failed to do, and he also admitted to selling the property to a third party. For this reason, the plaintiff issued a prior notice and made oral requests to the defendants to execute the sale deed by accepting the remaining consideration. However, there is no evidence on the



A.S.No.626 of 2018

plaintiff's part to prove these oral requests. As rightly pointed out by the defendants' counsel, at the time of filing the suit, the plaintiff did not deposit the remaining balance, which the learned trial Judge correctly observed. The plaintiff's conduct indicates that he did not have sufficient funds to fulfill his part of the agreement, which likely led to the delay in issuing the notice two years later. Furthermore, even at the time of filing the suit, the plaintiff did not establish that he possessed sufficient funds to pay the balance amount.

19. The learned counsel for the appellant/plaintiff argued that the defendants failed to measure and level the property, causing the delay. However, there were no such terms properly executed between the parties. Even otherwise, the plaintiff did not prove his readiness and willingness from the date of the agreement until the filing of the suit, nor did he demonstrate that he had sufficient means to pay the remaining sale consideration. Consequently, the plaintiff has not shown that he was always ready and willing to perform his part of the contract, a conclusion rightly reached by the learned trial judge when considering issue number 5, which requires no interference from this Court.

20. Since the plaintiff failed to prove his readiness and willingness, he is not entitled to the relief of specific performance, as rightly concluded by the



A.S.No.626 of 2018

trial Court, and this Court finds no reason to interfere with that conclusion.

Accordingly, all the three points are answered.

21. Notably, the 1st defendant admitted to receiving a sum of Rs.2,00,000/- from the plaintiff. In light of this, the defendants are directed to refund Rs.2,00,000/- (Rupees Two Lakhs Only) with 12% interest from the date of the agreement until the filing of the suit, and thereafter at 6% interest until the amount is realized, as rightly held by the learned trial Judge, and the amount is to be paid within three months from the date of receipt of a copy of this order. The findings rendered by the trial court are confirmed, and the suit is dismissed.

22. Accordingly, this appeal suit is dismissed. There shall be no order as to costs.

21.11.2024

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

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To

1. The III Additional District Judge, Vellore,

<https://www.mhc.tn.gov.in/judis>



A.S.No.626 of 2018

Tirupattur.

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

T.V.THAMILSELVI, J.



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A.S.No.626 of 2018

A.S.No.626 of 2018

21.11.2024