



S.A.No.815 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.815 of 2018

Lakshmanaswamy (Died)

1. Kothandaraman
2. Krishnaveni
3. Radhakrishnan
4. Rajeswari

... Appellants

Vs.

Sundari

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 21.06.2017 passed in A.S. No.6 of 2016, on the file of the Principal District Court, Puducherry, upholding the decree and judgment dated 21.01.2016 passed in O.S.No.61 of 2007, on the file of the Principal Sub Court, Puducherry.

For Appellants	: Mr.T.Dhanyakumar
For Respondent	: Mr.P.Veeraraghavan



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JUDGMENT

The defendants who failed in both the Courts below have filed the present second appeal. The respondent / plaintiff filed the suit in O.S.No.61 of 2007, before the Principal Sub Court, Puducherry, for specific performance of contract.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3.The case of the plaintiff in a nutshell is as follows :

The defendants 1 and 2 agreed to sell their property situate in Block No.17, T.S. No.3, Cad No.857, R.S.No.190/6, Door No.53, Selvaraj Chettiar Street, Vaithikuppam measuring 2400 sq.ft., in favour of the plaintiff. Accordingly, an agreement of sale was entered into between the plaintiff and the defendants on 13.04.1994 (Ex.A4) for a total sale consideration of Rs.1,25,000/-, out of which, the plaintiff paid a



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sum of Rs.10,000/- towards advance on the same day. The defendants agreed to demarcate the property intended to be sold in favour of the plaintiff. The plaintiff also subsequently paid a sum of Rs.1,00,000/- on various dates and thus the defendants have received a sum of Rs.1,10,000/- towards the sale consideration. No time limit was fixed for performance of the contract. While so, on 25.08.1995 when the suit property was measured and demarcated, it was found that there was an excess of 600 sq.ft. of land and therefore, a supplementary sale agreement dated 25.08.1995 (Ex.A5) was entered into between the parties for the excess land and the consideration was fixed as Rs.60,000/-. The plaintiff paid a sum of Rs.50,000/- on various dates. The plaintiff was always ready and willing to perform her part of the contract by paying the balance sale consideration of Rs.5,000/-. However, the defendants did not come forward to receive the balance sale consideration and execute the sale deed in favour of the plaintiff. They did not produce the title deeds of the suit property. Therefore, the plaintiff was constrained to issue a legal notice dated 11.10.2006 (Ex.A6) to the defendants calling upon them to execute a sale deed in her favour.



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The defendants received the said notice as is evidenced by the postal acknowledgment card (Ex.A7 and Ex.A8). However, the defendants did not come forward to execute the sale deed in favour of the plaintiff and hence the suit.

4. The suit was resisted by the defendants on the following grounds:

- i. It is true that an agreement of sale was entered into between the plaintiff and the defendants on 13.04.1994 and the plaintiff paid a sum of Rs.10,000/- towards advance.
- ii. The defendants never agreed to sell 600 sq.ft. of land in favour of the plaintiff.
- iii. The plaintiff was not ready and willing to perform her part of the contract.
- iv. The suit is barred by limitation and hence, the suit is liable to be dismissed.



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decree and judgment dated 21.01.2016, on the following grounds:-

- i. Though the defendants have denied the execution of the second sale agreement dated 25.08.1995 (Ex.A5), they did not raise any objection at the time of marking the said document.
- ii. The suit is not barred by limitation as per Article 54 of the Limitation Act, since the plaintiff had issued the notice on 11.10.2006.
- iii. Time is not the essence of the contract and the plaintiff had already paid a sum of Rs.1,80,000/-, out of total sale consideration of Rs.1,85,000/-. Thus the plaintiff has proved her readiness and willingness to perform her part of the contract.

8. Aggrieved over the decree and judgment passed by the trial court, the defendants 2 to 5 filed an appeal in A.S. No.6 of 2016, before the Principal District Court, Puducherry. The learned Principal District Judge, Puducherry, after analysing the evidence on record, upheld the findings recorded by the trial court vide her decree and judgment dated 21.06.2017, as against which the present second appeal is filed.



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9. At the time of admission the following substantial questions of law were framed :

"(1)Whether the suit filed on 04.04.2007 to enforce the Agreement of Sale dated 13.04.1994 (Ex.A.4) and Agreement of Sale dated 25.08.1995 (Ex.A.5) is barred by limitation?

(2)Whether Ex.A.5 Agreement of Sale is enforceable against the 1st defendant he being not signatory to Ex.A.5?

(3)Whether the suit is liable to be dismissed for mis-joinder of causes of action for filing the combined suit on the basis of Ex.A4 and Ex.A.5?"

10. Heard Mr.T.Dhanyakumar, learned counsel for the appellants and Mr.P.Veeraraghavan, learned counsel for the respondent.

11. Mr.T.Dhanyakumar, learned counsel for the appellants contended that both the sale agreements were executed during the year 1994 and 1995 and the plaintiff had filed the suit only in the year 2007.



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Therefore, the suit is barred by limitation as per Article 54 of the Limitation Act. He would also contend that the plaintiff has not proved her readiness and willingness to perform her part of the contract and in the circumstances, both the Courts below have committed an error in decreeing the suit in favour of the plaintiff.

12. Per contra Mr.P.Veeraraghavan, learned counsel for the respondent / plaintiff contended that the plaintiff has been in possession of the suit property since 1950 and both the Courts below by a well reasoned orders had decreed the suit filed by the plaintiff. Therefore, there is no reason for this Court to interfere with the concurrent findings recorded by both the Courts below.

13. At the outset it may be observed that the execution of the sale agreement dated 13.04.1994 (Ex.A4) by the defendants 1 and 2 in favour of the plaintiff is not denied by them. The defendants also admitted that the sale consideration was fixed as Rs.1,25,000/-, out of which, the plaintiff paid a sum of Rs.1,10,000/-. However, it was



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contended by the defendants that they did not execute the supplementary sale agreement dated 25.08.1995 (Ex.A5) in favour of the plaintiff. The contention of the plaintiff is that when the property was measured it was found that there was an excess of 600 sq.ft of land and therefore, both the parties entered into the supplementary sale agreement (Ex.A5). A perusal of Ex.A5 shows that several endorsements for receipt of payments from the plaintiff on various dates are found. The second defendant had not disputed his signature on these endorsements. The defendants have not also denied the receipt of Rs.1,80,000/- towards the sale consideration. The sale consideration fixed in both these two contracts under Ex.A4 and Ex.A5 was Rs.1,85,000/-. The balance sale consideration to be paid by the plaintiff is only a sum of Rs.5,000/-. In the circumstances, it cannot be stated that the plaintiff was not ready and willing to perform her part of the contract.

14. The plaintiff had specifically contended that the defendants did not produce the original title deeds to her in respect of the property. Therefore, she issued a notice dated 11.10.2006 (Ex.A6) to the



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defendants calling upon them to perform their part of the contract by executing the sale deed in her favour. This notice was actually received by the defendants 1 and 2 as is evidenced by the postal acknowledgment cards Ex.A7 and Ex.A8. However, the defendants did not send any reply to the plaintiff.

15. It is pertinent to point out that so far as immovable properties are concerned time is not the essence of the contract. Moreover, in the instant case, the parties had never fixed any time frame for performing the contract. As per Article 54 of the Limitation Act the period of limitation is three years from the date fixed for performance or if no such date is fixed, when the plaintiff has notice that the performance by the other party is refused. In the instant case, even after receipt of the notice dated 11.10.2006 (Ex.A6) the defendants did not send any reply and therefore, the plaintiff filed the suit. In the circumstances, it cannot be contended that the suit is barred by limitation. Though it was contended by the defendants that they did not execute the supplementary sale agreement (Ex.A5) it was admitted by the second



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defendant that he and his father signed in both the sale agreements (Ex.A4 and Ex.A5). It is pertinent to point out that Ex.A4 and Ex.A5 pertain to the very same property and after measuring the same it was found that there was an excess of 600 sq.ft. of land. Since a part of the property was left out in Ex.A4 it was covered in Ex.A5. Therefore, Ex.A5 is only the continuation of Ex.A4 and it cannot be stated that there is mis-joinder of causes of action.

16. Both the Courts below had analysed the evidence on record and came to a conclusion that the plaintiff was ready and willing to perform her part of the contract and that the suit is not barred by limitation. Therefore the substantial questions of law are answered against the appellants.

17. In the result,

- i. the Second Appeal is dismissed. No costs.



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ii. The decree and judgment dated 21.06.2017 passed in A.S. No.6 of 2016, on the file of the Principal District Court, Puducherry, and the decree and judgment dated 21.01.2016 passed in O.S.No.61 of 2007, on the file of the Principal Sub Court, Puducherry, are upheld.

14.11.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

1. The Principal District Court, Puducherry.
2. The Principal Sub Court, Puducherry.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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