

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2022

Delivered on : 29.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.565 of 2015

and

M.P.No.1 of 2015

1.Lakshmi Ammal
2.Viswanathan
3.Amaresan

... Appellants

Vs.

1.Gejaraj (died)
2.Kuppuswamy
3.Nagalingam
4.Manimegalai
5.Ilakiya

... Respondents

[R4 and R5 brought on record as legal heirs of the deceased R1 vide Court order dated 31.03.2022 made in CMP.No.4420 of 2022 in S.A.No.565 of 2015]

Second Appeal filed under Section 100 of Civil Procedure Code, 1908, against the decree and judgment made in A.S.No.146 of 2014 dated 03.03.2015, on the file of the Sub-Court, Arakkonam, Vellore District, reversing the judgment and decree, dated 22.04.2014, made in O.S.No.120 of 2007 on the file of the District Munsif's Court, Arakkonam, Vellore District.

For Appellants : M/s.Meera Gnanasekar

For Respondents : Mr.G.Jeremiah

J U D G M E N T

The defendants are the appellants in this Second Appeal.

2.The 1st respondent/plaintiff filed a suit seeking for the relief of specific performance and for the relief of permanent injunction restraining the defendants from interfering with the possession and enjoyment of the suit properties and also restraining the defendants from alienating the suit properties.

3.The case of the plaintiff is that the suit properties were owned by the defendants 2 to 5. They executed a Power of Attorney document in favour of the 1st defendant. The 1st defendant, in his capacity as the Agent of the defendants 2 to 5, entered into an agreement of sale with the plaintiff on 12.05.2004. This document was marked as Ex.A3. The total sale consideration was fixed at Rs.50,000/- and a sum of Rs.40,000/- was paid as advance even on the date of the agreement. The further case of the plaintiff

is that he was also put in possession of the suit properties and the original parent documents were also handed over to him. As per the sale agreement, the balance sale consideration of Rs.10,000/- must be paid within a period of three years and the sale transaction must be completed.

4.The plaintiff pleaded that he was always ready and willing to perform his part of the contract and had approached the 1st defendant repeatedly to accept the balance sale consideration and to execute the sale deed in favour of the plaintiff.

5.The plaintiff further pleaded that the 1st defendant was deliberately evading execution of the sale deed in favour of the plaintiff and all of a sudden, he informed the plaintiff that the defendants have cancelled the Power of Attorney document. In the meantime, attempts were made to disturb the possession and enjoyment of the suit properties and the defendants were also taking steps to alienate the suit properties and create third party rights. Left with no other option, the suit came to be filed seeking for the reliefs mentioned *supra*.

6.The 1st defendant filed a written statement and took a stand that a sale agreement was entered into with the plaintiff and the possession was handed over along with title documents to the plaintiff. However, the plaintiff was not ready and willing to pay the balance sale consideration and had also accepted to hand over the possession of the suit properties. The 1st defendant, therefore, asked the plaintiff to get back the advance amount from the 2nd and 3rd defendants. In the meantime, the Power of Attorney given in favour of the 1st defendant was also cancelled. Accordingly, the 1st defendant sought for the dismissal of the suit.

7.The other defendants filed a written statement and took a stand that the 1st defendant did not act as per the conditions stipulated in the Power of Attorney document and did not properly maintain the account from the suit properties and the income yielded by the suit properties was also not given to the 2nd and 3rd defendants. He was acting against the interests of the 2nd and 3rd defendants and hence, the Power of Attorney given in favour of the 1st defendant was revoked on 14.03.2007. A further defence was taken to the effect that the sale agreement is a fabricated document, which was created on collusion between the plaintiff and the 1st defendant and with an

intention to grab the suit properties. Therefore, it was pleaded that the suit itself was orchestrated by the 1st and 5th defendants and the plaintiff is merely a name-lender. In view of the same, they sought for the dismissal of the suit.

8.The trial Court, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, dismissed the suit through judgment and decree dated 22.04.2014. Aggrieved by the same, the plaintiff filed an appeal before the Sub-Court, Arakkonam, in A.S.No.146 of 2014. The lower Appellate Court, on re-appreciation of oral and documentary evidence, allowed the appeal through judgment and decree dated 03.03.2015 and thereby, the judgment and decree of the trial Court was set aside. Consequently, the suit was decreed in favour of the plaintiff. Aggrieved by the same, the defendants have filed this Second Appeal.

9.When the Second Appeal was admitted, the following substantial question of law was framed by this Court :

“Whether the Lower Appellate Court is justified in granting the decree for specific performance when the plaintiff has not complied with the statutory requirement of establishing his readiness and willingness as contemplated under Section 16(c) of the Specific Relief Act?”

10. During the course of arguments, the following additional substantial question of law was framed by this Court and the counsel appearing on either side were asked to address their submissions on the additional substantial question of law :

“Whether the lower appellate Court failed to appreciate the fact that the plaintiff was put in possession of the property in part performance of the Agreement of Sale dated 12.05.2004 as contemplated under Section 53A of the Transfer of Property Act and whether this agreement can be admitted in evidence without the same being registered ?”

11. Heard M/s.Meera Gnanasekar, learned counsel for the appellants and Mr.G.Jeremiah, learned counsel for the respondents.

12. This Court carefully considered the materials on record and the findings rendered by both the Courts below.

13. The trial Court gave a finding that the defendants 2 to 4 cannot wriggle out of the agreement entered into by their Power of Attorney Agent and challenge the same as not binding on them. That stand taken by the defendants 2 to 4 was rejected.

14.The trial Court thereafter went into the issue of the terms of the agreement and found that the three year period given for the payment of the balance sale consideration of Rs.10,000/- sounds unnatural. That apart, the trial Court also found that there was absolutely no evidence to establish the readiness and willingness on the part of the plaintiff to perform his part of the contract. Accordingly, the relief sought for by the plaintiff was rejected.

15.The lower Appellate Court also concurred with the finding of the trial Court with regard to the genuineness of the sale agreement and found that the 1st defendant had executed the same in his capacity as the Power of Attorney Agent of the defendants 2 to 4. Thereafter, the lower Appellate Court went into the issue of the contents of the sale agreement and found that the sale agreement itself provided for three year period to pay the balance sale consideration of Rs.10,000/- and this period comes to an end only on 11.05.2007. However, the plaintiff had filed the suit well before time on 16.04.2007 itself. Therefore, the lower Appellate Court reversed the finding of the trial Court and held that the sale agreement will bind the 2nd and 3rd defendants and that the plaintiff was also always ready and willing to perform his part of the contract. Accordingly, the appeal was allowed and

the plaintiff was directed to deposit the balance sale consideration of Rs.10,000/- within a period of one month. It is also reported that the balance sale consideration has also been deposited by the plaintiff before the trial Court.

16.Both the Courts below have concurrently upheld the genuineness of the sale agreement marked as Ex.A3. This sale agreement was executed by the 1st defendant in his capacity as the Power Agent of defendants 2 to 4. The act of the Agent will bind the Principal and consequently, the defendants 2 to 4 are bound by the sale agreement executed by their Power of Attorney Agent. If the sale agreement is upheld, the terms of the sale agreement must also be upheld. Just because the sale agreement had fixed three year period for the payment of the balance sale consideration of Rs.10,000/- by the plaintiff, that by itself will not be a ground to deny the relief of specific performance. When the parties have consciously stipulated such a clause in the agreement, it is not for the Court to disregard the same just because the Court feels it to be unconscionable. Therefore, the trial Court was not right in doubting the sale agreement after having upheld the genuineness of the document, which was found to be binding on the defendants 2 to 4. This finding was rightly reversed by the lower Appellate

Court.

17.The next issue to be gone into is regarding the fact as to whether the plaintiff was ready and willing to perform his part of the contract. The total sale consideration was fixed as Rs.50,000/- and out of the same, Rs.40,000/- was paid as advance even as on the date of the agreement. This fact was admitted by the 1st defendant even in his written statement. The plaintiff claims that the possession of the suit properties was handed over to him and the original title deeds were also handed over to him. The original title deeds were also marked as Exs.A1, A4 and A5. The agreement of sale had fixed three year period for payment of the balance sale consideration of Rs.10,000/-. This period will come to an end on 11.05.2007. The plaintiff, in more than one place, has pleaded that he was continuously asking the 1st defendant to receive the balance sale consideration and to execute the sale deed in his favour. The plaintiff also pleaded that he requested the defendants 2 to 4 during the last week of March, 2007, to receive the balance sale consideration and to execute the sale deed in his favour. Since the defendants were not coming forward to receive the balance sale consideration, the plaintiff proceeded to file the suit on 16.04.2007.

18.The learned counsel for the appellants submitted that the plaintiff did not prove that he was ready and willing to perform his part of the contract and not even a pre-suit notice was issued before the suit was filed. In the present case, it was the 1st defendant who was continuously in touch with the plaintiff and his Power of Attorney seems to have been cancelled only on 14.03.2007. Till then, there was no occasion for the plaintiff to interact with the defendants 2 to 5. After coming to know of the revocation of the Power of Attorney, the plaintiff had attempted to get in touch with the defendants 2 to 4 during the last week of March, 2007 requesting them to execute the sale deed in his favour after receiving the balance sale consideration. A specific averment in this regard is found at Para No.11 of the plaint and the plaintiff, who examined himself as P.W.1, has also spoken about the same. Since the period of three years was coming to an end on 11.05.2007, the plaintiff thought it fit to immediately institute the suit on 16.04.2007. Under such circumstances, non-issuance of a pre-suit notice cannot be put against the plaintiff. Law does not expect that, in every case, there should be a pre-suit notice before a suit is filed. It will depend upon the facts and circumstances of each case and there cannot be a strait-jacket formula to mandate the issuance of pre-suit notice in every case. This is one

such case, where, in view of the terms of the agreement, the plaintiff was forced to institute the suit without issuing the pre-suit notice, since the three year period was coming to an end.

19.The facts of the present case is squarely covered by the recent judgment of the Hon'ble Supreme Court in ***P.Ramasubbamma v. V.Vijayalakshmi & Others [Civil Appeal No.2095 of 2022, dated 11.04.2022]***. The relevant paragraph in the judgment is extracted hereunder:

“5.2.Considering the fact that original defendant No. 1 – vendor – original owner admitted the execution of agreement to sell dated 12.04.2005 and even admitted the receipt of substantial advance sale consideration, the learned Trial Court decreed the suit for specific performance of agreement to sell dated 12.04.2005. Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the plaintiff – vendee. Therefore, as such the learned Trial Court rightly decreed the suit for specific performance of agreement to sell. The High Court, was not required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration, once the vendor had specifically admitted the

execution of the agreement to sell and receipt of the advance sale consideration; thereafter no further evidence and/or proof was required.”

20. Once the execution of the agreement of sale and the receipt of the substantial amount towards the sale consideration is established, there is nothing more to be proved by the agreement holder to establish his readiness and willingness to perform his part of the contract. The finding of the lower Appellate Court in this regard does not suffer from any perversity and it does not require the interference of this Court. This Court holds that the plaintiff had established the execution of the sale agreement and also the payment of substantial amount towards sale consideration and also his readiness and willingness to perform his part of the contract. Therefore, the natural consequence would be that the plaintiff will be entitled for the relief of specific performance. The substantial question of law framed by this Court is answered accordingly.

21. In the present case, the plaintiff had pleaded and also restated in his evidence that possession was handed over to him even on the date of the agreement. Therefore, the plaintiff was trying to avail the protection under Section 53-A of the Transfer of Property Act. In the present case, Ex.A3

sale agreement is an unregistered document. When protection is sought for under Section 53-A, law expects that the sale agreement can be acted upon only if it is registered. In this case, this Court has already held that the plaintiff was ready and willing to perform his part of the contract. Hence, the question would be as to whether, Ex.A3 sale agreement can be acted upon when the same being an unregistered document. The answer to this issue has been given by the Hon'ble Supreme Court in *Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar and Others* reported in **2018 (5) L.W. 363**.

The relevant portions are extracted hereunder :

“9.In other words, the core issue to be answered in the present appeal is whether the suit agreement dated 9th July 2003, on the basis of which relief of specific performance has been claimed, could be received as evidence as it is not a registered document. Section 17(1A) of the 1908 Act came into force with effect from 24th September, 2001. Whereas, the suit agreement was executed subsequently on 9th July, 2003. Section 17 (1A) of the 1908 Act reads thus:

“17.Documents of which registration is compulsory- (1) *The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI*

of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

XXX XXX XXX

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

XXX XXX XXX”

*10. On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53A of the 1882 Act. The issue, in our opinion, is no more res integra. In *S. Kaladevi Vs. V.R. Somasundaram and Ors.*, MANU/SC/0246/2010 : (2010) 5 SCC 401 this Court has re-*

stated the legal position that when an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act. Section 49 of the 1908 Act reads thus:

“49.Effect of non-registration of documents required to be registered.- *No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall-*

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.”

11.In the reported decision, this Court has adverted to the principles delineated in K.B.Saha and Sons Private Limited

Vs. Development Consultant Limited, MANU/SC/7679/2008 : (2008) 8 SCC 564 and has added one more principle thereto that a document is required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance. In view of this exposition, the conclusion recorded by the High Court in the impugned judgment that the sale agreement dated 9th July, 2003 is inadmissible in evidence, will have to be understood to mean that the document though exhibited, will bear an endorsement that it is admissible only as evidence of the agreement to sell under the proviso to Section 49 of the 1908 Act and shall not have any effect for the purposes of Section 53A of the 1882 Act. In that, it is received as evidence of a contract in a suit for specific performance and nothing more. The genuineness, validity and binding nature of the document or the fact that it is hit by the provisions of the 1882 Act or the 1899 Act, as the case may be, will have to be adjudicated at the appropriate stage as noted by the Trial Court after the parties adduce oral and documentary evidence.”

22.It is clear from the above that, even where the sale agreement is not registered, the document can be received as evidence for considering the relief of specific performance and the inadmissibility will confine itself only to the protection sought for under Section 53-A of the Transfer of Property

Act. It is therefore held that, even though the sale agreement was not registered, it can be acted upon as an evidence for deciding the relief of specific performance. The additional substantial question of law framed by this Court is answered accordingly.

23.In view of the above discussion, this Court does not find any ground to interfere with the judgment and decree of the lower Appellate Court. The substantial questions of law framed by this Court are answered against the appellants.

24.In the result, this Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

29.04.2022

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Internet : Yes

Index : Yes

Speaking order / Non-speaking order

N. ANAND VENKATESH, J.

mkn

To

1.The Sub-Judge,
Arakkonam,
Vellore District.

2.The District Munsif's Court,
Arakkonam,
Vellore District.

Judgment in
S.A.No.565 of 2015

29.04.2022