S. Maruthai Vs Padmini Ramachandran

Court: Madras High Court

Date of Decision: April 23, 1993

Acts Referred: Specific Relief Act, 1963 â€" Section 16(c)

Hon'ble Judges: Swamidurai, J; Mishra, J

Bench: Division Bench

Advocate: Vittal V. Souli, S. Narasimhan, Mr. M.V. Krishnan in Cont. app. 400 of 1992, for the Appellant; S. Jegannathan, R. Damodharan, Miss Rani (Advocte-Commissioner), for the Respondent

Final Decision: Dismissed

Judgement

Mishra, J.
This appeal has been preferred against the judgment of a learned single Judge refusing to grant a decree for specific

performance of contract for sale of an immovable property. Defendant/respondent is the owner of the suit property at No. 11, Harrington Road,

Madras. She entered into an agreement with the plaintiff on 12.9.1979 to sell that property for a consideration of Rs. 3,80,000/- and received an

advance of Rs. 10,000/- from the plaintiff. It is said, however, by the plaintiff/appellate that it was agreed that the plaintiff would continue to

prosecute the suits for eviction of some tenants which suits were pending on the date of the agreement and for that purpose, the plaintiff/appellant

could get his name substituted in place of the name of the defendant/respondent. The agreement stipulated that the sale would be completed within

six months from the date of the agreement.

2. The plaintiff/appellant has averred that at the end of the five months, he wrote to the defendant to have the agreement extended by three months

but the defendant refused to comply with the request, since he found that she was even trying to sell the property to third party for a higher price,

and since the time was not the essence of the contract, and he was always ready and willing to perform his part of the contract, he brought the suit

for specific performance of the contract.

3. In the written statement, the defendant admitted the agreement and receipt of advance but stated that the parties had intended that the time of six

months for the completion of the sale was the essence of the contract. Defendant disputed in the written statement the claim of the plaintiff that he

was always ready and willing to perform his part of the contract.

4. The plaintiff"s case in the plaint has been that the reason, why at the end of the five months he wrote to the defendant to have the agreement

extended by three months, was that the defendant would give documents of title, etc. for inspection and arrange for the necessary income tax

clearance certificate but the defendant/respondent failed to do that. Denying this allegation in the plaint, the defendant/respondent has stated that

she is a permanent resident of Bangalore and she had sent her title deeds to her Auditor at Madras to enable the plaintiff to have inspection, but

however, the plaintiff was not eager to perform his part of the contract, as the suits for eviction were pending and was not willing to purchase the

property until the suits for eviction were decreed. He took no steps to get himself substituted as agreed between the parties as plaintiff in the suits

for eviction and instead ought extension of time for the completion of the sale deed by three months.

5. The trial court has noted in its Judgement as follows:

There is no dispute that the purchaser, namely the plaintiff, had knowledge of the litigation between the absentee landlady and the tenants and that

the eviction suit was three years old on the date of the agreement. The plaintiff offered to purchase the property which was under litigation, and

there is no mention in the agreement about handing over of possession. On the other hand, under the agreement the plaintiff was permitted to

substitute himself as a purchaser in the suit and carry on the litigation against the tenants. Thus, with the full knowledge of the litigation the plaintiff

executed this agreement of sate undertaking to complete the transaction within six months from the date of the agreement. In short, in the very

nature of things, there is no question of handing over of physical possession by the vendor to the Vendee and this is an important factor to be borne

in mind in appreciating the evidence whether the plaintiff was or was not ready to perform his part of the contract. The plaintiff has given evidence

as P.W. 1, and he has repeated his averments in the plaint stating that the title deeds of the property were not given to him for inspection by the

defendant, and therefore, the defendant is to be blamed for this. His evidence regarding the failure to give documents for inspection has been

demolished in cross-examination, let alone the evidence of the defence witnesses. Admittedly, the plaintiffs brother-in-law Rajan is a permanent

resident of Bangalore and both of diem approached the defendant in her residence at Bangalore. P.W. 1 had conceded in cross-examination that

his brother-in-law Raian who is a permanent resident of Bangalore inspected the title deeds and that the agreement was executed thereafter. What

is more, P.W. 1 further conceded that his brother-in-law got the documents from the defendant, took it to his own advocate at Bangalore and

prepared the agreement. Therefore, the plea of the plaintiff that he wanted to verify the title of the plaintiff, and therefore, there was delay on

account of non-production of the document falls flat. In fact, P.W. 1 himself had to admit in cross-examination that he has also fully satisfied about

the title of the defendant to the suit property. His own evidence clearly indicates the title deeds were inspected both by the plaintiff and his brother-

in-law who took them to their advocate at Bangalore and prepared the agreement in question. According to P.W.I, Mohammed"s Office at

Bangalore and instructions were given to the advocate both by the plaintiff and his brother-in-law. In fact, this is quite in conformity with the

conduct of the plaintiff in not sending a notice or a letter to the defendant calling upon her to produce the title deeds for inspection. The first letter

from the plaintiff to the defendant was under Ex. P 2 on 11.2.1980, i.e., five months after the agreement of sale. Even in this earlier letter, there is

no whisper about asking for inspection of documents. Now this is the only ground mentioned in the plaint and in the evidence of the plaintiff for the

non completion of the sale deed. There is no second witness to support the case of P.W. 1 and even his brother-in-law of Bangalore has avoided

the witness box. As against this, we have the evidence of the defendant as D.W. 1. She has given detailed evidence of what happened both prior

to the agreement and thereafter and her evidence is very convincing and acceptable. She is an educated lady and she has stated frankly what all

happened between the parties. In particular, D.W. 1 has stated that she was annoyed with litigation against the tenants which was then pending for

three years. She stated that, on the advice of her lawyers, she wanted to get rid of the property at Madras and requested her lawyer to make an

advertisement in the papers calling for offers in the daily newspapers and it is only after seeing the same according to D.W. 1 she was more

anxious to dispose of the property fearing the wasteful and long winding litigation against the tenants. In fact, her apprehension is quite justified, in

that, though the landlady had since succeeded both in the trial court and in the appellate court, the tenants are said to have filed a Second Appeal

which is pending in the High Court. Thus, even now, the litigation is six years old. Viewed in this background, there is nothing strange in an

absentee landlady who owns substantial properties trying to dispose of the same at the earliest opportunity. The very fact of advertisement in

papers shows her readiness for a quick sale.

D.W. 1 then stated that the plaintiff and his brother-in-law came to Bangalore and discussed the matter. She further stated that when she came to

Madras once, the plaintiff contacted her, invited her to his house for a dinner in which the defendant was the chief guest of the evening. In that

context, according to D.W. 1 she handed over for perusing the same, he gave them back to her before she left for Bangalore. D.W. 1 then says

that the negotiations took place in a very friendly way and she requested the plaintiff to have the sale deed executed at once without asking for any

time. But, the plaintiff who knows that a litigation is pending was not anxious to have the sale deed completed at the earliest opportunity and it was

at his suggestion that an agreement came into existence fixing six months time for the transaction. D.W. 1 says she was not happy in granting time.

The defendant then stated as D.W. 1 that she did not even ask for any advance from the plaintiff and she was only anxious to sell away the

property to the plaintiff without the formality of any agreement etc. According to her, she never wanted any advance, much less the nominal

advance of Rs. 10,000/- for a sale price of Rs. 3.8 lakhs. According to her, it was the plaintiff who thrust this sum of Rs. 10,000/- on her by

persuading that the date of agreement happened to be her birthday and therefore, she should not reject the same. D.W. 1 then stated that she even

took the plaintiff to the auditors, namely, Price And Company of Bangalore, in whose presence the defendant represented that the advance was

only a token amount and that she was going to complete the transaction within one month. D.W. 1 further stated that she promptly handed over the

documents to her auditors at Bangalore with instructions to send them to their Madras Office for further inspection, by the plaintiff. She further

stated that later she contacted plaintiffs brother-in-law at Bangalore for the completion of the sale but she was told that the plaintiff was busy with

the elections. Lastly, she has stated that her auditors with whom the documents were entrusted had informed her subsequently that nobody came to

see or scrutinise the documents at Madras Branch. She stoutly denied the suggestion that no documents were given for inspection to the plaintiff.

There is no reason to doubt her testimony in the sequence of events.

Her evidence is corroborated by the evidence of D.Ws. 2 and 3 D.W. 2 is a Chartered Accountant and he is a partner of R.G.N. Price and

Company of Bangalore. He has stated that the defendant is their client and he has corroborated the evidence of D.W. 1 stating that the plaintiff and

the defendant came to the auditor''s office and that she gave all the documents, namely title deeds, to the witness to be sent to their Madras Branch

Office for inspection by the plaintiff as and when necessary. D.W. 2 then stated that the plaintiff and some others came and scrutinised them.

Nothing worth mentioning was elicited in cross-examination and I do not think that D.W. 2 is giving false evidence just for supporting his client''s

case. Ex. D1 and D2 show that the title deeds were duly sent to the Madras Office for inspection.

D.W. 3 Sambasiva is an elderly man aged about 75 years and he is a senior partner of R.G.N. Price and Company of Bangalore. He has stated

that he received the title deeds from the Bangalore Office relating to the property of the defendants with instructions to allow inspection by the

plaintiff or his advocate. D.W. 3 stated that he contacted the plaintiff by phone and asked him to come and inspect the documents since they were

lying there for some time. Accordingly, the plaintiff came to the witness and wanted to take the title deeds with him to his advocates. But the

witness could not permit him to take the documents and he told the plaintiff that the inspection can be had in the office itself. According to D.W. 3

the plaintiff went away never to return and the witness after keeping them for some months sent them back to their Madras Office. He stoutly

denied the suggestion that the plaintiff never came to him. This witness had also spoken to the letters Ex. D 1 and D.2.

6. We have extracted from the judgment of the trial court, most of the discussion on the evidence of the witnesses and the case of the parties, for

no serious challenge has been made before us as to the appreciation of the evidence by the trial court. We can safely proceed, it is so stated at the

Bar, on the basis of the analysis of the evidence of the trial court. What is urged on behalf of the appellant before us, however, is that once it is

found that time is not the essence of the contract and according to him it has to be so found, for, in such agreements, time is invariably not the

essence of the contract, on facts as above it is not possible to say that the plaintiff was not ready and willing to perform his part of the contract.

7. It is indeed a case in our opinion in which unless the agreement holder/plaintiff had his doubts, there was no occasion for him to seek extension

of the period of six months, and by writing to the defendant to extend time, the plaintiff conveyed nothing but that he was not ready for the

purchase within six months-time for whatever reason. In a judgment recently delivered by a Bench to which one of us (Mishra, J.) had been a party

in Pushparani Shanmughasundaram v. Pauline Manonmant James (1993 I.L.W. 219) , it has been held that the rule of pleading and proof in S.

16(c) of the Specific Relief Act in a suit for a specific performance of a contract is not derived from the nature of the contract but solely from the

acts or conduct of the agreement holder and that the burden of proof as to any particular fact lies on that person who wishes the court to believe in

its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. The Bench has also said that the word

''prove'' in Section 16(c) of the Specific Relief Act, 1963, must be understood in the sense that the plaintiff is required to bring in support of the

fact in issue such facts, which would prove his readiness and willingness to perform his part of the contract and the court can either disbelieve it or

believe it. This judgment has also stated candidly that a mere reiteration of the words of the statute as to the readiness and willingness is not the

required averment of a fact and the statement in this behalf in the plaint should be as to the acts or conduct of the agreement holder, which alone

would satisfy the definition of a "fact" in the Evidence Act, meaning anything, state of things, or relation of things, capable of being perceived by the

sense and any mental condition of which any person in conscious.

8. A Constitution Bench of the Supreme Court in Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs., has come, it appears,

only to settle certain ambiguities which gave rise to some divergence of view. In this judgement, it is said categorically that in the case of sale of

immovable property, there is no presumption as to time being the essence of the contract. But even if it is not the obvious essence of the contract,

the court may infer that it has to be performed within a reasonable time, if the conditions are from the express terms of the contract, from the nature

of the property and from the surrounding circumstances, for example, the object of making the contract. The Court may infer the fact that the

plaintiff has not been ready and willing to perform his part of the contract. Taking notice of the facts of the case before it, the Constitution Bench of

the Supreme Court in the decision referred to above, answered the question whether the plaintiff was ready and willing in these words:

The notices which were exchanged between the parties have to be looked into in determining readiness and willingness. On 10.9.71 the plaintiff

would say through the registered notice that ready money was available for purchase of the property which was followed up by a telegram. The

stand is taken by the defendant that within 10 days from 26.8.71, the sum of Rs. 98,000/- was not paid, hence, the sum of Rs. 30,000/- stood

forfeited. The redemption of the mortgage would be done and the income tax clearance also would be obtained after the purchase of stamp paper.

Where, therefore, the plaintiff was put on notice as to the stand of the defendant with regard to payment of Rs. 98,000/- which again was

reiterated in the notice dated 16.9.73, nothing would nave been easier for the plaintiff than to pay the said sum. Instead of adopting that course

what is stated in the notice dated 24.9.71 by the plaintiff is as follows:

5. That as per agreement, your clientes has to pay all taxes, rates, municipal taxes upto the date of registration and that the previous and other

documents pertaining to the said Plot No. 30, Block "K", sanctioned plan and completion certificates from Municipal corporation of Delhi in

respect of the superstructure built on the said plot shall be handed over along with the vacant possession of first floor by 30.9.1971.

You know that 30.9.1971 is fast approaching and your clientes is still to comply with these requirements besides mentioned in para No. 2 and 3 of

the agreement.

I, therefore, call upon you to advise your clientes to comply with the requirements well before 30.9.71 or latest by 30.9.71 and obtain the further

part consideration of Rs. 98,0007- from my clientes.

30. Therefore, even as late as 24.9.71 the plaintiff was never willing to make the payment of Rs. 98,000/- In this connection, we have already seen

the oral evidence. It shows there was no readiness and willingness. We are in agreement with the conclusion of the Division Bench.

The facts of the instant case are similar to the facts of the case before the Supreme Court and the case before the Division Bench, wherein it was

held that the plaintiff has not been able to prove his readiness and willingness. It will be only going against the ratio decided and the principles so

clearly stated in the above judgments, if it is held on the facts of the instant case that the plaintiff has proved his readiness and willingness. The trial

court has opined that the plaintiff was not anxious to have the sale deed completed before the suit for possession was disposed of in favour of the

landlady, on facts which are indisputable, in these words:

In other words, the plaintiff was not anxious to have the sale deed completed before the suit for possession was disposed of in favour of the

landlady. It is but natural that the plaintiff did not want to invest Rs. 3.8 lakhs without obtaining possession of the property and that was why he

was asking for extension of time for the purpose of getting the suit disposed of. It may be recalled that handing over of possession was not

contemplated under the agreement of sale and the plaintiff agreed to purchase the property with the pending litigation and he was permitted to

substitute his name and prosecute the suit against the tenants. In short, it is clear that the plaintiff was not interested in purchasing the property till

the suit for possession pending against the tenants was disposed of.

That the plaintiff was not willing to perform his part of the contract is borne out by the further circumstance which is as follows. The absentee

landlady in a reply to the plaintiff''s letter promptly sent a communication refusing to wait any longer and called upon the plaintiff to have the sale

deed taken at once. She even offered to execute a power of attorney to effect the registration of the sale deed. In this reply Ex. P3, she had

charged the plaintiff with negligence and indifference and bluntly told him that if he did not complete the sale deed within the time already stipulated,

it will be presumed that he was not interested in honoring his part of the agreement. At least, after the receipt of Ex. P3, the plaintiff should have

arranged for the completion of the sale deed since the period was to expire on 12.3.1980. Ex. P4 is the reply by the plaintiff harping upon the

pendency of the suit and that she should come and give evidence and have the suit disposed of early.

We are in complete agreement with the above view expressed by the trial court. We find no merit in the appeal. The appeal is accordingly

dismissed. No costs.

9. Before we part with the judgement, we may indicate that learned counsel for the defendant/respondent has brought to our notice that the

defendant/respondent is ready to refund the advance paid by the plaintiff/appellant. There is nothing said, however, on behalf of the

plaintiff/appellant about it. The offer of the defendant/respondent, we record, and leave it for the plaintiff to claim the suit amount.

10. The advocate-Commissioner who has been appointed in course of the pendency of this appeal to report about the state of affairs, has been

paid her fees in part by the appellant. She has applied for additional remuneration in a sum of Rs. 5,000/- and demanded costs she incurred in

obtaining certain photographs. The successful party in our view should pay to the Commissioner the additional remuneration. Accordingly, we

order for the payment of Rs. 5,000/- in all to the advocate Commissioner by the defendant/respondent within two weeks from today. Regarding

the contempt application, even though there are circumstances to show that the defendant/respondent caused demolition of the superstructure in

the teeth of the order of this court to maintain status quo, since we have found in her favour in the appeal that any decree for specific performance

of contract cannot be granted to the plaintiff/appellant, we do not propose to proceed in contempt against the defendant/respondent. The rule

accordingly is discharged and the contempt application is dismissed.