
(2001) 3 MLJ 637

Madras High Court

Case No: S.A. No. 1077 of 1981

Ayisha Beevi

APPELLANT

Vs

Dhanalakshmi and
Others

RESPONDENT

Date of Decision: Oct. 9, 2001

Acts Referred:

Limitation Act, 1963 " Article 113, 4#Specific Relief Act, 1963 " Section 16#Transfer of
Property Act, 1882 " Section 58

Citation: (2001) 3 MLJ 637

Hon'ble Judges: A. Kulasekaran, J

Bench: Single Bench

Advocate: Chitra Sampath, for the Appellant; S.P. Subramanian, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The 1st defendant in O.S No.777 of 1981 on the file of the District Munsif Court, Chidambaram is the appellant in this second appeal The

plaintiffs in the suit are the respondents in this second appeal. For the sake of convenience, the parties are referred to by the nomenclature given to

them in the suit.

2. The plaintiffs have filed the suit for specific performance of an agreement to reconvey the property mentioned in the schedule of the plaint. The

case of the plaintiffs is as follows: The suit property belonged to the first plaintiff was sold by him to the first defendant on 29.7.1971. On the very

same day, the first plaintiff and the first defendant had entered into an agreement for reconveyance thereby on payment of Rs.15,000 by the first

plaintiff after seven years but before the expiry of ten years from 29.9.1971 the first defendant reconveyed the said property. Though the first

plaintiff has approached the first defendant, after the expiry of seven years but before the expiry of ten years to reconvey the property and receive

Rs.15,000 she failed to comply with. On 28.7.1981, the first plaintiff after informing the 1st defendant waited in the S.R.O. Parangipettai for

registration of re-conveyance deed, but she did not turn up, hence the suit was filed on 29.7.1981. Pending suit, the first plaintiff died and the

plaintiffs 2 to 6 were brought on record as legal heirs.

3. The 1st defendant has contested the suit stating that the plaintiff had given up his right of re-purchase in the Panchayat held in 1976 as he has

delivered only 1.33 acres as against 2.00 acres mentioned in the said sale deed dated 29.7.1971; moreover, the first plaintiff was incapable of

paying the amount of Rs.15,000 and he was never ready and willing to pay the same, as such, the plaintiffs were not entitled to the prayer sought

for. The first defendant sold 82 1/2 cents in the said 1.33 acres to one Habija Beevi on 24.12.1980 Ex.BI, who was not impleaded as party hence

suit was liable to be dismissed as non-joinder of necessary party.

4. The trial Court dismissed the suit on the ground that the entire extent of 2 acres were not delivered and the first plaintiff had retained 67 cents in

lieu of re-purchase, which was agreed by him in the Panchayat held in 1976, that the plaintiffs were incapable of paying Rs. 15,000 and they were

never ready and willing to perform the contract, which was evident that they have not deposited the sale consideration into the Court when filing

the suit.

5. Aggrieved by the said judgment the plaintiffs have preferred an appeal before the first Appellate Court, which was allowed on the grounds that

no whisper about the Panchayat even in the written statement filed by the first defendant, that no evidence was let in by the first defendant to prove

the Panchayat or the averments that the first plaintiff had given up the right of repurchase, and that the suit was filed within the period of 10 years,

that the plaintiffs categorically mentioned in the plaint that they were always ready and willing to repurchase the land and that u/s 16(c) of the

Specific Relief Act the deposit of the sale consideration is not warranted, admittedly the first defendant has not made any demand to deposit the

sale consideration into Court nor the Court gave any direction to deposit the same and that in the absence of any written document to show that

the plaintiff has given up his right of repurchase in the Panchayat could not be accepted. The lower Appellate Court further held that the first

defendant could execute the sale deed reconvening the property as per the boundaries mentioned in the sale deed dated 29.9.1971 nevertheless

the extent in dispute and the plaintiffs were entitled to as per the boundaries.

6. Aggrieved by the judgment of the lower Appellate Court the 1st defendant has preferred the present second appeal.

7. Heard the learned counsels appearing for both the parties and perused the records.

8. At the time of admission, the following substantial questions of law were framed by this Court:

1. When the suit is for enforcing a contract of re-conveyance, is the learned Subordinate Judge right in holding that the plaintiffs need not have the

sale consideration ready?

2. Is the learned Subordinate Judge right in granting a decree for specific performance in spite of categorical admission of P.W. 1 that the 1st plaintiff

was not having funds between 1978 and 1981 when he filed the suit?

3. Are the plaintiffs entitled to decree for specific performance when there was no payment made by the plaintiffs before the period fixed under the

contract?

4. Is not the suit liable to be dismissed for non-joinder of the necessary party, viz., the purchaser under Ex.B1?

9. Learned counsel appearing for the first defendant strenuously argued that the first plaintiff is incapable of paying the consideration, that there was

no proof that the first plaintiff has called upon the first defendant to come to the Sub-Registrar Office for registration of the sale deed and that the

first Appellate Court failed to see the evidence of PW1 wherein it was admitted that the plaintiff was not having money between 1978 and 1981 as

such the finding of the lower Appellate Court that the plaintiff was ready and willing to perform his contract is patently illegal. Learned counsel for

the 1st defendant further argued that the plaintiff has miserably failed in complying with the mandatory requirement of Section 16(c) of the Specific

Relief Act, that the plaintiff has not deposited the sale consideration into the court on 29.7.81 when the suit was filed, hence the first Appellate

Court ought to have held that the plaintiffs were not entitled to the reconveyance, that the observation of the first Appellate Court that the first

defendant did not take any steps to direct the plaintiff to deposit the money into the Court is contrary to law, that the learned first Appellate Court

failed to see that the evidence let in by the defendants clearly proved that the first plaintiff had given up his claim for reconveyance in the Panchayat,

that the non-joinder of the parties under Ex.B1 dated 24.12.80 is fatal to the case of the plaintiff. The learned counsel appearing for the plaintiffs

brought to the notice of this Court that the 1st plaintiff after informing the 1st defendant waited at the Sub-Registrar Office, but the 1st defendant

did not turn up, consequently, the suit was filed the next day. He further argued that admittedly the suit was filed within 10 years and expressly

mentioned in the plaint that the 1st plaintiff was ready and willing to pay which are sufficient under Clause 16 of the Specific Relief Act, besides

that. Ex. A2 and A3 are marked as documents to prove that the plaintiffs have kept the money ready to pay. As such, the Judgment and Decree

passed by the First Appellate Court is perfectly valid. I am satisfied that the findings made by the First Appellate Court is based on valid evidence.

The learned counsel for the defendant relied on the following decisions to say that Section 16 of the Specific Relief Act is not applicable to the case

of re-conveyance but only for agreement for sale.

1. N. Pattay Gounder Vs. P.L. Bapuswami, wherein it has been held thus: (Para-8)

The learned counsel for the plaintiff-respondent referred me to Section 4 and Article 113 of the Limitation Act and contended that as the Court

remained closed on 28-5-1953, the suit filed on the date of the reopening should be considered to be within time. In my opinion, the argument has

only to be stated to be rejected. The period fixed in the document is a condition for the performance and after the expiry of the period, the right

reserved is itself at an end. The period fixed in the deed is not the period of limitation prescribed for any suit. Section 4 of the Limitation Act can,

therefore, have no application to the present case.

No offer was made at any time within the stipulated period by tendering the required amount for repurchase. There is nothing in Ex.A8 to which

my attention was drawn by Sri K.S.Desikan to show that any offer or tender was made by the plaintiff within the stipulated time to repurchase the

property. That being the case, and the right to repurchase having been lost after the expiry of the period, by reason of the very terms of the

covenant, it seems to me that Art. 113 of the Limitation Act can have no application. The plaintiff having defaulted and as a result lost the right to

repurchase, he cannot resurrect and save the right by resort to the Limitation Act.

The above said judgment is in no way helpful to the defendants. The facts of the case was that the suit was not filed by the plaintiff within the period

stipulated in the agreement, the reason assigned by the plaintiff was that during the relevant period, the court remain closed and the case was filed

on the date of re-opening. This Court held that the period fixed in the document is a condition stipulated for performance and after the expiry of the

period the right reserved is itself come to an end, and further observed that Section 4 of the Limitation Act and Article 113 of the Limitation Act

are not applicable. The facts of the present cases is totally different from the facts covered in the above judgment.

2.Pachiappan v. S.P.Koon Man, 1996 (2) L.W. 1: Wherein it has been held as follows: (Para-22)

It is contended by learned counsel for the plaintiff that the principle that equitable relief should not be granted to a person who has approached the

Court with unclean hands, cannot be as strictly enforced in a suit for specific performance of an agreement of reconveyance as in the case of a suit

for specific performance of other agreements. It is submitted by him that in the case, of reconveyance agreement, the plaintiff is seeking to get back

his own property, which he had earlier placed in the name of the defendant in order to get over a financial crisis. But in the other case, a person

seeks to become the owner of the property for the first time by enforcing an agreement. There is considerable force in this argument and we are

inclined to accept the same. In the case of an agreement for reconveyance, the court cannot adopt the same stringent standards as are applicable

to a case of enforcement of other agreements. The person who was the owner of the property and had by the force of circumstances to part with

the same for a temporary period and the purchaser being fully aware of me same, having undertaken to restore the status quo ante by reconveying

the property for the same amount of consideration, cannot be placed on the same pedestal as a person who seeks to acquire ownership of the

property for the first time by enforcing an agreement. Hence, on the facts and circumstances of the case, we hold that the plaintiff is not guilty of

any act, which would prevent him from getting the decree for specific performance.

Indeed the said judgment is helpful to the plaintiffs and not to the first defendant. In the said judgment, Division Bench of this Court held that in the

case of agreement for reconveyance, the court cannot adopt the same stringent standard as are applicable to a case of enforcement of other

agreement. A person who was the owner of the property and had by the force of circumstances to part with the same for a temporary period and

the purchaser being fully aware of the same having undertaken to restore the status quo ante to reconvey the property for some amount of

consideration cannot be placed on the same pedestal as a person who seeks to acquire the ownership of the property for the first time by enforcing

an agreement. In the above said judgment, the Division Bench of this Court has deeply analyzed the various judgments of the High Courts and the

Apex Court of our country including the judgment in Jugraj Singh v. Raju Singh, AIR 1995 SC 945 wherein it was held that the continuous

readiness and willingness at all stages from the date of agreement till date of hearing of Suit must be proved. The Division Bench while

distinguishing the said judgment observed that the said ruling cannot be applicable to a case of agreement for reconveyance and assigned reasons

that the agreement for reconveyance of the said property at the same price on which it was sold after a certain period would itself show that the

parties agreed that there was no permanent transfer of ownership and in the event of the vendor paying the amount of consideration within a

particular date, his ownership would be restored. The Division Bench further held that since the sale and the agreement of reconveyance form part

of one transaction and it should be construed to be an option of the vendor and an undertaking by the purchaser that he would execute the deed of

conveyance in the event of exercise of the option by the vendor within the stipulated, period, hence time is the essence of the contract of

reconveyance and the period stipulated has lapsed, the vendor loses the right to get back the property, however, with great respect I point out that

no occasion arose for the Division Bench to consider Explanation-1 to Section 16 of the Specific Relief Act in that case. Now we look into

Section 16 of the Specific Relief Act, which runs as follows:

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

(a) who would not be entitled to recover compensation for its breach: or

(b) who has become incapable of performing, or violates any essential term of the contract that on his part remains to be performed, or acts in

fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract: or

(c) who fails to aver and 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 aver performance of, or readiness and willingness to perform, the contract according to its true construction.. "

It is clear that Explanation 1 to Section 16 is applicable to both the cases viz., the suit filed for specific performance on the basis of a sale

agreement and the suit filed for specific performance on the basis of reconveyance agreement.

10. Learned counsel for the plaintiff relied on the decision reported in G.Alagarsamy v. K.Y.Subba Naidu, 1992 (1) MLJ 272 wherein it is

observed as follows:

Explanation (1) to Section 16 does not make any distinction between a suit for specific performance filed on the basis of an agreement for sale

and a suit for specific performance filed on the basis of a reconveyance agreement.

Explanation (1) to Section 16 equally applies to a suit for

specific performance filed on the basis of a sale agreement as well as a suit filed on the basis of a reconveyance agreement. The contention of the

learned counsel to the contra is not warranted by the language of Explanation (1) to Section 16 of the Specific Relief Act.

The above said judgment of this Court squarely applicable to the facts and circumstances of the case on hand. Admittedly the first defendant has

not approached the trial court to direct the plaintiff to deposit the sale consideration into the court. The first Appellate Court has rightly pointed out

that the defendant has not made any such prayer as such it was impossible for him to accept the plea that the plaintiffs are incapable of depositing

the amount. The plaintiff also filed necessary documents Ex.A2 and A3 to show that the requisite fund was readily available in the bank deposit

and also assigned valid reason for depositing the same in the name of the son of the 3rd plaintiff. Learned counsel also misconstrued the evidence

of PW1 that during 1978-81 the first plaintiff was not having any money. It is also further pointed out by the first appellate court that the plaintiff in

the plaint has mentioned in express terms that they were ready and willing to perform the contract, which is sufficient u/s 16(c) of the Specific Relief

Act, 1963. After weighing the evidence, the first appellate Court held that the plaintiffs were always ready and willing to perform the contract. The

averment made by the first defendant that the lower appellate Court held that the plaintiffs need not have the sale consideration ready is also

thoroughly incorrect, no where such findings were made.

11. So far as the non-joinder of the party namely the purchaser under Ex.B1 is concerned, the property was reconveyed under Ex.B2 by the very

same person before the judgment is delivered by the trial court. This ground that the purchaser under Ex.B1 was not impleaded was canvassed for

the first time in the second appeal and not before the first appellate of the trial court. The case of the plaintiffs was that the said person was not at

all a necessary party even in her absence the suit could be proceeded legally against the first defendant alone, however she had re-conveyed the

property to the first defendant while the suit was pending before the trial court as such the said question does not arise.

12. The defendant have sold the part of the suit property under Ex.B1 dated 24.12.1980 and after filing the suit repurchased under Ex.B32 dated

7.10.1985 and she attempted to justify that the said transactions were made since the first plaintiff has allegedly given up his right of re-purchase.

The first Appellate Court after scrutinising the evidence rightly held that the plaintiff has never waived his right. I further agree with the lower

appellate Court's finding that the first defendant has no intention to honour the undertaking of executing deed of reconveyance. I am inspired by the

Judgment of the Division Bench of this Court reported in *Pachiappan v. S.P.Koon Man*, 1996 (2) LW 1 to hold that in the case of an agreement

of reconveyance, the Court cannot adopt the same stringent standards which are applicable to a case of enforcement of other agreements. The

provisions of Section 16 of the Specific Relief Act, 1963 are applicable to the suits filed based on agreement for sale as well as agreement of

reconveyance.

13. The learned first Appellate Court came to the conclusion that the suit was in time and the first plaintiff was ready and willing to perform the

contract and that it is not necessary to deposit the amount unless directed by the court. I have accepted the evidence of the plaintiffs that they were

ready and willing to pay the amount due to the first defendant. Hence the decree granted for specific performance by the first Appellate Court is

absolutely right. There is no infirmity in the judgment of the first Appellate Court. Hence, the second appeal is liable to be dismissed and

accordingly dismissed. No costs.