

(1993) 01 MAD CK 0009
In the Madras High Court

G. Chelliah Nadar (died) and Others	APPELLANT
Vs	
Periasami Nadar and Others	RESPONDENT

Date of Decision : 27-01-1993

Acts Referred:

Citation : (1993) 2 LW 84 : (1993) 2 MLJ 272

Hon'ble Judges : Thangamani, J

Bench : Division Bench

Judgement

Thangamani, J.—The appellant is the plaintiff before the trial Court. He instituted the suit for specific performance on the basis of Ex.A-1 the agreement dated 16.1.1973 entered with Matticka Naicker the first defendant (since deceased). His case is that he is carrying on joint family business under the name and style of Chelliah Nadar and sons. The first defendant acting for himself and on behalf of his wife and the second defendant (since deceased) entered into an agreement with him under Ex.A-1 for the sale of the premises bearing Door No. 4, Kalmandapam Road, Royapuram, Madras for Rs. 57,000 on 16.1.1973. So far the first defendant had received Rs. 22,000 as advance. As per the agreement the appellant who is in occupation of a portion of the house was authorised to receive rents from the other two tenants in the building. Under the terms of the agreement the balance of the purchase money has to be paid and sale deed registered within 11 months from that date. However, the first defendant collusion with the third defendant first respondent and Chandra Bose one of the sons of the appellant attempted to resils from agreement. Thereupon, the appellant sent the original of Ex.A-3 notice on 4.7.1974. He also caused a publication to be made in "Malai Murasu

dated 7.7.1974, as per Ex.A-2. At the instance of the third defendant first respondent, defendants 1 and 2 have conveyed the property in favour

of the 4th defendant 2nd respondent under Ex.B-1 dated 11.7.1974. This appellant has performed his part of the contract and he is always ready

and willing to comply with the terms of the agreement. Ex.B-1 sale deed cannot confer any right, title or interest in derogation of the rights of the

appellant under Ex.A-1. The 3rd respondent is the L.R. of deceased second defendant.

2. Defendants 1 and 2 resisted the action pleading that they never entered into any agreement of sale with the appellant. They did not hand over

possession of the suit house to the appellant at any time. Their agreement of sale was only with Chandra Bose, the son of the appellant. Since the

latter could not complete the transaction within the stipulated time, he expressed his inability to go through the sale and released his rights under

Ex.B-7 dated 25.3.1974. He requested for the return of the advance amount after selling the suit property to third parties and surrendered

possession. Thereupon, these defendants conveyed the property in favour of the fourth defendant under Ex.B-1 sale deed dated 11.7.1974 and

returned the advance amount paid by the Chandra Bose on the same day. Ex.B-8 is a receipt passed by Chandra Bose. They also contended that

the original agreement entered into between them and the said Chandra Bose differs from their copy of the agreement. It has been forged by the

appellant by adding words suitable to him and the same appears to have been filed in criminal proceedings instituted against him and others for

forgery. Obviously for this reason the appellant has instituted the suit with a photostat copy of the agreement. The fourth defendant claims that only

after satisfying himself of the title deeds and the letter written by Chandra Bose, he got the property conveyed in his favour.

3. The trial court held that Ex.A-1 agreement could have been executed only in favour of Chandra Bose in his individual capacity and he has later

on given it up and that the appellant had no funds to complete the sale and so other questions did not arise for consideration. Accordingly, it

dismissed the suit with costs of the defendants.

4. The appellant states in his evidence that Ex. A-1 sent for from the criminal court and marked is the agreement entered into between himself and

the first defendant. He has based his claim for specific performance only on this document. This purports to be an agreement dated 16.1.1973

executed by first defendant Manicka Naicker in favour of Chandra Bose representing Chelliah Nadar and Sons. The defendants assailed this

agreement on the ground that initially the document was executed in favour of Chandra Bose only. Later on by interpolation and forgery the

appellant has introduced suitable words so as to make it appear that it was in favour of Chelliah Nadar and Sons. Ex.B-6 sought to be produced

when 4th defendant Thanga Pandi Nadar was examined as D.W.1 for the purpose of showing that the duplicate handed over by to the first

defendant Manicka Naicker did not contain such terms. But since no one who is connected with the document could be examined, it was not

proved and so it was marked only for the purpose of identification. Now we have to examine other circumstances in the case to find out whether

the agreement executed by the first defendant conferred any interest on plaintiff/appellant.

5. Ex.A-1, agreement reads as under:

Normally the phraseology should be

The terms of the agreement as they stand indicate as if Manicka Naicker represents Chelliah Nadar and Sons. So the suspicion that the words

have been interpolated later on in the available space in between the words and is well founded. Besides, a careful scrutiny of Ex. A-1 sent for

from criminal court reveals that the words

occurring in four places in Ex.A-1 agreement are in different ink, though of the same handwriting. Further, that Ex.A-1 dated 16.1.1973 has been

engrossed on a stamp paper purchased on 17.1.1973 also throws doubt about its origin and genesis.

6. It is significant to note that the plaintiff in this case is G. Chelliah Nadar alone. Though the plaint starts by saying that Chelliah Nadar is the head

and Manager of the Hindu family carrying on the joint family business under the name and style of ""Chelliah Nadar and Sons"", the conveyance

pursuant to Ex.A-1 agreement has been sought only in favour of the plaintiff. It is not known for what purpose mention is made in the plaint about

the joint family business. And P.W. 1 Chelliah Nadar categorically admits in the witness box that there is no partnership concern in the name of

Chelliah Nadar and Sons. Further, the specific averment in the plaint is to the effect that the first defendant acting for himself and on behalf of his

wife, the second defendant entered into an agreement with the plaintiff for the sale of premises bearing Door No. 4. The plaint nowhere states that

the impugned agreement for sale, was entered into by Chandra Bose on behalf of the family. Ex.A-1 also does not enjoin first defendant Manicka

Naicker to execute the sale deed in favour of the plaintiff. The expression

occurring in Ex.A-1 could only refer to Chandra Bose on behalf of Chelliah Nadar and Sons.

7. One Chairman Selvaraj is purported to have attested Ex.A-1 agreement. P.W.1 states that the said Selvaraj has written the words ""Chelliah

Nadar and Sons"" in the agreement. Except the signatures the entire writings therein are in the handwriting of Chairman Selvaraj. However, this

Chairman Selvaraj has not been examined by the appellant. According to him, he could not examine Selvaraj since he is colluding with the third

defendant. But he admits in cross-examination that subsequent to the institution of this action Bose and the third defendant Periasami Nadarxhad

filed criminal case against this witness and his other sons and Chairman Selvaraj. While so, his claim that Chairman Selvaraj is colluding with the

third defendant is untenable. The examination of Selvaraj as a witness would have thrown light on the apparent interpolation we have noticed in

Ex.A-1.

8. According to the defendants, subsequent to Ex.A-1 Bose expressed his inability to complete the sale and so he released his rights in the

agreement by executing Ex.B-8 letter on 11.7.1974 and receiving back the advance paid by him. In this connection, P.W.1 says that he handed

over the required money to Bose, directed him to get the sale completed and left for the village to look after his farm. But Bose had spent away the

money and did not care to get the sale deed executed. So in December, 1973 when he came from the village he drove away Bose from the house.

Since his son is siding the defendants, he is not in a position to examine him. But we find from Ex.A-16 that on 15.3.1974 Bose had remitted sales-

tax for the business of Lakshmi Bakery whose proprietor is P.W.1 Chelliah Nadar. This belies the claim of P.W.1 that he has no cordial

relationship with his son Bose and the latter in collusion with the defendants had

released the rights under Ex.A-1.

9. Neither in the plaint nor in the witness box P.W.1 has given any reason for getting Ex.A-1 agreement in the name of his son Bose who is a

Junior member of the family. He admits in the witness Box, that when Ex.A-1 agreement written, Bose Sekar, Jeyaram, Sivaji, Chairman Selvaraj,

first defendant Manicka Naicker and himself were present in the house of Selvaraj. If really the agreement was entered into for the benefit of the

plaintiffs family, it is not known why while he the manager was available, the document should have been taken in the name of Bose. This factor

goes a long way to improbabilise the contention of the appellant.

10. As per the evidence of P.W.1, pursuant to the agreement he took possession of the entire house. The first defendant arranged that the existing

two tenants should thereafter pay rent to the appellant. However, there is no document which authorised the tenants to attorn the tenancy in favour

of the appellant. P.W. 1 admits that he has not collected any rent from the existing two tenants. Since both of them vacated the premises after

adjusting the advance with the arrears of rent, there was no necessity to collect rent from them. However, admittedly he does not know what was

the advance paid by them. Besides, one Kothari is a mortgagee of the property to an extent of Rs. 20,000, Ex.A-1 reads that this debt has to be

quoted in the sale deed. While so, it is unlikely that Kothari would have vacated without realising his mortgage money. Further D.W. 1 Thanga

Pandi deposes that he paid Rs. 20,000 and discharged the debt of Kothari and thereafter the latter vacated the portion. In fact, Ex.B.1 sale deed

also recites that the vendee Thanga Pandi has to discharge the mortgage debt due to Kothari.

11. So, it is highly doubtful whether Ex.A-1 as it stands is the agreement entered into between the parties for the sale of the suit property. In any

event, we find from the recitals in Ex.A-1 that the sale deed has to be completed within 11 months from the date of agreement which takes us to

16.12.1973. We have already seen that as per the evidence of P.W.1 his son had squandered away the money entrusted by this witness with him

for the purpose of sale. Admittedly he had returned from the village in December, 1973 and learnt that money was no longer available. Yet he had

not requested first defendant Manicka Naicker to give him further time to

mobilise money. According to him, the first defendant has unwell and he promised to execute the deed later on. However, this witness had not sent any notice to Manicka Naicker asking him to execute the sale deed. He admits that he sent notice only to third defendant Periasami on 4.7.1974. He further concedes that in February, 1974 he became aware of the fact that third defendant Periasami was making attempt to purchase the property. But only on 4.7.1974 he had sent notice to him. So as it has been rightly observed by the trial Judge only because the appellant was not possessed of sufficient funds, he did not take any steps, in time to get the sale deed executed.

12. In Ramaswamy Gounder Vs. K.M. Venkatachalam and Others, , Ismail J., has refused specific performance on the ground that the plaintiff had filed the suit making false allegations. He held that the falsity of the case directly impinged on the essential ingredients and elements necessary for claiming the relief. The falsity of the case put forward by the plaintiff disentitled him from obtaining the discretionary reliefs specific performance of agreement. In Vyapuri v. Vijayan, 1978 T.L.N.J. 62, the Court found that a sum of Rs. 11,000 was not paid as advance as contended by the plaintiff and that what was paid was only a sum of Rs. 1,000. The Division Bench comprising of Isamil and Nainar Sundaram, JJ. pointed out that the remedy of specific performance is an equitable remedy and is in the discretion of the Court, which discretion has to be exercised according to recognised principles of law and not arbitrarily. The plaintiff who comes to the Court with a false case in material ingredients necessary for the grant of relief of specific performance will not be entitled to the equitable relief at all. It is obvious that in the present case the appellant has based his relief on Ex.A-1 after making interpolation so as to make it appear that he has a right in it. And on the ratio laid down in the decisions referred to above even this is sufficient to refuse the relief to the appellant. In addition we have already seen that there is unexplained delay on the part of the appellant in seeking the remedy. In the circumstances, the learned trial Judge has rightly refused specific performance.

13. In the result, the appeal is dismissed with costs.