(2013) 04 MAD CK 0313

In the Madras High Court

Case No : A.S. No. 568 of 2003

Jaganathan APPELLANT

Vs

K. Sulochana RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Citation : (2013) 2 MadWN(Civil) 778

Hon'ble Judges : Mr. S. Palanivelu, J.

Bench : Single Bench

Advocate : Mr. M. Krishnappan, Senior counsel For M/s. R. Swarnalatha, Advocates, for the Appellants; Mr. K. Sukumaran, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The following are the averments contained in the plaint filed in O.S. No. 346 of 1997 :

1.(a) The defendants entered into an Agreement for Sale on 22.7.1992 with one U.R. Kuppuraj, whereupon they agreed to sell the suit property for a total sale consideration of Rs. 8,50,000/- and a sum of Rs. 6,50,000/- has been received on the same date as advance. The balance sale consideration was agreed to be received by the defendants in proposition from the said Kuppuraj after he form a Lay-out of house-sites in the suit property get the same approved by the Town Planning Authorities within a year from the date of the approval by the authorities. It is also agreed upon that the defendants will execute the sale or sale deeds after the formation of lay-outs and its approval in favour of the said Kuppuraj or to his nominee or nominees as required by the said Kuppuraj and will receive the balance sale consideration in proposition to the sale or sale deeds executed then and there.

1.(b) On the same date i.e., on 22.7.1993 itself the defendants executed a General Power of Attorney in favour of Kuppuraj for the purpose of converting the suit property and forming a lay out of house-sites and approval from the authorities concerned. The defendants also handed over the possession of the suit property to the said Kuppuraj for the said purpose. As per the General Power of Attorney Kuppuraj took possession of the suit property and got the same approved by the authorities and after the approval he was selling sites from the said lay out under the name and style of "Lovely Nagar" to different individual. At that time, the defendants demanded the balance sale consideration of Rs.2 lakhs for their urgent necessities to which the said Kuppuraj paid the same on 6.12.95 by way of two cheques. As the defendants have lost their original agreement of sale dated 22.07.1992, they extended the period of execution of the sale deeds, by a deed of extenuation of sale agreement on 6.12.1995 after receiving the balance sale consideration. In the extenuation agreement the defendants have further extended the performance of contract by one year and also extended the power granted under General Power of Attorney dated.22.7.1992 for further one year. So as on 6.12.1995 the entire sale consideration of Rs.8,50,000/- has been paid in fully and the defendants have also acknowledged the same. Therefore, the only thing remains is execution of sale deeds in respect of remaining sites by Kuppuraj

1.(c) The said Kuppuraj died on 20.03.1996 due to sudden heart attach leaving behind him, the plaintiffs as his legal heirs to succeed to all his assets and liabilities. On account of sudden demise of Kuppuraj nothing could be done in the family for 6 months from the date of death of said Kuppuraj. After the expiry of 6 months, the plaintiffs approached the defendants and requested them to execute a General Power of Attorney in favour of 1st plaintiff or to execute the sale deeds in favour of the plaintiffs or to their nominees as agreed upon in the agreement of sale. But the defendants were evasive and have been postponing the execution of the sale deeds on some pretext or other. During the 1st week of March 1997, when the plaintiffs approached the defendants for execution of sale deeds they refused to execute and said that they are not bound by the agreements dated.22.7.1992 and 6.12.1995. The defendants action is illegal besides being motivated.

1.(d) The 1st plaintiff''s husband Kuppuraj, father of plaintiffs 2 and 3 had been ever ready and willing to perform his part of contract and in fact he had paid the entire sale consideration to the defendants and was willing to take the sale deeds either by himself or to his nominees. After the death of Kuppuraj, his legal heirs i.e., plaintiffs are also ready and willing to take the sale deeds from the defendants as per the agreement. The defendants lie low to see the price soar up and then wriggle out the contract with a view to make unjust enrichment at the cost of the plaintiffs. Having received the entire sale consideration and having allowed the plaintiffs to continue in the possession of the suit property as per the agreement and General Power of Attorney, the defendants are estopped from acting against the same.

1.(e) The plaintiffs issued notice through their counsel to the defendants on 7.3.97 calling upon them to execute the General Power of Attorney in favour of the 1st plaintiff or to execute the sale deeds in favour of the plaintiffs or their nominees in respect of the suit property and for this purpose calling upon the defendants to be present before the Sub-Registrar office, Udumalpet on 10.3.97. The plaintiffs also specifically stated in the said notice that they would take appropriate legal action for specific performance and other reliefs as opened to them. The defendants although received the notice did not choose to reply the same or to come to Sub-Registrar office on 10.3.1997, but approached the plaintiffs afterwards and requested them not to take any legal action that would spoil their names and promised to comply with the plaintiffs claim within three months. Even after expiry of this 6 months period they do not seem to honour the contractual commitment. The plaintiffs now suspect the bona fides of the defendants and hence filed this suit for a decree for specific performance of contract dated 22.7.92 as extended on 6.12.95 in respect of suit property, directing the defendants to execute the sale deed in favour of the plaintiff or to their nominees; failing which the Court is completing the sale deed in respect of the suit properties to the plaintiffs or to their nominees and to pay the cost of the suit.

2. In the written statement filed by the defendants, it is averred as follows :

2.(a) The defendants do not admit any of the allegations except those that are specifically admitted. On the death of Kuppuraj i.e., on 23.3.1996 the agreement of sale and the Power of Attorney have been automatically stand cancelled and terminated as per Section 201 of Contract Act. There is no valid agreement in favour of the plaintiffs to sell the suit property. The plaintiffs as legal representatives of Kuppuraj could not ask for refund of Rs.8.5 lakhs minus the sale amount already received. There is no clause in the agreement to say that the possession of the property has been given to Kuppuraj. The defendants have not handed over the possession of the property at any point of time. The defendants have given only power of attorney to form lay out, to sell the sites and that power also cancelled on the death of Kuppuraj and now the plaintiffs are estopped from claiming any right on the basis of the power of attorney or the agreement of sale.

2.(b) The sale of the property would be subject to the result of the suit, the purchasers will have to satisfy the Court that they are bona fide purchasers. There are no encumbrances as the E.C. and discretion remedy of specific performance need not be granted in favour of the plaintiffs. Assuming that the plaintiffs can maintain the suit for specific performance still that the suit to be dismissed on the ground plaintiff will not be ready and willing to get the sale deed either in their favour or in favour of their nominees before the expiry of the period of one year from 6.12.1995 to 5.12.1996. It is not correct to state that the agreement of sale is extended for one year. The agreement of sale was extended only in favour of Kuppuraj alone and therefore the agreement will not be available to the legal representatives of Kuppuraj. The allegations are made only to suit the convenience of the plaintiffs. There is no cause of action for the suit. Therefore the suit may be dismissed with costs.

3. On scanning and making on the analysis of the pleadings, oral evidence, exhibits and the citations referred by both parties, the learned trial Court Judge passed a decree for Specific Performance of Contract in favour of the plaintiffs directing the defendants to execute the sale deed within one month. Aggrieved against the judgment the defendants are before this Court with this appeal.

4. Points for consideration :

1.Whether the equitable remedy of Specific Performance of Contract is available to the plaintiffs? If so, under what circumstances?

2.Whether the suit if barred by time?

3.To what relief are the parties entitled to ?

Point No.1

5. The suit property belong to the defendants. Both of them entered into an agreement of sale Ex.A.1 with U.R.Kuppuraj on 22.7.1992 by means of a unregistered sale agreement, agreeing to sell the property for a sum of Rs.8,50,000/-. In fact, the first defendant had received Rs.2,75,000/- on 10.12.1991 from Kuppuraj as advance and executed a sale agreement in his favour. This amount was agreed and adjusted in the sale consideration mentioned in Ex.A.1 and the defendants have received a further advance of Rs.3,75,000/-, totalling to Rs.6,50,000/- in the sale price. The remaining sale consideration was agreed to be received by the defendants. The said Kuppuraj had a proposal to lay out the suit property into vacant house sites, for which approval from Udumalpet Municipality and Town Planning Authorities in Chennai were to be obtained. Hence it was agreed by the defendants that within one year from the date of getting approval, the defendants had to execute the sale after receiving balance sale consideration of Rs.2 lakhs.

6. On the date of Ex.A.1, the defendants had executed a registered General Power of Attorney in favour of Kuppuraj, since there was a proposal on the part of Kuppuraj to layout the property. Out of inexperience in the real estate business affairs, the defendants authorised Kuppuraj by means of Ex.A.2.

7. At the time of execution of Ex.A.3, the unregistered sale agreement dated 6.12.95, the defendants have approached the said Kuppuraj and received from him the balance sale price of Rs.2 lakhs for attending to their urgent needs and they also executed the above said Ex.A.3 sale agreement, extending the period of execution of sale deed by one year. Likewise they also extended the period in Ex.A.2 Power of Attorney. In Ex.A.2 It is mentioned that on the date of Ex.A.2 document only one vacant site was sold. It is also stated in Ex.A.2 that since the defendants lost the copy of Ex.A.1 they executed Ex.A.2.

8. The agreement holder Kuppuraj died on 20.3.1996. Aftermath the death of Kuppuraj his wife and daughters viz., plaintiffs 1 to 3 sent notice to the

defendants, categorically narrating the facts , calling upon them to be present before the Sub-Registrar''s office, Udumalpet on 10.3.1997 to execute the sale deed and in default a case for specific performance of contract would be filed against them. This notice was dated 7.3.1997. Ex.A.9 is the General Notice published in Malai Malar Daily dated 12.3.1997 effected on behalf of the plaintiffs stating that a sale agreement has been entered into between the husband of first plaintiff and nobody shall enter to any transaction in respect of the suit property from the defendants.

9. In the backdrop of the above said factual aspects, when this Court takes up a discussion with regard to the grant of the specific performance in favour of the plaintiffs, the conduct of the parties have to be seen. Even though Ex.A.2 Power of Attorney deed was executed by the defendant in favour of Kuppuraj, for the purpose of determining whether his legal heirs are entitled to the remedy, it is to be seen whether they have complied with the requirements of possessing means and whether they were ready and willing to perform their part of contract. In Ex.A.1, it is seen that an advance of Rs.6,50,000/- out of the sale price Rs.8,50,000/- was paid by Kuppuraj. Subsequently on the date of execution of Ex.A2 and A3 the extension deed, the defendants received Rs.2,00,000/- from Kuppuraj. Hence, the entire sale price was paid by Kuppuraj himself even during his life time.

10. For what reason Kuppuraj did not insist upon the defendants to execute the sale deed since he had paid the entire sale price, the answer is available in Ex.A.3 itself. It is stated therein that even though approval was obtained, only one vacant site was sold and moreover the defendants were in dire need of money for their urgent expenses, they received Rs.2 lakhs and they wholeheartedly extended time by one year for the execution of the sale deed. Another reason is that as the defendants had lost the copy of Ex.A.1 and hence they came forward to execute another sale agreement. Since Kuppuraj himself had paid the entire sale consideration of Rs. 8,50,000/-, nothing was remaining to pay either by Kuppuraj or his legal heirs. Hence no question of possessing means by the plaintiffs and whether they have been ready and willing to perform their part of contract does not arise. When the above said conduct of the parties are carefully looked into, this Court is unable to discern any default on the part of either Kuppuraj or his legal heirs.

11. It is contended by the defendants that since Kuppuraj died, his legal heirs cannot enforce the said agreement entered by him. But the learned counsel for the plaintiff garnered support from a Division Bench decision of this Court reported in 2002(1) CTC 334 [V. Udayakumar and 7 others v. Navaneethammal and 5 others] wherein it is observed in para 18 that the rights of the agreement holder will automatically pass on to the successor in interest, in case of death of the agreement holder, that if the arguments of the learned Senior counsel for the appellants are to be accepted, then, there is no need for the defendants to refund the advance amount, which was received under, the suit agreement,

because such suit will be barred for want of privity of contract and it will amount to unlawful enrichment by the defendant, especially when there is no plea with regard to the maintainability of the suit by the father pursuant to the death of his son-the agreement holder. From the above said observation it has to be held that the legal heirs of Kuppuraj can enforce the sale agreement against the defendant.

12. He also cited a judgment of this Court reported in 2001 (4) CTC 730 [S.G.Kannappan v. S.Murugesan and another] rendered by K.Raviraja Pandian,j., wherein it is observed that the relief of specific performance can be granted even in absence of subsequent purchaser as he was not a party to agreement which is sought to be enforced and only parties to such agreement are necessary parties. The learned Judge has followed a decision of the Supreme Court for this proposition reported in 1995 (3) SCC 147 [Anil Kumar Singh v. Shivnath Mishra alias Gadasaguru] which is as follows :

"In this case, since the suit is based on agreement of sale said to have been executed by Mishra, the sole defendant in the suit, the subsequent interest said to have been acquired by the respondent by virtue of a decree of the Court is not a matter arising out of or in respect of the same act or transactions or series of acts or transactions in relation to the claim made in the suit.

6. Order 1. Rule 10(2) C.P.C......

7. By operation of the above rule though the Court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the Court must be satisfied that the presence of the party to be added, would be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit. To bring a person as a party-defendant is not a substantive right but one of procedure and the Court has discretion in its proper exercise. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid Multiplicity of proceedings.

8. The question is whether the person who has got his interest in the property by an independent decree but not a party to the agreement of sale, is a necessary and proper party to effectually and completely adjudicate upon and settle all the questions involved in the suit. The question before the Court in a suit for the specific performance is whether the vendor had executed the document and whether the conditions prescribed in the provisions of the Specific Relief Act have been complied with for granting the relief of specific performance.

9. Sub-rule (2) of Rule 10 of Order 1 provides that the Court may either upon or without an application of either party, add any party whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit. Since the respondent is not a party to the agreement of sale, it cannot be said that without

his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party."

13. In view of the above, law holding the field is that the legal heirs of agreement holder can enforce the agreement since rights passed on to them and even though the third party subsequently purchased any portion of the property need not be imp leaded as a party in the suit for specific performance of contract. In the light of the above said observations, this Court is of the opinion that the plaintiffs are entitled for a decree for specific performance of contact. This point is answered as indicated.

Point No.2:

14. When Ex.A.3 was executed on 6.12.1995, the period stipulated for execution is one year from the said date. The period of limitation for filing of the suit is within three years from the date of expiry of the date stipulated in the sale agreement. One year period was over by 5.12.1996. The suit was filed on 19.12.1997. Hence the suit was filed within time. The suit is not barred by limitation. This point is answered accordingly.

Point No.3:

15. A conspectus of pleading, evidence, exhibits and conduct of parties have paved way for this Court to reach a conclusion that the plaintiffs are entitled for a decree for specific performance of contract. Though there was a transaction between the defendants and Kuppuraj through Power of Attorney, the conduct of the parties and the principles to be followed in the matter of granting relief for specific performance shall be on the strength of the stipulations in the sale agreement. The suit is found to be filed in time. No question of possession of necessary means by plaintiffs and their ready and willingness have arisen. Since the sale consideration of Rs.8,50,000/- in entirety was paid by Kuppuraj himself, there was no lapse or default on the part of the plaintiffs. Having received the entire sale price, the defendants should have executed sale deed in favour of plaintiffs much earlier. Since due to their default, the period of pendency of the case has been elongated and the plaintiffs could not be made liable for escalation of prices. In such view of the matter, the Judgment and Decree passed by the Court below deserve to be confirmed and accordingly they are confirmed. The appeal has to fail. This point is answered accordingly.

16. In fine the appeal suit is dismissed confirming the Judgment and Decree of the trial Court. No cost. Time for execution of sale deed by the defendants in favour of the plaintiffs five (5) months.

