

(2015) 10 MAD CK 0243

In the Madras High Court

Case No : Second Appeal (MD) Nos. 932 of 2007, 647 of 2014, M.P. (MD). Nos. 1 of 2007, 1 of 2009, 1 of 2011, C.R.P. (MD). No. 1298 of 2007, M.P. (MD). Nos. 1 and 3 of 2007

Madurai Coats Public Servants Co-Operative Housing Society
Limited and Others

APPELLANT

Vs

Madurai Coats Ltd. and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 34
Specific Relief Act, 1963 — Section 20
Tamil Nadu Co-operative Societies Act, 1983 — Section 141

Citation : (2015) 10 MAD CK 0243

Hon'ble Judges : M. Duraiswamy, J.

Bench : Single Bench

Advocate : M. Vetrivel Murugan, for the Appellant; V. Raghavachari, for the Respondent

Final Decision : Dismissed

Judgement

M. Duraiswamy, J.—Second Appeal (MD).No.932 of 2007 arises against the judgment and decree passed in A.S. No.157 of 2005 on the file of I Additional Sub Court, Madurai, confirming the judgment and decree in O.S. No.386 of 1997 on the file of District Munsif Court, Thirumangalam. The third defendant in the said suit is the appellant. The first respondent was the plaintiff. The respondents 2 and 3 were defendants 1 and 2. The plaintiff filed the suit O.S. No. 386 of 1997 for specific performance and for delivery of possession.

2. Second Appeal (MD).No.647 of 2014 arises against the judgment and decree passed in A.S. No.1 of 2005 on the file of the Principal Sub Court, Madurai, reversing the judgment and decree passed in O.S. No.386 of 1997 on the file of the District Munsif, Thirumangalam. The third defendant is the appellant. The first respondent was the plaintiff and the respondents 2 and 3 were the defendants 1 and 2.

3. Civil Revision Petition (NPD) (MD).No.1298 of 2007 has been filed by the second defendant in O.S. No.386 of 1997 challenging the fair and final order passed in E.P. No.24 of 2005 on the file of District Munsif Court, Thirumangalm. The first respondent was the plaintiff. The second respondent was the first defendant and the third respondent was the third defendant.

4. Since the issues involved in all these matters are common and further all these matters arise out of the judgment and decree passed in O.S. No.386 of 1997, both the second appeals and civil revision petition are disposed of by this common judgment.

5. The brief case of the plaintiff is as follows:-

5.1 According to the plaintiff, the suit properties belong to the second defendant society. The second defendant is under liquidation and the properties have vested with the liquidator. The second defendant society was formed at the initiative and with the financial assistance of Madurai Mills Company Limited.

5.2 The suit properties were acquired in the year 1939 by the second defendant society. In the year 1975, the society was ordered for liquidation. Hence, the second defendant namely, the liquidator took control and possession of all the properties of the society including the suit properties. Even after the change of management of the Mill, there was no change in the position of the employees and workers. The plaintiff wanted to continue the welfare programme of providing house sites to the workers. The suit properties were already intended for workers, which was sought to be acquired by the liquidator. The second defendant suggested that the land may be sold to the Mill workers or to the plaintiffs directly, in turn the plaintiff can allot them to the workers.

5.3 The second defendant made an offer for sale by their letter dated 18.04.1980 and the plaintiff accepted the same on 06.06.1980. The price was fixed at Rs. 17,910/-. The said amount was paid in full by demand draft dated 10.06.1980 in favour of the second defendant.

5.4 The plaintiff is always ready and willing to purchase the properties. Since there was some encroachment committed by some third parties, the execution of the sale deed was delayed.

5.5 During pendency of the suit, the third defendant was impleaded and according to the plaintiff no interest was vested with the third defendant, since the third defendant has no proper registration. The averment that the third defendant amalgamated with the second defendant is false and even it is found to be true, it will not in any way affect the plaintiff's legal right to enforce the concluded contract, since the sale agreement is a concluded one. In these circumstances, the plaintiff filed the suit.

6. The brief case of the defendants 1 and 2 is as follow:-

6.1 According to the defendants, the suit properties belonged to the second

defendant. The second defendant is under liquidation and its properties are vested with the liquidator. After paying the entire sale price, the plaintiff did not pursue for all these years and therefore, the second defendant was under the impression that the plaintiff was not ready and willing to purchase the suit properties.

6.2 According to the second defendant, the claim is barred by limitation. The plaintiff was not ready and willing to perform his part of the contract. Since the plaintiff kept quiet for 17 years, he is estopped from filing the present suit. In these circumstances, the defendants 1 and 2 prayed for dismissal of the suit.

7. The brief case of the third defendant is as follows:-

7.1 According to the third defendant, as on the date of the plaint, the second defendant was not in existence. Even on 25.06.1997, itself on the basis of the order passed by the Registrar, Co-operative Housing Societies, Chennai, the second defendant society was liquidated. The suit was filed on 24.09.1997. Hence on the date of filing of the suit, there is no entity as that of the second defendant.

7.2 The third defendant acquired all the properties and the rights and dues of the second defendant as per the order dated 25.06.1997, which existed prior to the suit. By order dated 25.06.1997 the third defendant was directed to repay the amount paid by the plaintiff and on so many occasions they approached the plaintiff asking to receive the said amount. However, the plaintiff refused to receive the same.

7.3 The second defendant was liquidated and the third defendant acquired all the rights and the right to enforce the suit agreement. Therefore, the suit is not maintainable. The third defendant is also ready and willing to perform his duty as stated in the order.

7.4 Further the third defendant undertook to sell the properties to the workers of the plaintiff as directed in the order. In these circumstances, the third defendant prayed for dismissal of the suit.

8. Before the Trial Court, on the side of the plaintiff PW1 was examined and 21 documents Ex.A1 to Ex.A21 were marked. On the side of the defendants, two witnesses were examined as DW1 and DW2 and 16 documents Ex.B1 to Ex.B16 were marked.

9. The Trial Court after taking into consideration, the oral and documentary evidence of both sides decreed the suit in respect of specific performance and dismissed the suit in respect of other reliefs. Aggrieved over the judgment and decree of the Trial Court in respect of specific performance, the third defendant preferred A.S. No.157 of 2005 on the file of I Additional Sub Court, Madurai and the lower appellate Court, also confirmed the judgment and decree of the Trial Court and dismissed the appeal. Aggrieved over the judgment and decree of A.S. No.157 of 2005, the third defendant preferred second appeal in S.A.(MD).No.932

of 2007.

10. Aggrieved over the dismissal of the suit in respect of delivery of possession and other reliefs, the plaintiff preferred an appeal in A.S. No.1 of 2005 on the file of Principal Sub Court, Madurai. The lower appellate Court reversed the judgment and decree of the Trial Court in respect of delivery of possession and other reliefs and decreed the suit in toto. Aggrieved over the judgment and decree of the lower appellate Court, the third defendant preferred second appeal in S.A. (MD).No.647 of 2014.

11. Pursuant to the decree granted in O.S. No.386 of 1997, the plaintiff filed an execution petition in E.P. No.24 of 2005 to execute the decree for specific performance and delivery of possession. The execution court allowed the execution petition and sale deed was also executed in favour of the plaintiff. Aggrieved over the same, the second defendant has filed the civil revision petition in C.R.P. (MD).No.1298 of 2007.

12. Heard Mr.M.Vetrivel Murugan, learned counsel for the appellant as well as for the third respondent in the civil revision petition, Mr.G.R. Swaminathan, learned counsel for the civil revision petitioner and the third respondent in S.A. (MD).No.647/2014, Mr.V.Ragavachari, learned counsel for the first respondent in both the second appeals and in the civil revision petition, Mr.A.Thirumurthy learned counsel for the second respondent in civil revision petition and Mr.V.Janakiramulu learned counsel for the fourth respondent in the civil revision petition.

13. At the time of admitting the second appeals, the following substantial question of law arose for consideration:-

1. Whether the Courts below have committed an error in law in granting the relief of specific performance in favour of the plaintiff when the same is against the terms and conditions of Ex.A3 and Ex.A4 based on which the agreement is sought to be deduced?

2. Whether the Courts below have failed to exercise the discretion conferred upon them in the matter of granting specific relief under Section 20 of the Specific Relief Act, in a proper manner?

3. Whether the Courts below have not considered the fact that the suit against the liquidator without the leave of the Registrar of Co-operative Societies is barred under Section 141 of the Tamil Nadu Cooperative Societies Act, 1983?

4. Whether the Courts below have not considered the fact that the amount quoted as consideration is shockingly disproportionate to the market value?

14. The appellants have also raised the following additional substantial questions of law:-

1. Whether the Courts below have erred law in granting the suit relief of specific performance to the plaintiff when the relief is sought against the terms of Ex.A3

and A4?

2. Whether the decree granted in favour of Plaintiff against the terms of agreement in Ex.A3 and A4 are sustainable in law?

3. Whether the suit prayer not in terms of agreement in Ex.A3 and A4 sustainable or grantable in law?

4. Whether the delay of 17 years would disentitle the plaintiff in seeking the suit relief?

5. In view of the original company having become defunct and a new Private Limited company came into existence as contended by the plaintiff whether the suit as framed by the present plaintiff is maintainable and whether the plaintiff is competent to seek the suit relief on the basis of the agreements in Ex.A3 and A4?

6. When the agreement entered into with the 2nd defendant referred by the plaintiff became impossible of performance because of liquidation proceedings and the original agreement holder not in existence, whether the relief granted to the plaintiff is tenable in law?

7. Whether the decree and judgment of Courts below suffer due to legal infirmity because of not considering Sec.20 of the Specific Relief Act?

8. Whether the suit filed by the plaintiff is barred under Section 141 of Tamil Nadu Co-operative Society Act?

15. The learned counsel appearing for the appellant submitted that since the suit is filed after a lapse of 17 years, the Courts below should not have decreed the suit for specific performance and that as on the date of filing of the suit, the second defendant was not in existence, therefore, the decree granted in O.S. No.386 of 1997 is liable to be set aside.

16. Countering the submissions made by the learned counsel for the appellant, Mr.V.Ragavachari, learned counsel appearing for the first respondent submitted that the delay in filing the suit had occurred only because of the legal proceedings initiated by the second defendant to remove the encroachment made by the third parties. Further, the learned counsel, submitted that as per Ex.B2 and the evidence of DW2, the lower appellate Court has rightly come to the conclusion that the plaintiff is entitled for the reliefs sought for in the suit. Further, the learned counsel submitted that the second appeals filed by the third defendant is not maintainable for the reasons that the Courts below have not passed any decree as against the third defendant, therefore, the third defendant is not an aggrieved party. In support of his contention the learned counsel has relied upon the following judgments;-

i) Mrs. Saradamani Kandappan Vs. Mrs. S. Rajalakshmi and Others, , wherein the Hon"ble Supreme Court held that the question whether time is of essence of performance can be considered either with reference to contract which is breached. Thus, where time was specified for payment of sale price, but not in

regard to execution of sale deed, held time will become of the essence only with reference to payment of sale price but not in regard to execution of sale deed.

ii) (1991) 1 ILR Punjab and Haryana 35 (Darshan Kaur V. Gurdial Singh and another), wherein at paragraph 4 and 5 the Punjab and Haryana High Court has been held as follows:-

"4. It would also be pertinent to note here that the judgment-debtor has not come forth to state his objections if any, to the sale-deed as registered nor has he pointed out any prejudice caused to him by the contents of the sale-deed as executed.

5. In a case like the present where the judgment-debtor does not appear despite notice and is proceeded against ex parte, the provisions of Order 21 Rule 34 of the Code of Civil Procedure, that the Court shall cause a draft of the sale-deed to be executed to be served upon the judgment-debtor for inviting his objections, if any to it, must be held to be merely directory and noncompliance with them will not vitiate the sale deed executed under orders of the Court unless the judgment-debtor is able to show that prejudice was caused to him by the draft sale-deed not being served upon him and opportunity thereby being denied to him to file his objections against it."

iii) Banarsi and Others Vs. Ram Phal, , wherein the Hon"ble Supreme Court, held appeal lies against decree and not against judgment or any finding(s) and only person aggrieved by the decree is entitled to file appeal. Admittedly, the second defendant, was the owner of the property. That being the case, the third defendant cannot execute a sale deed in favour of the plaintiff. The decrees passed by the Courts below are only as against the second defendant. Therefore, the third defendant cannot file the second appeals as against the adverse findings. The judgment relied upon by the learned counsel for the first respondent reported in Banarsi and Others Vs. Ram Phal, squarely applies to the facts and circumstances of the case. Though the third defendant has no locus standi to file the second appeals, in the interest of justice, I have also gone into the merits of the matter and decide the same on merits.

17. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that there is no dispute that the property originally belonged to the second defendant. The agreement of sale was entered into between the second defendant and the plaintiff for the purchase of suit properties for a sum of Rs. 17,910/-. The letter of the liquidator dated 18.04.1980, to the plaintiff was marked as Ex.A3 and the copy of the letter of the liquidator to the plaintiff dated 06.06.1980 was marked as Ex.A4. Entire sale consideration of Rs. 17,910/- was paid by way of demand draft dated 10.06.1980 in favour of the second defendant. The plaintiff contended that they were always ready and willing to perform their part of the contract. However, the second defendant contended that though the plaintiff had paid the entire sale consideration, they did not approach them for getting sale

deed executed.

18. Further, the second defendant contended that since the suit was filed after 17 years, the same is barred by limitation. For this contention of the second defendant, the plaintiff submitted that there were encroachment by third parties in some portion of the suit properties. Hence, legal proceedings were initiated against them by the second defendant with the assistance of the plaintiff. Hence, the suit was filed after 17 years. This contention of the plaintiff is supported by Ex.A5, Ex.A6, Ex.A7, Exs.A9 to Ex.A20.

19. With regard to the plea of limitation is concerned no time limit was fixed for execution of the sale deed by the second defendant in favour of the plaintiff. It is not disputed that the plaintiff had paid the entire sale consideration to the second defendant on 10.06.1980 itself. As per Article 54 of the Limitation Act in a suit for specific performance of a contract, the period of limitation is 3 years, if the date is fixed for the performance, or, if no such date is fixed, when the plaintiff has noticed that performance is refused. In the case on hand under Ex.A21, letter dated 17.07.1997, the plaintiff had noticed that the performance of the agreement was refused. The suit was filed within two months from the date of refusal. Therefore, it cannot be stated that the suit filed by the plaintiff is barred by limitation. The courts below have rightly come to the conclusion that the suit is in time.

20. Even with regard to laches or abandonment on the part of the plaintiff is concerned, the plaintiff was able to prove that there was encroachment by some third parties in some portion of the suit properties, which necessitated the second defendant to initiate legal proceedings to remove the encroachment from the suit property. For the action of the second defendant, the plaintiff also assisted the second defendant in various ways. Therefore, it cannot be said that there was abandonment or laches on the part of the plaintiff.

21. According to the third defendant/appellant, as on the date of filing of the suit, the second defendant society was not in existence and even on 25.06.1997 on the basis of the order passed by the Registrar, Housing Societies, Chennai, the second defendant Society was liquidated. Further, the third defendant contended that they acquired all the properties and rights and dues of the second defendant under the order dated 25.06.1997 which existed prior to the suit.

22. Admittedly, when the agreement was entered into between the plaintiff and the second defendant, the third defendant was not in existence, only during the pendency of the suit, the third defendant got themselves impleaded as a party in the suit. The order dated 25.06.1997 was marked as Ex.B2. DW2, who was examined on the side of the third defendant, deposed that though in Ex.B2 and Ex.B14 it has been stated that the third defendant should repay the sale consideration paid by the plaintiff, they have not paid the amount to the plaintiff or deposited the amount before the Trial Court. Further DW2 has stated that amalgamation was not completed till that time.

23. The plaintiff had clearly established their case by oral and documentary evidences and also established that they were always ready and willing to perform their part of the contract. The plaintiff also specifically stated in the plaint that the sale transaction was entered into only for the welfare of its workers. This averment was also not denied either by the second defendant or by the third defendant. With regard to the relief of the delivery of possession is concerned, the plaintiff has specifically averred in the plaint that some third parties had encroached in the suit properties and since the second defendant was initiating legal proceedings as against the encroachers for handing over of the suit properties and the plaintiff was also assisting them in the legal proceedings for evicting the encroachers, they could not file the suit for specific performance immediately. That being the case, with regard to the possession PW1 also deposed in his evidence that the legal proceedings initiated by the second defendant with the assistance of the plaintiff were pending before the Trial Court. In these circumstances, the plaintiff has filed the suit for specific performance and delivery of possession. The Trial Court correctly decreed the suit for specific performance and erroneously negatived the relief of delivery of possession. When the plaintiff had clearly made averments in the plaint and also deposed evidence, the Trial Court should not have negatived the relief of recovery of possession. However, the lower appellate Court taking into consideration all these aspects rightly reversed the judgment and decree of the Trial Court with regard to the relief of delivery of possession and decreed the suit in toto. The suit was filed by the plaintiff for specific performance and recovery of possession has been rightly decreed by the lower appellate Court.

24. In these circumstances, I do not find any ground much less any substantial questions of law to interfere with the judgments and decrees passed in A.S. No.1 of 2005 and A.S. No.154 of 2005. Second appeals are liable to be dismissed and accordingly, the same are dismissed. Consequently, M.P.(MD).No.2 of 2007 is dismissed and M.P.(MD).No.1 of 2009 and M.P.(MD).No.1 of 2011 are closed.

25. So far as civil revision petition is concerned pursuant to the decree passed by the lower appellate Court in A.S. No.1 of 2005 the decree holder/plaintiff filed execution petition in E.P. No.24 of 2005 for execution of the sale agreement and for delivery of possession. It is brought to the notice of this Court, that pursuant to the order passed by the execution Court, a sale deed was executed and registered in favour of the plaintiff. Since the execution Court is bound by the decree passed in the suit O.S. No.386 of 1997, I do not find any error or irregularity in the order passed by the execution Court. The execution Court cannot go beyond the decree passed in the suit. The civil revision petition is devoid of merits and the same is dismissed. No costs. Consequently, connected M.P.(MD).No.1 of 2007 is dismissed and M.P.(MD).No.3 of 2007 is closed.