

(2001) 02 MAD CK 0145

In the Madras High Court

Case No : Second Appeal No. 988 of 1989

N. Ramalinga Nainar

APPELLANT

Vs

Noor Mohammed Saheb and another

RESPONDENT

Date of Decision : 15-02-2001

Acts Referred:

Limitation Act, 1963 — Section 14
Registration Act, 1908 — Section 72, 76, 77

Citation : (2001) 02 MAD CK 0145

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : Chitra Sampath, for the Appellant; K. Mani, for the Respondent

Final Decision : Dismissed

Judgement

S. Jagadeesan, J.—The plaintiff in O.S. 333 of 1981 on the file of the District Munsif, Thirukoilur is the appellant herein. He filed the suit for specific performance on the ground that the second respondent, the owner of the property agreed to sell the same by way of oral agreement on 6.10.1969. Followed by the agreement, she also executed the sale deed on 16.10.1969. Since she refused to come to the Sub-Registrar's Office for registration, the plaintiff filed the suit O.S. 422 of 1970 on the file of District Munsif Court, Thirukoilur u/s 77 of the Indian Registration Act for compulsory registration of the sale deed. The first respondent was impleaded, since he has entered into an agreement of sale with the second respondent, subsequent to the oral agreement entered into between the second respondent and the appellant/plaintiff. While the suit O.S. 422 of 1970 was pending, the first respondent filed O.S. 7 of 1970 on the file of the Sub-Court, Cuddalore against the appellant and the second respondent for specific performance of the agreement entered into between himself and the second respondent. At the instance of the respondents, O.S. 422 of 1970 was transferred to Sub-Court, Cuddalore, where both the suits were tried and suit O.S. 422 of 1970 was dismissed and O.S. 7 of 1970 filed by

the first respondent was decreed. As against the same, the appellant filed appeals A.S. 433 and 434 of 1974 on the file of District Court, South Arcot District, Cuddalore. The learned District Judge allowed both the appeals by judgment and decree dated 13.7.1979. Pursuant to the said decree, the appellant ought to have submitted the document for registration within 30 days from the date of judgment. As the appellant was not well, he could not present the document for registration within the time prescribed under Statute. However, he presented the document for registration on 16.11.1979 before the Sub-Registrar. As the statutory period of limitation expired, the Sub-Registrar refused to register the document. The appellant filed I.A. 86 of 1980 for extension of time for presenting the document for registration. The said I.A. was dismissed. Hence the present suit has been filed for specific performance. The second respondent remained ex parte.

2. The first respondent contested the claim of the appellant. The second respondent died and C.M.P. Nos. 1674 to 1676 of 2001 have been filed for condoning the delay for setting aside the abatement and to bring her legal representatives on record.

3. The defence put forth by the respondents is that the appellant having failed to exercise the right under the earlier decree for compulsory registration, this suit is not maintainable. Further the suit is barred by limitation.

4. The trial Court, after considering the various precedents cited by both the counsel as well as the evidence and pleadings, by its judgment and decree dated 7.9.1983 decreed the suit. Aggrieved against the same, the first respondent preferred an appeal A.S. 139 of 1983 on the file of Sub-Court, Villupuram. The appellant herein filed the cross-objection so far as the rejection of the claim for damages is concerned.

5. The learned Subordinate Judge, after considering the materials available on record, had allowed the appeal, setting aside the judgment and decree of the trial Court on the ground that the second respondent refused to register the document and the Sub-Registrar also refused to register the document on 4.11.1969. Hence the period of limitation commences from 4.1.1969. The three years period came to an end on 3.11.1972. Hence the present suit has been filed only in 1981 for specific performance and as such the suit is barred by limitation. As against the same, the present Second Appeal has been filed.

6. At the time of admission of the Second Appeal the following substantial questions of law were formulated:

(1) Whether the lower appellate court was right in holding that the suit for specific performance was barred by limitation when the suit has been filed within three years of the commencement of the time when the appellant could not obtain a sale deed from the first defendant and also in view of the appropriate proceedings before the Registrar, which is saved u/s 14 of the Limitation Act?

(2) Whether the lower appellate court was right in dismissing the suit for specific performance when the validity of the agreement is accepted and even acted upon by the first defendant, the owner of the property?

(3) Whether the lower appellate court was right in thinking that the cause of action pleaded is the oral agreement dated 6.10.1969, overlooking the other averments and also the decrees passed inter parties in the earlier proceedings in respect of the very same transaction?

7. The learned counsel for the appellant contended that the lower appellate court had proceeded on the basis that the suit for specific performance was filed in 1981 basing upon the oral agreement of sale dated 6.10.1969. When the appellant had filed the earlier suit O.S. 422 of 1970 u/s 77 of the Indian Registration Act for compulsory registration of the sale deed executed by the father of the second respondent herein and the suit having been dismissed, the appellant preferred the appeal before the District Court, South Arcot District and the appeal having been allowed on 13.7.1979, the present suit for specific performance is the continuation of the earlier proceedings and as such the present suit is not barred by limitation. Even assuming that the present suit is not the continuation of the earlier proceedings, still the appellant will have the benefit of Section 14 of the Limitation Act, as the earlier proceedings was initiated in the year 1970 itself and ended in 1979. Hence that period has to be excluded. If that is done the present suit is well within the period of limitation.

8. The learned counsel for the respondents contended that the present suit cannot be construed to be the continuation of the earlier proceeding. The earlier proceeding was initiated for compulsory registration of the document which ended in favour of the appellant in the year 1979. The appellant, having failed to exercise his right to have the benefit of the said decree within the statutory period of 30 days prescribed under the statute, the right accrued under the said decree had lapsed. After the lapse of the accrued right, now under the present suit, the appellant is seeking to enforce the original oral agreement of sale and the suit has been laid only on the basis of that cause of action. Hence the lower appellate court has rightly held that the suit is barred by limitation.

9. This court carefully considered the above contentions of both the counsel. There is no doubt that the appellant herein filed the suit O.S. 422 of 1970 u/s 77 of the Indian Registration Act. What is contemplated u/s 77 is that where the Registrar refuses to order the document to be registered, u/s 72 or Section 76, any person claiming under such document, or his representative, assign or agent, may within thirty days after the making of the order of the refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

10. The suit filed by the appellant herein O.S. 422 of 1970 was originally

dismissed on 31.1.1974 and the suit O.S. 7 of 1970 filed by the first respondent herein for specific performance against the appellant and the second respondent was decreed by the common judgment Ex. A1 dated 31.1.1974. The appellant herein preferred appeals A.S. 433 and 434 of 1974 on the file of the District Court, South Arcot. The learned District Judge allowed both the appeals by his judgment Ex. A2 and decree dated 12.7.1979. When the suit O.S. 422 of 1970 filed by the appellant u/s 77 of the Indian Registration Act, seeking for the compulsory registration of the sale deed executed by the vendor, the father of the second respondent herein, had been decreed, the appellant herein ought to have exercised his right accrued under the said decree within 30 days from the date of passing of such decree, as per the said provision of law. Admittedly the appellant herein did not exercise his right under the said decree. He also took a chance by filing I.A. 86 of 1980 for extension of time which was dismissed. By virtue of the dismissal of the I.A. 86 of 1980 virtually the appellant herein had been deprived of the benefit of the decree in O.S. 422 of 1970 i.e., the compulsory registration. Hence the right accrued under the said decree had lapsed. Once the right accrued under the decree lapsed, the appellant herein had lost his right to seek the compulsory registration. Hence the appellant herein cannot enforce the decree.

11. In fact a reading of Section 77 of the Registration Act would make it clear that the said provision does not leave anything to the discretion of the court. The only decree for registration which can be passed is one, directing the document to be registered in such Registrar's Office, if it is duly presented for registration, within 30 days after the passing of such decree under the provisions of the second paragraph of Section 77 of the Registration Act which are to apply mutatis mutandis to all documents presented for registration by decree of a Civil Court. Hence no Registering Officer would be bound to obey such decree, if the document was not presented for registration within 30 days after the passing of the decree. This provision shows that the Legislature deliberately intended that a decree of the nature referred to would only continue to be enforceable within the limited period specified in Section 77 of the Indian Registration Act. It would therefore follow that the document must be presented within 30 days of the decree; otherwise it becomes inoperative and all rights under it lapse. Hence the appellant admittedly having not presented the document within 30 days from the date of the decree, his right under the decree in O.S. 422 of 1970 lapsed. In such circumstances, the contention of the learned counsel for the appellant that the present suit for specific performance is a continuation of the earlier proceeding cannot be countenanced.

12. With regard to the contention of the learned counsel for the appellant that the appellant will be entitled for the benefit of Section 14 of the Limitation Act, here again this Court is of the view that the said contention is of no merits. Section 14 of the limitation Act will be applicable only if the appellant had bona fide proceeded with the proceedings in a court which has no jurisdiction to entertain the suit. Only in such cases, the duration of period spent in such

litigation can be excluded in calculating the period of limitation. Here it is not the case of the learned counsel for the appellant that the earlier proceedings O.S. 422 of 1970 filed by the appellant seeking for the compulsory registration of the document was in court which has no jurisdiction to try the suit. In fact the appellant had succeeded in the said proceeding before the lower appellate court and got a decree in his favour. When that be so, under no imagination it can be said that the appellant can have the benefit of Section 14 of the Limitation Act.

13. Nextly the learned counsel for the appellant contended that the appellant has got two remedies; one is to seek for compulsory registration of the document executed by the vendor; and the other is to file a suit for specific performance. Hence the filing of the suit for the compulsory registration by the appellant will not bar a suit by him for the specific performance. Hence the suit for specific performance is maintainable and cannot be dismissed on the ground of limitation. Before considering this question, it may be worthwhile to refer to some of the principles laid down by various courts.

14. A Division Bench of this Court in the case *Manicka Goundan Vs. Elumalai Goundan* minor by guardian *Ammakannu Ammal and Others*, held that the suit filed u/s 77 of the Indian Registration Act is not a bar for filing the suit for specific performance. In that case, *Rajamannar*, Chief Justice, speaking for the Bench, after considering the two extreme propositions: (1) that a party to an agreement has no right whatever in any circumstance to seek specific performance of the agreement once a document has been executed in pursuance of the agreement but the document is not registered; and (2) that the party to an agreement is entitled to compel the other party who has duly executed a document in pursuance of the agreement to go on executing fresh documents by resorting to a suit or suits for specific performance so long as no document has been registered, summed up the legal position thus:

It is true that the purchaser can resort to proceedings under the Registration Act, and the special statutory remedy u/s 77 of that Act to obtain registration of executed document. But if for any reason it becomes impossible to obtain registration after resort to such proceedings or because of other circumstances which prevent any resort to such proceedings under the Act then undoubtedly the vendee is entitled to bring a suit for specific performance of the agreement to sell in his favour. This does not, however, mean that every such suit should be decreed.

15. The above said principle had been followed by another Bench of this Court in *K. Hutchi Gowder Vs. H. Bheema Gowder*, and held as follows:

...a plaintiff, who having obtained a deed of transfer which requires registration in order that it may become operative, institutes a suit for a decree directing the defendant to execute a fresh deed of transfer, without having presented for registration the deed which had been executed, cannot obtain a decree in such suit unless the plaintiff proves that the failure to have the deed registered was

not due to any wrongful act or negligence on his part.

16. After reviewing various authorities on the subject, a Full Bench of Andhra Pradesh High Court in the case of Satyanarayana v. Gangamma 1959 AP 626 F.B.: has held that Section 77 of the Registration Act does not contain an exclusive remedy to a person who seeks to enforce his rights flowing from a contract of sale and it does not bar a suit for specific performance of an agreement to sell, though, of course, being an equitable remedy, the court is not bound to grant a decree in every case in which the agreement was not carried out in its entirety.

17. In the case of K. Veeran Ambalam Vs. Vellaiammal and Others, P.N. Ramaswami, J. has, after an elaborate consideration of all the decisions rendered by this Court as well as other High Courts, ruled that the lesser remedy provided for u/s 77 of the Registration Act, cannot take away the larger remedy provided for under the Specific Relief Act, that the Registration Act. does not touch or affect the equitable jurisdiction possessed by the Civil Courts to pass a decree for specific performance where circumstances exist entitling the plaintiff to such a decree, and that if the remedy u/s 77 of the Registration Act, is not available and even if available, is not effective and it is futile to initiate proceedings under the Registration Act, the vendee may have his remedy for specific performance.

18. In Mathai Ouseph Panackal Vs. Joseph and Another, Krishna Iyer, J. (as he then was) has referred to the decision of the Andhra Pradesh High Court in Anchuru Veerapa Naidu Vs. Gurijala Venkaiah Chowdari, with an approval and held that a person seeking relief other than bare registration can approach the Court by filing a suit and his right to file a suit in Civil Court is not fettered by Section 77. According to the learned Judge Section 77 of the registration Act is only a facility available to the aggrieved party and not a fetter on the Court's power and whether the plaintiff has already set in motion the machinery for enforcing registration or not is immaterial and cannot inhibit a suit dehors Section 77.

19. In the case of Ellammal Vs. Rangaswamy Koundar and Others, Ramanujam, J. after referring to various judgments had concluded thus:

It is also to be remembered that all the High Courts, other than Madras, has taken a consistent view that a suit for specific performance is maintainable even though the remedy for registration provided for under the Registration Act has not been followed. This Court, however, at early stages in Venkatasami v. Kristayya ILR (1893) 16 Mad 341= 12 L.W. 161- 3 MLJ 169, Thayarammal v. Lakshmi Ammal ILR (1920) 43 Mad 822= 12 L.W. 161 - 39 MLJ 181 and Kakarla Venkatasubbayya and Another Vs. Sravanam Venkatarathnamma, has taken the view that the aggrieved party has to invoke the remedy available to him under the Registration act to have the document registered and if that remedy has not been resorted to he cannot approach the Civil Court for the equitable remedy of specific performance.

As pointed out by Krishna Iyer, J in Mathai Ouseph Panackal Vs. Joseph and Another, "A powerful current of judicial thought has however blown the other way also. In deed; the preponderance of authority has swung in the last two decades towards the view that a suit for specific performance by way of registration of a document is maintainable notwithstanding the by-passing of the alternative remedy prescribed in Part 12 of the Registration Act.

As already stated, here on the facts of this case, the remedy available to the plaintiff under the provisions of the Registration Act is ineffective and futile. His vendors, defendants 1 to 3 have subsequently sold the properties to the fourth defendant and unless he could obtain relief as against the fourth defendant also from the registration authorities, that remedy under the Registration Act is useless and ineffective. For getting a relief as against the fourth defendant, the subsequent purchaser, the only proper and effective remedy available for the plaintiff is to file a suit for specific performance as he has done in this case.

20. From the conclusion of Ramanujam, J in the case of Ellammal Vs. Rangaswamy Koundar and Others, it is clear that the earlier view was that without resorting to a suit u/s 77 of the Registration Act, the suit for specific performance is not maintainable, subsequently the courts have taken a different view, as referred to by Krishna Iyer, J. in Mathai Ouseph Panackal Vs. Joseph and Another, that dehors the relief u/s 77 of the Indian Registration Act, it is open to the aggrieved party to file a suit for specific performance, seeking for the consolidated relief. So far as this principle is concerned, there cannot be any dispute.

21. But the difficulty arises in this case is whether a person opted to resort to the remedy u/s 77 of the Indian Registration Act and obtained a decree for registration and allowed the right accrued under the decree to be lapsed can file a suit for specific performance.

22. Almost in all the earlier cases referred to, the question arose for consideration is whether the suit for specific performance is barred by virtue of the remedy available u/s 77 of the Indian Registration Act. There the courts have taken a view that the remedy available under the Registration Act is only for specific purpose of registration and the same may be an ineffective remedy under some circumstances and hence the suit for comprehensive relief of registration, delivery of possession if the delivery is not effected already with the agreement holder and for other consequential relief, if any, in case if any third party had intervened. In some other cases, the remedy u/s 77 of the Indian Registration Act, though initiated, was not continued and the agreement holder resorted to the specific relief.

23. In this case, the appellant obtained a decree in the suit filed u/s 77 of the Indian Registration Act, but admittedly failed to execute the same within 30 days as per the said provision.

24. In K. Hutchi Gowder Vs. H. Bheema Gowder, , it has been held that even

though a plaintiff who obtains a document in writing which in law should be registered does not present it for registration, he can still maintain a suit for specific performance under certain circumstances, namely, when he proves that the failure to present the document for registration was not due to any wrongful act or negligence on his part or due to other circumstances which prevented his resorting to proceedings under the Registration Act.

25. More specifically the Bench had observed in the case of *Manicka Goundan v. Elumalai Goundan* 1956 II MLJ 536= 69 L.W. 782 as follows:

Every vendor is bound to do all that is necessary to perfect the title of the purchaser, which includes the execution and registration of a proper conveyance. It is true that the purchaser can resort to proceedings under the Registration Act and the special statutory remedy u/s 77 of that Act to obtain registration of the executed document. But if for any reason it becomes impossible to obtain registration after resort to such proceedings or because of other circumstances which prevent any resort to such proceedings under the Act then undoubtedly the vendee is entitled to bring a suit for specific performance of the agreement to sell in his favour. This does not however mean that every such suit should be decreed. Being an equitable remedy, a Court is not bound to grant specific performance in every case in which an agreement has not been carried out in its entirety. Well established equitable considerations would justify a Court refusing to grant the relief of specific performance. To take an obvious case, if the vendor duly executes a sale-deed and hands it over to the vendee and the vendee neglects to present it for registration within the time prescribed and, therefore loses his right to have it registered, a Court may well say that the plaintiff has only to blame himself for not securing registration and therefore he would not be entitled to any relief because of his own negligence.

26. The above view was affirmed by the Full Bench of the Andhra Pradesh High Court in *Padala Satyanarayana Murthy Vs. Padala Gangamma and Others*, wherein it is held as follows:

When there are two alternative remedies available to a party, it is open to him to exercise his right of election... As a suit u/s 77 has to be confined to the registration of a document alone, the question of validity and delivery of possession of property cannot but be conclusively adjudicated upon in a suit for specific performance only. A provision which cannot afford him full and complete relief which he can claim in law cannot possibly stand in his way in having resort to an effective remedy open to him. That must be so even though a party has not taken prior proceedings under the Registration Act for sufficient grounds. The remedy for specific performance of course being an equitable remedy, the Court may, if the party is guilty of laches or gross negligence, refuse to exercise the discretion in his favour.

27. It is also held by the Patna High Court in *Rameshwar Prasad Sahi Vs. Mt. Anandi Devi and Others*, that the specific relief can be granted subject to the

limitations of a court of equity. The learned Judges had dismissed a suit for specific performance not on the ground that such a suit did not lie, but on the ground the equitable relief would not be exercised in favour of the party, when the party itself was responsible for certain laches. For instance, when the plaintiff does not come with clean hands or is responsible in causing delay in asking for equitable reliefs, which again would vary according to the facts and circumstances as to whether the equitable relief's should be granted or not.

28. Hence it is clear that even though the suit for specific performance is maintainable, de hors the remedy available for the plaintiff u/s 77 of the Registration Act, it is for the court to consider whether the plaintiff is entitled for the equitable discretionary relief. In order to get the discretionary relief, it is well established principle that the plaintiff was not at fault or the delay in approaching the court for such relief of specific performance is not his.

29. As already stated, the plaintiff even though failed to get the sale deed registered before the Registering Authority, he did not opt to file the suit for specific performance straightway. Had he filed the suit, there will not be any difficulty in considering his case. Admittedly having failed before the Registering Authority in getting the document registered, the appellant resorted to the civil suit O.S. 422 of 1970 where he obtained a decree, though before the appellate court. Having obtained a decree, he had failed to get the document registered. In such circumstance, one cannot deny that the failure to get the document registered is only due to the appellant's negligence. It is not open for the appellant to plead that he had been prevented from other circumstances is resorting to register the sale deed by executing the decree in O.S. 422 of 1970.

30. Hence, as per the principles laid down by the Division Bench of this court in Manicka Goundan Vs. Elumalai Goundan minor by guardian Ammakannu Ammal and Others, and Full Bench judgment in Satyanarayana v. Gangamma (1959 AP 626) as well as by the Patna High Court in Rameshwar Prasad Sahi Vs. Mt. Anandi Devi and Others, the appellant is not entitled for the relief of specific performance on the ground of laches or negligence on his part.

31. The lower appellate court, however, dismissed the suit filed by the appellant on the ground of limitation, as the oral agreement is dated 6.10.1969 which is the cause of action for the suit. The suit was laid in the year 1981. The lower appellate court had held that the limitation would commence from the date of refusal by the second respondent or at the most from the date of rejection of the registration by the Registering Authority which resulted in the filing of the suit u/s 77 of the Indian Registration Act. As the time taken by the appellant for the proceeding in O.S. 422 of 1970 has necessarily to be held that will not ensure for the benefit of the appellant, this court does not find any error or illegality in the finding of the lower appellate court. Consequently, the judgment and decree of the lower appellate court is confirmed and the Second Appeal is dismissed. No costs.