

(1979) 07 MAD CK 0047
In the Madras High Court

S.K. Manavalan and Others

APPELLANT

Vs

B.S. Mary

RESPONDENT

Date of Decision : 20-07-1979

Acts Referred:

Citation : (1980) 93 LW 17 : (1980) 1 MLJ 43

Hon'ble Judges : P. Venugopal, J

Bench : Division Bench

Judgement

P. Venugopal, J.—The defendants are the appellants and the plaintiff is the respondent. The plaintiff filed a suit for specific performance of contract of sale on the following averments. The plaintiff was on the look-out for a house or a plot of land for building a house as she was not happy in the house she was residing at Thiagappa Mudali Street, Kilpauk. A vacant piece of land described in the plaint schedule belonging to the first defendant was offered for sale. The plaintiff entered into an agreement of sale on 14th December, 1973 and paid an advance of Rs. 1,000 to the first defendant for purchase of the suit property. As the plaintiff wanted to start the construction without delay, she wanted the plan to be submitted immediately by the first defendant, and this was agreed to and incorporated as a term in the agreement of sale. Thereupon the plaintiff applied for getting connection for water supply and also prepared a building plan and sent it to the first defendant. The first defendant suggested some alterations and the plaintiff believing that the suggestions made by the first defendant were bona fide, carried them out and prepared another plan. In the meantime the plaintiff came to know that the first defendant was negotiating the sale of the property. Since the first defendant did not sign the plan and forward the same to the Corporation as agreed and execute the sale deed within the period of three months agreed to in the agreement of sale, the plaintiff after notice has filed a suit for specific performance of the contract of sale.

2. Defendants 2 to 4 are the sons and daughter of the first defendant. The defendants in their written statement have raised the following pleas; what was

agreed to be sold under the agreement of sale dated 14th December, 1973 was not an independent and separate piece of land, but part of No. 17/1, Kilpauk Garden Road, Madras. Even at the time of agreement of sale the defendants pointed out to the plaintiff the difficulties in the way of selling the suit property and wanted the plaintiff to make sure whether the Corporation of Madras would sanction the plan for construction of a building on a plot of land measuring less than 1-1/2 grounds, contrary to the rules and whether they would permit the sub-division of the plot without leaving a gap of 12 feet for entrance to the rear portion. It was agreed that to the benefit of both parties the sanctioning of the plan by the Corporation of Madras should be made a condition precedent for sale of the plot. It was then agreed that the plaintiff should prepare a plan and hand it over to the defendants for being submitted to the Corporation of Madras for sanction and the sale deed had to be executed only if the plan was sanctioned. Clause 8 of the agreement provided that if the plaintiff fails to get the sanction within three months from the date of agreement, the advance of Rs. 1,000 paid should be returned. The plaintiff, through her husband, made enquiries in the Corporation and came to know that the plan will not be sanctioned since the sub-division of the property may not be granted and that she cannot construct the building with the plan sanctioned in favour of another person. It was the plaintiff who had committed the default and knowing that she has defaulted, had issued a suit notice to the defendants. Even otherwise, since the sanction of the plan was not obtained within three months from the date of agreement the plaintiff at best would be entitled to refund of advance, and the suit for specific performance is misconceived.

The trial Court framed the following three issues:

- (1) Whether the plaintiff is entitled for the specific performance of the agreement of sale?
- (2) Whether the defendants have committed breach of the terms of agreement of sale by not signing the plan for sanction?
- (3) To what other reliefs the parties are entitled to?

The trial Court recorded the following findings:

- (1) It was the duty of the first defendant to sign the plan and submit it to the Corporation. Without doing so, it is not open to the first defendant to say that the Corporation of Madras would not sanction the plan. The plea that before the sanction of the plan, the plot should be sub-divided is not borne out by the agreement of sale Exhibit A-I.
- (2) The suit property should be first sub-divided before the plan can be submitted to the Corporation is a plea introduced for the first time only at the time of the trial and not referred to in Exhibit A-I.
- (3) The suggestion that the building plans, Exhibits A-2 and A-3 were prepared after the filing of the suit and produced before the first defendant on 29th

December, 1973 was rejected by the trial Court.

(4) The first defendant did not perform his part of the contract by signing the building plan. Without sending the plan to the Corporation the first defendant cannot imagine difficulties in the sanction of the plan. The first defendant has committed a breach of the contract by not signing the plan prepared by the plaintiff and forwarding the same to the Corporation for sanction.

3. On these findings the trial Court decreed the suit with the following directions:

(a) The plaintiff should send the necessary plans to the first defendant by registered post within ten days from the date of decree. On receipt of the plans the first defendant should sign and submit them to the Corporation for sanction.

(b) Pending sanction of the plan by the Corporation the defendants should execute the sale deed in favour of the plaintiff in respect of the suit property within two months from the date of decree and the plaintiff should deposit the balance of sale consideration in Court within six weeks from the date of the decree.

(c) On such deposit, defendants should give vacant, possession of the suit property to the plaintiffs.

Aggrieved against the decree and judgment of the trial Court the defendants have filed the appeal before this Court.

4. It is contended for the appellants that the contract of sale Exhibit A-I should be performed and completed subject to sanction of plan by the Corporation and it is a contingent contract, the contingent event and future event being the sanction of the plan by the Corporation and the contract cannot be enforced by law unless and until that event has happened, and if the happening of the event becomes impossible, the contract becomes void. In the case of *Mrs. Chandnee Widya Vati Madden Vs. Dr. C.L. Katial and Others*, , the agreement to sell the house property built on leasehold plot belonging to Government provided that the vendor should obtain the necessary permission of the Chief Commissioner to the transaction. Though the vendor made an application to the appropriate authorities, later she withdraw the application and failed to fulfil her part of the obligation under the agreement. In a suit for specific performance it was contended the contract was not enforceable being of a contingent nature and the contingency not having been fulfilled, the agreement was inchoate. Rejecting the contention the Supreme Court held that the contract is enforceable and not a contingent contract. It was further held that in the contract of sale it was for the defendant-vendor to make the necessary application for obtaining the permission from the Chief Commissioner and since such an application made was withdrawn, she had failed to perform her part of the contract and the Court has to enforce the terms of the contract and enjoin upon the defendant-vendor to make the necessary application to the Chief Commissioner. From the decision of the Supreme Court cited¹ above it can be seen that a contract of sale subject to the

sanction of plan by the Municipal Corporation, is not a contingent contract capable of being enforced only when the plan is sanctioned. A contract is a bundle of reciprocal promises and the obligation of the parties had to be performed in the same sequence as set out in the contract. One of the parties to the contract cannot require compliance with the obligation by the other party without in the first instance performing his own part of the contract which in the sequence of obligation is performable by him earlier. Clause 4 of Exhibit A-I provides that the plan designed by the respondent should be submitted to the Corporation for sanction by the appellants. This being the term of contract between the parties, it has to be necessarily enforced by Court. In the chronological sequence the first obligation to be performed by the appellants under Exhibit A-I is to forward the plans to the Corporation for sanction. As per Clause 4 of Exhibit A-I it is incumbent on the appellant to submit the plans Exhibits A-2 and A-3, prepared by the respondent for sanction by the Corporation. In as much as the appellants have failed to forward Exhibits A-2 and A-3 to the Corporation, they have committed breach of contract. During the course of trial it was suggested that Exhibits A-2 and A-3 were prepared after the filing of the suit and they were not prepared and produced before the filing of the suit. The trial Court accepting the evidence of P.W. 2, the licensed surveyor rejected the suggestion and held that Exhibits A-2 and A-3 were prepared and submitted by the respondent to the first appellant for being: forwarded to the Corporation before the institution of the suit. The correctness of this finding is not challenged in appeal. It therefore follows that the first appellant in not submitting Exhibits A-2 and A-3 to the Corporation has committed breach of contract and on this short ground the respondent is entitled to a decree for specific performance of the contract. The contract does not become void or ineffective merely because the first appellant has failed to forward to the Corporation Exhibits A-2 and A-3 prepared by the respondent. Without forwarding the same to the Corporation as per the terms of the contract it is not open to the appellants to contend that the contingent event viz., the sanction of the plan has not fructified and consequently the contract has become void.

5. It was contended by the learned Counsel for the respondent that the approval of the building plan by the Corporation was exclusively for the benefit of respondent and if so, by waiver she can get rid of the condition. Counsel for appellants contended that sanction of the plan is a condition precedent, intended for the mutual benefit of both parties and it cannot be the subject-matter of waiver by respondent. This question will arise for consideration only when the first appellant has forwarded the building plan to the Corporation as required under Exhibit A-I and the Corporation refused to sanction the same. Until that stage is readied the consideration of the issue is premature and need not be gone into at this stage.

6. It was next contended for the appellants that subsequent to the decree, the first appellant forwarded the building plan to the Corporation and the Corporation refused to sanction the plan and if the supervening event is taken into account

the contract has failed for want of sanction by the Corporation and no decree for specific performance can be passed on a contract which has become frustrated.

7. The appellants have filed C.M.P. No. 6272 of 1979 to receive the plan submitted to the Corporation and the orders passed thereon as additional evidence. As per Exhibit A-I, the plan prepared by the respondent should be forwarded to the Corporation for sanction. Since such a plan has not been forwarded to the Corporation the plan submitted by the appellants and the order of the Corporation passed thereon, is neither admissible nor relevant for the purpose of this plea and the petition to receive the additional evidence, has therefore, to be rejected.

8. The plea that even if any building plan prepared by the respondent is forwarded to the Corporation, that will also meet with the same fate as the plan submitted by the first appellant is bereft of merit for the following three reasons:

(1) It is not known why the plan submitted by the appellant was not approved by the Corporation.

(2) If the plan was returned for non-compliance of any rules or procedure or any other reason the plan can always be resubmitted after compliance.

(3) It cannot be anticipated that the building plan prepared by the respondent would also receive the same fate and treatment as the building plan prepared by the first appellant and forwarded to the Corporation.

9. The trial Court has decreed that pending sanction of plan by the Corporation of Madras, the defendants should execute the sale deed in favour of the plaintiff in respect of the suit property. Clause 4 of Exhibit A-I in unmistakable terms provides that the sale shall be gone through only if the plan is sanctioned by the Corporation. In view of this specific term in the contract, the trial Court is not justified in directing the defendants to execute the sale deed pending sanction of the plan by the Corporation. The sale deed should be executed by the defendants-appellants only after the plan is sanctioned by the Corporation. To this extent the decree of the trial Court is modified. In all other respects the decree of the trial Court is confirmed. In the result, the appeal is allowed in part. No costs.

10. C.M.P. No. 6272 of 1979 for the reasons stated above stands dismissed.