

(1996) 04 MAD CK 0007
In the Madras High Court

T. Periasamy Nadar and Others

APPELLANT

Vs

T.D. Ramasubramaniam

RESPONDENT

Date of Decision : 24-04-1996

Acts Referred:

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 26

Citation : (1997) 1 MLJ 345

Hon'ble Judges : K.A. Swami, C.J

Bench : Division Bench

Judgement

K.A. Swami, C.J.—These 4 L.P. Appeals are preferred against the common judgment dated 19.4.1991 passed in A.S. Nos.427 to 430 of

1981 respectively. Those 4 appeals were preferred against the judgment and decree passed in O.S. Nos.3811 to 3814 of 1978. All these suits

were filed for specific performance of the agreements dated 10.8.1977. O.S. No. 3811 of 1978 was filed by T.Periasamy Nadar, T.Murugesan

and T.Thangaraj, whereas O.S. No. 3812 of 1978 was filed by T.Murugesan, O.S. No. 3813 of 1978 was filed by T.Thangaraj and O.S. No.

3814 of 1978 was filed by Periasamy. All the three are brothers and they have purchased different bits comprised in the property bearing door

Number 15/8, situate at Sir Thiagaraya Road, Pondy Bazaar, Madras. All these suits were filed on 17.4.1978. The trial court dismissed the suits.

So also the learned single Judge. Hence, these L.P.As. Thus, the two courts below have refused to grant a decree for specific performance.

2. In the light of the contentions urged, the points that arise for consideration in these appeals are : (i) whether the court below is justified in refusing

to grant a decree for specific performance and (ii) whether any other relief could have been granted to the plaintiffs/appellants.

3. Point (i) : In these appeals, the agreements are not disputed. Even according to the case of the plaintiffs, pursuant to the agreements dated 10.8.1977, the defendant did apply for permission to alienate the properties concerned in the 4 agreements under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1976. The application filed for permission was refused by the Authority under the Act. Therefore, the defendant sent a notice dated 19.10.1977 to the plaintiffs stating that as the application for permission to sell had been rejected, it was not possible to perform the agreement, hence he cancelled the agreement and also returned the cheque for Rs. 1,600 in each case received as advance under the agreements. However, the plaintiffs did not accept the cheques and returned them to the defendant. These facts are not in dispute. The other grievance of the plaintiffs was that in the application filed for permission, the defendant did not mention all the facts correctly and also did not pursue the matter by way of appeal, therefore, there were no bona fides on his part in performing his part of the agreement. It may be pointed out here that both the courts below have negated the contention of the plaintiffs and have held that there was no lack of bona fides on the part of the defendant that as per the agreement, he did apply for permission to alienate, but, the same was refused. Therefore, he was justified in cancelling the agreement.

4. We may refer to the various findings recorded by the learned single Judge. The following points were urged before the learned single Judge : (i) that as per the agreements, Exs. A-1 to A-4, the defendant was to obtain permission to sell from the Competent Authority, though as per law, no such permission was required to be obtained, the fact that the permission was not granted, did not disentitle the plaintiffs to seek, specific performance, (ii) that the defendant wantonly made a misrepresentation and suppressed necessary facts, manouvered to get a rejection order, therefore it was not open to the defendant to take advantage of his own fault and on that basis, the court could not refuse a decree for specific performance, (iii) that the mere rejection of an agreement for permission to sell did not bring the agreements to end and the defendant would have taken steps to file the appeals and (iv) that whatever might be the position under the Act 34 of 1976 under the new Act 24 of 1978, no permission

was necessary to sell the property and such refusal to grant permission had no effect in the eye of law and the defendant was not justified in

refusing to perform the agreements; that the finding of the trial court that the agreements were illegal and therefore, they were not enforceable, was

wrong and not sustainable in law. Learned single Judge has negated these contentions.

5. Before us, it is urged that having regard to the provisions contained in Act 24 of 1978, the decree of the courts below refusing to grant specific

performance is not valid in law and the appellate court can take into consideration the subsequent development in law and on the basis of the

provisions contained in Act 24 of 1978 and in view of the fact that the execution of the agreement and receipt of the advance have not been

denied, the decrees passed by the courts below be reversed and the decrees for specific performance be passed. Learned Counsel has placed

reliance on the decisions of the Supreme Court in *Ramjibhai v. Narottamdas* AIR 1986 S.C. 1912 : (1986) 3 S.C.C. 300 : (1986) 2 S.C.J. 369,

Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, .

6. We are of the view that it is not at all necessary to advert to these decisions. This is a case, in which as per the agreements, the defendant was

required to obtain permission for executing the sale deeds and the 1976 Act did provide for such a permission in the case of the land having the

construction over it. In the instant case, it is the case of the plaintiffs that there was a construction put up though not by the defendant, but by the

tenant of the property. Whatever may be, whether the construction was put up by the defendant or the tenant of the property, on the date the 1976

Act came into force, the subject matter of the agreements was land with the building thereon, therefore as per the provisions contained in Section

26 of 1976 Act, the permission was required to be obtained. Accordingly, the defendant did apply for permission, but, the same was refused.

Pursuant to that, before the 1978 Act came into force, the agreements were cancelled by the notice dated 19.10.1977, whereas the 1978 Act

came into force on 17th May, 1978, long after the cancellation of the agreements. It may be pointed out here that though it is open to the appellate

court to take into consideration the subsequent development in law, but the court cannot reverse the situation that had taken place before the

subsequent development of the law. Here is a case, before May, 1978, the agreements, were cancelled, because of refusal to grant permission to alienate. When once an agreement is cancelled, court can-not reconstruct the agreement, nor it can make the parties to enter into agreement. Court can only enforce the agreement, which is existing or the cancellation of the same is found to be bad in law. However, in the instant case, cancellation of the agreements cannot be held to be illegal because as the law stood on the date the agreements were cancelled, the agreements could not have been performed, without the permission to sell as per Section 26 of the 1976 Act. As pointed out above the permission sought was refused. Therefore, the agreements were cancelled by the defendant because the permission was refused. The subsequent development in law removing the requirement as to seeking permission for alienation will not have the effect of resurrecting the agreements which had been cancelled. Therefore, we are of the view that the subsequent development of law will not be of any assistance to the plaintiffs. In this view of the matter, it is not possible to hold that the discretion exercised by the courts below refusing to grant a decree for specific performance suffers from any illegality or arbitrariness.

7. In the case of *Vejanla Piothi Raju v. V.B. Raju* (1969) 2 S.C.W.R. 200, it has been held that the High Court can interfere in second appeal, only if the discretion is exercised arbitrarily or patently erroneous in law. That case also arose out of a suit for specific performance. Thus, the decision squarely applies to the facts of the case. As the two courts below have, on the facts, held that the defendant has not committed any default in performing his part of the agreements and is justified in cancelling the agreements on the refusal to grant permission by the competent authority under the 1976 Act, we see no reason to interfere with the discretion exercised judiciously in refusing to grant the specific relief. In view of this, we do not consider it necessary to refer to any other contentions.

8. Point (i) is, accordingly, answered in the affirmative.

9. Point (ii) : Though no plea was raised in the plaints based upon Section 22 of the Specific Relief Act, 1963 for refund of the advance amount in the event of refusal to grant a decree for specific performance, we specifically adjourned these appeals, after they were heard fully, to enable the

plaintiffs to amend the complaints to seek relief for refund of the advance amount with interest. A specific order was also passed on 19.3.1996 in the following terms:

Though these appeals were heard and posted for judgment to be dictated in open court, it was at this stage noticed that there was no alternative

prayer made for refund of the advance amount in the light of the provisions contained in Section 22 of the Specific Relief Act. In the event, this

Court were to come to the conclusion that the appellants are not entitled to specific relief, the decree for refund of the earnest money has to be

passed as in these cases, admittedly, a sum of Rs. 16,000 was paid in respect of each agreement as earnest money. As per Sub-section (2) of

Section 22 of the Act in the event no such prayer is made in the complaint, the court shall at any stage of the proceedings, allow the plaintiff to amend

the complaint on such terms as may be just for including a claim for such relief. Therefore, without prejudice to the contentions of the

appellants/plaintiffs and without expressing any view on the merits of the contentions advanced before us by both sides, we only adjourn these

appeals to enable appellants to avail the alternative remedy by amending the complaint as contemplated in Sub-section(2) of Section 22 of the Specific

Relief Act. Call on 2.4.1996.

Again, on 2.4.1996, the following order was passed and the matter was adjourned to 8.4.1996.

Even though an opportunity was given by the order dated 14.3.1996 to the plaintiffs appellants to seek an amendment of the complaint in terms of the

aforesaid order, no such applications are filed. Therefore, we proceed to deliver the judgment. Accordingly, post these appeals for judgment on

8.4.1996.

Even on 8.4.1996, for this purpose, the matter was adjourned by passing the following order:

One of the appellants T.Periaswami has appeared in person and also has sent a telegram. He has been told that if he wants to file an application

seeking relief alternatively, without prejudice to the right already sought in the suit, u/s 22 of the Act, he can do so by filing an application

on 24.4.1996 Finally call on 23.4.1996 at 2.15 p.m.

Accordingly, these appeals have come up today for judgment. Even to this day

also, the plaintiffs have not filed applications seeking amendment to the plaints. No doubt, we would not have hesitated to grant a decree for refund of the advance amount in favour of the plaintiffs with interest, for which the defendant had also no objection. In fact, he furnished the computation of the amount on the basis of the interest at the rate of 12% and 15%. But, in the absence of the amendment "to the plaints, it is not possible to grant such a decree in the light of the provisions contained in Sub-section(2) of Section 22 of the Specific Relief Act, which specifically states that no re-1 icf under Clause (a) or Clause (b) of Sub-section(1) shall be granted by the court, unless it has been specifically claimed. The proviso thereto specifically provides that if the plaintiffs has not claimed any such relief in the plaint, the court shall at any stage of the proceedings allow him to amend the plaint on such terms as may be just for including a claim for such relief. It is in the light of this provision contained in the proviso to Sub-section (2) of Section 22 of the Act, we adjourned these appeals more than once. It is unfortunate that the plaintiffs have not taken advantage of it. In view of this, we only regret that we cannot pass a decree, even though the defendant is ready and willing for such a decree being passed.

10. Point (ii) is answered accordingly.

11. For the reasons stated above, these appeals fail and the same are dismissed. However, there will be no order as to costs.