

Sekar Vs. Ramadas

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SooperKanoon Citation : sooperkanoon.com/1168791

Court : Chennai

Decided On : Jan-23-2014

Judge : R.Karuppiah

Appellant : Sekar

Respondent : Ramadas

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

23. 01.2014 CORAM: THE HONOURABLE MR.JUSTICE R.KARUPPIAH
S.A.No.1503 of 2004 Sekar ... Appellant Vs. Ramadas ... Respondent PRAYER :
Second Appeal filed under Section 100 of Civil Procedure code against the
judgment and decree dated 23.01.2004 made in A.S.No.85 of 2003 on the file of
Principal Subordinate Court, Mayiladudurai, reversing the Judgment and Decree
dated 10.07.2002 made in O.S.No.721 of 1998 on the file of Principal District
Munsif Court, Mayiladudurai. For Appellant : Mr.S.Sounther For Respondent :
Mr.Shivakumar

JUDGMENT

The appellant who is the defendant in the suit filed this second appeal against the
Judgment and Decree dated 23.01.2004 made in A.S.No.85 of 2003 and on the
file of Principal Sub-Court, Mayiladudurai, reversing the Judgment and Decree
dated 10.07.2002 made in O.S.No.721 of 1998 on the file of Principal District

Munsif Court, Mayiladudurai.

2. For the sake of convenience, the defendant in the suit is referred as appellant and the plaintiff in the suit is referred as respondent hereafter.

3. The respondent/plaintiff filed a suit for delivery of possession and for future profits. Briefly the case of the respondent is that the suit property belongs to the respondent. The appellant agreed to purchase the respondent's property and also the property of his brother namely S.Varadarajan's property on 14.04.1996 for sale consideration of Rs.1,17,000/- rendered in an agreement and taken possession of the properties on 14.04.1996 itself. The appellant paid a sum of Rs.20,000/- on 23.09.1996 and Rs.40,000/- on 20.02.1997 as part of sale consideration. Since the appellant has not complied with first condition, the respondent issued a legal notice on 28.02.1997 calling upon the appellant to pay the balance consideration and get the sale deed. But, the appellant expressed his inability to raise the money immediately. Therefore, both appellant and respondent entered into a separate agreement for sale in respect of plaintiff's property on 18.04.1997. As per the above said renewed agreement, the appellant agreed to purchase the property for Rs.1,17,000/- and also agreed to treat the amount of Rs.60,000/- paid in the earlier agreement as advance for second agreement for sale. The appellant also agreed to pay the balance of Rs.27,000/- on or before 30.09.1997 and the balance of Rs.30,000/- on or before 28.02.1998. But the appellant has not complied with the conditions of the agreement and he has not paid the balance amount. Only on 01.02.1998, the appellant paid a sum of Rs.15,000/- and endorsed the same in the agreement and agreed to pay the balance of Rs.42,000/- on or before 31.08.1998. The respondent has rendered the appellant on 15.08.1998 calling upon him to pay the balance on or before 31.08.1998. Both sides agreed that time is essence of contract. It is also agreed that the appellant is bound to deliver the possession of land to the respondent and to receive the balance amount after adjusting the profits from 01.04.1996 till date of delivery. The appellant raised sugarcane crops for three fasils and hence he has to pay Rs.45,000/- and the respondent is ready to adjust the said amount, out of sale consideration of Rs.75,000/- as per agreement. As agreed to between the parties, the agreement dated 18.04.1997 for sale stands cancelled. The respondent has all along been ready to comply with the

agreement, but the appellant was taking time to perform his part, taking advantage of the respondent's lenience. Therefore, the appellant's possession is illegal and bound to deliver the possession to the respondent. Hence the suit.

4. The appellant/defendant has filed a written statement in which, it is admitted that the appellant entered into an agreement of sale with the respondent and also admitted that the sale price was fixed at Rs.1,17,000/- and a sum of Rs.75,000/- was paid as part of sale consideration. At the time of last payment, the respondent agreed to produce all the original title deeds for the property and before the sale deed to get the signature of his daughters in the sale deed. But the appellant had not kept up his promise and without performing his part of the agreement, respondent gave a legal notice. Immediately, the appellant approached the respondent and reported that the appellant is ready to perform his part of the agreement and requested the respondent to produce the original title deeds and also to get signature of the daughters. The respondent has postponing the same on one ground or other. Now, the respondent has filed this vexatious suit. The respondent having failed to perform his part of contract, he cannot cancel the agreement unilaterally. Even now, the appellant is ready to perform his part of the agreement, if the respondent produce original title deed and obtain signature of his daughters. The appellant is not bound to surrender possession. The respondent has no right to adjust the amount towards profit. The respondent cannot claim any profit from the appellant and also it is highly excessive and therefore, prayed for dismissal of the suit.

5. The appellant has also filed an additional written statement in which it stated that the respondent has suppressed the mortgage deed executed in favour of Indian Overseas Bank on 12.06.1986 and filed the suit and hence, it is not maintainable. Further, the respondent cannot cancel the agreement unilaterally.

6. The trial Court has framed four issues from the above said pleadings. On the side of the respondent/plaintiff examined one witness as PW1 and marked three documents as Exs.A1 to A3. On the side of the appellant/defendant, examined one witness as DW1 and marked 11 documents as Exs.B1 to B11.

7. The trial court has discussed above the oral and documentary evidence adduced on either side and held that the respondent/plaintiff has proved that he is always ready and willing to perform his part of the contract and therefore, granted the reliefs of possession and mesne profits and directed the respondent to initiate separate proceedings for mesne profits and also directed to deduct the mesne profit out of sale consideration of Rs.75,000/- and passed the judgment and decree accordingly.

8. Aggrieved over the above said findings of the trial court, the appellant/defendant preferred first appeal A.S.No.85 of 2003 and the first appellate court has partly allowed the appeal and modified the decree and judgment passed by the trial court and held that the respondent is entitled to recovery of possession only on payment of Rs.75,000/- and three months time granted for payment and delivery of possession and modified the decree and judgment of the the trial court accordingly. Aggrieved over the above said findings of the first appellate court, the appellant/defendant preferred this second appeal.

9. This Court has admitted the second appeal on the following substantial questions of law for consideration: "

1. Whether the respondent/seller who failed to discharge his duty to clear all encumbrances over the suit property as per the terms of Section 55(1)(g) of Transfer of Property Act, is entitled to terminate the sale agreement by putting blame on the appellant/Purchaser ?.

2. Whether the respondent is entitled to terminate the contract on the ground that the appellant failed to pay purchase money within the stipulated time when time was not treated as essence of Contract ?. "

10. Heard the learned counsel appearing on either side and perused the records.

11. The respondent filed a suit for delivery of possession and mesne profits. It is not in dispute that the suit property originally belonged to the respondent. Further, both sides admitted that the appellant and respondent had entered into an agreement for sale in respect of suit property as per Ex.A2 agreement of sale

dated 18.04.1997. The learned counsel appearing for the respondent submitted that as per conditions made in the agreement, the appellant has not complied with the conditions and not paid the balance sale consideration. It is also pointed out that as per agreement of sale, possession also given to the appellant, in terms of sale agreement and therefore, the appellant is bound to deliver the possession to the respondent and hence, filed the suit for recovery of possession and mesne profits.

12. Per contra, the learned counsel appearing for the appellant would submit that at the time of last payment of sale consideration, the respondent agreed to produce all the original title deeds and also agreed to get the signature of his daughters in the sale deed, but, the respondent has not kept up his promise and also not performing his part of contract and therefore, the appellant not bound to surrender the possession and also not entitled to mesne profits.

13. A perusal of Ex.A2 agreement of sale revealed that both appellant and respondent entered into an agreement to sell the suit property on 18.04.1997 and as per agreement of sale, both parties agreed to take the earlier payment of Rs.20,000/- paid on 23.09.1996 and Rs.40,000/- paid on 20.2.1997 as per earlier agreement of sale as part of sale consideration for Ex.A2. It is further revealed that both sides also agreed that Rs.20,000/- has to be paid by appellant on or before 30.09.1997 and the balance amount has to be paid on or before 28.02.1998 and registered the sale deed by the respondent on his own expenses. The above said facts are not in dispute.

14. The learned counsel appearing for the appellant submitted that already one Bakthavatsalam, obtained loan from Indian Overseas Bank and the respondent and two others executed a letter of guarantee for the loan and also the respondent and two others deposited their title deeds on 12.06.1986 and created equitable mortgage. Since the above said amount has not paid, Indian Overseas Bank filed the suit in O.S.No.248 of 1991 and obtained preliminary decree on 18.10.1994, as per Exs.B1 to B3. But, the respondent has suppressed about the said facts and entered into an agreement with the appellant and therefore, the respondent is not entitled to claim any relief as claimed in the suit.

15. Per contra, the learned counsel appearing for the respondent submitted that only the appellant has not complied with the conditions stated in Ex.A2 sale agreement and not taking any steps to obtain sale deed, within the time stipulated in the agreement. Since time is essence of contract, the appellant is bound to deliver the possession to the respondent. The learned counsel also submitted that the respondent is ready to adjust the amount of income from sugarcane crops from the sale consideration and therefore, the respondent is entitled to the reliefs of delivery of possession and mesne profits.

16. The trial court has considered both sides submissions and held that the respondent has suppressed the equitable mortgage executed in favour of Indian Overseas Bank and obtained decree by the bank was suppressed by the respondent. Further, it is held that the appellant has not obtained the signature from his daughters and therefore, the respondent has hesitated to obtain the sale deed. Finally, the trial court has held that the appellant is liable to hand over the possession to the respondent and further directed to deduct the mesne profits, out of the sale consideration of Rs.75,000/- was paid by the respondent.

17. The first appellate court has held that the respondent is entitled to relief of delivery of possession, only on condition that the respondent should paid the advance amount of Rs.75,000/- paid by the appellant.

18. The learned counsel appearing for the appellant mainly contended that the delay in payment of sale consideration cannot due to the appellants failure but, due to the fraudulent act of the respondent and the respondent has not taken any steps to clear the encumbrance and convey the clear title to the appellant, inspite of it, the courts below held that the respondent is entitled to terminate the contract and get back the possession and therefore, the said findings of both the courts below are not valid in law.

19. Admittedly, the respondent has suppressed the facts of loan obtained from Indian Overseas Bank and the respondent created equitable mortgage in favour of Indian Overseas Bank and the Bank has obtained the decree and proceeded execution proceedings also. In the above said circumstances, the execution of sale deed as per Ex.A2 agreement of sale is not possible. A perusal of oral and

documentary evidence revealed that both sides have failed to comply with the conditions in execution of sale deed as per Ex.A1 earlier agreement of sale and Ex.A2 subsequent sale agreement. Both the courts below have discussed in detail and given findings that the respondent is entitled to the relief of possession from the appellant. The trial court has stated that the profits from the property may be deducted out of sale consideration. But, the first appellate court has held that only on payment of Rs.75,000/- received as part consideration as per agreement, the respondent is entitled to the relief of delivery of possession. Considering the submissions and the oral and documentary evidence adduced on both sides revealed that the non-payment of part of sale consideration is only due to earlier encumbrance and also it revealed that the appellant has not paid the balance sale consideration, within the stipulated time. Therefore, the first appellate court is final court of fact finding, has clearly held that the respondent is entitled to the recovery of possession from the appellant, on payment of sale consideration of Rs.75,000/-, received by the appellant. Therefore, the above said finding is not perverse or illegal as contended by the learned counsel for the appellant and answered two substantial questions of law accordingly. In view of the above said findings, the decree and judgment passed by the 1st appellate court is to be confirmed and the second appeal is to be dismissed.

20. In the result, the second appeal is dismissed and confirmed the decree and judgment passed by the first appellate court.

21. It is also reported that during the pendency of the second appeal, as per direction of this Court in interim petition CMP No.11901 of 2004, the appellant has paid Rs.42000/- to the respondent. Therefore, the respondent is directed to pay the above said amount of Rs.42000/- in addition to earlier advance amount of Rs.75000/- directly to the appellant within a period of three months and if the amount is paid then the appellant is directed to deliver the possession to the respondent, within one month thereafter. No order as to costs. 23.01.2014 Index : Yes / No Internet : Yes / No ssn R.KARUPPIAH, J.

ssn To 1. Principal Subordinate Court, Mayiladudurai.

2. Principal District Munsif Court, Mayiladudurai. S.A.No.1503 of 2004 23.01.2014

