

F.M.Anthoni Vs. 1.R.Johnson

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Court : Chennai

Decided On : Jul-13-2015

Judge : K.K.Sasidharan

Appellant : F.M.Anthoni

Respondent : 1.R.Johnson

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

13. 07.2015 CORAM THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN C.R.P.(NPD)(MD)No.1006 of 2012 C.R.P.(NPD)(MD)Nos.1006 to 1008 of 2012 and M.P.(MD)Nos.1,1 and 2 of 2013 F.M.Anthoni ... Petitioner Vs. 1.R.Johnson 2.Soman @ Swamidhas 3.Sornam @ Mari 4.R.Kirupa 5.Devanesam 6.Senai 7.Mahizha @ Queen Mahizha 8.Meena @ Queen Menaka 9.Lizi jent 10.Esthar Jeyanthi Bai 11.Baby VAsantha 12.Pushparani 13.Vimala Darling 14.Sam Sundaradhas 15.Samraj 16.Mary Stella 17.Prasad 18.Arulo 19.Amalin Sudha 20.Vijaya Stephen ... Respondents Prayer Civil Revision Petition is filed under Section 115 of Code of Civil Procedure to set aside the order and decretal order dated 27.06.2011 of the learned Principal District Munsif, Padmanabhapuram, made in E.A.No.233 of 2010 in O.S.No.31 of 1981, on his file, insofar as the same are against the petitioner, dismissing the said E.A. !For Petitioner : Mr.K.N.Thampi ^For Respondents 1to15 : Mr.R.Nandakumar For Respondents 16 to19: Mr.J.John Jayakumar C.R.P.(NPD)(MD)No.1007 of 2012: F.M.Anthoni ... Petitioner Vs.

1.Vijaya Stephen 2.Mary Stella 3.Prasad 4.Arlon 5.Amalin Sudha 6.Johnson 7.Samuvel 8.Roselet 9.Sornam 10.Kirupa 11.Esthar (minor) 12.Vasanth (minor) 13.Pushparani (minor) 14.Vimala (minor) 15.Dhas (minor) 15.Sam 17.Senai 18.Mahizha 19.Meena ... Respondents Prayer Civil Revision Petition is filed under Section 115 of Code of Civil Procedure to set aside the order and decretal order dated 27.06.2011 of the learned Principal District Munsif, Padmanabhapuram, made in E.A.No.159 of 2010 in E.P.No.15 of 2007 in O.S.No.31 of 1981, on his file, insofar as the same are against the petitioner, dismissing the said E.A. For Petitioner : Mr.K.N.Thampi For Respondent No.1 : Mr.S.Xavier Rajini For Respondents 2to5 : Mr.J.John Jayakumar For Respondents 6,9to19:Mr.R.Nandakumar For Respondent No.7 : Mr.V.Madhavan Kutty C.R.P.(NPD)(MD)No.1008 of 2012: F.M.Anthoni ... Petitioner Vs. 1.Vijaya Stephen 2.Mary Stella 3.Prasad 4.Arlon 5.Amalin Sudha 6.Johnson 7.Somu 8.Roselet 9.Somam 10.Kirupa 11.Esthar (minor) 12.Vasanth (minor) 13.Pushparani (minor) 14.Vimala (minor) 15.Dhas (minor) 16.Sam 17.Senai 18.Mahizha 19.Meena 20.Devanesam ... Respondents Prayer Civil Revision Petition is filed under Section 115 of Code of Civil Procedure to set aside the order and decretal order dated 27.06.2011 of the learned Principal District Munsif, Padmanabhapuram, made in E.P.No.15 of 2007 in O.S.No.31 of 1981, on his file, allowing the said E.P., as prayed for. For Petitioner : Mr.K.N.Thampi For Respondent No.1 : Mr.S.Xavier Rajini For Respondents 2to5 : Mr.J.John Jayakumar For Respondents 6,9 to 20 : Mr.R.Nandakumar For Respondent No.7 : Mr.V.Madhavan Kutty :COMMON

ORDER

INTRODUCTORY: Whether the plaintiff in a suit for specific performance is entitled to get the decree executed, after a period of 25 years, notwithstanding his failure to pay the balance amount, within the time permitted by the Trial Court, is the core issue that arises for consideration in these Civil Revision Petitions filed by the decree holder against the orders passed by the Executing Court, allowing the applications filed by the judgment debtors, for rescission of contract under Section 28 of the Specific Relief Act, 1963. THE FACTS IN NUTSHELL:

2. The petitioner filed a suit in O.S.No.31 of 1981 before the Sub Court, Padmanabhapuram. It was a suit for specific performance. The suit was laid on the strength of a sale agreement dated 27 August, 1976, executed by defendants 1 and 2.

3. The suit was decreed by the Trial Court, by judgment and decree dated 24 August, 1982. The defendants 2 and 3 filed first appeals in A.S.Nos.494 of 1984 and 110 of 1985, challenging the judgment and decree dated 24 August, 1982, in O.S.No.31 of 1981. The first appeals were dismissed by the High Court, by judgment and decree dated 19 November, 1998.

4. The petitioner, long after the disposal of first appeals, deposited the balance sale consideration on 09 January, 2007.

5. The petitioner filed E.P.No.15 of 2007, before the learned District Munsif, Padmanabhapuram, for execution of the decree in O.S.No.31 of 1981. In the meantime, the defendants 1 and 2 died and their legal representatives were impleaded in E.P.No.15 of 2007.

6. While so, the defendants 3 to 7 filed an application in E.A.No.159 of 2010, invoking Section 28 of the Specific Relief Act, 1963, for rescission of contract. Similarly, E.A.No.233 of 2010 was filed by the legal representatives of the deceased first defendant for rescission of contract.

7. The learned Executing Judge allowed the applications in E.A.Nos.159 of 2010 and 233 of 2010 and as a consequence, the Execution Petition was dismissed.

8. The order in E.A.No.233 of 2010, rescinding the contract, is challenged in C.R.P.(NPD)(MD)No.1006 of 2012. The order in E.A.No.159 of 2010 is challenged in C.R.P.(NPD)(MD)No.1007 of 2012. The order, dismissing the Execution Petition in E.P.No.15 of 2007, is challenged in C.R.P.(NPD)(MD)No.1008 of 2012.
SUMMARY OF ARGUMENTS:

9. The learned counsel for the petitioner contended that there was no specific direction in the decree in O.S.No.31 of 1981 specifying the time for depositing the balance amount. According to the learned counsel, the Trial Court permitted the

petitioner to deposit the balance sale consideration and immediately, after issuing the challan, amount was deposited on 09 January, 2007. The learned counsel further contended that in view of the permission granted by the Trial Court to deposit the money, the very application filed by the respondents in E.A.Nos.159 and 233 of 2010 are not maintainable.

10. The learned counsel for the contesting respondents justified the impugned orders. According to the learned counsel, before permitting the petitioner to deposit the balance sale consideration, notice was not issued to any of the respondents herein. The petitioner, even after the dismissal of first appeals, failed to deposit the sale consideration and the same resulted in filing applications by the respondents under Section 28 of the Specific Relief Act, 1963. THE ISSUE:

11. The only question that arises for consideration is as to whether the learned Executing Judge was correct in invoking Section 28 of the Specific Relief Act, 1963 to rescind the contract, consequent to the failure on the part of the petitioner to deposit the sale consideration, within the prescribed period or within a reasonable time after the dismissal of appeals. ANALYSIS:

12. The suit in O.S.No.31 of 1981 was filed by the petitioner for specific performance. The Trial Court passed a decree on 24 August, 1982, directing the defendants therein to execute the sale deed, on receipt of balance sale consideration, within two months. The petitioner now wanted to interpret the decree, as if the direction was to execute the sale deed, within two months, after receiving the balance sale consideration. The decree should be read as a direction to pay the balance sale consideration, within a period of two months and execution of sale deed thereafter. Since only a part of the sale consideration was paid initially, naturally, a direction should be given to the petitioner to pay the balance sale consideration. The Court should fix an outer time limit for payment. The decree dated 24 August, 1982, should be construed only in that manner. However, that date is not material, in view of the subsequent events.

13. The first appeals filed in A.S.Nos.494 of 1984 and 110 of 1985, before the High Court, challenging the judgment and decree dated 24 August, 1982 in O.S.No.31 of 1981, were dismissed by this Court, by judgment and decree dated

19 November, 1998. Even thereafter, balance sale consideration was not deposited, within a reasonable period. The balance sale consideration was deposited only on 09 January, 2007. The Trial Court has not issued notice to the respondents, before issuing challan to make deposit. Therefore, it cannot be said that the respondents are now precluded from taking up the contention regarding rescission of contract.

14. The defendants 3 to 7 and legal representatives of first defendant filed applications in E.A.Nos.159 and 233 of 2010 respectively, praying for rescission of contract. THE STATUTE:

15. Section 28 of the Specific Relief Act, 1963, reads thus:

"8. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.-

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the Court may allow, pay the purchase money or other sum which the Court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the Court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the Court- (a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and (b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the Court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:- (a) the execution of a proper conveyance or lease by the vendor or lessor; (b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the Court."

16. The suit for specific performance is a discretionary remedy. The Court exercises control even after passing the decree. The control would extend till the decree is executed. The conduct of the petitioner, before filing the suit and after suit, are all relevant consideration. Merely because the Court decreed the suit, it cannot be said that the contract cannot be rescinded subsequently.

17. The decree passed in a suit for specific performance is in the nature of a preliminary decree. The Trial Court retains control till the execution of decree. Section 28 of the Specific Relief Act, 1963 gives power to the Court to grant rescission of contract. Similarly, it gives power to the Court to extend the time for payment or performing the other conditions of the decree for specific performance. This makes the position very clear that by passing a decree for specific performance, there is no automatic extinguishment of contract. The decree in a suit for specific performance, therefore, stands on a different footing. Section 28 gives a clear discretion to the Court to pass equitable orders either in favour of the decree holder or judgment debtor, taking into account the background facts. THE PRECEDENT:

18. The Supreme Court in *Chanda v. Rattni* [AIR 2007 SC1514, indicated the powers under Section 28 of the Specific Relief Act, 1963, in the following words: "9. The present section corresponds to Section 35(c) of the Specific Relief Act, 1877 (hereinafter referred to as the 'repealed Act') under which it was open to the Vendor or lessor in the circumstances mentioned in that Section to bring a separate suit for rescission; but this Section goes further and gives to the Vendor or lessor the right to seek rescission in the same suit, when after the suit for specific performance is decreed the plaintiff fails to pay the purchase money within the period fixed. The present section, therefore, seeks to provide complete relief to both the parties in terms of a decree for specific performance in the same suit without requiring one of the parties to initiate separate proceedings. The object is to avoid multiplicity of suits. Likewise under the present provision where the purchaser or lessee has paid the money, he is entitled in the suit for specific performance to the reliefs as indicated in sub-section (3) like, partition, possession etc. A suit for specific performance does not come to an end on passing of a decree and the Court which has passed the decree for specific performance retains the control over the decree even after the decree has been passed.

10. The decree for specific performance has been described as a preliminary decree. The power under Section 28 of the Act is discretionary and the Court cannot ordinarily annul the decree once passed by it. Although the power to annul the decree exists yet Section 28 of the Act provides for complete relief to both the parties in terms of the decree. The Court does not cease to have the power to extend the time even though the trial Court had earlier directed in the decree that payment of balance price to be made by certain date and on failure suit to stand dismissed. The power exercisable under this Section is discretionary."

19. Even though the Trial Court granted a decree on 24 August, 1982, with a direction to deposit the money, the fact remains that the petitioner has not deposited the balance sale amount for a period of 25 years. The appeal was filed only in 1984. Even during the period of two years between the date of decree and filing of appeals, the petitioner has not deposited the money. The High Court has not granted time to the petitioner to pay the balance sale consideration. Nothing prevented the petitioner from depositing the sale consideration at least

immediately after the dismissal of first appeals on 19 November, 1998.

20. The petitioner waited till 2007 to deposit the money. By the time, the property value has gone up considerably. The Court cannot be a silent spectator in a matter like this. While exercising discretion in favour of a person, the Court is bound to consider equity in the light of background facts. The petitioner wanted to take undue advantage. He wanted the decree dated 24 August, 1982, to be executed now, notwithstanding the fact that the mandatory deposit was made only after a period of 25 years. I am, therefore, of the view that this is not a fit case to exercise the discretion in favour of the petitioner. CONCLUSION:

21. The learned Executing Judge considered the entire background facts and rightly allowed the applications in E.A.Nos.233 and 159 of 2010, by dismissing the Execution Petition in E.P.No.15 of 2007. I do not find any error or illegality in the orders warranting interference, by exercising revisional jurisdiction under Section 115 of Code of Civil Procedure, 1908.

22. In the upshot, I dismiss the Civil Revision Petitions. No costs. Consequently, the connected miscellaneous petitions are also dismissed. To The Principal District Munsif Court, Padmanabhapuram. .

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