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V. Udayakumar, Vs. I. Navaneethammal,

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Court : Chennai

Decided On : Jan-22-2002

Reported in : (2002)1MLJ519

Judge : S. Jagadeesan and ;P.D. Dinakaran, JJ.

Acts : Specific Relief Act, 1963 - Sections 15 and 16

Appeal No. : Letters Patent Appeal No. 206 of 2001

Appellant : V. Udayakumar, ;l. Rani, ;e. Usha, ;v. Ragunathan, ;v. Shankar, ;s. Selvi, ;v. Arulmurugan and V. Ma

Respondent : i. Navaneethammal, ;sankaran, ;mohanambal, ;thayanayagi, ;raji and Vasanthi

Advocate for Pet/Ap. : R. Gandhi, SC for ;R.G. Narendran, Adv.

Disposition : Letter patent appeal dismissed

Judgement :

S. Jagadeesan,J.

1. The legal heirs of the defendant in O.S.No.116 of 1981 on the file of the First Additional Subordinate Judge, Pondicherry are theappellants herein.

2. The predecessor in title of the respondents herein laid thesaid suit for specific performance on the basis of the agreement enteredinto between one Subramaniam, S/O Natesa Pillai - the plaintiff with oneRajeswari - the predecessor in interest of the appellants herein on20.11.1978. On the date of the agreement, a sum of Rs.10,000/- was paidas an advance to the defendant in the suit. Subsequent to the suitagreement, the said Subramaniam, the son of the plaintiff died and hence,the plaintiff filed the suit to enforce the agreement seeking specificperformance.

3. In the written statement, a plea was raised that the time isessence of the contract and there is no privity of contract between theplaintiff - the father of the said Subramaniam - the agreement holder andthe defendant and as such, the suit agreement cannot be enforced.

4. On the above pleadings, the Subordinate Judge framed thefollowing issues :

i. Whether the plaintiff is entitled to the specific performanceas prayed for in the plaint? and

ii. Whether the plaintiff is entitled to permanent injunctionrestraining the defendant from dealing with the suit property in anymanner of the suit property? To what other relief the plaintiff isentitled to?

5. Having framed the above issues, the learned trialJudge, after considering the oral as well as the documentary evidence letin by both the parties, found that the plaintiff - the father of theagreement holder is entitled for the specific performance of the suitagreement and ultimately decreed the suit as prayed by his judgment anddecree dated 3.8.1983.

6. Aggrieved by the judgment and decree of the trialCourt, the defendant filed an appeal in A.S.No.737 of 1983 on the file ofthis Court. The learned Single Judge framed the following questions forconsideration for the disposal of the appeal :

i. Whether the plaintiff is entitled for the specific performance prayedfor in the plaint? and

ii. Whether the plaintiff is entitled for the permanent injunctionrestraining the defendant from dealing with the suit property in anymanner?

7. The learned Single Judge, after considering theevidence elaborately, concurred with the findings of the trial Court anddismissed the appeal by his judgment and decree dated 20.9.2001, againstwhich, the present appeal has been filed.

8. Mr.R.Gandhi, learned Senior Counsel for the appellantsvehemently contended that there is no averment in the plaint that theplaintiff was ready and willing to perform his part of the contract.Further, there is no privity of contract between the plaintiff and thedefendant and as such, the suit is liable to be dismissed and that theplaintiff being the second degree heir of the said Subramaniam - theagreement holder, it is not open to him to maintain the suit, especiallywhen class-1 heir - the mother of the agreement holder is alive.

9. We have carefully considered the above contentions of thelearned Senior Counsel for the appellants.

10. From the pleadings, no issues were framed either by thetrial Court or by the learned Single Judge with regard to the readinessand willingness of the plaintiff in respect of the performance of hispart of the contract. If really such plea has been raised, the partiesought to have insisted for framing of the specific issue with regard tothat question. When there is no specific issue with regard to thereadiness and willingness on the part of the plaintiff and when there isno discussion, it is not open to the learned Senior Counsel for theappellants to raise such a plea before this Court.

11. However, a perusal of the judgments of the trial Court aswell as the learned Single Judge reveals that the plaintiff alone tooksome steps to enforce the agreement by obtaining signature from thedefendant in order to get no objection from the revenue authorities orthe land ceiling authorities. When the plaintiff had taken some steps toenforce the agreement, that would be sufficient to establish that theplaintiff was ready and willing to perform his part of the contract. Theconduct of the plaintiff in taking such steps can impliedly lead to theinference with regard to his readiness and willingness to perform hispart of the contract.

12. In fact, in a recent judgment in the case of Motilal Jain v. Ramdasi Devi 2000 AIR SCW 2554, the Supreme Court held as follows:

'That decision was relied upon by a three Judges Bench of thisCourt in Syed Dastagir's case : AIR 1999 SC3029 , wherein it was held that in construing a plea in any pleading,Courts must keep in mind that a plea is not an expression of art andscience but an expression through words to place fact and law of one'scase for a relief. It is pointed out that in India most of the pleas aredrafted by counsel and hence they inevitably differ from one to theother; thus, to gather true spirit behind a plea it should be read as awhole and to test whether the plaintiff has performed his obligations,one has to see the pith and substance of the plea. It was observed,'Unless a statute specifically requires a plea to be in any particularform, it can be in any form. No specific phraseology or language isrequired to take such a plea. The language in Section 16(c) of theSpecific Relief Act, 1963 does not require any specific phraseology butonly that the plaintiff must aver that he has performed or has alwaysbeen and is willing to perform his part of the contract.' So thecompliance of 'readiness and willingness' has to be in spirit andsubstance and not in letter and form.' It is thus clear that an avermentof readiness and willingness in the plaint is not a mathematical formulawhich should only be in specific words. If the averments in the plaintas a whole do clearly indicate the readiness and willingness of theplaintiff to fulfil his part of the obligations under the contract whichis subject matter of the suit, the fact that they are differently wordedwill not militate against the readiness and willingness of the plaintiffin a suit of specific performance of contract for sale.'

13. Basing upon the above principle, it is needless to say thatit is not necessary for the plaintiff to plead the readiness andwillingness in unequivocal terms in the plaint. However, if the readingof the plaint and the conduct of the plaintiff leads to an inference thathe was ready and willing to perform his part of the contract, then, theCourt can take into consideration of such conduct with regard to thereadiness and willingness on the part of the plaintiff.

14. Even though such argument has been advanced, in thememorandum of grounds of appeal filed before us in this letters patentappeal, the only question

urged is that there is no privity of contractbetween the plaintiff and the defendant and as such, the agreement is notenforceable by the plaintiff. Since the learned Senior Counsel advancedthe argument with regard to the readiness and willingness on the part ofthe plaintiff, we are forced to discuss the same in the earlierparagraph.

15. Now, coming to the question of privity of contract,admittedly, the agreement holder the said Subramaniam is the son of theplaintiff Natesa Pillai. When once the agreement holder dies, naturally,his rights would pass on to his legal representatives. The father beingone of the legal representatives, he filed the suit for specificperformance. If the defendant wants to raise any plea with regard to themaintainability of the suit by the plaintiff as the legal representativeof the deceased agreement holder, then, it is for her to deny the rightof the plaintiff to file the suit. When no such objection has beenraised with regard to the maintainability of the suit by the plaintiff asthe legal representative of the deceased son, it is too late to pleadthat there is no privity of contract between the plaintiff and thedefendant. When the right of the defendant being passed on to the legalrepresentatives, there is no need for the legal representatives to havethe privity of contract with the executant of the agreement to enforcethe specific performance. By virtue of inheritance, such right wouldevolve on the legal representatives of the deceased agreement holder,which is not disputed in the written statement.

16. It is the further contention of the learned Senior Counselthat when class-1 heirs are available, it is not open to class-2 heirs ofthe deceased agreement holder to file the suit.

17. It is a matter between the legal heirs of the deceasedagreement holder. In the absence of any specific plea in the writtenstatement with regard to the maintainability of the suit by the father asthe legal representative of the deceased agreement holder, therelationship being undisputed, it is not open to the learned SeniorCounsel for the appellants to advance such an argument at this stage orto plead the want of privity of contract between the parties. Hence, thecontention of the learned Senior Counsel for the appellants cannot becountenanced.

18. Section 15 of the Specific Relief Act is specific that therights of the agreement holder will automatically pass on to thesuccessor in interest, in case of death of the agreement holder. If thearguments of the learned Senior Counsel for the appellants are to beaccepted, then, there is no need for the defendant to refund the advanceamount, which was received under the suit agreement, because such suitwill be barred for want of privity of contract and it will amount tounlawful enrichment by the defendant, especially when there is no pleawith regard to the maintainability of the suit by the father pursuant tothe death of his son - the agreement holder. Hence, We do not find anyillegality in the findings of the trial Judge as well as the learnedSingle Judge in granting the decree for specific performance.

19. Hence, the letters patent appeal is dismissed.

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