

M.Ramalingam Vs. K.Vijayakumar

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Court : Chennai

Decided On : Feb-08-2013

Judge : The Hon'Ble Mr. Justice M.Duraiswamy

Appellant : M.Ramalingam

Respondent : K.Vijayakumar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated :

08. 02.2013 CORAM: THE HON'BLE MR. JUSTICE M.DURAISWAMY
A.S.No.853 of 2006 and M.P.No.1 of 2006 M.Ramalingam ... Appellant Vs.
1.K.Vijayakumar 2.Navaneethammal 3.Saroja Ammal 4.Rajeswari 5.Hemamalini
6.Lalli @ Lalitha 7.Vijaya 8.Jayanthi 9.Rangan 10.Nagaraj 11.Jambu 12.Nixon -
Mr.Jawaharlal, Power Agent of Nixon 13.A.Sundar (Died) 14.Selvalakshmi
15.Komala Devi 16.Alagarsamy 17.Audaiaammal ... Respondents (Recognised
Mr.Jawaharlal as the Power Agent of Mr.T.Nixon (12th respondent) vide order
dated 05.11.2008 in M.P.No.1 of 2007) (R14 to R17 brought on record as LRs of
the deceased 13th respondent vide order dated 16.02.2010 made in
C.M.P.Nos.3295 of 2007 & 3296 of 2007) (R15 & R17 recorded as LRs of
deceased R16 vide order dated 08.10.2012 made in A.S.No.853 of 2006 (memo
presented in Court on 08.10.2012)) First Appeal filed under Section 96 of the Code
of Civil Procedure against the judgment and decree dated 05.04.2006 made in
O.S.No.269 of 2004 on the file of the Additional District Judge, Fast Track Court
not II, Kancheepuram. For Appellant : Mr.K.V.Ananthakrishnan For Respondents :

Mr.Y.Jothish Chander (R1, R2, R12, R15 & R17) R3 to R11 given up R13, R14 and R16 - died

The above first appeal arises against the judgment and decree in O.S.No.269 of 2004 on the file of the Additional District Judge, Fast Track Court not II, Kancheepuram. 2.The plaintiff is the appellant and the respondents 1 to 13 were the defendants, respondents 14 to 17 were brought on record as the legal representatives of the deceased thirteenth respondent and respondents 15 & 17 were recorded as the legal representatives of the deceased sixteenth respondent. The plaintiff filed the suit in O.S.No.269 of 2004 for specific performance and for permanent injunction. 3.The brief case of the plaintiff is as follows: According to the plaintiff, the suit property originally belonged to one Ramachandra Naidu, who had a son by name Kuppusamy Naidu. The defendants 2 & 3, one Kanakambujammal and Bagirathiammal are the daughters of the said Ramachandra Naidu. The first defendant is the son of Kuppusamy Naidu. The defendants 4 to 11 are the children of Govindarajulu. The defendants 1 to 3 along with the mother of defendants 4 to 11, Bagirathiammal jointly executed an Agreement of Sale in favour of the plaintiff on 23.12.1989 agreeing to sell the suit property for a sum of Rs.6,19,200/-. On the date of the Agreement, a sum of Rs.1,00,051/- was paid as advance. Six months time (i.e.) till 22.06.1990 was fixed for the completion of the sale. After the execution of the Agreement, the sister of the defendants 2 & 3 viz., Kanakambujammal filed a suit in O.S.No.1386 of 1989 on the file of the District Munsif Court, Kancheepuram, against the defendants 1 to 3, Bagirathiammal and the plaintiff claiming pre-emptive right. She also obtained an order of interim injunction restraining the plaintiff in the present suit from purchasing the property and the defendants were also restrained from selling away the property to any other person. The plaintiff was always ready and willing to perform his part of the contract. After the dismissal of the suit in O.S.No.1386 of 1989 on 28.07.1999, the plaintiff has filed the present suit for specific performance. The plaintiff issued notice on 20.06.1990 to the defendants 1 to 3 and Bagirathiammal, but there was no reply. Thereafter, the plaintiff issued another notice on 13.10.1999 requesting the defendants to execute the Sale Deed. The defendants 1 to 11 failed to execute the Sale Deed and thereafter, the property was purchased by the defendants 12 & 13. Those Sale Deeds have no

legal sanctity. The suit is not barred by limitation. In these circumstances, the plaintiff filed the suit. 4. The brief case of the defendants 1 & 2 are as follows: The defendants admitted the execution of the Sale Agreement in favour of the plaintiff. But according to the defendants, time was the essence of the contract. The sale should have been completed on or before 22.06.1990. The plaintiff did not choose to pay the balance Sale Consideration and get the Sale Deed executed within the time stipulated. The plaintiff was never prepared to perform his part of the contract. The value of the property has gone up many folds and that is why the plaintiff is interested in proceeding as per the Sale Agreement. The suit has been filed after a lapse of 11 years, which cannot be entertained. The plaintiff has violated Order 7 Rule 14, Civil Procedure Code by filing the xerox copy of the Sale Agreement. On that score alone, the suit has to be dismissed. In these circumstances, the defendants prayed for dismissal of the suit. 5. The brief case of the 12th defendant is as follows: According to the defendant, the Sale Agreement dated 23.12.1989, in favour of the plaintiff, should have been a concocted one and fabricated to defeat the rights of Kanakambujammal. Even if there was an Agreement, it is not subsisting due to efflux of time. The twelfth defendant had purchased the property from one Navaneethammal, which has been described in 'A' Schedule and from one Vijayakumar under two Sale Deeds dated 24.01.1997 and 27.01.1997. The twelfth defendant is a bona fide purchaser of the property and he was put in possession of the same immediately. The plaintiff has not produced the original Sale Agreement dated 23.12.1989 at the time of filing of the suit. The plaintiff was not ready and willing to perform his part of the contract. In these circumstances, this defendant prayed for dismissal of the suit. 6. The brief case of the 13th defendant is as follows: According to the defendant, the Sale Agreement dated 23.12.1989 should be a concocted and a fabricated one. The suit is bad for misjoinder of necessary parties viz., one Sylvia, the purchaser of another share in the suit property. The plaintiff had violated Order 7 Rule 14, Civil Procedure Code by not producing the original Sale Deed along with the plaint. The defendants purchased the property from Sarojammal under Sale Deed dated 17.07.1997. The plaintiff was not ready and willing to perform his part of the contract. The Sale Agreement produced in the suit and marked as Ex.A1 is not the original of the plaint Document No.1 produced along with the plaint. Ex.A1 is a forged and

concocted document after the filing of the suit and therefore, the suit is liable to be dismissed. 7.Before the trial Court, on the side of the plaintiff, 2 witnesses were examined and 20 documents, Exs.A1 to A20, were marked and on the side of the defendants, 4 witnesses were examined and 4 documents, Exs.B1 to B4, were marked. 8.The trial Court after taking consideration the oral and documentary evidences of both sides, dismissed the suit. 9.Aggrieved over the judgment and decree of the trial Court, the plaintiff has filed the above appeal. 10.Heard Mr.K.V.Ananthakrishnan, learned counsel appearing on behalf of the appellant and Mr.Y.Jothish Chander, learned counsel appearing on behalf of the respondents 1, 2, 12, 15 & 17. 11.On a careful consideration of the materials available on record and the submissions made by both the learned counsels, the following points arise for consideration in this appeal:

1. Whether Ex.A1 Agreement is true and genuine and binding on the defendants?
- 2.Whether the plaintiff was ready and willing to perform his part of the contract?
- 3.Whether the purchase made by the defendants 12 & 13 are legally valid?
- 4.Whether the plaintiff is entitled for a decree for specific performance?

12. There is no dispute with regard to the title of the suit property. According to the plaintiff, the defendants executed Ex.A1 Agreement dated 23.12.1989 and the Sale Consideration was fixed at Rs.6,19,200/- and as per the Agreement, the sale should be completed on or before 22.06.1990. Though Ex.A1 Agreement was executed on 23.12.1989, the plaintiff has filed the present suit for specific performance only on 28.01.2000. The plaintiff contended that since the sister of the defendants 2 & 3 viz., one Kanakambujammal filed a suit in O.S.No.1386 of 1989 on the file of the District Munsif Court, Kancheepuram, claiming pre-emptive right against the defendants 1 to 3, Bagirathiammal and the plaintiff, which came to be dismissed on 28.07.1999, he did not file the suit immediately. It is also the case of the plaintiff that the plaintiff therein obtained an order of injunction restraining him from purchasing the property and also injunction restraining the defendants from selling the property to third parties. Though the sister of the defendants 2 & 3 filed the suit claiming pre-emptive right on 30.12.1989, there was no averment in the plaint that the present plaintiff had entered into an Agreement of Sale on 23.12.1989 with the owners of the suit property. The present plaintiff was the fourth defendant in the said suit. Even in the written statement, he has not

stated a single word with regard to the alleged Agreement dated 23.12.1989. 13. Since there was an order of injunction as against the present plaintiff, he could not file the suit immediately and he had filed the suit only after the dismissal of the suit in O.S.No.1386 of 1989, therefore, the suit filed by the plaintiff is in time and the trial Court also rightly held that the suit is not barred by limitation. 14. Since the suit was filed after a lapse of 11 years, as rightly contended by the defendants, the value of the property would have increased multifold. In order to gain advantage of the increase in value, the plaintiff had filed the present suit for specific performance after a period of 11 years. The plaintiff, at the time of filing of the suit, had filed only xerox copy of the Agreement dated 23.12.1989. On a perusal of the original plaint, it could be seen that the plaint was returned by the Subordinate Court for rectifying some defects. One of the return was that the original documents should be filed. Below the return, the counsel appearing for the plaintiff made an undated endorsement stating that "original documents is filed". 15. The learned counsel appearing on behalf of the appellant submitted that the original of the Agreement was filed at the time of re-presentation of the plaint. The defendants specifically pleaded in the written statement that the plaint Agreement dated 23.12.1989 is a concocted and fabricated document. In the written statement filed by the defendants, in the months of October 2000, March 2002 and October 2002, the defendants have stated that the original of the Sale Agreement dated 23.12.1989 was not produced by the plaintiff. If the original document was produced while re-presenting the plaint, the defendants would not have taken such a stand in the written statement. That apart, the Agreement dated 23.12.1989 does not bear the seal of the trial Court. When all the other documents bear the seal of the trial Court, the vital document (i.e.) the Sale Agreement dated 23.12.1989 does not bear the seal of the trial Court. It creates a doubt over the production of the said document. That apart, the defendants produced Ex.B2 xerox copy of the Sale Agreement executed between the plaintiff, defendants and others dated 23.12.1989. 16. P.W.1 in his cross examination had specifically admitted that Ex.B2 Agreement is the true Agreement and he had issued notices in the year 1990 and 1996 only under Ex.B2 Agreement. Further, P.W.1 admitted that Ex.A1 does not bear the seal of the trial Court. When the plaintiff himself admitted that Ex.B2 Agreement is the true Agreement, there is no necessity for

further probing into the matter with regard to the genuineness of Ex.A1 Agreement. It is pertinent to note that this aspect was also not clarified by way of re-examination in the deposition of P.W.1. That apart, in Ex.A1 Agreement dated 23.12.1989, the first Rs.5/- stamp paper was purchased on 23.02.1988, the next Rs.3/- stamp paper was purchased on 22.08.1989 and the other Rs.3.50p stamp paper was purchased on 24.04.1989. Therefore, from the above, it is very clear that the plaintiff had only used the stamp papers which were available with him and the stamp papers were not purchased for the purpose of execution of Ex.A1 Agreement. Further, the plaintiff has not examined the attestors to Ex.A1 Agreement. 17. When the defendants, specifically, stated that Ex.A1 Agreement is a concocted and a fabricated document, the burden is heavily on the plaintiff to establish and prove the genuineness of the document, which he failed to prove. On the contrary, the plaintiff himself admitted that Ex.B2 Agreement is the true document. No doubt there are some discrepancies in Ex.B2 Agreement, but there is no necessity for giving a finding with regard to the genuineness or the validity of Ex.B2 Agreement, since the plaintiff had filed the suit based on Ex.A1 Agreement. The defendants have not sought for any relief based on Ex.B2 Agreement. Therefore, from the evidence of P.W.1, it is clear that Ex.A1 Agreement is not a true and genuine document. The trial Court has rightly held that Ex.A1 is a concocted and fabricated document, therefore, Ex.A1 Agreement is not binding on the defendants. The trial Court has rightly found that the administration side of the trial Court should be made responsible as to how and in what manner the original version of the Agreement was substituted by the plaintiff and without the assistance and helping hand from someone in the administration side of the trial Court, the plaintiff could have never substituted Ex.A1 Agreement in the place of xerox copy, which alone was presented at the time of the presentation of the suit. 18. The learned counsel appearing on behalf of the appellant, in support of his contention, relied upon a judgment reported in 2007 (3) CTC 78.[J.Yashoda Vs. K.Shobha Rani] wherein the Hon'ble Apex Court held that in order to enable a party to produce secondary evidence it is necessary for the party to prove the existence and execution of original document and secondary evidence of contents of a document cannot be admitted without non production of original being first accounted for in such a manner as to bring it within one or other of cases provided

for in Section 65 of the Evidence Act. 19. Countering the submissions made by the learned counsel for the appellant, the learned counsel appearing for the respondents 1, 2, 12, 15 & 17, in support of his contentions, relied upon a judgment reported in 2007 (1) CTC 5. [A. Ganapathy Vs. S. Venkatesan] wherein a Division Bench of this Court held that equitable relief of specific performance could not be granted where evidence adduced by the plaintiff is wholly unsafe and false. 20. As already stated, the defendants are not seeking for any relief based on Ex. B2 xerox copy of the Agreement dated 23.12.1989, whereas, the plaintiff, relying on Ex. A1 Agreement, seeks for the relief of specific performance. But in his evidence, as already stated, P.W.1 himself admitted that Ex. B2 is the true Agreement. Therefore, there is no necessity for giving a finding with regard to the genuineness or the validity of Ex. B2 Agreement in the present proceedings. However, since the plaintiff himself had admitted that Ex. B2 is the true Agreement, it clearly proves that Ex. A1 Agreement is not a true and genuine document. Therefore, the judgment relied upon by the learned counsel for the appellant is not applicable to the facts and circumstances of the present case. The judgment relied upon by the learned counsel for the respondents 1, 2, 12, 15 & 17 squarely applies to the facts and circumstances of the present case. 21. The present suit filed by the plaintiff for specific performance, is an equitable discretionary relief. A person, who approaches the Court for the equitable relief, should come to Court with clean hands. In the present case, by his own evidence, the plaintiff clearly established and proved that he has not come to the Court with clean hands. The Hon'ble Apex Court as well as this Court in various judgments have repeatedly held that if a doubt arises whether it is probable or possible that Agreement of Sale would have been executed at all, discretionary relief shall not be granted. Further, when a suspicion is raised, discretion will not be exercised when it is inequitable to grant the relief of specific performance on account of conduct of the plaintiff. The Court is not bound to grant lawful performance merely because it is lawful to do so. The plaintiff would be dis-entitled to the relief of specific performance, if his conduct is tainted with falsity. The evidence adduced by the plaintiff is wholly unsafe and false and therefore, the relief of specific performance cannot be granted to the plaintiff. 22. Since, it is found that Ex. A1 document itself is not true and genuine and not binding on the parties, there is no necessity for going into the issue with

regard to the readiness and willingness. 23.The twelfth defendant purchased the share of Navaneethammal mentioned in 'A' Schedule to his written statement and from one K.Vijayakumar mentioned as 'B' Schedule to his written statement on 24.01.1997 and 27.01.1997 for a valuable consideration. 24.The thirteenth defendant purchased the property from the third defendant and others under Ex.B3 Sale Deed dated 17.07.1997 for a valuable consideration. Since it is found that Ex.A1 Agreement is not true and genuine document, the purchase made by the defendants 12 & 13 from the owners of the suit property is legally valid. 25.With regard to the possession of the property, the plaintiff failed to establish and prove that he is in possession of the suit property after the execution of the Agreement dated 23.12.1989. Even in Ex.B2 Agreement, which was admitted by P.W.1 as true document, there is no recital that possession was handed over to him at the time of execution of the document. Therefore, the trial Court, after taking into consideration the oral and documentary evidences, rightly came to the conclusion that the plaintiff has not proved his possession over the suit. In these circumstances, the trial Court has rightly dismissed the suit for specific performance and injunction. 26.In these circumstances, I find no ground to interfere with the judgment and decree of the trial Court. The appeal is liable to be dismissed. Accordingly, the same is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed. Index : Yes 08.02.2013 Internet: Yes va Note: Mark a copy to the Registrar General, High Court, Madras to conduct enquiry with regard to the finding given in paragraph No.17 of this judgment and take appropriate action based on the enquiry finding as against the concerned staff of Additional District Court, Fast Track Court not II, Kancheepuram and file a report in this regard within a period of three weeks from today. M.DURAISWAMY, J.

va To The Additional District Court, Fast Track Court not II, Kancheepuram. Judgment in A.S.No.853 of 2006 and M.P.No.1 o

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