

**Ramathal Vs. Lakshmi**

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**SooperKanoon Citation :** [sooperkanoon.com/965864](http://sooperkanoon.com/965864)

**Court :** Chennai

**Decided On :** Apr-05-2013

**Judge :** The Honourable Mr.Justice S.Palanivelu

**Appellant :** Ramathal

**Respondent :** Lakshmi

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

05. 04.2013 CORAM THE HONOURABLE Mr.JUSTICE S.PALANIVELU  
A.S.No.952 of 2004 Mrs. Ramathal .. Appellant vs. Mrs. Lakshmi .. Respondent  
Appeal Suit is filed under Section 96 of the Civil Procedure Code against the  
Judgment and Decree passed by the Learned Additional District and Sessions  
Judge, Fast Track Court not III, Coimbatore in O.S.No.229 of 2001 dated  
19.12.2003. For Appellant ... Mr. Kabilan Senior Counsel for M/s.Shobana  
Ramasubramanian For Respondents ... Mr. C.R. Prasanan JUDGMENT The  
following are the averments contained in the plaint filed in O.S.No.229 of 2001:

1. (a) The property measuring 2 cents and 51= sq.ft of land situate in S.F.No.222/2  
at Saravanapatti village, Coimbatore belongs to the defendant, that the defendant  
entered into a sale agreement on 25.3.1996 with the plaintiff for sale of the above  
property for a consideration of Rs.3,00,000/-, that an advance of Rs.1,00,000/- has  
been paid with a stipulation to complete the sale within two years from the date of  
agreement, that subsequently the defendant received Rs.1,45,000/- to construct a

house and Rs.50,000/- to settle earlier debts, that the total amount paid to the defendant is Rs.2,95,000/-, that the balance of Rs.5,000/- has been retained to be paid at the time of execution of the sale deed, that while the plaintiff was ready and willing to take the sale, the defendant postponed the execution of the sale deed under some pretext or the other, that in view of the lethargic attitude of the defendant, the plaintiff approached the defendant through mediators and during the second week of March 1998 she approached the defendant and reminded her that time stipulated in the sale agreement is about to expire within 10 days, that as per the directions of the defendant, the plaintiff purchased stamp-papers, typed out the sale deed and copy-sheets and was waiting at the Sub-Registrar office, Gandhipuram on 16.3.1998 from 11.00 a.m. to 5.30 p.m., but the defendant did not turn-up.

1. (b) The plaintiff therefore sent a Lawyer's Notice dated 16.3.98 calling upon the defendant to execute the sale deed in her favour and complete the sale, that the defendant sent a reply notice dated 21.3.1998 with false and frivolous allegations and hence the plaintiff has filed this suit seeking relief of Specific Performance of the suit agreement dated 25.3.1996, directing the defendant to execute the sale deed in favour of the plaintiff at her cost and to deliver the possession of the suit property to the plaintiff and for costs.

2. In the written statement filed by the 1st defendant and adopted by the 2nd defendant it is averred as follows:

2. (a) The defendant deny the entire averments in the plaint except that are specifically admitted and put to strict proof of each and every one of the averments, that the only jural relationship between the plaintiff and the defendant is that of a creditor and debtor, that during the month of February 1996 the defendant's husband suffered a massive paralytic stroke and was paralysed from head to toe and he has been undergoing medical treatment, that since the medical treatment was very expensive, she was forced to borrow monies from the plaintiff at heavy rates of interest, that on three occasions the defendant had totally borrowed a sum of Rs.55,000/- from the plaintiff, which was due and repayable with interest at 24% p.a., that till the date the defendant has been paying the

interest, however, in spite of demands made by the defendant the plaintiff refused to issue cash receipts for the said payments of interest. 2.(b) When the defendant borrowed monies from the plaintiff the plaintiff had obtained the defendant's signature on several Rs.10/- stamp papers and other stamp papers of different value, on several papers on which revenue stamps were affixed and on several blank papers, that the plaintiff also took the original sale deed of the defendant's property, that being an uneducated and also she was in a critical position where the plaintiff was in a position to impose undue influence the defendant had no option but to sign on every papers that plaintiff produced, that the signed papers are only intended to be document of debts for the said loans availed and nothing else, that the defendant was forced to get her signature and has unlawfully and illegally converted the same into an agreement for sale by the plaintiff, that at no point of time did she execute any agreement of sale in favour of the plaintiff much less on 25.3.1996 for a sum of Rs.3 lakhs as alleged in legal notice and in the plaint, that the claim of the plaintiff that the defendant received a sum of Rs.1,45,000/- to construct a house is nothing but absolute tissues of falsehood, that the defendant never intended to sell her only immovable property to any person, that the claims and contentions of the plaintiff will prove that the alleged agreement for sale is nothing but a document of debt and that the suit is not maintainable in law and hence the same may be dismissed with costs.

3. In the additional written statement filed by defendant it is stated that in the sale agreement and in the schedule appended to the plaintiff, the property is described as vacant site of about 922= sq.ft., that after the lapse of five years and after closing her evidence, the plaintiff has amended the plaint to insert the house in the suit vacant site mentioned in the schedule appended to the plaint on the ground that by mistake the house has been omitted to be mentioned in the agreement of sale dt.25.3.1996, that the plaintiff in her evidence has specifically admitted that she has inspected the suit vacant site and the building before the execution of sale agreement, hence it is not open to the plaintiff to now contend that by oversight the building has been omitted to be mentioned in the agreement and that besides the amendment now made in the description of property appended to the plaint is beyond the period of limitation as the amendment now made does not relate back to the filing of the suit.

4. After scrutiny of the evidence on record the learned Additional District and Sessions Judge, Fast Track Court III, Coimbatore, has dismissed the suit. Hence the plaintiff is before this Court.

5. Following points have arisen for consideration of this appeal:

1. Whether the sale agreement brought about between the parties is true, valid and legally enforceable? 2. Whether the sale agreement came to existence under the circumstances as narrated by the defendant? 3. Whether the plaintiff is entitled for decree for Specific Performance of Contract? 4. To what relief are the parties entitled to? Point Nos. 1 and

6. The suit property belongs to the defendant. It is described in Ex.A.1 sale agreement that the property is with an extent of 2 cents and 0.51= sq.ft. vacant site along with pathway right from the main road. It is to be borne in mind that no description of any construction is the schedule property.

7. The property was agreed to be sold to the plaintiff by the defendant for a sale consideration of Rs.3 lakhs and a sum of Rs.1,00,000/- was paid as advance to the defendant on the date of agreement. The sale deed has to be executed within two years from the date of sale agreement. It is the case of the plaintiff that he paid a sum of Rs.1,45,000/- to the defendant for the purpose of completing the house in the site which was under construction. A receipt for the payment of said amount dated 27.6.1996 is marked as Ex.A.2. She also paid another sum of Rs.50,000/- to the defendant on 15.12.1997 and a receipt Ex.P.3 is produced dated 16.3.1998. The plaintiff issued notice under the original of Ex.A.4 to the defendant calling upon her to execute the sale in her favour within 5 days. In this notice she has stated that believing the words of defendant, the plaintiff was waiting in the Registrar's office from 11.00 a.m. to 5.30 p.m. but in vain. The defendant has sent a reply notice in Ex.A.5 to the plaintiff denying the execution of any sale agreement in favour of the plaintiff. But she has stated that because of bad health of her husband, she had to incur expenditure for which she borrowed a sum of Rs.55,000/- from the plaintiff for which she obtained signatures on several Rs.10/- stamp papers and other stamp papers on which revenue stamps were affixed on several blank papers and that the plaintiff also took the original sale

deed from her.

8. The plaintiff in her evidence would state about the case. In her cross examination she has categorically admitted that the defendant told that the total sale price of Rs.3 lakhs is for the vacant site, the house with concrete roof and a tiled house. However, the plaintiff had not adverted her attention to Ex.A.1 sale agreement at the time of writing the description of the schedule property. In another part of cross-examination, she has reiterated the same statements.

9. Both P.Ws.2 and 3 are witnesses to Ex.A.1 sale agreement. P.W.2 has stated in his cross examination that a draft was prepared prior to the preparation of Ex.A.1, that in the draft, vacant site, a mortar house and tiled house were written. But in the typed sale agreement, the vacant site, tiled house and terrace building were not written, that in the typed Ex.A.1 sale agreement, the agreement between the parties was for vacant site alone and that both parties knew that the sale agreement was for vacant site and buildings. He also states that door numbers were not assigned to the house existed in the property and the plaintiff asked, after seeing the sale agreement why the constructions were not shown, for which the defendant stated that she would execute the sale deed along with the house after getting approval and door number. But this factors were not even spoken to by the plaintiff, nor were the pleadings in the plaint. P.W.3 is also a witness to Ex.A.1. It is his evidence in the cross examination that when he read the draft for sale agreement, along with vacant site a concrete building and a tiled building were also written and both the parties put their signatures in the said draft, that himself and one Kittusamy also signed in the draft as witnesses and the said draft is Ex.A.1. He also says that he signed as witness in Ex.A.3 also which was written for payment of Rs.50000/- by the plaintiff to the defendant.

10. When this Court has carefully scrutinised the above said evidence on the side of the plaintiff, it comes to light that even at the time of execution of sale agreement there were two constructions. One is terraced house and another one is tiled house and knowing full well that the agreed sale price of Rs.3 lakhs could be only towards vacant site and not for the constructions over it, the plaintiff has consciously omitted to insist inclusion of the constructions in the schedule to sale

agreement. From the evidence of P.W.3, it also transpires that she also signed a sale agreement in which vacant site along with 2 constructions were written. In these circumstances, the necessary corollary thereof is that the plaintiff has suppressed material facts in the plaint and it cannot be stated that she has come to the Court with clean hands. The above said lapses on her part would render Ex.A.1 sale agreement invalid and legally unenforceable. Since the relief of specific performance is an equitable one, it is incumbent upon the plaintiff to show her bonafide along with her means, readiness and willingness to perform her part of performance throughout.

11. In this context, the learned counsel for the respondent would cite a decision of the Honourable Supreme Court reported in 2008 (1) CTC 8.[Sita Ram and others v. Radhey Shyam] wherein Their Lordships have observed that the basic principle behind section 16(3) r/w Explanation (ii) is that any person seeking benefit of specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief and the Court is to grant relief on the basis of the conduct of the person seeking relief.

12. He also relied upon a Division Bench decision of this Court in 2005 (5) CTC 1.[P.Panneerselvan v. A.Baylis ] wherein it is observed that apart from the general principle of law that the plaintiff must succeed on the strength of his own case and not on the basis of the weakness in the case of defendant, in a suit for specific performance of contract, the plaintiff is obviously required to prove that there is a definite contract which is capable of being specifically enforced.

13. In view of the above, these points are answered in negative. Point Nos.3 and

14. An in depth study of the pleadings and oral evidence would show that the sale agreement has been found to be legally unenforceable. The truthfulness of Exs.A.2 and A.3 have not been also proved. The circumstances would indicate that there was loan transactions too between the parties. Even though the plaintiff had filed an application for amendment to the buildings in the suit property and get the same amended, she did not also take any steps to amend the prayer with an alternative relief of refund of the advance amount. It is found that she has suppressed material facts in the plaint. Hence she is not entitled for the relief.

However, this Court has found that the plaintiff paid an advance of Rs.1,00,000/- on the date of sale agreement which the defendant is bound to refund with interest at the rate of 12% p.a. from the date of filing of the suit and 6% from the date of decree of the trial Court till realisation. In such a view of the matter, the observations and findings recorded by the Court below do not warrant any interference by this Court and the judgment and decree passed by the trial Court deserves to be confirmed and accordingly it is confirmed. These points are answered as indicated.

15. In fine, the appeal is allowed in part setting aside the Judgment of the Court below with reference to the relief of specific performance of contract prayed for by the plaintiff. Original suit is dismissed without cost as far as the Specific Performance of Contract is concerned. The plaintiff is entitled for the refund of advance of Rs.1,00,000/- paid, along with interest at the rate of 12% p.a. from the date of filing of the suit till the date of decree and she is also entitled for interest at the rate of 6% p.a. from the date of decree till the date of realisation. No costs. 05.04.2013 Index : YES Internet : YES ggs S.PALANIVELU, J.

ggs To The Additional District and Sessions Judge, Fast Track Court not III, Coimbatore Pre-delivery Judgment in : A.S.No.952 o

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