

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.3523-3526 of 2010

A.R. MADANA GOPAL ETC.ETC.

.... Appellant(s)

Versus

M/S RAMNATH PUBLICATIONS PVT. LTD. AND ANR.

.... Respondent (s)

J U D G M E N T

L. NAGESWARA RAO, J.

1. These Appeals are filed against the judgment of the Division Bench of the Madras High Court by which a decree for specific performance passed by the learned Single Judge was reversed.

2. The Appellants filed four suits for specific performance of the agreements of sale dated 20.03.1991 and Memoranda of Understanding (MOU) dated 24.01.1994. In addition, the Appellants prayed for a direction to the Respondents to deliver vacant possession of the schedule property, a decree of permanent injunction restraining the Respondents from alienating or encumbering the suit property and a decree of mandatory injunction to deposit the title deeds with the Court. It was alleged in the plaints that the Respondent entered into separate

agreements with the Appellants who belong to the same family for sale of property situated at Door No.325, Arcot Road, Vadapalani, Chennai on 20.03.1991. As per the terms of the agreement, the sale was to be concluded within a period of four months. The Respondents would produce the encumbrance certificate much before the execution and registration of the sale deeds. The Respondents should also obtain the income tax clearance certificate under Section 230-A of the Income Tax Act, 1961. To comply with the obligation stipulated in the agreement, the first Respondent applied to the Income Tax authorities for permission to alienate the property. The Income Tax authorities passed an order for compulsory acquisition of property on 25.06.1991.

3. The Writ Petition filed by the Respondents challenging the order of the Income Tax authority was allowed by the Madras High Court by its judgment dated 21.12.1992. The authorities were directed to reconsider the matter afresh. The Income Tax authorities passed another order on 22.02.1993 directing purchase of the property. The said order was challenged in the High Court and an interim order of injunction was passed on 10.03.1993. The parties were directed to maintain status quo and not to change the nature of the property. In view of the developments after the agreements relating to the orders passed by the Income Tax authorities and the pendency of the Writ

Petitions challenging those orders, the Appellants and the Respondents entered into four separate MOUs on 24.01.1994. The recitals of the MOUs would show that they were in addition and not in substitution of the agreements dated 20.03.1991. It was agreed that the Respondents shall continue to keep the original title deeds until completion of the sale by registration of the sale deeds. The original title deeds would be handed over to the Appellants at the time of registration. It was also recorded in the Memorandum that certain amounts were paid by the Appellants and the balance of the sale price shall be paid to the Respondents at the time of registration of the sale deeds immediately after the disposal of the Writ Petitions in their favour.

4. The Writ Petitions filed against the compulsory acquisition by the Income Tax authorities were disposed of on 11.09.1998. The judgment of the learned Single Judge of the High Court allowing the Writ Petitions was challenged by the Income Tax department by way of filing of an appeal. When the Appellants made a demand for execution of sale deeds, the Respondents informed them that it can be done only after disposal of the Writ Appeal. Indian Bank filed a suit for recovery of its dues from the Respondents. As the Respondents were not executing the sale deeds in spite of repeated requests, the Appellants filed separate suits for specific performance.

5. In the written statement filed by the Respondents, it was submitted that the MOU dated 22.01.1994 substituted the suit agreements dated 20.03.1991. It was contended on behalf of the Respondents that the suit was time barred. Time was the essence of the agreement dated 20.03.1991 as it was agreed between the parties that the sale should be concluded within a period of four months. Though, the Writ Petition filed against the order of the Income Tax Department was allowed in the year 1998, the Appellants maintained silence for more than two years before filing the suits in 2000 which clearly shows that they were neither ready nor willing to perform their part of the agreement.

6. All the four suits were tried together and a learned Single Judge of the High Court decreed the suits on 17.07.2003. The Appellants were directed to deposit the balance sale consideration along with interest at the rate of 12 per cent within eight weeks from the date of decree and upon such deposit, the Respondents were directed to execute the sale deeds in favour of the Appellants. Thereafter, the Respondents were directed to deliver possession of the property to the Appellants. The Appellants deposited the balance consideration on 01.08.2003. The Respondents filed original suit appeals against the judgment of the learned Single Judge which were allowed by a Division Bench of the High Court on 25.07.2008. The judgment of the Division

Bench setting aside the decrees passed in favour of the Appellants is the subject matter in the present Appeals.

7. While decreeing the suit filed by the Appellants, the learned Single Judge of the High Court expressed his opinion that it cannot be said that the Appellants did not evince any interest in performing their part of the agreement nor can it be said that they did not have sufficient funds. It was further held that the Appellants were always ready and willing to perform their part of the contract by depositing the balance sale consideration. He further observed that the major portion of the sale consideration was already paid. According to the learned Single Judge, the suit was filed within a period of three years from the date of the disposal of the Writ Petitions and therefore, cannot be said to be barred by limitation. The MOUs dated 24.01.1994 were held to be in addition to the agreements dated 20.03.1991. On the above findings, the learned Single Judge decreed the suit. The relief claimed by the Appellants for award of damages was, however, not granted. The learned Single Judge awarded interest on the balance sale consideration at the rate of 12 per cent.

8. A Division Bench of the High Court set aside the judgment and decree of the learned Single Judge by holding that the Appellants failed to deposit the balance consideration immediately after the disposal of the Writ Petition. Though, the Writ Petition

was disposed of on 11.09.1998, the suits were filed between October to December, 2000. No notices were issued by the Appellants seeking execution of sale deeds nor did they purchase the stamp papers. According to the Division Bench the above factors would indicate that the Appellants were not ready and willing to perform their part of the agreement along with the fact that they kept quiet for two years and three months after the disposal of the Writ Petitions. That apart, conduct of the Appellants was commented upon by the Division Bench of the High Court to conclude that they are not entitled to the relief of specific performance. The Division Bench found fault with the Appellants for not pleading and proving how they got the possession of a part of the property. The claim of the Appellants for vacant possession of the property was found to be frivolous as the Appellants continued to be in possession of a part of the property. The attempt made by the Appellants to trespass into the ground floor of the property where the Indian Bank was having its office disentitled them from seeking the equitable relief of specific performance.

9. We have heard Mr. Raghavendra S. Srivatsa, Advocate for the Appellants and Mr. P.S. Narasimha, learned Senior Counsel for the Respondents. The contention of the Appellants is that the agreements and the MOUs have to be read together. It was

argued on behalf of the Appellants that the sale consideration of all the four agreements for purchase of the property is Rs. 37/- lakhs out of which Rs. 34/- lakhs was paid by August, 1994. Mr. Srivatsa, submitted that the demand made by the Appellants for execution of the sale deeds was rejected by the Respondents on the ground that the Writ Appeal filed by the Income Tax Department against the judgment of the High Court dated 11.09.1998 was pending. It was only on receipt of information by the Appellants that the property was already encumbered, that the Appellants filed suits for specific performance. According to the Appellants, it cannot be said that there was any delay in filing the suits. The Appellants were always ready and willing to perform their part of the agreement. The Appellants asserted that the interpretation of the MOU is contrary to well settled law of this Court. The Division Bench of the High Court placed undue emphasis on the word “immediately” to conclude that the Appellants failed to pay the balance consideration immediately after the disposal of the Writ Petition. By placing reliance on the judgments of this Court in ***State of Bihar v. Tata Iron¹, Anglo American Metallurgical Coal Pty Ltd. v. MMTC Ltd.²*** and ***Khardah Company Ltd. v. Raymon & Co. (India) Private Limited³***, Mr. Srivatsa submitted that the intention of the parties

1 (2019) 7 SCC 99

2 2020 SCC OnLine SC 1030

3 (1963) 3 SCR 183

must be ascertained from the language used in the agreement by reading it as a whole and in the light of the surrounding circumstances. He submitted that the relevant clause in the agreement obligates the Appellants to pay the balance sale consideration at the time of registration of sale deeds, immediately after the disposal of the Writ Petition. According to Mr. Srivatsa, the High Court ignored the crucial words “at the time of registration of the sale deeds” and committed an error in relying upon the word “immediately” to find that the Appellants were in default. The pendency of the Writ Appeal filed by the Income Tax Department was the reason for the Appellants not taking any steps to file the suits immediately after the disposal of the Writ Petitions. Seeking support from the judgments of this Court in ***K.S.Vidyanadam and Others v. Vairavan***⁴ and ***Saradamani Kandappan v. S. Rajalakshmi***⁵, Mr. Srivatsa contended that the Appellants are entitled for the relief of specific performance as they have paid a major portion of the consideration, possession in part was handed over to them and the suit was filed within the period of limitation. It was further submitted on behalf of the Appellants that specific performance is no longer a discretionary relief in view of the insertion of Section 10-A in the Specific Relief Act, 1963. It was argued that the

4 (1997) 3 SCC 1

5 (2011) 12 SCC 18

amendment should be made applicable to all pending proceedings including appeals.

10. Mr. Narasimha, learned Senior Counsel for the Respondents contended that time is the essence of the agreements dated 20.03.1991 and the MOUs dated 24.01.1994. Though, the Writ Petitions were disposed of on 11.09.1998, the Appellants filed the suit only between October and December, 2000. The Appellants had not issued any notices to the Respondents to execute sale deeds after the disposal of the Writ Petitions. The Appellants also did not discharge their obligation of paying balance sale consideration. The delay of two years and three months after the disposal of the Writ Petition is fatal and the Appellants are not entitled for the relief claimed for. It was argued on behalf of the Respondents that the escalation in prices of properties in Chennai is a relevant factor. Mr. Narasimha, supported the judgment of the Division Bench of the High Court by arguing that the Appellants were not put in possession of the property at the time of the agreement. There is no covenant in the MOU that the possession shall be given to the Appellants. The Appellants have not explained as to how they got possession of the first floor. The Appellants highhandedly made attempts to disturb the possession of the Indian Bank from a portion of the building. As the First Appellate Court is the last Court on findings of fact, this Court

should refrain from interfering with the judgment of the Division Bench of the High Court.

11. There is no dispute about the agreements dated 20.03.1991 and the MOUs between the parties. It is also a fact that Income Tax Department wanted to compulsorily acquire the property, due to which Writ Petitions were filed which were disposed of on 11.09.1998. Writ Appeals filed by the Department were pending on the date of filing of the suit. The relevant clause in the MOU is that the Appellants shall pay the balance sale consideration at the time of registration of sale deeds immediately after the disposal of the Writ Petition. The Division Bench of the High Court in the impugned judgment held that the Appellants were not ready and willing to perform their part of the agreement by not depositing the balance sale consideration immediately after the disposal of the Writ Petition. The High Court lost sight of the words “at the time of registration of sale” in clause 3 of MOUs. A plain reading of clause 3 in the MOU’s would show that the Appellants were required to pay the balance sale consideration at the time of the registration of the sale deeds immediately when the Writ Petition is disposed of upholding the sale agreement. The High Court further found fault with the Appellants in waiting for 2 years and 3 months after the disposal of the Writ Petition for filing the suits. The High Court refused to grant relief of specific performance to

the Appellants on the ground that there was total inaction on the part of the Appellants for more than two years after the parties entered into the MOU. Though, it was pleaded by the Appellants in the suits that they were always ready and willing to perform their part of the agreement, the High Court was of the opinion that they did not prove the same as they did not pay the balance sale consideration immediately after the disposal of the Writ petition. We find force in the submission made on behalf of the Appellants that payment of balance consideration has to be done only at the time of the registration of the sale deeds. Admittedly, no steps were taken for the registration of the sale deeds. The finding of the Division Bench of the High Court that the Appellants were not ready and willing to perform their part of the contract by not paying the balance consideration immediately after disposal of the Writ Petition is erroneous.

12. The Division Bench of the High Court agreed with the contention of the Appellants that mere fixation of time within which the contract was to be performed does not make the stipulation as to time being of the essence of the contract. However, the Appellants were found guilty of total inaction on their part. The sole ground for denial of relief to the Appellants is non payment of balance consideration immediately after disposal

of the Writ Petition. The said conclusion is the result of a faulty interpretation of clause 3 of the MOUs as stated earlier.

13. The High Court highlighted the conduct of the Appellants to deny relief. The failure of the Appellants in not pleading and proving how they were put in possession of a part of the property, the frivolous complaint about vacant possession not being given by the Respondents and the attempt made by the Appellants to take forcible possession of a part of the property were commented upon to hold that the Appellants were disentitled to equitable relief. There is no dispute that the Appellants were in possession of the first floor of the property. Details about the manner in which possession was given to the Appellants not being pleaded cannot be a ground to deny relief. The contention of the Appellants before the High Court was that the Respondents should demolish the super structure and hand over vacant possession of the land. The High Court observed that the Appellants who were in possession of a part of the property cannot make such an inane plea. According to the terms of the agreement, the Respondents had to hand over vacant possession of the land. The Appellants submitted that no steps were taken to demolish the structure to highlight the inaction on the part of the Respondents. By no stretch of imagination, can it be said that the Appellants can be denied relief on this account. Yet another reason given by the

Division Bench of the High Court is that the Appellants made an attempt to trespass into the ground floor where the Indian Bank was a tenant. The contention of the Appellants is that the Indian Bank was not a tenant in the ground floor but only a creditor of the Respondents. Admittedly, the Indian Bank sued the Respondents for recovery of the loan by the sale of the hypothecated goods stored in the ground floor. It was also contended on behalf of the Appellants that a police complaint was preferred by them against the Respondents for causing disturbance to their possession. The Appellants cannot be said to be disentitled for a relief of specific performance on the ground that their conduct on this count is blameworthy.

14. A suit for specific performance cannot be dismissed on the sole ground of delay or laches. However, an exception to this rule is where an immovable property is to be sold within a certain period, time being of the essence, and it is not found that owing to some default on the part of the plaintiff, the sale could not take place within the stipulated time. Once a suit for specific performance has been filed, any delay as a result of the Court process cannot be put against the plaintiff as a matter of law in decreeing specific performance. However, it is within the discretion of the Court, regard being had to the facts of each case, as to whether some additional amount ought or ought not to be

paid by the plaintiff once a decree of specific performance is passed in its favour even at the appellate stage⁶. We are in agreement with the Appellants that they did not file the civil suits immediately after the disposal of the Writ Petition in 1998 due to the pendency of Writ Appeals. Escalation of prices cannot be the sole ground to deny specific performance⁷. We are of the considered view that the Respondents are not entitled for any additional amount as 90 per cent of the sale consideration was paid by the Appellants before 1994. It is not necessary for us to deal with the submission of the Appellants regarding the applicability of the amendment to the Specific Relief Act, 1963, in view of the conclusion that we have reached in favour of the Appellants.

15. For the aforementioned reasons, the judgment of the Division Bench of the High Court is set aside and the judgment and decree passed by the learned Single Judge is restored. The Appeals are allowed, accordingly.

.....J.
[L. NAGESWARA RAO]

.....J.
[S. RAVINDRA BHAT]

**New Delhi,
April 09, 2021**

6 Ferrodous Estates (Pvt) Ltd. v. P. Gopirathnam (Dead) and Others, 2020 SCC OnLine SC 825

7 Nirmala Anand v. Advent Corpn. (P) Ltd ., (2002) 8 SCC 146