

N.P. THIRUGNANAM (D) BY L.RS.
v.
DR. R. JAGAN MOHAN RAO AND ORS.

JULY 12, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Code of Civil Procedure, 1908:

Order 22 Rule 6—Death of a party between conclusion of hearing and pronouncement of judgment—Such judgment and decree—Whether a nullity—Held: The judgment has the same force and effect as if it were pronounced before the death took place.

Specific Relief Act, 1963:

Sections 16(c) and 20—Equitable remedy—Discretion of court—To be exercised in accordance with settled principles of law—Continuous readiness and willingness on the part of plaintiff—A condition precedent to the grant of relief of specific performance—Court to take into consideration the conduct of the plaintiff prior and subsequent to the filing of suit along with other attending circumstances.

The petitioners are the legal representatives of the plaintiff who had entered into an agreement of sale with the respondents to alienate a certain property for a total consideration of Rs. 2,30,000 and paid Rs. 10,000 as advance. Till the date of execution of the sale-deed, he came into possession as a tenant agreeing to pay Rs. 1650 as monthly rent. Plaintiff laid a suit for specific performance claiming that the respondents had evaded execution of the sale deed. Respondent, claimed that they were ready and willing to perform their part of the contract, but the plaintiff did not even pay the further advance to discharge a mortgage debt. It was found by the Single Judge that the plaintiff was not ready and willing to perform his part of the contract. The Division Bench dismissed the appeal. Hence this Special Leave Petition.

It was contended that the decree of dismissal against the dead plaintiff-appellant was a nullity; and that the plaintiff was always ready and willing to perform his part of the contract.

A Dismissing the Special Leave Petition, this Court

B HELD : 1. In the face of the explicit language in Rule 6 of Order 22 C.P.C. there can be no abatement by reason of the death of any party between the conclusion of the hearing and the pronouncement of the judgment. It may be pronounced, notwithstanding the death, and shall have the same force and effect as if judgment had been pronounced before the death took place. Therefore, it cannot be said that the judgment and decree of the appellate court are nullity. [56-E-F]

C 2. It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to settled principles of law and not arbitrarily, as adumbrated under s.20 of the Specific Relief Act 1963. Under s.20, the court is not bound to grant the relief just because there was valid agreement of sale. Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. The factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was always ready and willing to perform his part of contract. [57-E-H, 58-A-B]

H 3. The plaintiff entered into an agreement to purchase the suit house for Rs. 2,30,000. He was not able to pay the loans and adjusted Rs. 20,000

which was paid towards arrears of rent and paid only Rs. 1975 for the sale consideration of his house. He was unable to pay the rent to the respondents and had deposited huge amount towards arrears of rent pursuant to the orders of the courts. PW-2, though professed to be willing to advance a sum of Rs. 2,00,000, did not have cash and admitted that had to obtain Rs. 2,00,000 by hypothecating his property and at the same time was willing to lend on a pronote to the plaintiff a sum of Rs. 2,00,000, which was hard to believe. These circumstances were rightly taken into consideration by the trial Judge as well as the Division Bench in concluding that the plaintiff was not ready and willing to perform his part of the contract. [57-C-D]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 12709 of 1995.

From the Judgment and Order dated 3.1.95 of the Madras High Court in O.S.A. No. 195 of 1983.

C. Chinnaswamy and S. Srinivasan for the Petitioners.

The following Order of the Court was delivered :

Petitioners are the legal representatives of N.P. Thirugnanam, the plaintiff who had entered into an agreement of sale with the first respondent for himself and on behalf of his mother, brothers and sisters as General Power of Attorney holder to alienate the house property in Madras city for a total consideration of Rs. 2,30,000 and paid a sum of Rs. 10,000 as advance. Till date of execution of the sale-deed, he came into possession as a tenant agreeing to pay a sum of Rs. 1,650 per month as rent. He laid the suit for specific performance with the averments that the respondents have evaded to execute the sale deed. The respondents pleaded that they were ready and willing to perform their part of the contract and the plaintiffs did not even pay Rs. 20,000 further advance as contracted by December, 1979 to discharge the mortgage debt due to the Madras Corporation. The amount of Rs. 20,000 was adjusted towards the rent payable with consent. On adduction of evidence and consideration thereof, the single Judge of the High Court found that the plaintiff was not ready and willing to perform his part of the contract giving diverse reasons. On appeal in OSA No. 195/83 dated January 3, 1985 the Division Bench in a well considered judgment dismissed the same.

A The first ground raised in the SLP is that the decree of dismissal against the dead plaintiff-appellant is a nullity. We find no force in the contention. It is true that the plaintiff died on December 26, 1994 by which date the arguments in the appeal were already heard and the judgment was reserved. The counsel for the plaintiff filed a Memorandum bringing to the notice of the court the demise under Order 22 Rule 11-A of CPC and prayed for time to bring on record the petitioners as legal representatives to represent the estate of the deceased. The court declined to accede to the request.

B
C Rule 6 of Order 22 provides that:

"No abatement by reason of death after hearing :- "Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place."

D
E In the face of the explicit language in Rule 6 of Order 22, there can be no abatement by reason of the death of any party between the conclusion of the hearing and the pronouncement of the judgment. It may be pronounced, notwithstanding the death, and shall have the same force and effect as if Judgment had been pronounced before the death took place. Therefore, the contention that the judgment and decree of the appellate court is a nullity is devoid of substance.

F
G It is next contended that the plaintiff was always ready and willing to perform his part of the contract. To buttress it, counsel placed strong reliance on the evidence of PW-2, who had testified that he was willing and prepared to lend a sum of Rs. 2,00,000 to the plaintiff on the foot of a promissory note. It is not necessary for the plaintiff that he should keep ready the money on hand. What is relevant and material is that he should have the necessary capacity to raise the funds and was ready and willing to perform his part of the contract which has been demonstrated by the evidence of PW-2. We do not accede to the contention. The trial Judge had pointed out that on an application filed by the defendants, a direction
H was given to the plaintiff by order dated February 11, 1991 to deposit the

amount of Rs. 2,00,000 or furnish bank guarantee giving time up to March 11, 1991. He neither deposited the amount nor has given bank guarantee. It was also found that the plaintiff was dabbling in real estate business. He had house on hire purchase agreement with the T.N. Housing Board. He paid only Rs. 7,750 upto 1980. A sum of Rs. 29,665 was further payable. He had an agreement with one Annamma Philip for Rs. 49,500 to sell the said house after purchase from the Board. Obviously, he had obtained advance and sold the house to his vendee on February 7, 1980 after getting a sale deed executed in his favour. He entered into an agreement (Ex.P.1) on 9.4.79 to purchase the suit house for Rs. 2,30,000. He was not able to pay the loans and he adjusted Rs. 20,000 which was paid towards arrears of rent and paid only Rs. 1975 under Ex.P.30 for the sale consideration of his house. He was unable to pay the rent to the respondents and had deposited huge amount towards arrears of rent pursuant to the orders of the courts. PW- 2, though professed to be willing to advance a sum of Rs. 2,00,000, did not have cash and admitted that had to obtain Rs. 2,00,000 by hypothecating his property and at the same time was willing to lend on a pronote to the plaintiff a sum of Rs. 2,00,000, which was hard to believe. These circumstances were taken into consideration by the trial Judge as well as the Division Bench in concluding that the plaintiff was not ready and willing to perform his part of the contract.

It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under s.20 of the Specific Relief Act 1963 (for short, 'the Act'). Under s.20, the court is not bound to grant the relief just because there was valid agreement of sale. Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit alongwith other attending circumstances. The amount of consideration which he has to pay

- A to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was always ready and willing to perform his part of contract.

In view of the aforesaid factual findings and of the legal position, the High Court has rightly concluded thus:

- C "We have no hesitation in recording the agreement with the finding of the learned single Judge that the plaintiff has hopelessly failed and shown rather reluctance than readiness to perform his part of the contract. In the facts that are noticed in the judgment of the trial court, which are extracted by us as above, the only possible conclusion is that the plaintiff really had rather reluctant than willing to perform his part of the contract and was at no time ready with either money or resources to fulfill his part of the contract. The other circumstances which are noticed by the learned single Judge and are detailed by him in the judgment go to show that the very idea of entering into an agreement with the first defendant alone when the plaintiff-appellant was already informed about the death of Dr. R. Surya Rao and the devolution of his interest upon the first defendant, his mother, his brothers and his sisters, was to somehow or other enter upon the property, but, the stipulated rent also was not paid by the plaintiff to the defendants. The trial court has noted that there was no legal necessity for the defendants to part with the suit property and held against the plaintiff that the very contract was speculative in nature and entered into by the plaintiff who has been dabbling in real estate transactions without the means to purchase a substantial immovable property like the suit property and we agree with the same."

This finding is well supported from the facts and circumstances and being a finding of fact, we see no infirmity in the judgment warranting granting of leave. Accordingly, the special leave petition is dismissed.