N.P. Thirugnanam (D) By Lrs vs Dr. R. Jagan Mohan Rao & Ors on 12 July, 1995

Equivalent citations: 1996 AIR 116, 1995 SCC (5) 115, AIR 1996 SUPREME COURT 116, 1995 (5) SCC 115, 1995 AIR SCW 3803, (1995) 5 JT 553 (SC), (1995) 2 KER LT 71, (1995) 2 LS 22, (1996) 1 LANDLR 325, (1995) 2 MAD LJ 118, (1995) 3 CIVLJ 486, (1996) 1 LABLJ 262, (1995) 3 SCJ 386, (1996) 1 CIVILCOURTC 27, (1996) 1 MAD LW 239, (1996) 2 RENCJ 490, (1995) 2 RENCR 647, (1995) 2 RENTLR 396, (1995) 2 ANDHWR 59, (1995) 2 CURLJ(CCR) 286

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L Hansaria

PETITIONER:
N.P. THIRUGNANAM (D) BY LRS

Vs.

RESPONDENT:
DR. R. JAGAN MOHAN RAO & ORS.

DATE OF JUDGMENT12/07/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 116 1995 SCC (5) 115
JT 1995 (5) 553 1995 SCALE (4)465

ACT:

HEADNOTE:

JUDGMENT:

ORDER 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 piaintiffs 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.

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.

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 beno abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgement, but judgement 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."

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 judgement. 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 judgement and decree of the appellate court is a nullity is devoid of substance.

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 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 hypothicating 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 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. 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 ready and 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:

> 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 judgement 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 Jude and are detailed by him in the judgement 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 judgement warranting granting of leave. Accordingly, the special leave petition is dismissed.