Veerayee Ammal vs Seeni Ammal on 19 October, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2920, 2002 (1) SCC 134, 2001 AIR SCW 4377, (2002) 1 ALLMR 264 (SC), (2002) 2 ANDHWR 267, (2002) 2 TAC 75, (2001) 9 JT 145 (SC), (2003) 2 ACJ 1413, 2003 (2) ALL CJ 823, 2003 ALL CJ 2 823, 2001 (9) JT 145, 2001 (7) SCALE 403, 2001 SCFBRC 526, 2002 (1) BLJR 137, (2001) 4 CURCC 252, (2001) 45 ALL LR 691, (2002) 2 LANDLR 701, (2002) 1 MAD LJ 134, (2002) 1 MAD LW 594, (2002) 1 RAJ LW 175, (2001) 7 SUPREME 812, (2001) 4 RECCIVR 625, (2002) 1 ICC 27, (2001) 7 SCALE 403, (2002) WLC(SC)CVL 80, (2002) 1 UC 100, (2002) 1 ALL RENTCAS 166, (2002) 1 ALL WC 97, (2001) 4 CIVLJ 810

Bench: R.P.Sethi, S.V.Patil

CASE NO.:
Appeal (civil) 7185 of 1997

PETITIONER:
VEERAYEE AMMAL

Vs.

RESPONDENT:
SEENI AMMAL

DATE OF JUDGMENT: 19/10/2001

BENCH:
R.P.Sethi, S.V.Patil

JUDGMENT:

SETHI,J.

Concurrent findings of fact were set aside by the High Court vide the judgment impugned in this appeal by holding that the alleged substantial question of law formulated by it stood proved in favour of the respondent-defendant as the appellant-plaintiff had not established that she had been ready and willing to perform her part of the contract. It was further held that the relief of specific performance, being an equitable relief, the same could not be enforced in favour of the appellant who was found to have failed to prove that she performed or had always been ready and willing to

perform the essential terms of the agreement executed between the parties.

The facts giving rise to the filing of the present appeal are that the appellant entered into an agreement to sell (Exhibit A-2) with the respondent-defendant initially on 5.1.1980 and subsequently on 16.3.1980 with respect to land measuring 27 cents for a price of Rs.24,300/-. A sum of Rs.8,000/- is stated to have been paid to the respondent-defendant on the day of the execution of the agreement which was reduced to writing and signed by the parties. As the respondent-defendant failed to execute the sale deed, the appellant-plaintiff filed a suit for specific performance of contract after notice to her. In her written statement respondent-defendant admitted the execution of the agreement and the receipt of Rs.8,000/-. It was, however, contended that as the appellant-plaintiff committed breach of the contract and failed to pay the balance amount of consideration, her suit for specific performance was not maintainable. It was further contended that time was the essence of the contract between the parties as was evident from the terms of the agreement.

On the pleadings of the parties, the Trial Court framed the following issues:

> "1. Whether the plaintiff was always ready and willing to perform his part of contract?
>
> 2. Whether time was of the essence of contract?
>
> 3. Whether the plaintiff abandoned the contract voluntarily?
>
> 4. To what relief if any is the plaintiff entitled?"

Deciding all the issues in favour of the appellant-plaintiff, the Trial Court decreed the suit permitting the appellant-plaintiff to deposit the balance amount within two weeks. The respondent-defendant was directed to execute the sale deed within two weeks from the date of deposit of the balance amount of consideration. The first appeal filed by the respondent-defendant was dismissed by the Ist Additional District Judge, Madurai vide his judgment dated 25th October, 1982. In second appeal, the High Court framed the following question of law considering it as substantial question of law:

> "Whether in the circumstances of the case, the plaintiff has established that she has been ready and willing to perform her part of the contract."

It has been conceded before us that both the courts of fact had concluded that the time was not the essence of the contract and that the appellant-plaintiff did not abandon the contract voluntarily and was always ready and willing to perform her part of the contract. Whereas the learned counsel appearing for the appellant-plaintiff has urged that the judgment of the High Court is contrary to the mandate of Section 100 of the Code of Civil Procedure, the learned counsel for the respondent-defendant has tried to justify it on various grounds and persuaded us to hold that the appellant-plaintiff, on facts, had failed to establish that she had been ready and willing to perform her part of the contract. It is contended that even though time was not the essence of the contract,

yet the appellant-plaintiff was under a legal and statutory obligation to seek enforcement of the rights accruing to her on the basis of agreement within a reasonable time.

Section 100 of the Code of Civil Procedure (hereinafter referred to as "the Code") was amended by the Amending Act No.104 of 1976 making it obligatory upon the High Court to entertain the second appeal only if it was satisfied that the case involved a substantial question of law. Such question of law has to be precisely stated in the Memorandum of Appeal and formulated by the High Court in its judgment, for decision. The appeal can be heard only on the question, so formulated, giving liberty to the respondent to argue that the case before the High Court did not involve any such question. The Amending Act was introduced on the basis of various Law Commission Reports recommending for making appropriate provisions in the Code of Civil Procedure which were intended to minimise the litigation, to give the litigant fair trial in accordance with the accepted principles of natural justice, to expedite the disposal of civil suits and proceedings so that justice is not delayed, to avoid complicated procedure, to ensure fair deal to the poor sections of the community and restrict the second appeals only on such questions which are certified by the courts to be substantial question of law. We have noticed with distress that despite amendment, the provisions of Section 100 of the Code have been liberally construed and generously applied by some judges of the High Courts with the result that objective intended to be achieved by the amendment of Section 100 appears to have been frustrated. Even before the amendment of Section 100 of the Code, the concurrent finding of facts could not be disturbed in the second appeal. This Court in Paras Nath Thakur v. Smt.Mohani Dasi (Deceased) & Ors. [AIR 1959 SC 1204] held:

> "It is a well settled by a long series of decisions of the Judicial Committee of the Privy Council and of this Court, that a High Cour,t on second appeal, cannot go into questions of fact, however, erroneous the findings of fact recorded by the courts of fact may be. It is not necessary to cite those decisions. Indeed, the learned counsel for the plaintiff-respondents did not and could not contend that the High Court was competent to go behind the findings of fact concurrently recorded by the two courts of fact."

To the same effect are the judgments reported in Sri Sinha Ramanuja Jeer Swamigal v. Sri Ranga Ramanuja Jeer alias Emberumanar Jeer & Ors. [AIR 1961 SC 1720], V.Ramachandra Ayyar & Anr. v. Ramalingam Chettiar & Anr.[AIR 1963 SC 302] and Madamanchi Ramappa & Anr. v. Muthaluru Bojjappa [AIR 1963 SC 1633]. After its amendment, this Court in various judgments held that the existence of the substantial question of law is a condition precedent for the High Court to assume jurisdiction of entertaining the second appeal. The conditions specified in Section 100 of the Code are required to be strictly fulfilled and that the second appeal cannot be decided on merely equitable grounds. As to what is the substantial question of law, this Court in Sir Chunilal v. Mehta & Sons Ltd. v. Century Spinning & Manufacturing Co.Ltd. [AIR 1962 SC 1314] held that:

> "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or

> by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion or alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

In Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors. [JT 1999 (3) SC 163] this Court again considered this aspect of the matter and held:

> "If the question of law termed as substantial question stands already decided by a large bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on facts of the case would not be termed to be a substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second appeal. This Court in Reserve Bank of India & Anr. v. Ramakrishna Govind Morey (AIR 1976 SC
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> 830) held that whether trial court should not have exercised its jurisdiction differently is not a question of law justifying interference."

The question of law formulated as substantial question of law in the instant case cannot, in any way, be termed to be a question of law much less as substantial question of law. The question formulated in fact is a question of fact. Merely because of appreciation of evidence another view is also possible would not clothe the High Court to assume the jurisdiction by terming the question as substantial question of law. In this case Issue NO.1, as framed by the Trial Court, was, admittedly, an issue of fact which was concurrently held in favour of the appellant-plaintiff and did not justify the High Court to disturb the same by substituting its own finding for the findings of the courts below, arrived at on appreciation of evidence.

When, concededly, the time was not the essence of the contract, the appellant-plaintiff was required to approach the court of law within a reasonable time. A Constitution Bench of this Hon'ble Court in Chand Rani (Smt.) (Dead) By Lrs. v. Kamal Rani (Smt.)(Dead) By Lrs. [1993 (1) SCC 519 held that in case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of contract, the court may infer that it is to be performed in a reasonable time if the conditions are (i) from the express terms of the contract; (ii) from the nature of the property; and (iii) from the surrounding circumstances, for example, the object of making the

contract. For the purposes of granting relief, the reasonable time has to be ascertained from all the facts and circumstances of the case.

In K.S. Vidyanadam & Ors. v. Vairavan [1997 (3) SCC 1] this Court held:

> "Even where time is not of the essence of the contract, the plaintiffs must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property."

The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to ideosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means as soon as circumstances permit. In Law Lexicon it is defined to mean "A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstance will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space thant 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

In the instant case the parties had agreed to complete the sale by 15.6.1980 despite the fact that the time was not the essence of the contract. The appellant-plaintiff is stated to have issued letters to the respondent-defendant calling upon to execute the sale deed and thereafter also issued notice. It was further alleged and held proved by the courts of fact that the nature of the property was wet land which continued to be such during the trial. As the appellant- plaintiff had contracted to purchase the land with a view to construct a residential house, the respondent-defendant had undertaken to remove the telegraph pole in one part of the property. The Trial as well as the First Appellate Court found that in pursuance of the agreement the said pole was got removed in the first week of November, 1980 and the appellant-plaintiff issued a notice (Exhibit A-4) on 11.11.1980 calling upon the respondent-defendant to execute the sale deed. The appellant- plaintiff also made a publication on 13.11.1980 in a daily newspaper intimating the people at large not to purchase the property of the respondent-defendant as the same was the subject matter of agreement to sell executed in favour of the appellant-plaintiff. On the failure of the respondent-defendant to comply with the conditions of the Agreement, the demands made in the letters and the notice, the appellant-plaintiff filed OS No.1249 of 1980 in the month of November, 1980 itself. The legal action initiated by the appellant-plaintiff was rightly held by the Trial Court and the First Appellate Court to have been commenced without delay and definitely within a reasonable time. The High Court was not justified in disturbing the finding of fact arrived at on appreciation of the evidence, while disposing of the second appeal.

The impugned judgment being against the settled provisions of law is not sustainable. The appeal is accordingly allowed by setting aside the impugned judgment and restoring the judgments of the Trial Court and the First Appellate Court decreeing the suit of the appellant- plaintiff against the respondent-defendant. No costs.