



S.A.(MD)No.138 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.06.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.138 of 2019

and

C.M.P.(MD)No.3310 of 2019

Jeya

... Appellant

/Vs./

Praveen Banu,
through her power agent,
S.Ganesan.

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 22.12.2015 made in A.S.No.20 of 2014 on the file of the I Additional District Court, Tuticorin, confirming the judgment and decree dated 30.06.2014 made in O.S.No.205 of 2010 on the file of the Sub Court, Tuticorin, and to allow this appeal.

For Appellant : Mr.M.P.Senthil

For Respondent : Mr.N.Dilipkumar



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JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The plaintiff in the suit in O.S.No.205 of 2010 on the file of the Sub Court, Tuticorin is the appellant herein. The respondent is the defendant in the said suit. The suit was filed for specific performance of an agreement of sale.

2. The trial Court, by its judgment and decree dated 30.06.2014 in O.S.No.205 of 2010 on the file of the Sub Court, Tuticorin dismissed the suit on the ground that the appellant / plaintiff was not ready and willing to perform her part of the contract as per the terms and conditions of the sale agreement. Aggrieved by the judgment and decree dated 30.06.2014 passed in O.S.No.205 of 2010 on the file of the Sub Court, Tuticorin, the appellant / plaintiff filed the first appeal in A.S.No.20 of 2014 on the file of the I Additional District Court, Tuticorin. The lower appellate Court, namely I Additional District Court, Tuticorin, by its judgment and decree dated 22.12.2015 also confirmed the findings of the trial Court by dismissing the first appeal filed by the plaintiff. Aggrieved by the concurrent findings of the Courts below, this second appeal has been



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filed. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3. The plaintiff was a tenant in the suit schedule property and the defendant was her landlord. The defendant agreed to sell the suit schedule property to the plaintiff under an agreement of sale dated 11.06.2007, which was marked as Ex.A1. The total sale consideration for the sale of the suit schedule property was Rs.1,90,000/-, out of which the plaintiff paid an advance of Rs.20,000/- at the time of execution of the agreement. The time limit stipulated for completion of the sale by the plaintiff by paying the balance sale consideration to the defendant was three months. Admittedly, the balance sale consideration was not paid by the plaintiff on time and she did not complete the sale within a period of three months as stipulated under the sale agreement dated 11.06.2007 (Ex.A1).

4. Before the trial Court, four documents were filed on the side of the plaintiff, which were marked as Exs.A1 to A4 and the details of the documents as exhibits on the side of the plaintiff are as follows:



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“வாதி தரப்பு சான்றாவணங்கள்

வா.சா.ஆ.1 11.6.2007 ம் தேதியிட்ட கிரைய ஒப்பந்தம்

வா.சா.ஆ.2 28.4.2009 ம் தேதியிட்ட வழக்கறிஞர்
அறிவிப்பு

வா.சா.ஆ.3 7.5.2009 ம் தேதியிட்டு வாதி அனுப்பிய
பதில் அறிவிப்பு

வா.சா.ஆ.4 மேற்படி அறிவிப்பை பிரதிவாதி வழக்கறிஞர்
பெற்றுக்கொண்டதற்கான அஞ்சல் ஒப்புதல் அட்டை”

On the side of the plaintiff, two witnesses were examined, namely, the plaintiff herself as P.W.1 and another person, by name, Ramakrishnan as P.W.2. On the side of the defendant, no documents were filed and only one witness was examined as D.W.1, the power of attorney of the defendant.

5. Based on the oral and documentary evidence available on record, the trial Court held that the plaintiff was not ready and willing to perform her part of the contract by paying the balance sale consideration as per the agreement of sale (Ex.A1) and complete the sale within a period of three months from the date of the agreement.

6. Admittedly, as seen from the impugned judgment and decree of the trial Court, the plaintiff has not been able to prove that she was



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always ready and willing to complete the sale as per the sale agreement (Ex.A1) by paying balance sale consideration to the defendant within a period of three months from the date of the agreement. Only based on the same, the trial Court has rightly dismissed the suit for specific performance filed by the plaintiff. Aggrieved by the judgment and decree of the trial Court dated 30.06.2014 in O.S.No.205 of 2010 on the file of the Sub Court, Tuticorin, the plaintiff filed the first appeal before the I Additional District Court, Tuticorin in A.S.No.20 of 2014. The lower appellate Court, namely, I Additional District Court, Tuticorin, by its judgment and decree dated 22.12.2015 in A.S.No.20 of 2014 has also rightly confirmed the findings of the trial Court by dismissing the first appeal filed by the plaintiff.

7. The relief of specific performance is a discretionary relief. Admittedly, the plaintiff has not been able to complete her part of the contract (Ex.A1) by paying the balance sale consideration to the defendant within a period of three months from the date of the sale agreement. The agreement of sale is dated 11.06.2007 (Ex.A1). There was no exchange of communication between the plaintiff and the



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defendant subsequent to the date of the sale agreement and the plaintiff has not produced any documentary evidence to show that she has reminded the defendant to execute the sale deed in her favour on receipt of the balance sale consideration.

8. Infact, as seen from the documentary evidence available on record, it was only the defendant, who had sent a legal notice to the plaintiff on 28.04.2009 (Ex.A2), by which he has cancelled the sale agreement dated 11.06.2007 (Ex.A1). Therefore, it is very clear that the plaintiff was not ready and willing to pay the balance sale consideration as per the sale agreement (Ex.A1) within a period of three months from the date of the agreement and get a sale deed executed in her favour.

9. It is also brought to the notice of this Court by both the counsels that subsequent to the suit in O.S.No.205 of 2010 filed by the plaintiff on the file of the Sub Court, Tuticorin, which is the subject matter of this second appeal, the defendant had initiated Rent Control Proceedings in RCOP No.1 of 2012 before the District Munsif Court, Tiruchendur, against the plaintiff for eviction and the Rent Controller had



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also ordered the said eviction petition on 14.07.2015. Aggrieved by the same, the plaintiff preferred an appeal in RCA No.17 of 2017 on the file of the Sub Court, Tiruchendur and the Rent Control Appellate Authority had also confirmed the findings of the Rent Controller by dismissing the rent control appeal on 10.11.2021.

10. Aggrieved by the concurrent findings of the Rent Control Authorities, the plaintiff had also filed a civil revision petition in C.R.P. (MD)No.592 of 2023 before this Court and the said civil revision petition was also dismissed on 03.03.2023. However, this Court, after recording the undertaking given by the plaintiff, granted time to the plaintiff till 31.10.2023 to vacate the suit schedule property. Therefore, it is not in dispute that the plaintiff will have to vacate the suit schedule property on or before 31.10.2023 as per her own undertaking given to this Court in the aforesaid civil revision petition.

11. As observed earlier, the relief of specific performance is a discretionary relief. However, the said discretion will have to be exercised by the Court guided by judicial principles. In the case on hand,



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both the Courts below have rightly held that the plaintiff is not entitled for the relief of specific performance and the reasons contained therein for rejecting the said relief are guided by judicial principles, which cannot be interfered with by this Court, that too at the stage of second appeal under Section 100 of CPC. Since there are no debatable questions of fact or law involved, which requires further consideration of this Court under Section 100 of CPC, there is no merit in this second appeal. The substantial questions of law framed by the appellant in the grounds of appeal have already been considered by the Courts below and there is no further scope of interference by this Court.

12. In the result, there is no merit in this second appeal and accordingly, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.06.2023

Index : Yes / No
NCC : Yes / No
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TO:

- 1.The I Additional District Court, Tuticorin.
- 2.The Sub Court, Tuticorin,
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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Judgment made in
S.A.(MD)No.138 of 2019

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21.06.2023