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A.S.(MD).No.119

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.02.2023

Pronounced on : 24.04.2023

THE HONOURABLE MRS.JUSTICE N.MALA

A.S.(MD)No. 119 of 2016

Syed Ibrahim

...Appellant/3rd Defendant

Vs.

1.Arjunan

...1st Respondent/Plaintiff

2.P.Kuthalam

3.E.Devi

...Respondents 2 & 3/ Defendants 1 & 2

4.M.Murugan

5.Meena

...Respondents 4 & 5/ Defendants 4 & 5

Prayer: Appeal Suit is filed under Order 41 Rule 1 & 2 r/w. Section 96 of C.P.C, 1908, praying to set aside the Judgment and Decree dated 26.04.2016 made in O.S.No.34 of 2006, on the file of III Additional District Court, Tirunelveli.

For Appellant : Mr.M.Ajmal Khan
Senior Advocate
for M/s.Ajmal Associates

For R1 : Mr.G.Prabhu Rajadurai

For RR2 & 3 : No appearance

R4 & R5 : Dispensed with

JUDGMENT

The third defendant aggrieved by the Judgment and Decree dated 26.04.2016, of the Trial Court in O.S.No.34 of 2006 has filed the above appeal.



2. The brief facts leading to the Appeal are as follows :

The suit properties originally belonged to the 1st defendant's mother, who executed the Will dated 30.09.1999 in favour of the 1st defendant. The 1st defendant as the owner of the suit properties executed the suit Sale Agreement dated 29.08.2005 in favour of the plaintiff for a sale consideration of Rs.1,00,000/- per acre and paid an advance of Rs.1,50,000/- on the day of the Agreement for the sale of 12.73 acres of lands in Pudukulam Village, Palayamkottai registration district, in Patta No.391, in survey numbers mentioned in the schedule of properties. Encumbrance free Sale Deed was to be executed within 4 months of the Sale Agreement. But it was also recited that if the plaintiff paid any amounts in the interregnum lands proportionate to the amounts received were to be alienated. According to the plaintiff possession was also hand over to him. The plaintiff pleaded that the defendant's had suppressed the existence of 2 mortgages over the suit properties and further stated that the delay in completing the sale transaction was due to defendant's inability to discharge the mortgages in time. The plaintiff further stated that he was ever ready and willing to perform his part of the contract but the defendant's evaded performance. Meanwhile the 1st defendant executed the settlement dated 24.02.2006 in favour of the 2nd defendant and she in turn sold the suit properties to the 3rd defendant under 2 Sale Deeds dated 07.04.2006. According to the plaintiff the 2nd and 3rd defendant were not bonafide transferee's. As the 1st defendant failed to keep up his promise under the Agreement, the plaintiff issued the suit notices dated 15.04.2006 to all the defendant's to which unconvincing replies were sent by the defendant's on 19.04.2006



and 25.04.2006. Therefore the plaintiff filed the suit praying for specific performance of the suit Agreement among other reliefs.

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3. The 1st and 2nd defendant's filed a common written statement denying the plaintiff averments. The specific case of the 1st defendant was that the suit Sale Agreement was a forged document. The defendant's submitted that as there was no such sale agreement, the settlement Deed as well as the Sale Deeds in favour of the 2nd and 3rd defendants respectively were valid and unassailable. The defendant's in any event, denied that the plaintiff was ever ready and willing to perform his part of the contract and further stated that even the suit notice was issued by the plaintiff long after the time stipulated for completion of the sale, and that too after third party rights were created under the Settlement Deed and the sale Deeds in favour of defendant's 2 and 3 respectively. According to the defendant's 1 and 2, the 3rd defendant was a bonafide purchaser for value.

4. The 3rd defendant filed a written statement on similar lines as that of the defendant's 1 and 2. The 3rd defendant added that the plaintiff was not entitled to the equitable and discretionary relief of specific performance as he had approached the Court with unclean hands. The 3rd defendant reiterated that he was a bonafide purchaser of the suit properties and therefore prayed for the dismissal of the suit.

5. In the Trial Court, the plaintiff examined himself as P.W.1, the attesor of the



sale agreement as P.W.2 and one other witness as P.W.3 and marked Exs.A.1 to A.18

on his side. The defendants on the other hand, examined seven witnesses and marked

Exs.B.1 to B.20 on their side. The expert opinion was filed as Court document Ex.C.

1.

The Trial Court framed the following issues:-

1. 29.08.2005 தேதியிட்ட கிரைய ஒப்பந்த பத்திரம் உண்மையானதா? சட்டப்படி நிலைக்கத்தக்கதா?

2. வாதிகோரிய ஒப்பந்தத்தை நிறைவேற்ற தயார் நிலையில் இருந்தாரா?

3. வாதி கோரிய ஏற்றதை ஆற்றுக பரிகாரம் கிடைக்கக்கூடியதா?

4. வாதிக்கு வேறு என்னென்ன பரிகாரம் கிடைக்கத்தக்கது?

பின்பிட்டு கூடுதல் எழுவினாக்கள் வனையப்பட்டுள்ளது

5. 1ம் பிரதிவாதி, 2ம் பிரதிவாதி எழுதி வைத்த செட்டில்மெண்ட் பத்திரம் வாதியை ஏமாற்ற வேண்டுமென்ற நோக்கத்தில் மோசடியாக தயாரிக்கப்பட்டதா?

6. The Trial Court on the basis of the pleadings and the evidence on record held that the Suit Agreement was valid and that the plaintiff was ready and willing to perform his part of the contract. The Trial Court further held that the settlement Deed in favour of the 2nd defendant and the sale Deeds in favour of the 3rd defendant were not bonafide transactions and hence decreed the plaintiff's suit for specific performance. Aggrieved by the Judgment and Decree of the trial Court, the third defendant in the suit has filed the above appeal.



7. The points that rise for determination in this appeal are as follows:-

1. Whether the suit sale agreement dated 29.05.2008 is valid and enforceable in law?
2. Whether the plaintiff was ever ready and willing to perform his part of the contract.
3. Whether the third defendant was a Bonafide purchaser for value without knowledge of the suit sale agreement?
4. Whether the plaintiff is entitled to the discretionary relief of specific performance of the sale agreement dated 29.08.2005?
5. To what other relief is the plaintiff entitled to?

The parties will be referred to as per their rank in the Trial Court for convenience sake.

8. Facts in brief:

The undisputed facts are that the suit properties originally belonged to the first defendant's mother and she executed a Will on 30.09.1999 in favour of the first defendant, bequeathing the suit properties in favour of the first defendant. It is the plaintiff's case that the first defendant as the owner of the suit properties entered into an unregistered sale agreement under Ex.A.1 dated 29.08.2005, with the plaintiff for sale of the suit scheduled properties to an extent of 12.73 acres in Puthukulam Village, in patta number 391. The sale consideration was fixed at Rs.1,00,000 per acre and an advance of Rs 1,15,000 was paid at the time of the agreement. The time stipulated in the sale agreement was four months.

9. According to the plaintiff, he was always ready and willing to perform his



part of the contract, but it was the first defendant who committed breach by executing a settlement deed in favour of the second defendant, who in turn executed the sale deeds in favour of the third defendant. According to the plaintiff, the third defendant was not a Bonafide purchaser.

10. On the other hand, it was the defendant's case that the plaintiff forged the first defendant's signature in the suit sale agreement, that the first defendant executed a settlement deed in favour of the second defendant who in turn executed the sale deeds in favour of the third defendant for valuable sale consideration, that the third defendant was a Bonafide purchaser, and that as the plaintiff had approached the Court with unclean hands he was not entitled to the discretionary relief of specific performance.

SUBMISSIONS

11. The learned Senior counsel for the 3rd defendant submitted that the suit sale agreement was a forged document, that the plaintiff filed to satisfy the mandatory requirements of 16(C) of the Specific Relief Act, that the plaintiff's case was a bundle of lies, that as the plaintiff approached the Court long after the expiry of the time stipulated in the agreement it shows that he was not ready and willing to perform his part of the contract in terms thereof, and that the plaintiff was not entitled to the discretionary relief of specific performance as he approached the Court with unclean hands and when third party rights were created. The learned Senior counsel further

submitted that the expert opinion was called for as regards the execution of the sale



agreement by the first defendant and the handwriting expert, categorically stated that the signatures, Q1 and Q2 in the first two pages matched with the admitted signature, but as regards the signature in the third page, no opinion could be given. The learned Senior counsel further referred to the various documents and the oral evidence of the witnesses to drive home the point that the plaintiff was not entitled to the discretionary relief of specific performance. The learned Senior counsel relied on several Judgments in support of his submissions which will be referred to in the course of the Judgment.

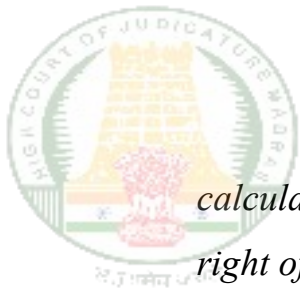
12. The counsel for the plaintiff on the other hand submitted that the appeal filed by the 3rd defendant was not maintainable, that the First defendant executed the sale Agreement in favour of the plaintiff and the opinion of the expert that the signatures in pages 1 and 2 of the sale deed matched with the admitted signature of the defendant, was enough to show that the sale deed was not a forged document, that the plaintiff was ever ready and willing to perform his part of the contract and to show his readiness and willingness he had deposited the balance sale consideration of Rs.11,58,000/- before the Trial Court. The defendants approached the Court with unclean hands and so the defence of the defendants should be rejected. The counsel therefore submitted that the plaintiff was entitled to the relief of specific performance. The counsel for the plaintiff also referred to the documents filed in the suit and also the evidence of the parties in support of his submissions. The counsel relied on various judgments in support of his case which will be dealt with later.



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13. Before venturing into the points for determination, the submission of the learned counsel for the plaintiff that the 3rd defendant who was the subsequent purchaser was not entitled to challenge the suit sale Agreement is considered first. The learned counsel for the plaintiff relied on the Judgment of the Division Bench of this Court in the case of *James Paul Vs. Shashikumar & others* reported in 2019(1) law weekly 215 and contended that the 3rd defendant had no locus to contest the suit. In my view, the said Judgment is distinguishable on facts and hence not applicable to the facts of the case. In the Division Bench Judgment relied on by the learned counsel for the plaintiff, the 1st defendant therein as the owner of the property, sold the property to the 2nd defendant who in turn sold the property to the 3rd defendant and both the subsequent sales took place during currency of the sale Agreement. In the said case, the Division Bench found that the plaintiff had established that he was ever ready and willing to perform his part of the contract. In the light of the said finding, the Division Bench at para 42 and 43 of the Judgment held as follows:-

“42. In the above facts and circumstance, we are of the view that the first defendant ought to have waited till 31.01.2007, as indicated in the agreement of sale dated 01.08.2006 for performance of the contract by the plaintiff and thereafter executed the sale deed in favour of a person of her choice. Therefore, we are of the view that the hasty manner in which the sale deed dated 14.12.2006 came to be executed by the first defendant in favour of the second defendant is nothing short of a deceitful and



calculated design devised by the first defendant intended to deprive the right of the plaintiff as an agreement holder of the suit property.

WEB COPY 43. *The other circumstances which lend support to our above conclusion is that the non-participation of the first and second defendant in the trial of the suit.”*

In the present case, the defendant's 1 and 2 contested the case by filing written statement and the 1st defendant who was the original owner of the property entered into the witness box and subjected himself to the cross-examination and I am therefore of the view that the contention of the learned counsel for the plaintiff cannot be sustained. It is further pertinent to note here that that the Hon'ble Supreme Court in the case of *Kadupugotla Varalakshmi Vs. Vudagiri Venkata Rao & ors.* reported in 2021(2) CTC 596, has categorically held that the subsequent purchaser was entitled to rise the submissions on the issue of readiness and willingness. In the said Judgment, the Hon'ble Supreme Court held in para 8 as follows:-

*“8. It must be stated here that the principles laid down in **Jugraj Singh and another** (supra) were not accepted by a Larger Bench of this Court. The relevant discussion in Paragraph 6 in the case of **Ram Awadh (Dead) by L.Rs and others v. Achhaibar Dubey and another**, 2000(2) SCC 428 was as under:*

“6. The obligation imposed by Section 16 is upon the Court not to grant Specific Performance to a Plaintiff, who has not met the requirements of Clauses (a), (b) & (c) thereof. A Court may not, therefore, grant to a Plaintiff, who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the Agreement the Specific Performance whereof he seeks. There is,



therefore, no question of the plea being available to one Defendant and not to another. It is open to any Defendant to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the Court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the Suit. We are of the view that the decision in Jugraj Sing Case 1995(2) SCC 31 is erroneous.””

In the light of the said Hon'ble Supreme Court Judgment, I find that the 3rd defendant who is the subsequent purchaser from the 2nd defendant is entitle to raise the issue ragarding the readiness and willingness of the plaintiff to challenge the relief of Specific Performance claimed by the plaintiff.

14. Points 1, 2 and 3

The points 1, 2 and 3 are inter related and hence taken up together.

The suit sale agreement dated 29.08.2005 was marked as Ex.A.1. Under the sale agreement, the sale consideration was fixed at Rs.1,00,000/- per acre and Rs. 1,15,000/- was paid as advance for the sale of the suit properties measuring 12.73 acres. The sale agreement is an unregistered one and execution of the same was denied by the first defendant, therefore, the Trial Court addressed the genuiness of the sale Agreement as the first issue. The Trial Court on the basis of expert opinion, marked as Ex.C.1, the evidence of expert who was examined as P.W.3 and on the basis that the defendants documents were executed subsequent to the sale agreement, held that the suit sale agreement was not forged but a valid document.



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15. The Trial Court on an assumption that the expert opinion was in favour of the plaintiff as the signatures of the first defendant matched with the signatures in pages 1 and 2 of the sale agreement found that the sale agreement was valid. But from a perusal of Ex.C.1, it is clear that the expert opinion was that the signatures in the first and second pages of the sale agreement matched with that of the first defendant, but as regards the signature in the third page, no positive opinion could be given. Therefore, the Trial Court erred in thinking that the expert had given an opinion that the signatures in Ex.A.1 were that of the first defendant. The Trial Court failed to note that the opinion of the expert is only advisory in nature and not conclusive. Further, the reasoning of the Trial Court that the suit sale Agreement is not forged, because the defendant's documents were executed after the suit sale agreement, is unsound and unreasonable.

16. Be that as it may, assuming that the plaintiff's contentions are true, it is to be seen, if the plaintiff was ready and willing to perform his part of the contract.

17. The recitals of Ex.A1, sale agreement are as follows:-

“என்னவென்றால் நம்மில் 1வது நபரின் தாயார்
உச்சிமாகாளி அவர்கள் தனக்கு சுயார்ஜித கிரயம் மூலம்
பாத்தியப்பட்ட சொத்துக்களைப் பொருத்து, 30.9.1999ல்
ஏழுதி, மேலப்பாளையம் சப்.ரி.ஆபீசில்.3.29.65 ₹ 66.58/ 1999ம்

<https://www.mhc.tn.gov.in/judis>



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நீரக ஒரு உயில் தஸ்தாவேசை பதிவு செய்து வைத்த நிலையில் ஐ ௩ உச்சிமாகாளி அவர்கள் 22.12.99ல் காலமான பின்னர் ஐ ௩ உயில் தஸ்தாவேஸ் நடைமுறைக்கு வந்து அதன்படி நம்மில் 1வது நபருக்கு சர்வசுதந்திரமாகவும் நிராட்சேபணையாகவும் பாத்தியப்பட்டு எல்லாவித உரிமைகளுடன் அனுபவித்து வருகிற சொத்துக்களில் இதன் தபசில் சொத்துக்களை நம்மில் 2வது நபருக்கு ஏக்கர் ஒன்றுக்கு ரூ.1,00,000/- ரூபாய் ஒரு இலட்சத்துக்கு மட்டும் கிரயம் செய்கு கொடுக்க ஒப்புக் கொண்டு, நூளது தேதியில் நமில் 2வது நபரிடம் இருந்து 1வது நபர் ரூ.1,15,000/- ரூபாய் ஒரு இலட்சத்து பதினைந்தாயிரத்தை மட்டும் இதனடியில் சாட்சிகள் கையெழுத்து செய்தவர்களின் முன்னிலையில் அட்வான்சாக ரொக்கம் பெற்றுக் கொண்டபடியால், நூளது முதல் 4

நான்கு மாத தவணைக்குள் தபசில் சொத்துக்களில் எவ்வித வில்லங்கமன்னியில் தபசில் சொத்துக்களை 2வது நபருக்கோ அல்லது 2வது நபர் குறிப்பிடும் நபர்/ நபர்களின் பெயருக்கோ 1வது நபர் மொத்தமாகவோ அல்லது பிரித்தோ கிரயம் செய்து கொடுத்து பாக்கி கிரயத் தொகையினை ஐ ௩ கிரயப் பத்திர பதிவுகளை 1வது நபர் பூர்த்தி செய்கு கொடுத்துவிடவேண்டியது. ஐ ௩ நான்கு மாதங்களுக்கு இடையில் 1வது நபர் 2வது நபரிடமிருந்து பெற்றுக் கொள்ளும் தொகைக்கு ஈடான நிலத்தை 2வது நபருக்கு கிரயம் செய்கு கொடுக்கவும் இதன் மூலம் 1வது

நபர் ஒப்புக் கொள்கிறார்.”



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It is the contention of plaintiff that the 1st defendant suppressed the Mortgages and therefore the delay in executing the sale Deed. It is clear from a plain reading of the recitals in the sale Agreement that there is absolutely no whisper about the Mortgages. It is the defendants case that the mortgages executed in favour of Tirunelveli Co-operative Primary Agriculture and Rural Development Bank, were discharged by the first defendant under Ex.B.1 and Ex.B.2 as early as on 14.11.2000 and 23.03.2002 and it was further stated that the electricity connection was changed in the name of the first defendant on 21.02.2004 itself. According to the first defendant, the defendant paid Rs.1,700/- on 21.03.2006 towards interest as per the auditing report of the Co-operative Bank which document was marked as Ex.B.7. In short, the first defendants case was that even before the suit Sale Agreement, the mortgages were discharged and the electricity service connection was changed in his name. The said contention can be tested from another angle also.

18. The plaintiff in his evidence stated that, at the time of the agreement the xerox copy of the Will, which is the parent document of the first defendant was given to him and on that basis the agreement was drafted. The plaintiff in his cross-examination further stated that when the plaintiff enquired about the Will, the defendant replied that the same would be handed over after a week. Even P.W2/ attesor of Ex.A1 admits that he saw the original Will and that the first defendant had it in his possession. The evidence of the plaintiff as also the attesor's, clearly



time of the Agreement. If really there were mortgages subsisting on the suit properties as alleged by the plaintiff, then the first defendant could not have the original Will with him. Therefore it is clear that the contention of the plaintiff that the Mortgages were suppressed by the 1st defendant is untenable. The plaintiff does not stop with stating that the mortgages were suppressed, but he also stated that because of the Mortgages, clear title could not be passed and therefore the 1st defendant had to be blamed for the delay. It is seen from a reading of the Sale Agreement that there is absolutely no mention of the Mortgages on other hand it is recited that if within the 4 months period, part sale consideration is received, lands proportionate to the consideration would be transferred.

19. From the pleadings it is clear that the plaintiff's readiness and willingness was not un-conditional but conditional on redemption of mortgages which was not a term of the contract, and which according to the defendants were redeemed long prior to the Agreement. The plaintiff's counsel submitted that after the redemption of the Mortgages he issued the suit notice, which would establish that the plaintiff was ready and willing to perform his part of the contract. I am afraid the said contention is untenable, moreso, when a specific stand was taken that there were no such Mortgages. The issuance of notice at the most, in the words of the Hon'ble Supreme Court would only reflect the "desire" of the plaintiff.



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complete the sale by paying the balance amount. It is to be seen if the averment is supported by evidence. The evidence in support of the plea of readiness and willingness is contra to the pleading. It is trite in law that pleading without evidence is of no avail. The evidence of the plaintiff on his readiness and willingness to perform is part of the contract is as follows:-

“வா.சா.ஆ.1ன் படி ரூ11 லட்சத்து 60 ஆயிரம் நான் பாக்கி கிரைய தொகையாக செலுத்தவேண்டியிருந்தது என்றால் சரிதான். மேற்படி பாக்கி தொகையை நான் செலுத்ததயாராக இருக்கிறேன் என்பதற்கு நான் ஆதாரம்தாக்கல்செய்யவில்லை என்றால் நான் நீதிமன்றத்தில் கிரைய தொகையை கட்டிவிட்டேன். நீதிமன்றத்தில் கட்டி வைப்பதற்கு முன்பு என்னிடம் மேற்படி தொகை இருந்தது

என்பதை காட்டுவதற்கு நான் ஆதாரம் தாக்கல்செய்யவில்லை என்றால் நான் ஆதாரம் தாக்கல்செய்யவில்லை ஆனால் என்னிடம்பணம் இருந்தது.”

Though the plaintiff states that he had the funds with him, absolutely no evidence is filed in support of the same.

21. Hence, it is clear that the plaintiff was not ever ready and willing to perform his part of the contract. It is trite that readiness and willingness has to be proved from the date of agreement till the final decision of the suit. The burden is on the plaintiff to establish the same, merely because, the plaintiff deposited the balance



the plaintiff was ever ready and willing to perform his part of the contract and in terms thereof right from the date of the sale agreement.

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22. The learned Senior counsel for the appellant relied on the following Judgments in support of his contention that the plaintiff has not established his readiness and willingness which is mandatory under Section 16(c) of the Specific Relief Act.

i) In the case of *U.N. Krishnamurthy (since Deceased) Vs. A.M.Krishnamurthy* reported in 2022 SCC Online SC 840, it is held:

“46. It is settled law that for relief of specific performance, the Plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the Plaintiff to prove his readiness and willingness by adducing evidence.”

ii) In the case of *P.Meenakshisundaram Vs. P.Vijayakumar and another* reported in 2018 (3) CTC 428, it is held:

“8. As regards Suit for Specific Performance, the law is very clear that the Plaintiff must plead and prove his readiness and willingness to perform his part of the Contract all through i.e., right from the date of the Contract till the date of hearing of the Suit.”

iii) In the case of *Pushparani S.Sundaram and others Vs. Pauline Manomani James (Deceased) and others* reported in 2002 (9) SCC 582, it is held:

“4. The only question raised before the High Court, which it



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considered, to which we are called upon for consideration is, whether the appellants were always ready and willing to perform their part under the contract. The High Court came to the conclusion that willingness and readiness is no doubt pleaded but they led no evidence to prove it. Thus held, that the plaintiff is not entitled to the decree of specific performance. The submission by the learned counsel for the appellants is that the plaintiff was always willing and ready to perform his part under the contract but mere non-leading of any evidence is not sufficient to reject it. Inference of readiness and willingness could be drawn by the conduct of the plaintiff, the circumstances in a particular case in other words to be gathered from the totality of circumstances.

5. For this, the appellants rely on two circumstances, one, that immediately after the exemption was given by the Ceiling Authorities on 31-3-1982, the present suit was filed in April 1982, and the other the tendering of a further sum of Rs 5000 to the defendant after execution of the agreement of sale. He also reiterates with reference to para 11 of the plaint which pleads that the appellant was and is ready and willing to perform his part under the contract. So far there being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said



Act makes it clear that mere plea is not sufficient, it has to be proved.”

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23. In the present case except the *ipsi dixit* of the plaintiff there is no independent evidence either oral or documentary to establish that the plaintiff had sufficient funds to complete the sale transaction. As an instance of his readiness and willingness, the plaintiff relies on the deposit of the sale consideration in Court. Here also there is no concrete evidence on when the deposit was made, whether at the time of filing the suit or subsequently ? The evidence of the plaintiff on the availability of funds referred to supra, does not inspire confidence on the plaintiff's readiness and willingness. One other instance as rightly pointed out by the learned Senior counsel for the appellant, for inferring that the plaintiff was not ready and willing is the issuance of notice after the expiry of the time stated in the Agreement. During the 4 months period stipulated in the Agreement the plaintiff did not take any steps to show his readiness and willingness to complete the sale. It is seen that the suit notice was issued long after the expiry of the time stipulated under the Agreement. The 4 month time stipulated in the Agreement expired on 28.12.2005, but the notice was sent by the plaintiff on 15.04.2006, which was 4-1/2 months after the period stipulated in the Agreement. It is relevant to note here that the first defendant executed the settlement deed in favour of the second defendant on 24.02.2006 and the second defendant in turn executed the sale deed in favour of the third defendant under 2 sale deeds on 07.04.2006. It was only thereafter that the plaintiff sent the suit notice on



the plaintiff had taken any steps in furtherance of the Agreement, moreso, when the Agreement stated that proportionate to the consideration received lands will be transferred.

24. The learned counsel for the plaintiff contended that the delay in issuing the suit notice cannot be put against the plaintiff, as the plaintiff filed the suit within the limitation period. In support of the said contention, the learned counsel for the plaintiff relied on the Judgment of the Hon'ble Supreme Court in the case of *R.Lakshmikantham Vs. Devaraji* reported in 2019(8) SCC 62. In the said Judgment, the Hon'ble Supreme Court held that, mere delay in filing the suit after accrual of cause of action would not lead to inference against the plaintiff that he was not ready and willing to perform his part, if the suit was filed within the period of limitation.

25. In my view, the said Judgment does not apply to the facts of the case, as in that case, the defendant had received further sum of Rs.60,000/- within the stipulated period and the notice for performance was sent well before the expiry of the time stipulated in the contract. In the Instance case, it is seen that, after Ex.A1 dated 29.08.2005, absolutely no steps were taken by the plaintiff to establish his readiness and willingness to perform his part of the contract nor any communication was sent to the first defendant to complete the sale transaction within the time stipulated in the contract. It is by now fairly settled law that when parties stipulate specific time for completion of the sale transaction some sanctity should be attached to it. The Court



will not ignore the terms of the contract when the parties have voluntarily agreed to the same.

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26. The learned counsel for the plaintiff relied on the following Judgments in *2022 SCC online 1391, 2022 SCC online Madras 4654 and 2004(8) SCC 689*. I find from a reading of the said Judgments that the same are distinguishable on facts and hence not applicable to the case on hand.

27. The learned Senior counsel for the 3rd defendant relied on *AIR 2022 SCC 5435: AIR Online 2022 SC 1332* in support of his case. The Hon'ble Supreme Court relying on the earlier Judgments in *Chandrani's* case and *Vidyanandam's* case, held that the purchaser therein was not ready and willing to perform his part of the contract within the time stipulated and accordingly specific performance could not be granted. The Court further held that

“59. It was necessary that the purchaser should have taken immediate steps to complete the transaction and if such steps were immediately completed then the purchaser would have a clear right for seeking enforcement for 3 years reckoned from the last date decided for completion of the contract.”

28. According to the plaintiff the breach was on the part of the defendants and therefore it was not necessary for the plaintiff to establish his readiness and willingness. In my view, the said contention is untenable. When the plaintiff seeks specific performance of the agreement, it is up to the plaintiff to establish his



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readiness and willingness and the question of breach of contract by the defendant would only arise when the plaintiff establishes his right to specific performance. In this regard, the Judgment of the Hon'ble Supreme Court in *2010(10) SCC 512* can be gainfully referred. The Hon'ble Supreme Court in the said Judgment, held that even assuming that the defendant had committed breach, if the plaintiff failed to aver in the plaint and prove that he was always ready and willing to perform his part of the essential terms of the contract which was required to be performed by him, there is a bar to specific performance in his favour and therefore the assumption of the plaintiff that the defendant committed breach of the contract cannot be a ground for the plaintiff to wriggle out of the mandatory provisions of Section 16(c) of the Specific Relief Act.

29. In the light of the said discussions, I am of the view that the plaintiff has miserably failed to establish that he was always ready and willing to perform his part of the contract.

30. The learned Senior counsel for the third defendant submitted that the Hon'ble Supreme Court in *AIR 2022 SC 5435*, categorically held that, the Amendment Act 18 of 2018 was not retrospective and the same cannot apply to the transactions that took place prior to its coming into force. Therefore, the learned Senior counsel for the third defendant submitted that the remedy is discretionary and this Court can refuse the relief exercising its power under Section 20 of the Specific

Relief Act. The learned counsel for the plaintiff in the light of the above Judgment



fairly conceded that the Amendment Act 18 of 2018, was not retrospective.

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31. The learned Senior counsel for the 3rd defendant submitted that the plaintiff approached this Court with unclean hands on the following aspects and hence disentitled to the discretionary relief of specific performance.

1)Regarding the alleged extension of time by the defendant for redemption of mortgages.

2)The purchase of stamp papers.

3)Presence of second defendant at the time of agreement and

4)Possession of the schedule properties

1. Redemption of Mortgages

The pleadings in this regard are as follows:-

“4. When the plaintiff pointed out the subsisting encumbrances as well as the service connection name, the 1st defendant promised to redeem the mortgages and change the name of the service connection in his favour and execute the sale deed after that.

5. The 1st defendant informed the name transfer of the service connection was effected by the Electricity Board and produced the xerox copy of the order also to the plaintiff and pleaded some more time to redeem the subsisting mortgages.”

In the cross examination, the plaintiff stated as follows:-

"1ம் பிரதிவாதி வங்கி கடனை அடைப்பதற்காக என்னிடம்கால அவகாசம்கேட்கவில்லை.



சொத்தை முடிக்கவில்லை என்றால் சரியல்ல."

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2.Purchase of Stamp Papers

The plaintiff in his cross-examination stated that the stamp papers for Ex.A.1 were purchased by the defendant. The plaintiff stated that the difference in Serial Number of the stamp papers was to be explained by the defendant as it was purchased by the first defendant. In this regard, the defendants examined D.W.6, who was a writer in the District Registrar's Office, Palayamkottai. D.W.6, in his chief-examination stated that, as per Ex.B.19/ Register of Non judicial Stamp Papers, twenty (20) 10 Rs. Stamp papers were purchased by Arjunan on 25.08.2005. The said witness in his cross examination deposed as follows:-

"அர்ஜுனன் என்பவர் முத்திரை தாள் வாங்கிய சமயத்தில் அதன் முடிவு எண் 26473 என குறிப்பிடப்பட்டுள்ளன என்றால் சரி. வைகுண்டம்மாள் வாங்கிய முத்திரைதாளின் எண் 26453 என குறிப்பிடப்பட்டுள்ளன என்றால் சரி. அர்ஜுனன் என்பவருக்கு பின்னால் ராமசாமி என்பவர் இரண்டு முத்திரை தாள்கள் வாங்கியுள்ளார். அதன் எண்கள் முடிவில் 6475 ஆகும், அர்ஜுனன் என்ற பெயர் திருத்தம் எதுவும் செய்யப்பட்டுள்ளதா என்றால் இல்லை.

குறக்கு விசாரணை: (1வது மற்றும் 2வது பிரதிவாதி தரப்பில்)

நான் கொண்டு வந்த ஆவணங்களின் படி குத்தாலம் என்பவருக்கு விற்பனை செய்யப்பட்டுள்ளதா என்றால் இல்லை.

மேற்படி பத்திரங்களுக்கும் குத்தாலத்திற்கும் எந்தவித

சம்பந்தமும் இல்லை."



Therefore from the evidence of D.W.6 and Ex.B19, it is clear that the stamp papers were purchaed by the plaintiff Arjunan and not by the first defendant, Kuthalam.

3.Presence of second defendant at the time of Agreement

The plaintiff in both his pleadings and in the legal notice stated that the second defendant was physically present when her father received the advance amount of Rs.1,15,000/- and executed the Sale Agreement on 29.08.2005. The plaintiff in his notice dated 15.04.2006 reiterated the same.

The plaintiff in his cross-examination stated as follows:

"2.ம் பிரதிவாதி கிரயம் பேசும்போது உடனில்லை.
மேற்படி விபரம் பேசும்போது 2ம் பிரதிவாதி உடனிருந்ததாக
நான்பிரமான வாக்குமூலத்தில் கூறியிருந்தால் அது தவறு."

It is therefore seen that even according to the plaintiff, the statement made by him in the notice and also the pleadings was incorrect.

4.Possession of the Schedule properties

The plaintiff in his plaint at para 3 and also in the affidavit filed in support of the injunction petition in I.A.No.40 of 2006 pleaded that he was put in possession of the suit properties, but the plaintiff in his cross-examination with regard to the possession stated as follows:-

"கிரைய ஒப்பந்தம் அன்று சொத்தின் சுவாதீனம்
என்னிடம் ஒப்படைக்கப்படவில்லை. மின் இணைப்பை ஒப்பந்தம்



போட்ட 6 மாதம் கழித்து தான் தன் பெயருக்கு மாற்றி
தந்தார். சொத்தின் சுவாதீனம் என்னிடம்
ஒப்படைக்கப்பட்டதாக நான் பிரரத்தில் கூறியிருந்ததால் அது
தவறு."

32. From the above discussions it is clear that the plaintiff has come to Court with unclean hands and therefore, as contended by the learned Senior Counsel for the third defendant, the plaintiff should be non suited.

33. The learned Senior counsel for the third defendant relied on the Judgments of the Hon'ble Supreme Court in the case of *Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy* and in the case of *G.Anbzhagan and another Vs. G.Manoharran (Deceased)* reported in 1996 (5) SCC 589 and 2013(6) CTC 624 which are as follows:-

In 1996 (5) SCC 589

"2. It is settled law that the party who seeks to avail of the equitable jurisdiction of a court and specific performance being equitable relief, must come to the court with clean hands. In other words the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief."

In 2013 (6) CTC 624

"20. Therefore, the Trial Court has rightly held that the Plaintiff was not given possession as alleged by him. It leads to the conclusion that the Plaintiff came to this Court with false case regarding delivery of possession and therefore, the question that arises for consideration



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is whether such Plaintiff is entitled to the discretionary relief of Specific Performance. As stated supra, in the judgments referred to above, the Honorable Supreme Court and the Division Bench of our High Court have clearly held that the relief of Specific Performance is a discretionary relief and there is no need to grant the relief even though the Plaintiff is entitled to the relief and when the Plaintiff comes to Court with unclean hands or with false case."

34. The learned counsel for the plaintiff on the other hand submitted that, in this case even the defendants have approached the Court with un-clean hands, I am not inclined to venture into the said aspects, for the simple reason that it is for the plaintiff to establish his entitlement to the relief claimed and only when the plaintiff is able to prove that he was entitled to the relief of specific performance he can rely on the lacunae in the defendants case and the question of the defendants approaching the Court with unclean hands would be of relevance.

35. It is the contention of the plaintiff that the 3rd defendant is not a bonafide purchaser. As I have found that the plaintiff has not established his right to specific performance of the suit sale agreement, I am of the view that the said contention is inconsequential. Therefore the issues 1, 2 and 3 are decided in favour of the appellant.

Issues 4 and 5:



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of the discussions in the foregoing paras, I find that the plaintiff is not entitled to the discretionary relief of specific performance. Hence points 4 and 5 are decided against the plaintiff. I am of the view that the Judgment and Decree of the Trial Court is improper and erroneous. Therefore the Judgment and Decree dated 26.04.2016 in O.S.No.34 of 2006, on the file of III Additional District Court, Tirunelveli is set aside. The appeal is accordingly allowed. There shall be no order as to costs.

24.04.2023

dsn

Speaking Order: Yes/No

Index: Yes/No

Neutral Citation: Yes/No

To

1. The learned III Additional District Judge,
Tirunelveli.



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N.MALA.J.,

dsn

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