



AS.No.669 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.12.2023

PRONOUNCED ON : 03.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

AS.No.669 of 2016 and  
C.M.P.No.20404 of 2016

P.R.Nagaraj

... Appellant

Vs.

Dhanalakshmi

...Respondent

**PRAYER:**

Appeal Suit is filed under Section 96 of CPC against the judgment and decree dated 25.02.2016 passed in O.S.No.97 of 2008 on the file of the II Additional District and Sessions Court, Salem.

For Appellant : Mr.A.E.Ravichandran

For Respondent : Mr.K.Elango



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### **JUDGMENT**

The Appeal suit is filed against the judgment and decree dated 25.02.2016 passed in O.S.No.97 of 2008 on the file of the II Additional District and Sessions Court, Salem.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The appellant is the plaintiff and the respondent is the defendant in the suit. The case of the appellant is that the defendant owned the suit property. She had agreed to sell the same to the Appellant and one, R.Balasubramani for the sale consideration of Rs.975/-per sq.ft., Accordingly, on 05.02.2007, the plaintiff and another paid sum of Rs.4,00,001/- as advance for part of sale consideration to the defendant and they had entered into an agreement for sale. The period of contract is fixed as four months from the date of agreement. Though, the plaintiff and another have always been ready and willing to perform their part of



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contract, the defendant had been evading to execute the sale deed without any reason. During the first week of June 2007, when the plaintiff and another were insisted the defendant to receive the balance sale consideration and execute the sale, the defendant informed that there is some dispute in the subject properties, due to which a suit is pending. Therefore, it requires further time to settle the issues and she sought further time. Even then, the Respondent/Defendant did not come forward to execute sale deed and as such, the Appellant/Plaintiff and another had caused legal notice dated 21.02.2008, thereby called upon the Respondent/Defendant to receive the balance sale consideration and execute the sale deed. However, the said notice was returned as no such member.

3.1. The further case of the plaintiff is that after verification of new address of Respondent/Defendant, another notice was sent to her and the same was received by her. Aggrieved by the same, Respondent/Defendant issued a reply notice dated 20.03.2008 alleging that it was fully a loan transaction and not an agreement for sale. After



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receipt of the reply, another person Balasubramanian had executed assignment notice in favour of the Appellant/Plaintiff and thereby assigning right for purchasing the suit property in favour of the Appellant/Plaintiff after receipt of a sum of Rs.2,00,000/- from the Appellant/Plaintiff. Thereafter, on 29.03.2008, the plaintiff caused another notice to the respondent/defendant. Hence, the Appellant/Plaintiff filed a suit for specific performance as against the Respondent/Defendant.

4. The Respondent/defendant filed her written statement and stated that she never agreed to sell her property to plaintiff and another at any point of time. The rate fixed in the alleged agreement is imaginary one. The Appellant/Plaintiff and another are doing money lending business. When the Respondent/Defendant in need of money to pursue her son's education at New Delhi, she had approached the Appellant/Plaintiff for borrowal of loan to the tune of Rs.2,00,000/- for interest. The Respondent/Defendant also promised to return the same within a period of three years. At the time of borrowal of loan amount, the Appellant/Plaintiff had insisted her to execute document. Therefore, the



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Respondent/Defendant had signed in the blank stamp papers and other papers. Accordingly, she signed and borrowed sum of Rs.2,00,000/- as loan. Thereafter, the Appellant/Plaintiff and another had created a fabricated alleged agreement for sale dated 05.02.2007 and filed a suit for specific performance.

5. On perusal of the pleadings, the trial court framed following issues:-

1. 05.02.2007ம் தேதியிட்ட ஒப்பந்தம் உண்மையானதா?
2. ஒப்பந்தத்தின் அடிப்படையில் கிரைய பத்திரம் முடித்து பெறுவதற்கு வாதி விருப்பமாகவும் தயாராகவும் இருந்து வந்தாரா?
3. வாதிக்கு ஏற்றதை ஆற்றுக பரிகாரம் கிடைக்கத்தக்கதா?
4. பாலகப்பிரமணி என்பவரால் வாதிக்கு எழுதி கொடுக்கப்பட்ட 27.03.2008ம் தேதிய அசைன்மென்ட் உண்மையானதா?
5. வேறு என்ன பரிகாரம்?

Thereafter, on 18.02.2016, the following additional issues were framed:

1. இந்த வாதியால் ஏற்பட்ட நடவடிக்கை ஒப்பந்த அடிப்படையில் ஏற்பட்ட நடவடிக்கையா, அல்லது கடன் அடிப்படையில் ஏற்பட்ட நடவடிக்கையா?
2. வாதிக்கு மாற்று பரிகாரமாக பிரதிவாதியிடம் இருந்து முன் தொகை



திரும்ப கிடைக்கத்தக்கதா?

3. மாற்று பரிகாரம் காலாவதி தோஸத்திற்கு உட்பட்டுள்ளதா?

6. On the side of the Appellant/Plaintiff, he had examined P.W.1 to P.W.3 and marked Exhibits P.1 to P.10. On the side of Defendant, she had examined D.W.1 and D.W.2 and marked Exhibits D.1 to D.20. On perusal of the oral and documentary evidence, the trial Court dismissed the suit for specific performance. Agreeived by the same, the present appeal suit is filed.

7. The learned counsel for the appellant submitted that the trial Court framed additional issues. However, the Appellant/Plaintiff was not given any opportunity to deal with the issues while cross-examining the witnesses. Even assuming that it is a loan transaction, the Respondent/Defendant failed to prove the same with substantial evidence. If at all it is a loan transaction, definitely she would have paid some interest. The defendant duly signed in the agreement and received sum of Rs.4,00,001/- as advance for part of sale consideration. Though the time is essence of contract, only on the part of the Respondent/Defendant,



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there was a delay in filing the suit. The Respondent/Defendant only informed that there was a civil suit in O.S.No.1128 of 2006 in respect of the suit property. Therefore, the sale deed could be executed only after the disposal of the civil suit. The Respondent/Defendant raised specific plea that it is a loan transaction and at the time of borrowal of loan she had signed in the blank stamp paper.

7.1. He further submitted that the agreement for sale revealed that all the three persons signed and it could not be forged from the signature of the defendant alone. Therefore, the agreement for sale is not fabricated by the Appellant/Plaintiff. In the said agreement, own brother of the defendant also signed as witness and he admitted his signature. The Respondent/Defendant is being an educated lady, that too working as teacher in the Government School, it is unbelievable to state that she had signed in the blank papers for borrowal of loan amount. She categorically admitted that she is well off and as such no need to borrow any amount. The other person who entered with agreement for sale with the Appellant/Plaintiff was examined as P.W.2. However, he was not



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cross-examined by the defendant. In fact the defendant was set ex-parte on two occasions for non cross-examining the P.W.1. Therefore, the ex-parte decree was passed on 04.06.2012 and again on 17.04.2014. After the ex-parte decree, the Appellant/Plaintiff had deposited the entire balance sale consideration on 25.06.2012. After setting aside the ex-parte decree and after the chief-examination of P.W.2, the whereabouts of said P.W.2 was not known. Therefore, he could not be present before the trial Court for cross-examination.

8. The learned counsel for the Respondent/Defendant would submit that the Respondent/Defendant never entered into an agreement for sale with the Appellant/Plaintiff, as she had no necessity to sell her property. She had only borrowed a sum of Rs.2,00,000/- for the purpose of her son's studies. At the time of borrowal of loan, she had signed in the blank stamp paper and it was subsequently fabricated as agreement for sale by the Appellant/Plaintiff. In the essence of contract, four months period is fixed for execution of sale deed. Even assuming that the agreement for sale is true, the Appellant/Plaintiff failed to come forward with the



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balance sale consideration for the execution of sale deed. There is alleged agreement for sale dated 05.02.2007 between the Appellant/Plaintiff and the Respondent/Defendant, whereas the Appellant/Plaintiff sent notice only on 21.02.2008, that too sent to wrong address. During the period of contract, there was no demand made by the Appellant/Plaintiff to perform part of the defendant's contract. Therefore, the trial Court rightly dismissed the suit for specific performance, since it is a discretionary relief. He further submitted that when the Respondent/Defendant specifically denied the very execution of agreement for sale, the Appellant/Plaintiff ought to have proved the case beyond any doubt with substantial evidence. The loan amount was borrowed only for the purpose of defendant's son studies. In support of her contention, she marked exhibit D.1 to D.20. Therefore, he prayed for dismissal of this Appeal Suit.

9. Heard, the learned counsel appearing on either side.

10. On the submissions made by either side, the following points



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arise for consideration :

- i) Whether the plaintiff proved his readiness and willingness to perform his part of contract?*
- ii) Whether the plaintiff filed a suit within a reasonable time when there is specific period mentioned in the agreement for sale to perform his part of contract?*
- iii) Whether sufficient opportunities were given to the plaintiff after framing additional issues?*

11. The Respondent/Defendant denied the very execution of agreement for sale dated 05.02.2007. On perusal of the agreement for sale revealed that the sale consideration was fixed at Rs.975/- per sq.ft., without mentioning the total extent of the property. Without even mentioning the total extent of the property, the Appellant/Plaintiff had paid sum of Rs.4,00,001/- as advance. The time for execution of sale deed was fixed at four months from the date of agreement and it expired on 05.07.2007. However, the Appellant/Plaintiff did not issue any notice thereby demanding to execute sale deed during the period of contract.

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The Appellant/Plaintiff sent notice on 21.02.2008. The Appellant/Plaintiff also failed to state any reason for delay in issuance of notice of demand. Though, the learned counsel for the Appellant submitted that while asking for execution of sale deed, the Respondent/Defendant delayed for the reason that already suit was pending in respect of the suit property in O.S.No.1128 of 2006. On perusal of the plaint and the notice, nowhere mentioned about the said suit, as if the defendant delayed the execution of sale deed for the reason of suit pendency. Therefore, it is nothing but afterthought, that too after filing the written statement and after marking the plaint in O.S.No.1128 of 2006 as Ex.P.13 by the defendant.

12. Even after filing the suit, the Appellant/Plaintiff did not file any application seeking permission to deposit the balance sale consideration. Only after the ex-parte of Respondent/Defendant, the Appellant/Plaintiff deposited the balance sale consideration. Therefore, the Appellant/Plaintiff failed to prove his readiness and willingness to perform his part of contract. The suit for specific performance is an equitable and discretionary relief. When a person approaches the court



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for equitable relief has to come to court with clean hands. When the suspicion is raised, discretion will not be exercised when it is inequitable to grant the relief of specific performance on account of the conduct of the Appellant/Plaintiff. Therefore, the Appellant/Plaintiff would be disentitled to the relief of specific performance, if his contract is tainted with falsity. The Respondent/Defendant raised specific plea that she never entered into an agreement for sale and the agreement for sale is a fabricated one. Therefore, the Appellant/Plaintiff should have taken steps to prove the agreement for sale as genuine one. But, the Appellant/Plaintiff failed to prove the same.

13. The learned counsel for the appellant submitted that though he asked for alternative relief, the Court below failed to consider the same. Even assuming that it is a loan transaction, the Appellant/Plaintiff is entitled for alternative relief. On perusal of the judgment, revealed that the trial Court had given liberty to the Appellant/Plaintiff to recover the loan amount which was borrowed by the defendant with interest in accordance with law in a separate proceedings.

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14. When the agreement for sale itself is not proved before the trial Court, the amount which is involved in the agreement cannot be treated as advance. If it is a loan transaction and if not repaid, then the Appellant/Plaintiff is at liberty to recover the loan amount by separate proceedings. The P.W.2 was examined in chief. Thereafter, the suit was posted for cross-examination of P.W.2 and P.W.3 on 08.10.2014. However, the P.W.2 was not present before the trial Court for cross-examination. Therefore, the P.W.2 was not cross-examined on 17.03.2015. Instead, P.W.3 was cross-examined on the same day. Therefore, the trial Court rightly eschewed the evidence of P.W.2.

15. Further, as stated supra, the suit was not filed within a reasonable time under section 16(c) of Specific Relief Act, it stipulates continuous readiness and willingness on the part of plaintiff. It is a condition for obtaining a relief of specific performance of contract. The



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Court exercises a discretionary jurisdiction, could be entitled to take into consideration as to whether the said suit had been filed within a reasonable time. What would be a reasonable time would however depend upon the facts and circumstances of the each case. In the case on hand, the specific time was fixed as four months in the contract from the date of agreement for the sale. Even after expiry of four months, the Appellant/Plaintiff did not take any steps to show his readiness and willingness to perform his part of contract. The Appellant/Plaintiff also failed to demand to perform the Respondent/defendant's part of contract. It shows that the Appellant/Plaintiff failed to establish his readiness and willingness to perform his part of contract as per the agreement for sale.

16. It is relevant to extract the judgment reported in **2023 (3) SCC 714** in the case of ***Desh Raj Vs. Rohtash Singh***, as follows:-

*“C.1 .Whether time was the essence of the contract?”*

*20. Before venturing into the aforementioned issue, we must highlight that throughout the entire dispute,*



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*Appellants have taken a consistent stand of time-bound performance being an essence of the contract. They have maintained that sale deed was needed to be executed necessarily on the Date of Execution as agreed between the parties. It is unfortunate that all the courts below have failed to render a finding on this aspect despite the fact that this was one of the key defenses taken by the Appellants in respect of the prayer seeking specific performance.*

*21. In this respect, we must now take note of Section 55 of Contract Act which stipulates the aftermath in case of failure to perform contractual obligations at fixed time. The provision states –*

*55. Effect of failure to perform at fixed time, in contract in which time is essential. - When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.*



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*Effect of such failure when time is not essential- If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.*

*Effect of acceptance of performance at time other than that agreed upon:- If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.*

*22. The Sale Agreements in the present case clearly indicate the intention of the parties to treat time-bound performance as an essential condition. They stipulate that in case the sale deed was not executed on the Date of Execution, the Sale Agreements were liable to be treated as cancelled, and the earnest money was to be forfeited. Even in the legal notices dated 18.08.2004, through which*



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*last opportunity was extended to Respondent to execute the sale deed, the factum of time being an essential condition for performance was reiterated. On the other hand, no evidence or communication has been brought on record by the Respondent to contradict the defense of time-bound performance taken by the Appellants.*

*23. At this juncture, we must note the decision of this Court in Citadel Fine Pharmaceuticals v Ramaniyam Real Estates Private Ltd and Saradamani Kandappan v S. Rajalakshmi wherein it was held that defense under Section 55 of Contract Act is valid against anyone who is seeking the relief of specific performance. The facts of the instant case make the observations in Saradamini Kandappan even more pertinent, which are to the following effect -*

*“36. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market values of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely*



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*indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.*

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*43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyadnam [(1997) 3 SCC 1]:*

*(i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.*

*(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was “ready and willing” to perform his part of the contract.*

*(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The courts will also “frown” upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a*



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*purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The threeyear period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser.”*

17. Thus it is clear that when the parties intended to treat the time as the essence of the contract and that there was an undue delay to institute the suit, the relief of specific performance cannot be granted. Therefore, all the points are answered in favour of the Respondent/Defendant. As such, this court finds no infirmity or illegality in the judgment and decree passed by the learned trial court.

18. In the result, this appeal suit is dismissed and the judgement and decree passed in O.S.No.97 of 2008 dated 25.02.2016 on the file of the II Additional District and Sessions Court, Salem is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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