



S.A.No.142 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 21.12.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

S.A.No.142 of 2013

1. A.Vennila
2. Thenmozhi
3. A.Panneerselvam (Died)
4. Godhavari
5. Saravanan
6. Lokesh
(A-3 died, A-4 to A-6 are brought
on record as LR's of the Deceased A-3
vide Court Order dated 02.04.2024 made
in CMP.No.4792 of 2022 in
S.A.No.142/2013)

... Appellants

Versus

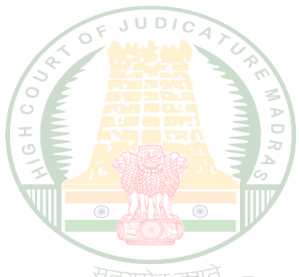
1. Purushothaman
2. Tamilarasi

... Respondents

Second Appeal is filed under Section 100 of Code of Civil Procedure to set aside the judgment and decree dated 12.08.2011 made in A.S.No.15 of 2008 on the file of the learned Principal District Judge at Krishnagiri confirming the Judgment and decree dated 04.07.2008 made in O.S.No.27 of 1986 on the file of the Subordinate Judge Court at Krishnagiri.

For Appellants

: Mr.S.Mukunth
Senior Counsel for
Mr.M.S.Swathish Kumar for
M/s.Sarvabhauman Associates



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For Respondent
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: Mr.V.Srimathi for R-1
Mr.K.Venkatesa Subbu for R-2

JUDGMENT

This Second Appeal had been filed to set aside the judgment and decree dated 12.08.2011 made in A.S.No.15 of 2008 on the file of the learned Principal District Judge at Krishnagiri confirming the Judgment and decree dated 04.07.2008 made in O.S.No.27 of 1986 on the file of the Subordinate Judge Court at Krishnagiri.

2. The brief facts which are necessary for the disposal of this Second Appeal are as follows:

2.1. The Plaintiff entered into sale agreement with the original Defendant in the suit in O.S.No.27 of 1986 on 27.09.1985. The sale price was fixed at Rs.1,00,101/-. On the date of sale agreement Rs.10,000/- was paid by the Plaintiff to the original Defendant. The balance of sale consideration of Rs.90,101/- is to be paid by the Plaintiff on or before 01.01.1986. If the Plaintiff was unable to pay the balance amount and get the sale deed executed on or before 01.01.1986, the Plaintiff will forfeit the advance amount already paid. On the other hand, if the Plaintiff is ready with the balance amount and



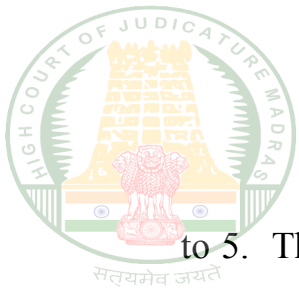
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if the original Defendant does not come forward to execute the sale deed by

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01.01.1986, the Plaintiff will be forced to file a suit for specific performance which cannot be objected by the original Defendant. These are the recitals in the sale agreement deed. The Plaintiff contacted the original Defendant regularly but the original Defendant did not come forward to execute the sale deed. Therefore, the Plaintiff had caused lawyers notice on 30.12.1985 calling upon the original Defendant to be present in the office of the Sub Registrar, Pochampalli on 02.01.1986 by 10.00 a.m. to execute the sale deed after receipt of the balance amount of Rs.90,101/-. After receipt of notice by the original Defendant, she did not appear before the Sub Registrar, Pochampalli, as was directed in the lawyer's notice issued by the Plaintiff. Therefore, on 02.01.1986 the Plaintiff had instituted the suit before the Sub Court, Krishnagiri, seeking specific performance of contract for sale of the property.

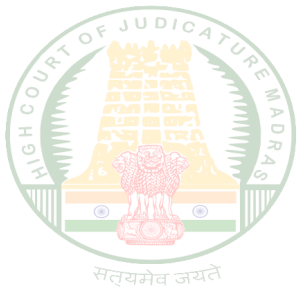
2.2. The original Defendant did not enter appearance. The Defendant was set *ex parte* and the suit was decreed. Subsequently, the Defendant filed petition to set aside the *ex parte* order and filed written statement. Pending the petition to set aside the *ex parte* order, the Petitioner in the petition to set aside the *ex parte* order (Defendant in the suit died on 28.05.2001). Therefore, her legal heirs filed I.A.No.195 of 2005 and they were impleaded as Defendants 2



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to 5. The Defendants 2 to 5 filed written statement disputing the claim of the

Plaintiff, claiming that the son of the original Defendant Panneerselvam only had borrowed money of Rs.10,000/-, for which, the Plaintiff had obtained the sale agreement deed from the mother of Panneerselvam, the sole Defendant in the suit. The sole Defendant in the suit was incompetent to enter into such sale agreement as she was not mentally fit to enter into a contract since he had been undergoing treatment for her age related illnesses. She was unable to speak and also understand things. Therefore, the sale agreement is not maintainable. The son of the original Defendant Panneerselvam is ready and willing to refund the balance amount. On the strength of the pleadings, issues were framed. The Plaintiff examined himself as P.W-1 and also examined three other witnesses on his side viz., Mr.Natarajan, Mr.Elango and Mr.Mahendramani as P.W-2 to P.W-4. The Plaintiff marked four documents as Ex.A-1 to Ex.A-4. The daughter of the original Defendant examined herself as D.W-1. The son of the original Defendant Panneerselvam examined himself as D.W-2. One Mr.Chakkaravarthi had examined as D.W-3. Dr.Vineesh Varghese had examined as D.W-4. The Defendants had marked four documents as Ex.B-1 to Ex.B-4. Ex.B-1 is the Death Certificate of the original Defendant. Ex.B-2 is the legal heir certificate. Ex.B-3 and Ex.B-4 are the discharge summary of the deceased original Defendant Vedhavalliammal.



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2.3. On appreciation of evidence, the learned Sub Judge, Krishnagiri, by judgment in O.S.No.27 of 1986, dated 04.07.2008 decreed the suit granting the relief of specific performance of contract for sale of the property in favour of the Plaintiff directing the Defendants to accept the balance of sale consideration and execute the sale deed within two months.

2.4. Aggrieved by the same, the legal heirs of the original Defendant, who are the Defendants 2 to 5, had filed Appeal in A.S.No.15 of 2008 before the learned Principal District Judge, Krishnagiri, raising the grounds that the mother of the Defendants 2 to 5, the original Defendant was under continuous treatment for her age related illness with Neurology Department of Christian Medical College Hospital. Therefore, she was incompetent to enter into sale agreement with the Plaintiff. The same was not considered by the trial Court. Therefore, raising those grounds, they filed Appeal seeking to set aside the decree for specific performance. After hearing both sides, the learned Principal District Judge, Krishnagiri, by judgment dated 12.07.2011 in A.S.No.15 of 2008 dismissed the Appeal.

2.5. Aggrieved by the same, the Defendants before the learned Sub



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Judge, Krishnagiri/Appellants before the learned Principal District Judge, Krishnagiri, have come forward with this Second Appeal.

3. The learned Senior Counsel appearing for the Appellants submitted that the Defendants in O.S.No.27 of 1986 before the learned Sub Judge, Krishnagiri is the Appellants in this Second Appeal. It is the submission of the learned Senior Counsel for the Appellants that the Suit was filed by the Plaintiff seeking specific performance of contract for sale. During the pendency of the Suit, the original Defendant died. Therefore, the legal heirs of the original Defendant were impleaded as Defendants 2 to 5. The Suit property is an extent of 13½ cents in Jambukuttaipatti Village in S.No.65/B within the Krishnagiri Taluk.

4. The learned Senior Counsel for the Appellants in the Second Appeal invited the attention of this Court to the averments in the Plaint, written statements filed by the Defendants and the issues framed by the learned Sub Judge, Krishnagiri. The learned Senior Counsel for the Appellants invited the attention of this Court to the Issues 2, 3 and 4 and the discussion of evidence by the learned Sub Judge in the Judgment dated 04.07.2008. The sale agreement was entered into on 27.09.1985. The Plaintiff had issued



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notice to the original Defendant on 30.12.1985 and filed the Suit on 02.01.1986. The learned Senior Counsel for the Appellants invited the attention of this Court to the contents of the sale agreement under Ex.A-1 and the notice issued by the Plaintiff under Ex.A-2. Also, the learned Senior Counsel for the Appellants invited the attention of this Court to the document under Ex.A-1 wherein the stamp paper was purchased prior to the date of entering the sale agreement. Also, it is the contention of the learned Senior Counsel that the Plaint was returned for insufficient Court fees and the Plaintiff was unable to pay the Court fees of Rs.8,000/-. The claim of the Plaintiff that he was ready and willing to perform his part of contract was taken for granted. Based on the presumption under the Indian Evidence Act regarding the recitals in Ex.A-1, the Court drew adverse inference and rejected the contention of the Defendants in the written statement and rejected the contention of D.W-1 and D.W-2.

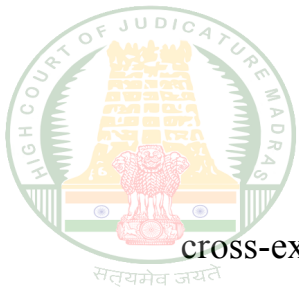
5. It is the contention of the learned Senior Counsel for the Appellants that both the trial Court as well as first Appellate Court failed to consider the evidence of the Plaintiff and the Defendants, particularly, the evidence of Plaintiff in cross-examination regarding the balance of sale consideration of the Plaintiff that he was ready and willing to perform his part



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of contract. He claims that he was waiting with money for registration of the sale deed before the Sub Registrar Office, Pochampalli. At that time, the Defendants did not turn up. It is disproved in the cross-examination that he was in Court for filing the Suit on 02.01.1986 on which date he claims to report before the Sub Registrar's Office. Therefore, the claim that he was ready and willing to perform his part of contract had not been proved. The Plaintiff was returned for deficit Court Fees for meagre amount of Rs.8,000/- whereas the sale agreement under Ex.A-1 claims that Rs.10,000/- paid by the Plaintiff and received by the Defendants on 02.07.2009 granting three months time for payment of the balance amount of Rs.90,101/-. This amount was subsequently paid in the year 1996. The Suit was decreed on 04.07.2008. The Defendants preferred the Appeal in A.S.No.15 of 2008, the learned first Appellate Court Judge also on re-appreciation of evidence confirmed the finding of the learned Sub Judge, Krishnagiri and thereby dismissed the Appeal by Judgment dated 12.07.2011.

6. The learned Senior Counsel for the Appellants seeks to raise the valuable defence of the original Defendant in the written statement that the Plaintiff did not have enough resources to pay Rs.90,101/- within the time stipulated by him in the sale agreement dated 27.09.1985. In the course of the

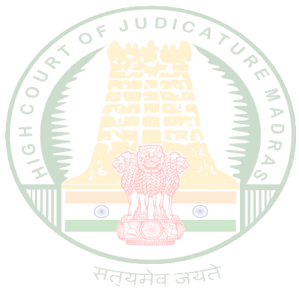


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cross-examination, Plaintiff admits that he has Bank Account, he had not filed copy of the account in Bank as document in support of his claim that he was ready and willing to perform his part of the contract. The learned Senior Counsel for the Appellants invited the attention of this Court to the cross-examination of P.W-1 wherein he admits that he was in Court on 02.01.1986. Therefore, the claim that he was ready and willing to pay the balance of sale consideration and execute the sale deed on 02.01.1986 before the Sub Registrar Office, Pochampalli is not true. The learned trial Judge as well as the learned Appellate Judge failed to consider those facts and rejected the valuable defence of the Defendants in the written statement that the Plaintiff did not have the resources. The learned Senior Counsel for the Appellants invited the attention of this Court to the discussion of evidence by the learned Sub Judge regarding issues.

7. The conclusion arrived at by the learned Sub Judge, Krishnagiri in decreeing the Suit is an erroneous finding. Therefore, he seeks to raise the following Substantial question of law:

“(i) Whether the trial Court as well as the Appellate Court failed to consider the claim of the Plaintiff that the Plaintiff was ready and willing to perform his part of contract?”



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(ii) *Whether the Defendants' evidence available in the trial*

Court can be ignored in the light of Provisions under Section 92 of the Indian Evidence Act regarding the recitals in the document where the Suit can be decreed based on the recitals whereas the evidence is otherwise?"

8. It is the contention of the learned Senior Counsel for the Appellant that the Plaintiff had issued notice on 30.12.1985 and had filed the Suit on 02.01.1986. As per the lawyer's notice under Ex.A-2, the Plaintiff claims that he was ready with the balance sale consideration of Rs.90,101/- to be paid to the Defendant (original Defendant) at the time of filing of the Suit. Also, in evidence, the Plaintiff claimed that he had gone to the Residence of the Defendants to hand over the money, but she refused. He had issued notice calling upon her to come to the Sub Registrar Office, Pochampalli and execute the sale deed as per the sale agreement dated 27.09.1984. In the lawyer's notice under Ex.A-2, he claims that he was in the Sub Registrar Office still 2 o'clock, it is false. The learned Senior Counsel for the Appellant invited the attention of this Court to the cross-examination of P.W-1 in which he had admitted, he was busy in the Court of the learned Sub Judge, Krishnagiri for filing of this Suit in O.S.No.27 of 1986.

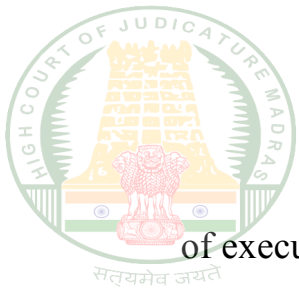


9. The cross-examination of P.W-1 reads as follows:

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“1.186 க்குள் பாக்கி தொகையை செலுத்தி கிரையம் செய்து கொள்ள வேண்டும் என்று எங்களுக்குள் பேசி, 1.186 க்கு முன்பே கிரையம் செய்துகொடுக்கக்கேட்டேன். ஒரு 4,5 நாட்களுக்கு முன்பு போய் கேட்டேன். நான், என் அண்ணாரும் தான் கேட்டோம். அப்போது பாக்கிதொகையை எடுத்துச் சென்றோம். நான் பேங்கில் பணம் இருந்ததை காட்ட எதையும் காட்டவில்லை. நோட்டீஸ் விட்ட விவரம் எனக்கு மறந்துவிட்டது. சப்ரிஜிஸ்டர் ஆபிசில் நான் பணத்துடன் காத்திருந்த தேதி 26, 27 இருக்கும். சொல்லியபடி வரவில்லை. ஆகவே நான் நோட்டீஸ் கொடுத்தேன். இந்த விவரத்தை நான் பிராதிஸ் அல்லது என்னுடைய வாக்குமூலத்திலோ சொல்லவில்லை என்றால் சரிதான். 2.186 அன்று நான் பணத்துடன் தயாராக இருந்ததாக பொய் சொல்கிறேன் என்று சொன்னால் சரியல்ல. நான் காலை 10 மணிமுதல் மாலை 2 மணிவரை காத்திருந்தேன், வரவேயில்லை. வீட்டிற்குபோய் பார்த்தேன் ஆள் இல்லை. சாட்சி மேலும் சொல்கிறார் மாலை 7 மணிவரை காத்திருந்தேன். பிராதிஸ் உள்ள கையெழுத்து என்னுடையது தான். பிராதிஸ் உள்ள கையெழுத்து 2,186 என்றால் சரிதான். வழக்கு தாக்கல் செய்த தேதி 2.186 என்று உள்ளது என்றால் சரிதான் சப்ரிஜிஸ்டர் அலுவலகத்தில் நான் காத்திருந்ததாக சொல்வது பொய் என்றும் நான் நீதிமன்றத்தில் வழக்குபோட காத்திருந்தேன் என்றால் சரிதான்.”

10. In the course of the evidence, the children of the original Defendant had in their evidence stated that the original Defendant viz., Vedhavalliammal was not in a fit state of mind on the date of execution of sale agreement. The sale agreement was entered into with the help of the son of the original Defendant/Panneerselvam and the Plaintiff to the cross-examination of D.W-1 and D.W-2 reading their claim in the reply notice here he had stated that the Vedhavalliammal was not in a fit state of mind on the date of execution of Ex.A-1. They have stated those facts, not mentioned in the reply notice. Further they were confronted regarding the examination of any Doctor regarding the physical mental condition of the original Defendant at the time



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of execution of Ex.A-1- sale agreement deed.

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11. Since the Defendants' witness, son of the original Defendant was unable to prove through cogent evidence regarding the mental and physical state of original Defendant at the time of entering into the sale agreement deed under Ex.A-1 dated 27.09.1985. The evidence of the Defendants on that ground of mental capacity has to be rejected. Still, it is the duty of the Plaintiff to prove his claim that he was ready and willing to perform his part of contract. Even if it is accepted that Ex.A-1-sale agreement deed is valid and *bona fide*. Still, the Plaintiff has to prove his part of contract that he was ready and willingness to perform his part of contract, with balance of sale consideration. Here, he had failed to prove his part of contract regarding his readiness and willingness to perform his part of the contract by not depositing Rs.90,000/- into the Civil Court deposit. On the date of execution of the Suit, voluntarily marking the passbook of the Plaintiff with the State Bank of India. On the date of trial when the Plaintiff examined himself as P.W-1 and Ex.A-1 to Ex.A-4 and no other documents were marked on the side of the Plaintiff.

12. Therefore, the seal of the Court on the Complaint itself is falsified the case of the Plaintiff that he was in the Sub Registrar Office waiting for the



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Defendants to execute the sale deed. The claim of the Plaintiff under Ex.A-2

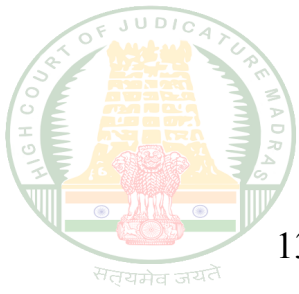
that he was in the Sub Registrar Office on 02.01.1986 expecting the Defendants to receive the balance of sale consideration of Rs.90,101/- and execute the sale deed also is false. He was not in the Sub Registrar Office as per the seal of the Court on the Plaint. He had filed the Suit on 02.01.1986. Therefore, he was in the Court. A person cannot be expected the person in both places at the same time. The presumption available to the Court in the presence of the Plaint where the seal of the Court is found as 02.01.1985 is falsified. The Plaintiff was ready and willing to perform his part of contract. Further, the Plaint was returned for deficit Court fee. The Suit is valued as per the Tamil Nadu Court fees and Suit Valuation Act for Rs.7,500.87/-. The Plaintiff did not have sufficient Court fees at the time of presentation of the Plaint before the learned Sub Judge, Krishnagiri. Therefore, the Plaint was returned for deficit Court fees. He had paid deficit Court fees only on 17.01.1986. He had admitted in his cross-examination that the Plaint filed by him had Court seal on 02.01.1986. He had admitted in the cross-examination that the Plaint was returned for deficit Court fees. He had paid deficit Court fees on 17.01.1986. A person who claims to be ready and willing to pay Rs.90,101/- to the Defendants (balance sale consideration) is found unable to pay Court fees of Rs.7,500/- on the date of institution of Suit cannot be



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considered to be ready and willing to pay the balance sale consideration.

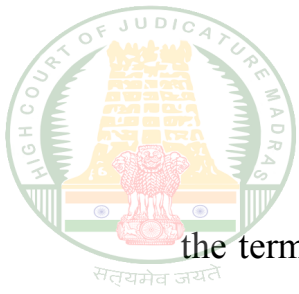
Therefore, it is mere submission, he was not actually ready and willing to perform his part of the contract. The Court had granted a decree only based on Section 92 of the Indian Evidence Act which does not permit the parties to the document to contradict the recitals of the documents. Here, the original Defendant who was alive at the time of filing of the Suit had specifically denied in the written statement that Ex.A-1 sale agreement did not come into existence as was claimed by the Plaintiff. When the Defendants sought loan from the brother of the Plaintiff, he took the original Defendant to the Plaintiff whereby the Plaintiff took the signature of the original Defendant in the blank papers and misused it as sale agreement. It was not indicated actually in the sale agreement. Further, in the written statement it was pleaded that the son of the original Defendant was in urgent need of money and the brother of Plaintiff had taken the son of the original Defendant to the Plaintiff whereby he had instructed the son of the original Defendant to get signatures of the original Defendant on blank papers which was later on used as a sale agreement deed. The original Defendant was not aware of the signatures obtained by the son of the original Defendant. Therefore, she was not in clear mind to have entered into such agreement.



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13. During trial, the original Defendant died on 28.05.2001.

Therefore, sons and daughter of original Defendant had examined themselves as D.W-1 and D.W-2. Still, the learned Sub Judge had rejected the contents in the written statement and had on the basis of Section 92 of the Indian Evidence Act which does not permit the parties to instrument under contract to give contradictory evidence contradicting the recitals in the instruments. Merely based on such presumption, the learned Sub Judge, Krishnagiri had decreed the Suit. The learned Sub Judge failed to note that in the Complaint itself, the Plaintiff was unable to pay the necessary Court fees for the valuation of the Suit. Therefore, the Complaint was returned for deficit Court fees. When a person is unable to pay Rs.7,500/- on the date of presentation of the Complaint on 02.01.1986, the same person cannot be expected to be ready and willing to pay the balance sale consideration under Ex.A-1-sale agreement. This part of the evidence was lost sight by the learned Sub Judge, Krishnagiri and miserably failed to consider the valuable defence in the light of the cross-examination of P.W-1. The Plaintiff as P.W-1 himself admits in cross-examination that the Complaint was returned, the Plaintiff was available in the Court on 02.01.1986 busy with the filing of the Suit. Those evidence were lost sight by the learned Sub Judge, Krishnagiri while discussing the evidence regarding “ready and willing on the part of the Plaintiff to perform his part of the contract”, as per



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the terms under Ex.A-1. Mere presumption in the light of the recitals under

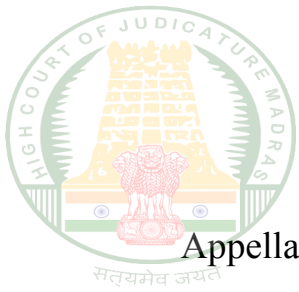
Ex.A-1 will not help the Plaintiff to get a decree in his favour. When the Plaintiff failed to prove the readiness and willingness on the part of Plaintiff to execute his part of contract within the time stipulated in the sale agreement deed under Ex.A-1, the time for payment of remaining amount till 31.12.1985. On 30.12.1985, Plaintiff issued notice under Ex.A-2 and files the Suit on 02.01.1986. The Defendant had disputed the claim of the Plaintiff in the reply notice under Ex.A-4. The children of the original Defendant had examined themselves as D.W-1 and D.W-2. They had stated that their mother had returned the money and she was not fit state of mind to enter into the sale agreement. When the Plaintiff was confronted with this suggestion on behalf of the Defendants, the Plaintiff claims ignorance. If he actually visited the house of the Defendants as was stated in the notice under Ex.A-4, he would have come to know the original Defendant was not in a fit state of mind. Plaintiff as P.W-1 had given only an evasive answer when he was confronted with those facts. The Plaintiff has to seek decree only on the strength of his/her own evidence. Merely stating that he is ready to perform his part of contract cannot be accepted by this Court in the light of the evidence of the Plaintiff. The Plaintiff claims that he maintains the Bank account. If that be so, he should have filed the Bank Passbook itself as evidence to show



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sufficient balance amount which meets the sufficient balance sale consideration to the Defendants. Therefore, the Court has to draw adverse inference against the Plaintiff. Instead the Court had drawn adverse inference against the original Defendant as though the original Defendant failed to perform her part of contract. The learned Appellate Court Judge failed to consider the crucial evidence in the cross-examination of P.W-1 contradicting the averments in the Plaint. Ex.A-1-stamp paper is sealed on 17.09.1985. The sale agreement was entered on 27.09.1985. When the Plaintiff's claim itself create doubt, the Court shall not grant decree for specific performance. The valuable property 13½ cents of land in Jambukuttaipatti Village was knocked off for the meagre amount of Rs.1,00,101/- through the decree of the Court over a period of years. The sale agreement entered into on 27.09.1985, the balance sale consideration was deposited in the Court only in the year 1986 after the original Defendant was set *ex parte* in the light of the *ex parte* decree. Therefore, the Plaintiff is not entitled to the relief of specific performance of contract for sale. Therefore, the concurrent Judgments of the learned Sub Judge and the learned Principal District Judge in A.S.No.15 of 2008 had to be set aside.

14. In support of his contention, the learned Senior Counsel for the



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Appellants relied on the following rulings:

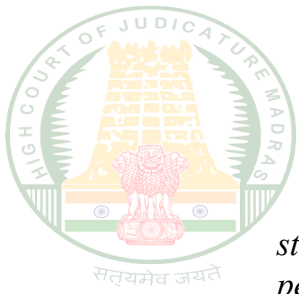
WEB COPY 14.1. In **(2002) 9 SCC 582** in the case of ***Pushparani S. Sundaram and others vs. Pauline Manomani James (deceased) and others***, the Hon'ble

Supreme Court has observed as follows:

*“5. For this, the appellants rely on two circumstances, one that immediately after the exemption was given by the Ceiling Authorities on the 31st March, 1982, the present suit was filed in April, 1982 and the other the tendering of further sum of Rs. 5,000/- 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 of the contract. So far these are 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 first of the two circumstances, how could mere filing of this suit, after exemption was granted could 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.”*

14.2. In **(2019) 9 SCC 132** in the case of ***Ritu Saxena Vs. J.S.Grover and another*** the Hon'ble Supreme Court had observed as follows:

“15) Coming to the facts of the present case, the sole document relied upon by the appellant to prove her readiness and willingness is the approval of loan on July 30, 2004 by the ICICI. Such approval was subject to two conditions, viz., furnishing of income tax documents of the appellant and the property documents. M/s. ICICI has sent an Email on May 12, 2005 to the husband of the appellant requiring an Agreement to Sell on a stamp paper of Rs.50/- to be executed between the parties, as per the legal opinion sought from the empaneled lawyer, without which ICICI will not be able to disburse the loan. Admittedly, no agreement was executed on stamp paper, therefore, the appellant could not avail loan of Rs.50 lakhs from ICICI. Independent of such loan, there is mere



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statement that appellant and her husband have income of Rs.80 lakhs per annum unsupported by any documentary evidence. Such statement will be in the nature of ipsi dixit of the appellant and/or her husband and is without any corroborating evidence. Such self-serving statements without any proof of financial resources cannot be relied upon to return a finding that the appellant was ready and willing to perform her part of the contract. The appellant has not produced any income tax record or the bank statement in support of her plea of financial capacity so as to be ready and willing to perform the contract. Therefore, mere fact that the bank has assessed the financial capacity of the appellant while granting loan earlier in respect of another property is not sufficient to discharge of proof of financial capacity in the facts of the present case to hold that the appellant was ready and willing to perform her part of the contract. Such is the finding recorded by both the courts below as well.”

14.3. In **2001 (3) CTC 86** in the case of **Bhagwandas Fatechand Daswani and 4 others Vs. H.P.A International, a partnership firm carrying on its business at No.8C, old No.15/16, Casa Major Road, Egmore, Madras-8, rep. By its Managing Partner H.A.Md. Aleemuddin and 2 others** this High Court has observed as follows:

“59. Learned counsel for the plaintiff respondent laid great emphasis on the misconduct on the part of the appellant in the course of the trial, in denying his identity as Bob Daswani, and his conduct in proceeding with the construction despite the interim injunction, and submitted that the lack of candour and dishonesty in his pleadings and affidavits, disentitles him to any relief in equity, as one who plays foul with equity cannot use it as a shield. This submission though relevant to the grant or withholding of discretionary relief, where the plaintiff is otherwise not disentitled in law or equity to such relief, cannot be regarded as relevant for the purpose of deciding the existence or otherwise of a legally enforceable contract at the time the trial court granted the decree for specific performance. What does not exist in the eye of law cannot be deemed to exist, because of the acts of omission or commission of the defendant during the course of the trial. If the plaintiff having regard to its own conduct is not entitled to the relief, the



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misconduct of the defendants cannot result in plaintiff becoming entitled to such relief.”

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14.4. In **(1996) 4 SCC 526** in the case of ***His Holiness Acharya Swami***

Ganesh Dassji Vs. Sita Ram Thapar the Hon'ble Supreme Court has observed as follows:

“2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For contract, the conduct has to be properly scrutinised. There is no documentary proof that the plaintiff had ever funds to pay the balance of consideration. Assuming that he had the funds, he has to prove his willingness to perform his part of the contract. According to the terms of the agreement, the plaintiff was to supply the draft sale deed to the defendant within 7 days of the execution of the agreement, i.e., by 27.2.1975. The draft sale deed was not returned after being duly approved by the petitioner. The factum of readiness and willingness to perform plaintiff's part 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 the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready no capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bid for the time which disentitles him as time is the essence of the contract.”

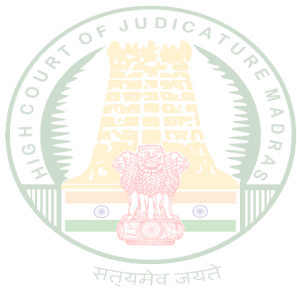
15. The learned Counsel for the first Respondent is also present in Court. She takes notice regarding the Substantial questions of law raised by this Court. The learned Counsel for the first Respondent disputing the submission of the learned Counsel for the Appellants submits that there is concurrent judgment by the trial Court as well as Appellate Court. Also, the



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learned Counsel for the first Respondent invited the attention of this Court to the discussion of evidence by the learned trial Judge in Judgment dated 04.07.2008. She would further submit that Ex.A-1 had the signature of the son of the original Defendant viz., Pannerselvam. Also in the course of the trial, the Defendants claim that the deceased Defendant at that time of entering the sale agreement was not mentally fit to enter into such sale agreement.

16. The learned Counsel for the first Respondent submits that D.W-4 Dr.Vigneesh Varghese was examined on the side of the Defendants regarding such plea. But his evidence was not supportive of the claim of the Defendants that the original Defendant Tmt. Vedhavalliammal was not mentally fit to enter into sale agreement. Also, the learned Judge had in the course of the evidence observed that the petition to set aside the *ex parte* order and the petition to condone the delay in filing the set aside the order were both filed by the original Defendant Tmt. Vedhavalliammal in I.A.No.30 of 2000 and I.A.No.334 of 1997 which was signed by Vedhavalliammal. Also Vedhavalliammal appeared before the Court on wheelchair. Therefore, the learned Judge had rejected the claim of the legal heirs of the Defendants 2 to 5 that the sale agreement was not entered into with the intention to sell the property was rejected.



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WEB COPY 17. The learned Counsel for the first Respondent invited the attention of this Court to the contents of the written statement filed by the Defendants in O.S.No.27 of 1986 wherein it is stated as follows:

“4.....The Plaintiff did not approach the Defendant at all and there is no necessity for approaching the Defendant. It is true that the Plaintiff issued notice to the Defendant. However, the Defendant has entrusted the notice to her son A.Panneerselvam to send a reply notice repudiating the allegations in the notice and putting forth the fact that the Defendant has not been able to speak coherently, loudly and continuously and with the full power of understanding and hence there is no question of entering into negotiations and agreeing to sell the suit properties in favour of the Defendant. Her son Panneerselvam later told the Defendant that he has engaged a lawyer and issued a reply notice. The Defendant is yet to know the full contents of the reply notice issued at the instance of her son A.Panneerselvam.

5. As the Defendant did not execute the Suit agreement, there is no question of presenting herself before the Sub Registrar's Office at Pochampalli till 2.00 p.m., on 02.01.1986 it is absolutely false to say that the Defendant absconded for three days prior to the institution of the Suit.”

18. The learned Counsel for the first Respondent also invited the attention of this Court to the additional issues framed by the learned Sub Judge, Krishnagiri viz., (i) whether the benami plea set up by the Defendant is maintainable in view of the Benami Prohibition Act? (ii) whether the Suit agreement came into existence under the circumstances detailed in the written statement? The learned Counsel for the Respondent relied on the discussion of additional issues. The relevant portion reads as follows:



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“Addition Issue No.6:

..... In Ex.A-1 the signature of the mother obtained without revealing the correct facts, D.W-2 specifically admitted before this Court,

வா.த.சா.ஆ.1ல் வற்புறுத்தி கையெழுத்து வாங்கி சென்ற விவரத்தை நான் வேறு யாரிடமும் சொல்லவில்லை. நான் மகேந்திரமணியிடம் கடன் வாங்கிக் கொண்டாலும் வாதி பேரில் பத்திரம் எழுதுவதற்கு நான் ஆட்சேபணை எதுவும் செய்யவில்லை. வாதியிடம் நான் பணம் வாங்கிக் கொடுத்தார். மகேந்திரமணி எனக்கு பணம் கொடுக்கவில்லை. இந்த விவரத்தை நான் எதிர் உரையில் சொல்லவில்லை என்றால் சரிதான். D.W-2 Specifically admitted before this Court, என்னுடைய எதிர் உரையில் நான் மகேந்திரமணியிடம் கேட்டதில் அவர் என் தம்பியிடம் ரூபாய் 10,000 வாங்கிக் கொடுத்ததையும் அவர் பேரில் அவருடைய கடையில் பத்திரம் எழுதப்பட்டதாக என் எதிர் உரையில் குறிப்பாக சொல்லவில்லை என்றால் சரிதான்.

In this case even though the Defendant D.W-1 & D.W-2 stated that the Defendants son namely Paneerselvam only approached the plaintiff brother Mahendramani and requested him to lend Rs.10,000/- to him for starting business the suit agreement was preferred and the sale agreement was taken in the name of the Plaintiff.....

.....D.W-3 is a put witness he is specifically admitted before this Court.

பிரதிவாதி வேதவள்ளிக்கு அரசமட்டியில் அரிசன காலணிக்கு அருகில் வீடு இருந்தது என்றால் சரிதான். அதை நான் தான் பாதுகாத்து வாடகை வாங்கிக் கொடுத்துக் கொண்டிருந்தேன் என்றால் சரியல்ல.

he also admitted before this Court, there is no mention about the loan transaction in Ex.A-1. Further more as per the decision reported in 1993-2 law weekly page 205 and 2007 (4) MLJ 442 says that oral evidence cannot be let into prove that the agreement of sale is for loan transaction and the Defendant has not let in any other evidence to prove the loan transaction.

Additional Issue No.7:

.....The suit agreement was preferred and sale agreement was taken in the name of the Plaintiff. The Defendant Vedhavalliammal son namely Paneerselvam D.W-2 got the signature of the deceased Vedhavalliammal without knowing consent and without understanding of what she was doing. The said contention of D.W-1 & D.W-2 was not

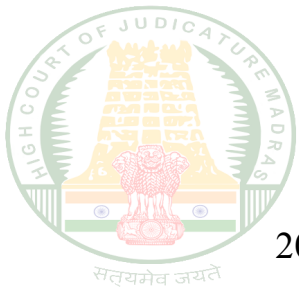


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accepted by this Court. Already this Court comes to conclusion stating that the agreement sale of Ex.A-1 was entered in between the Plaintiff and the deceased Vedhavalliammal. Further more there is no question of the suit agreement was entered in between the Plaintiff and Defendant and without knowing the contents the Defendant mother put the signature in Ex.A-1 is not at all arise in this case."

19. Also, the learned Counsel for the first Respondent submitted that ready and willing does not mean that the Plaintiff shall be ready with money at all the time. The Plaintiff had clearly deposed in his evidence that if the Court insists he is ready to pay the balance of sale consideration either into Court or to the Defendants. That shows the intention of the Plaintiff that he was always ready and willing to perform his part of the contract. The learned Judge had on the appreciation of the evidence rightly decreed the suit for specific performance granting two months time to the Defendants to execute the sale deed after receipt of balance of the sale consideration. It is a well reasoned judgment which does not warrant any interference by this Court. Therefore, the Appeal preferred by the Defendantst as Appellants was also dismissed by the learned Principal District Judge, Krishnagiri in A.S.No.15 of 2009. On independent assessment of the evidence, the learned Principal District Judge, Krishnagiri, as Appellate Judge also arrived at the same conclusion. Therefore, when there are concurrent finding, substantial questions of law does not arise. The Second Appeal lacks merit and is to be dismissed.



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20. In support of her contention, the learned Counsel for the first

Respondent relied on the following rulings:-

20.1. In *AIR 1985 ALL 223* in the case of ***Bijai Bahadur vs. Shri Shiv***

Kumar the Allahabad High Court has held as follows:-

“13. There seems to be an essential difference between the terms 'willingness' and 'readiness'. Since these two terms having almost a similar meaning have been used, in a sequence, it would only be fair to assume that the legislature had done this with a view to distinguish between the two. What is the difference between 'willingness' and 'readiness' must, therefore, be examined first.”

20.2. In *2009 (6) CTC 301* in the case of ***T.G.Pongiannan vs.***

K.M.Natarajan and another this Court had observed as follows:-

“30. At this juncture, I would like to point out that such an alternative argument failed to hold water or carry conviction with this Court, for the reason that it is not the case of the defendants anywhere either in the reply to the pre-suit notice or in the written statement that the plaintiff was not ready and willing to perform his part of the contract. On the contrary, the stand of the defendants was that the plaintiff and the defendants did not enter into an agreement to sell at all. Whereas, the plaintiff in his plaint, in commensurate with [Section 16 \(c\)](#) of the Specific Relief Act, 1963 clearly and categorically, unambiguously and unequivocally pointed out that he has been ready and willing to perform his part of the contract.”

20.3. In *2011 (3) CTC 447* in the case of ***Ananda Moorthy vs. P.***

Chandrakala this Court had observed as follows:-

“42. From the cumulative reading of the rival decisions cited by both sides, the Court can very well come to a conclusion that if there is any written document, wherein the terms mentioned in unequivocal manner and neither party disputes it, oral evidence is not permissible under Sections 91 and 92 of the Indian Evidence Act. But at the same time, if one party has taken a definite stand that particular document is not the



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document for which it has been executed, in reality it has been executed for some other purpose, the bar created under Sections 91 and 92 of the Evidence Act, is not applicable and in that circumstances, oral evidence is permissible so as to prove the intention of the parties with regard to execution of the document in question.”

20.4. In **RFA 543 of 2012** in the case of **Asha Joseph vs. Babu C.**

George the Kerala High Court had observed as follows:-

“17. In the case on hand, Ext.A3 lawyer notice produced along with the plaint and the plaint, with sufficient clarity has stated that the plaintiff was and is ready and willing to perform her part of the contract and that though she had approached and requested the defendants to execute the deed in her favour; they have failed to perform their part of the agreement. It is true that the plaintiff has not given the details of the funds in her pos- session or the manner in which she intended to raise them in the plaint. Those aspects are matters of evidence, which as per O.VI Rule 1 need not be pleaded. There is yet another important aspect that needs to be taken note of and which has been lost sight of by the court below. As referred to earlier, Ext. A3 notice issued by the plaintiff refers to her readiness and willingness....”

Substantial questions of law:

“(i) Whether the trial Court as well as the Appellate Court failed to consider the claim of the Plaintiff that the Plaintiff was ready and willing to perform his part of contract?

(ii) Whether the Defendants' evidence available in the trial Court can be ignored in the law of Provisions under Sections 90 and 92 of the Indian Evidence Act regarding the recitals in the document where the Suit can be decreed based on the recitals whereas the evidence is otherwise?”

21. Heard the learned Senior Counsel for the Appellants, the learned Counsel for the first Respondent and the learned Counsel for the second Respondent. Perused the judgment of the learned Sub Judge, Krishnagiri in



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O.S.No.27 of 1986, dated 04.07.2008, the deposition of witnesses and documents in O.S.No.27 of 1986. Perused the judgment of the learned Principal District Judge, Krishnagiri in A.S.No.15 of 2008, dated 12.08.2011.

22. In the discussion hereinafterwards the parties are referred to as per their status before the trial Court, learned Sub Judge, Krishnagiri.

23. On consideration of the rival submissions, the fact that the Plaintiff was available in Court on 02.01.1986 is proved. He was not available as per the Ex.A-2-Lawyer's notice issued on behalf of the Plaintiff to the original Defendant directing the original Defendant to be present in Sub Registrar Office, Pochampalli on 02.01.1986. It is only a mere statement to institute a Suit for specific performance. Actually, the Plaintiff was not before the Sub Registrar Office, Pochampalli as claimed by him in the Lawyer's notice under Ex.A-2. Further, the evidence of the Plaintiff that he himself admitted that on 02.01.1986 he was in Court busy with filing of the Suit. Also, he admitted in the cross-examination that the Plaint was returned for deficit Court fees on 02.01.1986, he had paid the deficit Court fees on 17.01.1986. That shows, for the meagre amount of Rs.8,000/-, the Plaintiff did not have sufficient means. Merely stating that the Plaintiff is ready and willing to



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perform his part of contract will not call them to the Court to institute the Suit

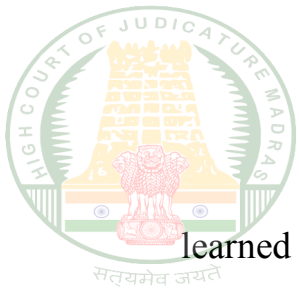
for specific performance for the contract of sale. Right from the beginning, the original Defendant had been denying the claim of the Plaintiff stating that the Plaintiff did not have the resources to complete the sale agreement as per the sale agreement of sale entered into on 27.09.1985. Further, as rightly pointed out by the learned Senior Counsel for the Defendants, the sale agreement is entered into on stamp paper dated 17.09.1985, 10 days prior to the actual date of sale agreement. The Plaintiff has to fall or stand on the strength of his/her own case. Here, the Plaintiff had miserably failed to prove that he was ready and willing to perform his part of contract. Merely there was a sale agreement, the recitals in the sale agreement cannot be contradicted by the original Defendant, will not help the Plaintiff to seek a decree for specific performance of contract for sale/purchase of the property through the Court of law. Admitting the execution for decades, the Suit was instituted in the year 1986. The Suit was decreed on 14.07.2008. By the time the Suit was decreed, 22 years had lapsed, for every year, the value of the immovable property multiplies in the geometric progression for a mere Rs.1,00,101/-, the Plaintiff had succeeded in protracting the proceeding and attempted to knocking off the value of the property of the Defendants. The judgment of both the trial Court as well as Appellate Court in rejecting the valuable defence of the Defendants



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available in the reply notice under Ex.A-4 is found perverse in the light of the following reported rulings.

24. As per the reported decision of the Hon'ble Supreme Court in **(2002) 9 SCC 582** in the case of ***Pushparani S. Sundaram and others vs. Paulin Manomani James and others (deceased)***, mere filing of the suit for specific performance itself is not sufficient to hold that the Plaintiff was ready and willing in terms of Section 16(c) of the Specific Performance Act. As per Section 16(c) of Specific Performance Act not only such a plea is sufficient but also the claim that the Plaintiff was ready and willing had to be proved. This decision relied by the learned Senior Counsel for the Defendants as Appellants in the Second Appeal is found applicable to the facts of this case as the evidence before the trial Court indicate that the Plaintiff did not pay sufficient Court fee at the time of filing of the Suit for specific performance. The plaint was returned for deficit Court fee of less than Rs.8,000/-. Whereas the suit was instituted for specific performance of contract for sale of property against the Defendants after paying Rs.10,000/- on the date of sale agreement and balance of Rs.90,000/- for which the Plaintiff claims he was ready and willing. This fact was lost sight by the learned Sub Judge, Krishnagiri while granting the decree. This fact was also not considered by the learned Appellate Judge,



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learned Principal District Judge, while considering the Appeal.

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25. As per the decision of the Hon'ble Supreme Court reported in **(2019) 9 SCC 132** in the case of ***Ritu Saxena Vs. J.S.Grover and another***, the Plaintiff has to prove his readiness and willingness through cogent evidence. Willingness is the state of mind. Readiness has to be proved. The same has not been proved. As discussed above, the Plaintiff was unable to pay sufficient Court fee at the time of filing of the suit. At the same time, he claims in the pleading that he was ready and willing to pay a sum of Rs.90,000/- towards the balance of sale consideration to the Defendants which was available through the evidence of Plaintiff as P.W-1 in cross-examination which was lost sight by both the trial Court as well as Appellate Court.

26. As per the ruling in **2001 (3) CTC 86** in the case of ***Bhagwandas Fatechand Daswani and 4 others Vs. H.P.A International, a partnership firm carrying on its business at No.8C, old No.15/16, Casa Major Road, Egmore, Madras-8, rep. By its Managing Partner H.A.Md. Aleemuddin and 2 others***, the lack of candour and dishonesty in his pleadings and affidavits, disentitles him to any relief in equity, as one who plays foul with equity cannot use it as a shield. If the Plaintiff having regard to his own conduct is not



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entitled to the relief, the misconduct of the Defendants cannot result in Plaintiff

becoming entitled to such a relief. Here in this case, the Plaintiff was not ready and willing to perform his part of contract. As per the claim he was ready and willing to perform his part of contract but on the date of institution of the suit for meagre amount of Rs.7,500/- deficit court fees, the Plaintiff was not able to pay or collect enough resources to meet the court fees. While so, in the pleadings in the plaint, the Plaintiff claims that he was ready and willing to perform his part of contract by paying the balance sale consideration as per the sale agreement deed for Rs.90,000/-. On 02.01.1986 he was before the Court busy with institution of the suit. Whereas in the notice under Ex.A-2, he claimed that he was waiting before the Sub Registrar's Office, Pochampalli with the balance of sale consideration expecting the Defendant to come and execute the sale deed. What was stated in the notice under Ex.A-2 is not true as he admitted in cross-examination that he was available in the Court on 02.01.1986 busy with filing of the suit. Therefore, when the evidence of the Plaintiff is analysed, the Plaintiff is not entitled to the relief. Whereas the trial Court had rejected the defence of the Defendant claiming that the Defendant cannot deny the recitals in the sale agreement deed marked as Ex.A-1. Therefore, granted the decree which is against the ruling reported in **2001 (3) CTC 86** wherein this Court observed that if the Plaintiff having regard to his

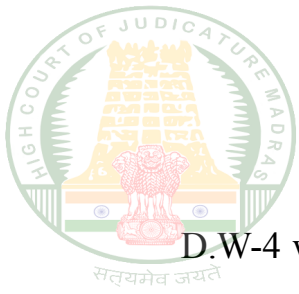


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own conduct is not entitled to the relief, the misconduct of the Defendant cannot result in Plaintiff becoming entitled to such relief. In the light of the above ruling, the judgment of the learned Sub Judge, Krishnagiri, in O.S.No.27 of 1986 and the judgment of the learned Principal District Judge, Krishnagiri in A.S.No.15 of 2008 is found perverse.

27. As per the reported ruling in *(1996) 4 SCC 526 [His Holiness Acharya Swami Ganesh Dassji vs. Sita Ram Thapar]*, the Plaintiff was not ready nor had the capacity to perform his part of contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bide for the time which disentitles him as time is the essence of the contract. The same facts and circumstances applies to the facts and circumstance of the case before the learned Sub Judge, Krishnagiri in O.S.No.27 of 1986.

28. From the appreciation of evidence by the learned Sub Judge, Krishnagiri, it is found that the learned Judge had decreed the suit on the ground that the recitals in Ex.A-1 is denied by the Defendants on the ground that the original Defendant who died during trial, on whose behalf, the daughters and son deposed evidence had claimed that their mother was not mentally fit to execute sale agreement deed. The Doctor who was examined as



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D.W-4 was unable to prove the mental capacity of the original Defendant that she was incompetent to enter into the contract. Therefore, the evidence of the Defendants was rejected and the suit was decreed based on presumption under Section 92 of the Indian Evidence Act regarding recitals in a document, oral evidence disputing the recitals will not hold good.

29. In the appeal, the Defendants had raised the ground that the learned Sub Judge had decreed the suit based on the appreciation of evidence of the Defendants as the Defendants had not proved their contention. Whereas in the Appeal, it is the contention of the Defendants as Appellants that the Plaintiff himself had admitted in the cross-examination that the plaint was returned for deficit Court fee of Rs.7,500/-. A person who is unable to pay Rs.7,500/- towards Court fees claiming that he is ready and willing to perform his part of the contract by paying the balance amount of Rs.90,101/- is found to be unacceptable from the conduct of the normal human being. The learned Appellate Judge failed to appreciate the same and had confirmed the judgment of the learned Sub Judge, Krishnagiri, based on the same set of evidence, based on the same reasoning that the Defendants cannot be permitted to let in evidence contrary to the recitals in sale agreement deed. Therefore, dismissed the Appeal. Even accepting the reported ruling relied by the learned Counsel



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for the first Respondent in this Second Appeal/Plaintiff before the trial Court

in **2011 (3) CTC 447 [D.Ananda Moorthy vs. P.Chandrakala]** even if the

Defendant's evidence is rejected, the Plaintiff's evidence has to be looked into

before granting the decree. As per the observation of the Hon'ble Supreme

Court in **2001 (3) CTC 86 [Bhagwandas Fatechand Daswani and four**

others vs. H.P.A. International, a partnership firm carrying on its business

at No.8C, Old No.15/16, Casa Major Road, Egmore Madras 8 rep. By its

Managing Partner H.A.Md.Aleemuddin and 2 others], if the Plaintiff having

regard to his own conduct is not entitled to the relief, the misconduct of the

Defendant cannot result in Plaintiff becoming entitled to such a relief. In the

light of the said ruling, the submission of the learned Counsel for the Plaintiff

as first Respondent in the Appeal is rejected. The Plaintiff cannot seek a

decree based on the strength of the sale agreement deed and the presumption is

in favour of the Plaintiff. The Plaintiff had admitted in his cross-examination

that on 02.01.1986 he was available in the Court. Therefore, the claim in the

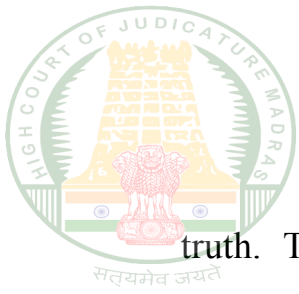
Lawyer's notice under Ex.A-2 that he was in Sub Registrar's Office,

Pochampalli cannot be true. When he was confronted this fact, he admitted

that he was in Court on 02.01.1986 busy with filing of the suit. When there is

deficit of Court fees of Rs.7,500/-, the claim of the Plaintiff that he was ready

and willing to perform his part of contract is only a mind set and not the actual

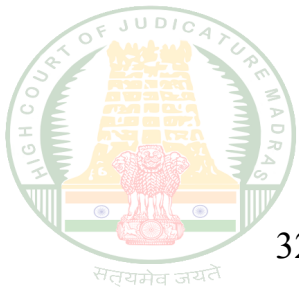


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truth. Therefore, when the Plaintiff unable to prove the ready and willingness the Plaintiff cannot be granted a decree for specific performance of contract of sale. Therefore, the rulings relied by the learned Counsel for the Plaintiff as first Respondent in this Appeal will not help the Plaintiff.

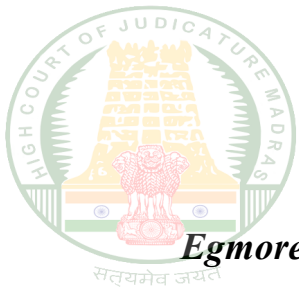
30. The submission of the learned Senior Counsel for the Appellant is found acceptable in the light of the above rulings cited by him. The Plaintiff failed to prove the claim of readiness and willingness before the trial Court which was not considered by the learned Sub Judge, Krishnagiri as well as by the learned Principal District Judge, Krishnagiri in the Appeal in A.S.No.15 of 2008 dated 12.07.2011. Therefore, the concurrent finding of the learned Sub Judge, Krishnagiri in O.S.No.27 of 1986 dated 04.07.2008 and the learned Principal District Judge in A.S.No.15 of 2008 dated 12.07.2011 is to be set aside.

31. In the light of the above discussion, the trial Court as well as the appellate Court failed to consider the claim of the Plaintiff that he was ready and willing to perform his part of the contract. **The Substantial Question of law-1 is answered against the Plaintiff and in favour of the Defendants.**



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32. In the light of the above discussion, when the Plaintiff himself had not been able to establish his case regarding his claim of ready and willing to perform his part of contract, when the Plaintiff was not able to pay the balance of Court fees less than Rs.8,000/-, the Plaintiff's pleading in the plaint that he was ready and willing to perform his part of contract by paying the balance of sale consideration of Rs.90,000/- and expecting the Defendant before the Sub Registrar Office, Pochampalli on 02.01.1986 had not been proved before the trial Court, the claim of the Defendants that the original Defendant was not intending to sell the property was rejected by the learned Sub Judge, Krishnagiri based on presumption under law in the light of the evidence under Section 92 of the Indian Evidence Act and granting a decree based on presumptions under Section 92 of the Indian Evidence Act is found against the settled principles of law governing grant of decree to the Plaintiff. The settled position of law that the Plaintiff has to stand or fall on the strength of his or her own evidence. It is also the settled position of law that the Plaintiff is not entitled to a decree by picking holes in the evidence of the Defendant. Under such circumstances, in the light of the ruling relied by the learned Senior Counsel for the Defendants in **2001 (3) CTC 86** in the case of ***Bhagwandas Fatechand Daswani and 4 others Vs. H.P.A International, a partnership firm carrying on its business at No.8C, old No.15/16, Casa Major Road,***



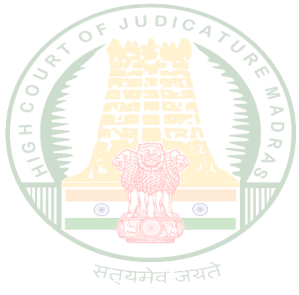
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Egmore, Madras-8, rep. By its Managing Partner H.A.Md. Aleemuddin and

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2 others, the evidence of the Defendant even if considered cannot be considered to grant decree to the Plaintiff. It amounts to ignoring the settled principles of law that the Plaintiff who knocks the door of the Court seeking relief, the burden is on the Plaintiff under Section 101 of the Indian Evidence Act. It is the Plaintiff to establish his case. Here in this case in O.S.No.27 of 1986 the Plaintiff miserably failed to prove his claim. Therefore, the Defendant's evidence available in the trial Court can be ignored in the light of the provisions under Section 92 of the Indian Evidence Act regarding the recitals in the documents where the suit cannot be decreed based on the recitals whereas the evidence was otherwise. The Plaintiff was not able to establish his case. **The Substantial Question of law-2 is answered against the Plaintiff and in favour of the Defendants.**

In the result, ***this Second Appeal is allowed.*** The judgment and decree dated 12.08.2011 made in A.S.No.15 of 2008 on the file of the learned Principal District Judge at Krishnagiri confirming the Judgment and decree dated 04.07.2008 made in O.S.No.27 of 1986 on the file of the learned Subordinate Judge, Krishnagiri, with regard to the decree for specific performance is set aside.



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WEB COPY The suit for specific performance filed by the Plaintiff in O.S.No.27 of 1986 on the file of the Court of the learned Subordinate Judge at Krishnagiri, is dismissed. No costs.

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order
dh

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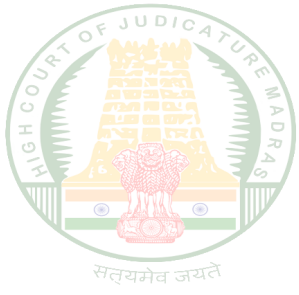


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1.The Principal District Judge,
Krishnagiri.

2.The Sub Court,
Krishnagiri.

3.The Section Officer,
V.R.Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Judgment made in
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