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Reserved on	10.11.2023
Pronounced on	31.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

Second Appeal.No.118 of 2016

D.Nagaraj

.....Appellant

Vs.

A.Devaraj

.....Respondent

Prayer: Second Appeal has been filed under section 100 of Civil Procedure Code against the judgment and decree dated 09.09.2015 made in A.S.No.28 of 2010 on the file of the Principal District Court, Tiruvallur confirming the judgment and decree dated 19.01.2010 made in O.S.No.124 of 2007 on the file of the learned Sub Court, Tiruvallur.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.P.Selvaraj



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J U D G M E N T

The plaintiff has filed the suit for specific performance of contract in O.S.No.124 of 2007. The defendant preferred the appeal suit in A.S.No.28 of 2010, which confirmed the judgment and decree passed by the learned Sub Judge, Tiruvallur in O.S.No.124 of 2007 dated 09.09.2015. Aggrieved by this the present Second Appeal is preferred.

The brief facts giving rise to the present appeal are as follows:-

2. The defendant entered into an agreement of sale with the plaintiff in respect of the suit 'A' and 'B' Schedule properties on 24.09.2005. The total extent of the property is 3.05 acres of land situated in Pagalmedu village, Uthukottai Taluk, Tiruvallur District. The sale consideration was fixed as Rs.17,38,500/- and advance of Rs.5,00,000/- was received by the defendant on 24.09.2005. The possession of the suit property was given to the plaintiff on the same day. The defendant agreed to measure and identify the suit property, pay kist and transfer patta which stands in the name of Govindammal, wife of Kannaiah Naidu and one Veeraragavan, son of



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Dharma Naidu, in the name of the defendant. Though in the agreement, the time for completion of contract was fixed as three months from completion of name transfer in patta, the time was never the essence of the contract. The defendant, after entering into sale agreement received Rs.13,30,000/- in total towards part of sale consideration on the following dates:

24.09.2005: 5,00,000/-

28.09.2005: 50,000/-

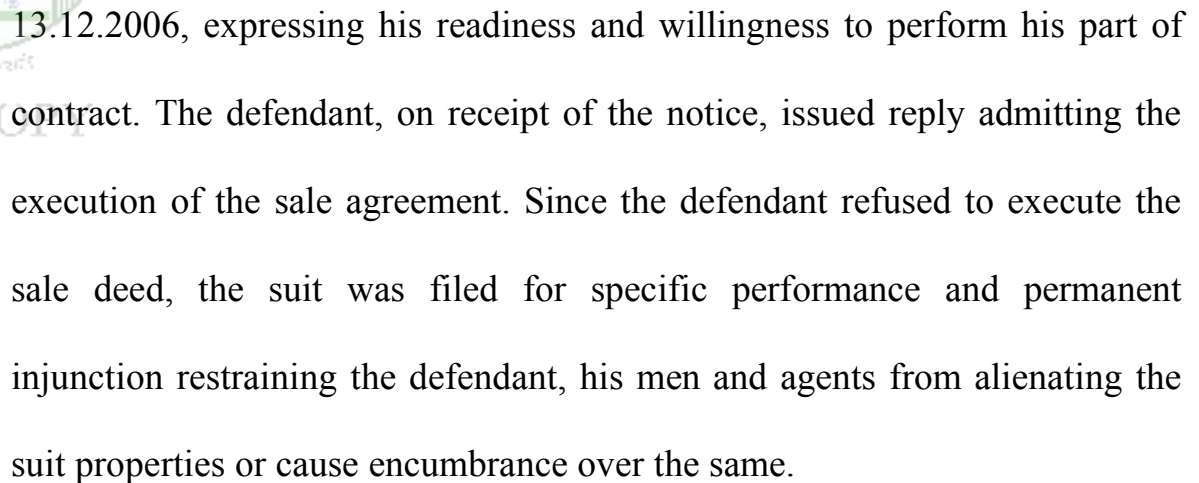
24.10.2005: 4,00,000/-

20.11.2005: 30,000/-

05.03.2005: 3,00,000/-

Total Rs. 13,30,000/-

3. The defendant, on 24.10.2005, sold the “A” Schedule properties to the plaintiff's nominee, authorised purchaser Mrs. Varalakshmi for a sale consideration of Rs.1,08,000/-. The plaintiff was always ready and willing to pay the balance sale consideration of Rs.4,08,000/-, but the defendant did not take any steps to comply with the conditions of the sale agreement dated 24.09.2005. Therefore, the plaintiff issued notice through his lawyer on



1. While admitting the execution of the sale agreement, it is contended by the defendant that the suit is not maintainable. The pre-condition to get the patta transferred in the name of the defendant did not fructify. Without complying this condition, the sale deed dated 24.10.2005 was obtained from him. In the recital of the agreement, it is specifically stated that the time for completion as three months and on the expiry of three months, the agreement stood lapsed. The plaintiff had no funds to pay the sale consideration. Since the plaintiff failed to perform his part of the contract within three months, the agreement stands cancelled. The possession of the property is with the defendant and the plaintiff was never put in possession.



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5. Based on the above pleadings, the trial Court framed the following issues:-

1. 24.09.2003 தேதியிட்ட கிரய ஒப்பந்தப்பத்திரத்தில் காலக்கெடு ஒரு முக்கிய அம்சம் என்று சொல்வது சரியா?
2. 24.09.2003 தேதியிட்ட கிரய ஒப்பந்தப்பத்திரத்தில் மேற்குறிப்பில் குறிப்பிடப்பட்ட பணம் ரூ.8,30,00/- கொடுக்கப்படவில்லை என்றும் அது உண்மையான மேற்குறிப்பு இல்லை என்பது சரியா?
3. மேற்சொன்ன கிரய ஒப்பந்தம் எழுதிய தேதியில் சுவாதீனத்தை பிரதிவாதி, வாதியிடம் ஒப்படைக்கவில்லை தற்போதும் பிரதிவாதி தாவா சொத்தின் சுவாதீனத்தில் உள்ளார் என்பது சரியா?
4. வாதி கிரய ஒப்பந்தப்படி பணத்தை கொடுத்து கிரயப்பத்திரம் எழுத எப்போதும் தயாராக உள்ளார் என்பது சரியா?
5. வாதி 2ஆவது இனச்சொத்தை குறித்து வாதி கோரியபடி வாதியின் பெயருக்கோ அவர் குறிப்பிடும் நபருக்கோ கிரய பத்திரம் எழுதிக் கொடுக்க பிரதிவாதி கடமைப் பட்டவர் என்று பரிகாரம் பெறத் தக்கவரா?
6. வாதியின் சுவாதீனத்தை பிரதிவாதி கடை செய்யக்கூடாது என நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வாதிக்கு கிடைக்கக்கூடியதா?
7. பிரதிவாதி தாவா 2ஆவது இனச் சொத்தைக் குறித்து 3ஆம் நபருக்கு எந்த வில்லங்கமும் செய்யக்கூடாது என்ற பரிகாரம் வாதிக்கு கிடைக்கக்கூடியதா?



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8. வேறு என்ன பரிகாரம்?

6. On the side of the plaintiff, two witnesses, the plaintiff and one Shri. Srinivasan were examined as P.W.1 and P.W.2. Five exhibits Ex.A1 to A5 were marked. On the side of the defendant, two witnesses, the defendant and one Shri. Balan were examined as D.W.1 and D.W.2. Six exhibits Ex.B1 and Ex.B2 were marked.

7. The trial Court, relying upon the admission made by the defendant during the cross examination about the receipt of the part sale consideration, even after the lapse of three months time fixed in Ex.A1 agreement and pointing out the failure of the defendant to contend in the reply notice that time was the essence of contract, concluded that the time was not the essence of contract. Taking note of the fact that the defendant has recorded the delivery of possession in Ex.A2 sale deed in favour of one Varalakshmi, disbelieved the claim of the defendant that possession of the entire property is with him. Regarding readiness and willingness of the plaintiff, the trial Court, pointing out that the defendant, after receiving 80% of the sale consideration, never attempted to get the contract complete or repudiate the



contract immediately after the lapse of three months. On the Contrary, the plaintiff has offered the balance sale consideration to show his readiness and willingness through lawyer notice dated 13.12.2006 and has deposited the balance sale consideration of Rs 4,08,500/- in the suit account on 21.04.2008. Therefore, the trial Court held that the plaintiff was always ready and willing to perform his part of the contract.

8. Aggrieved by the judgment and decree of the trial Court, the defendant preferred the appeal in A.S.No.28 of 2010, on the following grounds:-

- a) There are material alterations in the sale agreement in respect of time for performance.
- b) At no point of time, the plaintiff specifically pleaded his readiness and willingness to perform his part of contract, while the time was the essence of contract.
- c) The trial Court failed to appreciate the evidence in proper prospective.
- d) There is misdescription of property, which is not considered by the



trial Court.

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9. On the above submissions, the First Appellate Court framed the following points for consideration:-

1. Did the parties to the contract intended the time for performance to be the essence of their contract under Ex.A1?
2. Whether the alterations found in Ex.A1 are material in nature, if so, who is responsible for it?
3. Whether the absence of words, “ready and willing” in the notice Ex.A4 will dis-entitle the plaintiff from seeking the relief of specific performance?

10. The First Appellate Court held that time is not the essence of contract, since the parties, by conduct, continued to act on the contract beyond the time fixed. The First Appellate Court further held that since the material alterations found in Ex.A1, in no way is advantageous to the plaintiff and that it should have been done with the knowledge of the defendant. The act of the plaintiff in causing notice on 13.12.2006 for enforcing the contract



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by filing the suit and depositing the balance sale consideration in the Court would show that, the plaintiff was always ready and willing to perform his part of contract. On such observation, the First Appellate Court confirmed the judgment and decree passed by the learned Subordinate Judge, Tiruvallur passed in O.S.No.124 of 2007 dated 19.01.2010 and dismissed the appeal filed by the defendant with costs. Being aggrieved by the decree for specific performance, the appellant approached this Court by filing this Second Appeal.

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

12. In this appeal, the learned counsel for the appellant/defendant assails the judgment and decree of the first appellate Court and trial Court contending that in the absence of any material to show that the plaintiff was always ready and willing to perform his part of contract, the Courts below ought not to have decreed the suit.



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13. The learned counsel for the appellant/defendant would further submit that the Courts below failed to consider the scope of Section 16(c) of the Specific Relief Act, 1963 to find out whether the plaintiff has complied with the requirements of clauses (a) (b) and (c) thereof. It is further submitted that even where time is not the essence of the contract, the plaintiff must perform his part of the contract within a reasonable time by looking into the express terms of the contract and the nature of the property. It is also submitted that time is not the essence of contract is no longer available for adjudication, in view of the judgment of the Hon'ble Supreme Court in ***Saradamani Kandappan vs. S.Rajalakshmi [2011 (4) CTC 640]***. The total complete inactiveness and total silence on the part of the plaintiff between 23.12.2005 and 13.12.2006 and again between 14.12.2006 and 28.09.2007 would expose that the plaintiff failed to fulfil the requirement of Section 16(c) of the Specific Relief Act, 1963.

14. The time fixed for performance of the contract was three months. However, the plaintiff failed to perform his part of contract within the fixed period of time. Therefore, the Court has to take into consideration, the conduct of the plaintiff, recitals in the sale agreement and circumstances



outside the contract. He would submit that if the decree of specific performance is granted, the defendant will suffer hardship and therefore, the plaintiff is not entitled to discretionary relief of specific performance.

15. To support his contention, the learned counsel for the appellant/defendant relied upon the following the decisions of the Hon'ble Supreme Court:-:-

1. Shenbagam vs. KK. Rathinavel [2022 SCC Online SC 71]

2. Citadel Fine Pharmaceuticals vs. Ramaniyam Real Estates Private Limited [(2011) 9 SCC 147]

3. Padmakumari vs. Dasayyan [(2015) 8 SCC 695]

Placing reliance on the above cases, the learned counsel would submit that, the trial Court failed to see that the plaintiff was not ready and willing to pay the balance sale consideration and had not come to the Court with clean hands. Hence, it is submitted that the judgment and decree passed by the Courts below are liable to be set aside.

16. Per contra, the learned Counsel for the respondent/plaintiff would submit that in the light of the definite recitals in the agreement of sale, the



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Courts below rightly rejected the defence plea taken by the appellant/defendant. It was further submitted that having received the money from the respondent/plaintiff, even after the stipulated period for performing the contract, it is not open to resile from the contract. By stating that the time is not the essence of contract, it was contended that upon appreciation of evidence, the trial Court has rightly granted the decree for specific performance, and confirmed by the First Appellate Court which cannot said to be perverse warranting interference.

17. On consideration of the submissions, a point that arises for consideration is whether the Courts below were justified in decreeing the suit for specific performance.

18. Heard on both sides, records perused.

19. Under Section 20(1) of the Specific Relief Act, 1963, granting decree for specific performance of contract is discretionary. Though the decree for specific performance is discretionary, yet the Court is not bound to grant such a relief, merely because its lawful to do so; but, the discretion of



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the Court should not be arbitrary, but sound and reasonable, guided by judicial principles of law and capable of correction by a Court of appeal and should be properly exercised, keeping in view of the settled principles of law as envisaged under Section 20 of the Act. The jurisdiction to decree specific performance is the discretion of the Court and it depends upon the facts and circumstances of each case. The Court would have to take into consideration the circumstances of each case, conduct of parties, recitals in the sale agreement and the circumstances outside the contract. The Hon'ble Supreme Court in *Sadar Singh Vs. Krishna Devi [1994 (4) SCC 18]* observed that the Court has to see the totality of the circumstances, conduct of the parties and respective interest under the contract while granting/refusing such relief.

20. In the present case, Ex.A1 sale agreement was executed on 24.09.2005, by which, the defendant agreed to sell 3.05 acres of land for a consideration of Rs.17,38,500/-. Admittedly, at the time of agreement, the patta for the property was not in the name of the defendant. The defendant also promised to measure the land and identify the suit property to pay the kist arrears and also to get the patta transferred in his name, from the name of



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third person. On such promise, he received a sum of Rs.13,30,000/- as part consideration on various dates. There is a specific clause in the agreement that three months time for promise will commence from the date of such name transfer of patta. Admittedly, the patta was not transferred in the name of the defendant till the filing of the suit. However, the plaintiff got the execution of sale in respect of 'A' Schedule properties in the name of Varalakshmi on 24.10.2005. According to the plaintiff, the said Varalakshmi is the authorized purchaser and the sale deed marked as Ex.A2 in favour of one Varalakshmi is the consequence of Ex.A1 sale agreement. The extent of land transferred through Ex.A2 for sale consideration of Rs.1,08,000/- is not in dispute.

21. Moreover, the specific plea of the plaintiff is that the defendant has received some part of sale consideration on various dates i.e. on 28.09.2005, 24.10.2005, 20.11.2005 and 05.03.2005. Though in the proof affidavit the defendant denied the receipt of any amount after the date of agreement, in his cross examination, he admitted the receipt of money on the dates mentioned above. Therefore, if time is the essence of contract and if really the intention



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of the parties was to complete the contract within the stipulated time, after receipt of money on the last transaction, time would have been fixed by the parties for the completion of contract. In the absence of any such clause, it should be taken that time is not the essence of contract.

22. The First Appellate Court has rightly held that since the parties continued to act on the contract beyond the time fixed, it cannot be presumed that time is the essence of contract. As per the terms of the contract, the appellant/defendant is under obligation to identify the property and transfer patta in his name, for which, no time limit was fixed. Moreover, even after the expiry of the agreement period, the appellant/defendant continued to accept the part sale consideration without any protest. Therefore, not perversity or infirmity is found in the findings of the trial Court and the First Appellate Court that time was not the essence of contract. Therefore, the said finding is confirmed. With regard to the material alterations, the First Appellate Court has rightly found that it is no way advantage to the plaintiff and therefore, the said correction should have been done with the knowledge of the defendant. By reducing the time limit from three months to one month



will only benefit the defendant and not the plaintiff. Therefore, the findings of the First Appellate Court in this regard is also confirmed.

23. The next point for consideration is that, whether the plaintiff should prove the readiness and willingness continuously from the date of agreement till the date of filing the suit. The pleadings and evidence placed on record would show that after entering into the agreement for sale on 24.09.2005, the appellant/defendant had received part sale consideration on various dates and also executed a sale deed for 1.68 acres of land in favour of one Varalakshmi under Ex.A2 as per the request of the plaintiff. Out of the total sale consideration of Rs.17,38,500/-, the defendant, in total, had received a sum of Rs.13,30,000/- as per the endorsement made in Ex.A1 and executed the sale deed for 6 items out of 14 items of properties mentioned in the sale agreement. On 13.12.2006, the plaintiff issued Ex.A4 notice to the defendant calling upon him to execute the sale deed by receiving the balance sale consideration of Rs.4,08,500/-. To the said notice, the defendant vide Ex.A5, replied that, since the plaintiff could not mobilize the full sale consideration, he expressed his inability for the execution of sale deed for the entire 3.05 acres and requested the defendant to execute the sale deed for the



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amount paid. Accordingly, the appellant/defendant executed sale deed for 1 acre 68 cents. In the reply notice the appellant/defendant further contended that in spite of repeated demands, the plaintiff did not show any interest to register the remaining lands, and therefore, the sale agreement dated 24.09.2005 gets terminated. Where as, the plaintiff after receipt of the above reply, issued a second notice under Ex.B1 and thereafter, filed a suit for specific performance on 08.10.2007 and also deposited the balance sale consideration of Rs.4,08,500/- into the Court on 21.04.2008.

24. Though the defendant in spite of receipt of part sale consideration, never called upon the plaintiff till 05.03.2006 to pay the balance sale consideration and complete the contract. There is no evidence to show that the defendant was ready to perform his part of contract and intimated the same to the plaintiff. Moreover, the plaintiff has specifically pleaded and deposed that he was always ready with the balance sale consideration and informed the defendant to execute the sale deed. Therefore, by way of filing the suit and depositing the sale consideration into the Court, the plaintiff established that he was all along ready and willing to perform his part of contract.



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25. Considering the above facts, the trial Court and the First Appellate Court have rightly come to the conclusion that the plaintiff has placed all the facts fairly and sought for equitable relief. The conduct of defendant is not appreciable after receiving the major part of sale consideration and after executing Ex.A2 sale deed. The equity is in favour of the plaintiff and therefore, the trial Court rightly granted the relief as prayed for by the plaintiff and thus, the judgment and decree for specific performance cannot be said to be perverse warranting interference.

26. In the result, the judgment and decree passed by the trial and First Appellate Court is confirmed. This Second Appeal is dismissed. No costs.

31.01.2024

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Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

To

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- 1.The Principal District Court, Tiruvallur
- 2.The Sub Court, Tiruvallur.

K.GOVINDARAJAN THILAKAVADI, J.

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PRE- DELIVERY JUDGEMENT MADE IN

Appeal Suit.No.118 of 2016

31.01.2024