



S.A.No.190 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.190 of 2021

A.Devaraj

... Appellant

Vs.

Pechiammal

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 03.09.2020 passed in A.S. No.123 of 2018, on the file of the Principal District Court, Coimbatore, upholding the decree and judgment dated 27.07.2018 passed in O.S.No.1066 of 2011, on the file of the II Additional Sub Court, Coimbatore.

For Appellant	: Mr.N.Krishnakumar for M/s.Sarvabhauman Associates
For Respondent	: Ms.Chenthoori Pugazendhi



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JUDGMENT

The defendant who failed in both the Courts below has filed the present second appeal. The respondent / plaintiff filed the suit in O.S.No.1066 of 2011, on the file of the II Additional Sub Court, Coimbatore, for specific performance of contract based on a registered sale agreement dated 02.02.2007 (Ex.A1).

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3. According to the plaintiff, the defendant executed a registered sale agreement dated 02.02.2007 (Ex.A1) in her favour in respect of the land in survey number 269 of Upillipalayam Village, Coimbatore, measuring 1300 sq.ft. The total sale consideration was fixed as Rs.7,00,000/-, out of which, a sum of Rs.5,75,000/- was paid by the plaintiff towards advance on the date of execution of the sale agreement.



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The time fixed for the contract was five years. The plaintiff was always ready and willing to perform her part of the contract by paying the balance sale consideration to the defendant and get the sale deed executed in her favour. However, the defendant started evading the plaintiff and therefore, she was constrained to issue a legal notice dated 28.11.2011 (Ex.A2) to the defendant. The defendant received the said notice as is evidenced by the postal acknowledgment card (Ex.A3) and sent a reply notice dated 07.01.2012 (Ex.A4) to the plaintiff. According to the plaintiff, all the allegations contained in the reply notice are false. Therefore, the plaintiff filed the suit for specific performance of the contract.

4. The suit was resisted by the defendant on the following grounds:

- i. The suit property was leased out to the plaintiff for Rs.50,000/- during 2004.
- ii. The defendant was mentally ill during 2005 to 2008 and the plaintiff taking advantage of the defendant's situation forcibly took



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him to the Sub Registrar Office, Singanallur, Coimbatore and obtained his signature on the registered sale agreement dated 02.02.2007 (Ex.A1).

iii. The defendant came to know about the execution of the sale agreement in favour of the plaintiff only after receipt of the legal notice dated 28.11.2011 (Ex.A2) from the plaintiff.

iv. The plaintiff never paid a sum of Rs.5,75,000/- as alleged by her.

Therefore, the defendant had prayed for dismissal of the suit.

5. On the basis of the above pleadings, the trial Court framed the following issues :

- i. *"Whether the plaintiff is entitled for a specific performance of the contract ?*
- ii. *Whether the sale agreement was forcibly obtained by the plaintiff ?*
- iii. *To what relief the plaintiff is entitled?"*

6. In the trial Court, the plaintiff examined herself and one another witness and marked Ex.A1 to Ex.A4. However, no oral / documentary evidence was adduced on the side of the defendant.



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7. The learned trial court judge after analysing the evidence on record, decreed the suit in favour of the plaintiff vide her decree and judgment dated 27.07.2018, on the following grounds:-

- i. The contention of the defendant is that he was mentally ill during the time when the sale agreement was executed and registered was not substantiated by him.
- ii. The plaintiff has proved her readiness and willingness to perform her part of the contract by paying a sum of Rs.5,75,000/-, out of the total sale consideration of Rs.7,00,000/-.

8. Aggrieved over the decree and judgment passed by the trial court, the defendant filed an appeal in A.S. No.123 of 2018, before the Principal District Court, Coimbatore. The learned Principal District Judge, Coimbatore, after analysing the evidence on record, upheld the findings recorded by the trial court vide his decree and judgment dated 03.09.2020, as against which the present second appeal is filed.



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9. At the time of admission the following substantial questions of law were framed :

"(i) Whether the Courts below were right in decreeing the suit when the respondent has not proved her readiness and willingness to perform her part of the contract?

(ii). Whether the Lower Appellate Court correct in concluding that the sale agreement is true and valid when the evidence is clear to the fact that the respondent had taken the sale agreement fraudulently?"

10. Heard Mr.N.Krishnakumar, learned counsel for the appellant and Ms.Chenthoori Pugazendhi, learned counsel for the respondent.

11. Mr.N.Krishnakumar, learned counsel for the appellant contended that the plaintiff had not proved her readiness and willingness to perform her part of the contract and that she had not also paid a sum of



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Rs.5,75,000/- to the defendant as alleged by her. Both the Courts below have not considered these aspects and wrongly decreed the suit. He also drew the attention of this Court to the sale agreement dated 02.02.2007 (Ex.A1) and contended that there is a clause in the sale agreement itself which stipulates that if the defendant does not come forward to perform his part of the contract, the plaintiff should deposit the balance sale consideration with the court and seek for a specific performance of the contract. However, the plaintiff did not deposit the balance sale consideration at the time of filing of the suit and therefore, the suit filed by the plaintiff has to be dismissed. He relied on the decision of the Division Bench of this Court in ***Saradammal alias Saradambal vs G.S.Srinath*** reported in ***2012 (3) MWN (Civil) 449*** wherein it has been held thus :

"26.It is the submission of the learned Counsel appearing for the appellant, that Ex.A2 sale agreement, provides for compulsory registration in the event of failure on the part of the defendant to execute the sale deed after receiving the balance of sale consideration and if really the plaintiff was ready and willing and the defendant refused to perform her



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WEB COPY *part of the contract, the plaintiff invoking the said Clause, could have approached the Court by depositing the balance of sale consideration and made a request for execution of the sale deed by the Court; but, he has not done so. This submission is well founded. Though such a right and privilege was available to the plaintiff in the terms of Ex.A2 agreement of sale, he has not exercised the said right, which would only show reluctance on his part. In the circumstances stated above, we have to conclude that the plaintiff has not proved that he was ready and willing to perform the essential terms of the contract, which are to be performed by him. The trial Court, though failed to frame an issue as to whether the plaintiff was ready and willing to perform his part of the contract, has considered the above aspect; but, its conclusion in this regard, is not based on proper appreciation of oral and documentary evidence and is erroneous. Point No.1 is determined accordingly. "*

He further relied on the decision of the Division Bench of this Court in ***Arunachala Mudaliar vs Jayalakshmi Ammal and another*** reported in **2003 (1) CTC 355** and contended that the plaintiff has not deposited the balance sale consideration as provided under sale agreement (Ex.A1) and



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in the circumstances the appeal is liable to be allowed.

12. Per contra Ms.Chenthoori Pugazendhi, learned counsel for the respondent / plaintiff contended that both the Courts below had concurrently held that the plaintiff is entitled to a decree of specific performance of contract and the findings are based on facts. Therefore, there is no reason for this Court to interfere with the same. Her further contention is that the defendant has not proved any of his contentions and hence, the appeal is liable to be dismissed.

13. At the outset it may be observed that the sale agreement dated 02.02.2007 (Ex.A1) is a registered document. The defendant has not disputed his signature on the sale agreement. A perusal of the sale agreement shows that the total sale consideration was fixed as Rs.7,00,000/-, out of which, a sum of Rs.5,75,000/- was paid towards advance. The contention of the defendant was that he was mentally ill during the period 2005 to 2008 and that the plaintiff took him forcibly to the Sub Registrar Office, Singanallur, Coimbatore, for getting the sale



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agreement executed in her favour. However, the defendant did not adduce any documentary evidence to substantiate his contention in this regard. He also did not get into the witness box to prove his allegations in the written statement. According to the defendant, the suit property was leased out to the plaintiff for a sum of Rs.50,000/- during 2004. This has also not been proved by the defendant. The time fixed in the sale agreement was five years from the date of the sale agreement. The plaintiff, both in her pleadings as well as in her evidence, had averred that she was ready and willing to perform her part of the contract and that during the year 2010 she personally requested the defendant to execute the sale deed in her favour and that the defendant refused to do the same. Subsequently on 28.11.2011 she issued a legal notice (Ex.A2) calling upon him to execute the sale deed in her favour for which the defendant issued a reply notice dated 07.01.2012 (Ex.A4) refusing to execute the sale deed in her favour and had also contended that the sale agreement (Ex.A1) was obtained by force and coercion. This contention of the defendant has not been substantiated by adducing acceptable evidence. It is not known as to why the defendant did not take any action against the



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plaintiff. There is no evidence to show that the defendant was mentally ill during the relevant period.

14. In the sale agreement there is a clause which stated that in the event of the defendant's failure to perform his part of the contract, the plaintiff should deposit the balance sale consideration in the Court and get the sale deed executed. According to the learned counsel for the appellant / defendant, the plaintiff did not pay the balance sale consideration as per this clause in the sale agreement (Ex.A1), at the time of filing of the suit.

15. In Ex.A1 the following conditions are mentioned

“மேற்படி வீதம் மேற்படி கெடுவுக்குள் 1-
லக்கமிட்டவர் கிரயம் பெற்றுக்கொள்ள தவறினாலும்,
மறுத்தாலும், 2-லக்கமிட்டவருக்குச் செலுத்தியுள்ள
அட்வான்ஸ் தொகையை இழந்துவிட வேண்டியதுடன்,
கிரயம் கோரும் உரிமையும் இழந்துவிட வேண்டியது.

மேற்படி வீதம் மேற்படி கெடுவுக்குள் 1-
லக்கமிட்டவர் கிரயம் பெற்றுக்கொள்ள தயாராக



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இருந்தும், 2-லக்கமிட்டவர் கிரயம் செய்து கொடுக்க

தவறினாலும், மறுத்தாலும், 1-லக்கமிட்டவர்
வழக்குமன்றத்தில் தாவா தொடர்ந்து 2-
லக்கமிட்டவரின் அனுமதியில்லாமலே பாக்கி உள்ள
கிரயத்தொகையை கோர்ட்டில் டிபாசிட் செய்து,
கட்டாய ரிஜிஸ்ட்ரேசன் செய்துகொள்வதுடன்
அதற்கேற்படும் நியாயமான செலவுத்
தொகைகளையும், மேற்படி டிபாசிட் தொகையில்
கழித்துக்கொள்ள வேண்டியது.

இந்தச் சொத்துக்கள் ஏற்கெனவே 2-
லக்கமிட்டவரால் 1-லக்கமிட்டவருக்கு சுவாதீனம்
செய்து கொடுக்கப்பட்டு தற்போது 1-லக்கமிட்டவரின்
சுவாதீனத்திலேயே உள்ளன.”

A perusal of the above conditions shows that it is not a mandatory condition stipulated in the sale agreement for getting the sale deed executed in favour of the plaintiff. It is pertinent to point out that the plaintiff had paid more than 80% of the sale consideration on the date of the sale agreement itself and the balance sale consideration was paid immediately after the decree was passed by the trial court. In the decision in *Saradammal alias Saradambal vs G.S. Srinath* (cited supra) the plaintiff in the said decision did not issue any notice to the defendant to



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show that she was always ready and willing to perform her part of the contract. In such circumstances, it was held that the plaintiff has not proved her case and did not also deposit the balance sale consideration to show her readiness and willingness. Therefore, the said decision would not be applicable to the facts of the present case. In, the decision in *Arunachala Mudaliar vs Jayalakshmi Ammal and another* (cited *supra*) the plaintiff in the suit had contended that she was in possession and enjoyment of the suit property and that the defendant attempted to interfere with her peaceful possession. These contentions of the plaintiff were found to be false and therefore, it was held that the plaintiff has not come to the court with clean hands and did not also deposit the amount as mentioned in the sale agreement. The facts of the present case are totally different.

16. Both the Courts below after analysing the evidence on record had concurrently held that the plaintiff was entitled to the relief of specific performance of the contract as prayed for by her. All the observations made by both the Courts below are based on the evidence



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and facts and therefore, the substantial questions of law 1 and 2 are answered against the appellant.

17. In the result,

- i. the Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 03.09.2020 passed in A.S. No.123 of 2018, on the file of the Principal District Court, Coimbatore and the decree and judgment dated 27.07.2018 passed in O.S.No.1066 of 2011, on the file of the II Additional Sub Court, Coimbatore, are upheld.

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

1. The Principal District Court, Coimbatore.
2. The II Additional Sub Court, Coimbatore.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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