



A.S.No.585 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 27.03.2024	Pronounced on 23.07.2024
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CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.585 of 2023

T.R.Jayapal, S/o.Late.Ramasamy
No.2/1A, Bharathiar Street
Thiruvalluvar Salai, Teynampet
Chennai 600 018

... Appellant

Vs.

K.Kamalesh
Son of Krishnan
No.149, Appinaicakinapatti Village
Uthangarai Post and Taluk
Krishnagiri District

... Respondent

PRAYER: This Appeal is filed under Section 96 of CPC, against the Judgment and Decree dated 23.03.2023 in O.S.No.47 of 2018 on the file of the Additional District Court, Krishnagiri.

For Appellant : Mr.M.Baskar

for S.Sai Shankar

For Respondents : Mr.C.Prabakaran



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JUDGMENT

This Appeal has been filed against the Judgment and Decree dated 23.03.2023 in O.S.No.47 of 2018 on the file of the Additional District Court, Krishnagiri.

2.The Plaintiff in the Suit is the Appellant herein.

3.The Plaintiff filed Suit in O.S.No.47 of 2018 for the relief of specific performance or any alternate relief. After trial, the learned Additional District Judge, Krishnagiri rejected the main relief of specific performance, however, granted an alternate relief of refund of Rs.5,00,000/- along with 12% interest per annum. As against the rejection of the main relief of specific performance, the Plaintiff has preferred this Appeal against the grant of alternate relief of refund of advance amount of Rs.5,00,000/-, the Defendant has not filed any Appeal or cross Appeal or cross objection.

4.For the sake of convenience the parties are referred to as per their ranking before the trial Court.



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5.On the date of filing of the Suit, the original Defendant viz., Kamalesh is a minor and hence Suit was filed against the minor represented by his biological Mother viz., Selvi @ Kalaiselvi and on attaining the majority, necessary application was filed to declare him as major and causetitle was amended as per the order dated 07.02.2022 in I.A.No.4 of 2022.

6.The present Suit was filed for specific performance of the agreement Ex.A4/registered sale agreement dated 07.08.2014 entered between the Plaintiff and the Defendant.

7.The brief facts which leads to filing of the Suit is as follows:

7(a).The Plaint proceeds on the basis of that the Plaintiff has a plan to setup a fuel station, hence he approached the Defendant and his family members and expressed his interest to purchase the suit schedule property and adjoining two properties each measuring to an extent of 59 cents.



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7(b).Plaintiff purchased the 1st property measuring to an extent of 59 cents from the step brother of the Defendant by way of registered sale deed dated 12.06.2014 as document No.1909 of 2014 in the office of sub registrar of Uthangarai. The total sale consideration of sum of Rs.20,00,000/- was paid by the Plaintiff to the step brother of the Defendant.

7(c).The 2nd property (which is adjacent to the property already purchased by the Plaintiff) is the present suit schedule property which belongs to the Defendant who was a minor at that time. The 3rd property which is adjacent to the present suit schedule property, also belongs to the step brother of the Defendant, for which the Plaintiff entered into a sale agreement dated 12.6.2014 with the step brother and subsequently filed a separate suit for specific performance (OS No: 46 of 2018) on the file of Additional District Judge, Krishnagiri and the said suit was decreed in favour of the Plaintiff as against which the step brother of the Defendant had preferred appeal before this Court (AS No: 363 of 2021).



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8.Had there been a joint trial or atleast simultaneous trial, such a divergent view would not have been possible. The respective advocates ought to have filed a memo for joint trial or atleast for simultaneous trial. For the reasons best known the Suit in O.S.No.46 of 2018 was taken up by the Additional District Judge, Krishnagiri and the same was disposed on 23.04.2021. However, O.S.No.47 of 2018, which is the next suit, was taken by the Additional District Judge, Krishnagiri, and thereafter, judgment was also pronounced on 23.03.2023. By the time the present Appeal was reap for argument.

9.Be that as it may, the learned counsel for the Plaintiff brought to the notice of this Court that initially argument was heard in A.S.No.363 of 2021 and judgment was reserved on 18.03.2024 and thereafter, in A.S.No.585 of 2023 arguments on both sides was heard and orders also reserved on 27.03.2024.

10.Since separate trial was taken place, this Court has taken sufficient caution not to intermingle the evidence. However, taking note of the entirety of the circumstances and the pleas taken by the respective land owners, treating it as a simultaneous trial. Though not in strict sense



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of the terms, the judgment has been pronounced in both the A.S. on the same day, however, by separate judgment.

11(a).As far as the present suit schedule property is concerned, the same belongs to the Defendant, who was a minor at that time. Hence, it is mandatory to obtain permission from the court. Hence, the sale agreement dated 07.08.2014 registered as document No.1910/2014 in the office of Sub Registrar of Uthangara (Ex.A4) was entered with respect to the suit schedule property with the Defendant who was represented by his mother and and natural guardian viz., Selvi @ Kalaiselvi.

11(b).The total sale consideration was fixed as Rs.18,01,000/-. At the time of entering into the sale agreement a sum of Rs.5,00,000/- was paid as advance and as per the terms of the agreement the balance sale consideration of sum of Rs.13,01,000/- shall be paid by the Plaintiff within a period of one year. Once the court permission is obtained by the mother and natural guardian has to come forward to execute the sale deed in favour of the Appellant/Plaintiff.

11(c).After entering into the sale agreement (Ex.A4) and



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receiving an advance amount of Rs.5,00,000/- no steps was taken by the Mother and natural guardian of the Defendant and she was silent with respect to obtaining court permission.

11(d).Hence, the Plaintiff caused legal notice dated 02.06.2015 (Ex.A5), which is within the contracting period. After receipt of the said legal notice, the mother and natural guardian of the Defendant remained silent for about two months and then caused reply notice dated 06.08.2015 (Ex.A6).

11(e).In the said reply notice she admits the total sale consideration was fixed as Rs.18,01,000/- and receipt of advance amount of Rs.5,00,000/- and balance sale consideration as Rs.13,01,000/-. Further, in the said reply notice, she brings to the knowledge of the Plaintiff for the first time that court permission has been obtained in GWOP for selling minor's property. However, she did not produce the order copy. Further in the said reply notice, she finds fault with the Plaintiff that he did not come forward to pay the balance sale consideration of Rs.13,01,000/- and execute the sale deed.



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11(f).After receipt of rejoinder of the Plaintiff dated 12.08.2015 (Ex.A7) mother and natural guardian of the Defendant issued a reply to the rejoinder dated 22.8.2015 (Ex.A8), in which she completely changes her stand and stated that the total sale consideration is Rs.83,00,000/- and after payment of advance amount of Rs.5,00,000/-, the Plaintiff must pay the balance sale consideration of Rs.78,00,000/- which was not in accordance with the sale agreement (Ex.A4). Apart from demanding exorbitant amount as sale consideration as against the agreed amount in the sale agreement (Ex.A4) the mother and natural guardian of the Defendant did not even produce the order passed in GWOP.

11(g).Hence, the Plaintiff conducted panchayat through common person and middle men with an intention to pacify and convince the mother of the Defendant to execute the sale deed. Since all the efforts of the Plaintiff became futile, the Plaintiff filed the above suit.

12.On behalf of Defendant/who is a minor, his Mother filed written statement so also gave evidence as DW1. The case of the Defendant is that the Defendant represented by his mother and natural



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guardian admits execution of sale agreement dated 07.08.2014 (Ex.A4).

However, it is their case that the sale consideration of sum of Rs.18,01,000/- fixed in the sale agreement is only the guideline value and it is specific stand of the Defendant before the trial court that the Sale Agreement dated 07.08.2014 (Ex.A4) was entered only for the purpose of obtaining court permission by way of GWOP. The actual sale consideration was fixed as Rs.83,00,000/-

13.As per written statement, the court permission was obtained in GWOP No.76 of 2014 on the file of learned Principal District Judge, Krishnagiri on 24.11.2014 itself, whereas, the Plaintiff did not come forward and get the sale deed registered by paying the balance sale consideration of Rs 83,00,000/-.

14.During trial, the Plaintiff examined himself as PW1 and one Dhandapani as PW2 (Panchayatar) and marked Ex.A1 to A17. The Defendant was examined as DW1 and one independent witness viz., Ravi was examined as DW2 and no documents was marked on the side of the



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Defendant.

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15.After trial, the trial Court has formulated the following issues:

- 1. Whether the suit sale agreement dated 7.8.2014 is valid*
- 2. Whether the Defendant is bound to carry out the specific performance ?*
- 3. Whether the Plaintiff was not ready to pay the balance of sale consideration and willing to register the sale ?*
- 4. Whether the sale agreement is sham and nominal ?*
- 5. Whether the claim of the Plaintiff is barred by limitation ?*
- 6. To what relief?*

16.The trial Court has framed the necessary issues to decide the matter. Based upon the oral and documentary evidence advanced before the trial Court, the trial Court answered the issue Nos.1, 2 & 4 to 6 in favour of the Plaintiff and with regard to issue No.3, which is touching upon the readiness and willingness of the Plaintiff, for the reasons



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recorded therein the trial Court come to a conclusion that the Plaintiff has not demonstrated that he is ready and willing to perform his part of contract and accordingly, rejected the main relief. However, the trial Court chosen to grant alternate relief of refund of advance amount and accordingly decreed the Suit in part. The trial Court also rendered a finding that sale consideration fixed is only Rs.18,01,000/- and not Rs.83,00,000/- as alleged by the Defendant and no cross objection has been filed by the Defendant assumes significance. The trial Court also rendered a finding that financial capacity of the Plaintiff was not demonstrated.

17.Learned counsel for the Appellant/Plaintiff contended that the Plaintiff is ready and willing to perform his part of contract and relied upon Ex.A10/account statement from Karur Vysya Bank, T.Nagar Branch and also stated that the alleged delay in filing the Suit is due to the fact that the information regarding obtaining of Court permission to sell the minor's property as ordered in GWOP.76 of 2014 dated 24.11.2014 was not intimated by the Defendant's Mother and she intimated the same only under Ex.A13 on 12.09.2015 and also stated that



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as per the Ex.A17, the guideline value is fixed in respect of the suit property, the alleged plea in the written statement cannot be true.

18.The learned counsel for the Respondent/Defendant drew my attention to the evidence of DW1 and finding of the trial Court on issue No.3, with regard to readiness and willingness on the part of the Plaintiff and the Suit was instituted after 2 years & 5 months of the communication of rejecting the plea of execution of sale deed by the Defendant and hence made submission in support of the judgment of the trial Court.

19.Heard the learned counsel for the Appellant and the learned counsel for the Respondent.

20.The points arise for determination in this Appeal are as follows:

- 1.Whether the Suit sale agreement is true and valid?
- 2.Whether the sale consideration as pleaded by the Plaintiff is true or as projected by the Defendant/land owner in Ex.A8 is true?
- 3.Whether the grant of permission by the Court to sell the minor



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property was intimated to the Appellant/Plaintiff?

4. Whether the Plaintiff is ready and willing to perform his part of contract?

5. Whether the Plaintiff is entitled for specific performance of the suit sale agreement?

6. Whether the Plaintiff is entitled for alternate relief?

7. Whether the judgment of the trial Court is sustainable in law?

21. Perused the oral evidence of PW1 & DW1 and documentary evidence of Ex.A10 dated 06.08.2015, account statement issued by Karur Vysya Bank, T.Nagar Branch. Ex.A4 is the suit sale agreement, the terms of the agreement was not disputed either in the legal notice exchanged between the parties under Ex.A5 to Ex.A9 and Ex.A12 to Ex.A13.

22. There is a marked deviation in the stand of the Defendant. In the initial set of legal notices viz., Ex.A6, Ex.A8, the Defendant has taken a plea that the amount mentioned as sale consideration under Ex.A4 is just and correct. The Suit sale agreement for the extent of 59 cents a sum of Rs.18,01,000/- was fixed as sale consideration and a sum of



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Rs.5,00,000/- was paid as advance and a sum of Rs.13,01,000/- has to be paid. After a year under Ex.A8, second reply notice, Defendant took a stand that for one cent a sum of Rs.18,00,000/- was arrived at and consequently, for 59 cents, it is Rs.83,00,000/- and not Rs.13,01,000/-. The change in stand by the Defendant from Ex.A6 with that of Ex.A8 was highlighted by the learned counsel for the Plaintiff to show there is a marked difference in the attitude of the Defendant in projecting the new case away from the registered document & Ex.A4 assumes significance. So also as against the reply notice, viz., rejoinder notice to the reply notice issued by the Plaintiff in Ex.A8.

23.Under Ex.A13, the Defendant has projected another new case that the value of the property is on the higher side viz., Rs.83,00,000/- and hence, I find that the stand of the Defendant with regard to the sale consideration, and the agreed amount and the expected amount varies between Ex.A6, Ex.A8 and Ex.A13, which will be discussed infra.

24.Though the Defendant said to have obtained permission to



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sell the minor's property from the Principal District Judge, Krishnagari in GWOP.76 of 2014 on 24.11.2014 under Ex.A11, the same was not disclosed to the Plaintiff, either under Ex.A6 or under Ex.A8, assumes significance.

25.On a close perusal of Ex.A6, it reveals that there is no whisper regarding obtaining Court's permission for selling the minor property. However, the Defendant has taken a new stand under Ex.A8, after two notices from the Plaintiff that he had obtained the Court permission for selling the minor's property, the same was conveyed to the land owner. In this regard, though it is stated that under Ex.A8 and Ex.A13 that communication regarding court permission for selling minor property was sent to the Plaintiff, she has not chosen to examine any one, in this regard. Further more, she has not whispered as DW1, in her evidence that through whom such information about the Court permission was conveyed to the Plaintiff and the same was never disclosed in the trial, assumes significance. Hence, this Court is of the considered view that the Defendant has not disclosed the information regarding Court permission to sell the minor property to the Plaintiff.



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26.Under Ex.A8 a new plea of higher amount was introduced, so also under Ex.A13 another plea was taken.

27.Ready and willingness on the part of the Plaintiff:

27(a).Financial capability:

As to the point of financial capability of the Plaintiff, PW1 deposed about his financial capacity of purchasing the suit property. The Plaintiff is financially capable of purchasing the suit schedule property and the same is explicit from the fact that two months prior to entering into the present sale agreement (Ex.A4), the Plaintiff purchased adjacent property from the step brother of the Defendant by way of sale deed dated 12.06.2014 (Ex.A2) by paying a sum of Rs.20,00,000/- as total sale consideration. On the same date, another sale agreement (Ex.A3) has been entered by the Plaintiff with the same step brother with respect to another adjacent property by paying an advance amount of Rs.10,00,000/-, out of total sale consideration of Rs.20,00,000/-

27(a)(i).Further, it is a clear evidence that on 12.06.2014 itself, the Plaintiff paid a sum of Rs.20,00,000/- as total sale consideration for



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purchasing the adjacent property along with a sum of Rs.10,00,000/- as advance for purchasing another adjacent property. Hence, the Plaintiff paid a sum of Rs.30,00,000/- to the step brother of the Defendant.

27(a)(ii).The Plaintiff paid an advance amount of Rs.5,00,000/- out of total sale consideration of Rs.18,01,000/- and the balance sale consideration of Rs 13,01,000/- was agreed to be paid within a period of one year and the said one year time was fixed in the sale agreement (ExA4) only for the purpose of obtaining court permission for selling minor's property. The Defendant having received an advance amount of Rs.5,00,000/- did not inform the Plaintiff with respect to court permission and completely kept the Plaintiff in dark.

27(a)(iii).On the financial status, the Plaintiff has filed Ex.A10/account statement from Karur Vysya Bank, T.Nagar Branch dated 06.08.2015, wherein a sum of Rs.13,00,000/- was shown as standing in credit of the account of the Plaintiff. Based upon Ex.A10, learned counsel for the Appellant/Plaintiff emphasised that the Plaintiff is ready with the money on 06.08.2015. The Plaintiff has deposited



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Rs.13,00,000/- in his account. The trial Court has passed a comment that only on 06.08.2015, the amount was deposited and hence, it has held that the Plaintiff is not ready with money.

27(a)(iv).It is settled proportion of law that the averment of the Plaintiff that he is ready and willing to perform his part of contract is enough. The Plaintiff need not jinx the coin before the Court to show the possession of currency. Amount has been deposited and he is also man of means as admitted by DW1 in the cross examination. DW1 has admitted that son of the Plaintiff is an NRI (Computer Engineer) working in America and DW1 further admitted that he has much means to complete the sale transaction. DW1 had further admitted that he had paid a sum of Rs.20,00,000/- and purchased the piece of land adjacent to the suit property under Ex.A2 dated 12.06.2014, from none other than the son of her husband through his first wife and also paid the amount to the said Raghunathan under Ex.A3 and also paid huge amount to him under Ex.A4 and also coupled with Ex.A10, he is a man of means, which was demonstrated by both oral and documentary evidences. Besides, specifically admitted by the Defendant in the witness box through the



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cross examination needs no further evidence. Admission of Defendant of Plaintiff plea is best piece of evidence . However, the trial Court appears to have misread the evidence and jumped to the conclusion and the same is not in accordance with the appreciation of evidence in a proper prospects. Accordingly, the said finding of the trial Court is hereby stands vacated.

27(a)(v).Based upon the admission of DW1 in the cross examination coupled with the financial capacity demonstrated by the Plaintiff by Ex.A2, Ex.A3 & Ex.A4 and payment of sale consideration under Ex.A6 as admitted by the Plaintiff and Ex.A8 as admitted by the Defendant and as per Ex.A10 amount credited in the account of the Plaintiff, the Plaintiff is a 'man of means' and he is 'ready with money'.

27(b).On the point of willingness:

27(b)(i).On perusal of records, I find that on 02.06.2015 which is within the contracting period of one year, the Plaintiff issued legal notice dated 02.06.2015 (Ex.A5) calling upon the mother and natural guardian of the Defendant to disclose the status of GWOP and also expressing his readiness and willingness to register the sale deed in his



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favour. It was after receipt the said legal notice, the mother and natural guardian of the Defendant remained silent for about two months purposely with an intention to delay, then caused reply notice dated 06.08.2015 (Ex.A6).

27(b)(ii).As discussed supra, Ex.A5 to Ex.A9, Ex.A12 & Ex.A13 are pre-suit legal notices exchanged between the parties. Besides, as against the evidence of PW1, DW1 evidence is oath against the oath of the parties. From the said exchanged notice, by Ex.A5/legal notice dated 02.06.2015, Plaintiff called upon the Mother to disclose the status of GWOP and had expressed his willingness. In the reply under Ex.A6, the Mother admits the total consideration as Rs.18,01,000/- and advance amount of Rs.5,00,000/- and balance amount of Rs.13,01,000/-. In other words, the terms of the agreement as found in suit sale agreement Ex.A4 was clearly admitted under Ex.A6.

27(b)(iii).After entering into sale agreement under Ex.A4, after receiving the advance amount of Rs.5,00,000/-, as admitted by the Mother under Ex.A6, the Mother and natural guardian/Defendant was



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silent and never bothered to inform the Plaintiff with regard to the status of court permission. Under Ex.A5 dated 02.06.2015, the Plaintiff caused legal notice to the Defendant to disclose the status of the GWOP and to disclose the status of the Court's permission, as to whether it was obtained or not. From the evidence of DW1, this Court finds that there was a total silence for about two months, thereafter, under notice Ex.A6 dated 06.08.2015, while she admits the total consideration and receipt of the advance amount and also quantum of balance amount, in turn she admits the terms of the agreement as contained in Ex.A3. However, she stated that she had conveyed court permission to Plaintiff for the first time in the said reply notice under Ex.A6. She brings to the knowledge of Plaintiff for the first time about filing of GWOP.76 of 2014 and order of civil Court granting permission for selling the minor property. Though under the terms of agreement/Ex.A4, Defendant is bound to produce the order copy to the Plaintiff but she failed to do so, thereby Defendant had kept the Plaintiff under dark is clearly demonstrated by the Plaintiff.

27(b)(iv).Furthermore, it remains to be stated that under pre suit legal notice (Ex.A6) Defendant finds fault with the Plaintiff that he did



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not come forward to pay the balance sale consideration of Rs 13,01,000/- and execute the sale deed in-spite of the order passed by the principal District Court, Krishnagiri in GWOP No:76 of 2014, as follows:

“இந்நிலையில் மீதித்தொகையை செலுத்தி தாங்கள் கிரையம் செய்து கொள்ள எனது கட்சிக்காரர், தங்களிடம் போனில் தொடர்பு கொண்டும், நிலத்தரகர்கள் மூலம் தங்களிடம் தகவல் தெரிவிக்கப்பட்டது. மீதித்தொகையை எனது கட்சிக்காரர் பெற்றுக்கொண்டு கிரையம் செய்து கொடுக்க முன் வந்தும், நிலத்தரகர் மூலம் தகவல் சொல்லியும், தாங்கள் கிரையம் செய்து கொள்ள மறுத்து வருவதாக எனது கட்சிக்காரர் தெரிவிக்கிறார்.”
(emphasis supplied)

27(b)(v).It appears from the documentary evidence as admitted by DW1 that immediately the Plaintiff sent Ex.A7, calling upon the Mother of the Defendant to produce the order copy and also to fix up the date of registration and hence this Court finds that Ex.A6/legal notice dated 02.06.2014 as well as written notice, Ex.A7/reply notice dated 12.08.2015, both are pre-suit notice issued by the Plaintiff and are well within the period of time fixed under suit agreement, whereby Plaintiff had showed his readiness and willingness to complete the sale



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transaction, assumes significance.

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27(b)(vi).In this regard, it remains to be stated under Ex.A8, the Defendant had introduced a new case that through third parties, the Plaintiff had come to know about the grant of permission by the Court in GWOP.76 of 2014. However, except her oral contention, no other document or no independent person, much less the alleged messenger through whom he had sent the information to the Plaintiff has not been examined before the Court. DW1 stated that through public and third parties, the Plaintiff knows about the court permission.

27(b)(vii).It is a specific term under the suit sale agreement/Ex.A4, that a duty is caused upon the Defendant/landlord to inform the Plaintiff about the court permission to sell the minor property, which is a statutory requirement for completion of suit sale agreement. And hence, it is the duty of the Defendant to inform the Appellant/Plaintiff and also to produce the order copy made in GWOP.76 of 2014. Unless the Defendant produces the order copy or atleast come with reliable proof that order has been obtained from the Court, Plaintiff cannot be expected to act in hearsay or general information while terms of



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the agreement are clear. It is binding upon the Defendant. The terms of the agreement admitted by the Defendant under Ex.A6.

28(a).At this juncture, the admission of the Mother as DW1 in the cross examination stated that she could offer no proof to show that the Defendant informed the Plaintiff about the order passed in GWOP.76 of 2014 and hence, this vital aspect appears to have been lost sight of the District Court. Hence, I find that the Plaintiff has demonstrated that the permission granted by the District Court for selling the minor property under GWOP.76 of 2014 was not disclosed to the Plaintiff and the same was disclosed only through Ex.A8 dated 22.08.2015.

28(b).Hence, the alleged delay projected by the Defendant is unacceptable, since unless the information regarding the court permission is passed on to the Plaintiff, the ready and willingness on the part of the Plaintiff cannot be doubted. Since only on obtaining the court permission as per the terms of Ex.A4 and also due to the statutory condition contemplated under the transfer of property act, only after obtaining the competent court's permission, the ready and willingness of the Plaintiff



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starts to commence.

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29. Thus, this Court finds that the Plaintiff has sent legal notice under Ex.A5 dated 02.06.2015 as well as rejoinder notice dated 12.08.2015 under Ex.A7. Both Ex.A5 and Ex.A7 legal notices are pre-suit legal notices and are well within the period stipulated under the contract, whereby the Plaintiff was called upon the Defendant to register the sale deed and hence, the same cannot be treated as delay in institution of suit as held by the Hon'ble Supreme Court in the case of ***R.Lakshmikantham Vs. Devaraji*** reported in **2019 (8) SCC 62**, wherein it is stated as under:

“In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, delay cannot be put against the Plaintiff”

in which, the Hon'ble Supreme Court has interpreted by this Court in the case of ***M.Kumar Vs. V.Balan*** reported in **2021 (4) CTC 330**, wherein it is stated as under:

“If only the Plaintiff had issued notice within the time fixed under the agreement and filed the suit at the fag end of the



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*limitation period, the decision in **Lakshmikantham's** case would squarely apply and the Plaintiff cannot be non-suited for being not ready and willing.”*

30.Hence on the factual matrix as discussed supra, I find that the judgment of the Hon'ble Supreme Court is squarely applicable to the facts and circumstances of this case, in view of the pre-suit legal notice, Ex.A5 and Ex.A6.

31.At this juncture, it remains to be stated that the mother and natural guardian of the Defendant admits in cross examination as follows:

“அரசாங்க வழிகாட்டி மதிப்பின்படி தான் வாதி கிரயம் செய்து கொள்ள தயாராக இருந்தார். சந்தை மதிப்பின்படி கிரயம் செய்து கொள்ள வாதி தயாராக இல்லை. வழக்கு சொத்தின் விலை குறித்து தனிப்பட்ட முறையில் நிலத்தரகர்கள் மூலம் வாதியோடு பேசியதாக சொல்வது குறித்து எந்தவித ஆவணமும் நான் தாக்கல் செய்யவில்லை என்றால், சரி தான் ”

...

“உத்தரவின் நகல் நாளது வரை வாதிக்கு நான் கொடுக்கவில்லை என்றால் சரிதான். வாதி மத்தியஸ்தர்கள் மூலமும், பஞ்சாயத்தார்கள் மூலமும் கிரயம் செய்து



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கொடுக்கும்படி எங்களிடம் தொடர்ந்து கேட்டுக்கொண்டு தான்
இருந்தார் என்றால், சரிதான். குறைந்த விலைக்கு கிரயம்
செய்து கொடுக்க கேட்டார். நான் சொன்ன விலைக்கு கிரயம்
செய்து கொள்ள வாதி தயாராக இல்லை.”

(emphasis

supplied)

From the above evidence of DW1, it is explicit that the Plaintiff was all along ready and willing to perform his part of contract and it was the Defendant who made a demand for more sale consideration than agreed amount in the sale agreement (Ex.A4) and refused to execute the sale deed on that ground.

32.Yet another point is that under Ex.A8, the Defendant has asked for exorbitant amount and on that ground the Defendant was refusing to execute the sale deed. In this connection, the evidence of PW2, independent witness (panchayat) supports the case of the Plaintiff. It is his specific evidence that terms of settlement talks has been



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duly elaborated and evidence with regard to conduct of panchayat also admitted. Further Selvi @ Kalaiselvi Mother of the minor as DW1 has also admitted as under:

“ரகு (எ) ரகுநாதனிடம் வாங்கிய சொத்து தனது வியாபாரத்திற்கு போதவில்லை என்பதால் தான் இளவர் கமலேட்சின் சொத்தை என்னிடம் கிரய ஒப்பந்தம் செய்தார் என்றால், சரிதான். Ex.A4 கிரய ஒப்பந்தத்தில் வாதி ரகுநாதனிடம் இருந்து கிரயம் பெற்ற நிலத்திற்கு தெற்கு என்று நான்கெல்லையில் குறிப்பிட்டு கிரய ஒப்பந்தம் பெற்றுள்ளார் என்றால், சரிதான். Ex.A4 கிரய ஒப்பந்தத்தில் எழுதப்பட்டுள்ள விவரங்கள் எனக்கு நன்கு தெரியும் என்றால், சரிதான்.”

“வாதியின் மகன்கள் வெளிநாட்டில் வேலை பார்த்து வருகிறார்கள் என்றால் சரிதான். வாதியின் மகன்கள் வெளிநாட்டில் வேலை பார்த்து வருவதாலும், வாதி பெட்ரோல் பங்கு வைத்து தொழில் செய்து வருவதாலும் ஒப்பந்தத்தில் கண்ட பாக்கி கிரய தொகையை செலுத்தி கிரயம் செய்து கொள்வதில் வாதிக்கு எவ்வித சிரமமும் இல்லை என்றால், சரிதான்.”

“நீதிமன்றத்திடம் அனுமதி வாங்கிய பிறகு வாதியிடம் நீதிமன்றத்திடம் அனுமதி வாங்கியது குறித்து எப்போது தெரிவித்தேன் என்றால், நீதிமன்றத்திடம் இளவர் சொத்தை



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விற்பனை செய்ய அனுமதி வாங்கிய தேதியன்றே மாலையில்
வாதியிடம் தெரிவித்துவிட்டேன். யார் மூலமாக தெரிவித்தேன்
என்றால் நிலத்தரகர்கள் சண்முகம், வேடியப்பன், கோவிந்தன்,
சுப்பிரமணி ஆகியோர்கள் மூலம் வாதிக்கு தெரிவித்தேன்.”

(emphasis supplied)

“நிலத்தரகர்கள் சண்முகம், வேடியப்பன், கோவிந்தன், சுப்பிரமணி
ஆகியோர்கள் கிரைய ஒப்பந்தப்படி நான் கிரயம் செய்து
கொடுக்காததால் பஞ்சாயத்து பேச வந்த பஞ்சாயத்தார்கள்
என்றால், சரிதான்.”

(emphasis supplied)

“கோவிந்தன், தண்டபாணி, சண்முகம், ராமநாதன் ஆகியோர்கள்
பஞ்சாயத்து பேசினார்கள் என்று சொல்லியுள்ளேன் என்றால்,
சரிதான்.”

“அந்த விசாரணையில் பதிவு செய்யப்பட்ட கிரய ஒப்பந்தம்
என்பதாலும், நீதிமன்ற அனுமதியும் பெறப்பட்டுள்ளது என்பதாலும்,
ஒப்பந்தப்படி என்னை கிரயம் செய்து கொடுக்குமாறு அறிவுரை
சொன்னார்கள் என்றால், சரிதான்.”

“அரசாங்க வழிகாட்டி மதிப்பின்படி தான் வாதி கிரயம் செய்து
கொள்ள தயாராக இருந்தார். சந்தை மதிப்பின்படி கிரயம்
செய்து கொள்ள தயாராக இல்லை. வழக்கு சொத்தின் விலை
குறித்து தனிப்பட்ட முறையில் நிலத்தரகர்கள் மூலம் வாதியோடு



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பேசியதாக சொல்வது குறித்து எந்தவித ஆவணமும் நான்
தாக்கல் செய்யவில்லை என்றால் சரிதான்.”

“வாதி மத்தியஸ்தர்கள் மூலமும், பஞ்சாயத்தார்கள் மூலமும்
கிரயம் செய்து கொடுக்கும்படி எங்களிடம் தொடர்ந்து
கேட்டுக்கொண்டு தான் இருந்தார் என்றால் சரிதான்.”

(emphasis supplied)

“06.08.2015 ம் தேதியில் வழக்கறிஞர் வடிவேலு என்பவர் மூலம்
வாதிக்கு அறிவிப்பு (Ex.A6) அனுப்பினோம் என்றால் சரிதான்.”

During the the cross examination of DW1, the factum of conduct of panchayat was suggested to her and the same was accepted. More over, Dhandapani, Shanmugam, Govindhan, Ramanathanm are the panchayatars. In the cross examination of DW1, receipt of Rs.5,00,000/- as advance on behalf of the minor was received by the Mother of the minor, was answered in affirmation, assumes significance.

33.Thus this Court finds that the Defendant has taken a different stand between Ex.A6 & Ex.A8. In Ex.A8, a new case has been introduced. Terms of the agreement has been accepted under Ex.A6, new amount has been mentioned under Ex.A8. By changing the stand, the



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Defendant's stand exposed. In view of the admission by DW1 in cross examination, as extracted supra, none of the grounds raised by defendants counsel, arises for consideration, since the parties have admitted the factual position during the cross examination. The same cannot be re-agitated. Hence, I find that the contention raised by the learned counsel for the Respondent/Defendant falls to ground as flat.

34.Thus, under the legal notice as discussed supra, the Plaintiff has expressed his willingness to purchase the property. During the exchange of notice, for more than about two months, the Defendant never discloses about the court permission in GWOP.76 of 2014 and only under Ex.A8, she had disclosed it. As per the terms of Ex.A4/agreement a duty is caused upon her, but the Defendant failed to do so and hence, the Defendant cannot blame the Plaintiff for inaction. The plea of inaction raised by the Defendant against the Plaintiff falls to ground as she failed to intimate the Plaintiff regarding the Court order granting permission to sell minor's property. Further more, new case also been introduced, which this inconsistent and self contradicting with Ex.A6.

35.Hence, I find that the ready and willingness of the Plaintiff as



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contemplated under Section 16(3) of the Specific Relief Act has been duly complied with. A contra finding rendered by the trial Court is hereby set aside. Consequently, this Court holds that the Plaintiff is ready and willing to perform his part of contract.

36.In this case, the Plaintiff has taken earnest efforts through the panchayatars to insist the Defendant to perform his part of contract. But the same was failed, thereafter, he filed the suit. Therefore, it cannot be stated that there is a delay in approaching the Court by the Plaintiff. A period of two years and six months is not fatal to the claim of the Plaintiff, as discussed infra.

37.On the facts and circumstances as stated supra, the alleged delay in approaching the equity Court is only due to the factum of non disclosure of the Court order granting permission for selling minor property, as mandated under Ex.A4 agreement, which is on the part of the Defendant alone and not on the part of the Plaintiff. As the Defendant has not denied the pleadings and the evidence of PW1 and PW2 about the efforts taken by the Plaintiff through the Panchayatar and since the efforts ended in vein, the suit came to be filed. Similarly, the



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Defendant has not chosen to challenge the pleadings made by PW1 during the cross examination of PW1, assumes significance.

38.Hence, I find that the pre-suit notices as well as rejoinders (Ex.A5 and Ex.A7) are well within the contracting period. The Plaintiff has called upon the Defendant to register the sale deed. After receipt of rejoinder of the Plaintiff dated 12.8.2015/Ex.A7 the mother and natural guardian of the Defendant issued a reply to the rejoinder dated 22.08.2015/Ex.A8 in which she completely changes her stand and states that the total sale consideration is Rs.83,00,000/- and after payment of advance amount of Rs.5,00,000/-, the Plaintiff must pay the balance sale consideration of Rs.78,00,000/- which was not in accordance with the sale agreement/Ex.A4.

39.While Ex.A4 is a registered agreement and court permission has been obtained by the mother and natural guardian of the Defendant in GWOP No.76 of 2014 on the file of Principal Distirct Court, Krishnagiri, by showing the total sale consideration as Rs.18,01,000/- as mentioned in sale agreement/Ex.A4, the total sale consideration has been escalated by the Defendant to an exorbitant sum of Rs.83,00,000/- and



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refused to register sale deed unless the exorbitant sale consideration is paid.

40.However, there is not even a piece of evidence to substantiate that the total sale consideration mentioned in Ex.A4 is only for the purpose of obtaining court permission and the actual sale consideration is Rs.83,00,000/-

41.By making such distorted statement, Defendant has come to the court with unclean hands. Though the trial court found that the Defendant is making distorted statements and the actual sale consideration is not Rs.83,00,000/- as alleged by the Defendant, the trial court ought to have drawn adverse inference against Defendant. On the other hand, wrongly exercised the discretion by not granting the relief of specific performance in favour of the Plaintiff.

42.Apart from demanding exorbitant amount as sale consideration as against the agreed amount in the sale agreement/Ex.A4, the mother and natural guardian of the Defendant did not even produce the order passed in GWOP No: 76 of 2014.



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43. In support of the contention that the Defendant has not approached with clean hands and discretion need not be exercised in favour of the Defendant, the following judgment of Hon'ble Supreme Court has been relied upon in the case of ***Zarina Siddiqui Vs A.Ramalingam*** reported in ***2015 (1) SCC 705***, wherein it is held as follows:

“The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the Plaintiff so that discretion would be exercised judiciously in favour of the Plaintiff. At the same time, if the Defendant does not come with clean hands and suppresses material facts and evidence and misled the Court then such discretion should not be exercised by refusing to grant specific performance.

34. In the instant case, as noticed above, although Defendant no.2 held a registered power of attorney on behalf of Defendant no.1 to sell and dispose of the property, but the Defendants not only made a false statement on affidavit that the power of attorney had authorized the second Defendant only to look after and manage the property but also withheld the said power of



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attorney from the Court in order to misguide the Court from truth of the facts. Further, by registered agreement the Defendants agreed to sell the suit premises after receiving advance consideration but they denied the existence of the agreement in their pleading. Such conduct of the Defendants in our opinion, dis entitle them to ask the Court for exercising discretion in their favour by refusing to grant a decree for specific performance. Further, if a party to a lis does not disclose all material facts truly and fairly but states them in distorted manner and mislead the Court, the Court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse of the process of law.”

The above judgment is squarely applicable to the present case, since Defendant has made distorted statement and has not come to court with clean hands.

44.Further the Defendant had brought DW2 as a witness on his side, while DW2 is no way related to the any person to suit agreement, a panchayathar.

45.Thus, the Plaintiff has proved his readiness and willingness



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by issuing the pre-suit legal notice and rejoinder (Ex.A5 & Ex.A7) respectively within the contracting period calling upon the Respondent/Defendant to execute the sale deed in his favour. Once the Defendant made a demand for exorbitant amount as against the agreed amount, the Plaintiff tried his level best by way of panchayat to pacify and get the sale deed registered. Hence, I find that the Plaintiff has proved his ready and willingness and he is also a “man of means” and he is taken earnest efforts. It is only due to the fault of the Defendant in not communicating the court permission order and further after the panchayat, it appears that Ambika born through the first wife had issued a legal notice under Ex.A12 and also filed a suit for partition in O.S.No.3 of 2017 and the written statement filed by the Plaintiff in that suit are also marked as Ex.A12, Ex.A13 & Ex.A15.

46.In this connection, the presence of the husband of the said Ambika during the panchayat was admitted by DW1 in the cross examination and hence, I find that the family members of Krishnan and his son Raghunathan and daughter Ambika and second wife viz., Sevli @ Kalaiselvi, representing the minor Kamalesh have not come to the Court



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with clean hands. The stand of the Defendant stands exposed under Ex.A8, wherein he had taken a deviated stand mutually destructive stand against Ex.A6. The averment made in Ex.A6 and admission made by DW1 was given a total go-by under Ex.A8. During the cross examination, she admitted averment and contents of Ex.A6 assumes significance. Hence, I have no hesitation to come to the conclusion that Ex.A6/rejoinder issued by Selvi @ Kalaiselvi, at the first instance is mutually destructive with Ex.A8.

47.PW2, who is one of the panchayatar, whose presence was admitted by DW1. The husband of Ambika was also present for negotiating for higher price. Though the Defendant has raised a plea, the value mentioned in Ex.A4 is low and it was not the real picture, from the order passed in GWOP.76 of 2014 under Ex.A11, the very same Selvi @ Kalaiselvi as a witness admitted the terms of the agreement as true and fair and also admitted the receipt of the amount and she is trying to take a different stand before this Court. However, by changing her stand between the two proceedings, she stands exposed.

48.As mentioned in preceding paragraphs, it appears that



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Ambika filed Suit for partition. The written statement filed in the said Suit viz., O.S.No.3 of 2017, clearly describes various manipulations and various techniques adopted by the family members to deny the Plaintiff of his legitimate right and hence partition suit in O.S.No.3 of 2017 said to have been filed by Ambika, D/o.Krishnan (though his first wife) is only for the failure of the panchayat conducted whereby PW2 is one of the panchayatars and hence I find that O.S.No.3 of 2017 (partition Suit by Ambika) is only to divert and to deny the Plaintiff's legitimate claim.

49(a).Admittedly, Krishnan has settled the property in favour of the Defendant's son Kamalesh under Ex.A1, another portion was settled in favour of Raghunathan (who is also his son through his first wife). Based upon the same, a sale deed was executed by Raghunathan in favour of the Plaintiff as could be seen from Ex.A2. Based upon the settlement deed executed by Krishnan, one portion of the property, measuring 59 cents was already purchased by the Plaintiff. The next portion of land as discussed supra, is the subject matter of the said suit.

49(b).The gift deed executed by the father in favour of the minor



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under Ex.A1 was not under challenge. The biological Mother of the minor obtained permission under Ex.A11 from the District Court, Krishnagiri in GWOP.No.76 of 2014. But she kept quiet, she has not disclosed the Court's permission to the Plaintiff and only after issuance of Ex.A5 and Ex.A6 and two months thereafter by Ex.A8 the cat came out of bag by way of Ex.A8. Thereafter, the Plaintiff has set the law into motion by approaching the court. Panchayat has also been conducted. Conduction of panchayat and participation of parties are also admitted and hence, I find that the whole gamut of the case of the Defendant is to deny and to raise additional sale consideration as evident from Ex.A8.

49(c).Hence, I find that the Defendant has not approached the Court with clean hands and family members of the Defendant has induced Ambika to file a case for partition in order to prevent the Plaintiff from seeking the specific relief of the case.

50.As per the terms of the agreement Rs.5,00,000/- was already paid in advance. As per the evidence of PW1 cash element was not disclosed before the court of law. Hence, I find that the Defendant's case does not deserve any sympathy and he has not approached the Court with



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clean hands. Defendant has a grease in her palm. Hence, the trial Court has not properly appreciated the issue. Though the trial Court has found all the issues in favour of Plaintiff, except on the readiness with money and the same was set aside for the reasons stated in the preceding paragraphs and hence, this Court holds that the Plaintiff is entitled for the relief of specific performance.

51. In view of the discussions in the preceding paragraphs, the Suit sale agreement Ex.A4 is true and valid, which was entered between the parties for valuable consideration and the sale consideration fixed in Ex.A4, as discussed supra is a true reflection of the understanding and acceptance between the parties and the stand taken by the Defendant under Ex.A8 stands negatived and the sale consideration fixed in the suit sale agreement is proved in the manner known to law. The Defendant has not intimated the Plaintiff regarding the grant of permission by the civil Court to sell the minor property and the Plaintiff has demonstrated that he is ready with money and willing to perform his part of contract. Consequently, the Plaintiff has proved his ready and willingness to perform his part of contract, which is the sole ground and the Plaintiff is



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entitled for the main relief of the specific performance of the suit sale agreement.

52.In the result, the Appeal is allowed. Consequently, Judgment & Decree made in O.S.No.47 of 2018 on 23.03.2023 on the file of the Additional District Court, Krishnagiri is hereby set aside. In view of the grant of relief of specific performance, the alternate relief does not arise and hence the Suit in O.S.No.47 of 2018 for the relief of specific performance is allowed. Time for execution of sale deed is eight weeks. No costs.

23.07.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order
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To
The Additional District Judge,
Additional District Court,
Krishnagiri.



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RMT.TEEKAA RAMAN, J.

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Pre-delivery Judgment made in

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Dated: 23.07.2024