



WEB COPY



A.S..Nos.596 & 598 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.04.2024

CORAM:

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Appeal Suit Nos.596 & 598 of 2022
and
CMP.No.23176 of 2022

B.Senthil Kumar

... Appellant in both appeals

Versus

1.Ekta

.... 1st respondent in both appeals

2.G.Rajesh

...2nd Respondent in A.S.No.596/22

2.The Sub Registrar

Velacherry, Chennai-600 042.

(Given Up in the appeal)

...2nd Respondent in A.S.No.598/22

PRAYER in A.S.No.596 of 2022: Appeal suit filed under Section 96 of the Code of Civil Procedure, prayed to set aside the Judgement and Decree dated 22.06.2022 made in O.S.No.269 of 2012, on the file of Principal District Judge, Kancheepuram District at Chengalpattu.

PRAYER in A.S.No.598 of 2022: Appeal suit filed under Section 96 of the Code of Civil Procedure, prayed to set aside the Judgement and Decree dated 22.06.2022 made in O.S.No.305 of 2014, on the file of Principal District Judge, Kancheepuram District at Chengalpattu.

For Appellant in both appeals

: Mr. A.V.Arun

For Respondent in both appeals :

Mr. T.Mohan Senior Counsel
for Mr.T.K.S.Gandhi



A.S..Nos.596 & 598 of 2022

COMMON JUDGMENT

WEB COPY

The plaintiff has filed these appeals to set aside the Judgement and Decree dated 22.06.2022 made in O.S.Nos.269 of 2012 and 305 of 2014 respectively, on the file of Principal District Judge, Kancheepuram District at Chengalpattu.

2. Heard, Mr.A.V.Arun, learned counsel for the appellant and Mr. T.Mohan, learned Senior Counsel for Mr.T.K.S.Gandh for the respondents and perused the materials available on record.

3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

4. The appellant herein is the plaintiff in O.S.No.269 of 2012 and a defendant in O.S.No.305 of 2014. The 1st respondent is the 1st defendant in O.S.No.269 of 2012 and plaintiff in O.S.No.305 of 2014. The suit property and the parties are same in both the suits. The learned Principal District Judge, Kancheepuram District, Chengalpattu, jointly analyzed the suits and passed a common judgement on 22.06.2022.



A.S..Nos.596 & 598 of 2022

5. The appellant filed a suit for relief of specific performance which was dismissed, and the suit filed by the respondent for the relief of declaration of permanent injunction was partly allowed by granting the relief of declaration and mandatory injunction. Aggrieved by the said findings of the learned trial Judge, the plaintiff in O.S.No.269 of 2012 has preferred these First Appeals.

6. Briefly the facts of the case are as follows:

Originally, the 2nd defendant purchased the property from his vendor through a sale deed dated 17.05.1989 and settled the property in favour of his daughter on 17.04.2007 through settlement deed. Thereafter, she become the absolute owner of the property measuring to an extent of 1980 sq.ft. comprised in Survey No.195/1 and 195/2 of Madipakkam Village. The plaintiff submits that both the defendants approached him, offering to sell the property for a sum of Rs.22,00,000/-. The plaintiff accepted the same and paid an advance of Rs.3,00,000/- and a sale agreement was executed on 08.07.2009, with a condition that within a period of 5 months, the sale agreement is to be executed. The plaintiff was always ready and willing to execute the sale deed, but the defendant evaded as part of performance in September 2009. The plaintiff was not in possession of the property. Therefore, the plaintiff issued letters on 08.04.2010 and another letter on 01.12.2010 expressed his readiness and willingness, and also issued notice on 23.05.2011, purposely delayed with.

Hence, the plaintiff filed a suit for specific performance with an alternative



A.S..Nos.596 & 598 of 2022

remedy. The 1st defendant admits that she is the absolute owner of the property as per the settlement deed executed by her father / D2 except that they denied all the allegations.

7. The contention of the defendant is that the 1st defendant was in necessity of money for emergency purpose. At that time, the plaintiff entered into a registered sale agreement on 08.07.2009 and fixed the sale price for Rs.22,00,000/-, out of which Rs.3,00,000/- was paid as an advance and a fixed time of 5 months to 07.12.2009 as per the condition clause. At request of the plaintiff, the 1st defendant extended the time till March 2011. During the said period, the 1st defendant made several requests to the plaintiff to get the sale deed by paying the balance sale consideration. The plaintiff, having sufficient money, prolonged the registration. He also informed that she is in urgent need of money but the plaintiff failed to comply the terms within 5 months. The 1st defendant also informed the plaintiff that she would sell the property to a 3rd party and refund the amount. Even then, the plaintiff did not comply with the terms. After the laps of 1 ³/₄ years from the expiry of the stipulated period, on 23.05.2011, a legal notice was issued to the plaintiff and her father, who is not a party in the aforesaid sale agreement, and also sent some anti-social elements threatening them to the 1st defendant's house on 27.05.2011. Thereafter, a complaint was given against the plaintiff on 28.05.2011. The police also advised them to complete the sale transaction. So, a reply was not send to the



A.S..Nos.596 & 598 of 2022

notice issued by the plaintiff. But the plaintiff used to give the false complaints, as a woman, she faced all the difficulties. Therefore, she issued notice on 28.05.2012 to the plaintiff by terminating the aforesaid agreement of sale called upon him to receive Rs.3,00,000/- demand draft by refunding the advance. But the plaintiff denied to accept the same by giving a reply notice dated 03.06.2012. Thereafter, through the friend of the plaintiff, named as Kannan, she approached to compromise, when she accepted the proposal waited for another one month. Even then the plaintiff was not ready to comply with the terms of the agreement. Since she terminated the agreement, there is no existed relationship between the plaintiff and the 1st defendant. However, the plaintiff tried to interfere in the 1st defendant enjoyment and also she filed a suit in O.S.No.803 of 2012 (renumbered as O.S.No.305 of 2014) before the learned Principle District Judge, Alandur, and obtained temporary injunction and not to cause interference in his enjoyment and other consequential reliefs.

8. Before the trial Court, both the parties adduced oral and documentary evidence. On the side of the plaintiff, he was examined as P.W.1 and Ex.A1 to Ex.A11 were marked. On the side of the defendants, 1st defendant in O.S.No.269/2012 was examined as D.W.1 and Ex.B1 to Ex.B8 were marked. Copy of cancellation deed marked as Ex.C1 on Court side.

9. Considering the oral and documentary evidences, the learned trial



Judge framed issues. The foremost issues are

WEB COPY

- “1. Whether the plaintiff Senthilkumar is entitled to specific performance?*
- 2. Whether the time is the essence of the contract?*
- 3. Whether the plaintiff has been ready and willing to perform his part of the contract?*

10. The claim in O.S.No.305 of 2014 are also merely related to the issues framed as above. On considering both oral and documentary evidences, the learned trial Judge held that the plaintiff is always ready and willing to perform his part of the agreement by paying the balance sale consideration, also held that sufficient needs to provide balance sale consideration and the same was unfair, from the evidence of P.W.1 himself. Accordingly, the suit relief was negative. The relief of specific performance was dismissed, and the refund of the advance amount was released, which was already deposited by the defendant and permitted to receive. Accordingly, the suit filed by the plaintiff was decreed. In respect of the suit filed by the defendant in O.S.No.305 of 2014 as the 1st defendant is absolute owner of the property and the relief of specific performance was granted. In respect of declaration, to declare the sale agreement as null and void and mandatory injunction to the consequential relief was negative. Challenging the said findings, the plaintiff / Senthil Kumar has filed the present suits.



11. Points for consideration is as follows:

WEB COPY

(i) Whether the plaintiff had sufficient means to pay by expressing his readiness and willingness by paying the balance sale price?

12. The learned counsel for the appellant submitted that the learned District Judge has completely erred in dismissing the suit preferred by the appellant herein for specific performance when the appellant was ready and willing to perform his part of contract and the defendant failed to execute the sale deed even after the legal notice issued to her. The learned trial Judge was carried away by the fact that there was no proof for sending the notice under Ex.A3 to A5 overlooking the fact that the appellant had issued legal notice dated 25.05.2011 under exhibit A6. When the respondent had admitted the execution of the sale agreement dated 08.07.2009 and receipt of the advance amount of Rs.3 lakhs and also there was no explanation by her to the legal notice under Exhibit A6 the suit for specific performance ought to have been decreed in favour of the appellant. When the defendant /1st respondent admitted that there was a sale agreement executed in respect of the suit property and has not given any explanation on Ex.A6, hence, the suit should have been decreed in favour of the plaintiff and the case of the defendant ought to have been rejected. The learned trial Judge further failed to see that the plaintiff need not produce the currency before the Court in order to deposit the sale consideration for filing the suit for specific performance and the finding of



A.S..Nos.596 & 598 of 2022

the Court below is contrary to the basic principles of specific performance and is liable to be set aside. The learned trial Judge has completely erred in holding that the plaintiff has not having sufficient funds to conclude the same after without appreciating the evidence viz., the bank statement, which was produced by the plaintiff on the date of filing of the suit under Exhibit A11 before the Court. The learned District Judge failed to see that after having received the legal notice dated 23.05.2011 issued by the plaintiff and waiting for one year and subsequently by notice dated 28.05.2012, the defendant stated that the advance amount would be refunded should not have been accepted by the Court below. The finding of the Court below that the plaintiff is not entitled for interest is without any legal basis and the same is liable to be set aside. The Court below committed serious error, but decreed the suit for injunction filed by the defendant and dismissing the suit filed by the appellant after having held that the defendant had entered into agreement out of her free will and she is not entitled for declaration and mandatory injunction.

13. By way of reply, the learned counsel for the respondents submitted that within the stipulated period, the plaintiff did not tender the balance sale consideration nor expressed their readiness and willingness even after expiry of the stipulated period. He was not inclined to perform his part of the agreement. Since, he did not possess sufficient means but means to bear the amount, the plaintiff also accepted the same. During cross-examination, by relying on the confirmations made by the plaintiffs, the learned trial judge concluded that the



A.S..Nos.596 & 598 of 2022

plaintiff was not possessed sufficient means nor did he express his willingness to perform. Accordingly, the specific performance was relied declined which needs no interference by this Court. Considering that the 1st defendant is a absolute owner of the property to grant permanent injunction which needs no interference by this Court. Hence, he prays to dismiss the appeal, which is devoid of merits.

14. Considering both sides' submissions, it is admitted that the 1st defendant is the absolute owner of the property. As per the settlement deed executed by her father /D2, which is also admitted on the side of the 1st defendant as she is absolute need of money and she offered to sell the property. The plaintiff agreed to purchase the same for Rs.22 lakhs and paid Rs.3 lakhs as an advance on 08.07.2009. Within 5 months on or before 08.12.2019, the plaintiff has to pay the balance amount and to get the sale amount from the stipulated clause. It is an admitted fact that within the stipulated period, the plaintiff has not paid the balance amount. Thereafter, issuing a notice and expressing their willingness to get the sale deed by paying the balance amount. Thought the plaintiff contended that he was always ready to perform the part of the agreement and also having sufficient means, during cross examination he admits as follows;



A.S..Nos.596 & 598 of 2022

ஏற்பட்ட தேதியில் முன்பணமாக ரூபாய் முன்று லட்சம் கொடுத்திருந்தேன், கிரய உடன்படிக்கை தேதிக்கு முன்பாக 1ம் பிரதிவாதியுடன் ஜாயின்ட் வென்சர் க்காக ஒரு அக்ரிமென்ட் போட்டுக்கொண்டுள்ளேன். அந்த விவரத்தை எனது பிராது மற்றும் முதல் விசாரணை பிரமாண வாக்குமூலத்தில் குறிப்பிட்டு இருக்கவில்லை. அவ்வாறான ஜாயின்ட் வென்சர் ஆவணத்தை வழக்கில் ஒரு ஆவணமாக தாக்கல் செய்யவில்லை. 08.07.2009 க்கு பின்னர் கிரய தொகையில் வேறு எந்த ஒரு தொகையையும் நான் கொடுக்கவில்லை என்றால் சரிதான். ஐந்து மாத காலகெடுவிற்குள் கிரயத்தை முடித்துக்கொள்ள நான் எந்தவிதமான நடவடிக்கை எடுத்தேன் என்று கேட்டால் வக்கீல் நோட்டீஸ் கொடுத்தேன், சாட்பிகேட் ஆப் போஸ்ட் அனுப்பினேன்.”

“ஐந்து மாத கெடுவிற்குள்ளாக நான் அனுப்பிய வழக்கறிநர் அறிவிப்பு எதுவும் தாக்கல் செய்யவில்லை என்றால் அவ்வாறான ஆவணம் எனது தரப்பில் தாக்கல் செய்யவில்லை, ஐந்து மாத காத கெடு என்பது 07.12.2009 தேதியுடன் முடிவாகிறது என்றால் சரிதான்.”

15. Therefore, the plaintiff himself admits that he has not paid the balance amount within the stipulated period of 5 months, as per the terms of the sale agreement. But the plaintiff contends that he did not issued notice to the defendant for that, he relied on the copies of the notice A3, A4 and A5. But, there is no proof that those notices were received by the defendants, since the address mention in the said notices was totally different from the address



A.S..Nos.596 & 598 of 2022

plaintiff does not possess sufficient means to pay the balance sale amount of Rs.19 lakhs and she followed part of illegal methods to send notice to the plaintiff.

16. The evidence of P.W.1 also supports the said contention of he defendants. Moreover, the plaintiff also claimed that possession was handed over to him after the said agreement, but there was no revenue records produced on his side and nor was he was in possession of the property, which falsifies the contention that he is in possession of the property. To avail the relief of specific performance, the plaintiff approached the Court with clean hands, as is settled proportion. According to the plaintiff, she had sufficient means to prove the balance within the stipulated period. Even the account statement produced on the side of the plaintiff marked as Ex.A10 shows that he possessed only a sum of Rs.2,75,000/- and the balance sale consideration nearly Rs.19 lakhs. Even after the completion of the stipulated period, the plaintiff expressed his readiness and willingness, immediately, the alleged notice relied upon by the plaintiff also did not contain the correct address of the defendant. The oral and documentary evidence relied upon by the plaintiff has not established that the plaintiff was always ready and willing to perform his part of the agreement and also not established that the plaintiff posted within the stipulated period. Thereby he is not entitled to the relief of specific performance, and the same was rightly concluded by the learned trial Judge in



A.S..Nos.596 & 598 of 2022

issued Nos. 1,2 & 3, which need no interference by this Court.

WEB COPY

17. Furthermore, the defendant was in urgent need of money. The plaintiff failed to comply with the terms within stipulated period. The 1st defendant, by issuing the notice and paid also a sum of Rs.3,00,000/- (Rupees three lakh only) to the plaintiff through a Demand Draft along with the notice. However, the learned trial Judge concluded that the plaintiff is not entitled to interest, but on considering facts, plaintiff approached Court for retrieve. However, Rs.3,00,000/- (Rupees three lakh only) was ordered to be refunded with 6% rate of interest from the date of suit till realization. Accordingly, the grounds raised by the plaintiff in the present appeals are unsustainable. Furthermore, on considering the fact that the 1st defendant is in possession of the property, the trial Judge relied granted relief of permanent injunction, which needs no interference by this Court.

18. Accordingly both the appeals are dismissed as devoid of merits and the finding rendered by the learned trial Judge is confirmed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.



A.S..Nos.596 & 598 of 2022

Speaking Order: Yes/No
Neutral Citation: Yes/No

WEB COPY
rri

To,

1. The Principal District Judge, Kancheepuram District,
Chengalpattu.
2. The Section Officer, VR-Section,
High Court of Madras, Chennai.



WEB COPY



A.S..Nos.596 & 598 of 2022

T.V.THAMILSELVI,J.

rrr

Appeal Suit Nos.596 & 598 of 2022
and
CMP.No.23176 of 2022

26.04.2024