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S.A.No.808 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.808 of 2024 and
C.M.P.No.25860 of 2024

Rani

... Appellant

Vs.

1. Periyasamy
2. Mookkayee
3. Chinnaponnu @ Anjalai
4. Viruthambal
5. Pushparani
6. Veeramani
7. Pachiyappan
8. Siva

... Respondents

Prayer : Second Appeal filed under Section 100 r/w. Order 41 CPC, 1908 against the decree and judgment dated 27.08.2024 passed in A.S.No.18/2019, on the file of the Additional District Court, Kallakurichi, upholding the decree and judgment dated 12.04.2019 passed in O.S.No.40/2009, on the file of the Subordinate Court, Kallakurichi.

For Appellant : Mr.N.Manoharan



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JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal.

2. This Second appeal is posted before this Court for admission and the same is decided at the admission stage itself.

3. The plaintiff filed the suit for specific performance of contract against the defendants, dated 16.03.2006.

4. 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.

5. The case of the plaintiff in a nutshell is as follows :

The suit property belonged to the first defendant and his father Muthu. The second defendant is the wife of Muthu and the defendants 3



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to 6 are their daughters. The first defendant and his father Muthu agreed to sell the suit property in favour of the plaintiff for a sale consideration of Rs.1,14,750/- vide registered sale agreement dated 16.03.2006 (Ex.A1). A sum of Rs.25,000/- and a sum of Rs.50,000/- were paid by the plaintiff to the first defendant's father on 25.03.2006 and 10.04.2006. As per the sale agreement, the time fixed for completion of contract was four months. The plaintiff approached the defendants to receive the balance sale consideration of Rs.89,750/- and execute a sale deed in her favour. Since the defendants demanded more than the agreed amount, the plaintiff issued a legal notice, dated 02.05.2008 (Ex.A2) calling upon the defendants to receive the balance sale consideration of Rs.14,750/- and execute the sale deed in her favour. Since this notice did not evoke any response from the defendants, the plaintiff filed the suit for specific performance of contract.

6. The suit was resisted by the defendants 1 to 6 on the following grounds:



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- i. All the allegations contained in the plaint are false.
- ii. The first defendant and his father did not execute the sale agreement dated 16.03.2006 as alleged by the plaintiff.
- iii. The first defendant's father Muthu borrowed a sum of Rs.25,000/- from the plaintiff and signed on blank papers and pro notes. The plaintiff filled up the the signed blank papers subsequently and has filed the present suit.
- iv. The defendants in fact wanted to settle the loan amount obtained by their father. But the plaintiff refused to receive the amount.
- v. The suit property has already been sold in favour of the defendants 7 to 9.

7. The defendants 7 to 9 in the written statement had stated that they are bonafide purchasers for value and that they were not aware of the earlier transaction between the plaintiff and the first defendant and his father.



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

- i. *Whether the plaintiff is entitled to a decree for specific performance of contract?*
- ii. *Whether the defendants 7 to 9 are bonafide purchasers for value without notice of prior agreement to sell?*
- iii. *To what relief is the plaintiff entitled?*

9. The following Additional issues were also framed by the trial Court:

- i. *Whether the sale agreement is true, valid and supported by consideration?*
- ii. *Whether the deceased Muthu and the 1st defendant has got exclusive right to execute the sale agreement in respect of suit property to the plaintiff?*

10. In the trial Court, the plaintiff examined herself and marked Ex.A1 to Ex.A11. The first defendant and the seventh defendant



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examined themselves and marked Ex.B1. The Mortgage deed executed in favour of one Nagaraja Mudhaliar by the defendants was marked as Ex.X1.

11. After full contest, the learned Subordinate Judge, Kallakurichi, vide his decree and judgment dated 12.04.2019, dismissed the suit filed by the plaintiff on the following grounds:- :

- i. The plaintiff has not proved her readiness and willingness to perform her part of the contract.
- ii. The plaintiff has not proved that she paid a sum of Rs.50,000/- and a sum of Rs.25,000/- on 25.03.2006 and 10.04.2006 subsequent to the execution of the sale agreement.
- iii. The time fixed for performance of the contract is four months. However, the plaintiff issued the notice to the defendants only after a lapse of 23 months from the date of sale agreement.
- iv. The plaintiff has also not proved that the sale agreement (Ex.A1) is true and valid.



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12. Aggrieved over the decree and judgment passed by the trial court, the plaintiff filed an appeal in A.S.No.18/2019, before the Additional District Court, Kallakurichi. The learned Additional District Court, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial court vide his decree and judgment dated 27.08.2024, as against which the present second appeal is filed.

13. Heard Mr.N.Manoharan, learned counsel for the appellant.

14. Mr.N.Manoharan, learned counsel for the appellant contended that the plaintiff had actually approached the defendants for getting the sale deed executed in her favour and since the first defendant's father Muthu who is one of the signatories to the sale agreement (Ex.A1) passed away two months after the execution the sale agreement (Ex.A1), the defendants requested the plaintiff to grant time to perform their part of contract. According to the learned counsel, the plaintiff has infact paid a sum of Rs.1,00,000/- to the defendants and the



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balance amount to be paid by the plaintiff is only Rs.14,750/-. In the circumstances, both the Courts below had wrongly held that the plaintiff is not entitled for specific performance of the contract.

15. It is pertinent to point out that the execution of the Sale agreement (Ex.A1) was denied by the defendants 1 to 6 in their written statement. In order to establish the execution of the sale agreement, the plaintiff examined herself and three other witnesses. Both the Courts below, based on the evidence on record, had concurrently held that the plaintiff has not proved the execution of the sale agreement. The observation of the trial Court is extracted hereunder:

"அவருடைய மகன் கலியன் வா.சா.3 ஆக சாட்சியம்
அளித்துள்ளார். வா.சா.4-ஆக மேற்படி ஆவணத்தை எழுதிய
பத்திர எழுத்தர் சாட்சியம் அளித்துள்ளார். பத்திர எழுத்தரின்
சாட்சியத்தை பார்க்கும்போது,

"வா.சா.ஆ.1ல் நில விற்கிரைய உடன்படிக்கை ஆவணம்
என்று உள்ளதால், அது விற்பனைக்கான ஆவணம்



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என்று சொல்கிறேன் என்றால் சரிதான். மேற்படி
ஆவணத்தை நான் தயார் செய்து கொடுத்தேன்.
ஆனால் தரப்பினர்கள் பதிவு செய்யவில்லை. நான்
ஆவணம் தயார் செய்து முடித்து என் பெயர் மற்றும்
பதிவு எண்ணை குறிப்பிட வேண்டும் என்றால் சரிதான்.
அதுபோல இந்த வழக்கு ஆவணத்தில் என் பெயர்
மற்றும் பதிவு எண் குறிப்பிடவில்லை என்றால் சரிதான்.
மேற்படி ஆவணம் உண்மையாகவே தயார்
செய்யப்பட்டிருந்தால், என்னுடைய பெயர் மற்றும் பதிவு
எண்ணை குறிப்பிட்டிருப்பேன். அது ஜோடிக்கப்பட்ட
ஆவணம் என்பதால், குறிப்பிடவில்லை என்றால் சரியல்ல."

என்று காணப்படுகிறது. மேற்படி நபரின் சாட்சியத்தை
பார்க்கும்போது, அவர் பதிவு செய்யப்பட்ட பத்திர எழுத்தர்
என்பது தெரியவருகிறது. ஆவணம் தயார் செய்து
கொடுத்தபோது அவருடைய பதிவு எண் குறித்த விபரங்களை
தெரிவிக்காததற்கு எந்த நியாயமான காரணமும் கூறவில்லை.



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மேலும் வா.சா.ஆ.1 ஆவணத்தின் முதல் பக்கத்தில் கையெழுத்து மற்றும் கைரேகை போடுவதற்கு இடம் இல்லாத நிலையில் அது தட்டச்சு செய்யப்பட்டுள்ளதை பார்க்கும்போது, பிரதிவாதிகள் கூறுவதுபோல ஆவணம் எழுதப்பட்டு வாங்கப்பட்டிருந்தால் முறையாக இடம் விட்டு கையெழுத்து பெற்றிருப்பார்கள் என்றும், அந்த ஆவணம் மோசடியானது என்பதால்தான் அவ்வாறு வாங்கப்பட்டுள்ளதாக வாதிடப்படுகிறது."

16. The plaintiff though in his plaint had stated that she was always ready and willing to perform her part of the contract, she did not prove the same by adducing acceptable evidence. The legal notice dated 02.05.2008 (Ex.A2) was issued after two years from the date of the sale agreement (Ex.A1). It is relevant to point out that the time fixed for performance of the contract was four months from the date of the sale agreement. It is true that the time is not the essence of the contract as far as the immovable properties are concerned. However the parties had intended to complete the contract within a period of four months from the



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date of the sale agreement. The plaintiff though had averred in the plaint that the first defendant's father received a sum of Rs.50,000/- on 25.03.2006 and another sum of Rs.25,000/- on 10.04.2006, did not adduce any documentary evidence to substantiate the same. According to the plaintiff, the balance sale consideration is only Rs.14,750/- and that she had paid a sum of Rs.1,00,000/-. In the absence of acceptable evidence in this regard, it cannot be held that the plaintiff had paid a sum of Rs.1,00,000/- towards sale consideration to the defendants. In a suit for specific performance of contract, the plaintiff must establish that he was ready and willing to perform the contract throughout the period of contract. The first legal notice (Ex.A2) was issued after a lapse of 23 months from the date of sale agreement (Ex.A1) and the suit was filed after a lapse of one year from the date of the notice. The observation of the first appellate Court in this regard is,

"15. On careful perusal of the plaint averments, it is clear that the plaintiff has miserably failed to aver about her readiness and willingness to perform her part of the contract. On perusal of Ex.A2, legal notice shows that on 01.05.2008, the plaintiff had issued legal notice to the



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defendants 1 to 6 calling upon them to execute sale deed within one week from the date of Ex.A2 legal notice. It is evident from Ex.A2, that the plaintiff had issued Ex.A2 notice after lapse 23 months from the date of sale agreement, even though time fixed in Ex.A1 sale agreement for the completion of agreement is only 4 months. It is held by Hon'ble Supreme Court of India in the following judgment as the plaintiff should not only plead and prove the terms of the agreement, but should also plead and prove his readiness and willingness to perform his obligations under the contract in terms of the contract.

CIVIL APPEAL NOS. 147-148 OF 2001

MAN KAUR (DEAD) BY LRS.

VS.

HARTAR SINGH SANGHA

9. Section 16(c) of the Specific Relief Act, 1963 (Act' for short) bars the specific performance of a contract in favour of a plaintiff who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than terms of the performance of which has been prevented or waived by the



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defendant).

Explanation (ii) to section 16 provides that for purposes of clause (c) of section 16, the plaintiff must aver performance of, or readiness and willingness to perform the contract according to its true construction. Thus in a suit for specific performance, the plaintiff should not only plead and prove the terms of the agreement, but should also plead and prove his readiness and willingness to perform his obligations under the contract in terms of the contract. (See: N.P. Thirugnanam to R. Jagan Mohan Rao AIR 1996 SC 116; Pushparani S.Sundaram v. Pauline Manomani James - 2002 (9) SCC 582; and Manjunath Anandappa v. Tammanasa - 2003 (10) SCC 390). In the first case, this Court held:

"The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to



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grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was always ready and willing to perform his part of contract."

16. learned counsel for appellant argued that, even though it is not specifically pleaded in the plaint



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about the readiness and willingness of the plaintiff to perform her part of contract, but the plaintiff has clearly stated in Ex.A2 legal notice, plaint and chief examination that he repeatedly demanded the 1st defendant and his father for execution of sale deed which will clearly establish the readiness and willingness of the plaintiff, therefore the conclusion arrived by the trial court that the plaintiff has not proved her readiness and willingness is not correct. In the said circumstances the conduct of the plaintiff from the date of sale agreement has to be taken into consideration to ascertain whether she is ready and willing to perform the contract."

17. It is also relevant to point out that the plaintiff in her legal notice (Ex.A2) had stated that she requested the defendants to receive a sum of Rs.14,750/- towards balance sale consideration and execute the sale deed in her favour. On the other hand, in the plaint, the plaintiff had stated that the first defendant's father Muthu received a sum of Rs.50,000/- on 25.03.2006 and another sum of Rs.25,000/- on 10.04.2006 and issued receipts for the same. As already observed, the plaintiff did not adduce those receipts either in the trial Court or in the



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first appellate Court. In the proof affidavit, the plaintiff had stated that she approached the first defendant after three months from the date of execution of the sale agreement and requested him to execute the sale deed in her favour after receiving the balance sale consideration of Rs.89,750/-. However, in the legal notice, the balance sale consideration is mentioned as Rs.14,750/-. Thus the plaintiff has not approached the Court with clean hands. Moreover, the defendants 1 to 6 have sold the suit property in favour of the defendants 7 to 9 for valuable consideration and both the Courts below concurrently held that they are bonafide purchasers for value. In any event, the plaintiff has not proved any of her contentions in the plaint and therefore the second appeal deserves to be dismissed. In fact, there is no substantial question of law involved in the second appeal.

18. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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ii. The decree and judgment dated 27.08.2024 passed in A.S. No.18/2019, on the file of the Additional District Court, Kallakurichi and the decree and judgment dated 12.04.2019 passed in O.S.No.40/2009, on the file of the Subordinate Judge, Kallakurichi, are upheld.

15.11.2024

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

To

1. The Additional District Court, Kallakurichi.
2. The Subordinate Judge, Kallakurichi.
3. The Section Officer, VR Section,
Madras High Court, Chennai.



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vum

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