



Second Appeal No.359 of 2019

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 19.06.2024**

**CORAM :**

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**Second Appeal No.359 of 2019**  
**and C.M.P.No.5219 of 2019**

Selvaraj

.... Appellant

-Vs-

1.Pazhanathal (Deceased)

(R1 died. Memo dated 13.12.2018 in  
VSR No.101959/18. R2 is recorded as  
LR of the deceased R1 vide order of  
court dated 20.12.2018 made in CMP  
No.10932/18 in SA.SR.No.91302/17)

2.Sivakasi

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 16.06.2017 made in A.S.No.47 of 2015 on the file of the III Additional District and Sessions Judge, Coimbatore confirming the decree and judgment dated 08.04.2015 made in O.S.No.833 of 2013 on the file of the V Additional Subordinate Judge (Trainee District Judge) Coimbatore.

For Appellant : Mr.N.Ishtiaq Ahmed

For Respondents : R1 - Died, steps taken  
R2 - Mr.N.Ponraj



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## **J U D G M E N T**

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The present Second Appeal arises out of the judgment and decree of the III Additional District and Sessions Judge, Coimbatore in dismissing A.S.No.47 of 2015 on 16.06.2017, whereby he confirmed the judgment and decree of the Court of the V Additional Subordinate Judge, Coimbatore in O.S.No.833 of 2013 dated 08.04.2015.

2. For the sake of convenience, the parties will be referred to as per their ranking in the suit.

3. O.S.No.833 of 2013 was originally presented before the learned District Judge at Coimbatore in O.S.No.58 of 2009. The relief that was sought for was for specific performance of agreement of sale dated 10.10.2005. The plaintiff pleaded that he and the defendants entered into an agreement on the aforesaid date, whereby the defendants agreed to sell the suit schedule mentioned property to the plaintiff on receipt of a sum of Rs.5,16,000/-. On the date of entering into the agreement, he had paid a sum of Rs.1,00,000/- to the defendants. The agreement granted him three years time to convert it into a sale deed. As the defendants did not execute the sale deed despite several attempts to get it executed by the plaintiff, the plaintiff was left with no other



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option than to issue a suit notice on 06.10.2008. Thereafter, as delaying tactics were being adopted by the defendants, he came forward with the suit on 13.10.2008.

4. On service of summons, the defendants entered appearance. The second defendant filed a written statement stating that they have no intention to sell the property to the plaintiff. They admitted that they had borrowed a sum of Rs.1,00,000/- from one Tmt.Sivakami and as a condition for giving the said loan she wanted the defendants to execute a sale deed in favour of the plaintiff. The pleading in Para 3 of the written statement states it was only an arrangement for security and it was not in connection with any sale. They would plead that the suit property is worth about Rs.1 Crore and no one would sell the property for a paltry sum of Rs.5,16,000/-. They further pleaded that they approached one Vijayakumari for settlement of the amount on several occasions, but she refused the same.

5. On the basis of these pleadings, the learned trial Judge framed the following issues:

1. வாதி வழக்குரையில் கோரியுள்ளவாறு ஏற்றதை ஆற்றுகை பரிகாரம் பெறத்தக்கவரா ?
2. வாதி வழக்கில் குறிப்பிட்டுள்ள 10.10.2005 தேயிட்ட கிரைய ஒப்பந்தமான கிரையம் செய்யவேண்டும் என்ற நோக்கத்திற்காக



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உருவாக்கப்பட்டதா ?

3. வழக்கில் சம்மந்தப்பட்டுள்ள கிரைய ஒப்பந்த ஆவணமானது கடன் பரிவர்த்தனைக்காக உருவாக்கப்பட்டதல்லவா ?

4. வாதி பெறத்தக்க இதர பரிகாரம் என்ன ?

6. On the side of the plaintiff, he examined himself as P.W.1 and one Ganapathiyappan as P.W.2. He marked Exs.A1 to A9. On the side of the defendants, no witness was examined. However, two documents were marked in the cross examination as Exs.B1 and B2.

7. On consideration of the overall circumstances, the learned trial Judge came to a conclusion that, as the plaintiff has not proved "readiness and willingness" the suit deserves only an order of dismissal and accordingly dismissed it.

8. Aggrieved by the same, the plaintiff preferred an appeal before the learned III Additional District and Sessions Judge at Coimbatore which was received as A.S.No.47 of 2015. The learned Judge confirmed the judgment and decree against which the present Second Appeal.

9. This Court ordered notice regarding admission on 01.03.2019. On service of notice, Mr.N.Ponraj entered appearance for the respondents.



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10. I heard Mr.Ishtiaq Ahmed for the appellant and Mr.N.Ponraj for the respondent.

11. The matter is put before me for passing orders on admission. Mr.Ishtiaq Ahmed would invite my attention to the fact that the document is a registered document and that the plaintiff had approached the defendants on several occasions and since they did not execute the sale deed in terms of the agreement dated 10.10.2005, the appellant issued a lawyer's notice and immediately followed it up with the suit. He vehemently contended that the defendants avoided the witness box and therefore the Court must look against the defendants.

12. On the contrary, Mr.Ponraj would argue that in a suit for specific performance, it is the duty of the plaintiff to prove that he was ready, anxious and willing to convert the sale agreement into the sale deed and that having not been done, he is not entitled to the highly equitable and discretionary remedy of specific performance. He would point out that being concurrent findings of fact, this Court should not interfere with the same.

13. Mr.Ishtiaq Ahmed would suggest the following substantial questions of



law for the purpose of admission.

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- (a) As per Ex.A1 plaintiff and defendants have consciously agreed that the balance of sale consideration should be paid at the time of registration of the sale deed. That being the case whether the courts below have not erred in law in holding that the plaintiff has not proved his readiness and willingness to pay the balance of sale consideration and to get the sale deed executed?
- (b) Whether the Courts below have not erred in law in interpreting readiness and willingness prior to the date as agreed between the parties?
- (c) Whether the Courts below have not erred in law in dismissing the suit when no contra evidence has been let on the side of the defendants?

I have heard both sides on the aforesaid questions of law.

14. There is no dispute between the parties that an agreement had been entered into on 10.10.2005. It is the case of the plaintiff that it is a sale agreement, whereas it is the case of the defendants that it is only a sham agreement which was entered into for the purpose of the loan transaction entered into between them and a third party. Insofar as this plea of the defendants is concerned, they not having entered the witness box and deposed



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to that effect, they are not entitled to agitate the same before this Court.

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15. In a suit for specific performance, condition precedent for the Court to grant relief in terms of Section 16(c) of the Specific Relief Act is that the plaintiff must aver and prove that he was ready and willing to convert the sale agreement into a sale deed. There is absolutely no evidence on behalf of the plaintiff as to what he did between 10.10.2005 to 06.10.2008. The mere fact that the agreement gives three years time for the purpose of converting the sale agreement into a sale deed does not mean the plaintiff can be twiddling his thumbs and approach the Court as and when he chooses. Though there is a plea that he was ready and willing in the plaint, the conduct of the plaintiff does not substantiate the same. Ex.A1 is of the year 2005 and the first step that has been taken by the plaintiff is only in 2008. Deathly silence has been maintained for a period of three years, which I feel, is fatal to the case of the plaintiff.

16. As the plaintiff has not substantiated his readiness and willingness, the appeal necessarily would have to be dismissed. The questions of law that have been framed by the plaintiff for the purpose of specific performance does not arise for consideration at all.

17. Insofar as the relief of return of advance amount is concerned,



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Mr.Ishtiaq Ahmed would point out that the agreement concedes to the fact that a sum of Rs.1,00,000/- had been received by the defendants. A perusal of the written statement, on the basis of which he argues, also concedes to the fact that a sum of Rs.1,00,000/- had indeed been received. The mere fact that I am rejecting the suit for specific performance does not mean the defendants can have a free ride with the money of the plaintiff. Therefore, there shall be a decree for return of the advance amount of Rs.1,00,000/- together with interest at the rate of 6% per annum from 10.10.2005 till the date of repayment. As a security for the said repayment, there shall be a charge over the suit schedule mentioned property. The charge shall continue till the debt is extinguished.

18. At this stage, Mr.Ishtiaq Ahmed, relying upon the evidence of P.W.2 would state that on 16.09.2009 when an exparte decree had been passed in the suit, the plaintiff had deposited the entire remaining sum of Rs.4,16,000/- to the credit of the suit. As I have dismissed the suit for specific performance, the plaintiff would be entitled to take back the amount that he has deposited to the credit of the suit. If a cheque application is filed, the defendants will have no objection to the same.

19. In fine, the Second Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed. The suit shall stand dismissed insofar



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as the specific performance is concerned. There shall be a decree for return of the advance amount of Rs.1,00,000/- together with interest at the rate of 6.00% per annum from 10.10.2005 till the date of repayment. There shall be a charge over the suit schedule mentioned property as a security for the repayment. The plaintiff will be entitled to the return of Rs.4,16,000/- deposited by him on 16.09.2009.

**19.06.2024**

Index : Yes/No  
Neutral Citation : Yes/No  
Speaking Order / Non-speaking order  
KST

To

1. III Additional District and Sessions Judge, Coimbatore
2. V Additional Subordinate Judge (Trainee District Judge) Coimbatore



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**V.LAKSHMINARAYANAN, J.**

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