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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S(MD)No. 125 of 2013

and

C.M.P(MD)Nos.3225 & 3226 of 2024

Kannan Raja

... Appellant/Defendant

--Vs--

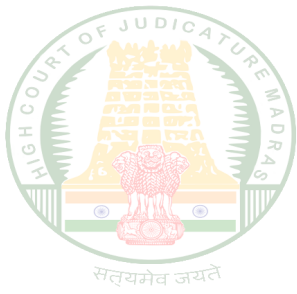
Bharatsingh

... Respondent/Plaintiff

PRAYER: Appeal Suit is filed under Section 96 of the Code of Civil Procedure, against the Judgment and Decree dated 30.11.2012 passed in in O.S.No.21 of 2009 on the file of Principal District Judge, Virudhunagar District at Srivilliputhur.

For Appellant : Mr.J.Barathan,
for M.Jerin Mathew

For Respondent : Mr.Y.Prakash



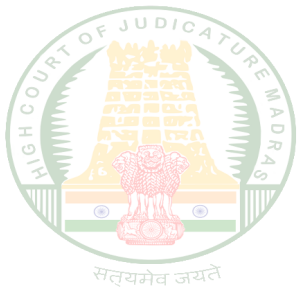
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JUDGMENT

The Appeal suit is filed against the Judgment and Decree dated 30.11.2012 passed in in O.S.No.21 of 2009 on the file of Principal District Judge, Virudhunagar District at Srivilliputhur.

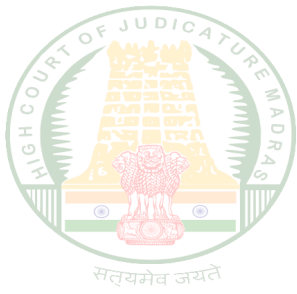
2. The defendant is the appellant herein and the plaintiff is the respondent herein. For the sake of convenience, the parties are referred to as plaintiff and the defendant.

3. The suit property belonged to the defendant and he approached the plaintiff for selling his property and the plaintiff had agreed to purchase the property, thereby the parties had executed sale agreement dated 15.12.2008 fixing the sale consideration at Rs. 38,100/- per acre. The total extent of the property is 56 acres and 93 cents, and the plaintiff paid an advance amount of Rs. 2,50,000/-. The total sale consideration was fixed at Rs. 21,69,033/-. The plaintiff had openly



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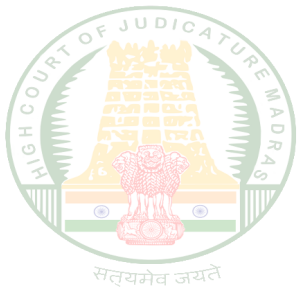
declared that there was no encumbrance over the suit properties and on the date of sale agreement handed over the photo copies of the documents relating to the suit properties. As per the sale agreement the defendant ought to come forward to execute sale deed after receiving the balance of sale consideration on or before 14.03.2009. Though the plaintiff was always ready and willing to execute the sale deed from 10.03.2009 onwards, the defendant was evading the execution of sale deed in favour of the plaintiff, the plaintiff continued to remind the defendant in person, but the defendant was evading the execution of the sale deed. On 14.03.2009 the plaintiff approached the defendant to complete the contract and finalize the sale, but the same being Saturday, the defendant told the plaintiff that he would execute sale deed on 16.03.2009. Hence the plaintiff insisted the defendant to complete the sale on or before 16.03.2009 at 03:00 p.m. On 16.03.2009, the plaintiff waited until 03:00 p.m. for the defendant to appear before the Registrar to complete the sale, however, the defendant did not appear. The plaintiff had an amount of Rs.19,30,000/-. Since the defendant did not appear, the plaintiff deposited the entire amount into KVB account.



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4. Thereafter, the plaintiff issued a suit notice dated 17.03.2009. The defendant replied on 20.03.2009, raising false allegations. In the reply, the defendant admitted to the sale agreement and acknowledged the receipt of Rs. 2,50,000/-as advance. However, the defendant claimed that the plaintiff had not paid the balance amount or completed the sale. The defendant further stated that he had requested the plaintiff to complete the contract within one month, but the plaintiff had not given any response, which the defendant denied. If the defendant's contention were true, he should have cancelled the sale agreement dated 14.03.2003 and issued a notice. However, the defendant failed to do so. Therefore, the plaintiff has filed a suit for specific performance in O.S. No. 21 of 2009 seeking the execution of sale deed based on the sale agreement.

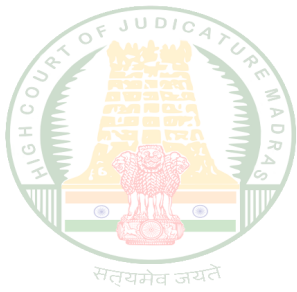
5. The defendant has filed a written statement stating that the suit is not maintainable and that the averments and facts stated in the plaint are false. The facts being that one Ramasubramanian entered into a sale agreement dated 02.10.2008 in respect of the same suit properties. As per the sale agreement, the



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agreed sale price was Rs 38,250/-per acre and the said Ramasubramanian paid an advance amount of Rs.1,50,000/-, and the defendant handed over all the original documents pertaining to the suit properties to Ramasubramanian as per the terms of the agreement. However, Ramasubramanian failed to pay the balance amount on or before 02.12.2008 and did not execute the sale deed with the defendant. As a result, the sale agreement dated 02.10.2008 came to an end on 01.12.2008. The defendant informed the details of the sale agreement to the notice of the plaintiff, who replied that he would face any issues arising from the sale agreement entered into between the defendant and Ramasubramanian.

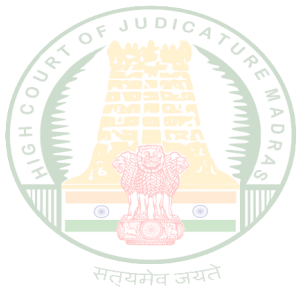
6. Thereafter, a sale agreement was entered into between the plaintiff and the defendant on 15.12.2008, wherein the rate was reduced as Rs.38,100/- per acre and the plaintiff paid an advance of Rs.2,50,000/- and undertook to pay the remaining sale consideration on or before 14.03.2009 and to have the sale deed executed in his favor. The plaintiff had suppressed the above facts and filed the suit. The attestors who had signed the earlier sale agreement dated 02.10.2008



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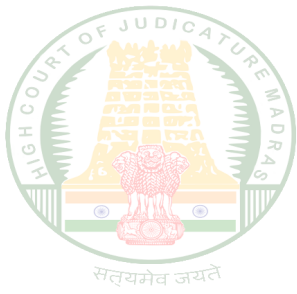
which was entered into between the plaintiff and Ramasubramanian, has acted as brokers and brought the plaintiff to enter into present sale agreement dated 15.12.2008. If the aforesaid attestors / brokers are enquired they would tell the truth. The averments stated in para 5 of the plaint is false, the plaintiff was never ready and willing to proceed with the sale after paying the balance sale consideration. The averment in the plaint that the plaintiff approached the defendant in person and requested to accept the balance amount and requested to register the sale deed is absolute false statement.

7. The fact is the plaintiff approached the defendant and said that the expected amount has not received, hence the plaintiff sought further time to pay the balance amount. But the defendant refused to extend the time and strictly informed the plaintiff to pay the balance amount on time, otherwise he would lose the advance amount as well. Despite this, the plaintiff did not come forward to complete the transaction. It is false to state that 14.03.2009 being a Saturday, hence, the plaintiff requested the defendant to accept the balance amount and



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execute the sale deed on 16.03.2009, which was a Monday, the same is created for the purpose of the case. Infact the act of the plaintiff has created loss, mental agony to the defendant. The claim of the plaintiff that the plaintiff called the defendant on 16.03.2009 in person several times and waited until 3.00 p.m. for the defendant to execute the sale deed, the claim of the plaintiff that had deposited Rs.19,30,000 in the Karur Vysya bank, issued telegram through lawyer, are created for the purpose of the case. The plaintiff issued an advocate's notice on 17.03.2009 to the defendant to execute the sale deed after receiving the balance of the sale consideration is against the terms of the sale agreement. The defendant had received the said notice and had replied stating the true reasons. The said sale agreement had lapsed on 15.03.2009 itself, hence the said sale agreement is not binding on the defendant. The plaintiff was not ready and willing to execute his part of the contract at all. Hence, the defendant prayed for the dismissal of the suit.



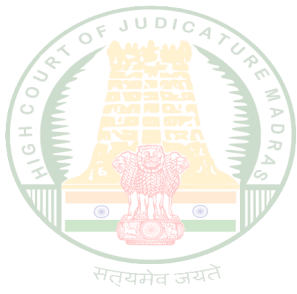
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8. Based on the pleadings the Trial Court had framed the following issues for consideration:

1. Whether plaintiff is entitled to the relief of specific performance on the strength of sale agreement deed dated 15.12.2008 entered into between plaintiff and defendant in respect of suit property?
2. Whether plaintiff was always ready and willing to perform his part of contract?
3. Whether suit filed by the plaintiff is barred by limitation?
4. To what relief if any plaintiff is entitled to?

9. The plaintiff had examined two witnesses PW1 & PW2 and marked Ex.A.1 to Ex.A.12, the defendant had examined one witness DW1 and marked Ex.B.1 to B.4.

10. After hearing rival submission, the suit was allowed with costs, directing the defendant to execute the sale deed after receiving the balance of the



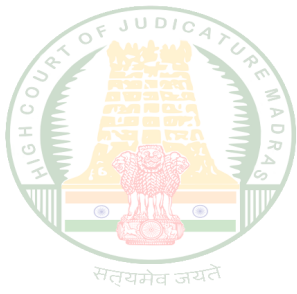
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sale consideration within three months. Failing which, the Court would execute the sale deed after receiving the deposit amount for the balance sale consideration of Rs. 19,30,000/- from the plaintiff. Aggrieved by the said judgment and decree, the present appeal suit has been filed by the defendant.

11. Heard Mr.J.Barathan, for M.Jerin Mathew, the Learned Counsel for the petitioner, Mr.Y.Prakash, the Learned counsel for the respondent and perused the material documents available on records.

12. The defendant has filed the present appeal raising various grounds and this Court had formulated the following points for consideration:

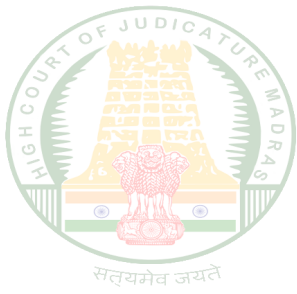
1. Whether plaintiff was always ready and willing to perform his part of contract?
2. Whether the plaintiff has means to pay the balance amount?
3. Whether time is essence of the contract?



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13. It is an admitted fact that the sale agreement was entered into on 15.12.2008, with an advance payment of Rs. 2,50,000/- and the balance amount Rs.19,30,000/- was payable on or before 14.03.2009. The contention of the plaintiff is that he was ready and willing to complete his part of the contract, hence he approached the defendant on 14.03.2009 in person and requested the defendant to execute the sale deed after receiving the balance amount Rs. 19,30,000/-, the defendant agreed to execute the sale on 16.03.2009 since 14.03.2009 was Saturday, on 16.03.2009 the plaintiff waited until 3 pm but the defendant failed to turn up to execute the sale. On the other hand, the defendant stated that on 14.03.2009 the plaintiff came in person and sought further time to pay the balance amount, but the defendant refused to extend the time.

14. In order to ascertain whether the plaintiff was ready and willing the documents ought to be scrutinized. The plaintiff had produced the pass book to substantiate that the plaintiff was having the amount of Rs.19,30,000/- on 16.03.2009. On perusing the said pass book it is seen on 12.01.2009, the plaintiff



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had only Rs.20,000/- in his account and that the plaintiff was not having Rs. 19,30,000/- on or before 14.03.2009, but was having the said amount only on 16.03.2009. Further the said amount was withdrawn in one or two days. And the plaintiff has not filed the pass book indicating subsequent transaction details after withdrawal of the amount in the subsequent dates. The plaintiff had stated in the plaint that he was ready and willing to perform his part of the contract, but the same is a bare statement but no evidence has been presented on behalf of the plaintiff. Hence from the above it is evident that the plaintiff was not having continuous readiness and willingness from the date of the contract to the time of the hearing to perform the contract on his part except one day. The plaintiff ought to show that he was ready and willing continuously as held in the Judgment reported in **2022 SCC Online SC 840 in the case of U.N.Krishnamurthy Vs. A.M.Krishnamurthy** and the relevant paragraph No.27 is extracted hereunder:

“27. In Pt. Prem Raj V. D.S.F.Housing and Construction Private Ltd. And Anr. AIR 1968 SC 1355 cited by Mr.Venugopal, this Court speaking through Ramaswamy J. Held that “ it is well-settled that in a suit for specific performance the Plaintiff should allege that he is ready



and willing to perform his part of the contract.... ”. and if the fact is traversed, he is required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part”.

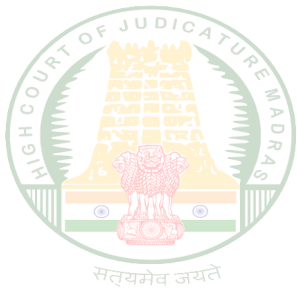
15. Further the plaintiff had admitted in cross-examination that he withdrew the said amount and the relevant portion is extracted hereunder:

“**वासा.आ.6-पड** 14.3.2009**कू** **मुनूपाक**
एनुनुदय वङ्की कणक्कील एन्त
तुकायुडु इल्लै एन्नाल सरीतान्. 16.3.09 अन्नु
एनुनुदय सैमीपु कणक्कील वा.सा.आ.6 पड
1930000-वैपूडूक सेलुत्तियुल्लैन्. नान् मेरूपड
तुकायुडु पिननर वैपूडूडुल इरुन्तु
एरुत्तुक्कुण्डु वीडुन्. मेरूपड 1930000-
तुकायुडु एन्त तैती नान् एनुतु वङ्की
कणक्कील इरुन्तु एरुत्तुक्कुण्डुन् एन्नाल
सम्मन्तपूडू वङ्की कणक्कु पारूतूतूल् तान्
तैरियुडु. 16.3.09 अन्नु व़ेनु नपरीडुडु ककमाऱूतूक
1930000-वाङ्की वासाआ.6पड एन् वङ्की कणक्कील
सेलुत्तुवूडू वडूक्कीरूक सतूकमाक अन्त नीलैयै



நான் மேற்கொண்டேன் என்றாலும் உண்மையில் என்னிடம் 14.3.09க்கு முன்பு பணம் ஏதம் இல்லை என்று சொன்னாலும் சரியல்ல. மேற்படி 1930000-3மாத கால அளவுக்கு என் வங்கி கணக்கில் வைப்பீடாக செலுத்தியதாக ரூபகம் எவ்வளவு நாட்கள் அவ்வாறு போட்டுள்ளேன் என்று குறிப்பிட்டு சொல்ல இயலவில்லை. மேற்படி வங்கிக் கணக்கை பார்த்தால் மேற்படி உண்மை நிலவரம் தெரியவரும் என்றால் சரிதான். நான் வைப்பீடாக பணம் வைப்பீடு செய்தது கரூர் வங்கி ஆகும். நான் வங்கியில் பணம் போட்டதும் வழக்கறிஞர் மூலம் தந்தி கொடுத்ததும் தினமலர் நாளிதழிலில் விளம்பரம் கொடுத்ததும் 16.3.09க்கு பின்னர் தான் என்றால் சரிதான்”.

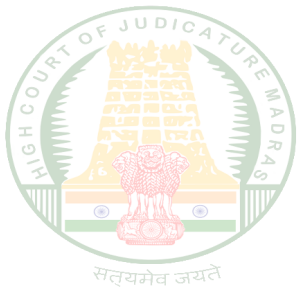
Therefore, this Court is of the considered opinion that the plaintiff was not having continuous readiness and willingness from the date of the contract till the time of the hearing. The point for consideration is answered against the plaintiff.



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16. The next contention is that the plaintiff was not having means to pay the balance amount. This Court had already held that the plaintiff was not having the said amount from the date of contract till the date of hearing except one day. The plaintiff had admitted in his examination that the said amount was borrowed on 16.03.2009, this would clearly indicate that the plaintiff had no means to pay the balance amount. The said point for consideration is answered against the plaintiff.

17. The next contention is that whether time is essence of the contract. The plaintiff and the defendant had agreed in the Ex.A1 sale agreement that the plaintiff has to pay the remaining amount on or before 14.03.2009. Further in the sale agreement the default clause states if the plaintiff failed to pay the amount on or before 14.03.2009, the advance amount paid by the plaintiff would go to the defendant. If the defendant did not execute the sale deed the plaintiff can claim the advance amount of Rs.2,50,000/- along with the compensation of Rs.2,50,000/-. As held supra that the plaintiff had not proved

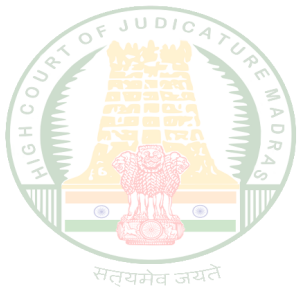


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that he was ready & willing, and the plaintiff had no means to pay on or before 14.03.2009. If so, the rights of the parties are stated in the default clause. From the facts narrated and from the default clause it is evident that the time is essence of the contract. Therefore, this Court is of the considered opinion that the time is essence of the contract in the present case. The said point for consideration is answered against the plaintiff.

18. From the above discussion, this Court is of the considered opinion that the plaintiff has not proved to grant the discretionary relief. Therefore, the relief of specific performance cannot be granted.

19. Accordingly, the appeal is liable to be allowed, accordingly, the appeal suit is allowed. The judgment and decree passed by the Learned Principal District Judge, Virudhunagar District at Srivilliputhur in O.S. No. 21 of 2009, dated 30.11.2012, is hereby set aside.



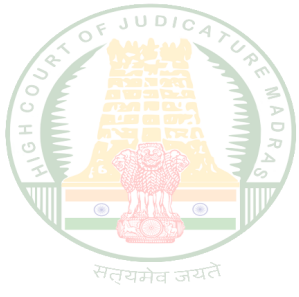
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20. The Learned Counsel appearing for the plaintiff submitted that subsequently, the said decree was handed over to a third party who deposited it in the EP Court. Since this Court is allowing the appeal, the said plea of the plaintiff cannot be entertained.

21. The plaintiff has paid Rs. 2,50,000/- as an advance amount to the defendant. The same shall be refunded to the plaintiff within a period of two months from the date of receipt of a copy of this order, along with 7.5% interest. No costs. Consequently, the connected miscellaneous petitions are closed.

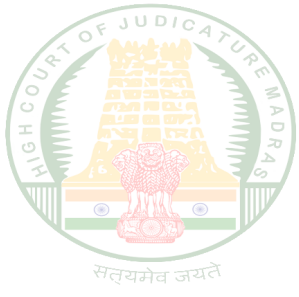
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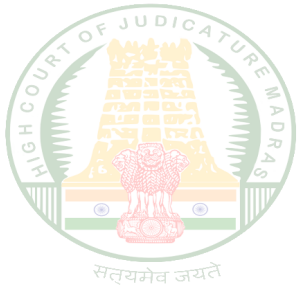
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To

The Principal District Judge,
Virudhunagar District at Srivilliputhur.



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S.SRIMATHY, J.,

KSA

Judgment made in
A.S.(MD)No.125 of 2013

24.09.2024