



S.A.(MD) No.123 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **13.09.2024**

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

S.A.(MD) No.123 of 2012

Faritha Begam

... Appellant

VS.

Panner Selvam

...Respondent

Prayer:- Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.29 of 2011 on the file of the Principal Sub Court, Kumbakonam, Thanjavur District dated 29.09.2011 reversing the judgment and decree in O.S.No.72 of 2008 on the file of the District Munsif cum Judicial Magistrate, Papanasam, Thanjavur District dated 28.02.2011.

For Appellant : Mr.G.Gomathi Sankar
For Respondent : Mr.V.K.Vijayaragavan

JUDGMENT

Challenging the reversing judgment, the defendant is before this Court.

2. The pleadings in the above proceeding are set out herein below and the parties are for the ease of understanding referred to in the same ranking as before the trial Court.



S.A.(MD) No.123 of 2012

PLAINTIFF'S CASE:

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3. The plaintiff has filed a suit for specific performance of an agreement of sale dated 16.04.1994. It is the case of the plaintiff that the suit property belonged to the defendant. The defendant had agreed to sell the same to the plaintiff for a total sale consideration of Rs.26,703/-. The parties had produced the terms of agreement into writing in a sale agreement dated 16.04.1994. Out of the sale consideration of Rs.26,703/-, it was agreed that a sum of Rs.10,000/- was already paid by the plaintiff on 07.07.1993 and on the date of the agreement, a sum of Rs.15,203/- was paid leaving a balance of Rs.1,500/-. The parties had agreed that this sum of Rs.1,500/- would be paid, whenever the plaintiff deems it fit and on such payment, the defendant agrees to execute the sale deed in favour of the plaintiff or his nominees subject to a 15 days prior notice being issued to the defendant.

3.1. The plaintiff would submit that he has got necessary funds for buying the property and the stamp papers and that he has been always ready and willing to have the sale deed executed in his favour. From November, 2007, the plaintiff had been demanding the execution of the sale deed offering the balance sale consideration, but however the defendant had been evading to receive the balance of consideration and execute the sale deed.



S.A.(MD) No.123 of 2012

WEB COPY

3.2. Therefore, on 04.01.2008, the plaintiff had issued a notice calling upon the defendant to convey the date of the execution of the sale deed. However, the reply notice dated 24.01.2008 was received, where the defendant refused to execute the sale deed on untenable grounds. It is also not true that the plaintiff had agreed to provide a Channel for irrigating the water to the defendant's land and the provision of the Channal was a condition in order to execute the sale deed. Therefore, the plaintiff had come forward with the suit in question.

WRITTEN STATEMENT OF THE DEFENDANT:

4. The defendant had admitted the execution of the agreement of sale, but had clearly and categorically stated that the suit is barred and the plaintiff has not expressed his readiness and willingness to get the sale deed executed. The plaintiff was occupying the land as the cultivating tenant and that was the reason for having the agreement executed for such low price. Despite the balance amount being such a meagre amount, the plaintiff has not evinced his readiness and willingness to proceed further with the agreement of sale. The defendant would submit that at no point in time, the plaintiff demanded the defendant to execute the sale deed and the defendant had never refused to



S.A.(MD) No.123 of 2012

receive the balance sale consideration.

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4.1. The defendant would submit that there was an agreement between the parties to permit the defendant to water the lands situate at north-south of the property by putting up a Channal on the eastern side of the suit land. The defendant is having her pumpset on the northern of the suit land and she has to take the water to her land situate on the southern side of the suit land through this Channal. The defendant would submit that the sale agreement was entered into in the year 1994 and only a meagre sum of Rs.1,500/- was due in total and the suit was filed only in the year 2008 with no averment on the side of the plaintiff to prove his readiness and willingness.

TRIAL COURT:

5. The learned District Munsif cum Judicial Magistrate, Papanasam, Thanjavur District had framed the following issues:

"1.வாதி தாவாவில் கேட்டுள்ள ஏற்றதை ஆற்றுகை பரிகாரம்
அவருக்கு கிடைக்கக்கூடியதா? (அல்லது)

மாற்றுப்பரிகாரமாக பிரதிவாதியிடமிருந்து வாதி கேட்டுள்ள
தொகை அவருக்கு கிடைக்கக்கூடியதா?

2.காலாவதி தோஷத்தால் இவ்வழக்கு பாதிக்கப்பட்டுள்ளதாக
கூறுவதுசரியா?



S.A.(MD) No.123 of 2012

3.வாதிக்கு கிடைக்கக்கூடிய ஏற்புடைய பரிகாரங்கள் என்ன?"

6. On the side of the plaintiff, the plaintiff had examined himself as P.W1 and one Saravanan was examined as P.W2 and Ex.A1 to Ex.A9 were marked. On the side of the defendant, the defendant's husband had examined himself as D.W1 and no documentary evidence was marked.

7. The learned District Munsif cum Judicial Magistrate, Papanasam on considering the evidence had held that the plaintiff has failed to prove his readiness and willingness and there is no averment regarding the same even in the pleading or evidence except for baldly stating that he was ready and willing for paying a sum of Rs.1,500/- and having the sale deed executed, the plaintiff had taken 14 years and the amount was not even deposited prior to the filing of the suit. Therefore, the suit was dismissed.

FIRST APPELLATE COURT:

8. Challenging the same, A.S.No.29 of 2011 has been filed by the plaintiff. The lower appellate Court had framed the following points for consideration:-



S.A.(MD) No.123 of 2012

"1. வாதி இவ்வழக்கில் கோரியுள்ள ஏற்றதை ஆற்றுக

பரிகாரம் கிடைக்கத்தக்கதா?

2. வாதிக்கு மாற்று பரிகாரமாக ரூ.25,203/-

கிடைக்கத்தக்கது என்ற விசாரணை நீதிமன்றம் தீர்மானித்துள்ளது

சட்டப்பூர்வமாக சரியானதா?

3. விசாரணை நீதிமன்றத்தின் தீர்ப்பு மற்றும் தீர்ப்பானை

ரத்துசெய்யத்தக்கதா?"

9. The lower appellate Court has simply stated that the explanation given for the delay of 29 years appears to be a plausible one and that since there was no time prescribed for performance, it is the date of refusal which would be the starting point for limitation and the readiness and willingness can be confirmed from the legal notice that has been issued and for this reason had proceeded to allow the first appeal.

SECOND APPEAL:

10. Challenging the same, the defendant had filed this second appeal. This second appeal has been admitted on the following substantial questions of law:-

"i) *Whether the plaintiff is proved his readiness and*

willingness to purchase the suit property?



S.A.(MD) No.123 of 2012

ii) *Whether the suit is not barred by limitation?"*

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11. Coming to the substantial question of law No.(ii), it is true that in an agreement of sale, there is no time fixed for its performance. It is the date of refusal to perform that would be the commencement of the period of limitation. Here, the refusal on the part of the defendant was in the reply notice, Ex.A4. Therefore, the substantial question of law No.(ii) is answered in favour of the plaintiff.

12. Section 16(c) of the Specific Relief Act, reads as follows:

"16(c). 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 the performance of which has been prevented or waived by the defendant."

13. A reading of the same would clearly indicate that the person, who comes to the Court, has to not only aver in his plaint, but also prove that he has been always ready and willing to perform the terms of the contract, which he is required to perform. In the agreement, Ex.A1, the language of the same would



S.A.(MD) No.123 of 2012

indicate that it is for the plaintiff to inform the defendant 15 days in advance that he is ready and willing to proceed with the execution of the sale deed, should purchase the stamp paper and have the sale deed prepared and ready for the signature of the defendant.

14. Admittedly, the plaintiff has not come forward to get the sale deed ready and neither has given a 15 days notice. No doubt, a notice has been given, which is a 10 day notice. That apart, there is absolutely no explanation on the part of the plaintiff as to why from 19.09.2014, till the issue of Ex.A2, legal notice, there has been no steps taken to have the sale deed executed and the balance sale consideration paid and added to this, there is an admission on the part of P.W1 in his cross-examination, wherein he stated as follows:-

"1994ம் வருடத்தில் இருந்து கிரைய பாக்கி பணம் செலுத்த எனக்கு வசதி வாய்ப்பு உள்ளதா என்றால் இல்லை."

15. This categoric admission clearly shows that the plaintiff did not have the wherewithal to even pay a sum of Rs.1,500/-. In the light of this categoric admission, it is clear that the plaintiff had never come forward to have the sale deed executed, since he did not have the necessary wherewithal. Therefore, the readiness and willingness on the part of the plaintiff is totally absent. The trial



S.A.(MD) No.123 of 2012

Court has rightly come to the conclusion that the plaintiff was not ready and willing. However, the lower appellate Court has reversed the same only on mere conjecture and presumption and the same cannot be sustained. Therefore, the substantial question of law No.(i) is answered against the plaintiff.

16. In fine, the Second Appeal stands allowed. The judgment and decree made in A.S.No.29 of 2011 on the file of the Principal Sub Court, Kumbakonam, Thanjavur District, dated 29.09.2011 reversing the judgment and decree in O.S.No.72 of 2008 on the file of the learned District Munsif cum Judicial Magistrate, Papanasam, Thanjavur District dated 28.02.2011 is hereby set aside. No costs.

Index : Yes / No
Internet : Yes/ No

13.09.2024

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To

- 1.The District Munsif cum Judicial Magistrate,
Papanasam.
- 2.The Principal Subordinate Judge,
Kumbakonam.
- 3.The Section Officer, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,



Madurai.

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S.A.(MD) No.123 of 2012



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S.A.(MD) No.123 of 2012

P.T.ASHA, J.

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S.A.(MD) No.123 of 2012

13.09.2024