



S.A(MD)No.81 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 12.07.2024

Pronounced on : 18.09.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.81 of 2017

and

C.M.P(MD)No.1556 of 201

1.T.Jeba Kumar (Died)

... Appellant/Respondent/
Plaintiff

2.Stella

3.Vijipaulin

...Appellants 2 and 3

(Appellants 2 and 3 are brought on record as LR's of the deceased sole appellant vide Court order dated 20.07.2023 made in C.M.P(MD)Nos.8765, 8768 and 8770 of 2023 in S.A(MD)No.81 of 2017)

Vs.

W.Robert Solomon

... Respondent/Appellant/
Defendant

PRAYER : This Second Appeal is filed under Section 100 of the Civil Procedure Code, to call for the records relating to the judgment and decree dated 31.08.2015 made in A.S.No.6 of 2012 on the file of the Principal District Judge, Tirunelveli, reversing the judgment and decree, dated 05.07.2011 made in O.S.No.188 of 2010 on the file of the Additional Sub Court, Tirunelveli and allow this Second Appeal.



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For Appellants : Mr.Meenakshi Sundaram
Senior Counsel
for Mr.T.Antony Arul Raj

For Respondent : Mr.H.Arumugam

JUDGMENT

This Second Appeal is preferred against the judgment and decree, dated 31.08.2015 passed in A.S.No.6 of 2012 on the file of the Principal District Court, Tirunelveli, reversing the judgment and decree, dated 05.07.2011 passed in O.S.No.188 of 2010 on the file of the Additional Sub Court, Tirunelveli.

2. The appellant is the plaintiff and the respondent is the defendant in O.S.No.188 of 2010 on the file of the Additional Sub Court, Tirunelveli. The appellant/plaintiff filed the suit for specific performance directing the defendant to execute the sale deed in respect of suit property.

3. For the sake of convenience, the parties are referred as plaintiff and defendant as arrayed in O.S.No.188 of 2010 on the file of the Additional Sub Court, Tirunelveli.



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4. Case of the plaintiff:

The suit property belonged to the defendant. The defendant through his power of attorney Seeniammal, entered into a registered sale agreement, dated 30.03.2007 with the plaintiff to sell the suit property for sale consideration of Rs.9,00,000/-. On the date of sale agreement Rs.4,50,000/- was paid in advance to the defendant through his power agent. The defendant agreed to execute the sale deed before 29.03.2008 after receipt of balance sale consideration. The plaintiff was always ready and willing to perform his part of the contract. On coming to know that the defendant was trying to sell the suit property to some others, the plaintiff issued a legal notice on 22.11.2007. The defendant received the notice. On intervention of mediators, the defendant delivered the possession of the suit property to the plaintiff and agreed to execute the sale at the earliest. Again the defendant was trying to alienate the property, the plaintiff caused paper publication, dated 07.02.2008. On 07.02.2008, the plaintiff sent a telegram to the defendant to receive the balance sale consideration of Rs.4,50,000/- and execute the sale deed on 08.02.2008, on which date, the plaintiff waited at the Sub Registrar Office. The defendant sent some rowdy



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elements and disturbed the plaintiff's possession. Hence, the plaintiff filed the suit for specific performance.

5. Case of the Defendant:

The alleged sale agreement, dated 30.03.2007 is not true and it was collusively brought out by the plaintiff and said Seeniammal, who were residing under one roof. The defendant purchased the suit property from one Gabriel Johnson on 11.02.2004 and constructed a house on availing housing loan of Rs.7,00,000/- from Sundaram Housing Finance Ltd., and also availed personal loan, part final withdrawal of provident fund of Rs.60,000/-. Further, the defendant's wife Suguna Bai was working as P.G. Assistant and availed P.F. part final withdrawal of Rs.1,65,000/-. Further, the defendant obtained the loan of Rs.2,00,000/- by pledging jewels and also extended hand money of Rs.2,00,000/-. Hence, the defendant invested more than Rs.16,35,750/- towards construction. The house site is an extent of 7.28 cents which alone fetches more than Rs.10 lakhs. Therefore, there is no occasion for the defendant to agree to sell the suit property for Rs.9,00,000/-. Since the defendant was in difficulty to supervise the construction, he entrusted the managerial works to Seeniammal and executed the Power of



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Attorney, dated 10.10.2005 in her favour to meet the needs regarding construction works. There was no proposal or talk about the sale of the property. As Seeniammal has not furnished true accounts, there arose differences between her and the defendant. Hence, the plaintiff and the Seeniammal, who were residing under the same roof, brought out the alleged sale agreement. The defendant cancelled the general Power of Attorney on 09.07.2007. The defendant sent a notice, dated 14.11.2007 to the said Seeniammal to furnish the true accounts. She sent a reply notice on 26.11.2007 falsely stating that she spent Rs.13,16,590/- and demanded Rs.7,66,590/- apart from Rs.4,50,000/- received from the plaintiff. No person, who spent Rs.13,16,950/-, would sell the house property for Rs.9,00,000/-. No mediation was held and possession was not handed over to the plaintiff. The alleged sale agreement, dated 30.03.2007 is not a *bona-fide* one and it is not enforceable. Hence, the suit is liable to be dismissed.

6.Reply statement of the plaintiff:-

The plaintiff filed the reply statement and contended that the defendant obtained various loans for the education of his daughter, who was studying



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I.I.P.E. It is false to state that the suit property is worth more than Rs.26,00,000/-. The defendant is an educated person and is working in a bank as an Officer, so, he knew very well about the contents of Power of Attorney. He authorized the said Seeniammal to negotiate the sale of the suit property. The Power of Attorney executed by the defendant in favour of Seeniammal with contents for sale, lease, etc., The sale agreement is true and enforceable. The possession of the suit property was given to the plaintiff and the defendant agreed to execute the sale deed upon the intervention of mediators.

7. The defendant filed an additional written statement contending that the house site alone is worth more than Rs.10,00,000/- and the same is situated near the Tirunelveli - Tuticorin National Highways road. The value of the house site is increasing day by day. The Power of Attorney was executed only to borrow amounts and take requisite steps for construction of the house since the defendant was employed in the bank. The other averments in the power deed were mistakenly added by the document writer in a routine manner and that clause was being abused by the plaintiff to grab the suit property. The plaintiff has no job and no means.



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8. Upon pleadings, the trial Court framed the following issues:-

"(i) Whether the sale agreement dated 30.03.2007 is true?

(ii) Whether the plaintiff is entitled to the relief of specific performance?

(iii) To what relief, the plaintiff is entitled for?"

9. During trial, on the plaintiff's side P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.22 were marked. On the defendant's side, D.W.1 was examined and Ex.B.1 to Ex.B.25 were marked.

10. After hearing both and considering evidences of both sides, the learned trial Judge/Additional Sub Judge, Tirunelveli, concluded that the plaintiff has proved his case and decreed the suit for specific performance by passing judgment and decree, dated 05.07.2011.

11. Aggrieved by the judgment and decree in O.S.No.188 of 2010, the defendant preferred the Civil Appeal in A.S.No.6 of 2012 on the file of the Principal District Court, Tirunelveli. The first Appellate Court after hearing both passed the judgment, dated 31.08.2015 allowing the appeal in



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A.S.No.6 of 2012 and reversed the judgment and decree passed in O.S.No.188 of 2010 and dismissed the suit for specific performance.

12. Challenging the judgment and decree of the First Appellate Court, the plaintiff preferred this Second Appeal and the same has been admitted on 17.02.2017 by framing the following substantial question of law:-

"(a) Whether the appellant proved his ready and willingness to perform his part of contract as per sale agreement (Ex.A.1) dated 30.03.2007?

(b) Whether the first Appellate Court can hold that the appellant is not ready and willing to perform his contract based on Ex.A.6 without considering other exhibits?

(c) Whether cause of action was arose on 22.11.2007 or 08.02.2008 in filing the suit?"

13. The learned counsel for the appellant/plaintiff submitted that the defendant admitted ExA.10 - Power of Attorney executed by him in favour of Seeniammal. It is also admitted fact that the plaintiff and the power agent of the defendant entered into the sale agreement, dated 30.03.2007 for Rs.9,00,000/- in respect of the suit property and that the advance of



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Rs.4,50,000/- was given. The said sale agreement is marked as Ex.A.1.

The plaintiff contacted the defendant several times for execution of the sale deed, but the defendant evaded. Hence, the plaintiff issued Ex.A.2 - Legal Notice, dated 22.11.2007, the defendant sent a reply dated, 26.11.2007.

The defendant alleged that he cancelled the Power of Attorney on 09.07.2007 and so, his power of attorney has no power to execute the sale deed and also contended that the power of attorney was only executed to supervise the construction. The defendant's contention is wrong because he is a bank employee and also knew about the contents of the document.

The contents of Ex.A.10 itself show that the Power of Attorney has the power to sell the property. The defendant has not proved that the Power of Attorney was executed only for the purpose of supervision and the other contents mistakenly written by the document writer by examining the said document writer. The possession of the suit property was given to the plaintiff as seen from Exs.A2, A3, A5 and A6. The plaintiff also marked house tax receipt, electricity bills and voter card. Postal communication marked as Exs.A.19 and A.20 and also proved the possession of the plaintiff.

The plaintiff has proved his possession over the suit property. The Courts below also concluded about the possession of the plaintiff. The plaintiff



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marked Ex.A.15 - Employment ID Card to show that he was working in abroad and had sufficient means. The plaintiff has also deposited the balance sale consideration of Rs.4,50,000/- and the trial Court has also observed in its judgment in paragraph No.17. The plaintiff was always ready and willing to perform his contract. The defendant's power agent stated that she spent more money towards development of the suit property since the defendant has not repaid the amount, she entered into a sale agreement. The plaintiff issued Ex.A.2 - Legal Notice to the defendant. Even after issuance of notice, the defendant has not taken legal steps against his power agent and has not filed any suit against the power agent. There is no pleading by the defendant that there was enmity between himself and Seeniammal. The defendant has not examined the said Seeniammal to prove his case. So, the sale agreement is valid one. The plaintiff gave paper publication and telegram on 07.02.2008. Though the first Appellate Court upheld the findings of the trial Court that the plaintiff proved the sale agreement and his readiness, the first Appellate Court held that the plaintiff was not ready and willing to perform his contract and has not come to Court with clean hands, simply on technical ground that on the date of Ex.A.6 – Telegram, the plaintiff signed the plaint on 07.02.2008 and filed the



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suit. The plaintiff has issued Ex.A.2 - Legal Notice dated 22.11.2007, hence, the cause of action arose from 22.11.2007 itself. But, the first Appellate Court did not consider the other documents and evidences. Therefore, the plaintiff is entitled to the discretionary relief of specific performance and the Second Appeal may be allowed. In support of his argument, the learned counsel for the plaintiff relied on the following citations:

- "(i) (1999) 6 Supreme Court Cases 337
(Syed Dastagir /v/ T.R.Gopalakrishna Setty)***
- (ii) (1997) 2 Supreme Court Cases 200
(Sukhbir Singh and Others / v/ Brij Pal Singh and
Others)***
- (iii) (2017) 4 Supreme Court Cases 654
(A.Kanthamani /v/ Nasreen Ahmed)"***

14. Per contra, the learned counsel for the respondent/defendant contended that the defendant, who has been working in a bank, was unable to attend his construction work and hence, he executed Ex.A.10 - Power of Attorney in favour of Seeniammal, only to supervise the construction work. Further, since the dispute arose between the defendant and the building engineer, a suit in O.S.No.179 of 2015 came to be filed. So, Seeniammal was appointed as Power of Attorney. The document writer has engrossed the



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document in a routine manner. The plaintiff and the Power of Attorney are residing in the same roof and created fraudulent sale agreement to grab the suit property, which fetches more value. Since the said Seeniammal has not furnished proper accounts, the defendant cancelled the power of attorney on 09.07.2007 and issued a public notice in the newspaper. Only thereafter, the plaintiff issued Ex.P.2 - Legal Notice on 22.11.2007 and the defendant came to know about the sale agreement. The plaintiff's case is a concocted story. The plaintiff has not explained, what was necessitated to issue Ex.A.5 - Paper Publication and Ex.A.6 - Telegram on 07.02.2008, on the same date the plaintiff prepared the suit and signed in the plaint on 07.02.2008. The suit was presented on 11.02.2008. Hence, the first Appellate Court has correctly held that the plaintiff has not come to Court with clean hands and the plaintiff was not ready and willing to perform his contract. The plaintiff has not taken steps to get the sale deed executed even though he alleged that the possession was given to him. Even at the time of institution of the suit, the plaintiff has not deposited the balance sale consideration. Since the Power of Attorney was cancelled by the defendant, the sale agreement executed between the plaintiff and the Power of Attorney is not enforceable. Though the Courts below found that the plaintiff proved the



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sale agreement and payment of advance, the first Appellate Court negated his relief on the ground that the plaintiff was not ready and willing and so, the suit was dismissed and the decree was accordingly drafted, so, the part of decree was assailed by the defendant. Hence, there is no necessity to file the Cross Objection in this appeal. The plaintiff has not produced any material to show that he has sufficient means to pay the sale consideration prior to filing of the suit and therefore, the plaintiff is not entitled to the discretionary relief of specific performance. The plaintiff has furnished the wrong address for which also he should be prosecuted. The first Appellate Court correctly appreciated the evidence of both sides and correctly reversed the findings of the trial Court. The plaintiff, who filed the suit, died without any direct legal heirs and hence, only II Class heirs were impleaded in this case and this may also be taken into consideration. Therefore, the Second Appeal may be dismissed. In support of his argument, the learned counsel for the defendant has relied on the following citations:

"(1) 2024 INSC 157 (Major Gen.Dharshan Singh (D) by Lrs. & Anr. /v/ Brij Bhushan Chaudhary (D) by Lrs.)

(2) (2021) 20 Supreme Court Cases 245 (Sukhwinder Singh /v/ Jagroop Singh and Anr.)



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(3) (2020) 3 Supreme Court Cases 311 (Atma Ram /v/ Charanjit Singh)

(4) (2016) 4 Supreme Court Cases 352 (Satish Kumar /v/ Karan Singh & Anr.)

(5) 2022 (1) CTC 235 (Shri Saurav Jain and Anr. /v/ A.B.P. Design and Anr.)

(6) 2022 (3) MWN (Civil) 459 (B.Amudha /v/ K.Rajendran (Died) and Ors.)

(7) 1991 (1) MWN (Crl.) (Sugesan Finance Investment Vs. Mulji Metha & Sons and 4 Ors.)

15. In reply, the learned counsel for the appellant/plaintiff submitted that the plaintiff has correctly pleaded in the cause of actions in the plaint and also in the para for cause of action as on 07.02.2008, when he issued paper publication and telegram and on 08.02.2008, the plaintiff was waiting at Sub Registrar office. The plaint was filed on 11.02.2008. However, the verification date was mentioned as 07.02.2008, which is a typographical error, this will not affect the case of the plaintiff. Even as on 07.02.2008, the plaintiff is in possession of the suit property and all revenue tax receipts, electricity receipts and postal addresses prove the same. The plaintiff has proved the sale agreement and receipt of the sale advance amount and also proved his readiness and willingness. The defendant's allegation that the suit



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property is worth Rs.30 lakhs is utterly false. He purchased the property for a value of Rs.1,48,000/- and the defendant has only paid Rs.6,73,590/- towards construction to the engineer, as seen from the written statement filed by the defendant in the suit filed by the engineer in O.S.No.179 of 2005. Further, the cost of construction of the building was agreed at Rs.8,10,000/- and the same was not given by the defendant and so, he appointed Power of Attorney to sell the property, the plaintiff entered the sale agreement. Therefore, the defendant's plea that the suit property fetches more value is not proved by him. As per his evidences, the defendant is in huge debt. Therefore, the sale agreement is valid one and the plaintiff was always ready and willing to perform his contract. The Second Appeal may be allowed.

16. Heard the arguments of both sides and perused the material records in this Second Appeal. It is an admitted fact that the suit property belonged to the defendant and that he purchased a vacant housing plot and later started construction. The defendant executed the registered Power of Attorney, dated 10.10.2005 in favour of one Seeniammal as seen from Ex.A.10. Though the defendant claims that he executed only for supervision of his ongoing construction, the document writer has typed the contents of Power of



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Attorney as usual, the defendant is not an illiterate, he admits that he is a bank employee. In such circumstances, the defendant could not state that he executed Power of Attorney only for supervision of the construction. On perusal of records, the defendant has not examined any one of the attestors to the Power of Attorney or document writer of the Power of Attorney to establish his contention. Admittedly, there was litigation between the defendant and the building engineer as seen from Ex.B.18 copy of judgment in O.S.No.179 of 2005. Hence, the Courts below correctly concluded that the Power of Attorney was for all affairs including the sale of the property on behalf of the defendant appreciating the contents therein, which are as follows:

“பாத்தியப்பட்ட காலிமனையை நான் எனது வேலை விசயமாக அடிக்கடி வெளியூர் செல்ல வேண்டியிருப்பதால் தபசில் சொத்தை என்னால் அடிக்கடி மேற்பார்வை செய்ய முடியாமல் இருப்பதாலும் தபசில் சொத்தை கிரையம் கொடுக்க நபர்கள் பார்க்க முடியாமல் இருப்பதாலும் தபசில் சொத்தை எனக்காக தங்களை மேற்பார்வை செய்ய பவர் ஏஜண்டாக நியமித்துள்ளேன். எனவே, தபசில் சொத்தை எனக்காக தாங்களே மேற்பார்வை செய்யவும் கிரயம் கொடுக்க நபர்கள் பார்க்கவும் மேற்படி நபர்களிடம் தொகைகளை பேசவும் பேசிய மேற்படி தொகைகளை எனக்காக தாங்களே பெற்றுக்கொண்டு மேற்படி நபர்கள் பெயருக்கு எழுதும் மேற்படி பத்திரங்களிலும் தேவைப்பட்டால்



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எழுதும் எக்ரிமெண்ட், எக்ரிமெண்ட் ரத்து, பணப்பற்று
ரசீது, குத்தகை, ஒத்தி, அடமானம், சீர்திருத்தம்,
பரிவார்த்தனை போன்றவற்றிலும் எனக்காக தாங்களே
கையெழுத்து செய்து பத்திரங்களை.....தபசில்
சொத்தில் அரசு அனுமதி பெற்று கட்டிடம் கட்டும்நிலை
ஏற்பட்டால் அது சம்பந்தமான அனைத்து
நடவடிக்கைகளை மேற்கொள்ளவும்.....”

From the above recitals, it is very clear that the defendant executed the Power of Attorney for attending all affairs including the sale of property and in case of erection of building with permission of the Government to make construction. In the plaint schedule, it is mentioned as incompleted building and later RCC roof building. Therefore, the Courts below correctly concluded that the Power of Attorney was executed by the defendant in favour of Seeniammal for all purposes including the selling of property and there is no need for any interference in this aspect.

17. Next, the defendant has clearly admitted that Ex.A.1 - Sale Agreement was entered between the plaintiff and his Power of Attorney for a sale consideration of Rs.9,00,000/- and receipt of advance of Rs.4,50,000/- by his Power of Attorney. On perusal of judgments of the Courts below, it is correctly held that the plaintiff has proved the Ex.A.1 - Sale Agreement and payment of Rs.4,50,000/- towards advance to the Power of Attorney of the



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defendant. At this juncture, the defendant contends that the suit property worth Rs.30 lakhs, and the plaintiff and his Power of Attorney, who are residing under the same roof concocted the sale agreement. As rightly submitted by the plaintiff, the defendant has purchased the vacant site at Rs.1,48,000/- and totally gave Rs.6,73,590/- to the engineer for construction as could be seen from Ex.B.18 copy of judgment in O.S.No.179 of 2005, in which, the defendant filed the written statement admitting the above facts. Hence, the contention of the defendant that the property worth Rs.30 lakhs is untenable.

18. The Hon'ble Supreme Court in *P.Ramasubbamma Vs. Vijayalakshmi & Ors.*, Civil Appeal No. 2095 of 2022, dated 11.4.2022 has rendered which is extracted hereunder:

“5.2 Considering the fact that original defendant No.1 –vendor – original owner admitted the execution of agreement to sell dated 12.04.2005 and even admitted the receipt of substantial advance sale consideration, the learned Trial Court decreed the suit for specific performance of agreement to sell dated 12.04.2005. Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to



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be proved by the plaintiff – vendee. Therefore, as such the learned Trial Court rightly decreed the suit for specific performance of agreement to sell. The High Court, was not required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration, once the vendor had specifically admitted the execution of the agreement to sell and receipt of the advance sale consideration; thereafter no further evidence and/or proof was required.”

19. In the case on hand, the defendant admitted the Ex.A.1 sale agreement and receipt of half of sale consideration by his power of attorney, thereafter nothing further is required to be proved by the plaintiff. The defendant as D.W.1 has clearly admitted in his evidence as follows:

“10.10.2005ல் சீனியம்மாளுக்கு நான் தாவா சொத்தைப் பொறுத்து ஒரு பதிவு செய்த பவர் பத்திரம் கொடுத்திருந்தேன் என்றால் சரிதான். அது வா.சா.ஆ.10 ஆகும். மேற்படி பவர் பத்திரத்தின் அடிப்படையில் சீனியம்மாள் வாதியுடன் தாவா சொத்தைப் பொறுத்து கிரையம் செய்வதற்கு ஒரு கிரைய ஒப்புந்தம் போட்டிருந்தார் என்றால் சரிதான். 22.11.2007ல் மேற்படி கிரைய ஒப்புந்தம் சம்பந்தமாக வாதி எனப் பெயருக்கு ஒரு அறிவிப்பு அனுப்பியிருந்தார் என்றும், நான் வழக்கறிவிப்பு அனுப்பியதற்கு பின்பு வாதி எனக்கு அறிவிப்பு அனுப்பியிருந்தார். வா.சா.ஆ.6 தந்தி அறிக்கை வாதி எனக்கு கொடுத்திருந்தார் என்றால் சரிதான்.”



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As per Ex.A.1 - Sale Agreement, the recitals clearly establish that on the date of sale agreement advance of Rs.4,50,000/- was paid to the vendor.

This was not disputed by the defendant. P.W.2 has deposed as follows:

“பிரதிவாதியிடம் அது குறித்து பேசியபோது ஒரு வாரத்திற்குள் பணத்தை தந்து பத்திரத்தை முடித்துக்கொள்ளவேண்டும் என்று கூறிவிட்டு சாவி என்னிடம் தந்தார். நான் அங்கு வைத்தே பிரதிவாதி முன்னிலையில் வாதியிடம் சாவியை ஒப்படைத்தேன். அதன்பிறகு தாவா வீட்டில் ஜெபகுமார் தான் குடியிருந்து வருகிறார்.....”

20. The plaintiff filed house tax receipts, electricity bills, postal communication and voter slip to establish his possession over the suit property. So, it is very clear that the plaintiff has paid advance of Rs.4,50,000/- on the date of the sale agreement and also proved his possession over the suit property. The Courts below also came to the above conclusion.

21. However, the first Appellate Court observed that the plaintiff issued paper publication, telegram and signing the plaint on 07.02.2008 and so, the plaintiff has come to the Court with unclean hands. The observation is wrong. The plaintiff issued the legal notice as early as 22.11.2007 as



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evidenced from Ex.A.2. In view of the recent proposition of law of the Hon'ble Supreme Court *'once the vendor had specifically admitted the execution of the agreement to sell and receipt of the advance sale consideration; thereafter no further evidence and/or proof was required'* the plaintiff has proved his readiness and willingness and nothing is required to be proved. The Hon'ble Supreme Court held in various cases that even pre-legal notice cannot be expected. Because of non-sending pre-legal notice will not defeat the discretionary relief of specific performance. In a suit for specific performance, even the conduct of the defendant should be taken into consideration by the Court while exercising its discretion. When the defendant admitted the sale agreement and receipt of the sale advance, he has not issued notice to the plaintiff cancelling the sale agreement. But, the defendant contended that the plaintiff was not ready and willing and the plaintiff has no sufficient means to complete the sale. On perusal of the records, the plaintiff produced Ex.A.15 - Employment Identity Card for his avocation. Further, till the filing of the suit, the plaintiff has been taking steps to perform his part of contract by sending a legal notice, telegram and also after filing of the suit, the plaintiff deposited the balance sale consideration of Rs.4,50,000/-. But, the defendant has been



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evading citing one reason or another. The argument of the learned counsel for the plaintiff that the purchaser need not prove possession of sufficient money or vouch for the specific scheme for financing transaction, relied on the citation reported in **(2017) 4 Supreme Court Cases 654** (supra) is acceptable in the facts and circumstances of this case. The first Appellate Court though held that the plaintiff proved the sale agreement and payment advance sale consideration and subsequent deposit of balance sale consideration, but on the technical ground that on the same date, the plaintiff issued telegram and signed plaint, rejected the discretionary relief of specific performance.

22. In a suit for specific performance the relief is discretionary. The Courts would be more cautious while negative the discretionary relief while the vendor admitted the sale agreement and receipt of substantial sale consideration amount. In this case, the first Appellate Court erred in taking adverse inferences against the plaintiff. In the considered view of this Court, there was no necessity to take adverse inference against the plaintiff, as the plaintiff proved his part of performance. *Once the execution of the agreement of sale and the receipt of the substantial amount towards the sale*



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consideration is established, there is nothing more to be proved by the agreement holder to establish his readiness and willingness to perform his part of the contract. Once the sale agreement is admitted during subsistence of the Power of Attorney, the subsequent cancellation of Power of Attorney would have nothing to do with the said sale agreement, much less affect the sale agreement. During the course of argument, on the side of the defendant it is argued that the plaintiff died issueless and so, his Class II heirs are impleaded and so, they are not entitled to the relief. This argument is not acceptable. It is a settled proposition of law, in litigation, in case of demise of party, his legal heirs as per the Succession Act are entitled to continue the case and enjoy the fruits of the decree.

23. From the above facts and circumstances, the trial Court has correctly appreciated the evidence and correctly decreed the suit for specific performance, whereas the first Appellate Court has erred in reversing the same on technical ground though upheld the finding of the trial Court in other respects. Hence, the judgment rendered by the first Appellate Court is held to be perverse and liable to be set aside.



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24. In view of the above discussion, this Court finds that the judgment and decree of the first Appellate Court require the interference of this Court. All the substantial questions of law framed by this Court are answered in favour of the appellant/plaintiff. Thus this Second Appeal succeeds.

25. In the result, the Second Appeal is allowed. The judgment and decree, dated 31.08.2015 passed in A.S.No.6 of 2012 on the file of the Principal District Court, Tirunelveli, reversing the judgment and decree, dated 05.07.2011 passed in O.S.No.188 of 2010 on the file of the Additional Sub Court, Tirunelveli is set aside. The judgment and decree passed by the Additional Sub Court, Tirunelveli in O.S.No.188 of 2010 is restored and the suit in O.S.No.188 of 2010 is decreed as prayed for. Further, two months time is granted to the defendant for execution of sale deed from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

18.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD



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To

- 1.The Principal District Court,
Tirunelveli.
- 2.The Additional Sub Court,
Tirunelveli.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre-Delivery Judgment made in
S.A(MD)No.81 of 2017
and
C.M.P(MD)No.1556 of 201

18.09.2024