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A.S.No.121 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.07.2026

CORAM

THE HONOURABLE MR . JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

A.S.No.121 of 2017

&

C.M.P.No.5407 of 2017

R.Krishnamoorthy

... Appellant

Versus

Rajasubramaniam

... Respondents

Appeal Suit filed under Sections 96 read with Order XLI Rule 1 of CPC against the judgment and decree dated 09.12.2016 made in O.S.No.459 of 2005 on the file of I Additional District and Sessions Judge, Tiruppur.

For Appellant

: Mr.K.Harishankar
for Mr.K.Surendar

For Respondent

: Mr.AR.L.Sundaresan
Senior counsel
for Mr.P.Navaneethakrishnan

JUDGMENT

(Judgment of the Court was made by **N.SATHISH KUMAR, J.**)

Challenging the judgment and decree of the trial Court negating the



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relief of specific performance, the present appeal has been filed.

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2. The parties are referred to by their respective ranks before the trial Court.

3. It is the case of the plaintiff that the defendant, being the owner of suit property, has entered into an agreement for sale dated 30.04.2004 with the plaintiff agreeing to sell the same for a total sale consideration of Rs.71 lakhs and received a sum of Rs.1,00,000/- as advance on the date of agreement itself and has agreed to give a sum of Rs.10,00,000/- within two months from the date of sale agreement. The agreement intended to promote the suit property into house sites and sell them to third parties. The defendant has agreed to allow the plaintiff to improve the suit property by laying roads and forming the layout. The plaintiff has also agreed to pay Rs.27,000/- after sale of each site, which is to be accounted towards the total sale consideration. It is the further case of the plaintiff that after entering into the sale agreement, the plaintiff has spent huge amount for formation of the layout, preparation for house sites and for forming of road and rain water trenches. The plaintiff has also divided the suit property into 45 house sites in the name of “Chitrahar Nagar” excluding reserved site and road area and



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paid necessary development charges in respect of site numbers 1, 2, 3, 4, 5, 6, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 22, 26, 27 and 28. The total extent covered under the sale agreement dated 30.04.2004 is 3.78 acres in S.F.No.134 of Nerupperuchal Village and development charges of Rs. 39,634.65 sq.ft has been paid for an extent of 0.91 acres and the balance extent available is 2.87 acres including reserved site and road area. It is contended that the defendant has not cooperated with the plaintiff for the purpose of formation of layout and hence, the plaintiff is not liable to pay Rs.10 lakhs as agreed to be paid within two months in the sale agreement and the non-payment was only because of the defendant. The defendant did not cooperate with the plaintiff in locating the schedule mentioned property and its boundaries and therefore, the time is not the essence of the contract. According to the plaintiff, the agreement has been part performed and acted upon as the plaintiff has entered into sale agreement with 20 parties, therefore, the defendant has no right to cancel the sale agreement and it is still subsisting and the plaintiff was always ready and willing to perform his part of the contract.

4. The suit was resisted by the defendant by filing a written statement



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wherein the defendant has denied the contention of the plaintiff that he has paid the development charges to the authorities. It is contended on behalf of the defendant that the suit without a prayer for declaration, to declare that the agreement for sale entered between them is subsisting is not maintainable. The agreement was duly terminated as early as on 08.01.2005 and therefore, the suit for the relief of specific performance based on the terminated contract is invalid in the eye of law. It is the case of the defendant that it has been specifically stated in the agreement that the plaintiff has to pay a sum of Rs.10 lakhs within two months from the date of agreement for sale and to pay the balance within a period of six months from the date of contract and hence, 6 months time was agreed to be the essence of the contract. The plaintiff was never ready and willing to perform the contract. It is the further case of the defendant that the plaintiff never showed any intention to form a layout and never sought the cooperation of the defendant to sign necessary papers enabling the authorities to approve the layout plan. According to the defendant, some of the plaint documents have been created by the plaintiff with the connivance of the officers in the local body and the plaintiff is a known litigant and is capable of creating documents of any kind to suit his convenience. It is the further allegation of



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the defendant that the plaintiff is not a registered power of attorney of the defendant and therefore, the act of the plaintiff would show that the plaintiff had gone to the extreme of tampering and creating any type of documents to grab the valuable property of the defendant and hence, disputed the claim of the plaintiff and sought for dismissal of the suit.

5. Based on the above pleadings, the following issues were framed by the trial Court:

- i) Whether the suit agreement was terminated on 08.01.2005?
- ii) Whether the plaintiff is entitled for the relief of specific performance?
- iii) To what other relief the plaintiff is entitled?

6. Before the trial Court, on the side of the plaintiff, PWs 1 and 2 were examined and Exs.A1 to A13 were marked and on the side of the defendant, DW1 was examined and Exs.B1 to B6 were marked.

7. The trial Court, on appreciation of evidence, both oral and documentary, dismissed the suit on the ground that without seeking the relief of declaration, the suit is not maintainable. That apart, the trial Court has



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also held that the plaintiff was not ready and willing to perform his part of the contract. Challenging the said judgment and decree, the unsuccessful plaintiff is before this Court by way of this appeal.

8. Mr.Harishankar, learned Senior counsel for the appellant would submit that the agreement cannot be unilaterally cancelled for the simple reason that the defendant never issued any legal notice demanding payment of Rs.10 lakhs and in the absence of such legal notice, unilateral cancellation is not valid in the eye of law as per the judgment of Supreme Court in ***K.S.Manjunath and Others Vs. Moorasavirappa alias Muttana Chennappa Btail and Others*** reported in ***2025 SCC OnLine SC 2378*** and the trial Court has not gone into the issue of whether the agreement is determinable in nature. According to learned Senior counsel, the trial Court relying on the judgment of the Supreme Court in ***I.S.Sikandar (dead) by LRS vs. K.Subramani and other*** reported in ***(2013) 15 SCC 27*** is not proper. That apart, according to the plaintiff, time is not the essence of the contract. It is submitted that when the parties intended to develop the suit property into house sites and agreed to receive the consideration on sale of each plot, time agreed between the parties never intended to be an essence of the contract. According to him, PW2 has clearly spoken about the development



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charges paid by the plaintiff. PW2's evidence clearly indicates that defendant has also accompanied the plaintiff. These facts clearly show that the time was not the essence of the contract. The trial Court, without even framing an issue as to the readiness and willingness, has non-suited the plaintiff for the relief of specific performance. Learned Senior counsel further submits that the plaintiff has already entered into contract with third parties and 20 such contracts have been entered into.

9. Per contra, Mr.AR.L.Sundaresan, learned Senior counsel would submit that except one lakh paid on the date of the agreement, no penny whatsoever has been paid and the plaintiff is doing Real Estate business and his conduct itself clearly shows that his intention is only to enter into an agreement with innocent vendors and take them on ride. It is also stated in the agreement that within a period of two months, the plaintiff has to pay a sum of Rs.10 lakhs and in the event of failure to pay the said amount, Rs.1 lakh paid as advance has to be forfeited and the forfeiture clause makes it clear that time is the essence of the contract. It is the further contention of the learned Senior counsel that so called layout plan and approval is nothing but created documents and PW2 was examined after the evidence of plaintiff and defendant was over and he was summoned only on 28.11.2016 and PW2



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is none other than close associate of the plaintiff. It is submitted by learned

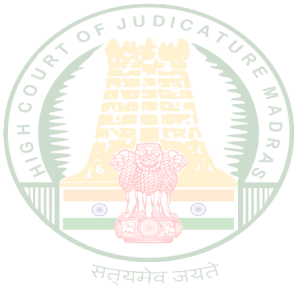
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Senior counsel that the evidence of PW2 is to the effect that no approved layout whatsoever has been filed and except some engineer's plan and receipt said to have been issued by PW2, no other document has been produced to substantiate the contention of the plaintiff that the defendant also cooperated for forming the layout. Further, there was no evidence to show that the plaintiff was ready and willing from the very inception of the contract. According to learned Senior counsel, the very conduct of the plaintiff itself clearly shows that he used to enter into an agreement with the innocent vendors to knock out their properties. Hence, the trial Court has rightly dismissed the suit for specific performance and prays for dismissal of the appeal.

10. In the light of the above rival submissions, the points that arise for consideration in this appeal are

"i) Whether the time agreed between the parties is the essence of the contract and if so, whether the plaintiff was always ready and willing to perform his part of the contract?

ii) To what other relief, the parties are entitled?

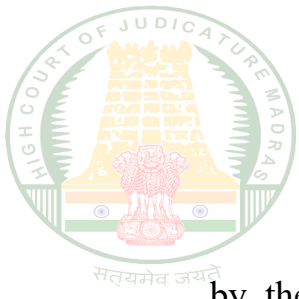


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Point No.1

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11. The execution of sale agreement dated 30.04.2004, marked as Ex.A1 is not in dispute and the suit property was agreed to be sold for a sale consideration of Rs.71 lakhs and on the date of agreement itself, Rs.1 lakh was paid as advance. It is also specifically agreed between the parties that within two months from the date of agreement, the plaintiff has to pay a sum of Rs.10 lakhs towards the sale consideration and the agreement further states that if the amount of Rs.10 lakhs as agreed between the parties is not paid within the time agreed, a sum of Rs.1 lakhs paid as advance will be forfeited. Hence, it was agreed between the parties to complete the contract within a period of six months. Though in case of immovable properties, the time is not an essence of the contract, when specific timeline is agreed between the parties to perform certain obligations, more particularly, payment of money and also when there is a forfeiture clause, we are of the view that such time line agreed cannot be ignored altogether. Admittedly, the plaintiff has not parted any amount except Rs.1 lakh paid on the date of agreement. Though he has specifically agreed to pay Rs.10 lakhs within two months from the date of agreement, he has not paid that amount within the said period.



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12. Be that as it may, the reason for non-payment of money pleaded

by the plaintiff is to the effect that the defendant did not cooperate for forming the layout and therefore, Rs.10 lakhs was not paid by the plaintiff.

It is relevant to note that though the agreement stipulates that the defendant has also agreed to cooperate for forming the layout, on a perusal of plaintiff pleadings it is seen that it is the case of the plaintiff that the defendant has never cooperated for forming the layout at any point of time. Therefore, the plaintiff himself approached the Panchayat and paid the development charges and obtained "No Objection Certificate" for sale of 20 plots, but No Objection Certificate is in the name of the defendant. In the plaint, it is the case of the plaintiff that the defendant has never cooperated even for forming the layout whereas for the first time PW2 was examined on 28.11.2016 after the evidence of PW1 and DW1 was closed wherein PW1 has supported the case of the plaintiff and stated that defendant has also appeared along with the plaintiff in the Panchayat office.

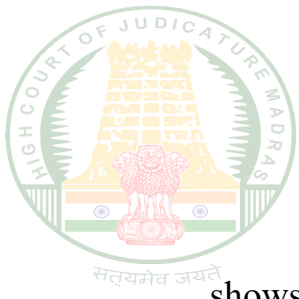
13. It is relevant to note that the evidence of PW2 cannot be given much importance for the simple reason that the very pleading of the plaintiff itself shows that the defendant never cooperated. The evidence PW2 to the effect the defendant has also appeared before the Panchayat office is highly



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improbable and unbelievable for the simple reason that on 08.01.2005 itself

under Ex.B1, the defendant has made up his mind to cancel the agreement and it is stated that since the plaintiff has not cooperated for the completion of sale transaction, he has to cancel the agreement unilaterally. Of course, unilateral cancellation is not a matter of right without sending a notice to the plaintiff demanding payment of balance sale consideration as per the dictum laid down by Hon'ble Supreme Court in ***K.S.Manjunath*** case (supra), but the fact remains that though unilateral cancellation cannot be given much importance, the very conduct of the plaintiff in not paying any amount as agreed in the agreement assumes significance to determine his readiness and willingness. It is relevant to note that Ex.A12 (Receipt) and Ex.A13 (No Objection Certificate) were issued on the same date by the Panchayat President (PW2). It is also relevant to note that if any approval is sought, for forming the layouts, such permission is granted by the local body only after the developer fully forms roads, provides basic infrastructure (water, drains, street lights) and legally hands over the roads and Open Space Reservation (OSR) to the local body. Mere filing of receipts issued on 14.02.2005, that too, after the defendant has cancelled the agreement is highly unbelievable and cannot be given much importance.



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14. It is further to be noted that the very agreement itself very clearly shows that Rs.10 lakhs to be paid within a period of two months from the date of the agreement, but the said amount has not been paid. The reasons given by the plaintiff is that the defendant has not cooperated. However, it is pertinent to note that the very receipts were obtained only when the defendant sent a letter under Ex.B1 expressing his intention to cancel the agreement. This itself clearly indicates that the plaintiff has never taken any steps to form a layout within a period of six months as agreed in the agreement. Further, one of the prime conditions in the agreement is that Rs.10 lakhs should be paid within two months. Except payment of Rs.1 lakhs, the plaintiff has not made any attempt to pay the remaining sale consideration.

15. It is also relevant to note that though it is the case of the plaintiff that he formed layout for around 20 sites and entered into a sale agreement with 20 persons, none of these agreements have been filed before the Court. Even assuming that he has entered into an agreement for sale of the plots with third parties as agreed in the agreement, he ought to have paid Rs.27,000/- for each site to defendant. Not even a pie has been paid to the defendant even after the so called alleged agreement said to have been



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entered by the plaintiff with the third parties. These facts clearly indicate that the plaintiff, without investing any single pie, has taken undue advantage of the innocent vendors by entering into an agreement and making the property a litigative one. These facts cannot be ignored altogether particularly when the conduct of the plaintiff is assessed.

16. It is relevant to note that own admission of the plaintiff in the cross examination shows that a similar suit has been filed by him in O.S.No.557 of 2010 on the file of II Additional District Judge, Tiruppur for specific performance. In the said suit also, the plaintiff has stated that the defendant has not cooperated. The said suit was also dismissed after trial. Later, he has also filed another suit for specific performance as against one firm by name "Samuthiralakshmi". The plaintiff himself has admitted that he has fabricated the number of days in the said suit and he was found guilty by the Sessions Court and the matter went upto Supreme Court as per his own evidence. These facts clearly indicate that the plaintiff, who is doing Real Estate business, was in the habit of making unjust enrichment by entering into agreement with innocent land owners and is in the habit of filing the suit making the valuable the properties litigative one and was trying to take undue advantage for unjust enrichment. When a person wants



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to make unjust enrichment merely by entering into some contract and parting with small amount and making the entire property litigative one, such persons in the considered view of this Court certainly not entitled for specific performance.

17. Further, it is relevant to note that in the legal notice dated 12.01.2005, which is marked as Ex.A3, the plaintiff has taken a stand that if the defendant cooperate for the purpose of obtaining layout plan approval, within 7 days, he is ready to pay Rs.10 lakhs. Though such a plea has been taken in the legal notice, Rs.10 lakhs has not been paid. These facts clearly show that the plaintiff was never ready and willing to perform his part of the contract. He has also not proved his capacity to mobilize such a huge amount rather he has taken advantage by entering into agreement with innocent vendors only for unjust enrichment. When the readiness and willingness is absent from the very inception of the contract and no piece of evidence is available on record to show that the plaintiff has the capacity to mobilize the balance sale consideration, as a matter of right he cannot seek for the relief of specific performance. Merely parting with a meagre sum of Rs.1 lakh, the plaintiff dragged the real owner to incur massive legal costs by making the property a litigative one for more than 20 years. Hence, we



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are of the view that the trial Court is right in dismissing the suit for specific performance.

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Accordingly, the appeal is dismissed with costs. Consequently, the connected miscellaneous petition is closed.

[N.S.K.,J.] [M.J.R.,J.]

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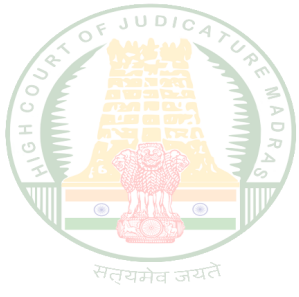
Index: Yes/No

Neutral Citation: Yes/No

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To

1. The I Additional District and Sessions Judge
Tiruppur
2. The Section Officer
VR Section
Madras High Court



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N.SATHISH KUMAR, J.,
AND
M.JOTHIRAMAN, J.,

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