

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27. 03.2015

DELIVERED ON: 09.06.2015

CORAM

THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

S.A.No.748 of 2008

V.N.Devadoss

Appellant/ Plaintiff

vs.

1.T.Manavala Pillai

2.T.Karmegam

3.T.Nithyanantham

4.M.Dhasarathan

5.A.Venugopal

Respondents/ Defendants

(R5 impleaded as party respondent vide order of Court dated 17.09.2009 made in M.P.No.1 of 2008 in S.A.No.748 of 2008)

Second Appeal against the judgment and decree dated 14.03.2007 of the learned Principal District Judge, Chengalpet made in A.S.No.45 of 2006 confirming the judgment and decree dated 24.01.2006 made in O.S.No.285 of 1996 on the file of the Subordinate Judge, Poonamallee dismissing the suit filed by the appellant against the defendant.

For appellant : Mr.S.Parthasarathy
Senior counsel
for Mr.R.Murali

For respondent : Mr.R.Singgaravelan
for Mr.P.Seshadri for R2 to R4
Mr.P.Satheesh Kumar for R5
R1-No appearance

JUDGMENT

The sole plaintiff, who proved to be unsuccessful in both the courts below, has brought forth this second appeal challenging the decree of the learned Principal District Judge, Chengalpattu dated 14.03.2007 made in A.S.No.45 of 2006 confirming the decree of the trial Court (Sub-Court, Poonamallee) dated 24.01.2006 dismissing O.S.No.285 of 1996 filed by the appellant herein against the respondents herein for the relief of specific performance.

2. The appellant herein/plaintiff filed the suit O.S.No.285 of 1996 on the file of the Sub-Court, Poonamallee (trial Court) based on an agreement for sale between the first respondent/first defendant and the appellant/plaintiff, whereby the first respondent/first defendant agreed to sell and the appellant/plaintiff agreed to purchase the suit property measuring an extent of 1.01 acres of land comprised in S.No.8/5B in Mugalivakkam Village, Sriperumbudur Taluk, Kanchepuram District.

3. Admittedly the suit agreement came to be executed by the first respondent/first defendant agreeing to sell the suit property to the appellant / plaintiff for a sale consideration of Rs.3,52,500/- calculated at the rate of Rs.3,500/- per cent and a sum of Rs.10,000/- was received by him on the date of agreement itself as advance. Contending that a further sum of Rs.1,70,150/- came to be paid on various dates from the date of agreement till 28.09.1994 and thus, making the total amount of advance-cum-part sale consideration to Rs.1,80,150/-; that he had been ready and willing to pay the balance sale consideration and get the sale deed executed and registered in his name; that on the other hand, the first respondent/first defendant was postponing the same under one pretext or other forcing the appellant/plaintiff to send a legal notice dated 17.10.1995 calling upon the first respondent/first defendant to execute and register a sale deed after receiving the balance amount of sale consideration for which a reply dated 17.11.1995 containing false and untenable allegations came to be sent by the first respondent/first defendant through his lawyer and that hence, he was constrained to file the suit for the relief of specific performance, the appellant/plaintiff filed the original suit. It was contended by the appellant/plaintiff in the plaint that the first respondent/first defendant was the owner of the suit property, but he falsely claimed it to be a joint family property in which his sons, respondents 2 to 4 / defendants 2 to 4 also got a right to share and that hence for avoiding technical objections, respondents 2 to 4 / defendants 2 to 4 were also made party defendants.

4. The suit was resisted by the first respondent/first defendant based on the following contentions: 1) The suit property did not belong to him absolutely and the same was the joint family property consisting of himself, and his sons, viz., defendants 2 to 4. 2) He never intended to sell suit property to the appellant/plaintiff. 3) The appellant/plaintiff, who got a deed of Power of Attorney for getting sanction for a layout in respect of the suit property from MMDA, obtained his signature in the agreement also on the date of execution of Power of Attorney. 4) The appellant/plaintiff also obtained the signatures of the first respondent/first defendant and the other respondents/other defendants in the agreement and other papers on the date of agreement and on the dates on which further payments were made; 5) The appellant/plaintiff was not ready and willing to perform his part of the obligations under the agreement for sale and hence, he is not entitled to the relief of specific performance.

5. The respondents 2 to 4/defendants 2 to 4 resisted the suit contending that the suit against them was not maintainable; that they were not parties to the suit agreement for sale; that they never agreed to convey the suit property to the appellant/plaintiff and that hence the suit was liable to be dismissed with costs.

6. The learned trial Judge framed the following two issues:

- 1) Whether the plaintiff is entitled to seek the relief of specific performance; and
- 2) To what other relief the plaintiff is entitled?

7. Based on the said issues framed by the trial Court, the parties went for trial, in which one witness was examined as PW1 and 16 documents were marked as Exs.A1 to A16 on the side of the appellant herein/plaintiff, whereas one witness was examined as DW1 and 8 documents were marked as Exs.P1 to P8 on the side of the respondents / defendants.

8. The learned trial Judge, at the end of trial, heard the arguments and considered the evidence and on an appreciation of evidence, held that the appellant/plaintiff failed to prove his readiness and willingness to perform his part of the obligations under the suit agreement for sale and dismissed the suit filed by the appellant/plaintiff without costs on that ground, by a judgment and decree dated 24.01.2006. On an appeal preferred by the appellant herein/plaintiff as A.S.No.45 of 2006 on the file of the Principal District Judge, Chengalpattu, the learned lower appellate Judge concurred with the findings of the trial Court and by a judgment and decree dated 14.03.2007 dismissed the appeal confirming the decree passed by the trial Court. As against the said decree of the lower appellate Court, the present second appeal has been preferred on various grounds set out in the memorandum of grounds of second appeal.

9. As mandated under Section 100 C.P.C, the second appeal was admitted on 05.11.2008 on the following substantial questions of law:

- 1) Whether the Courts below are correct in law in holding that the appellant/plaintiff was not ready and willing to purchase the property?
- 2) Whether the Lower Appellate Court is correct in law in holding that the non-deposit of balance sale consideration into Court on the date of filing of the suit is fatal and in not suiting the plaintiff on that ground?

10. After the disposal of the original suit and after the presentation of the appeal before the lower appellate Court, the respondents 1 to 4 conveyed the suit property to the 5th respondent under a sale deed dated 16.03.2006 registered on 30.03.2006 in the office of the Sub-Registrar, Kundrathur as Document No.3230 of 2006. As the same came to the knowledge of the appellant / plaintiff only after the disposal of the first appeal by the lower

appellate Court and during the pendency of the second appeal, the appellant/plaintiff filed M.P.No.1 of 2008 in S.A.No.748 of 2008 and by virtue of an order of this Court dated 17.09.2009, 5th respondent Venugopal was impleaded.

11. The arguments advanced by Mr.S.Parthasarathy, learned senior counsel appearing for the counsel on record for the appellant/plaintiff, by Mr.R.Singgaravelan, learned counsel appearing for respondents 2 to 4 and by Mr.P.Satheesh Kumar, learned counsel appearing for the 5th respondent were heard. The materials available on record in the form of typed-set of papers were also perused.

12. The unsuccessful plaintiff is the appellant in the second appeal. The suit came to be filed for the relief of specific performance on the basis of Ex.A1 agreement for sale dated 05.08.1989 between the appellant/plaintiff and the first respondent/first defendant, whereby the first respondent/first defendant agreed to sell the suit property measuring an extent of 1.01 acres to the appellant/plaintiff for a sale consideration of Rs.3,53,500/-. Though the agreement was executed by the first respondent/first defendant alone and respondents 2 to 4/defendants 2 to 4 did not join the execution of the agreement, the appellant/plaintiff chose to make them also party-defendants to the suit since the first respondent/first defendant claimed that the suit property was the joint family property of himself and his sons, namely respondents 2 to 4/defendants 2 to 4. Since the first respondent/first defendant alone executed the suit agreement for sale, the agreement cannot be enforced against respondents 2 to 4/defendants 2 to 4 in case the suit property turns out to be the joint family property of respondents 1 to 4/ defendants 1 to 4. The agreement cannot also be enforced in respect of the shares of respondents 2 to 4/defendants 2 to 4, if any, since admittedly they were not parties to the suit agreement for sale.

13. In this regard, it is pertinent to note that the appellant/plaintiff V.N.Devadoss has not chosen to enter the box as a witness on his side. On the other hand, one B.R.Nandakumar figured as the sole witness (PW1) on the side of the appellant/plaintiff. He claims to be the manager of the business concern run by the appellant/plaintiff in the name of "VGN Enterprises". In the proof affidavit submitted by him, which was accepted as his evidence in chief examination, he has not stated that he was one of the attestors of the suit agreement for sale. However, the same was elicited during cross-examination and he testified to the effect that he was one of the attestors of Ex.A1 agreement for sale.

14. The first and foremost objection raised by the first respondent/first defendant was that the suit property did not belong to him absolutely and on the other hand, it was the joint family property belonging to himself and his sons. It is the evidence of PW1 that the first respondent/first defendant got the suit property under a Will and that hence the suit property was

the absolute property of the first respondent/first defendant. The first respondent/first defendant alone took a plea in his written statement that he was not the absolute owner of the suit property and on the other hand it belonged to himself and his sons, namely respondents 2 to 4/ defendants 2 to 4 as joint family property. However, he has not chosen to enter the box to depose as a witness on his side. The second respondent/second defendant figured as the sole witness on the side of the defendants. It shall be pertinent to note that neither the second respondent nor the respondents 3 and 4 took a plea in their respective written statements that the suit property did not belong to their father absolutely and on the other hand, it belonged to the joint family consisting of themselves and their father. They were content with taking a plea that they were not parties to the suit agreement for sale and they never intended to sell the suit property to the appellant/plaintiff and that therefore, the suit against them was liable to be dismissed as not maintainable.

15. In the light of the above said pleadings, it is quite obvious that neither the second respondent nor respondents 3 and 4 could have been permitted to adduce evidence to the effect that the suit property was the joint family property belonging to themselves and their father, viz. first respondent/first defendant. However, a meek attempt was made during the course of trial by DW1 to support the defence plea of the first respondent/first defendant that the suit property was the ancestral property in the hands of the first respondent / first defendant and hence it was the joint family property belonging to respondents 1 to 4/defendants 1 to 4. Such an attempt also proved to be a failure. In fact, the agreement contains a recital that the first respondent/first defendant was the absolute owner of the suit property. In addition, the second respondent/second defendant, who figured as DW1, made a categorical admission that his father, namely the first respondent/first defendant got the suit property under a Will left by Parthasarathy Pillai, the grand father of the first respondent/first defendant. Admittedly, the suit property originally belonged to the said Parthasarathy Pillai. As per the evidence of DW1, the said Parthasarathy Pillai got two sons by name Singara Pillai and Thiruvengada Pillai. Thiruvengada Pillai got two sons by names Manavala Pillai and Adimuthu Pillai and the said Manavala Pillai is the first respondent/first defendant. It is also a clear admission made by DW1 that Parthasarathy Pillai bequeathed the suit property in favour of his grandson, namely the first respondent Manavala Pillai. In view of such a clear admission made by DW1, it is quite obvious that the suit property was the absolute property of the first respondent/first defendant, since any property which comes to a person by way of testamentary succession shall be the absolute property of the legatee. Hence, the contention of the first respondent/first defendant, which was sought to be supported by DW1, the second respondent/second defendant, that the suit property was the joint family property belonging to respondents 1 to 4/ defendants 1 to 4 does not stand substantiated and on the other hand, the contention of the appellant/plaintiff

that the suit property was the absolute property of the first respondent /first defendant stands established.

16. In a suit for specific performance, defect in title of the vendor under the agreement for sale or absence of title shall be immaterial if the purchaser under the agreement is prepared to purchase the subject matter of the agreement despite such defect in title or absence of title. The discussion on this aspect would have been unwarranted if the respondents 2 to 4/defendants 2 to 4 were not made parties to the suit. Since the appellant/plaintiff chose to make respondents 2 to 4/defendants 2 to 4 also as party-defendants, consideration of the question has become relevant. So far as respondents 3 to 4/defendants 3 to 4 are concerned, they are no way connected with Ex.A1 suit sale agreement. As such, no relief can be sought for against them. The second respondent/second defendant is sought to be roped in on the premise that some of the payments were made through him and he signed the receipts evidencing such payments. The receipts are 1) Ex.A10 dated 23.09.1993 for Rs.1000/-; 2) Ex.A11 dated 26.05.1994 for Rs.1000/-; and 3) Ex.A13 dated 28.09.1994 for Rs.500/-.

17. It is not the case of the appellant/plaintiff that the said amounts were received by the second respondent/second defendant for himself. Admittedly, those payments were also made to the first respondent/first defendant through his son, the second respondent/second defendant. The first respondent/first defendant has also admitted all the payments made by the appellant/plaintiff including the above said three payments evidenced by Exs.A10, A11 and A13 were made to the first respondent/first defendant through the second respondent/second defendant. Therefore, the relief of specific performance cannot be sought for and shall not be granted against the second respondent/second defendant, who received a total sum of Rs.2,500/- alone on behalf of his father, namely the first respondent/first defendant. The first respondent /first defendant has also admitted the receipt of the said amount through the second respondent/second defendant. Therefore, the dismissal of the suit by the trial Court as against respondents 2 to 4 / defendants 2 to 4 and the confirmation of the same by the lower appellate Court cannot be found fault with.

18. As pointed out supra, the first respondent/first defendant alone executed Ex.A1 suit sale agreement. Of course, an attempt was made on the part of the respondents to contend that the appellant, while getting a Power of Attorney for the purpose of obtaining sanction for the layout from MMDA in respect of the suit property, got the signatures of the first respondent/first defendant in the agreement and in other papers when further payments were made, which were filled up as receipts. But, the first respondent/first defendant has clearly admitted in his written statement itself that he entered into an agreement for sale with the appellant/plaintiff and received a total amount of Rs.1,80,150/- as evidenced by Exs.A1 to A13. Though the first respondent/first defendant admitted the execution of agreement for

sale and receipt of above said amount, he contended that the appellant was not ready and willing to perform his part of the contract under the suit agreement for sale in accordance with the requirement of Section 16(c) of the Specific Relief Act, 1963 and hence, the appellant /plaintiff was not entitled to the relief of specific performance. In view of the admission of the execution of the agreement for sale and the passing of consideration, the question of genuineness or otherwise of the agreement does not arise for consideration. As such, the respondent cannot dispute the fact that the first respondent/first defendant is bound by Ex.A1 agreement for sale.

19. However, in a suit for specific performance, the party seeking the relief shall not be entitled to the relief unless he pleads and proves that either he has performed or he has been always ready and willing to perform his part of the obligations under the contract in accordance with Section 16(c) of the Specific Relief Act, 1963. Section 16 of the Specific Relief Act is extracted hereunder:

"16. Personal bars to relief- Specific performance of a contract cannot be enforced in favour of a person-

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(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."

Explanation - For the purposes of clause (c),-

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

20. Clauses 3 and 4 of the agreement run as follows:

"3. The Vendor has today put the Purchaser in physical and actual possession of the property and the Purchasers have also entered occupation today. The purchaser shall be entitled to, as and from today to commence the work of Survey of lands and converting them into house sites, and do all other acts in respect of the same.

4. The Vendor shall extend all and every co-operation help and assistance to the Purchaser, his agents, servants, or representatives in the preparation, conversion and sale of lands, as house-sites and in obtaining necessary approval, sanction and permission of competent authorities. He shall also sign all applications, forms, plans, papers, if and whenever required in connection with the layout of the lands. The purchaser is hereby authorised and empowered to attend to and carry out and perform all and every act, deed or thing, as agent and on behalf of the Vendor in matters concerning the sanction and approval of the layout by competent authorities."

21. The agreement does not contain any clause fixing a time limit for completion of the transaction. However, it was contended on behalf of the respondents that the time for completion of the sale transaction was six months from the date getting approval for the layout from MMDA. It is a fact admitted by the parties that on the date on which the Ex.A1 sale agreement was executed, a registered deed of Power of Attorney was also executed by the first respondent/first defendants in favour of the appellant/plaintiff, so as to enable him to form a layout, apply to the authorities and get sanction for the layout from MMDA. The said deed of Power of attorney has not been produced by the appellant/plaintiff. A copy of the same was produced and has been marked on the side of the respondents/defendants as Ex.B8. Power was given under the said document to the appellant/plaintiff to plot out, divide, sub-divide and layout the suit property, to apply to the competent authorities for necessary approval, to appear before the authorities and file applications for the said purpose, to tender and give statements of declaration so as to bind the first respondent/first defendant regarding the common spaces to be left, to execute necessary gift deed in respect of such roads and parks and for the execution of sale deeds in respect of the approved plots. But a perusal of the said document will make it clear that the purpose of execution of the Power of Attorney was to enable the appellant/defendant to form a layout of the suit property, apply for and get approval from the competent authorities and then sell such approved plots to third parties. In the proof affidavit of PW1, which was accepted as his evidence in chief examination, he has made an admission that the parties agreed that the sale transaction should be completed within 6 months from the date of conversion of the suit land, which was an agricultural land, into an approved layout of house sites and that for the purpose of getting approval from MMDA, on 05.08.1989 itself, a Power of Attorney was obtained from the first respondent/first defendant. There is no evidence adduced on the part of the appellant/plaintiff as to the time limit within which the appellant/plaintiff had to obtain the approval for the layout from MMDA. In this regard, it is the testimony of DW1 that there was an agreement for joint development of the suit property into approved housesites and that for the said purpose, the deed of Power of Attorney, a certified copy of which has been produced as

Ex.P8, came to be executed. It was also his testimony that the understanding was that within six months from the date of execution of the Power of Attorney, the property should be developed into a layout of approved housesites. A consideration of the said evidence will make it probable that the transaction between the first respondent/first defendant and the appellant / plaintiff was an agreement for sale coupled with a Power of Attorney on the understanding that the appellant/plaintiff should layout the land into house sites and get approval from MMDA.

22. Though there is nothing in writing except the oral testimony of DW1 to show that the understanding between the parties was that the approval should be obtained by the appellant/plaintiff within 6 months from the date of agreement, the appellant/plaintiff through the testimony of PW1 has made a clear admission that the sale transaction should be completed within 6 months from the date of obtaining approval for the layout from the MMDA (for the present CMDA). Taking advantage of absence of any clause prescribing the time limit within which the appellant/plaintiff should get the approval for layout from MMDA, the appellant/plaintiff simply kept idle for more than 6 years without taking steps for forming a layout, getting approval for the layout of house sites from MMDA, even though payments came to be made piecemeal. The above said attitude on the part of the appellant/plaintiff exhibited his intention to keep the property clogged without taking steps towards the completion of the transaction with a view to get enrichment due to escalation of price.

23. The agreement itself contains a clause that the possession of the property was delivered to the appellant / plaintiff to enable him to measure, form a layout of house sites and apply for and get approval from CMDA. But till the date of filing of the suit, the appellant /plaintiff did nothing towards the achievement of the said object. On the other hand, without doing what was expected of him, the appellant/plaintiff chose to issue a notice under Ex.B4 on 17.10.1995, a copy of which has also been produced as Ex.A14, accusing the first respondent/first defendant that he had not kept his promise of producing SLR copy to enable the appellant/plaintiff to apply to the CMDA. The said reason assigned in the said notice is nothing but a lame excuse for not having done anything towards the fulfillment of the obligation cast on the appellant/plaintiff to develop the suit property into a layout of house sites.

24. In fact, there is no dispute regarding the identity of the property. The suit agreement itself contains the description of the property with reference to the re-survey number. Though it was contended in the said notice that the original document contained only pimash number and hence the SLR Copy was necessary for correlating the re-survey with the pimash number, the appellant/plaintiff could have very well obtained a copy of the SLR from the concerned authorities as he had obtained a general power of attorney. Without doing it, after causing a lapse of

more than 6 years, the appellant/plaintiff chose to issue Ex.P4 notice pointing his index finger against the first respondent/first defendant as if he had made a promise to produce the SLR copy relating to the suit property and failed to keep the promise. There is no piece of evidence to show that within the period of 6 years, the appellant/plaintiff did ask the respondent/first defendant to produce the SLR copy. It is also the evidence of DW1 that when they wanted to get a sanction for laying out the suit land into house sites, they were not successful in getting the sanction for quite a long time and that at the said point of time, the appellant /plaintiff, who was doing Real Estate business, undertook to get sanction for the layout, pursuant to which alone the original of Ex.B8 Power of Attorney came to be executed.

25. Overall consideration of the documents and the facts and circumstances, will probablize the case of the first respondent / first defendant that there was a joint development agreement pursuant to which alone the suit sale agreement and the power of attorney came to be executed; that after getting the agreement and the power of attorney, the appellant/plaintiff simply kept quiet for quite a number of years as he had been expecting a huge profit and that only after the escalation of the land cost, the appellant /plaintiff chose to issue a notice giving such a lame excuse for his inaction and expressing his readiness to pay the balance sale consideration and get the sale deed registered. By the time the appellant/plaintiff chose to issue such a notice under Ex.B4, the land cost had increased manifold and the same was the reason why the first respondent/first defendant chose to cancel the deed of General Power of Attorney by a registered cancellation deed marked as Ex.B1 and intimated the same to the appellant/plaintiff under Ex.B2 notice dated 09.11.1995. For the notice sent by the appellant/ plaintiff under Ex.B4, the first respondent/first defendant sent a reply under Ex.A15 (copy marked as Ex.B5), for which a rejoinder came to be issued under Ex.B6, besides sending a notice under Ex.B7 (copy marked as Ex.A16). Though possession of the property was said to be handed over to the appellant/defendant as per the recital found in Ex.A1 agreement for sale so as to enable the appellant/plaintiff to develop the land, form a layout and apply for approval for the layout from MMDA (now CMDA), admittedly, the appellant/plaintiff did nothing towards the same till controversy arose and till the filing of the suit. A meek attempt was made on behalf of the appellant/plaintiff to contend that since no time limit was prescribed either in the agreement or in the Power of Attorney, for developing the land into a layout of house sites and getting approval for the same from MMDA (now CMDA) and it was agreed that the sale transaction should be completed within 6 months from the date of getting the approval for the layout of house sites, the first respondent/first defendant could not complain of inaction on the ground that approval for layout was not obtained by the appellant/plaintiff. Only in an attempt to justify his inaction, the appellant/plaintiff chose to accuse the first respondent/first defendant of not honouring the undertaking allegedly given by him to produce the SLR copy.

26. It is also pertinent to note that the appellant/plaintiff has taken conflicting and contradictory stands as to who is in possession of the suit property. In Ex.B4 notice itself the appellant/plaintiff admitted the fact that the suit property was in the possession of the first respondent/first defendant. The relevant portion in the notice reads as follows:

"So far, MMDA approval was not obtained and the reasons for the same are known to you. That is why, the lands are allowed to be in your possession and you are in possession of the land. "

Similar averments were also made in paragraph 5 of the plaint. The relevant portion is extracted as under:

"So far, Approval from the M.M.D.A., could not be obtained and the reasons for the same is well known to the first defendant and the same will be revealed at the appropriate time. That only in the said circumstances, the plaintiff allowed the lands to be in possession of the first defendant and he is in possession of this land."

27. From the said unequivocal admission made in Ex.B4 and in paragraph 5 of the plaint, it is quite clear that though the agreement contained a clause to the effect that the possession of the suit property was handed over to the appellant/plaintiff on the date of agreement itself, actual possession was not handed over and what was granted was only a permission to enter the land for the purpose of effecting divisions, sub-divisions, dividing the property into house sites and forming roads for the purpose of submitting a layout plan to the MMDA for approval. Though a meek attempt was made under Ex.B4 that the appellant/plaintiff could not apply for layout sanction, due to the non-furnishing of SLR copy, the same was given a go by when filing the suit, by simply stating that the reasons for not obtaining the approval from MMDA were well known to the first respondent/first defendant and that the same would be revealed at an appropriate time. The plaintiff filing the suit has chosen to provide a loophole in the averments made in the plaint to invent and include a reason as an excuse for his inaction towards the obtaining of the layout sanction from MMDA.

28. If all these aspects are taken into account, the only conclusion that can be arrived at is that the appellant/plaintiff was not ready and willing and he had not done anything towards the fulfillment of the obligations cast on him, namely to layout and obtain a sanction from MMDA for layout as a prelude to the completion of the sale transaction. Though no time limit has been prescribed either in the agreement or in the deed of general Power of Attorney for the appellant/plaintiff to get sanction for the layout, it should have been done within a reasonable time. Had the appellant/plaintiff taken at least the preliminary steps towards obtaining the sanction for layout of the suit property, for example measuring the land, forming the layout by dividing the land into house sites or at least by applying to the concerned

authority for conversion of the land and for sanction for developing the same into house sites, the appellant/plaintiff would have been in a position to contend that though he had taken such steps, he could not get the sanction due to non-cooperation of the first respondent/first defendant. Admittedly, the appellant/plaintiff has done nothing in this regard.

29. Having admitted that the suit property was allowed to remain with the first respondent/first defendant, the appellant/plaintiff chose to take a contradictory stand through the evidence of PW1 that the suit property is in the possession of the appellant/plaintiff and that the appellant/plaintiff is cultivating the land through others. Such contrary and conflicting stands taken by the appellant/plaintiff will make it clear that the appellant/plaintiff did not turn even a single stone towards completion of transaction for more than six years. The cumulative effect of the aspects discussed above leads to the inescapable conclusion that the appellant/plaintiff has not proved that he has been ready and willing to perform his part of the agreement for sale, ever since the date of agreement till the date of filing of the suit and that on the other hand the respondents, on preponderance of probabilities, have proved the absence of readiness and willingness on the part of the appellant/plaintiff for more than three years from the date of the suit sale agreement. The courts below, on proper appreciation and re-appreciation of evidence and applying the correct principles of law, rendered a concurrent finding that the appellant/plaintiff failed to prove his readiness and willingness as contemplated under Section 16-C of the Specific Relief Act, 1963 and that hence the appellant/plaintiff was not entitled to the relief of specific performance. The said concurrent findings of the Courts below do not suffer from any defect or infirmity warranting interference by this Court. Accordingly, the first substantial question of law is answered in favour of the respondents holding that the Courts below have not committed any error in rendering a finding that the appellant/plaintiff was not willing to perform his part of the obligations under the agreement.

30. The learned lower appellate Judge made an observation to the effect that the appellant/plaintiff did not even deposit the balance sale consideration into Court when he filed the suit and chose to pay the amount belatedly after the lapse of five years from the date of filing of the suit and that the same would also show that the appellant/plaintiff was not ready and willing to perform his part of the contract. Of course, the failure to deposit the balance sale consideration into Court while filing the suit for specific performance shall be one among several factors to be considered by the Court as to whether the appellant/plaintiff was ready and willing to perform his part of the contract and the same cannot be the sole ground on which he could be held to be not ready and willing to perform his part of the obligations under the contract. Though the learned lower appellate Judge would have referred the said aspect in his judgment in the appeal, a proper reading of the judgment will show

that the same is one among several reasons leading to the conclusion that the appellant / plaintiff failed to prove his readiness and willingness to prove his part of the obligations under the suit agreement for sale. It is not enough that the plaintiff, in a suit for specific performance, proves his readiness and willingness on the date of filing of the suit and subsequent to the date of filing of the suit. It is mandatory that the plaintiff should plead and prove that either he had performed the entire obligations under the agreement for sale or that he has been ever ready and willing right from the date of agreement to perform his part of the obligations under the agreement for sale. In the case on hand, after traversing the entire evidence showing inaction on the part of the appellant/plaintiff for more than 6 years from the date of agreement, including the fact that the appellant/plaintiff failed to deposit the balance sale consideration soon after the filing of the suit, the lower appellate Court has come to the conclusion that the readiness and willingness on the part of the appellant/plaintiff as contemplated under Section 16-C of the Specific Relief Act had not been substantiated by him. The second substantial question of law has been formulated on a misconception that the lower appellate Court rendered a negative finding regarding the readiness and willingness on the part of the appellant/plaintiff solely based on the fact that he had not deposited the balance sale consideration at the time of filing of the suit. In fact it is not so. The lower appellate Judge has rendered such a finding after considering the totality of the evidence regarding the facts and circumstances of the case. Hence, this Court hereby holds that the second question formulated as substantial question of law does not arise for consideration in this appeal and accordingly, the second substantial question of law is answered.

31. In view of the findings rendered on the substantial questions of law on which the appeal came to be admitted, this Court comes to the conclusion that the Courts below did not commit any error in holding that the appellant/defendant was not entitled to the relief of specific performance as he had prayed for in the suit. This Court finds no reason to interfere with the same in this second appeal.

32. The appellant / plaintiff could have asked for an alternative relief of refund of the amount paid under the agreement with or without interest. Even in such a case, the respondents could have claimed that they were entitled to damages and adjustment of the said amount towards damages. Since the appellant/plaintiff did not make any such alternative prayer and the first respondent/first defendant has also failed to take such a defence, perhaps in view of the absence of the alternative prayer of refund of the amount paid under the agreement, the consideration of the question as to whether the appellant/plaintiff is entitled to the refund of the advance amount does not arise. Even during the course of hearing in the second appeal, the counsel for the appellant/plaintiff did not put

forth any argument that in case the prayer for specific performance directing execution of sale deed shall be negated, a decree for refund of the amount paid under the agreement should be granted. It shall be pertinent to note that besides failing to make such a prayer for alternative relief before the trial Court, the appellant/plaintiff failed to make such a prayer even before the lower appellate Court. Not even before this Court in the second appeal, he has chosen to make such a prayer for alternative relief. In the said circumstances, the question of directing refund of the amount paid under the agreement also does not arise.

33. For all the reasons stated above, this Court comes to the conclusion that there is no merit in the second appeal and the same deserves to be dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs in the second appeal.

34. In the result, the second appeal fails and the same is dismissed. The decree of the trial Court dated 24.01.2006 made in O.S.No.285 of 1996 as confirmed by the lower appellate Court by judgment and decree dated 14.03.2007 made in A.S.No. 45 of 2006 shall stand confirmed. There shall be no order as to costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

gpa

To

1. The Principal District Judge
Chengalpattu

2.The Subordinate Judge
Poonamallee

Copy to

The Section Officer
VR Section,
High Court, Madras

1 cc to M/s.M. Elayaraja, Advocate, Sr. 26664
1 cc to Mr.P. Seshadri, Advocate, Sr. 27763
2 ccs to M/s.R. Murali, Advocate, Sr. 27690

S.A.No.748 of 2008

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