

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.707 of 2015

M.Damodaran

...Appellant

Vs.

1.K.Mani

2.Kuppuamal

3.M.Senthilkumar

... Respondents

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 04.07.2014 made in A.S.No.3 of 2011 on the file of the II Additional District and Sessions Judge Vellore at Ranipet, Vellore District, reversing the Judgment and decree dated 30.01.2010 made in O.S.No.10/2006 on the file of Subordinate Judge, Ranipet, Vellore District.

For Appellant : Mr.K.Thangavelu

J U D G M E N T

The plaintiff is the appellant in a suit for specific performance, based on the agreement dated 27.01.2003. As per the agreement, the said suit schedule property was to be sold to the plaintiff for a sum of Rs.1,60,000/- and advance of Rs.1,50,000/- was paid to the defendants/respondents and the balance of Rs.10,000/- was to be paid at the time of registration and to execute and register the sale deed within three years period. The defendants had not come forward to execute sale deed. The plaintiff had also issued legal notice dated 07.12.2005. The Trial Court decreed the suit and on appeal by the defendant/respondent, the same was reversed by the Lower Appellate Court. The second appeal is directed against the same.

2. In a suit for specific performance, the plaintiff is expected to come to court with clean hands. In this case, out of Rs.1,60,000/-, the plaintiff claimed to have parted with Rs.1,50,000/- as advance and only Rs.10,000/- was due to be paid. Though the appellant/plaintiff as PW1 claimed that he was ready to perform his part of the contract there is no evidence to prove that he offered to pay Rs.10,000/- to the defendant in performance of his part of contract to execute the sale deed before the suit came to be filed. The legal notice was issued on 07.12.2005. The appellant as PW1 has also admitted that he was lending money to the second defendant and got executed two promissory notes dated 10.08.1999 marked as Ex.B1 and B2. When the plaintiff having parted with more than 90% of the sale consideration had not paid the balance of Rs.10,000/- till the date of filing of suit. There is no

reason forthcoming from the sole appellant/plaintiff for non payment of Rs.10,000/-. This lead the first appellate court to reverse the findings of the trial court as the plaintiff in a suit for specific performance should be ready willing to perform his part of contract throughout the term of the contract. As there is no evidence that he has been continuously ready and willing to pay the balance Rs.10,000/- and get the sale deed executed, the suit was rightly dismissed by the first appellate court by exercising the discretionary power.

3. In view of the forgoing reasons, this court finds no acceptable and convincing reasons to interfere with the judgment and decree of the first appellate court in dismissing the suit for specific performance and as such no question of law arises for consideration in this Second Appeal.

4. Hence, the Second Appeal is dismissed confirming the judgment and decree of the first appellate court. No costs.

nvi

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub-Assistant Registrar

To

1. The Subordinate Judge,
Ranipet
2. The II Additional District and
Sessions Judge Vellore at Ranipet,
Vellore District
3. The Section Officer,
V.R. Section, High Court, Madras.

+1 C.C. To MR.K.Thangavel, Advocate in SR.NO.48469

S.A.No.707 of 2015

SK(CO)

sd : 13/10/2015