

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 02.12.2016

Date of Verdict : 07.12.2016

CORAM

THE HONOURABLE DR. **JUSTICE G. JAYACHANDRAN**

S.A.No. 1776 of 2003
C.M.P.Nos. 16231 of 2003,
and 3153 of 2007

1. Lurthumary (died)
2. P.R.Santhana Devan
3. Emily Lawerence
4. P.R.Rathinasamy
5. P.R.Duraisamy
6. Jayamary Irudayaraj
7. Alashia
8. C.R.Reena Mary

(Appellants 2 to 8 brought on record as LR's of the deceased sole appellant vide order of Court dated 02.12.2016 by GJJ made in C.M.P.No.20800 of 16 in S.A.No.1776 of 2003)

...Appellants

Vs.

M.Vijaya

...Respondent

Prayer:- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 23.06.2003 and made in A.S.No.43 of 2002 on the file of the Principal District Judge, Vellore confirming the Judgement and Decree dated 22.02.2002 and made in OS.No.433 of 1992 on the file of the Sub Court, Vellore.

For Appellants : Mr.K.P.Gopalakrishnan

For Respondent : Mr.T.R.Rajaraman

JUDGMENT

The first appellant in this second appeal is the defendant who suffers decree in the suit for specific performance. Against the concurrent judgment, this appeal is filed raising certain substantial question of law.

2. The brief facts leading to this appeal are as under:- The plaintiff and the defendant entered into an agreement of sale on 23.10.1991 in respect of the suit schedule property. The total sale consideration was fixed at Rs. 62,000/-. Advance of Rs 25,000/- paid and one year period for payment of balance consideration and to complete the sale was agreed upon by both the parties. While plaintiff was ready and willing to perform her part of contract, the defendant was not ready. The plaintiff issued notice on 3.10.1992 but the defendant did not respond. Hence suit filed on 20.10.1992

3. The defendant contested the suit on the ground that the suit property is a joint family property. She is not competent to enter upon a sale agreement in respect of the suit property based on the settlement deed dated 16.5.1975 by one Chinnappa Naidu which was not acted upon. Further, the she sign the deed under the impression that it is a lease deed

in favour of the plaintiff's husband in respect of her property. The document was not read over and explained to her. On receipt of the plaint copy she came to know about the fraud committed by the plaintiff's husband. The sale consideration shown in the sale agreement is very less and the real value of the property runs to several lakhs.

4. The trial court, after considering the oral and documentary evidences namely PW-1, PW-2 and DW-1, Ex.A-1 to Ex.A-3, rejected the defence and allowed the suit. The first appellate court confirmed the trial court judgment and dismissed the appeal.

5. This court on second appeal has formulated the following substantial question of law:-

- 1. Whether the lower court is right in decreeing the suit without even discussing the readiness and willingness of the plaintiff ?*
- 2. Whether the lower appellate court is right in holding that the plaintiff was ready and willing, in view of the decision reported in 2003 (1) MLJ 501 and AIR 1995 (SC) 945 ?*

6. The learned counsel for the appellant reading out the deposition of the plaintiff, the pleading and the legal notice contented that, the plaintiff has not made a specific plea of readiness and willingness and

also failed to prove the same. In support of his submission judgments which has held that, under Section 16(c) of the specific relief Act, readiness and willingness has to be pleaded and proved.

7. Per contra, the learned counsel for the respondent pointing out the relevant portions of the pleadings, evidence and discussion of the courts below on readiness and willingness submitted that, these are all question of facts which has been discussed thoroughly by the courts below and concurrently held in favour of the plaintiff. At the second appeal stage no substantial question of law arise in this case, for this court to interfere under Section 100 CPC .

8. **Substantial question of law (1)** : The trial court based on the pleadings, has framed five issues. Out of these five issues the third and fourth issues are : " Whether the plaintiff was ready to perform her part of contract? And Whether the plaintiff is entitle for the relief of specific performance? The trial court has held these two issues in affirmative after assessing the sale agreement Ex.A-1 dated 23.10.1991, the pre suit notice Ex.A-2 dated 3.10.1992, the oral evidence of the plaintiff.

9. Before the Lower Appellate court, five points were formulated for consideration and one of the point was whether the respondent/plaintiff is ready and willing to perform his part of contract? After due discussion the appellate court has confirmed the trial court judgment and held this point in favour of the plaintiff.

10. It is pertinent to point at this juncture, that the defendant in her written statement has first questioned her own title over the property and locus to execute the sale agreement, next she has pleaded fraud and misrepresentation by the plaintiff's husband at the time of executing the sale agreement. Lastly her defence was that the plaintiff was not ready and willing to perform her part of contract. The courts below after due consideration and discussion has held unanimously that the defendant has title to convey the property, the sale agreement is not vitiated by fraud or misrepresentation and the plaintiff was ready and willing to perform her contract. This court finds adequate discussion by the courts below on readiness and willingness which is sufficient to arrive at the right conclusion.

11. **Substantial question of law (2) :2003 (1) MLJ 501 and 1995 (SC) 945** In the first cited case, the Hon'ble High Court has held that

the vendor against whom the specific performance sought had no title over the property coupled with the fact that the first respondent not proved the readiness and willingness in unequivocal terms. In second cited case, the Hon'ble Supreme Court has held that, the continuous readiness and willingness at all stages from the date of the agreement till the date of the hearing of the suit need to be proved. The substance of the matter and surrounding circumstances and the conduct of the plaintiff must be taken into consideration in adjudging readiness and willingness to perform the plaintiff's part of contract.

12. In the light of the observations made by the courts in the above two judgments, in this case though the defendant has taken a stand that she does not have a title to enter upon the sale agreement, she has not substantiated this. Court has disbelieved her plea and rejected the defence. In fact such a false plea actually strengthen the case of the plaintiff who has avered that she was ready and willing to perform her part of contract but the defendant was evading. This has forced her to issue notice dated 03.10.1992 followed by the suit for specific performance.

13. As pointed out by the Supreme Court it is the conduct and circumstances which has to be taken note for adjudicating readiness and

willingness. It is not necessary to jingle the coins before the party or before the court. A bonafide expression is sufficient. The courts below after cumulative assessment of the plaintiff evidence has satisfactorily concluded that the plaintiff has established readiness and willingness.

14. In this case, as per the terms of the agreement, the buyer has to pay the balance sale consideration within one year and get the sale completed. The date of agreement is 23.10.1991 whereas the suit notice calling the defendant to execute the sale is dated 3.10.1992 which is well within the one year period prescribed for completion of contract. Neither the law nor precedents mandates that the day on which the agreement entered, the buyer must be ready with full sale consideration. What is required and expected is that, the buyer must be read to perform his or her part of contract before the date prescribed for completing the contract

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and it must be expressed unequivocally. Both the requirements are fully complied by the plaintiff. Therefore the relief of specific performance has been rightly granted. No merit in the appeal to interfere the concurrent finding of the courts below.

15. Hence second appeal dismissed. No order as to costs.

07.12.2016

Index :Yes/No

To

1. The Principal District Judge, Vellore.
2. The Sub Court, Vellore.

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S.A.No. 1776 of 2003
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