

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

S.A.No.343 of 2017

&

C.M.P.Nos.8114 & 8115 of 2017

P.Sulochana

... Appellant/Plaintiff

Versus

P.S.A.Raju [Died]
rep.by LR Arul Rathinam [died]

... Respondent/Defendants
1 & 2

[impleaded as per order
in IA No.997/2011 dated 10.10.2011]

Metilda

[Impleaded as per order in
IA.No.839/2014 dated 04.03.2016]

... Respondent 3/Respondent No.1

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree passed in A.S.No.5 of 2013 dated 03.01.2017 on the file of the Principal District Judge, Kancheepuram District @ Chengalpattu, confirming the Judgment and Decree of the Subordinate Judge, Tambaram made in O.S.No.375 of 2010 dated 31.10.2012 (Formerly O.S.No.175 of 2003 on the file of the Sub Court, Chengalpattu as transferred as O.S.No.414 of 2004 on the file of the Fast Track Court, Chengalpattu.)

For Appellant : Mr.R.Thiagarajan

WEB COPY
JUDGMENT

The appellant who was unsuccessful before the Courts below, is the appellant herein.

2. The facts leading to the filing of this Second Appeal, briefly narrated, are as follows. For the sake of convenience, the array of parties as referred to by the Trial Court, is adopted here also.

[a] The appellant / plaintiff would state that the defendants are the absolute owners of the house with ground and first floors in Plot No.42, Vasuki Street, Thirumalai Nagar, Sembakkam Village, comprised in S.No.1/3, Tambaram Taluk, Kancheepuram District, admeasuring to an extent of 2400 sq.ft. with buildings in ground and first floors and they approached the plaintiff and offered to sell the said property and it was also accepted by the plaintiff. The sale consideration was fixed at Rs.5,31,000/- and a sum of Rs.2,00,000/- was paid by way of advance and a Sale Agreement dated 19.06.1997 came into being [Ex.A1]. As per the terms of Ex.A1-Agreement of Sale dated 19.06.1997, six months time was fixed to complete the sale transaction and one of the conditions was that the defendants have to produce the sanctioned building plan for the premises for the reason that the plaintiff was working as Superintendent in the Adi Dravidar Welfare Department and for the purpose of availing housing loan from the employer, she has to produce the sanctioned plan.

[b] The plaintiff would further aver that at the request of the plaintiff, the defendants had executed another Sale Agreement dated 30.06.1997 [Ex.A.4] which was signed by the defendants on 07.07.1997 in respect of the very same suit property fixing the sale consideration at Rs.3,00,000/- and an advance of Rs.5000/- was also fixed and the said Agreement also expired on 07.01.1998 and prior to the said expiry of 19.12.1997, the plaintiff had sent a reminder to the defendants calling upon them to give the sanctioned plan in respect of the first floor and though the plaintiff had contacted the defendants, they failed to produce the approved plan and in this regard, she has also made very many attempts ; but her efforts proved to be futile.

[c] It is also stated by the plaintiff that she has also sent a letter dated 24.12.1998 to the defendants bringing to their knowledge about the said fact and the defendants had sent a letter dated 20.02.1998 calling upon the plaintiff to pay a sum of Rs.25,000/- to obtain the sanctioned plan and also undertook to produce the same by 20.03.1998 and however, they handed over the Xerox copy of the sanctioned plan in respect of the first floor during third week of March 1998 to enable her to submit before her employer for the purpose of availing housing loan and the defendants also promised to bring the original sanctioned plan in respect of the first floor and the said fact was also confirmed by them vide letter dated 27.03.1998.

[d] Subsequently, the plaintiff met the defendants at Trichy on 26.04.1998 and on that day, the defendants demanded a sum of Rs.85,000/- from the plaintiff and the plaintiff along with the letter, sent two Demand Drafts for a sum of Rs.50,000/-

and Rs.35,000/- respectively drawn on Lakshmi Vilas Bank and State Bank of India, Chennai dated 09.05.1998 and 12.05.1988 respectively and due to inadvertence and oversight, the name of the vendor has been wrongly mentioned and taking advantage of the same, the defendants vide letter dated 13.05.1998, had returned the said Demand Drafts and also directed the plaintiff to meet them in person. It is the specific case of the plaintiff that despite the promise made by the defendant to produce the original sanctioned plan in respect of the first floor, they did not do so and on account of the non-production of the sanctioned plan and the delaying tactics adopted by the defendants, the loan application submitted by the plaintiff has not been processed and sanctioned.

[e] The plaintiff, left with no other alternative, sent a legal notice dated 07.06.1998 calling upon the defendants to produce the original sanctioned plan and to proceed further with the sale transaction pursuant to the Agreement of Sale and the defendants, taking an untenable stand, sent a reply/legal notice on 09.06.1998, unilaterally cancelling the Agreements of Sale dated 19.06.1997 and 30.06.1997 respectively and also returned the sum of Rs.2 lakhs paid by way of advance through the cheque dated 09.06.1998, drawn on Central Bank of India, Kodambakkam Branch, Chennai-24. The plaintiff, in response to the same, sent a reply dated 20.06.1998 through her Advocate and along with the said reply, has returned the cheque for a sum of Rs.2 lakhs for which the defendants sent a rejoinder dated 26.06.1998, again sending back the cheque for a sum of Rs.2 lakhs.

[f] The plaintiff once again sent a notice dated 06.07.1998 calling upon the defendants to produce the original sanctioned plan and also to make the available to complete the formalities of registration in pursuant to the Agreement of Sale and also returned the cheque for a sum of Rs.2 lakhs sent by the defendants and it was refused to be received by them. The plaintiff sent another notice dated 14.10.1998 calling upon the defendants to execute and register the Sale Deed in her favour and thereafter, the defendants filed OS.No.4090/1998 on the file of the learned 14th Assistant Judge, City Civil Court, Chennai, on 01.07.1998 against the plaintiff to declare the Agreements of Sale dated 19.06.1997 and 30.06.1997 respectively, as terminated due to non-performance and also for return of the original documents and other documents and they also filed OS.No.60/1999 on the file of the District Munsif, Tambaram, against the plaintiff and the said suits are being contested by her. Thus, the plaintiff took a stand that despite her readiness and willingness to perform her part of obligation under the Agreement of Sale dated 19.06.1997 [Ex.A.1], the defendants did not come forward to perform their part of obligation and adopted

delaying tactics and would further aver that in part performance of Agreement dated 19.06.1997 executed on 20.06.1997, she was also put in possession and though efforts have been made by the henchmen of the defendants to forcibly take back the possession of the first floor, the plaintiff managed to hold the possession of the suit property and therefore, came forward to file the suit for specific performance and also for permanent injunction.

[g] The 1st defendant filed the written statement refuting the averments made in the plaint and would state that the wife of the 1st defendant had purchased the suit property under a registered Sale Deed dated 05.09.1970 bearing Doc.No.2310/1970 and after her death, the defendants 1 and 2 became the owners by inheritance and the suit property is a house and site having ground and first floors and the said constructions were completed prior to the year 1997. The defendants would further aver that the Agreement of Sale came into being between the plaintiff and the defendants on 19.06.1997, wherein the plaintiff had agreed to purchase the said property for a sum of Rs.5,31,000/- and also paid a sum of Rs.2,00,000/- by way of advance and agreed to pay the balance sale consideration of Rs.3,31,000/- within a period of six months and denied the averment that the plaintiff has been put in possession of the property.

[h] It is further averred by the 1st defendant that the plaintiff was very well aware of the fact that the first floor was unapproved and unauthorised and was ready to purchase the suit land, ground and building with unapproved first floor and since the loan could not be sanctioned by the Government in respect unapproved building, the plaintiff requested them to enter into one more Agreement of Sale dated 30.06.1997 in respect of very same property for a lesser sale consideration of Rs.3,00,000/- and a sum of Rs.5,000/- was also paid as advance in respect of the Sale Agreement. According to the defendants, the subsequent Agreement dated 30.06.1997 came into being in order to facilitate the plaintiff to obtain housing loan and not for any other purpose and therefore, it is a non est one. The defendants would further aver that the time stipulated under the Agreement dated 19.06.1997 [Ex.A.1] came to an end on 18.12.1997 and the defendants had also issued a Lawyer's Notice dated 09.06.1998 cancelling the said agreement and also returned the sum of Rs.2 lakhs paid by the plaintiff by way of advance through a cheque and insofar as the stand taken by the plaintiff that she had paid a sum of Rs.85,000/- by way of two Demand Drafts dated 09.05.1998 and 12.05.1998 is concerned, it is the stand of the defendants that the appellant/plaintiff had deliberately put the wrong names of the vendors/defendants in the Demand Drafts to avoid agreement.

[i] The defendants would further aver that they have also filed OS.No.4090/1998 on the file of the learned 18th Assistant Judge, City Civil Court, Chennai, to declare that the Agreements of Sale dated 19.06.1997 and 30.06.1997 as terminated, incapable of performance and though the present plaintiff had entered appearance in the said suit ; she did not contest the same and it was decreed exparte on 25.09.2001. The defendants also took a stand that the suit for specific performance filed, is not only barred by limitation but also hit by the principles of res judicata and they have also filed another suit in OS.No.60/1999 before the District Munsif, Tambaram, stating that the plaintiff and her henchmen made an illegal attempt to trespass into the suit property and the said suit was also decreed against the plaintiff on 12.10.2001. The defendants would further state that they also filed another suit for possession in OS.No.403/2003 on the file of the Court of Principal Subordinate Judge, Chengalpattu and the same is pending and therefore, prays for dismissal of the suit.

[j] The Trial Court, based on the pleadings, had framed the following issues:-

[a] Whether the plaintiff is entitled to the specific relief as prayed for? ;

[b] Whether the suit is barred by limitation? ; and

[c] To what other relief, the plaintiff is entitled to?

[k] During the course of trial, the plaintiff examined herself as P.W.1 and examined one Prabju as P.W.2 and marked Exs.A.1 to 56. The 1st defendant examined himself as D.W.1 and no documents were marked.

[l] The Trial Court, on a consideration of the pleadings and appreciation of oral and documentary evidences, had dismissed the suit vide judgment and decree dated 31.10.2012 and aggrieved by the dismissal of the suit, filed an appeal in AS.NO.5/2013 on the file of the Court of the Principal District Judge, Chengalpattu.

[m] The Lower Appellate Court, on going through the Grounds of Appeal, framed the following points for determination:-

[1] Whether the suit is in time? ;

[2] Whether the plaintiff is entitled to the relief of specific performance? ; and

[3] Whether the appeal deserves to be allowed?

[n] The Lower Appellate Court in paragraph No.18 of the Judgment, has noted the fact that though the plaintiff would

claim that subsequently, Ex.A.4 [Agreement of Sale] came into being as a suit for specific performance only based upon Ex.A.1 dated 19.06.1997 and however, in the pleadings, she has also relied upon Ex.A4 for the purpose of limitation.

[o] The Lower Appellate Court has noted the fact that the said suit was filed on 22.12.2000 and Ex.A.1 - Agreement of Sale was executed on 19.06.1997 ; but it was signed on 20.06.1997 and the time was fixed at six months and the said time expired on 20.12.1997 and found that from that date, if three years is added for the purpose of limitation, the suit ought to have been filed on or before 20.12.2000 and admittedly, the suit has not been filed with the time stipulated under Ex.A.1.

[p] The Lower Appellate Court has also took note of the plea made by the appellant / plaintiff that the limitation is extended by virtue of Ex.A.4 and taken into consideration the admission made by P.W.1 [vernacular version is translated] which reads as follows:-

".....Before availing loan, it is not correct to state that I am aware of the eligibility. Having aware of the fact that I am entitled to a sum of Rs.3 lakhs by way of eligibility, for the purpose of entering into another agreement, I approached the first defendant and he has signed the second Agreement dated 07.07.1997. The said agreement has been obtained only for the purpose of availing loan and not for any other purpose."

[q] The Lower Appellate Court has also taken note of the said admission and found that Ex.A.4 came into existence to help the plaintiff to generate funds for the purpose of availing loan from her office and it is not intend to be performed or enforced by both parties and also noted that Exs.A1 and A4 are in respect of the same property and the sale consideration under Ex.A.1 is for a sum of Rs.5.31 lakhs and whereas, under Ex.A.4, it has been fixed for a sum of Rs.3 lakhs and that too, within one month from the execution of Ex.A.1 and therefore, found that Ex.A.1 is only a formal document to facilitate the plaintiff to avail loan and to get necessary permission and therefore, it cannot come to the aid of the plaintiff to save the period of limitation and found that the Trial Court has rightly reached the conclusion that the suit is barred by limitation.

[r] The Lower Appellate Court has also considered the plea of readiness and willingness on the part of plaintiff to perform her part of contract and found that the defendants had returned the advance amount of Rs.2 lakhs to the plaintiff and having

refused the same, the suit ought to have been filed within the period of limitation and found that the plaintiff has failed to approach the Court with clean hands.

[s] The Lower Appellate Court found that the loan applied by the plaintiff has not been sanctioned by her Department and even at the time of filing the suit also, she did not deposit the balance sale consideration and at the time of presenting the plaint, she has not even affixed sufficient stamps on the plaint. The Trial Court has also noted the fact that at the time of filing the suit on 22.12.2000, Court fee to the tune of Rs.2000/- alone has been affixed by the plaintiff and the plaint was returned on 02.01.2001 for making good the deficit court fee and two weeks time was granted for that purpose and however, the plaintiff has not even taken due care to file the suit with sufficient court fee within the time ; on the other hand, the plaint was represented merely after two years, i.e., on 17.04.2003 and even at the time of representation, the deficit court fee has not been paid and once again, the plaint was returned and represented on 02.06.2003, wherein the deficit court fee of Rs.17,325/- has been paid and the delay in payment of the deficit court fee has been condoned and the Lower Appellate Court, taking note of the above fact, has held that the above conduct of the plaintiff would go to show her financial capacity to perform her part of contract and therefore, it also creates an adverse inference against her about her readiness and willingness to perform her part of contract.

[t] The Lower Appellate Court has also noted that Ex.A.1 - Agreement of Sale dated 19.06.1997, signed on 20.06.1997 and Ex.A.2 dated 19.12.1997 is the first letter on the verge of the expiry of time limit fixed for performance under Ex.A.1, wherein the plaintiff has requested for approved plan for the first floor for which, Ex.A.3 - reply has been given by the defendants and Exs.A.6 to A.8 would go to show that there was delay in getting the approved plan for the first floor of the suit property and thereafter, notices were exchanged between the parties and on 09.06.1998, the defendants sent a notice indicating that the plaintiff has no inclination to perform her part of obligation and accordingly, sent a cheque for a sum of Rs.2 lakhs, returning the advance amount paid by the plaintiff and even after the receipt of the said notice, the plaintiff did not choose to file the suit and also taken into consideration the admission on the part of the plaintiff / P.W.1 in her cross-examination [vernacular version is translated], which reads thus:-

“At the time of entering into the Agreement of Sale, it is correct to state that I did not have full sale consideration On 12.05.1998, for Rs.85,000/-, I sent two cheques and it is

incorrect to state that since I am not having full sale consideration, I have sent a sum of Rs.85,000/-. The legal notice dated 20.06.1998 if given, is not correct."

[u] The Lower Appellate Court has recorded the factual finding that the agreement was of the year 1997 ; but the plaintiff is unable to generate the funds may be for the reason that the loan has not been sanctioned in time and subsequently, very many litigations has also emanated and under such circumstances, the readiness and willingness on the part of plaintiff to perform her obligation, has not been proved.

[v] Insofar as the refund of the advance amount is concerned, the Lower Appellate Court found that for refund of advance amount, the limitation period is fixed as twelve years, as per the ratio laid down by this Court in the decision reported in 2016 [6] CTC 740 [P.Muthusamy Vs. K.Arumugham and others] and found that though the suit has not been filed within three years, it is competent to Decree for refund of advance amount paid under Agreement of Sale [Ex.A.1] and due to non-performance, the defendant has not been put to loss ; but on the other hand, due to increase in price, he has been benefited and granted a decree for a sum of Rs.2 lakhs with interest at the rate of 9% per annum from the date of plaint till the date of realisation. The Lower Appellate Court, citing the said reasons, has dismissed the Appeal Suit vide impugned judgment and decree dated 03.01.2017 and challenging the legality of the same, the present Second Appeal is filed.

3. In the Memorandum of Grounds of Second Appeal, the following substantial questions of law are raised by the appellant:-

(a) Whether the conclusion reached by the Trial Court as well as the Appellante Court that time shall be the essence of the Agreement for Sale entered into between the Appellant/Plaintiff and the original Defendant (since deceased) in respect of the immovable property, is sustainable in law in the absence of surrounding circumstances to establish the said fact?

(b) since the contract being conditional contract, on the happening of the event viz., production of the original sanctioned plan by the Vendor, time for performance of the contract shall not commence or run until the production of approved Sanctioned Original Plan by the

Vendor and, in such circumstances, whether the conclusion reached by the Trial Court, as confirmed by the lower Appellate Court that the suit is barred under Article 54 of the Limitation Act is sustainable in law?

(c) Whether the conclusion of the Trial Court as well as the lower Appellate Court that the suit agreement is barred in law, is sustainable and tenable in law?

(d) Whether the time-frame has been waived by the original vendor Defendant-1 on account of his failure to produce the original sanctioned plan in respect of the suit schedule mentioned property?

(e) Whether the conclusion reached by the Trial Court, as confirmed by the Appellate Court, that the suit agreement is barred in law is sustainable and tenable in law despite the fact that the suit was originally laid on 22-12-2000 on the file of Sub Court, Poonamallee, which was subsequently transferred to Principal District Court, Chengalpattu, and numbered as O.S.No.175 of 2003, and subsequently transferred to the Fast Track Court, Chengalpattu and numbered as O.S.No.414 of 2004?

(f) Whether the time-frame has been waived by the original Vendor-Defendant-1 on account of his failure to produce the original sanctioned plan in respect of the suit schedule mentioned property?

(g) Whether the conclusion reached by the Trial Court as confirmed by the Appellate Court that the suit for specific performance is barred in law under Section 54 of the Limitation Act, despite the dismissal of the suit filed by the original Defendant in O.S.No.403 of 2003, when it operates as constructive res judicata?

(h) Are the Courts below right in holding that the suit for specific performance is barred in law, despite the suit having been filed by the Appellant/Plaintiff on 22-12-2000 after Ex.A-12 dated 09-06-1999 on the file of the Subordinate Judge, Poonamallee, in S.R.No.6431/2000 and subsequently transferred to the file of

the Subordinate Judge, Chengalpattu, on account of territorial Jurisdiction and numbered as O.s.No.175/2003 on 27-06-2003 and subsequently transferred to the Fast Track Court, Chengalpattu and renumbered as O.S.No.414 of 2004, later transferred to Sub Court, Tambaram and renumbered as O.S.No.375 of 2010?

(i) Whether, the Appellate Court is justified in order refund of Rs.2,00,000/- with interest at 9% per annum, whereas the entire sale consideration of Rs.5,31,000/- have been paid and remitted by the Appellant to the original Vendor and balance sum of Rs.3,31,000/- remitted to the credit of the suit?"

4. Mr.R.Thiagarajan, learned counsel appearing for the appellant / plaintiff would contend that the Courts below have not appreciated the oral and documentary evidences in proper perspective and though the respondents / defendants are under obligation to produce the sanctioned plan in respect of the first floor, the fact remains that it has not been produced and as a consequence, the appellant / plaintiff who was an employee of Adi Dravidar Welfar Department, was not able to avail the loan for want of such a document and in the light of the said un-controverted fact, it cannot be said that the plaintiff was not ready and willing to perform her part of obligation. Insofar as the issue of limitation is concerned, it is the submission of the learned counsel for the appellant / plaintiff that though the defendants returned the sum of Rs.2 lakhs, through another communication, it has been returned back to them and despite the fact that the appellant / plaintiff was always ready and willing to perform her part of obligation, the defendants have resiled from the terms of Ex.A.1 - Agreement of Sale on account of the fact of increase in price of the property.

5. The learned counsel appearing for the appellant / plaintiff would further contend that the Trial Court has ordered refund of the sum of Rs.2 lakhs paid by way of advance with interest @ 9% per annum and a sum of Rs.3.31 lakhs was deposited on 16.07.2007 and it was also one of the factors exhibiting the readiness and willingness on the part of the plaintiff to perform of her part of obligation and in any event, the Lower Appellate Court ordered refund of entire sale consideration paid by the plaintiff with interest and prays for interference.

6. This Court paid its anxious consideration and best attention to the submission made by the learned counsel appearing for the appellant / plaintiff and also perused the impugned judgments passed by the Courts below.

7. It is a well settled of law that despite the fact that the plaintiffs/ Agreement Holder fulfills the necessary ingredients for getting a decree for specific performance, still it is a discretionary remedy and this Court, in the light of the submissions made by the learned counsel for the appellant / plaintiff, has to see [1] whether the suit is filed on time ? And [2] whether the appellant / plaintiff is always ready and willing to perform her part of obligation?

8. The Courts below had recorded concurrent findings, negating the claim of the plaintiff.

9. Ex.A-1 [Agreement of Sale] is dated 19.06.1997 and the sale consideration was fixed for a sum of Rs.5.31 lakhs and the time for performance was six months. The plaintiff who was a Government servant, even at the time of entering into the Agreement of Sale, was very well aware of the fact that in respect of the first floor of the suit premises, it was an unapproved construction and was unauthorised and despite the said fact, she had entered into an Agreement of Sale with an understanding that the defendants have to produce the approved plan in respect of the first floor.

10. The plaintiff having become aware of the fact that there may be some delay in getting the approved plan, has entered into another Agreement of Sale under Ex.A.4 dated 30.06.1997 in respect of the very same property wherein the sale consideration was considerably reduced to Rs.3 lakhs from Rs.5.31 lakhs and also claims to have paid an advance of Rs.5,000/-. This Court, while narrating findings recorded by the Lower Appellate Court has also extracted the vernacular portion of the evidence of the appellant / plaintiff who was examined as P.W.1, wherein she has admitted that the said Agreement came into being only for availing loan and not for any other purpose. It is also pertinent to point out at this juncture that the suit for specific performance has been filed only on the basis of Ex.A.1-Agreement of Sale dated 19.06.1997 and not in respect of Ex.A.4 - another Agreement of Sale dated 30.06.1997.

11. The first Agreement of Sale came to an end on 18.12.1997 and there were series of correspondences and the defendants having found that the plaintiff was not ready and willing to perform her part of obligation, returned the advance amount of Rs.2 lakhs and it was once again returned to the defendants by the plaintiff.

12. The Lower Appellate Court has noted the fact that on receipt of the defendants' Notice dated 09.06.1998, the

plaintiff, in any event, ought to have filed the suit within a period of three years from the date of receipt of the notice, which came to an end by 08.06.2001 and in the interregnum, the defendants had also filed a suit in OS.No.4090/1998 on the file of the learned 14th Assistant Judge, City Civil Court, Chennai, to declare that the Agreements of Sale dated 19.06.1997 [Ex.A.1] and 30.06.1997 [Ex.A.4] respectively came to be terminated and the said suit came to be decreed ex-parte on 25.09.2001.

13. The defendants had also filed one more suit in OS.No.60/1999 before the Court of the District Munsif, Tambaram, alleging that the plaintiff with the help of henchmen, made attempts to illegally trespass into the suit property and the said suit was also decreed on 12.10.2001 and the defendants thereafter, filed one more suit in OS.No.403/2003. It is brought to the knowledge of this Court that though the suit in OS.No.4090/1998 came to be decreed exparte on 25.09.2001, it was restored and subsequently, it was dismissed on 06.06.2006, as evidenced under Ex.A.49.

14. The Lower Appellate Court, on a perusal of the case papers, found that at the time of presentation of the plaint on 22.12.2000, the appellant / plaintiff did not pay the proper and sufficient court fee and she has paid only a sum of Rs.2000/- and the plaint has been returned on 02.01.2001 for payment of deficit court fee and two weeks time was granted by the Trial Court to comply with the same. However, the plaintiff did not take care to pay the deficit court fee on time and in fact, presented the plaint nearly after two years from the date of return and that too, on 17.04.2003 and even at the time of representation, the deficit court fee has not been paid and after complying with the defects, once again, it was represented on 02.06.2003 and only at that time, the deficit court fee of Rs.17,325/- has been paid. Though the delay in payment of the deficit court fee has been condoned and the plaint has been taken on file and numbered, the fact remains that the plaintiff was not in a position even to pay the Court fee at the time of presenting the plaint and nearly after three years only, she was able to pay the entire court fee and thereafter only, the suit came to be numbered. The Lower Appellate Court has also taken note of the said instance, as to the readiness and willingness on the part of the plaintiff to perform her part of obligation and noted that she was not having enough financial capacity to go through the sale transaction under Ex.A.1.

15. It is also to be noted at this juncture that the suit in OS.No.175/2003 was transferred to the file of the Subordinate Court at Tambaram and renumbered as OS.No.375/2010 and though it was pending for nearly four years and though it was originally filed and pending on the file of the Sub Court, Poonamallee, for

nearly three years, the balance sale consideration of Rs.3.31 lakhs was deposited only on 16.07.2007. Thus, this Court is of the considered view that the plaintiff was never willing to perform her part of obligation and she has not exhibited her readiness and willingness to do so.

16. The Lower Appellate Court has also noted that from the date of receipt of the defendants' notice dated 09.06.1998 [Ex.A.12], wherein they have refunded the advance amount of Rs.2 lakhs on the ground that the plaintiff was not ready and willing to perform her part of contract, they ought to have filed the suit at least prior to that date and though the plaintiff claim that the limitation is saved under Ex.A.4, the fact remains that as per her own version as P.W.1, she has admitted that Ex.A.4 came into being only for the purpose of availing loan and not for any other purpose and therefore, the Trial Court has rightly reached the conclusion that the said Agreement cannot be pressed for the purpose of saving the limitation. Even otherwise, the plaintiff has not exhibited her readiness and willingness to perform her part of contract and the facts narrated about would also disclose that she did not possess enough financial capacity to go through and complete the sale transaction.

17. The findings rendered by the Trial Court, in the considered opinion of the Court, are based upon thorough consideration and proper appreciation of oral and documentary evidences and whatever substantial questions of law raised in this second appeal, have been answered by the Courts below. It is also to be noted at this juncture that in the light of the factual circumstances and the conduct on the part of the appellant / plaintiff, she is not entitled to the decree for specific performance and the Courts below had rightly reached the conclusion to negative the said relief.

18. This Court, on an independent application of mind to the entire materials is of the considered view that there is no error or infirmity or perversity attached to the findings rendered by the Trial Court in negating the claim made by the plaintiff for specific performance of Ex.A.1-Agreement of Sale dated 19.06.1997 and finds no merit in the Second Appeal.

19. In the result, the second appeal is dismissed at the admission stage confirming the judgments and decrees passed by the Courts below. No costs.

20. In the light of the submission made by the learned counsel for the appellants / plaintiff that the plaintiff has deposited Rs.3.31 lakhs, it is opened to the plaintiff to approach the Lower Appellate Court, either by way of filing a review or by filing a petition under section 152 of the Code of

Civil Procedure to get the refund of the said amount and as and when such a petition is filed and if the papers are otherwise in order, the Lower Appellate Court may entertain the same and give a disposal in accordance with law as expeditiously as possible. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Subordinate Judge,
Tambaram.
2. The Principal District Judge
Kancheepuram District @ Chengalpattu.

Copy to:

1. The Section Officer
VR Section, High Court,
Madras.
2. Metilda,
W/o.Arul Rathinam,
B-14, Arul Nivas,
Razaram Colony,
Kodambakkam, Chennai 024.

+2cc's to Mr.R.Thiagarajan, Advocate, S.R.No.40586

S.A.No.343 of 2017

MP(CO)
CA(23/08/2017)

WEB COPY