

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2017

PRONOUNCED ON : 27.06.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

C.S.No.200 of 2011

D.Sangupathi ... Plaintiff

Vs.

D.Suriyan ... Defendant

For Plaintiff : Mr.R.Murali
for M/s.K.Venkatachalam

For Defendant : Mr.N.Thiagarajan
Senior Counsel
for G.N.Sridharan

JUDGMENT

Suit for specific performance and possession.

2. The averments contained in the plaint are briefly stated as follows:-

The suit property absolutely belonged to the defendant and the defendant approached the plaintiff and offered to sell the suit property

to meet out his family commitments and the plaintiff accepted the offer and both the defendant and the plaintiff agreed that the sale consideration should be Rs.1,05,00,000/- and the plaintiff paid a sum of Rs.50,000/- as an advance towards part of the sale consideration to the defendant on 22.01.2011 and on the same day, the agreement in writing was entered into between the plaintiff and the defendant in the presence of witnesses and the agreement had been hand written. As per the agreement above mentioned, the defendant had to execute the sale deed in respect of the suit property on or before 22.02.2011 in favour of the plaintiff after the receipt of the balance sale consideration. On 06.02.2011, the plaintiff and the defendant met in person and discussed the execution of the sale deed and to register the same on 07.02.2011. Since encumbrance certificate was not ready, the registration could not be carried out on 07.02.2011. Subsequently, as agreed between the plaintiff and the defendant, the date was fixed for the execution and registration of the sale deed in respect of the suit property on 09.02.2011. The plaintiff had drawn Demand Draft for a sum of Rs.28,40,000/- in favour of the defendant towards the part of the sale consideration and balance of Rs.76,10,000/- was kept by way of cash for the defendant and on that date, the plaintiff was waiting at Sub Registrar's office in Anna Nager

for registration. But, the defendant did not turn up for execution and registration. On 10.02.2011, the plaintiff sent a registered notice to the defendant along with the copy of the Demand Draft for Rs.28,40,000/- calling upon the defendant to execute sale deed in respect of the suit property as agreed, after the receipt of the balance sale consideration. The above said notice was returned with postal endorsement "door locked". In order to prove the readiness and willingness on the part of the plaintiff, she drew a Demand Draft dated 11.02.2011 drawn on Axis Bank for a sum of Rs.76,10,000/- in favour of the defendant apart from the Demand Draft of Rs.28,40,000/- and sent a telegram on 19.02.2011 to the defendant calling upon him to execute the sale deed and register thereof, without any further delay. But, the defendant has not responded to the plaintiff's request and evaded to perform his part of the obligation. The plaintiff has always been ready and willing to perform her part of the contract by paying the entire balance sale consideration. On the other hand, the defendant had refused to fulfill his part and on the other hand, he is trying to dispose of the suit property in favour of the third parties. Hence, left with no other alternative, the plaintiff has been necessitated to lay the suit for appropriate reliefs.

3. The averments contained in the written statement filed by the defendant are briefly stated as follows:

The suit is not maintainable either in law or on facts. The defendant is the owner of the suit property. It is false to state that the defendant approached the plaintiff and offered to sell the suit property. It is only the plaintiff, through her husband R.P.Dharmalingam, who had voluntarily approached the defendant with the proposal for buying the property and they had been residents of the same locality being fully aware of the family and personal circumstances of the defendant and the defendant is aware that R.P.Dharmalingam is engaged in real estate business and accordingly, on 22.01.2011, R.P.Dharmalingam came to the residence of the defendant stating that he will arrange for a high price of Rs.1,05,00,000/- and at that point of time, the defendant was in severe mental distress having lost his wife barely about a year back and also attending to his aged mother and the defendant himself is a heart patient and undergone treatment and being in such a confused state of mind and feeble health, the defendant actually was not in a mood to accept the proposition made by R.P.Dharmalingam. However, since the plaintiff belongs to the

same locality and known to the defendant, the defendant reluctantly received the advance of Rs.50,000/- tendered on the spot by R.P.Dharmalingam and however, the defendant made it clear that the sale transaction proposed by R.P.Dharmalingam will be finalized only after the proposal was approved by the defendant's brother and mother and consented to the same. After a lot of deliberations, a hand written note was drawn up incorporating that the sale consideration shall be Rs.1,05,00,000/- and also, the condition that the balance sale consideration should be paid within a month i.e. on or before 10.02.2011, no stamped agreement was entered into and the defendant was actually coerced into signing the plain paper and the said plain paper is not valid and the plaintiff had conveniently omitted to mention the above facts in the plaint and the plaintiff has suppressed the material facts and with a view to mislead the Court. The defendant's brother advised him not to sell the property and the defendant's mother also asserted the property should not be sold. Hence, the defendant decided to refund the advance amount to the plaintiff. As a matter of fact, even before the expiry of the agreement period, the defendant took out two Demand Drafts for Rs.25,000/- each in favour of the plaintiff and forwarded the same under the letter dated 22.02.2011 addressed to the plaintiff. The cover had been

returned with the remarks always "door locked/ intimation delivered" on 24.02.2011. Hence, even thereafter, the plaintiff or her husband did not bother to collect the letter from the post office and again the defendant sent the Demand Draft by registered post on 09.03.2011. The second cover was also returned undelivered with the remarks party out of station. For the third time, the defendant sent the Demand Drafts and the postal acknowledgement had been received showing that the cover had been received only on 01.04.2011. The conduct of the plaintiff and her husband would show that they are hell-bent in grabbing the suit property. The plaintiff is not entitled to seek the relief of specific performance. It is false to state that the plaintiff met the defendant on 06.02.2011 and it was decided to have the registration on 09.02.2011. The plaintiff had never met the defendant 6th or 7th of February 2011. On the morning of 09.02.2011, R.P.Dharmalingam spoke to the defendant over phone and the defendant informed about the serious ailment of his mother and he had warned him in a harsh tone and insisted on registration. Hence, he having come to know the reluctance on the part of the defendant to sell the suit property, for the reasons above mentioned, to pressurise the defendant, the plaintiff had, with an ulterior motive, purchased the bank DDs. The defendant's mother expired on 10.04.2011. The defendant was not

aware of the DDs taken by the plaintiff for Rs.28,40,000/-dated 09.02.2011 and the keeping of the balance amount of Rs.76,10,000/- in cash for payment. The plaintiff or her husband never informed about the same and it is false to state that they were waiting in the Registrar's office but the defendant did not turn up. The defendant had not received the copy of the Demand Draft of Rs.28,40,000/- as alleged by the plaintiff and also not aware of the second Demand Draft of Rs.76,00,000/- as put forth in the plaint. The above acts had been indulged by the plaintiff to show that she had been willing and ready to perform her part of the contract. On account of the intimidatory attitude of R.P.Dharmalingam, the defendant feel physically insure and it is false to state that the plaintiff has always been ready and willing to perform her part of the contract. The defendant has no intention of selling the suit property to the plaintiff. It is false to state that the defendant is engaging with the third party as regards the sale of the suit property. The plaintiff is not entitled to the reliefs sought for and hence, the suit is liable to be dismissed.

4. On the pleadings set out above, the following issues are framed for determination.

" 1. Whether the Document relied upon constitute a legally valid agreement

of sale?

2. Whether the defendant's termination of the agreement is valid?

3. Whether the plaintiff is ready and willing to perform his part of the agreement?

4. Whether the conduct of the plaintiff during and after the agreement period vitiated the agreement?

5. Whether the plaintiff is entitled to the relief sought for?"

5. In support of the plaintiff's case, PW1 has been examined and Exs.P1 to 7 have been marked and on the side of the defendant Dws 1 & 2 have been examined and Exs.D1 to 11 have been marked.

6.Issue No.1

It is not in dispute that the suit property belonged to the defendant. According to the plaintiff, in respect of the suit property, the plaintiff and the defendant had entered into a sale agreement on 22.01.2011, whereunder, the defendant agreed to sell the property to

the plaintiff for a sum of Rs.1,05,00,000/- and accordingly, the same

was accepted by the plaintiff and in terms of the agreement, agreed to between the parties, it is the case of the plaintiff that the sale agreement was written in hand and both the plaintiff and the defendant put their signature in the sale agreement in the presence of the witnesses and on the date of sale agreement, a sum of Rs.50,000/- was paid by the plaintiff to the defendant as advance and towards part of the sale consideration and it is further case of the plaintiff that both parties agreed that the sale deed should be executed in respect of the suit property on or before 22.02.2011 by the defendant in favour of the plaintiff, after the receipt of the balance sale consideration. The sale agreement entered into between the plaintiff and the defendant has been marked as Ex.P2.

7. The defendant has taken a plea in the written statement, as if he was not a willing party to the sale agreement marked as Ex.P2 and according to him, he was in a confused and feeble state of mind and health at that point of time on account of various factors and further according to him, however, he had agreed to be a party to the sale agreement on the footing that the sale transaction proposed by the

plaintiff will be finalized only after the same was approved by the defendant's brother and mother and they gave consent to the same and accordingly, it is the case of the defendant that the plaintiff through her husband had pressurized the defendant to enter into the sale agreement marked as Ex.P2 and in such view of the matter, according to the defendant, inasmuch as his brother, subsequently, did not give consent to the sale transaction, it is his case that the sale agreement marked as Ex.P2 is not a valid instrument in the eyes of law.

8. A perusal of Ex.P2, in conjunction with the averments contained in the written statement would go to show that it has been clearly admitted by the defendant that he had entered into the above said agreement with the plaintiff in respect of the sale of the suit property as put forth by the plaintiff. That apart, the defendant, examined as DW1 during the course of cross-examination, has clearly admitted that the signature in Ex.P2 is his signature and he wrote the contents of Ex.P2 and he knew the contents of Ex.P2 and further, according to him, the plaintiff left Rs.50,000/- in his house and it is correct to state that the said amount was left in his house on 22.01.2011 and R.P.Dharmalingam husband of the plaintiff had signed as 4th witness in Ex.P2 and he knew Dharmalingam signed as 4th

witness and in Ex.P2, it is written that the sale consideration is for Rs.1,05,00,000/- and that, he handed over the title deeds to the plaintiff since she had requested to check the encumbrance of the suit property. Therefore, in the light of the abovesaid clear admission given by the defendant examined as DW1 and also the recitals found in the written statement, both seen cumulatively, it is found that the defendant has clearly admitted the execution of Ex.P2, sale agreement in respect of the suit property between the plaintiff and himself and thereby, it is found that the defendant had agreed to sell the suit property to the plaintiff for a sum of Rs.1,05,00,000/- and in tune with the agreement entered into between them, it is also found that the defendant had received a sum of Rs.50,000/- from the plaintiff towards part of the sale consideration. In such view of the matter, the contention of the defendant that he was not a willing party to the sale agreement Ex.P2 as such cannot be accepted.

9. It is the case of the defendant that at the time of execution of Ex.P2 sale agreement, he was in a state of confused mind and feeble health and thus, he was not a consenting party to Ex.P2 as such. Further, according to the defendant, the plaintiff through her husband had exerted pressure on him to enter into the sale agreement and therefore, according to the defendant, Ex.P2 is not a valid agreement.

However, as regards the plea of the defendant that the plaintiff's husband had exerted pressure on him by way of threat etc., there is no reliable material forthcoming on the side of the defendant. If the above plea of the defendant has any semblance of truth, as rightly put forth by the plaintiff's counsel, as a prudent person, the defendant would have taken the necessary legal redressal available to him against the plaintiff or her husband as the case may be. However, the defendant has not adopted any such method available to him in law. Similarly, the case of the defendant that he was in a state of confused mind at the time of execution of Ex.P2 also cannot be readily accepted, because when the defendant has failed to establish that he was put under pressure in entering into the sale agreement Ex.P2 and on the other hand, when it is found that it is the defendant, who had written the sale agreement himself, knowing the recitals contained therein, particularly, the sale consideration mentioned therein and also having admitted the receipt of the advance sum of Rs.50,000/- under the said agreement, it is too late in the day on the part of the defendant to contend that he was not a willing party to the sale agreement Ex.P2, on account of confused state of mind and feeble health as pleaded by him. Therefore, the defence set out by the defendant that Ex.P2 had not been really entered into between the

plaintiff and the defendant with consensus *ad idem* as such cannot be readily countenanced.

10. In the light of the above discussions, I hold that the sale agreement marked as Ex.P2 constitute a legal valid agreement of sale entered into between the parties i.e. the plaintiff and the defendant and accordingly, Issue No.1 is answered in favour of the plaintiff.

11. Issue No.3.

Under issue No.1, it has been held that Ex.P2 sale agreement is a valid and legally enforceable agreement of sale. As seen from the pleadings of both parties and also the evidence adduced in the matter and in particular the recitals found in Ex.P2, it would go to show that the parties have agreed that time should be essence of the contract and accordingly, fixed that the sale transaction should be completed, pursuant to Ex.P2 sale agreement on or before 22.02.2011. Therefore, it is noted that the plaintiff is incumbent to pay the balance sale consideration to the defendant on or before 22.02.2011 and get the sale deed executed and registered from the defendant as per the terms and conditions of Ex.P2.

12. Now, according to the plaintiff, she has been ready and willing to pay the balance sale consideration and to complete the

execution of the sale deed and on the other hand, only on account of the failure of the defendant to come forward with the execution of the sale deed, the sale transaction could not be completed. Hence, according to the plaintiff, she had been necessitated to lay the suit for specific performance. Per contra, it is the specific case and the defence of the defendant that the plaintiff has never been ready and willing to perform her part of the contract and never tendered the balance sale consideration within the time stipulated under Ex.P2 to the defendant and therefore, according to the defendant, readiness and willingness on the part of the plaintiff being the essential factor to enable the plaintiff to seek the relief of specific performance, the plaintiff, having failed to perform her part of the contract with reference to the above aspects, is not entitled to obtain the reliefs sought for in the suit.

13. In the light of the above defence set out by the defendant, it is for the plaintiff to establish that she has been always ready and willing to perform her part of the contract i.e. ready and willing to part with the balance sale consideration to the defendant within the time fixed under Ex.P2. Ex.P2 has been entered into between the parties on 22.01.2011. Prior to 06.02.2011, there is no material on the part of the plaintiff to show her readiness and willingness to complete the

sale transaction by paying the balance sale consideration. According to the plaintiff, on 06.02.2011, she and the defendant met in person and discussed about the execution of the sale deed for the suit property and to register the same on 07.02.2011. As regards the above case of the plaintiff, the same has been specifically controverted by the defendant and despite the same, apart from the ipse dixit interested testimony of PW1, there is no material forthcoming on the part of the plaintiff to show that she and the defendant had met on 06.02.2011 in person and agreed to complete the execution of the sale deed on 07.02.2011. With reference to the above case of the plaintiff, there is nill evidence other than the interested testimony of the plaintiff examined as PW1. Further, according to the plaintiff's case, inasmuch as the encumbrance certificate for the suit property was not ready by 07.02.2011, the execution and registration process could not be completed on 07.02.2011. The above reason also put forth by the plaintiff, for the inability of the completion of the sale transaction as such cannot be straightaway accepted. Having admitted that the defendant has title to the suit property and the plaintiff having ventured to enter into a sale agreement with the defendant in respect of the suit property on 22.01.2011, her further case that inasmuch as the encumbrance certificate was not available on 07.02.2011, the sale

process could not be completed on that date as such cannot be readily accepted. As rightly put forth by the defendant's counsel, knowing fully well that the defendant is the owner of the suit property and the plaintiff having entered into the sale agreement with the defendant in respect of the sale of the suit property on 22.01.2011, it is far-fetched on the part of the defendant to contend that the sale process could not be completed on account of the absence of encumbrance certificate as such cannot be believed and accepted. Therefore, the theory projected by the plaintiff that the sale transaction could not be completed on 07.02.2011 for want of encumbrance certificate is found to be highly preposterous and unacceptable.

14. Further, according to the plaintiff's case, subsequent to 07.02.2011, both parties agreed to complete the sale consideration on 09.02.2011. However, as regards even the above case of the plaintiff, there is no reliable and acceptable material other than the interested testimony of PW1. It has not been made clear by the plaintiff as to on what basis the defendant agreed that the sale process should be completed on 09.02.2011. According to the plaintiff, on 09.02.2011 she was waiting at the Sub Registrar's Office with a part of the sale consideration amounting to Rs.28,40,000/- by way of Demand Draft and the remaining sale consideration amounting to

Rs.76,10,000/- by way of cash and inasmuch as the defendant did not turn up to complete the sale transaction on that date, the sale could not be completed. As regards the plea of the plaintiff that she had been waiting at the Sub Registrar's office on 09.02.2011, there is no reliable material other than the interested testimony of the plaintiff.

15. The plaintiff has marked the Demand Draft taken by her for Rs.28,40,000/- along with notice as Ex.P4. However, as rightly argued by the defendant's counsel, if really, the parties had agreed to complete the sale on 09.02.2011 and the plaintiff was willing to adopt the said course and the plaintiff was really ready and willing to part with the sale consideration in full to the defendant to complete the sale transaction and the plaintiff was having the balance sale consideration readily available by 09.02.2011 nothing prevented the plaintiff from taking the Demand Draft for the entire balance sale consideration by 09.02.2011 so as to enable the completion of the sale transaction. It is not made clear as to why the plaintiff should take Demand Draft only for Rs.28,40,000/- by 09.02.2011 and keep the remaining balance sale consideration in cash for completing the sale transaction. The plea put forth by the plaintiff that the abovesaid course had been adopted at the request of the defendant as such also is not borne out

by any acceptable and reliable material. The defendant had denied that she had requested for the adoption of such a course i.e. payment of balance sale consideration by way of two modes i.e. one by way of DD and the other by way of cash. In such circumstances, if really, the plaintiff had been always ready and willing to pay the balance sale consideration within the time stipulated under Ex.P2 and if both parties had agreed that the sale transaction should be completed on 09.02.2011, it is found that as argued by the defendant's counsel, the plaintiff would have been ready to pay the balance sale consideration in its entirety by way of DD or by way of cash and the very conduct of the plaintiff in tendering the balance sale consideration in parts i.e. Rs.28,40,000/- by way of DD and the remaining amount with available cash as such also cannot be readily accepted.

16. As regards the case of the plaintiff that she was having the balance sale consideration in cash amounting to Rs.76,10,000/- by 09.02.2011 also is not borne out by any material worth acceptable. In this connection, it is contended by the plaintiff's counsel that it is not incumbent upon the plaintiff to establish her financial capacity as the same has been admitted by the defendant during the course of cross examination. In this connection, DW1 during the course of cross

examination has testified that he had decided not to sell the suit property to the plaintiff and decided to give the same to his relatives as requested by the relatives and not on account of the incapacity of the plaintiff to purchase the suit property. This piece of evidence on the part of the defendant is projected by the plaintiff to contend that the defendant had admitted the means and capacity of the plaintiff to pay the balance sale consideration and in such view of the matter, according to the plaintiff, the Court should accept the case of the plaintiff that she was having the balance sale consideration amounting to Rs.76,10,000 in cash by 09.02.2011. However, when that case of the plaintiff has been specifically denied and that apart, when there is no plausible and acceptable reason given by the plaintiff for tendering the balance sale consideration in two modes i.e. one by way of DD and another by way of cash and if really the plaintiff was having the entire balance sale consideration with her by 09.02.2011 and when nothing prevented the plaintiff from taking the DD for the entire balance sale consideration by that point of time and when there is no evidence on the side of the plaintiff that she had taken the DD for a part of the balance sale consideration as requested by the defendant, it is found that the above conduct of the plaintiff appears to be very strange and this will only go to show that inasmuch as the plaintiff

was not ready and willing to complete the sale transaction by tendering the balance sale consideration as per the terms of Ex.P2, it is found that she was not ready to part with the entire balance sale consideration by tendering the same by way of DD by 09.02.2011. In this connection, as rightly put forth by the defendant's counsel, the willingness and readiness on the part of the plaintiff to complete the sale consideration should be both in spirit and substance and merely because, the defendant had admitted the financial capacity of the plaintiff, that by itself would not enable the plaintiff to argue that she was ready to part with the entire balance sale consideration by 09.02.2011. To cap it all, as seen above, it has not been established by the plaintiff that the parties had agreed to complete the sale transaction by 09.02.2011 and on that account, the plaintiff was waiting at the sub Registrar office on 09.02.2011. As regards the above aspects, as adverted to earlier, other than the interested evidence of plaintiff, there is no material forthcoming.

17. According to the case of the plaintiff, she had sent a notice to the defendant on 10.02.2011 along with the copy of the Demand Draft for Rs.28,40,000/- calling upon the defendant to complete the sale transaction by receiving the balance sale consideration and the said notice along with Demand Draft, as seen above, has been marked as

Ex.P4. Admittedly, the said notice has not been served on the defendant. As seen from the postal cover marked as Ex.P5, it is found that the said notice had been returned with the endorsement "door locked". It is therefore clear that the notice sent by the plaintiff showing her readiness and willingness to pay the balance sale consideration and complete the sale process has not been served on the defendant. In this connection, it is contended by the plaintiff that inasmuch as the abovesaid notice had been sent to the defendant's address in a proper manner, the Court should presume and hold that the notice had been duly intimated to the defendant. It is found that the above said notice had been sent by way of speed post and not by registered post. As adverted to above, the notice has been returned with the endorsement door locked. It has not been established by the plaintiff that due steps had been taken by the agency of the speed post to serve the notice on the defendant. Other than marking the postal cover with the endorsement "door locked", there is no material forthcoming on the part of the defendant that the agency of the speed post had taken diligent steps to ensure that the said notice had been properly attempted to be served on the defendant. Inasmuch as the above said notice had been sent only by speed post and not through registered post, as rightly put forth by the defendant's counsel, the

presumption under Section 27 of the General Clause Act also cannot be straightaway invoked in the present case. The presumption, which could be taken under Section 27 of the General Clause Act, could be invoked only if the notice had been sent by registered post. In such view of the matter when it is found that there is no material as such on the part of the plaintiff that due steps have been taken by the agency of the speed post to deliver Ex.P4 notice on the defendant and when as per Ex.P5, the same had been returned with the endorsement "door locked", the only conclusion that can be drawn is that the defendant is not served with Ex.P4 notice.

18. Further the case of the plaintiff is that thereafter, she had taken the Demand Draft for Rs.76,10,000/- in favour of the defendant and the copy of the same has been marked as Ex.P6. It is further pleaded by the plaintiff that she had sent the copies of DDs for Rs.76,10,000/- and Rs.28,40,000/- to the defendant by way of telegram marked as Ex.P7 calling upon the defendant to complete the sale transaction. The copy of the DD said to have been taken for Rs.76,10,000/- has been marked as Ex.P6. There is no material on the part of the plaintiff that the telegram said to have been sent and marked as Ex.P7 had been served on the defendant. As regards the

same, there is nill material on the part of the plaintiff. Equally, it is not made clear by the plaintiff that she had really taken the Demand Draft for Rs.76,10,000/- in favour of the defendant marked as Ex.P6. When the same is controverted by the defendant, it is for the plaintiff to establish that she had endeavoured and really taken the Demand Draft for Rs.76,10,000/- as projected by her. Be that as it may, when the telegram marked as Ex.P7 along with DDs have not been shown to be duly served on the defendant by adducing acceptable evidence and when the plaintiff examined as PW1 has also admitted that she does not know whether the telegram was dispatched on 19.02.2011 under Ex.P7. it is found that the plaintiff herself is not aware of the despatch of such a telegram along with Demand Drafts and the fact that the said telegram is not shown to have been duly served on the defendant by reliable evidence, it is found that Ex.P7 is also not served on the defendant.

19. In the light of the above discussions, it is found that the case of the plaintiff that she has been ready and willing to perform her part of the contract and in this connection, had sent notice Ex.P4 and the telegram Ex.P7 cannot be accepted for the simple reason that when the above said notice and telegram had not been shown to be served

on the defendant, it is clear that the plaintiff has not exhibited her readiness and willingness to the defendant to complete the sale transaction within the time stipulated under Ex.P2 and in such view of the matter, it is found that there is nill evidence on the part of the plaintiff that she had always been ready and willing to complete the sale process within the time agreed to between the parties under Ex.P2. Exs.P4 and P7 are found to be not useful to sustain the plaintiff's case.

20. In the light of the above discussions, when the readiness and willingness on the part of the plaintiff should be both in spirit and in substance and when the alleged steps said to have been taken by the plaintiff to part with the balance sale consideration having not been duly proved and established and when there are serious doubts with reference to the genuineness of the plaintiff's claim that she has always ready and willing to part with the balance sale consideration within the time stipulated as pointed out above, it is found that the plaintiff has failed to prove that she has performed or always been ready and willing to perform her part of the contract and in such view of the matter, when the essential condition for enabling the plaintiff to seek the relief of specific performance contemplated under Section 16

(c) of the Specific Relief Act, 1963 has not been complied with by the plaintiff, it is found that the plaintiff is not entitled to seek the equitable relief of specific performance.

21. In the light of the above said reasons, I hold that the plaintiff has failed to establish that she has been ready and willing to perform her part of the contract. Accordingly, issue No.3 is answered against the plaintiff.

22. Issue No.2

As noted above, the defendant's case that he was not a willing party to the sale agreement Ex.P2 on account of feeble health and confused state of mind and only due to the pressure exerted by the plaintiff through her husband, he had entered into the sale agreement, and held to be unacceptable. Now, according to the defendant, he had thereafter terminated the sale agreement. It is the case of the defendant that as advised by his relative, he had decided to terminate the sale agreement and in this connection, it is his plea that he had sent notices to the plaintiff thrice enclosing DDs for the advance amount paid under Ex.P2 amounting to Rs.50,000/- under the letters marked as Ex.D5, 7 & 9. Admittedly Ex.P9 has come into existence after the institution of the suit and therefore, it is out of consideration and unreliable. It is found that Ex.D5 and D7 had not been duly served

on the plaintiff. The above said letters sent by the defendant had been returned as door locked / intimation delivered and party is out of station respectively. Therefore, it is found that Exs.D5 & D7 have not been duly served upon the plaintiff. That apart, as seen from the documents referred as Exs.D5 & 6, it is noted that the defendant as such has not sent the above said letters and the sender's name is shown in the cover as D.Rani Kannan and not the defendant. It has not been properly explained by the defendant as to why the said letter had been despatched in the name of D.Ranikannan. Further, it is found that Ex.D7 letter has been addressed to Tmt.Sangumathi and not Tmt.Sangupathi, hence not to the plaintiff, whose name is Tmt.Sangupathi. Be that as it may, admittedly Ex.D7 letter has not been served on the plaintiff and the same had been returned with the endorsement "party out of station". Further, when it is found that the above notices had been dispatched only on 22.02.2011 and thereafter, when the parties agreed that the sale consideration should be completed on or before 22.02.2011 and if really, the defendant was not a willing party to the sale agreement Ex.P2 as rightly put forth by the plaintiff's counsel, the defendant would have endeavored to rescind the sale agreement immediately after the execution of Ex.P2. It is not necessary on the part of the defendant to wait till the last date

i.e. 22.02.2011 to rescind the agreement. This conduct of the defendant also would go to show that his case that he had terminated the sale agreement by way of Exs.D4 & 6 and 9 as such cannot be accepted, when it is found that Exs.D5 & 6 have not been duly served on the plaintiff and as seen above admittedly, Ex.D9 has come to be sent after the institution of the suit and therefore, the receipt of the same by the plaintiff thereafter would not in any manner advance the case of the defendant that he has validly terminated the sale agreement.

23. That apart, when it is found that the defendant was a willing party to the sale agreement and his case that he was not a willing party to the sale agreement has not been proved and found to be false and when the defendant is not empowered to cancel the sale agreement as such under the terms contained in Ex.P2, it is found that particularly when Exs.D5 & 7 have not been duly served on the defendant, the plea of the defendant that Exs.P2 agreement had been duly terminated by him as such cannot be accepted. For the reasons aforementioned, I hold that the defendant has failed to establish that he has duly and validly terminated the sale agreement Ex.P2. Accordingly, issue No.2 is answered against the defendant.

24. Issue No.4.

The defendant has taken a plea that the conduct of the plaintiff during or after the agreement vitiates the sale agreement Ex.P2. However, it has not been established as to which conduct of the plaintiff during or after the agreement amounts to vitiating the sale agreement Ex.P2. It has not been established by the defendant that the plaintiff had by other means or through coercion forced the defendant to enter into sale agreement. No material has been placed by the defendant to show that the plaintiff had deliberately avoided the receipt of Exs.D5 & 7. On the other hand, when it is found that the defendant was a willing party to the sale agreement and when the defendant has failed to establish that the conduct of the plaintiff as such either during or after the sale agreement amounts to undermining the sale agreement Ex.P2 in any manner as per law, I hold that the plea of the defendant that the conduct of the plaintiff as such had vitiated the sale agreement cannot be accepted. For the reasons afore mentioned, issue No.4 is answered against the defendant.

25. Issue – 5.

In support of the plaintiff's case, the following decisions ***AIR 1977 Supreme Court 1005(1) (Govind Prasad Chaturvedi Vs. Hari Dutt Shastri and another), (2005) 7 Supreme Court Cases 534 (Aniglase Yohannan Vs. Ramlatha and others), (2009) 2 Supreme Court Cases 582 (Aloka Bose Vs. Parmatma Devi and others), (2015) 1 Supreme Court Cases 705 (Zarina Siddiqui Vs. A. Ramslingam Alias R.Amarnathan), 1998 (III) CTC 537 (Gopibai Kundandas Vs. Syed Shafiullah and another) (2015 (1) MWN (Civil) 1 (Sarojammal Vs.S.Gopisrinivasalu) CDJ 2016 MHC 4804 (S.Mathrubootham & Another Vs. S.Gunasekaran), CDJ 2016 MHC 5946 (Ponnammal & Another Vs. Perumal & Another), 2006 (2) M.L.J. 726 (Pavadai Padayachi Vs. Arumugam), 2013 (3) CTC 746 (Nanjappa Gounder and another Vs. Ashok Kumar) and (2015) 2 MWN (Civil) 481 (George Kavalam Vs. P.Vijayalakshmi)*** are relied upon and in support of the defendant's case, the decision reported in ***2016 (1) CTC 555 (Sciemed Overseas Inc. Vs. BOC India Limited and others)*** is relied upon. The principles of law enunciated in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

In the light of the answer to issue No.3, I hold that the plaintiff is not entitled to the reliefs sought for in the suit. Resultantly, the suit is dismissed with costs.

27.06.2017

Index : Yes/No

Internet:Yes/No
sms

T.RAVINDRAN,J.

sms

PRE-DELIEVERY JUDGMENT
MADE IN
C.S.No. 200 of 2011

27.06.2017