

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.10.2017

PRONOUNCED ON : 26.10.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.111 of 2001

G.Muthusamy ... Appellant /Appellant/Defendant

Vs.

1.Mariadass (died)

2.Lourdhumary

3.Joseph Stephen

4.Lucy Pauline ... Respondents/Respondents/Plaintiff

(RR2 to 4 brought on record as Lrs
of the deceased sole respondents
vide order of Court dated 01.03.2010
made in CMP.No.21760 to 21762/03)

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 10.04.2000 made in A.S.No.275 of 1999 on the file of the Principal District Court, Erode, confirming the judgment and decree dated 01.09.1999 made in O.S.No.268/1999 on the file of the Additional Subordinate Court, Erode.

For Appellant : Mr.S.V.Jayaraman
Senior Counsel
for Mr.M.Kempraj

For Respondents : Mr.Gunalan
for Mr.K.Balaji

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JUDGMENT

The second appeal is directed against the Judgment and decree dated 10.04.2000 made in A.S.No.275 of 1999 on the file of the Principal District Court, Erode, confirming the judgment and decree dated 01.09.1999 made in O.S.No.268/1999 on the file of the Additional Subordinate Court, Erode.

2. The parties are referred to as per their rankings in the trial Court.

3. Suit for specific performance.

4. The case of the plaintiff, in brief, is that the suit property belonged to the defendant and on 24.09.1991, the plaintiff and the defendant entered into a registered written agreement, through which the plaintiff agreed to purchase the suit property from the defendant, who in turn agreed to sell the same to the plaintiff for a sum of Rs.40,000/- and on the date of the agreement, a sum of Rs.25,000/- was received by the defendant as advance. The defendant had agreed to execute the sale deed in favour of the plaintiff free from any encumbrance after receiving the balance sale consideration from the plaintiff within two years from the date of the sale agreement i.e. on or before 23.09.1993 and the plaintiff has always been ready and willing to perform his part of the contract by paying the balance sale consideration and though he had expressed the said intention to the defendant on many occasions, the defendant had been evading to perform his part of the contract and the plaintiff issued a lawyer notice on 19.08.1992 calling upon the defendant to convey the sale deed in respect of the suit property by receiving the balance sale consideration within 7 days from the date of receipt of the notice and despite the receipt of the said notice, the defendant failed to comply with the demand made therein and in the above said notice, the date of agreement and the date of expiry of the period of agreement have been wrongly given due to clerical error and oversight and on account of the improper translation of the document and the defendant issued a reply notice on 26.08.1992 containing false allegations as if he had not executed the sale agreement in respect of the conveyance of the suit property and that he had not received any advance as pleaded and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the allegation that the defendant agreed to sell the suit property in favour of the plaintiff for a sum of Rs.40,000/- and executed the sale agreement on 24.09.1991 in favour of the plaintiff and received a sum of Rs.25,000/- as advance and agreed to convey the sale deed after receiving the balance sale consideration within 2 years from the date of the sale agreement are all false and made for the purpose of this case and according to the defendant, he had been having several money transactions with the plaintiff with reference to his 'dying company' and only in relation to the same, the defendant was made to execute the sale agreement in favour of the plaintiff as a security for the money transactions and apart from the sale agreement, the defendant

had also given signed blank stamp papers to the plaintiff previously as security for the money transactions and it is false to state that the plaintiff has been always ready and willing to perform his part of the contract by paying the balance sale consideration and that he had expressed his above intention to the defendant on many occasions. The defendant, at no point of time, intended to sell the property either to the plaintiff or to any one else and to the notice issued by the plaintiff, proper reply containing true facts has been issued by the defendant and hence, the suit, without any cause of action, is liable to be dismissed.

6. In the additional written statement, the defendant has pleaded that the amount mentioned in the sale agreement dated 24.09.1991 does not represent the actual market value of the property comprised therein and the value of the suit property was more than Rs.6,00,000/- and the defendant is ready and willing to pay the sale agreement amount with interest as determined by the Court legally to the plaintiff at any point of time and the plaintiff is not entitled to get the conveyance in respect of the suit property for a sum of Rs.40,000/- pursuant to the sale agreement and hence, the suit is liable to be dismissed.

7. In support of the plaintiff's case, PW 1 has been examined and Exs.A1 to 3 were marked. On the side of the defendant, DW1 has been examined and Exs.B1 to 9 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties, the Courts below were pleased to accept the case of the plaintiff and accordingly, granted the relief sought for by him. Challenging the same, the present second appeal has been preferred by the defendant.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration;

1. Whether the courts below are correct in decreeing the suit when none of the parties to the suit agreement was examined on the side of the plaintiff including the plaintiff himself?
2. Whether the courts below are correct in decreeing the suit without the plaintiff himself being not examined on his side without proper reason, when the plaintiff has given his age as 43 years in the plaint?
3. Whether the courts are correct in decreeing the suit when the plaintiff did not prove his readiness and willingness

to perform the contract?

10. The suit has been laid by the plaintiff for specific performance on the basis of the sale agreement dated 24.09.1991, which has been marked as Ex.A3. It is found that Ex.A3 is a registered sale agreement. Now, according to the plaintiff, the defendant agreed to convey the suit property in favour of the plaintiff for a sum of Rs.40,000/- and accordingly, executed Ex.A3 sale agreement in his favour and on the date of the sale agreement, the defendant received a sum of Rs.25,000/- as advance and agreed to receive the balance sale consideration within two years thereafter and complete the sale transaction; and despite the readiness and willingness on the part of the plaintiff to pay the balance sale consideration and get the sale transaction completed, according to the plaintiff, the defendant had been evading to complete the sale transaction and hence, he has been necessitated to lay the suit for specific performance.

11. It is the further case of the plaintiff that he has also issued the legal notice marked as Ex.B1 calling upon the defendant to receive the balance sale consideration and execute the conveyance and to the same, it is stated that the defendant has sent a reply marked as Ex.B2 containing false allegations and hence, according to the plaintiff, he has been necessitated to lay the suit. It is further stated that the date of sale agreement and the date of expiry of the sale agreement have been wrongly mentioned in the notice Ex.B1 and the same had occurred due to clerical error and oversight.

12. According to the defendant, he had not intended to convey the suit property in favour of the plaintiff for a sum of Rs.40,000/- as projected by the plaintiff and that, he had not executed the sale agreement Ex.A3 pursuant to the same and agreed to convey the suit property in favour of the plaintiff after receiving the balance sale consideration within two years from the date of the sale agreement. According to the defendant, there were several money transactions with the plaintiff in relation to his dyeing business and only as a security with reference to the same, according to his case, the agreement had come to be executed and further, according to the defendant, he had given signed blank promissory notes in favour of the plaintiff as security for the above said money transactions and hence, it is his case that there is no intention on his part to convey the suit property in favour of the plaintiff or to any one at any point of time and hence, the plaintiff is not entitled to obtain the reliefs sought for. Further, it is the case of the defendant that the suit property is worth more than Rs.6,00,000/- and therefore, the case projected that the defendant agreed to convey the property for a sum of Rs.40,000/- as such cannot be accepted. The defendant

has also denied that the plaintiff has been ready and willing to perform his part of the contract as mentioned in the sale agreement.

13. Considering the facts and the plea of defence projected by the defendant in this case, it is found that the defendant has admitted the execution of the sale agreement Ex.A3, however, pleading that Ex.A3 has come to be executed only as a security in relation to the money transactions, which he had been having with the plaintiff in connection with the dyeing business. In such view of the matter, as rightly determined by the Courts below, the defendant having admitted the execution of the sale agreement Ex.A3 and only taken a plea that it has been given as a security for the loan transactions he had with the plaintiff in relation to his dyeing business, it is for the defendant to establish the same by acceptable and reliable evidence. However, as rightly determined by the Courts below, with reference to the plea of the defendant that he had been having money transactions with the plaintiff in relation to his dyeing business, there is no material forthcoming on the part of the defendant. Particularly, the defendant has not pleaded as to when from he had been having money dealings with the plaintiff in connection with the dyeing business and as to what was the sum outstanding in connection with the said transactions on the relevant date i.e. 24.09.1991 etc., Very baldly, he has pleaded that the sale agreement had come to be executed only as a security in connection with the money transactions, he had been having with the plaintiff. However, with reference to the same, no convincing material has been placed by the plaintiff, as rightly determined by the Courts below. Thus the defence of the defendant that the sale agreement Ex.A3 has come to be executed only as a security document for the money transactions and not intended to convey the suit property as such as put forth by the defendant cannot be readily countenanced.

14. It is further found that Ex.A3 is a registered document. In this connection, the defendant examined as DW1 has admitted without any doubt that his signature had been affixed at the Registrar Office in the presence of the Registrar and therefore, his plea that Ex.A3 document had come to be executed only as a security in connection with the money transactions as such cannot be readily accepted. Further, according to the defendant, he has already given signed blank stamp papers to the plaintiff as security for the money transactions. If really, the above plea of the defendant is true, as rightly contended, even assuming for the sake of argument that the sale agreement had been given by the defendant as security for the alleged money transactions, as a prudent person, the defendant would have endeavoured to retrieve back the blank stamp papers said to have been given by him to the plaintiff earlier as security for

the money transactions. However, it is not the case of the defendant that he has endeavoured to get back the alleged blank stamp papers said to have been entrusted to the plaintiff in connection with the money transactions, he had been having with the plaintiff. It is found that in such view of the matter, the plea put forth by the defendant that he has previously handed over the signed blank papers to the plaintiff as security for the money transactions cannot be accepted easily. Equally, it is found that the further plea made by the defendant that in addition to the above said entrustment of the blank stamp papers, he had further given the sale agreement as a security for the alleged money transactions as such also cannot be accepted in any manner, particularly, when Ex.A3 sale agreement has come to be executed by the defendant in the presence of the Registrar and the same is also a registered document. It is found that the defendant, without any basis or material, had taken the above plea that the sale agreement had been executed only as a security for the money transactions. Thus, it is found that the Courts below have, sans any material pointing to the same, disbelieved the case of the defendant and held that the sale agreement had been executed only for the purpose of conveying the suit property in favour of the plaintiff as put out therein.

15. Now, according to the defendant, the suit property is worth more than Rs.6,00,000/- and therefore, he would not have intended to convey the suit property to the plaintiff for a sum of Rs.40,000/- under the sale agreement. However, the above plea of the defendant has been stoutly resisted by the plaintiff. Despite the same, there is no material projected on the part of the defendant to hold that the suit property was worth Rs.6,00,000/- on the date of the sale agreement. In this connection, the defendant examined as DW1 has admitted that he has not filed any guideline value to hold that the value of the suit property was worth Rs.6,00,000/-. Further, he has also admitted that he has not placed any sale transaction, which had occurred in the neighbourhood to hold that the suit property was valued at the sum as pleaded by him and further, he has admitted that the guideline value and the market value will be different. It is thus, found that inasmuch as the case of the defendant that the suit property is valued more is not based upon any evidence, it is seen that the Courts below have also rejected the above case of the defendant for disbelieving the sale agreement marked as Ex.A3.

16. It is found that as rightly determined by the Courts below, the defendant has been taking inconsistent pleas as regards the sale agreement from the inception. In the reply notice, according to the defendant, he has taken a plea that the sale agreement had been prepared by the plaintiff based upon the

stamp papers entrusted by him as security for the money transactions. However, in the written statement, he has taken a plea that the sale agreement has been given as a security for the alleged money transactions, apart from the entrustment of the blank stamp papers given earlier in respect of the alleged money transactions. However, during the course of the proceedings before the trial Court, it is found that the defendant has also preferred I.A.No.577 of 1996, whereunder, he had agreed that he is ready to part with the advance amount with interest and deposit the same into the Court as determined by the Court and in this connection, the defendant examined as DW1 has admitted that he has averred so in the affidavit filed in connection with I.A.No.577 of 1996 and the same plea has also taken in the additional written statement. If really the defendant had not received any amount on the date of the sale agreement Ex.A3 as mentioned therein, it could be seen that the defendant would not have endeavoured to pay the advance amount with interest to the plaintiff as specifically admitted by him as above narrated. Therefore, it is found that inasmuch as the defendant had agreed to convey the suit property in favour of the plaintiff for a sum of Rs.40,000/- under Ex.A3 and accordingly, received a sum of Rs.25,000/- as advance on the date of the sale agreement and further, agreed to convey the sale deed on the receipt of the balance sale consideration within two years from the date of the sale agreement, it is found that the defendant, who is unable to resist the above case of the plaintiff, has been taking inconsistent pleas with regard to his defence and therefore, it is found that the Courts below have rightly, for proper and cogent reasons, declined to believe the case of the defendant and held that the sale agreement in question Ex.A3 is a true and genuine document.

17. The conduct of the defendant would go to show that he has also the audacity to depose that he had signed the sale agreement without reading the contents thereof. When the document Ex.A3 is registered document, the plea of the defendant, who had retired as BDO, that he had signed the document in question without reading the contents thereof cannot be believed and accepted in any manner. Further, it is also found that the defendant, with a view to stifle the case of the plaintiff one way or the other, has also chosen to testify that he would even sign in false documents. This conduct of the defendant only would go to show that having executed the sale agreement in favour of the plaintiff, it is seen that with a view to defeat the plaintiff's case one way or the other had been gone to the extreme extent of deposing that he would even sign in the false documents. Further, if really, the defendant had executed the sale agreement only as a security in relation to the money transaction and also had given blank stamp papers as security for the money transaction, as a prudent person, as

rightly held by the Courts below and also as rightly argued by the plaintiff's counsel, the defendant would have endeavoured to retrieve the alleged agreement within a reasonable time and also retrieve the alleged stamp papers said to have been entrusted by him to the plaintiff within a reasonable time and on the other hand, it is found that till the laying of the suit by the plaintiff, no such attempt had been taken by the defendant as regards the same. Further, it is seen that the defendant has also not endeavoured to lay any lis seeking for the cancellation of the sale agreement on the footing that it had been taken by the plaintiff as security for the alleged money transactions. It is further admitted by the defendant that he has entrusted the title deeds in respect of the suit property to the plaintiff. This aspect also would go to establish that inasmuch as the defendant had intended to sell the suit property in favour of the plaintiff under the sale agreement Ex.A3 as detailed therein, it is found that he had entrusted the title deeds of the suit property to the plaintiff and this would go to further establish the authenticity and genuineness of the sale agreement Ex.A3. Further, till date, the defendant has not endeavoured to lay any action against the plaintiff to retrieve the title deeds of the suit property. It is not the case of the defendant that the title deeds had been fraudulently obtained by the plaintiff from him and it is resultantly seen that as the defendant intended to convey the suit property to the plaintiff, accordingly, had entrusted the title deeds of the suit property to the plaintiff for the purpose of completing the sale transaction within the time stipulated under the sale agreement i.e. two years from the date of the sale agreement.

18. In the light of the above discussions, as rightly found by the Courts below, it is seen that the sale agreement Ex.A3 is a true and genuine document and the pleas put forth by the defendant for repudiating the same are all false and rightly disbelieved by the Courts below and no exception could be taken with reference to the reasonings and findings of the Courts below for not accepting the case of the defendant.

19. During the course of the arguments, it is contended by the defendant's counsel that in the pre-suit notice, the date of the agreement and the other facts have not been correctly given and therefore, it is stated that the plaintiff has not established the readiness and willingness on his part to complete the sale transaction as stipulated in the sale agreement and hence, the plaintiff is not entitled to obtain the equitable relief of specific performance. It is further argued that the Courts below have not specifically framed an issue as regards the readiness and willingness on the part of the plaintiff for completing the sale transaction. Further, it is also contended that even after the issuance of the notice Ex.B1,

only one year thereafter the plaintiff has chosen to lay the suit for specific performance and in such view of the matter, relying upon the authorities reported in 2016-3-L.W.527 (M.Johnson Vs. E.Pushpavalli), 2016 (3) TLNJ 193 (Civil) (Kadali Venu Sankar Vs. Pydikondala Lakshmi), 2017 (5) CTC 390 (S.Ashok Kumar and another Vs. S.Subramaniam and another) and 2017 (5) CTC 403 (Babulal Tuter and three others Vs. Harakh Chand J.Golecha and four others), it is argued by the defendant's counsel that the plaintiff has failed to establish the readiness and willingness on his part, right from the inception and considering the legal principles enunciated in the above said decisions, this Court should hold that the plaintiff has never been ready and willing to perform his part of the contract and accordingly, set aside the judgments and decrees of the Courts below and allow the second appeal. It is the further case of the defendant that the plaintiff has not chosen to examine himself to show his readiness and willingness and had only chosen to examine his son as PW1 and this aspect also should be held against the plaintiff for declining the relief of specific performance.

20. Per contra, it is contended by the plaintiff's counsel that no doubt, in the reply notice, certain facts have been wrongly given by the plaintiff due to clerical error and by oversight and further, it is contended that by way of the same, the defendant has not been misled in any manner considering the nature of the reply sent by him marked as Ex.B2 and further, according to the plaintiff's counsel, the plaintiff has established his readiness and willingness right from the inception through the evidence of PW1 and within the time stipulated in the agreement, he has chosen to send the pre-suit notice and despite the same, as the defendant has failed to complete the transaction demanded therein, chosen to lay the suit within the time as specified in the sale agreement and in such view of the matter, according to the plaintiff's counsel, the decisions relied upon by the defendant's counsel would not be applicable to the case at hand and considering the false defence put forth by the defendant, according to the plaintiff's counsel, it would be equitable to order specific performance of the sale agreement in question as put forth by the plaintiff and accordingly, prayed for dismissal of the second appeal.

21. As regards the contention put forth by the defendant's counsel that certain facts have been incorrectly given in the legal notice marked as Ex.B1, no doubt, the date of the sale agreement and the expiry of the sale agreement etc., have been wrongly given in the notice. However, considering the reply notice issued by the defendant marked as Ex.B2, it is found that the defendant has not at all been misled in any aspect on account of the incorrect particulars mentioned in the legal

notice Ex.B1 and on the other hand, it is found that the plaintiff has issued notice only in respect of the sale agreement dated 24.09.1991 and accordingly, the defendant had pleaded in the reply notice that the same had been concocted by the defendant by way of making use of the blank stamp papers said to have been entrusted by him in relation to the money transactions. In the written statement also, according to the defendant's plea, the sale agreement had been taken only as a security in respect of the alleged money transactions. The plaintiff in the plaint has clearly averred about the mistakes that had crept in the legal notice owing to clerical errors and oversight. In such view of the above position, it is found that furnishing of the incorrect particulars by the plaintiff in the notice as such would not in any manner militate against the case of the plaintiff, particularly, as regards the readiness and willingness expressed on the part of the plaintiff under the same. It is found that the legal notice Ex.A1 has come to be issued on 19.08.1992 much earlier to the period fixed in the sale agreement for completing the sale transaction. Therefore, it is found that the above aspect of the matter, in my considered opinion, would not in any manner affect the plaintiff's case.

22. As regards the contention of the counsel for the defendant that the Courts below have not specifically framed the issue /point with reference to the readiness and willingness on the part of plaintiff for entitlement of the relief of specific performance, it is noted that the Courts below have framed the main issue/point as to whether the plaintiff is entitled to obtain the relief of specific performance with reference to the sale agreement put forth by him and when the above said main issue/point encompasses the issue as regards the readiness and willingness on the part of the plaintiff for the entitlement of the relief of specific performance as claimed by him, it is seen that the failure of the Courts below in not framing the issue as regards the readiness and willingness on the part of the plaintiff specifically, in my considered opinion, would not in any manner vitiate the impugned judgments rendered by them. That apart, it is also seen that the Courts below have gone into the issue as regards the readiness and willingness on the part of the plaintiff for obtaining the relief of specific performance as put forth by him in a detailed manner and in such view of the matter, the contention that the Courts below have not adverted to the above said issue as such cannot be countenanced.

23. It is argued by the defendant's counsel that the plaintiff has not chosen to examine himself to show his readiness and willingness and on the other hand, he had chosen to examine his son as PW1. No doubt, the plaintiff has not

examined himself to buttress his case. Now, according to the plaintiff, as his age is 75 years, he is unable to testify before the Court and in this connection, the medical certificate has been marked as Ex.A1. However, it is stated that during the course of arguments, in the plaint, the plaintiff's age has been mentioned as 43, therefore, the certificate marked as Ex.A1 is not a genuine certificate. However, considering the fact that admittedly PW1 is the son of the plaintiff and further, finding that PW1 was aged 46 years on the date of the deposition, it is thus found that the plaintiff would not have been aged 43 years on the date of filing of the suit, it is found that the age of the plaintiff has been incorrectly given in the plaint. With reference to the above particulars found in the plaint, it is found that the defendant has not made any specific denial nor put forth any plea in the written statement that he has been thereby misled in his defence or prejudiced in putting forth his defence effectively. Therefore, the argument that the certificate marked as Ex.A1 is inconsistent with the age of the plaintiff as given in the plaint and therefore, militate against the case of the plaintiff as such cannot be readily accepted. Considering the age of PW1 on the date of his deposition and the reasons given in Ex.A1, it is found that the plaintiff was an aged person even on the date of filing of the suit and only owing to his illness, he was unable to depose and accordingly, chosen to examine his son on his behalf. In such view of the matter, it is seen that no exception could be taken for disbelieving the case of the plaintiff by not examining himself and instead for having examined his son as PW1.

24. Now, according to PW1, he was present on the date of execution of the sale agreement and knew very well about the facts and circumstances of the case. It is found that the above testimony of PW1 is acceptable and when it is not the plea of the defendant that PW1 was not present at the time of the execution of the sale agreement, it is seen that PW1 being the son of the plaintiff was very well present on the date of the sale agreement and at the time of its registration and accordingly, being a person acquainted with the facts and circumstances of the present case, is competent to depose about the case and therefore, it is found that the plaintiff has established the readiness and willingness on his part, through his son examined as PW1. The mere fact that PW1 is not a signatory to Ex.A1 would not lead to the conclusion that he would not have been present at the time of the execution of the sale agreement. It is thus found that PW1, who is well versed/acquainted with the facts and circumstances, is competent to depose on behalf of the plaintiff and therefore, the non examination of the plaintiff as such would not in any manner affect his case as put forth by the defendant.

25. Now, it is seen that the time stipulated in the sale agreement is two years, which expires on 23.09.1993. Now well before the expiry of the said time, it is found that the plaintiff has chosen to issue the legal notice on 19.08.1992 and to the same, the defendant has sent reply notice on 26.08.1992. Thereafter, it is found that the plaintiff has chosen to lay the suit on 23.09.1993. Pointing to the above fact, it is argued by the defendant's counsel that despite the issuance of the reply notice dated 26.08.1992, the plaintiff has chosen to lay the suit only one year thereafter and this conduct of the plaintiff would only go to show that he has never been ready and willing to perform his part of the contract and the delay in filing of the suit by the plaintiff should be held against him and in this connection the aforesaid authorities relied upon by the defendant are pressed into service. No doubt, the plaintiff has not laid the suit immediately after the issuance of the reply notice and he had levied the suit on 23.09.1993. However, it is found that the laying of the suit on 23.09.1993 is still within the time stipulated under the sale agreement i.e. when the sale agreement Ex.A3 prescribed two years period for completing the sale transaction and when it is found that the plaintiff has laid the suit well before the said time i.e. on 23.09.1993 itself, though there is delay in the laying of the suit after the issuance of the reply, that by itself would not in any manner affect the plaintiff's case as if he has not been ready and willing to perform his part of the contract and on the other hand, when it is found that the plaintiff has chosen to lay the suit on or before the time stipulated in the sale agreement i.e. 23.09.1993, it is found that the plaintiff has established his readiness and willingness by the above factors also and therefore, the merely delay in the filing of the suit immediately after the issuance of the reply would not in any manner disentitle from the plaintiff, to obtain the relief of specific performance, particularly, considering the fact that in so far as this case is concerned, the plaintiff has levied the suit within the time stipulated in the sale agreement. Even in the decision relied upon by the defendant's counsel, it has been held that the determination of the Court in the above said decisions should not be mistaken as if the Court holds that non-filing of the suit immediately after the denial even though limitation period has not expired, as fatal to the case of the plaintiff and if there is a long time gap between such denial and filing of the suit and the same is properly explained with convincing reasons, the Court can always decide such issue based on the fact and circumstances of each case. In the light of the above proposition of law laid down in the above said decision reported in 2016-3-L.W.527 (M.Johnson Vs.E.Pushpavalli), when it is found that after the issuance of the reply notice dated 26.08.1992 and considering the facts and circumstances, when it is found that the plaintiff has laid the

suit on 23.09.1993, which date admittedly falls within the time stipulated for completing the sale transaction under the sale agreement Ex.A3, it is seen that on the facts and circumstances of the case, the filing of the suit by the plaintiff on 23.09.1993 would not in any manner lead to the conclusion that the plaintiff has not been ready and willing to perform his part of the contract and on the other hand, it is found that the plaintiff has always been ready and willing to perform his part of the contract and accordingly, placed acceptable and reliable material with reference to the same through the mouth of PW1, who is competent to speak on behalf of the plaintiff and accordingly, it is found that the Courts below have rightly held that the plaintiff has always been ready and willing to complete the sale transaction from the inception and only on account of the delay tactics adopted by the defendant, the sale transaction could not be completed one way or the other. Further, considering the various false pleas put forth by the defendant to stifle the case of the plaintiff and considering the readiness and willingness that has been established on the part of the plaintiff to complete the sale transaction within the time agreed to between the parties and coupled with the fact that the plaintiff has laid the suit within the time stipulated in the sale agreement, it is found that the plaintiff is entitled to seek the equitable relief of specific performance and in such view of the matter, on the facts and circumstance of the present case, the principles of law outlined in the decisions relied upon by the defendant's counsel, as rightly argued by the plaintiff's counsel and also in my considered opinion, would not be applicable to the case at hand. I, therefore, hold that, as rightly determined by the Courts below, the plaintiff has established the readiness and willingness on his part to complete the sale transaction pursuant to Ex.A3 by examining PW1, his son, the competent witness and further hold that the non-examination of the plaintiff as such would not in any manner affect the plaintiff's case. Considering the fact that PW1 is a competent witness to speak on behalf of the plaintiff and accordingly, had tendered evidence with reference to the readiness and willingness of the plaintiff to perform his part of the contract and therefore, the substantial question of laws formulated in this second appeal are answered in favour of the plaintiff and against the defendant.

26. The counsel for the plaintiff, in support of his contentions, placed reliance upon the decisions reported in CDJ 2012 SC 356 (Narinderjit Singh Vs. North Star Estate Promoters Limited) and CDJ 2009 MHC 1716 (Lakshmi (died) by L.Rs & Others Vs. Saminathan (Deceased) & Others). The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

27. In the light of the above discussions, the second appeal fails and the same is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

sms

To

1.The Principal District Judge,
Erode.

2.The Additional Subordinate Judge,
Erode.

3.The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.M.Kempuraj, Advocate SR.No.75935

+1cc to Mr.K.Balaji, Advocate SR.No.75821

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