

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.11.2017
PRONOUNCED ON : 06.12.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.1491 of 2001

B.V.Subramanian
Proprietor of "Baggya Reka Exports"
Trivellore. ...Appellant/Plaintiff

Vs.

Vasanthan ...Respondent/Defendant

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 29-03-2001 in A.S.No.30 of 2000 on the file of the Principal District Court, Chingleput, reversing the judgment and decree dated 31.01.2000 in O.S.No.128 of 1997 on the file of the Subordinate Court, Trivellore.

For Appellant : Mr.R.Selvakumar
For Respondent : Mr.K.Goviganesan

J U D G M E N T

Challenge in the Second Appeal is made to the the judgment and Decree dated 29-03-2001 passed in A.S.No.30 of 2000 on the file of the Principal District Court, Chingleput, reversing the judgment and decree dated 31.01.2000 passed in O.S.No.128 of 1997 on the file of the Subordinate Court, Trivellore.

2. 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 the plaintiff and the defendant entered into a sale agreement on 08.06.1994 with reference to the suit property and thereunder, the defendant agreed to sell the suit property to the plaintiff for a sale consideration of Rs.1,76,000/- and pursuant to the same, on the date of the agreement, the plaintiff paid a sum of Rs.75,000/- to the defendant and the defendant agreed to receive the balance sale consideration on or before 31.03.1995 and execute the sale

deed in favour of the plaintiff and accordingly, the plaintiff was also put in possession of the suit property on the date of the sale agreement and also, the defendant had deposited the original title deeds dated 25.03.1976 and 06.06.1994 with the plaintiff and thereafter, the defendant received a sum of Rs.42,500/- through her husband from the plaintiff i.e. (i) on 31.08.1994, Rs.16,500/- by cash, (ii) on 03.12.1994, Rs.3000/- by cash, (iii) on 12.12.1994 Rs.10,000/- by cheque, (iv) on 09.03.1995, Rs.11,000/- by cash and (v) on 12.03.1995 Rs.2000/- by cash and though the plaintiff was ready to pay the balance sale consideration, the defendant was not ready to receive the same and execute the sale deed in favour of the plaintiff and though time has been mentioned in the sale agreement to complete the sale consideration on or before 31.03.1995, time is not the essence of the contract entered into between the parties and the defendant failed to act as per the terms of the agreement and on the other hand, chosen to issue a notice dated 29.04.1995 to the plaintiff containing false allegations and immediately, the plaintiff sent a telegram requesting the defendant to receive the balance sale consideration and complete the sale transaction and despite the same, the defendant failed to execute the sale deed and hence, the plaintiff, left with no other alternative, has been necessitated to lay the suit for appropriate reliefs.

5.The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts and it is true that the plaintiff and the defendant entered into a sale agreement on 08.06.1994, whereunder, the defendant agreed to sell the suit property in favour of the plaintiff for a sum of Rs.1,76,000/- and also received a sum of Rs.75,000/- from the plaintiff on the same date and it was specifically agreed between the parties that the entire balance sum should be paid on or before 31.03.1995, the time being the essence of the contract and under no circumstances, the time should be extended and it is false to state that the plaintiff was put in possession of the suit property on the date of the sale agreement and the defendant entered into the sale agreement with the plaintiff on fond hope of meeting the urgent family expenses and to clear off the debts and however, the plaintiff failed to pay the balance amount in spite of several demands made by the defendant and thereby, the plaintiff committed breach of agreement, hence, the defendant terminated the contract by sending a notice dated 29.04.1995 calling upon the plaintiff to return the original title deeds as there is no subsisting or enforceable contract. On coming to know about the notice, the plaintiff had sent a telegram on 01.05.1995 with vague and untenable pleas with a view to create documents to make out a false case and failed to send any detailed reply to the notice dated 29.04.1995 and thereafter also, did not evince interest to fulfill the sale agreement and wait for nearly two years and filed the suit

despite the termination of the contract and thus, the plaintiff has abandoned his rights to get the sale deed executed. The defendant denies that she has received Rs.42,500/- through her husband from the plaintiff as detailed in the plaint and the alleged payments put forth by the plaintiff and the receipts and documents evidencing the same are fabricated by the plaintiff and the defendant's husband has no right to issue any receipt and the plaintiff is personally known to the defendant and her residence is also known to the plaintiff and hence, the alleged payments to her husband through cheque or cash are mere concoctions and the same will not bind the defendant and it is false to state that the defendant promised to receive the balance sale consideration and execute the sale deed as and when called by the plaintiff and it is false to state that the plaintiff has always been ready and willing to perform his part of the contract. The plaintiff has failed to comply with his part of the contract and the suit is barred by limitation and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW's 1 and 2 were examined and Exs.A1 to A9 were marked. On the side of the defendant, DW's 1 and 2 were examined and Exs.B1 and 2 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. On appeal, the first appellate Court was pleased to set aside the judgment and decree of the trial Court and by allowing the appeal preferred by the defendant dismissed the suit laid by the plaintiff. Aggrieved over the same, the present Second Appeal has come to be preferred.

8. The following substantial questions of law were formulated for consideration, at the time of admission of the Second Appeal:

(a) Whether the lower appellate court is right in holding that the time is the essence of the suit contract, when the contract specifically does not say so?

(b) Whether the mentioning of the last date for payment implies to the condition that the time is the essence of the contract, when the defendant herself is not returning the money along with the notice to cancel the suit contract?

(c) Whether the lower appellate court is right in rejecting Ex.A2 to A6 as not

genuine in the light of

(i) Non-objecting to the signature of the husband in the defendant, by the defendant, in the receipts issued by her husband, in her cross examination

(ii) the fact that the defendant's husband has not been examined, leading to adverse inference

(iii) the fact that payment on 12.03.1995 is by cheque

(iv) the fact that the plaintiff have proved the receipts.

9. It is not in dispute that the plaintiff and the defendant entered into a sale agreement on 08.06.1994 in respect of the suit property and the sale agreement has come to be marked as Ex.A1. It is further not in dispute that the parties agreed the sale price at Rs.1,76,000/- and also the parties are not in issue that the defendant had received a sum of Rs.75,000/- from the plaintiff on the date of sale agreement and it is further seen that the parties had, under Ex.A1, agreed to complete the sale transaction on or before 31.03.1995, whereunder, it is seen that the plaintiff had agreed to pay the balance sale consideration of Rs.1,01,000/- to the defendant on or before 31.03.1995 and get the sale deed executed from the defendant. Thus, on the above terms contained in Ex.A1, according to the plaintiff, time is not the essence of the contract, whereas, according to the defendant, time is the essence of the contract.

10. Now, according to the plaintiff, though he has been always ready and willing to pay the balance sale consideration within the time stipulated and accordingly, also paid a sum of Rs.42,500/- to the defendant through her husband as detailed in the plaint and in his evidence and as time was not the essence of the contract and as only the defendant had failed to go further as per the terms of the agreement, it is the case of the plaintiff that the defendant had sent a false notice on 29.04.1995, to which, the plaintiff had sent a telegram directing the defendant to receive the balance sale consideration and execute the sale deed and thus, according to the plaintiff, he has been necessitated to lay the suit for specific performance.

11. As per the case of the plaintiff, he has paid a sum of Rs.42,500/- to the defendant towards part of the balance sale consideration on different occasions both by way of cash and cheque and thus, according to the plaintiff's case, he has in all in addition of Rs.75,000/- paid on the date of the sale agreement, paid Rs.42,500/- to the defendant. The defendant has

denied the receipt of the sum of Rs.42,500/- said to have been paid by the plaintiff to her husband. According to the defendant, the plaintiff has not been permitted under the sale agreement to pay the balance sale consideration to her husband nor the defendant has authorized her husband to receive the amount on her behalf and hence, according to the defendant, the alleged payments said to have been made to her husband are not true and valid and even assuming to be true, they are not binding on the defendant. Inasmuch as the above said payments, in all amounting to a sum of Rs.42,500/- has been disputed by the defendant, it is for the plaintiff to establish that he has paid the said sum as pleaded by him.

12.As rightly put forth by the defendant, a perusal of Ex.A1 sale agreement would go to show that it does not permit the plaintiff to pay the balance sale consideration to the defendant's husband. On the other hand, as per terms contained in Ex.A1, the plaintiff is only bound to pay the payment to the defendant directly. However, it is the case of the plaintiff that inasmuch as the agreement of sale Ex.A1 had come to be executed between the parties and as the defendant's husband was instrumental in bringing about the said sale agreement between the parties concerned and at the time of entering into the sale agreement, as the defendant had orally informed to pay the amount to her husband, according to the case of the plaintiff, he has tendered the above said payments to the defendant's husband and hence, the above said payments are valid, true and binding on the defendant. However, as seen above, there is no stipulation in Ex.A1 agreement permitting the plaintiff to pay the sale amount to the defendant's husband. If really, the defendant had directed the plaintiff to make the payment to her husband, as argued on the part of the defendant, necessary recitals to that effect would have been incorporated in the sale agreement. However, the sale agreement is silent as regards the plaintiff's claim of right to make the payment of the sale amount to the defendant's husband. It is further seen that it is not the case of the plaintiff that the defendant was not available on the date of the alleged payments said to have been made to her husband. On the other hand, it is found that the plaintiff has admitted that the defendant was available and it is further seen that the defendant's residence is situated a few houses away from the plaintiff's office and in such view of the matter, if really, the plaintiff had made the payments as pleaded by him amounting to a sum of Rs.42,500/- on various dates, nothing prevented the plaintiff from making the said payments directly to the defendant and accordingly, obtain necessary receipts from the defendant or get necessary endorsements as regards the payments from the defendant in the sale agreement itself. On the other hand, it is found that though it has been admitted by the plaintiff that the defendant

was very much available or accessible on the date of the alleged payments said to have been made to her husband, it is very strange on the part of the plaintiff to have tendered the payments to the defendant's husband and not to the defendant directly.

13. However, it is argued by the plaintiff's counsel that the defendant, during the course of her evidence, has not, as such, disputed the signature of her husband in the documents or receipts marked as Exs.A2 to A6 and on the other hand, she would only depose that the signatures found in some of the above said documents appear to be as that of her husband and despite the above said position, as the defendant had not evinced interest to examine her husband to repudiate the above said documents as such, it is contended that adverse inference should be drawn against her for not examining her husband in support of her defence version and hence, the Court should hold that the defendant had received a sum of Rs.42,500/- through her husband as put forth by the plaintiff. No doubt, the defendant, in her evidence, has admitted that in some documents above referred to, the signatures found therein appear to be that of her husband. However, it is seen that on a reading of the evidence of the defendant as a whole and also the defence put forth by her in the written statement repudiating the alleged payments said to have been made by the plaintiff through the defendant's husband is not true, valid and binding upon her and when it is found that the defendant, as such, contested the receipts Exs.A2 to A6 projected by the plaintiff as not true, valid and binding upon her and when Ex.A1 agreement does not permit the plaintiff to make the payment to the defendant's husband as such, it is seen that merely on the failure of the defendant to examine her husband to repudiate Exs.A2 to A6, by itself would not enable the plaintiff to assert that he had made the payments to the defendant's husband under Exs.A2 to A6 and that they are true, valid and binding upon the plaintiff. It is thus seen that if at all, the plaintiff had made such payments to the defendant's husband as put forth by him and finding that the same had been repudiated by the plaintiff as not true, valid and binding upon her and the plaintiff being incumbent to establish his case, particularly, when the same had been controverted by the opponent party, if really, the plaintiff had made the payments as put forth by him and the defendant's husband had issued necessary receipts as regards the said payments, nothing prevented the plaintiff from taking steps to subject the signatures found in the above said receipts for expert examination. However, for the reasons best known to the plaintiff, he has not taken appropriate steps to subject the signatures found in Exs.A2 to A6 for expert examination to establish that it only contains the signatures of the defendant's husband and as such are true and valid documents and

also binding upon the defendant. On the other hand, the plaintiff cannot take shelter under the above said so-called admission on the part of the defendant that some of the signatures found in the above said receipts appear to be that of her husband and as above referred to, on a reading of the entire evidence of the defendant and her defence, it is seen that the defendant has not admitted the truth and validity of the above said receipts and in such view of the matter, the plaintiff being the suitor should endeavour to establish his case by acceptable and reliable evidence. The plaintiff having failed to establish the same, it is seen that the above said documents by themselves would not be sufficient to hold that the plaintiff has made a payment of Rs.42,500/- towards the part of the sale consideration to the defendant as per the terms of Ex.A1 sale agreement.

14.It is further seen that the evidence of PW2 examined on behalf of the plaintiff also would not be sufficient to sustain the plaintiff's case, when it is found that the plaintiff has failed to establish that the defendant's husband has been empowered by the defendant to receive the balance sale consideration on her behalf and when it is further seen that the defendant was very much available on the relevant dates and when it is further seen that the plaintiff has failed to establish the truth and validity of the receipts Exs.A2 to A6, it is seen that merely on the basis of the evidence of PW2 that he knew about the payments made under Exs.A2 to A6 as such by itself would not establish the case of the plaintiff that he had made a valid payment of Rs.42,500/- towards the part of the sale consideration to the defendant as per the terms of Ex.A1. It is thus found that as rightly determined by the first appellate Court, the plaintiff has failed to establish that he has made the payment of Rs.42,500/- to the defendant through her husband towards part of the sale consideration under Exs.A2 to A6 as put forth by him and hence, it is seen that the above case of the plaintiff is not true and acceptable.

15.That apart, it is also found that as the alleged payment of Rs.42,500/- to the defendant's husband by the plaintiff is not true, accordingly, the receipts said to have been issued by the defendant's husband towards the part payments are not filed by the plaintiff along with the plaint and it is found that the said documents have come to be marked subsequently only during the course of evidence. If really, the said documents had been really issued by the defendant's husband as put forth by the plaintiff's version, one would have expected the plaintiff to have filed the said documents along with the plaint. Thus, when it is seen that the said documents had not been filed simultaneously with the plaint, though no doubt the plaint disclosed the alleged payments on various dates to the

defendant's husband, if the said payments had been true, the documents pertaining to the same would have also been filed along with the plaint by the plaintiff. This aspect of the matter also throw considerable suspicion in the plaintiff's case as regards the part payment of the sale consideration to the defendant's husband amounting to Rs.42,500/-.

16.It is found that as per the terms of Ex.A1, the plaintiff has to pay the balance sale consideration on or before 31.03.1995 and complete the sale consideration. However, according to the plaintiff, time is not the essence of the agreement. In this connection, the plaintiff's counsel placed reliance upon the decision reported in 2010 (2) CTC 751 (B.Nemi Chand Jain and another Vs. G.Ravindran and four others) for the proposition that there is no presumption that time is essence of the contract in respect of the immovable property and mere fixation of the period for completion of contract does not make the time essence of the contract and it is thus found as to whether time is essence of contract entered into between the parties is made essential or not, all depends upon the facts and circumstances of each case. Admittedly, Ex.A1 sale agreement is found to be in respect of the immovable property and on a perusal of the terms of sale agreement, it is further seen that as such time is not made the essence of the contract between the parties, however, the parties have agreed that the plaintiff should make the payment of the balance sale consideration on or before 31.03.1995, failing which, the plaintiff should compensate the defendant by paying a sum of Rs.25,000/- towards loss and further the document also recites that on the failure of the defendant to execute the sale deed as per the terms thereof, the plaintiff is entitled to take appropriate action against the defendant as per law as per the terms of the document. Now, according to the defendant, with a view to settle her debts and meet her urgent family expenses, she has entered into a contract with the plaintiff with the condition that the plaintiff should pay the balance sale amount on or before 31.03.1995. It is found that as rightly argued by the defendant's counsel, if the parties had endeavoured to complete the sale transaction as and when they like, there is no need for them to incorporate any specific time limit for completing the sale transaction. However, it is seen that for one reason or the other, the parties had chosen to fix a time limit for completing the sale transaction, accordingly, it is seen that the parties had agreed to complete the sale transaction on or before 31.03.1995. However, the agreement being related to an immovable property, as such, it is seen that considering the facts and circumstances of the case, time may not be the essence of the contract. Still, it is seen that the plaintiff should take all steps to complete the sale transaction as per the terms of the agreement Ex.A1. It is thus to be seen whether the plaintiff

has been ready and willing to perform his part of the contract from the inception to complete the sale transaction or whether there are any latches and failures on the part of the plaintiff in completing the sale transaction and as such is disentitled to obtain the discretionary relief of specific performance as contended by the defendant.

17. Though time may not be the essence of the contract, Ex.A1 entered into between the parties, still the parties have chosen to fix the outer time limit of 31.03.1995 for completing the sale transaction. It is thus seen that on or before 31.03.1995, the plaintiff should have been ready to make the payment of balance sale consideration and called upon the defendant to execute the sale deed as per the terms of the agreement. As adverted above, the case of the plaintiff that he had made part payment of the sale consideration amounting to Rs.42,500/- through the defendant's husband on various dates is found to be false and unacceptable. The plaintiff has not established the above pleas. Equally, it is found that there is no material adduced on the part of the plaintiff to show that at any point of time prior to 31.03.1995, he had been ready and willing to make the payment of the balance sale consideration. Though the plaintiff would aver that he has been always ready and willing to pay the balance sale consideration and get the sale deed executed and the delay had occurred only on the defendant's side in evading the execution of the sale deed, if the above case of the plaintiff is true, one would have expected the plaintiff, on knowing the alleged attitude and conduct of the defendant to issue a legal notice to the defendant calling upon her to receive the balance sale consideration and execute the sale deed in favour of the plaintiff. However, it is found that even though the plaintiff has alleged that he has been always ready and willing to pay the balance sale consideration from the date of the agreement, it is seen that there is no material available as such to show that the plaintiff has always been ready to make the payment of balance sale consideration on or before 31.03.1995. Equally, it is found that the plaintiff has also not issued any legal notice calling upon the defendant to receive the balance sale consideration and execute the sale deed on or before 31.03.1995. On the other hand, it is the case of the defendant that though she was ready to complete the sale transaction and as the plaintiff was not willing to complete the sale transaction, it is her plea that left with no other alternative, she had sent a notice to the plaintiff on 29.04.1995 explaining the true facts and thereby cancelled the sale agreement entered into between the parties and the receipt of the said notice marked as Ex.A9 had not been controverted by the plaintiff. It is found that only thereafter, the plaintiff seems to have realized his folly and chosen to send a telegram on 01.05.1995 marked as Ex.B1 calling upon the defendant to

receive the balance sale consideration and execute the sale deed. It is thus found that not to a single piece of evidence is available on the part of the plaintiff to show that till 29.04.1995, he was ready and willing to pay the balance sale consideration to the defendant and get the sale deed executed. On the other hand, it is found that only on 01.05.1995 i.e. vide Ex.B1 long after the expiry of the period fixed for the completion of the sale the plaintiff has expressed his readiness and willingness to the defendant to complete the sale transaction. It is thus found that the case of the plaintiff that he has always been ready and willing to perform his part of the contract right from the inception cannot be accepted in any manner. It is further found that as rightly put forth by the defendant's counsel, in the telegram, the plaintiff has not whispered anything about the alleged payment of Rs.42,500/- said to have been paid by him to the defendant's husband on various dates as pleaded in the plaint. The telegram Ex.B1 is conspicuously absent with reference to the above said case of the plaintiff. It is thus found that as the above said alleged payments are not true, it is found that no reference about the same has been made in Ex.B1 telegram by the plaintiff. However, it is argued by the plaintiff's counsel that Ex.B1 being a telegram one should not expect the plaintiff to give a detailed information about his payments made by him as detailed in the plaint and hence, it is stated that in a cryptic manner, the plaintiff had expressed his readiness and willingness in the telegram and that part, he has not detailed anything in the telegram. However, it is not a rule of law that the telegram should not contain extensive details about the party's case. It is for the party concerned to determine as to what facts are to be stated and what facts are not to be stated in the telegram, particularly, when the defendant had cancelled the sale agreement under Ex.A9 and that till date, when the plaintiff has not established his readiness and willingness to complete the sale transaction, at least one would have expected the plaintiff, if his case is true to give a detailed reply, if any, by way of telegram Ex.B1 containing the factual aspects about his readiness and willingness and also as to the alleged payments said to have been made by him to the defendant's husband on various dates amounting to Rs.42,500/-. However, such information are not forthcoming on the part of the plaintiff in Ex.B1 and this aspect of the matter also would only go to expose the falsity of the plaintiff's case as regards the alleged payment the above sale consideration to the defendant's husband amounting to Rs.42,500/-.

18.That apart, even assuming for the sake of arguments that the plaintiff cannot be expected to send a detailed reply in the telegram Ex.B1, at least, to show the truth in his pleas, as rightly argued, nothing prevented the plaintiff to send a

detailed reply to the notice Ex.A9, subsequent to the telegram sent by him marked as Ex.B1. If really, the plaintiff has made the part payment amounting to Rs.42,500/- to the defendant's husband on various occasions, if the said facts are not be able to be disclosed by the plaintiff in the telegram Ex.B1, at least thereafter, one or two days subsequent thereto, the plaintiff should have endeavoured to send a detailed reply to the defendant explaining his readiness and willingness to complete the sale transaction from the inception and also, the part payments said to have been made by him to her husband on various occasions etc., However, it is seen that such step has not been taken by the plaintiff and this aspect of the matter also would only go to show that inasmuch as the above said payments are not true and valid, it is seen that the plaintiff has neither whispered about the same in the telegram Ex.B1 nor evinced interest to send a detailed reply to the defendant subsequent to Ex.B1 telegram to the notice sent by the defendant marked as Ex.B9. This aspect assumes importance as under Ex.A9, the defendant has, pointing to the failure of the plaintiff to perform his part of the contract, cancelled the sale agreement. It is thus found that the defendant has validly cancelled the sale agreement as the time fixed under the agreement had expired. The defendant cannot be expected to wait endlessly to enable the plaintiff to complete the sale consideration as and when he pleases and on seeing the conduct of the plaintiff that he has been not showing his readiness and willingness to complete the sale transaction from the inception and accordingly, not endeavouring to pay the balance sale consideration within the time stipulated under agreement, it is naturally on the part of the defendant to resort but further legal process and accordingly, it is seen that the defendant had cancelled the sale agreement. It is true that Ex.A1 sale agreement does not specifically empower the defendant to cancel the sale agreement on the failure of the plaintiff to pay the balance sale consideration on or before 31.03.1995. Even if it be so, it is found that when the plaintiff has not placed any material as such to the satisfaction of the defendant that he is ready to complete the sale transaction as per the terms of the agreement entered into between the parties, it is natural on the part of the defendant to take further appropriate legal remedies available to him and as such, it is seen that the defendant has rightly and validly cancelled the sale agreement by way Ex.A9 and only thereafter, it is seen that the plaintiff has by way of Ex.B1 telegram expressed his readiness and willingness, whereas on factual aspects it is seen that the plaintiff has not been ready and willing to perform his part of the contract from the date of the sale agreement as per terms contained therein.

19.Now coming to the institution of the suit, it is seen

that the plaintiff has chosen to lay the suit for specific performance only on 06.06.1997. No doubt, as per the law of limitation, the plaintiff is entitled to lay the suit within the time limit specified under Article 54 of the Limitation Act, but the question is whether the plaintiff's institution of the Civil action on 06.06.1997 would exhibit his readiness and willingness to complete the sale transaction as put forth by him has to be seen. Now, according to the plaintiff, he has been always ready and willing to complete the sale transaction by paying the balance sale consideration to the defendant and it is only the defendant, who is evading to execute the sale deed. As seen above, there is no material placed on the part of the plaintiff to establish that he has been always ready and willing to perform his part of the contract on or before 31.03.1995. Considering the above said real position, it is found that the defendant, left with no other alternative, has terminated the contract by sending a notice to the plaintiff under Ex.A9. Therefore, when it is found that to the knowledge of the plaintiff, the defendant has expressed her mind set about Ex.A1 agreement and accordingly, cancelled the sale agreement and only thereafter, as pointed out above, the plaintiff has sent the telegram Ex.A1, now, when the plaintiff is aware of the determination of the defendant in not being ready to proceed further under the sale agreement, particularly, she having cancelled the same under Ex.A9, if really, the plaintiff had been ready and willing to perform his part of the contract right from the inception as contemplated under law, one would have expected the plaintiff to institute the civil action against the defendant immediately at least after receiving Ex.A9 notice or at least after sending the telegram Ex.B1. On the other hand, it is found that much belatedly i.e. after sending the telegram Ex.B1 on 01.05.1995, only two years thereafter, the plaintiff has chosen to levy the civil action against the defendant for the equitable relief of specific performance. It has not been explained on the part of the plaintiff as to he should wait for another period of two years to institute the civil action against the defendant, particularly considering the determination of the defendant in not being ready to proceed further in the matter and the belated institution of the suit by the plaintiff, even thereafter would only go to expose that it is only the plaintiff, who has not been willing to perform his part of the contract and on the other hand, it is found that the defendant has always been ready and willing to perform her part of the contract and such being the real position, it is found that the first appellate Court, considering the above facts in its entirety in the right perspective rightly declined the relief of specific performance claimed by the plaintiff. The plaintiff for establishing his entitlement to obtain the discretionary and equitable relief of specific performance, should establish that he has always been ready and willing to

perform his part of the contract from the inception and considering the above facts, when it is found that the plaintiff has been completely lethargic and inactive to perform his part of the contract, rightly it is found that the first appellate Court has declined the discretionary relief of specific performance in favour of the plaintiff and in such view of the matter, no interference is called for in the above said determination of the first appellate Court.

20. In the light of the above discussions, though time may not be the essence of the agreement Ex.A1, it is found that the plaintiff has miserably failed to establish his readiness and willingness to perform his part of the contract right from the inception and it is further found that the plaintiff has projected the false case, as if he had made a part payment of Rs.42,500/- to the defendant through her husband towards part of the sale consideration and it is further found that the plaintiff, being the suitor, failed to establish the truth and validity of Exs.A2 to A6 and hence, the defendant cannot be expected to discharge the said burden, and in such view of the matter, the failure of the defendant in not examining her husband to substantiate the case of the plaintiff or establish his defense version as such would not in any manner be helpful to uphold the plaintiff's case and similarly, the plaintiff has also not established even the cheque payment said to have been made by him on 12.03.1995 by adducing acceptable and reliable evidence and accordingly, it is found that the plaintiff has miserably failed to establish the truth and validity and binding the nature of the receipts Exs.A2 to A6 and accordingly, the substantial questions of law formulated are answered against the plaintiff and in favour of the defendant.

21. In conclusion, the Second Appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar (CO)

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Sub-Assistant Registrar

mfa/sms

To

1.The Principal District Judge, Chingleput.

2.The Subordinate Judge, Trivellore.

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+1 CC to M/s.K. Goviganesan, Advocate sr 86668.

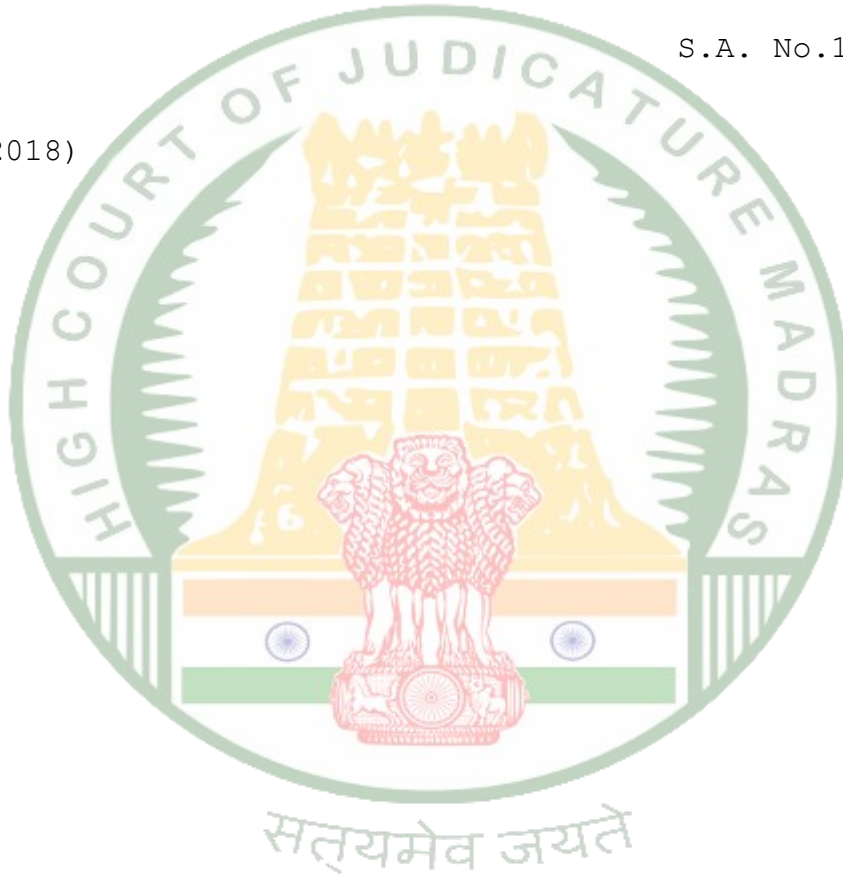
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The Section officer

VR Section, High Court, Madras.

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