



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.24 of 2014

and

M.P.(MD).No.1 of 2014

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P.Dhanalakshmi

... Appellant/plaintiff

Vs.

V.Velusamy

... Respondent/Defendant

PRAYER : Appeal filed under Section 96 of Civil Procedure Code, r/w order 41 Rule 1, to set aside the judgment and decree of the learned II Additional District Judge, Tiruchirappalli in O.S.No.132 of 2012, dated 10.09.2013 by allowing this appeal with cost by decreeing the suit for specific performance as prayed for with cost.

For appellant : Mr.A.Haja Mohideen

For respondent : Mr.H.Lakshmi Sankar

JUDGMENT

[Judgment of the Court was delivered by **M.M. SUNDRESH, J.**]

The appellant is the plaintiff in the suit. The suit has been filed for specific performance of Ex.A.1, which is a sale agreement executed by the respondent in favour of the appellant on 23.05.2012. The sale consideration mentioned under Ex.A.1 is Rs. 37 lakhs, out of which Rs.10 lakhs admittedly was paid by the appellant in favour of the respondent. Ex.A.2 is a draft sale deed dated 20.02.2012. According to the appellant, as per Ex.A.2, he was ready and willing to perform his part of contract within the stipulated period of two months. Ex.A.3 is legal notice sent by the appellant dated 11.08.2012. Ex.A.4 is reply notice sent by the respondent dated 24.08.2012. Ex.A.5 is proceedings of the Tahsildar dated 04.12.2012, by which the stamp was cancelled on the ground of mistake in executing the document. Ex.A.6 is plain stamp papers for a value of Rs.84,000/- dated 19.07.2012.

2.Before the trial Court, the appellant examined 3 witnesses namely P.W.1 to P.W.3. P.W.1 is the appellant. P.W.2 and P.W.3 are the attestors, namely brother and sister of the appellant and six documents were marked as Ex.A.1 to Ex.A.6. The respondent examined D.W.1. No document was marked by the respondent.



3.The trial Court has framed the following issues:-

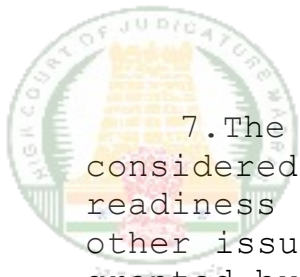
- 1.Whether the plaintiff is entitled for the relief of specific performance?
- 2.Whether the plaintiff is entitled to relief of refund of advance amount?
- 3.Whether the plaintiff is ready and willing to perform his part of contract?
- 4.To what other relief?

The trial court dismissed the suit by disbelieving Ex.A.2. This is for the reason, the appellant has not stated anything about Ex.A.2 in the legal notice and the amount mentioned therein for a sum of Rs.12,10,000/- as against the amount mentioned in Ex.A.1 being Rs.37 lakhs. It is further held that there is no material to hold that the appellant was ready and willing to perform his part of contract.

4.The learned counsel appearing for the appellant would submit that the trial Court ought to have taken into consideration Ex.A.2. It is a case where there is no dispute regarding the execution of Ex.A.1. The additional documents filed would show that two agreements have been entered into being registered for the purpose of effecting the sale, though it was executed by the sister of the appellant. As they are living along with the appellant which is evident from the other additional document, which is family card, it has to be held that his readiness and willingness is correctly proved. The documents filed would show that the application was made by the appellant for issuance of encumbrance certificate which would also show that his readiness and willingness of the appellant.

5.The learned counsel for the respondent would submit that the discretion has rightly been exercised against the appellant by the trial Court, as the property which is the subject matter of Ex.A.1 is a house property. Ex.A.2 is disputed. Therefore onus is on the appellant to prove it. The trial Court has rightly disbelieved Ex.A.2. There were no materials available before the trial Court to substantiate his readiness and willingness. The documents sought to be taken as additional documents before this Court ought to have been filed even during the pendency of the suit. These documents have been introduced for the first time and the parameters for complying with Order 41 Rule 27 are not satisfied. Hence, the appeal has to be dismissed.

6. We have considered the above submissions of the learned counsels for the parties and perused the materials available on



7.The execution of Ex.A1 is admitted. The only question to be considered in this appeal is whether the appellant has proved his readiness and willingness to perform his part of contract? And other issues to be considered are with respect to the relief to be granted by this Court.

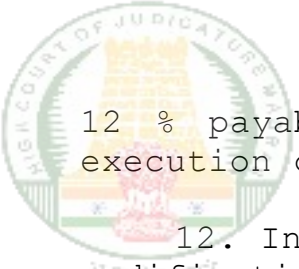
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8.Admittedly even the trial Court directed the respondent to pay a sum of Rs.10 lakhs along with 6 % interest. The trial Court being the Court of first instance rightly disbelieved Ex.A.2. There is no mention about Ex.A.2 dated 20.07.2012 in Ex.A.3 dated 11.08.2012, which is a legal notice sent by the appellant. If Ex.A.2 is prior to Ex.A.3, the same would have been mentioned in Ex.A.3. Secondly, Ex.A.2 reveals only a sum of Rs.12,10,000/- as against the sale consideration as mentioned in Ex.A.1, being Rs.37 lakhs. Before the trial Court, there was no sufficient material available to hold that the appellant was ready and willing to perform his part of contract. The readiness will have to be seen from financial status and willingness is with respect to the execution of deed.

9.As rightly submitted by the respondent, these documents cannot not be filed as additional documents at this stage. These documents were available with the appellant at the relevant point of time. There was no pleading in support of his contention even before the trial Court. Even otherwise, the appellant has not stated that he has made money ready to perform his part of contract. Therefore, this is nothing but an attempt to fill up the lacuna. With respect to the readiness and willingness, the appellant is statutorily bound to prove the same. Admittedly within a period of two months the amount had not been made ready. Hence we do not find any error in the findings rendered by the trial Court.

10.In such view of the matter, the following decisions in the cases of, **(i) Chebrol Sriramalu Vs. Vakalapudi Satyanarayana, reported in 2013 (9) SCC, 404. (ii) Satya Jain (Dead) Thoruh Lrs and others Vs. Anis Ahmed Rushdie (dead) Through Lrs and others, reported in 2013 (8) SCC, 131 and (iii) K.M.Rajendran Vs Arul Prakasam and another, reported in AIR 1998, Madras, 336,** relied on by the learned counsel for the appellant are not applicable to the present facts of the case.

11.Accordingly, the relief sought for an order and decree for specific performace is rejected.The trial Court has granted a relief to return the advance amount deposited with 6% of interest. We also take note of the fact that value of money for these years and escalation of the property value mentioned in Ex.A.1,is not in dispute. Thus, we deem it fit to modify the judgment and decree of the trial Court with respect to the interest alone. Accordingly, instead of 6 % interest, it is enhanced from 6 % to



12 % payable on the sum of Rs. 10,00,000/- from the date of execution of Ex.A.1 till the date of reliasition.

12. In the result, the Appeal suit is dismissed with the above modification. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The II Additional District Judge, Tiruchirappalli.

+1cc to Mr.H.Lakshmi Sankar, Advocate Sr.No.76897

+1cc to Mr.A.Haja Mohideen, Advocate Sr.No.76826

DSK

VB/KK/SAR1/04/10/2017/4P/4C

A.S. (MD) No.24 of 2014
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