



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 30.01.2017

Delivered on: 02.06.2017

CORAM :

THE Hon'ble MR.JUSTICE **S.S.SUNDAR**

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Appeal Suit (MD) No.30 of 2011
and
M.P.(MD) No.1 of 2013

1. Balakrishnan
2. Paramasivan,
3. O.S.Mohammed Sherif
4. O.M.Mohammed Ehiya
5. Saravanakumar

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-Vs-

1.B.Veni
2.Velammal
3.Parvathi,
4.Amuthavalli,
5.Thirumalai Nambi,
6.Shenbagavalli
7.Krishnaveni

: 1st Respondent / Plaintiff: Respondents 2 to 7 /
Defendants No.10 to 15

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code, against the Judgement and Decree passed in O.S.No.11 of 2010 on the file of Additional District Court (Fast Tract Court-II), Tirunelveli, dated 01.12.2010.

For Appellants : Mr.M.P.Senthil
For Respondent 1 : Mr.A.Arumugam
for T.Selvan
For Respondents : No Appearance
2 to 7

JUDGMENT

This appeal has been filed by defendants 2 to 9 in the suit in O.S.No.11 of 2010 on the file of the Additional District Court (Fast Track Court-II), Tirunelveli. The first respondent in this appeal, as plaintiff, filed a suit in O.S.No.11 of 2010 for specific performance of an agreement of sale and for consequential relief.

2.The suit properties are described in three items. Items 1 and 2 are landed properties each measuring an extent of 44 cents in Survey No.124 in Chathiram Puthukulam Village, Tirunelveli Taluk. Item No.3 is a small well located in the first item of suit property. During the pendency of the suit, the first defendant in the suit died and hence, respondents 10 to 15 were impleaded as the legal representatives of the deceased first defendant.

3.The case of the plaintiff / first respondent herein are as follows:

3.1.Originally, the defendants 1 to 3 entered into a sale agreement on 30.04.2005 agreeing to sell the suit property and another property measuring an extent of 48 cents in Survey No.81 in the same village for consideration at the rate of Rs.18,000/- per cent. On the date of agreement, a sum of Rs.3,00,000/- was paid as advance. Since the defendants 1 to 3 did not hand over the title documents in respect of the suit properties, the plaintiff got a power of attorney deed from defendants 1 to 3 in the name of her husband in respect of the



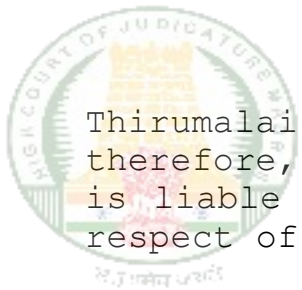
properties in Survey No.81 and cancelled the sale agreement dated 30.04.2005, on 18.04.2007. On the same date, namely, on 18.04.2007, the defendants 1 to 3 executed a registered sale agreement in respect of the suit property agreeing to sell the suit property at the rate of Rs.18,000/- per cent.

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3.2.A sum of Rs.1,00,000/- was paid as advance under the agreement. As per the terms of the sale agreement, the defendants 1 to 3 undertook to clear all encumbrances, if any. For the purpose of production of title deeds, fresh agreement dated 18.04.2007 was executed after cancelling the previous agreement dated 30.04.2005. At the request of the defendants 1 to 3, six months time was fixed for the performance of the contract. Though the plaintiff was always ready and willing to give the balance and get the sale deed, defendants 1 to 3 have not given the title deed in respect of the suit properties to show that they have title. The plaintiff and her husband visited almost every day asking the defendants 1 to 3 to give title deed.

3.3.When the plaintiff and her husband insisted the title deeds for the purpose of getting the sale deed registered, the defendants 1 to 3 told them that they would execute the sale deed in the month of ஜூன் 2009. Even earlier in 2005, the defendants 1 to 3 received a sum of Rs.3,00,000/- to execute the sale deed only in respect of the one item in the year 2007 after getting the sale consideration. After the sale agreement in 2007, the defendants 1 to 3 did not call upon the plaintiff for completing the sale transaction. Since a sum of Rs.1,00,000/- has been paid by the plaintiff, it is only the plaintiff who has been demanding the defendants to execute the sale deed.

3.4.On 21.11.2009, the plaintiff issued a legal notice calling upon the defendants 1 to 3, to execute the sale deed and to inform the plaintiff about the documents of title deed before the sale. However, the defendants 1 to 3 sent reply through their Advocates on 25.11.2009. In the notice sent by the plaintiff, the plaintiff requested the defendants 1 to 3 to inform as to how the suit properties, which are standing in the name of one Thirumalai Nambi, Rajagopal and Thangammal, became the properties of the plaintiff. Thereafter, the defendants 1 to 3 stated that the property belonged to them. However, as per the notice, dated 21.11.2009, issued by the plaintiff, the defendants 1 to 3 have not given the title documents to register the sale deed. However, to defraud the plaintiff, a reply dated 25.11.2009 was sent by the defendants 1 to 3. Hence, the plaintiff once again issued a notice on 09.12.2009 in response to the reply notice. Though, the first defendant is the only heir to her husband and her son Thirumalai Nambi, as per the Hindu Succession Act, in the reply notice dated 25.11.2009, the defendants 1 to 3 stated that defendants 2 and 3 as well as their five sisters are the legal heirs to Thirumalai Nambi. It was stated in the reply notice that

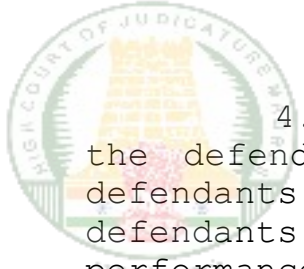


Thirumalai Nambi was not heard of for more than ten years and that therefore, he should be treated as dead. Hence, first defendant is liable to execute the sale deed in favour of the plaintiff in respect of Items 2 and 3.

3.5. Though the defendants 1 to 3 have stated that defendants 2 and 3 are entitled to Item 1 of the suit properties on the basis of a will executed by one Thangamal, the defendants 1 to 3 have not stated whether the Will is a registered Will or not. The contention of the defendants 1 to 3 that they have disclosed every fact relating to the suit properties and that the plaintiff was informed about the Will etc., are all false. The defendants 1 to 3 executed the sale agreement by stating that the suit properties are their ancestral properties. The defendants have not got a declaration from any Civil Court that the son of first defendant namely T.Thirumalai Nambi shall be presumed to be dead. When the plaintiff issued a further notice on 09.12.2009, the defendants 1 to 3 sent a reply dated 12.12.2009 and along with the reply, they have sent three cheques for a sum of Rs.1,00,000/-. However, once again the plaintiff issued a notice on 15.12.2009 and returned all the three cheques. In the notice dated 15.12.2009, the plaintiff called upon the defendants 1 to 3 to execute the sale deed or otherwise the plaintiff will be constrained to initiate action both in Criminal Court and Civil Court. After reply notice, dated 15.12.2009, the second defendant requested the plaintiff to give a sum of Rs.75,000/- to get a declaration from the Civil Court regarding the civil death of his brother T.Thirumalai Nambi. However, the plaintiff and her husband informed the second defendant that they will give the money to defendants 1 to 3 if they acknowledge in writing and also should hand over the Will dated 19.01.1991 and execute the sale deed. Thereafter, the second defendant did not turn up. However, the defendants 1 to 3 are liable to execute the sale deed after receiving the balance amount. Since the defendants 1 to 3 have failed to perform their part of contract, the plaintiff was constrained to issue a public notice in Dinamalar on 16.01.2010, regarding the subsistence of the sale agreement, cautioning the public to know that any other sale or encumbrance would not bind the plaintiff. The defendants 1 to 3 gave a publication in reply on 17.01.2010. Thereafter, the defendants 4 to 9 enquired the plaintiff's husband about the suit agreement dated 18.04.2007. Hence, the defendants 4 to 9 are fully aware of the sale agreement. With an intension to cheat the plaintiff, the defendants 1 to 3 have executed a sale deed in favour of the defendants 4 to 9 on 18.01.2010. When the sale agreement dated 18.01.2007 is in force, the sale deed in favour of defendants 4 to 9 is not valid. Hence, the plaintiff has come forward with the present suit seeking specific performance of the agreement dated 18.04.2007, as against defendants 1 to 9.

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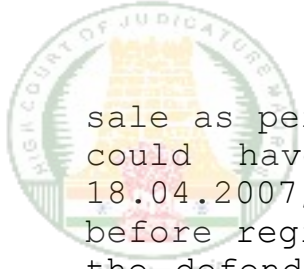
4. The defendants 1 to 3 filed a written statement *inter alia* contenting as follows:



4.1. Since the agreement dated 18.04.2007 was cancelled by the defendants 1 to 3 by the notice dated 12.12.2009 and the defendants 1 to 3 have executed the sale deed in favour of the defendants 4 to 9, the plaintiff is not entitled to seek specific performance. If really, the plaintiff is interested in getting the sale deed, she would have issued notice immediately after the date specified for performance (i.e 18.10.2007) and filed the suit for specific performance. However, the suit which is filed after this long delay and after the sale deed was executed in favour of the defendants 4 to 9 is not maintainable. Items 1 and 2 of the suit properties originally belonged to one Rajagopal and his wife Thangammal, by virtue of sale deed dated 04.05.1983. They did not have any issue. Rajagopal died leaving behind his wife Thangammal. During the life time Thangammal, she executed a Will in favour of her brother Dhakshinamoorthy to enjoy the properties till his life time and vested remainder in favour of the defendants 2 and 3. Dhakshinamoorthy is the father of the defendants 2 and 3. After the life time of Thangammal, the Will came into force and after the death of Dhakshinamoorthy on 01.11.1996, the suit properties Items 2 and 3 belonged to defendants 2 and 3. Regarding first item, the suit properties belonged to yet another brother of defendants 2 and 3 by virtue of a sale deed dated 29.06.1981. Thirumalai Nambi did not marry and was missing for more than ten years. Therefore, he was presumed to be dead. Since first defendant, the mother of Thirumalai Nambi, is the only heir, the original agreement dated 30.04.2005 was executed in favour of the plaintiff. Despite a specific condition that the sale should be completed within six months, the plaintiff did not complete the same. Hence, the agreement was cancelled on 18.04.2007. Even in the cancellation deed, it was specifically mentioned that the plaintiff was not willing to get the sale. The contention of the plaintiff that the defendants 1 to 3 have not handed over the document of title, is not the real reason. The sale agreement dated 30.04.2005 was cancelled as the plaintiff was not willing to perform the contract in terms of the agreement dated 30.04.2005. However, one of the items mentioned in the sale agreement was sold by defendants 1 to 3 in favour of the plaintiff.

4.2. In the agreement, dated 18.04.2007, there is no condition that the defendants 1 to 3 should hand over the title deeds. Even at the time of sale agreement, the xerox copies of the title deeds were handed over to the plaintiff. However, only for the purpose of delaying and to justify the inordinate delay, the plaintiff has come forward with the false case.

4.3. Since the agreement, dated 30.04.2005, in respect of suit properties were cancelled, because of the fact that the plaintiff did not have money then to complete the sale, in terms of the agreement, dated 30.04.2005, on the same date of canceling the previous agreement, the plaintiff entered into a fresh agreement on 18.04.2007. If the plaintiff did not complete the



sale as per the previous agreement, for want of title deeds, there could have been a specific clause in the agreement dated 18.04.2007, to hand over the documents of title to plaintiff before registration of sale deed. The fact is that on 18.04.2007, the defendants 1 to 3 handed over the copies of all documents of title in their possession. Despite the agreement that the sale should be completed before 18.10.2007, the plaintiff did not come forward to complete the sale. The very fact that the plaintiff kept quiet from October, 2007 to November, 2009 without issuing any notice, would show that the plaintiff was not ready and willing to perform her part of the contract. Hence, the contention that the plaintiff was always ready and willing is false. Nearly after two years from the date specified for performance, the plaintiff issued a legal notice containing false averments. Even in the notice, the defendants 1 to 3 were called upon to explain their title before completing the sale. If really the plaintiff is interested in the sale in terms of the suit agreement, the plaintiff ought to have issued notice immediately after 18.10.2007. The plaintiff was never ready and willing to perform her part of the contract and the plaintiff has no right to demand the documents of title deed even before the completion of the sale. The plaintiff is aware of the title and hence, there was no reference in the sale agreement about the title. Since the copies of the documents of title were given to the plaintiff even at the time of agreement and the plaintiff has agreed to the purchase the property, only after knowing the rights of the defendants 1 to 3, the case of the plaintiff in the plaint are false.

4.4. The contentions of the plaintiff in the notice dated 21.11.2009 are also false. Since the plaintiff was not ready and willing, the suit agreement stood cancelled. Therefore, defendants 1 to 3 in their reply notice, dated 12.12.2009, cancelled the agreement and returned the advance amount. After the cancellation of the suit agreement, the plaintiff is not entitled to specific performance of the agreement. The plaintiff came forward to purchase the suit property only after issuing all the documents of title and hence, the reason for not completing the sale as per the averments in the plaint are false to the knowledge of the plaintiff. Having regard to the facts, the contention of the plaintiff that she was always ready and willing to perform her part of the contract, are false. The other allegations and averments in paragraphs 7 to 10 are false. The contention that the second plaintiff demanded a sum of Rs.75,000/- after the notice, dated 15.12.2009, is false. Similarly, the contention of the plaintiff that she demanded defendants 1 to 3 to hand over the Will, dated 19.01.1991 and to get the amount after passing on receipt signed by defendants 1 to 3 is false. The second defendant never met the plaintiff after the suit agreement. Since the plaintiff was not ready and willing even after the suit notice was issued and the plaintiff did not have enough money to complete the



sale, the defendants 1 to 3 had no other option but to cancel the suit agreement and to execute the sale deed in favour of the defendants 4 to 9.

5. The defendants 4 to 9 have also filed an independent written statement contending that they are *bona fide* purchasers for value and that the suit agreement is not binding on them. Since the defendants 1 to 3 informed them that the suit agreement was cancelled by the notice, dated 12.12.2009, for the failure of the plaintiff to get the sale deed within a period of six months, they said that the defendants 4 to 9, purchased the property from defendants 1 to 3. Though several issues arose for consideration before the trial Court, the trial Court did not frame the important issues relating to the readiness and willingness of the plaintiff and the entitlement of the plaintiff to get the discretionary and equitable remedy of specific performance. The trial Court has only framed the following issues:

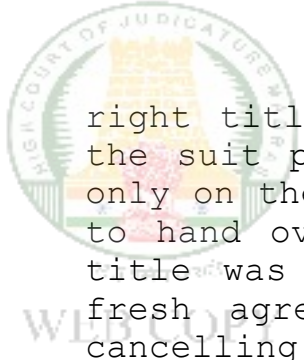
- 1) Whether the plaintiff is entitled to the decree for getting the sale deed in terms of the suit agreement?
- 2) Whether the sale agreement was cancelled?
- 3) Whether the cancellation of the sale agreement is valid?
- 4) Whether the defendants 4 to 9 are *bona fide* purchasers for value?
- 5) To what relief the plaintiff is entitled to?
- 6) What is the order to be passed regarding cost?

6. On behalf of the plaintiff, the plaintiff's husband was examined as P.W.-1 and one Mr. Velu was examined as P.W.-2. The plaintiff filed Ex.A1 to A31. Though the defendants examined two witnesses, no document was filed on the side of the defendants. The trial Court on the issues 2 and 3 regarding cancellation of agreement found that the suit agreement cannot be unilaterally cancelled by the defendants 1 to 3. These two issues were decided as pure legal issues mainly on the ground that the defendants 1 to 3 can cancel the agreement only by approaching the Court by getting a declaration to that effect or to cancel the sale agreement. Thereafter, the trial Court considered the issue No.4, namely, whether the defendants 4 to 9 are *bona fide* purchasers for value. While considering this issue, the trial Court relying upon a judgement of the Hon'ble Supreme Court reported in **2007 SAR (Civil) 446**, for the proposition that the subsequent purchasers have to prove that they are *bona fide* purchasers for value without notice and that the defence of readiness and willingness is not available to them. It was, thereafter, the trial Court came to the conclusion that the defendants 4 to 9 purchased the suit property after knowing the suit agreement and that therefore, they are not *bona fide* purchasers for value without notice. The trial Court considered the first issue as to the entitlement of the plaintiff for a decree in her favour without an issue being framed as to the readiness and willingness and the entitlement of plaintiff to get the discretionary and equitable relief of specific performance. While answering issue No.1, the trial Court



came to the conclusion that the plaintiff would have completed the sale if defendants 2 and 3 had handed over the Will in their favour. After holding that it was the defendants 1 and 3, who failed to hand over the documents of title in time, the trial Court considered several judgments cited before the Court both by the plaintiff as well as by the defendants in support of their respective cases. The trial Court despite referring to the evidence of P.W.2 categorically deposing that there was a panchayat pursuant to the complaint of P.W.1 stating that P.W.1 wanted him to get the advance amount from the defendants, the trial Court proceeded to hold that the plaintiff was always ready and willing to perform her part of the contract and the sale transaction could not be completed only because of the defendants 1 to 3 who were not willing to hand over the documents of title deeds. However, without a factual foundation for framing appropriate issues, the trial Court discussed several judgments relating to readiness and willingness and the scope of Section 20 of the Specific Relief Act. Despite specific stand being taken in the written statement by projecting the inordinate delay in issuing notice and filing suit, the trial Court did not frame any issue regarding laches and proceeded as if the plaintiff can wait any number of years till the defendants hand over the title deeds. However, the trial Court refused to grant relief in respect of items 2 and 3 on the ground that the original owner, namely, Thirumalai Nambi is not a party to the agreement and that the sisters of defendants 2 and 3 have not entered into an agreement with the plaintiff. Contrary to the facts and admission of plaintiff and defendants 1 to 3, the trial Court came to the conclusion that the plaintiff is not entitled to get the sale deed in respect of items 2 and 3 from the defendants. Aggrieved by the judgment and decree of the trial Court, the defendants 2 to 9 have filed the appeal. Since no decree has been passed as against the defendants 10 to 15, there is no appeal at their instance.

7. The learned Counsel for the appellants strenuously argued that the plaintiff who knew everything about the right title and interest of the defendants 1 to 3, was never ready and willing to perform her part of the contract any time during the subsistence of the agreement and the findings of the trial Court are erroneous and perverse. The second contention of the learned Counsel for the appellants is regarding the long and unexplained delay in filing suit which according to the learned Counsel, will disentitle the plaintiff from getting the equitable relief of specific performance. The learned Counsel after referring to the evidence of P.W.1 and P.W.2 submitted that the conduct of plaintiff in exhibiting an attitude, which is contrary to the terms of the agreement is totally ignored by the trial Court. In other words, the plaintiff has come forward with a false plea, regarding the terms found in Ex-A1, the suit agreement and the obligation of the parties thereunder. The plaintiff who had already entered into an agreement in 2005 was fully aware of the



right title and interest of the defendants 1 to 3 in respect of the suit properties, cannot postpone the performance on her part only on the ground that the defendants 1 to 3 did not come forward to hand over the documents of title to prove their title. Since title was not an issue at the time of sale agreement, and the fresh agreement under Ex-A1 was entered into on the date of cancelling the prior agreement, which was in the year 2005, the learned Counsel contended that the parties should have incorporated a specific term with regard to handing over documents of title deed in the suit agreement, had there been a doubt about the title of defendants 1 to 3. Since the plaintiff agreed to purchase the properties knowing the full background about the title and interest of defendants 1 to 3, the reason stated by the plaintiff in the suit notices and in the plaint for not completing the sale within the time stipulated in the suit agreement cannot be accepted. The trial Court failed to consider the material aspect that the plaintiff is not ready and willing to perform her part of the contract in terms of the suit agreement. It is further submitted by the counsel that the trial Court failed to consider the fact that the plaintiff was not willing to perform her part of contract in terms of the suit agreement even in the notices sent under Ex-A3, Ex-A5, Ex-A8 and Ex-A9, and that the plaintiff is not entitled to the decree for specific performance especially in the light of Sections 16, 17 and 20 of the Specific Relief Act.

8.As against the submission of the learned counsel for the appellants, Mr.A.Arumugam, learned Counsel for the first respondent vehemently argued that the judgment of the trial Court is perfectly in order inasmuch as the trial Court has considered the pleadings on both sides and the documents and oral evidence in a proper perspective so as to arrive at unassailable findings regarding the readiness and willingness of the plaintiff apart from the entitlement of plaintiff to get the discretionary relief of specific performance. Regarding the delay, it was submitted by the learned counsel for the first respondent that the delay was only on account of failure on the part of the defendants 1 to 3 to produce documents of title deed and hence, there is no delay in the eye of law. Secondly, it was pleaded by the learned counsel for the first respondent that the defendants 1 to 3 were not put to any prejudice because of the delay particularly the defendants have not pleaded anything about the loss or prejudice that was caused to the defendants because of the delay. It was further contented by the learned counsel for the first respondent that the defendants 1 to 3 have executed the sale deed in favour of the defendants 4 to 9 for a price which is less than the price that was offered by the plaintiff under Ex-A1-agreement and that therefore, the plaintiff is entitled to the decree for specific performance as found by the trial Court.



9.I have considered the submissions of the respective counsels on both sides.

10.The trial Court has proceeded on the basis that the defendants 4 to 9 are not *bona fide* purchasers and that therefore, they cannot defend the suit on the ground that the plaintiff is ready and willing to perform her part of the contract. Since the trial Court failed to frame any issue regarding readiness and willingness by accepting the position of law as the learned Judge understood, based on the judgment of the Hon'ble Supreme Court in **2007 SAR (Civil) 446**, the whole judgment is vitiated for the failure to frame an important issue regarding readiness and willingness of the plaintiff.

11.The learned counsel for the appellant relied upon the judgment of Her Lordship Mrs.R.Banumathi in the case of **M.Ranganathan v. M.Thulasi Naicker (Deceased) and eight others** reported in **2008 (5) CTC 428** wherein it has been held that the delay in filing the suit would disentitle the plaintiff to get the discretionary relief of specific performance especially when the plaintiff has not tendered the amount. In the case of **Sandhyarani v. Sudha Rani** reported in **1978 SC 537** the Hon'ble Supreme Court has held as follows:

"(D) Specific Relief Act (47 of 1963), Section 16(b) and (c) - Specific performance of contract - Bars to relief - Inordinate delay on the part of Plaintiff to perform her part of contract - Decree for specific performance refused."

The Hon'ble Supreme Court in several cases has held that inordinate and unexplained delay on the part of the plaintiff to perform her part of the contract can be a reason to deny the relief of specific performance.

12.In the case of **Satyanarayana v. Yelloji Rao** reported in **AIR 1965 SC 1405**, the Hon'ble Supreme Court has held that mere delay without such conduct on the part of the plaintiff as would cause prejudice to the defendants does not empower a Court to refuse such relief of specific performance. In the case of **K.S.Vidyanandam v. Vairavan** reported in **1997 (1) CTC 628**, the Hon'ble Supreme Court observed that the delay, if it has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff, will disentitle the plaintiff to seek specific performance. The Hon'ble Supreme Court while dealing with the similar situation where the long delay of 2½ years was sought to be explained by the plaintiff that the defendants did not vacate the tenant. The Hon'ble Supreme Court considered the relevant facts as extracted below:

"Meanwhile [i.e., on the expiry of six months from the date of agreement], he stated, the defendants told him that since the plaintiff has abandoned the agreement, he

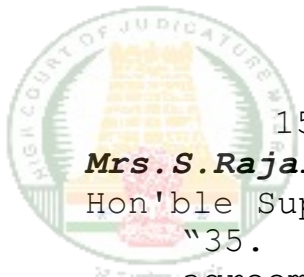


need not vacate. It is equally an admitted fact that between December 15, 1978 and July 11, 1981, the plaintiff has purchased two other properties. The defendants' consistent refrain has been that the prices of house properties in Madurai have been rising fast, that within the said interval of 2 1/2 years, the prices went up by three times and that only because of the said circumstance has the plaintiff [who had earlier abandoned any idea of going forward with the purchase of the suit property] turned round and demanded specific performance. Having regard to the above circumstances and the oral evidence of the parties, we are inclined to accept the case put forward by Defendants 1 to 3. We reject the story put forward by the plaintiff that during the said period of 2 1/2 years, he has been repeatedly asking the defendants to get the tenant vacated and execute the sale deed and that they were asking for time on the ground that tenant was not vacating. The above finding means that from 15.12.1978 till 11.7.1981, i.e., for a period of more than 21/ 2 years, the plaintiff was sitting quiet without taking any steps to perform his part of the contract under the agreement though the agreement specified a period of six months within which he was expected to purchase stamp papers, tender the balance amount and call upon the defendants to execute the sale deed and deliver possession of the property. We are inclined to accept the defendant's case that the values of the house property in Madurai town was rising fast and this must have induced the plaintiff to wake up after 2 1/2 years and demand specific performance."

13.The Hon'ble Supreme Court in the said case at paragraph 13 has held as follows:

"13. In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2 1/2 years in clear violation of the term of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices - according to the defendants, three times - between the date of agreement and the date of suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff."

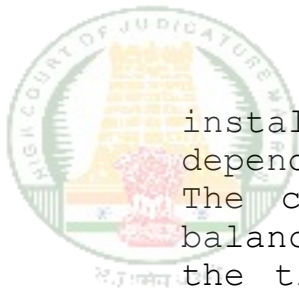
14.In the case of **P.Arumugam v. M.Shanmugam Pillai** reported in **2013 (3) MWN (Civil) 110** the learned Single Judge of this Court has held that the long delay of 2 years in issuing the plaint would disentitle the plaintiff to get specific performance.



15. In the case of **Mrs. Saradamani Kandappan v. Mrs. S. Rajalakshmi and others** reported in **AIR 2011 SC 3234** the Hon'ble Supreme Court has held as follows:

"35. The appellant contends that clause (3) of the agreement provides that execution of the sale deed shall depend upon the purchaser getting satisfied regarding (vendors') title to the lands and that the property is not subject to any encumbrance; that the said clause precedes clause (4) requiring payment of balance consideration of Rs.2,75,000 in three instalments; and that shows that the intention of parties was that the satisfaction of the purchaser in regard to the vendors' title to the land and encumbrance, was a condition precedent for payment of the balance consideration. In other words, it is contended that the contract provides the order in which reciprocal promises are to be performed, by placing clause (3) before clause (4), that is the vendors should first satisfy the purchaser regarding title of the vendors and only when that promise is performed by the vendors, the question of purchaser performing her promise to pay the balance consideration would arise.

36. The order of performance of reciprocal promises does not depend upon the order in which the terms of the agreement are reduced into writing. The order of performance should be expressly stated or provided, that is, the agreement should say only after performance of obligations of vendors under clause (3), the purchaser will have to perform her obligations under clause (4). As there is no such express fixation of the order in which the reciprocal promises are to be performed, the appellant's contention is liable to be rejected. We have already noticed that the contract contains two different streams of provisions for performance. One relates to payment of the balance consideration by the purchaser in the manner provided, which is not dependent upon any performance of obligation by the vendors. It is significant that clause (4) of the agreement did not say that the balance of the sale price shall be paid only after the vendors satisfied the purchaser in regard to title or that the purchaser shall pay the balance of sale price only after she satisfies herself regarding title of the vendors to the lands. Nor does clause (3) contain a provision, after stating that execution of the sale deed shall depend upon the purchaser getting satisfied regarding title to the land as also the nil encumbrance, that the payment of sale consideration will also depend upon such satisfaction regarding title and nil encumbrance. As noticed above there is an unconditional promise to pay the balance consideration in three



instalments and the said promise by the purchaser is not dependent upon performance of any obligation by vendors. The contract specifically states that having paid the balance price, if the purchaser is not satisfied about the title and on being intimated about the same if the vendors fail to satisfy the purchaser about their title, all amounts paid towards the price should be refunded to purchaser. This clearly demonstrates that the payment of balance of sale price in terms of the contract was not postponed nor made conditional upon the purchaser being satisfied about the title, but that payment of the balance price should be made to the vendors as agreed unconditionally. In fact if the intention of the parties was that only after the vendors satisfying the purchaser about their title, balance consideration had to be paid, clause (12) would be redundant as the situation contemplated therein would not arise. Further, if that was the intention, the purchaser would not have paid Rs.1,00,000 as further advance on 28.1.1981 and Rs.25,000 on 2.4.1981.

It is therefore clear that the contract does not expressly (or even impliedly) specify the order of performance of reciprocal promises, as alleged by the appellant.

37. The terms of the contract makes it clear that payment of sale price did not depend on execution of the sale deed. The sale deed was not required to be executed within any specific period. The purchaser had to fulfil her obligation in regard to payment of price as provided in clause 4 and thereafter vendors were required to perform their reciprocal promise of executing the sale deed, whenever required by the purchaser, either in her name or in the names of her nominees. The sale deed had to be executed only after payment of complete sale consideration within the time stipulated. In these circumstances, section 52 of the Contract Act does not help the appellant but actually supports the vendors-respondents."

16. Further in the same judgement, in paragraph 28, the Hon'ble Supreme Court has expressed as its view in the following manner on the question of delay and regarding the importance of time stipulated in the agreement:

"28. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam (supra) :

(i) Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps



or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser."

17. In the case of **Ram Niwas Gupta v. Mumtaz Hasan and others** reported in (2008) 17 SCC 362 the Hon'ble Supreme Court refused to exercise discretion in favour of the plaintiff, having regard to the circumstances indicated therein particularly with reference to the time factor and the conduct of the parties.

18. In the case of **K. Jeyakumar v. Robert and others** reported in (2002) 2 M.L.J. 112 this Court has held that the delay in sending notice and filing suit is a ground to deny the relief of specific performance. In another judgement of this Court in the case of **Jugraj v. P. Sankaran** reported in 2010 (3) CTC 279 it has been held that the delay in filing the suit would operate either as acquiescence or waiver or as abandonment to make the relief inequitable.

19. In the light of judgements that are referred to above, this Court is inclined to consider the present case on hand.

20. From the pleadings, it can be seen that it is the definite case of the plaintiff that though the plaintiff admitted that there was a delay of about more than two years in issuing the suit notice, the plaintiff justified this delay on account of the defendants' failure to hand over the documents of title deed pertaining to the suit properties. The suit agreement Ex.A1 does not have the condition or a clause requiring the defendants 1 to 3 to hand over the title deeds pertaining to the suit properties or to convince the plaintiff about their title before the plaintiff come forward with the balance of sale

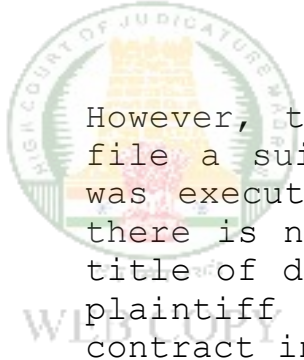
consideration and to complete the sale. Paragraphs 35 to 36 in the judgement of the Hon'ble Supreme Court reported in **2011 SC 3234** are relevant and the Hon'ble Supreme Court therein specifically observed that, where the terms of the contract is clear that payment of sale price did not depend on execution of the sale deed, the sale deed to be executed only after payment of complete sale consideration within the time stipulated. It has been further held that Section 52 of the Contract Act does not help the plaintiff but only support the defendants. In the present case, the defendants 1 to 3, no doubt were required to clear any encumbrance if it is found at their cost. That does not mean that they should hand over all the documents of title deed, as it has been insisted by the plaintiff all along. After the suit agreement, despite the fact that the time stipulated was only six months, till the suit notice was issued nearly after a period of two years from the date fixed for performance, the plaintiff never called upon the defendants 1 to 3 either to hand over the documents or to satisfy the plaintiff about their title. Further, the plaintiff and defendants had earlier entered into an agreement in respect of the same properties even in the year 2005. The previous agreement was cancelled and on the date of cancellation, this suit agreement came into existence. Even in the cancellation document, it was stated that the plaintiff was not willing to purchase the property in terms of the agreement. This would only suggest that the plaintiff failed to perform her part of the contract within the stipulated time and it was not on account of any defect in the title of defendants 1 to 3. If really the plaintiff had some doubt about the title of the defendants 1 to 3 over the suit property, the plaintiff would have certainly incorporated a specific clause or condition requiring the defendants 1 to 3 to produce the document of title deed or to hand over the documents of title deed before completing the sale or within the stipulated time. In this case, in all the notices issued by the plaintiff, the plaintiff has been insisting the defendants 1 to 3 to hand over the documents of title deeds and to explain the title before completion of the sale. The defendants 1 to 3 knew the plaintiff from 2005. In such circumstances, the case of the plaintiff that she did not enquire and verify about the title of defendants 1 to 3 even before the suit agreement is not believable. Even after the defendants 1 to 3 came up with a reply specifically stating that it was never agreed that the defendants 1 to 3 to hand over the documents of the title deed to the plaintiff or that the defendants 1 to 3 be required to explain their title for proceeding further with the sale agreement at that stage, the plaintiff in the subsequent notice, raised a doubt with regard to the title of defendants 1 to 3 on the one hand and warned them that they cannot cheat the plaintiff by trying to sell the property to any one. The conduct of the plaintiff, in such circumstances, did not indicate the readiness and willingness of the plaintiff in terms of the agreement.



21.The plaintiff examined P.W.2 who has filed proof affidavit stating that he knew about the demand of Rs.75,000/- by the defendants. But in the cross examination, P.W.2 categorically stated as follows:

“பாலகிருஷ்ணன் என்பவர் கிரைய ஒப்பந்தம் போட்டோம் தற்போது எனக்கு இடம் பிடிக்கவில்லை. பணம் கேட்டால் தரமாட்டோம் என்று கூறுகிறார்கள். நான் கிரைய ஒப்பந்தத்திற்கு கொடுத்த பணத்தை வாங்கித் தரவேண்டும் என்று என்னிடம் கூறினார்.”

22.There was no re-examination of this witness by the plaintiff explaining the categorical statement of P.W.2 about the withdrawal of plaintiff from the suit agreement. The trial Court, even after referring to this statement did not consider the significance even though this is one of the crucial statements which would go against the plaintiff regarding the plaintiff's readiness and willingness. As pointed out, in the successive notices sent by the plaintiff under Exs.A2, A4 and A6, the plaintiff has never stated about her readiness and willingness to complete the sale. Even in the notices, the plaintiff was only insisting the defendants to hand over the documents and put that as a condition for completion of sale. When this Court has already held that the agreement does not contemplate such a condition before completion of sale, it is very difficult to sustain the findings of the trial Court on the question of readiness and willingness. Even after the expiry of two years from the date specified for performance, the plaintiff has not expressed her readiness and willingness in terms of the suit agreement Ex.A1. After raising a doubt about the title of defendants 2 and 3, the plaintiff simultaneously threatened the defendants 1 to 3 by saying that action would be taken against them before Criminal and Civil Court in case they do not arrange for the execution of the sale. This attitude would make any one mad in the given context. It was, therefore, the defendants 1 to 3 had no other option but to send a reply on 12.12.2009 informing the plaintiff that the suit agreement is cancelled. No doubt, the mutual agreement entered into between the two parties cannot be cancelled unilaterally by one party to the agreement. However, the cancellation of agreement has no relevance in this case to decide the issue as to whether the plaintiff is entitled to the relief as prayed for. The plaintiff has filed the suit after receiving the notice from the defendants 1 to 3 dated 25.11.2009 under Ex.A3 and the reply under Ex.B5, dated 12.12.2009. The suit has been filed on 21.01.2010 immediately after the defendants 1 to 3 sold the property to defendants 4 to 9 on 18.01.2010. The paper publication effected by the plaintiff and the contents of the second and third notices issued by the plaintiff to the defendants 1 to 3 would only disclose that the plaintiff was trying to delay the completion of sale to the extent possible. Having regard to the stand taken by the plaintiff entertaining serious doubt about the title of defendants 1 to 3, a prudent person having rich experience, as a real estate business woman, would cancel the agreement and get back the advance amount.



However, there is no reason why the plaintiff should choose to file a suit for specific performance immediately after the sale was executed in favour of the defendants 1 to 3 especially when there is no material or event to convince the plaintiff about the title of defendants 1 to 3. Therefore, this Court held that the plaintiff is not ready and willing to perform her part of the contract in terms of the suit agreement under Ex.A1.

23. Law is settled that inordinate and unexplained delay in issuing suit notice and filing suit would disentitle the plaintiff from seeking the equitable relief of specific performance. It is not in dispute that the suit agreement under Ex.A1 was entered into between the parties on 18.04.2007 after cancelling the previous agreement. It is also not in dispute that the time agreed for performance was only six months and it expired on 17.10.2007. The first suit notice under Ex.A2 was issued only on 21.11.2009. After successive notices under Exs.A2, A4 and A6, paper publication was effected informing the public about the subsisting contract of sale in respect of the suit properties with an intention to make third parties be aware of the rights of plaintiff to seek specific performance of the agreement and not to allow the defendants 1 to 3 to go for alienation in favour of the third parties. Except stating that the plaintiff and her husband were visiting the house of defendants to get the documents of title, there is no independent witness to prove the contention of the plaintiff. The total sale consideration agreed was Rs.15,80,000/-. Under the agreement, only a sum of Rs.1,00,000/- was paid as advance. The amount paid as advance is very meagre compared to the total sale consideration. The agreement contemplates the payment of balance only at the time of executing the sale. As pointed out earlier, the plaintiff never showed her willingness even at the time of issuance of notice. Even after getting reply from the defendants 1 to 3, second notice was sent by the plaintiff sticking to the same stand that the defendants 1 to 3 should hand over the documents of title deed or to extend their title before the sale to be completed. Since the intention of the plaintiff was explicit and the plaintiff never expressed her readiness and willingness in terms of the agreement, the defendants 1 to 3 were forced to sell the property to defendants 4 to 9 out of frustration. The consideration they received from defendants 4 to 9 is less than the price for which the plaintiff agreed to purchase the property. However, in the light of notices and paper publication effected by the plaintiff, the sale deed in favour of the defendants 10 to 15 and 4 to 9 should be taken as a distress sale. The evidence of D.W.1 would also indicate the precarious position of the defendants 1 to 3. The evidence of P.W.2 as extracted in the earlier part of this judgement would clearly indicate that the intention of the plaintiff earlier was never to complete the sale. The abandonment has been clearly spoken to by P.W.2, one of the witnesses examined by the plaintiff. In such circumstances, the long delay of more than two



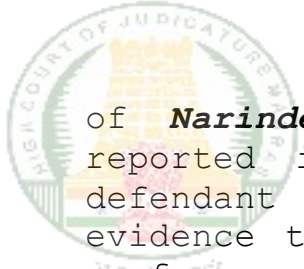
years in issuing suit notice and in filing the suit after the period specified for performance would disentitle the plaintiff from seeking the relief of specific performance.

24. The learned counsel for the first respondent has relied upon a judgement of the Hon'ble Supreme Court in the case of **Motilal Jain v. Ramdasi Devi (Smt) and others** reported in **(2000) 6 SCC 420**, wherein the Hon'ble Supreme Court failed to accept mere delay in filing suit as a reason to non-suit the plaintiff. However, in the said judgement, it was noted by Hon'ble Supreme Court that the defendant in the suit was not in station at the time of notices and that the suit has to be filed only when the defendant came back to his place. Since the evidence of P.W.1 and P.W.2 was accepted by the Hon'ble Supreme Court in paragraph 10 of the judgment, the Hon'ble Supreme Court stated the position in the following manner:

"10. In the instant case a perusal of paras 6 to 11 of the plaint do clearly indicate the readiness and willingness of the plaintiff. The only obligation which he had to comply with was payment of balance of consideration. It was stated that he demanded the defendant to receive the balance of consideration of Rs.8000/- and execute the sale deed. The defendant was in Patna (Bihar) at the time of notices and when he came back to his place the plaintiff filed the suit against him. In support of his case, he adduced the evidence of PW 1 and PW2."

25. In another judgment of the Hon'ble Supreme Court in the case of **Satya Jain v. Anis Ahmed Ruushdie** reported in **(2013) 8 SCC 131** it has been held that the period during which the defendant was factually absent from India is liable to be excluded and that the suit was well in time after excluding the period of absence of defendant from India. It was further held in that case that the defendants should be directed to execute the sale deed in favour of plaintiff, but as per the price of the suit property as on the date of the order passed by the Hon'ble Supreme Court. This judgement would clearly indicate that the delay in approaching the Court is also relevant and that the Courts are expected to consider even the delay on account of the pendency of the proceedings before the Court while granting the relief. This judgement is not helpful to the respondents in the present case. Apart from delay, the conduct of plaintiff and the material circumstances noticed, this Court is of the firm view that the plaintiff cannot be granted the relief on the principles reiterated by Courts interpreting Section 20 of Specific Relief Act.

26. The learned counsel for the first respondent relied upon a judgement of the Hon'ble Supreme Court in the case



of **Narinderjit Singh v. North Star Estate Promoters Limited** reported in **(2012) 5 SCC 712**, for the proposition that the defendant who has neither pleaded hardship nor produced any evidence to show that it would be inequitable to order specific performance of agreement, cannot successfully defend the suit for specific performance merely on the ground that there was no considerable rise in cost. The facts of the case before the Hon'ble Supreme Court is entirely different. For similar proposition, the learned counsel for the first respondent relied upon the judgement of the Hon'ble Supreme Court in the case of **P.S.Ranakrishna Reddy v. M.K.Bhagyalakshmi and another** reported in **(2007) 10 SCC 231**. The Hon'ble Supreme Court in this case has held that rise in the price of the immovable property which is the subject matter of sale agreement by itself is not a ground to refuse specific performance, when the agreement of sale is lawful and that the conduct of seller who was unwilling to perform his part of the contract in view of the rise in the price would be a factor for a Court to refuse to exercise the discretion in favour of the seller/defendant. This judgement also has no significance having regard to the facts in the present case. In the case of **Smt.T.K.Santha and others v. Smt. A.G.Rathnam and others** reported in **AIR 1990 Kerala 69** it has been held that mere delay in filing the suit for specific performance cannot be a ground to refuse decree. In the said judgment, the judgment of Hon'ble Supreme Court in the case of **Satyanarayana v. Yelloji Rao** reported in **AIR 1965 SC 1405** was relied upon. In the present case, it is not mere delay but the delay has not only caused serious prejudice to the defendants but has created rights in third parties, namely, the defendants 4 to 9. Hence, this judgement also has no application to the facts of this case. In the light of the decisions which were referred to earlier by this Court, the principle that has been consistently applied relating to the Doctrine of delay and laches, this Court has no hesitation to hold that the judgement relied upon by the first respondent in this case have no application to the facts of this case and that the plaintiff is not entitled to get the equitable and discretionary relief of specific performance on account of the delay.

27. In view of the discussions above, this appeal is allowed and the judgement and decree of the trial Court in O.S.No.11 of 2010, dated 01.12.2010 is set aside and the suit in O.S.No.11 of 2010 on the file of the Additional District Court (Fast Track Court-II), Tirunelveli, is dismissed with costs throughout. Consequently, M.P.(MD)No.1 of 2013 is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar



To

The Additional District Judge, Fast Track Court II,
Tirunelveli.

+1 CC to M/s.M.P.SENTHIL, Advocate, SR No. 58098.

+1 CC to M/s.T.SELVAN, Advocate, SR No. 58156.

SRM

PSM/GT/SAR4/19.06.2017/20P/4C

Judgment made
in
Appeal Suit (MD) No.30 of 2011
02.06.2017