

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.08.2018

PRONOUNCED ON : 05.10.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.281 of 2015

Ramarajan
Rep by Power Agent
Anjanavannan

...Appellant/2nd Defendant

Vs.

Shanmugam

...Respondant/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 18.07.2014 passed in A.S.No.74 of 2012 on the file of the Principal District Judge, Cuddalore district, Cuddalore, confirming the judgment and decree dated 25.11.2011 passed in O.S. No.170 of 2010 on the file of the first Additional Subordinate Judge, Cuddalore.

For Appellant : Mr.S.Parthasarathy, Senior Counsel
for J.Ramakrishnan

For Respondent : Mr.R.Gururaj

JUDGMENT

In this second appeal, challenge is made to the judgement and decree dated 18.07.2014 passed in A.S.No.74 of 2012 on the file of the Principal District Court, Cuddalore, confirming the judgment and decree dated 25.11.2011 passed in O.S. No.170 of 2010 on the file of the first Additional Subordinate Court, Cuddalore.

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 defendant who own the suit property appointed two sets of power of attorney agents, one set of power of attorney agents are Christiana Mary and Anjavannan and the other set of power of

attorney agents are Arokia Mary and Susai and accordingly, the two sets of power of attorney agents formed a layout known as Golden Avenue and the power agents mentioned in the suit approached the plaintiff and sought his help in selling the plots and accordingly the plaintiff, being a willing party to the same, accordingly the plaintiff and the defendant's power agents agreed that the plaintiff should help in the sale of 15 plots and further agreed that the plaintiff should fetch the prospective purchasers for the aforesaid plots for which the plaintiff should pay Rs.13,51,500/- to the power agents and in turn the power agents should execute the sale deeds in favour of the persons named by the plaintiff and during each and every sale, part of the agreed sum shall be paid to the defendant's power agent and the difference shall be appropriated by the plaintiff and accordingly an agreement of sale was entered into between the parties on 09.03.2006 which was registered and time was not the essence of the contract though in the agreement of sale, a time of six months is mentioned and the agreement was not a normal agreement of sale for direct purchase and the plaintiff fetched six purchasers and accordingly 7 plots have been sold at the instance of the plaintiff and the sale deeds have been executed on behalf of the power agents. Subsequently, the president of the village changed and the newly elected president threatened that building approval will not be given to the purchasers and that water facility, electricity supply facility will not be given and installed a board to that effect in the property. As a result, the prospective purchasers were driven away and the power agents of the defendant had urged the president of the village to do so, so that they could make further demands. Thereafter, the plaintiff explained to the president of the village the factual state of affairs and the president was then convinced and thus the plaintiff was willing and ready to perform his part of the contract. There was no fault of the part of the plaintiff and this could be gathered from the fact that the plaintiff has fetched purchasers of 7 plots and not only that the plaintiff has paid an advance amount of Rs.1,59,000/- and also paid a total sum of Rs.6,51,000/- on different dates, which had been endorsed in the sale agreement and in all, the plaintiff has paid Rs.8,10,000/- and there is no fault on the part of the plaintiff in completing the sale transaction and he was always ready and willing to perform his part of the contract. However, the defendant's power agents issued a notice dated 16.04.2007 calling upon the plaintiff to come and execute a cancellation deed and the plaintiff issued a reply on 15.05.2007 stating the entire facts and called upon the power agents to be present at the Sub Registrar office, Vadalur on 18.05.2007 to complete the sale. Though the plaintiff was present in the Sub Registrar Office on that day from morning till evening, the defendant's power agent did not turn up and hence according to the plaintiff in as much as the defendants

are liable to receive the balance sale consideration and execute the sale deed in terms of the sale agreement, he had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. The defendants for their own use and also for the purpose of making some gains, took the power from their principal Ramarajan in respect of the sale of the suit property and accordingly 25 plots were laid out and in this connection, it is stated that to the immediate west of the plots of the defendants, the plaintiff along with others had formed the layout, there was no proper approach to the layout from the main road and he could not sell these plots as there was no proper approach road and therefore, the plaintiff approached the defendants and sought their help and represented that he would be able to sell his plots if he could connect the approach road from the main road and thereby offered to buy the unsold plots of the defendants so that he could lay the connecting road and the defendants obliged the plaintiff by entering into an agreement to sell their plots for Rs.13,51,500/- and the plaintiff paid an advance of Rs.1,59,000/- and agreed to pay the balance in 6 months time and assured that he would complete the transaction within 6 months and it is false to state that the balance money will be paid only as and when the plots were sold, on the other hand, it has been specifically agreed that the entire balance sale consideration has to be paid within 6 months and it is false to state that the 6 months period is not the essential item of the contract, on the other hand, it is specifically mentioned in the sale agreement that the whole thing should be completed within 6 months and on the other hand, without getting the permission of the panchayat, the plaintiff sank a bore well and resultantly, the panchayat caused a notice pointing the abovesaid illegality and the panchayat nowhere stated that the building license will not be given and further the allegation of the plaintiff that the defendants were instrumental in the panchayat issuing the abovesaid notice is false and the plaintiff delayed the payment of money and he has been waiting for the rise in the price so that he could make money by the transaction and thereby the plaintiff willfully defaulted to pay the balance payment and never came forward to perform his part of the contract within the time and the plaintiff did not have the funds to pay the balance amount and take the sale and never called upon the defendants on 18.05.2007 or any other date to come to the Sub Registrar Office to complete the sale, while so, the defendants were compelled to issue the notice cancelling the agreement and the plaintiff made a huge profit in the sale of 7 plots and the plaintiff has come forward with the false allegations and the suit is therefore liable to be dismissed.

6. In support of the Plaintiff's case, PW1 was examined and Exs.A1 to A16 were marked. On the side of the defendants Dw1 was examined and EXs.B1 to EX.B4 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the courts below were pleased to grant the reliefs in favour of the plaintiff as prayed for. Challenging the same, the present second appeal has been laid.

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

a) Whether in law, having regard to the recitals to Ex.A1 / sale agreement and taking note of the jural relations exist between the parties concerned to the suit properties and the nature of transaction in particular, whether the time is not the essence of contract and as such, the adverse finding of the learned Trial Court and First Appellate Court are sustainable in law?

b) When the plaintiff miserably failed to prove his readiness and willingness as mandated under Section 16(c) of the Specific Relief Act, whether in law the Courts below are justified in decreeing the suit?

c) In the light of Section 92 of the Indian Evidence Act, whether in law, it is permissible to plead and lead evidence contrary to the terms which are reduced into writing under a written document under Ex.A1 Registered sale agreement and as such, the plaintiffs claim is sustainable in law?

d) Having regard to the scope of Section 101 to 103 of the Indian Evidence Act, when the plaintiff himself miserably failed to prove his case as required under law, whether the judgment and decree of the courts below in placing the burden on the defendants is sustainable

9. It is not in dispute that in respect of the suit property, the plaintiff and the defendants entered into the sale agreement on 09.03.2006 fixing the sale consideration at Rs.13,51,500/- and it is found that on the date of the sale agreement, the plaintiff had paid a sum of Rs.1,59,000/- as advance to the defendants and Ex.A1 is the sale agreement entered into between the parties. The execution of Ex.A1 sale

agreement is not in dispute. On a perusal of Ex.A1 sale agreement and the terms contained thereof, it is evident that as put forth by the defendants, the parties had agreed that the balance sale consideration of Rs.11,92,500/- should be paid by the plaintiff to the defendants within 6 months from the date of the sale agreement and in the event of the plaintiff paying the balance sale consideration within the abovesaid stipulated time, the defendants are obliged to execute the sale deeds in favour of the nominees of the plaintiff and accordingly, it is evident as per the terms of the sale agreement of EX.A1, a specific time limit has been fixed by the parties concerned that the transaction should be completed within the period of 6 months from the date of the sale agreement. As above noted, EX.A1 sale agreement was entered on 09.03.2006, therefore, it is evident that as per the terms thereof, the time fixed for the performance of the contract expires on 08.09.2006. Admittedly, even as per the case of the plaintiff, he has not paid the balance amount of Rs.11,92,500/- within the period of 6 months as stipulated under Ex.A1 sale agreement. Materials placed on record go to show that following Ex.A1 sale agreement, the plaintiff has paid a total sum of Rs.6,51,000/- on different dates as could be seen from the endorsements made on the sale agreement Ex.A1 marked as Exs.A2 to A4. Thus, it is found that within the time fixed by the parties, the plaintiff has paid only a sum of Rs.8,10,000/- and not more than that. Though the plaintiff would contend that time is not the essence of the contract, however, when as seen from the contents of Ex.A1 sale agreement, the parties had fixed a particular time limit for completing the performance of the contract, i.e., 6 months from the date of Ex.A1 sale agreement and despite the same, the case of the plaintiff that though time is fixed, the same is not the essence of the contract entered into between the parties, as such, cannot be accepted. Though, normally, time is not the essence of the contract in respect of the immovable properties, but, however, when the parties choose to specify a particular time factor for completing the transaction and accordingly included the terms thereof in the sale agreement entered into between them, it is seen that accordingly, the parties had been very particular that the contract should be performed within the time fixed by them and in such view of the matter, merely because the time is not the essence of the contract in respect of the immovable properties, that by itself, would not apply to all cases as sought to be made out by the plaintiff.

10. In this case, the main crux of the defence projected by the defendants is that the plaintiff has failed to perform his part of the contract within the time stipulated thereunder and even thereafter, the plaintiff had not evinced interest to come forward to pay the balance sum and complete the sale transaction and on the other hand, according to the defendants, they, having

awaited for a considerable point of time to enable the plaintiff to complete his part and as no such endeavour was forth coming on the part of the plaintiff, according to the defendants, they issued a notice on 16.04.2007 calling upon the plaintiff to come forward and execute the cancellation deed. The receipt of the notice dated 16.04.2007 marked as Ex.A5 has not been disputed by the plaintiff. Only thereafter, it is seen that the plaintiff has chosen to send a reply notice dated 15.05.2007 marked as Ex.A6, putting forth the case that he has been always ready and willing to perform his part of the contract and thereby called upon the defendants to be present at the Sub Registrar Office, Vadalur on 18.05.2007 for receiving the balance sale consideration and complete the sale transaction. According to the plaintiff, though he was present at the Sub Registrar Office on that particular day from morning to the evening, as the defendants had failed to turn up, according to the plaintiff, he had been necessitated to lay the suit for appropriate reliefs. But the fact remains, when as per the terms of Ex.A1, the plaintiff is obliged to perform his part of the contract right from the inception, i.e., 09.03.2006 and should have endeavoured to pay the balance sale consideration on or before the stipulated time, i.e. 08.09.2006, on the other hand, when the materials placed on record go to show that, in all, the plaintiff has paid only a sum of Rs.8,10,000/- within the abovesaid stipulated time and not the entire sale consideration as agreed to between the parties and when the parties had been very clear and conscious that the performance of the contract should be completed within the particular time factor, in such view of the matter, it is for the plaintiff to establish that he has been always ready and willing to perform his part of the contract as agreed to. However, there is no material placed on the part of the plaintiff that he has been always ready and willing to perform his part of the contract in paying the balance sale consideration as agreed to between the parties and particularly within the time fixed by the parties. The last date of payment made by the plaintiff is 18.08.2006, the endorsement of which is marked as Ex.A4.

11. Though the plaintiff would claim that he has been always ready and willing to perform his part of the contract, however, the plaintiff has failed to establish the same. As above noted, on a perusal of the terms of Ex.A1 sale agreement, there is no stipulation therein that the parties had agreed that the sale deeds should be executed in favour of the persons named by the plaintiff and that during each and every sale, part of the agreed sum shall be paid to the defendants and thereby the difference should be appropriated by the plaintiff. On the other hand, as put forth by the defendants, it is found that the entire sale consideration should be paid by the plaintiff within 6 months and therefore it is seen that the case of the plaintiff

that the balance sale amount should be paid to the defendants by the plaintiff only as and when the plots are sold to the prospective purchasers and thereby the amount should be appropriated, as such, cannot be countenanced. If that be the intention of the parties, necessary recitals to that effect would have been incorporated in Ex.A1 sale agreement. On the other hand, a normal reading of Ex.A1 sale agreement would go to show that it is only the plaintiff who had been obliged to pay the balance sale consideration within the 6 months period of time and on that payment, it is found that the defendants are obliged to execute the sale deeds in favour of the persons named by the plaintiff. Such being the position, the very basis of the plaintiff's case that the parties had agreed that the balance sum to be paid should be tendered only at the time of the sale of each and every plot to the prospective parties, as such, is found to be beyond and contrary to the terms of the sale agreement and when the plaintiff has based his case on the abovesaid premise, it is evident that the plaintiff is attempting to seek the reliefs sought for in the plaint contrary to the terms of the sale agreement, which he is not legally entitled to, particularly in the light of the statutory bar provided under Section 92 of the Indian Evidence Act. Therefore, when the plaintiff is not permitted to plead or act beyond the terms of the sale agreement, the case of the plaintiff that the parties had agreed that the balance sale amount should be paid only at the time of the sale of each and every plot, as such, cannot be accepted and in such view of the matter, as rightly put forth by the defendants, the plaintiff's suit based on the pleas contrary to the terms of the sale agreement, on that score alone, it is found that the plaintiff should have been non-suited.

12. It is clear and evident that the plaintiff has not paid the balance sum on before 08.09.2006, and even thereafter, the plaintiff has not endeavoured to come forward in paying the balance sale consideration to the defendants with a view to complete the sale transaction. Accordingly, it is seen that the plaintiff has not been showing his readiness and willingness to complete the sale transaction and left with no other alternative, it is seen that the defendants had been constrained to issue a legal notice calling upon the plaintiff to execute the deed of cancellation on 16.04.2007. Thus, it is found that right from 18.08.2006 onwards till the expiry of the time limit fixed under Ex.A1 sale agreement, i.e., 08.09.2006 and even thereafter from 08.09.2006 to 16.04.2007 and even thereafter from 16.04.2007 to 14.05.2007, the plaintiff has not moved his little finger to come forward and pay the balance sale consideration for the purpose of completing the sale transaction. On the other hand, nearly 8 months after the expiry of the time limit fixed under Ex.A1, the plaintiff has chosen to

send Ex.A6 notice, a reply to the defendants' notice marked as Ex.A5, whereunder only, he had expressed his willingness to pay the balance sum in tune with the sale agreement. As to why the plaintiff has not endeavoured to pay the balance sale consideration within the time allotted under the agreement or even thereafter till 14.05.2007, there is no proper explanation on the part of the plaintiff and this would only go to show that in as much as the plaintiff has never been ready and willing to perform his part of the contract, accordingly, it is found that the plaintiff had been delaying the same one way or the other and with a view to gain advantage, it is seen that the plaintiff has also come forward with the suit putting forth the factors beyond the scope of the sale agreement as the reasons for not completing the contract. However, when the plaintiff is not entitled to plead or put forth any case contrary to the terms of the sale agreement, the abovesaid case projected by the plaintiff has to be discarded in toto.

13. In the plaint, the plaintiff would also project a case for the delay on the footing that the newly elected president of the village threatened that the building approval will not be given to the purchasers and also water supply facility and electricity supply facility will not be extended and accordingly it is stated by the plaintiff that the prospective purchasers did not venture to come forward to purchase the plots in question. Further it is also pleaded by the plaintiff that the abovesaid action of the panchayat president was only at the instance of the defendants. Per contra, it is the case of the defendants, in as much as the plaintiff had sunk a bore-well without the approval of the panchayat, notice had come to be issued by the panchayat to the plaintiff and the same is not in any manner associated with the defendants or with the terms of the sale agreement and therefore, it is stated that the abovesaid cause projected by the plaintiff for the delay in completing the contract has been made only for the purpose of the case. With reference to the case of the plaintiff that the new president had threatened that the building approval would not be given or the water facility and electricity supply would not be extended, there is no material worth acceptance projected on the part of the plaintiff other than the ipse dixit testimony of the plaintiff. Furthermore, there is no material also placed by the plaintiff to evidence that the so called action, threatening by the panchayat president had been made at the instance of the defendants. Therefore, the plaintiff, being aware of the delay caused in completing the sale agreement, has been inventing the cause for the same and accordingly projected the abovesaid cause as if only due to the same, the delay had occurred. However, when the abovesaid cause projected for the delay has been disputed by the defendants and when there is no reliable material placed on the part of the plaintiff evidencing

the same, it is found that, as rightly contended by the defendants' counsel, with a view to give a colour of reality to the deal caused by him, the plaintiff has come forward with the false case and accordingly it is seen that the plaintiff is unable to substantiate the abovesaid cause projected for the delay. By way of the abovesaid alleged reasons, the plaintiff himself had admitted that there is a delay in performing the part of the contract, but, when the said cause for the delay has not been established and found to be a false one, accordingly, it is seen that the plaintiff had deliberately avoided the payment of balance sale consideration to the defendants and in such view of the matter, the contention of the plaintiff that he has been always ready and willing to perform his part of the contract, as such, cannot be countenanced in any manner.

14. Even the case of the plaintiff that he had been awaiting at the Sub Registrar Office, Vadalur on 18.05.2007, with a view to complete the sale transaction is not borne out by acceptable and reliable evidence other than certain photographs. It is found that the abovesaid endeavour of the plaintiff to express his readiness and willingness has emanated only after the expiry of the time limit fixed under Ex.A1 sale agreement, i.e., the same had been emanated only after 15.05.2007, nearly 8 months from the date of the expiry of the outer time limit. As rightly put forth by the defendants' counsel, the abovesaid delay is very much fatal to the case of the plaintiff and accordingly, it is seen that the plaintiff has not been ready and willing to perform his part of the contract and accordingly has come forward with the false case by giving untenable reasons for the delay in not completing the sale transaction and accordingly also unable to substantiate the said case projected by him for the delay.

15. The plaintiff examined as PW.1, during the course of his evidence, has clearly admitted about the execution of the sale agreement marked as Ex.A1 and also admitted that the parties had agreed that the balance sale consideration should be paid within 6 months from the date of the sale agreement and also further admitted that there is no recital contained in the sale agreement Ex.A1 that the balance sale consideration should be paid only at the time of the sale of each plot and also admitted that he has not paid the balance sale consideration within the period of 6 months as agreed to under Ex.A1 and also admitted that there is no recital contained in Ex.A1 about the construction of any approach road or the formation of any road and also admitted that he has not filed any document issued by the panchayat that money should be paid to the panchayat with reference to any of the abovesaid purposes and also admitted that since the date of sale agreement, the prices of the plots had enhanced, and therefore, when, as seen from the evidence of

PW1, the plaintiff is very conscious about the time limit fixed by the parties in completing the sale transaction and when within the time fixed, admittedly, the plaintiff had not paid the entire balance sale consideration and kept a huge amount due and when there is no acceptable cause projected by the plaintiff with reference to the same and on the other hand, with a view to escape from the delay caused by him in completing the sale transaction, the plaintiff is found to have come forward with the new set of facts completely alien to the recitals contained in the EX.A1 sale agreement and also unable to substantiate the same with acceptable and reliable evidence and the cause projected by him is also found to be untenable in the eyes of law, he, being legally barred to take such pleas as per Section 92 of Indian Evidence Act and when it is found that the plaintiff had endeavoured to show his readiness and willingness only after the defendants had moved to cancel the agreement by sending EX.A5 notice on 16.04.2007, the courts below, without considering the abovesaid aspects of the matter in the right perspective, seem to have accepted the plaintiff's case blindly as if he had been always ready and willing to perform his part of the contract right from the inception.

16. Counsel for the plaintiff in support of his various contentions, placed reliance upon the decisions reported in 1999(2) SCC 471 para 14 (Dnyanoba Bhaurao Shemade v. Maroti Bhaurao Marnor)

1999 (3) SCC 722 paras 2 to 5 (Kondiba Dagadu Kadam v. Savitribai Sopan Gujar)

AIR 2001 SCC 2920 paras 2,5,10 & 11 (Veerayee Ammal v. Seeni Ammal)

2006(1) SCC 729 paras 4,5 & 5 (Saraswati Devi Gupta v. Har Narain Johari and others)

2013(8) SCC 131 paras 33 & 36 (Satya Jain (dead) through Lrs and others v. Anis Ahmed Rushdie (dead) through Lrs. and others)

1996(3) SCC 131 paras 6,7 & 11 (Ramanuja Naidu v. V.Kanniah Naidu and another)

AIR 1965 SC 1405 para 13 (Mademsetty Satyanarayana v. G.Yelloji Rao and others)

1972(1) MLJ 218 (DB) paras 9, 17 and 18 (Eswari Amma and another v. M.K. Korah and others)

AIR 1973 SC 559 paras 13 & 14 (Dr.Jiwan Lal and

others v. Brij Mohan Mehra and another)

AIR 1977 SC 1005 paras 5 to 7 (Govind Prasad Chaturvedi v. Hari Dutt Shastri and another)

AIR 1979 SC 1241 paras 9 and 14 (Prakash Chandra v. Angadlal and others)

100 LW 582 (DB) paras 16,19,24 & 25 (N.B. Namazi v. Central Chinmaya Mission Trust)

AIR 2000 SC 2408 paras 6 & 10 (Motilal Jain v. Smt. Ramdasi Devi and others)

2003(3) MLJ 383 (DB) paras 19,24 & 25 (Bakiyalakshmi and others v. Alamely (died) and others)

2005(1) LW 147 (SC) paras 11 to 14 & 18 (Smt. Swarnam Ramachandran and another v. Aravacode Chakungal Jayapalan)

2008(1) LW 801 (SC) paras 10 to 14 (Balasaheb Dayandeo Naik (dead) through Lrs & others v. Appasaheb Dattatraya Pawar)

2010(4) LW 57 paras 21 & 27 (S.Sambandam v. P.Daivasigamani)

2010(1) LW 569 para 18 (A.Jayalakshmi and others v. M.Ramalingam)

AIR 2000 SC 2740 Para 12 (Uttam Singh Dugal and Co. Ltd., v. Union Bank of India and others)

AIR 1982 SC 20 para 11 (Smt.Gangabai v. Smt. Chhabubai)

Similarly, the Counsel for the defendants in support of his contentions, placed reliance upon the decisions reported in (1993)2MLJ 560 (Viswanathan and others v. R.Lakshmi Ammal(died) and others)

1993(2) MLJ 272 (G.Chelliah Nadar (died) and others v. Periasami Nadar and others)

(1995) 5 Supreme Court Cases 115 (N.P. Thirugnanam (dead) by Lrs v. Dr. R.Jagan Mohan Rao and others)

(1997) 3 SCC (K.S.Vidyanadam and others v.

Vairavan)

(2001) 6 Supreme Court cases 600 (A.C.Arulappan v. Ahalya Naik (SMT))

2003-3-L.W.479 (Govindappa Naidu v. C.Sidd Chetty and others)

2010(3) CTC 297 (Jugraj v. P.Sankaran and others)

(2011)12 SCC(Saradamani Kandappan v. S.Rajalakshmi and others)

S.A.No.281 of 2015 (Kadirvelu Pillai v. Arjun)

(2013)6 MLJ 400 (Subramani Gounder (died) and others v. Chinnakannammal (died) and others)

(2016) 1 SCC 762 (K.Nanjappa (dead) by legal representatives v. R.A.Hameed alias Ameersab (dead) by legal representatives and another)

(2015) 8 Supreme Court Cases 695 (Padmakumari and others v. Dasayyan and others)

2017-2-LW893, (2017) 3MLJ 472 (Ramamani v. Pitchaimani)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at the hand.

17. In the light of the above discussions, having regard to the recitals contained in Ex.A1 sale agreement and the nature of the transaction in particular entered into between the parties, it is found that the parties had been very conscious that the performance of the contract should be completed within a particular time factor and accordingly it is seen that the parties had intended that time should be the essence of the contract entered into between them. In such view of the matter, it is found that, as above discussed, when the plaintiff has miserably failed to establish his readiness and willingness to perform his part of the contract as mandated under 16(c) of the Specific Relief Act, 1967, the courts below, without considering the abovesaid aspects in the right perspective, had erred in upholding the plaintiff's case and also when it is found that the plaintiff had taken pleas for sustaining his claim to the discretionary relief of specific performance on certain causes much contrary to the recitals found in EX.A1 sale agreement,

which he is not legally entitled to put forth and when the plaintiff having come forward with the suit seeking the discretionary relief of specific performance, the duty is cast upon the plaintiff to establish his case of readiness and willingness for obtaining the said relief and when the plaintiff has miserably failed to establish the same by adducing the acceptable and justifiable cause and also sans any material pointing to the same, in all, it is found that the courts below had totally erred in accepting the case of the plaintiff without assessing the materials placed on record in the right perspective both factually and legally and in such view of the matter, the findings arrived at by the courts below and the determination of the case by the courts below in favour of the plaintiff are thereby found to be illogical and perverse and unacceptable in the eyes of law and hence the judgment and decree of the courts below are liable to set aside. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

18. In conclusion, the judgement and decree dated 18.07.2014 passed in A.S.No.74 of 2012 on the file of the Principal District Court, Cuddalore, confirming the judgment and decree dated 25.11.2011 passed in O.S. No.170 of 2010 on the file of the first Additional Subordinate Court, Cuddalore, are set aside. Resultantly, the suit laid by the plaintiff in O.S. No.170 of 2010 is dismissed with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

सत्यमेव जयते Sub Assistant Registrar

bga

To

1. Principal District Court, Cuddalore,
2. Additional Subordinate Court, Cuddalore
3. The Section Officer,
V.R.Section, High Court, Madras.

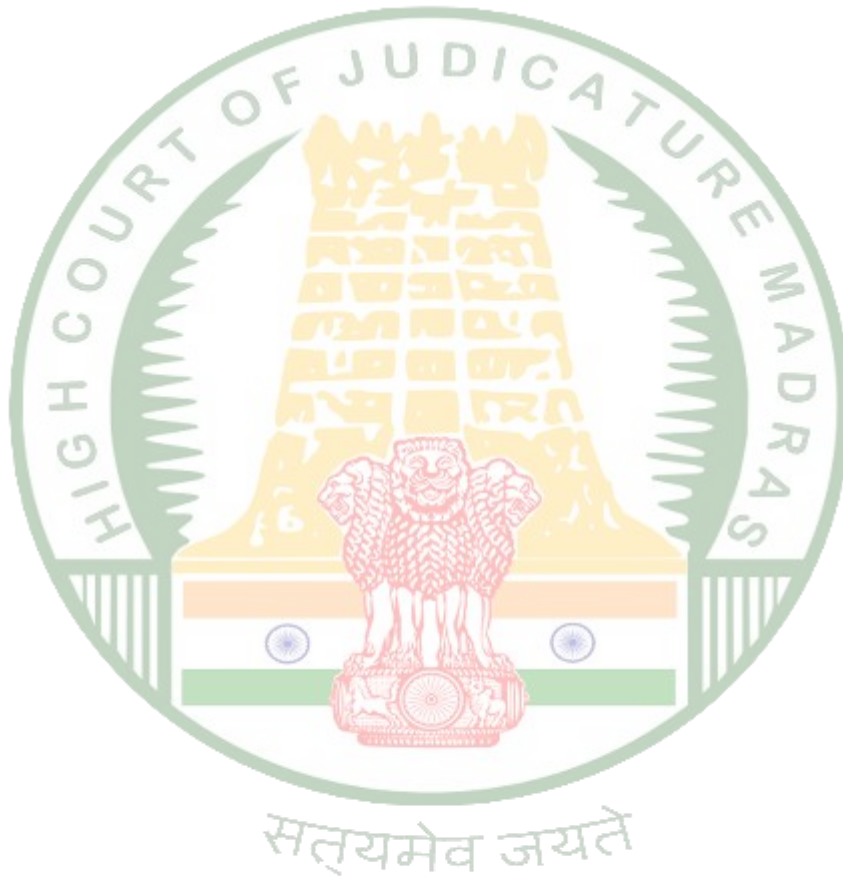
+1cc to Mr.J.Ramakrishnan, Advocate SR.No.68901

+1cc to Mr.R.Gururaj, Advocate SR.No.69724

S. A.No.281 of 2015

NM(CO)

GMV(08/11/2018)



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