IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.09.2019

PRONOUNCED ON : 15.10.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.234 of 2011

1. N.A. Abdul Nazaar
2. N.A.Akbar Ali ...Appellants/Plaintiffs

Vs.

1. T. Gunasekaran
2. T. Ramesh ...Respondents/Defendants

Prayer: First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree dated 17.09.2010 in O.S.No.44/2009, on the file of Additional District and Sessions Judge, Fast Track Court III, Dharapuram.

For Appellants : Mr.E. Om Prakash for Senior Counsel for M/s. Ramalingam Associates

For Respondents: Mr. S. Saravanan for R1 & R2.

JUDGMENT

Aggrieved over the judgment and decree dated 17.09.2010 passed in O.S.No.44/2009, on the file of Additional District and Sessions Judge / Fast Track Court III, Dharapuram, the plaintiffs have come forward with the first appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for specific performance.

4.The case of the plaintiffs, in brief, is that the defendants are the absolute owners of the suit property having purchased the same by way of the sale deed dated 31.01.2001 and the defendants had agreed to sell the suit property to the plaintiffs for a sum of Rs.19,40,360/- free from encumbrance and the parties had entered into a written sale agreement on 17.03.2008 with reference to the same and the plaintiffs paid a sum of Rs.6,00,000/- as advance towards the part of the sale consideration and the parties had agreed to complete the sale transaction within 6 months from the date of the sale agreement. The plaintiffs have been always ready and willing to perform their part of the contract and keeping the cash in their hands and approached the defendants to execute the sale deed as per the terms and conditions set out in the sale agreement dated 17.03.2008. Further, according to the plaintiffs, time is not the essence of the contract. Further according to the plaintiffs, the first defendant demanded another sum of Rs.2,00,000/- from the plaintiffs to discharge the loan regarding the suit property and the plaintiffs have paid the said sum on 30.06.2008 and an endorsement had been obtained on the reverse side of the sale agreement. The defendants had agreed to produce the original sale deed and the other parental documents at the time of the sale agreement, however, they failed to produce the same. The defendants had been dragging on the matter endlessly without any justification and the plaintiffs have spent huge amount and developed the suit property and further according to the plaintiffs, the defendants have agreed to measure the suit property and fix the boundaries with the help of the surveyor and despite the approach of the plaintiffs several times, the defendants had failed to measure the suit property with the help of the surveyor and the defendants have also not permitted the plaintiffs to measure the suit property by a surveyor. The plaintiffs came to know in the first week of November 2007 that the defendants had mortgaged the suit property on 24.09.2007 in favour of the Govindasamy Gounder, S/o. Rangasamy Gounder, for a period of two years and also came to know that on 30.09.1976, the vendors of the defendants themselves had mortgaged the suit property with Kethalrev Village Cooperative Agricultural Credit Society. The defendants had agreed to convey the suit property free from encumbrance, however, the defendants had not taken steps to clear the abovesaid mortgages. Whileso, on 11.11.2008, the plaintiffs received a notice from the defendants containing false allegations and in the said notice, the defendants had suppressed the payment of Rs.2,00,000/- on 30.06.2008. On receiving the said notice, the plaintiffs had approached the defendants to settle the matter and the defendants had assured that the abovesaid notice had been issued formally and agreed to produce the discharge receipts in respect of the abovesaid two mortgages and execute the sale deed in favour of the plaintiffs and the plaintiffs on 02.12.2008, issued a reply notice calling upon the defendants to execute the sale deed as per the terms of the sale agreement. However, the defendants failed to comply with the abovesaid demand and hence, according to the plaintiffs, the need for the suit for appropriate relief.

5. The defendants resisted the plaintiffs' suit contending that the suit laid by the plaintiffs is not maintainable either in law or on facts. They had admitted the execution of the sale agreement in favour of the plaintiffs in respect of the suit property on 17.03.2008 for a sum of Rs.19,40,360/- and the receipt of Rs.6,00,000/- as advance on

the date of sale agreement, however, denied the case of the plaintiffs that they had been always ready and willing to part with the balance sale consideration and keeping the cash in their hands and that it is only the defendants who had been evading to receive the same and execute the sale deed in favour of the plaintiffs. Further denied the case of the plaintiffs that time is not the essence of the contract. The defendants denied that they had demanded a sum of Rs.2,00,000/- from the plaintiffs to discharge the debts and that the abovesaid amount had been paid by the plaintiffs on 30.06.2008 and endorsement had been made on the reverse side of the sale agreement with reference to the same. According to the defendants, no payment of Rs.2,00,000/- has been made by the plaintiffs on 30.06.2008 and no endorsement has been made by them in the sale agreement pointing to the same. The plaintiffs seem to have forged the said endorsement after the issuance of the legal notice by the defendants dated 11.11.2008 for making unlawful gains. The defendants denied the case of the plaintiffs that they had assured to entrust the title deed and the other documents pertaining to the suit property on the date of the sale agreement and had refused to part with the same despite the several requests of the plaintiffs. No such demand had been made by the plaintiffs at any point of time. Further, the defendants denied the case of the plaintiffs that they had made improvements in the suit property by spending huge amount. The possession of the suit property had not been entrusted to the plaintiffs pursuant to the sale agreement and therefore, the question of making improvements in the suit property by the plaintiffs doest not arise. The defendants denied the alleged readiness and willingness on the part of the plaintiffs in paying the balance sale consideration and according to the defendants, the plaintiffs had never been ready and willing to perform their obligation under the sale agreement. Further according to the defendants, there is no mortgage in respect of the suit property as put forth in the plaint in favour of Govindasamy Gounder on 24.09.2007 and Kethalrev Village Cooperative Agricultural Credit Society on 30.09.1976 and disputed the case of the plaintiffs that they had been often requesting the defendants to discharge the abovesaid mortgages and convey the suit property free from encumbrance and the abovesaid mortgages had been discharged by the defendants even on the date of the sale agreement. Only thereafter, the sale agreement had been entered into between the parties. The abovesaid facts are known to the plaintiffs. If any encumbrance had been made in respect of the suit property, the plaintiffs would not have come forward to purchase the suit property and further the defendants denied the case of the plaintiffs that they had informed the plaintiffs that the notice dated 11.11.2008 had been issued formally. Inasmuch as the plaintiffs had failed to come forward to perform their obligation under the sale agreement within the time agreed to between the parties, according to the defendants, they had issued the notice on 11.11.2008 pointing to the abovesaid aspects and informing that as per the terms set out in the sale agreement, the same had been cancelled automatically and therefore, according to the defendants, time is the essence of the contract and on the failure of the plaintiffs to perform their obligation under the agreement within the stipulated time, the agreement had become unenforceable and therefore, the plaintiffs are not entitled to seek and obtain any relief based on the same. As the plaintiffs had failed to issue any reply notice to the notice sent by the defendants dated 11.11.2008, the defendants were necessitated to enter into the sale agreement in respect of the sale of the suit property with others and after coming to know of the same, the plaintiffs had issued the false notice dated 02.12.2008 containing untenable allegations as if they had been always ready and willing to perform their part of the contract and that it is only the defendants who had been delaying the transaction and therefore, according to the defendants, the plaintiffs had not come forward with the clean hands and that they have no cause of action to lay the suit and the suit is liable to be dismissed.

6. On the basis of the abovesaid pleas set out by the by the respective parties, the following issues were framed by the trial court for consideration.

1) Whether the plaintiffs are ready and willing to perform their part of contract?
2) Whether the defendants are ready to fulfill their part of the contract?
3) Whether the suit is barred by limitation?
4) Whether the plaintiffs are entitled to the relief of specific performance?
5) What are the other reliefs the plaintiffs are entitled to?

7. In support of the plaintiff's case P.Ws.1 to 3 were examined and Exs.A1 to A9 were marked. On the side of the defendants, D.Ws.1 and 2 were examined and Exs.B1 to B10 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiffs' suit. Impugning the same, the present first appeal has been preferred by the plaintiffs.

9. The following points arise for determination in this first appeal.

1. Whether the plaintiffs had been always ready and willing to perform their obligation under the sale agreement dated 17.03.2008?
2. Whether the plaintiffs are entitled to seek and obtain the relief of specific performance in respect of the sale agreement

dated 17.03.2008 as put forth in the plaint?

3. To what relief the plaintiffs/ appellants are entitled to?
4. To what relief the defendants are entitled to?

Point Nos. 1 and 2

10. It is not in dispute that the defendants are the owners of the suit property. It is also not in dispute that the defendants and the plaintiffs had entered into the sale agreement on 17.03.2008 in respect of the sale of the suit property for a sum of Rs.19,40,360/- and the defendants had received a sum of Rs.6,00,000/- as advance on the date of the sale agreement. The sale agreement dated 17.03.2008 has been marked as Ex.A1. As per the terms set out in the sale agreement, it is found that the plaintiffs should pay the balance sale consideration to the defendants within 6 months from the date of the sale agreement and thereupon the defendants should execute the sale deed in favour of the plaintiffs free from encumbrance and the other routine clauses are also incorporated in the sale agreement as to the consequences that would follow if the parties failed to adhere to the terms of the sale agreement.

11. According to the plaintiffs, they had been always ready and willing to perform their part of the contract and further according to them, they had been keeping the balance sale consideration in cash and were ready to part with the same to the defendants and put forth the case that it is only the defendants who had been evading to receive the balance sale consideration and execute the sale deed on some pretext or the other and therefore, according to the plaintiffs, they had been necessitated to institute the suit against the defendants for appropriate reliefs. The abovesaid case projected by the plaintiffs has been stoutly refuted by the defendants.

12. In the light of the abovesaid versions put forth by the respective parties, the plaintiffs, being the suitors, should establish that they had been always ready and willing to perform their part of the contract and it is only the defendants who had been avoiding the same on some pretext or the other. The plaintiffs have also pleaded that they had paid a sum of Rs.2,00,000/- towards the sale consideration on 30.06.2008 and endorsement had been obtained on the reverse side of the sale agreement with reference to the same. The defendants have disputed the payment of Rs.2,00,000/- by the plaintiffs on 30.06.2008 towards the sale consideration and also disputed that they had made endorsement pointing to the same on the reverse side of the sale agreement. In this connection, the plaintiffs have also examined the attestors to the abovesaid endorsement as P.Ws.2 and 3 and P.Ws.2 and 3 have deposed about the payment of Rs.2,00,000/- by the

plaintiffs to the defendants on 30.06.2008 and the endorsement made by the defendants with reference to the same on the reverse side of the sale agreement. According to the defendants, the abovesaid endorsement had been created by the plaintiffs to suit their case after the issuance of the legal notice by the defendants on 11.11.2008 marked as Ex.A2. However, considering the evidence of P.Ws.2 and 3, in toto, and when it is found that they had clearly tendered evidence regarding the payment of Rs.2,00,000/- on 30.06.2008 as well as the endorsement made by the defendants on the reverse side of the sale agreement pointing to the same and when the evidence of P.Ws.2 and 3 had not been shown to be unacceptable and unreliable on the part of the plaintiffs by way of their cross examination, in such view of the matter, it is found that the trial court seems to have ignored the abovesaid case of the plaintiffs without any basis and found to have erred in upholding the defence version with reference to the same on the footing that the plaintiffs have not taken steps to prove the signature of the defendants in the abovesaid endorsement. However, as above pointed out, when P.Ws.2 and 3 have tendered clear evidence with reference to the same and P.Ws.2 and 3 have deposed about the payment of Rs.2,00,000/- by the plaintiffs to the defendants in person, in such view of the matter, the determination of the trial court that the plaintiffs had failed to establish the payment of Rs.2,00,000/- on 30.06.2008 towards the balance sale consideration and the genuineness of the endorsement marked as Ex.A2, as such, cannot be accepted in any manner.

13. As above pointed out, the parties had agreed to complete the sale transaction within the period of 6 months from the date of sale agreement. Though the time may not be the essence of the contract in respect of the immovable property, still, when the parties had chosen to fix the time limit for completing the sale transaction, the same cannot be easily discarded. The readiness and willingness on the part of the plaintiffs is the sine qua non factor for enabling the plaintiffs to seek and obtain the discretionary relief of specific performance. As per the sale agreement, the sale consideration had been fixed at Rs.19,40,360/-. The plaintiffs had paid Rs.6,00,000/- as advance on the date of sale agreement. Thereafter, the plaintiffs had paid a sum of Rs.2,00,000/- on 30.06.2008. As per the time fixed under the sale agreement, the plaintiffs should pay the balance sale consideration on or before 17.09.2008 and obtain the sale deed from the defendants.

14. If according to the plaintiffs they had been keeping the balance sale consideration in cash in their hands readily, as to why the plaintiffs had not endeavoured to pay the same to the defendants at the earliest point of time and obtain the sale deed, no valid reason has been projected by the plaintiffs. As rightly put forth by the defendants' counsel,

at least, the plaintiffs, to show their bonafides, should have endeavoured to pay the entire balance sale consideration on 30.06.2008 and obtain the sale deed from the defendants. On the other hand, the case of the plaintiffs that they had paid only a sum of Rs.2,00,000/- on 30.06.2008 as demanded by the defendants, as such, cannot be countenanced. By way of the endorsement made in the sale agreement on 30.06.2008, the parties had not chosen to extend the time limit for completing the sale transaction. Therefore, it is found that the original time limit fixed under the sale agreement stands good. In such view of the matter, from the evidence adduced by the respective parties and the materials placed on record, it is found that the the plaintiffs had paid only a sum of Rs.8,00,000/- in toto towards the sale consideration and the balance sale consideration has not been paid by the plaintiffs within the time stipulated under the agreement.

15. Certain reasons are projected by the plaintiffs for not completing the sale transaction. According to the plaintiffs, the defendants had assured to produce the original sale deed and the other parental documents to them on the date of the sale agreement, however, the defendants had failed to adhere to the abovesaid condition. However, no such conditions or recitals are incorporated in Ex.A1 sale agreement with reference to the same. As rightly put forth by the defendants' counsel, if the plaintiffs are not certain or sure about the title of the defendants in respect of the suit property, they would not have endeavoured to enter into the sale agreement with the defendants on 17.03.2008. Therefore, the case projected by the plaintiffs that without verifying the title of the defendants, they had entered into an agreement of sale with them and the defendants had agreed to produce the title deeds at the time of sale agreement and they had failed to produce the same, is found to be totally unbelievable and unacceptable. Therefore, the abovesaid case projected by the plaintiffs for attributing the delay on the part of the defendants for the completion of the sale transaction, cannot at all be believed and accepted in any manner.

16. The plaintiffs would also put forth the case that the defendants had agreed to measure the suit property and fix the boundaries with the help of the surveyor and according to them, they had approached the defendants with reference to the same on several occasions, but the defendants had failed to comply with the abovesaid demand. However, Ex.A1 sale agreement does not contain any recitals that the defendants had agreed to measure the suit property with the help of the surveyor and fix the boundaries. As per the materials place on record, it is found that the suit property had already been measured and sub divided. Therefore, when there is no recital contained in Ex.A1 about any exercise of measurement on the

part of the defendants qua the suit property, the abovesaid case projected by the plaintiffs does not merit acceptance in any manner. When the suit property is found to be already measured and when the same remains intact, there is no need on the part of the defendants to undertake the measurement of the suit property further and accordingly it is found that no recital pointing to the same had also been incorporated in the sale agreement. Therefore, the abovesaid reasons projected by the plaintiffs for the delay on the part of the defendants in completing the sale transaction cannot be believed and accepted and rightly rejected by the trial court.

17. When there is no promise made by the defendants to measure the suit property with the help of the surveyor under the sale agreement Ex.A1 and when it is found that the suit property had already been measured and subdivided, therefore, the further case put forth by the plaintiffs that the defendants had also not permitted the plaintiffs to measure the suit property on their own with the help of the surveyor cannot be accepted and the abovesaid case had been projected by the plaintiffs without any basis or foundation.

18. Further according to the plaintiffs, on verification of the encumbrance of the suit property, according to them, two mortgages had been created in respect of the suit property one in favour of Govindasamy Gounder on 24.09.2007 and another in favour of the Kethalrev Village Co-operative Agricultural Credit Society on 30.09.1976 by the defendants vendors themselves and therefore, according to the plaintiffs, inasmuch as the defendants had agreed to convey the suit property free from encumbrance, without the clearance of the abovesaid mortgages, the plaintiffs had been unable to proceed further qua the sale agreement dated 17.03.2008. However, according to the defendants, the abovesaid mortgages had been cleared and discharged even on the date of the sale agreement and with reference to the same, the defendants had also marked the receipts pointing to the redemption of the abovesaid mortgages on 17.03.2008 itself, which are marked as Exs.B1 and B2 and established the attestation of the same by P.W.2 and furthermore, P.W.2 had also tendered evidence that he had apprised the plaintiffs regarding the discharge of the abovesaid mortgages by the defendants. Therefore, when the alleged mortgages stated to be in force in respect of the suit property are found to be cleared by the defendants on 17.03.2008 itself and when the materials placed on record go to show that the plaintiffs are aware of the same, accordingly, it is found that the case projected by the plaintiffs that the mortgages abovestated are still in force and required to be discharged by the defendants and the same is also one of the cause for not completing the sale transaction on the part of the defendants, as such, cannot be believed and accepted. As rightly put forth by the

defendants' counsel, if really, the abovesaid mortgages had been in force on the date of the sale agreement, the necessary recitals pointing to the same would have been incorporated in the sale agreement itself and on the other hand, when the abovesaid mortgages had been discharged by the defendants on the date of sale agreement itself and the abovesaid factors had also been apprised to the plaintiffs as spoken to by P.W.2, P.W.2 particularly being an attestor to the abovesaid transactions, in such view of the matter, to say that the mortgages are still pending and the defendants are required to discharge the same and the plaintiffs had come to know about the mortgages by obtaining the encumbrance subsequently, cannot at all be believed and accepted and as rightly put forth by the defendants' counsel, the abovesaid case had been projected by the plaintiffs with a view to project the reason for concealing their failure to comply with the performance of their obligation under the sale agreement.

19. The plaintiffs would also put forth the case that they had made vast improvements in the suit property pursuant to the sale agreement. However, the abovesaid case of the plaintiffs cannot at all be believed in any manner. According to the defendants, they had not parted with the possession of the suit property in favour of the plaintiffs pursuant to the sale agreement. The sale agreement Ex.A1 does not recite about the handing over of the possession of the suit property to the plaintiffs. In such view of the matter, the question of making improvements in the suit property by the plaintiffs, as put forth by them, does not arise at all for consideration. Though the plaintiffs would claim that they had made vast improvements in the suit property by spending huge amount, however, no reliable material had been produced by them pointing to the same. Furthermore, the plaintiffs would only state that they had only cleaned the suit property and not made any improvements and even the question of cleaning the suit property on the part of the plaintiffs would not arise, when it is found that they had not been parted with the possession of the suit property pursuant to the sale agreement. Therefore, the abovesaid case projected by the plaintiffs for the delay in the completion of the sale transaction also doest not merit acceptance.

20. Other than the abovesaid reasons put forth by the plaintiffs, no other valid cause had been projected by them for the delay in the completion of the sale transaction, particularly, for attributing any delay on the part of the defendants. In such view of the matter, when the plaintiffs are obliged to pay the balance sale consideration within 6 months from the date of sale agreement and when the parties had, for a particular purpose, fixed the time limit for completing the sale transaction and when the sale agreement also further recites that in the event of the failure of the

plaintiffs to pay the balance sale consideration within the stipulated period, they stand forfeited to loose the receipt of the amount paid by them under the sale agreement and accordingly when the defendants had, in toto, disputed the alleged readiness and willingness on the part of the plaintiffs in paying the balance sale consideration, in such view of the matter, it is found that on noticing the conduct of the plaintiffs in not coming forward to perform their obligation under the sale agreement, the defendants had chosen to issue the legal notice to the plaintiffs on 11.11.2008 informing that the plaintiffs had failed to adhere to the conditions set out in the sale agreement within the stipulated period and therefore, the sale agreement had been rendered invalid and unenforceable and accordingly apprised the plaintiffs that they are thenceforth not entitled to claim any relief based on the sale agreement and the abovesaid notice has been marked as Ex.A2. The receipt of Ex.A2 notice has not been challenged by the plaintiffs. Nearly one month thereafter, the plaintiffs had issued the reply notice dated 12.12.2008, whereunder they would claim that they had been ready to pay the balance sale consideration and obtain the sale deed from the defendants. According to the defendants, on the failure of the plaintiffs to go ahead with the sale agreement, as they had endeavoured to make arrangement to convey the suit property to the others after the issuance of Ex.A2 notice, only thereafter, on coming to know of the same, according to them, the plaintiffs had issued the reply notice dated 12.12.2008.

21. Considering the facts and circumstances of the case, in toto, it is found that as rightly put forth by the defendants, the plaintiffs had miserably failed to establish that they had been possessed of sufficient funds and keeping the same with their hands and ready to part with the same to the defendants within the stipulated period. Other than the oral assertion, there is no material worth acceptance on the part of the plaintiffs evidencing that they are possessed of sufficient solvency to pay the balance sale consideration in time and the delay had occurred only on the part of the defendants. Though the plaintiffs would come forward with certain income tax returns marked as Exs. A5 to A8 to show that they are possessed of sufficient funds, however, merely from the abovesaid income tax returns, particularly when they are found to be pertaining to the period after the expiry of the time fixed under the sale agreement, on the basis of the same, ipso facto, we cannot hold that the plaintiffs are possessed of sufficient solvency and had the capacity to pay the balance sale consideration to the defendants within the stipulated period. If that be the true position, there is no explanation on the part of the plaintiffs as to why they had not taken further steps to pay the balance sale consideration when according to them it is only the defendants who had been evading the completion of the sale transaction one way or the

other. If really the defendants had been delaying the sale transaction, as put forth by the plaintiffs, on noting their attitude, as rightly put forth by the defendants, the plaintiffs should have endeavoured to call upon the defendants to receive the balance sale consideration and execute the sale deed by issuing the legal notice. On the other hand, the plaintiffs had not moved their little finger to demand the defendants to complete the sale transaction as per law. Only after the defendants had issued the legal notice Ex.A2 on 11.11.2008, the plaintiffs are found to have issued the reply notice dated 12.12.2008 marked as Ex.A3. Thereafter, the plaintiffs had come forward with the suit for specific performance.

22. In the light of the abovesaid factors,when the conduct of the plaintiffs is assessed in toto and when the various reasons projected by the plaintiffs for attributing the delay on the part of the defendants in completing the sale transaction are found to be totally untenable and unacceptable as above pointed out and on the other hand, it is only the plaintiffs who had not been able to perform their part of the contract by tendering the balance sale consideration to the defendants within the stipulated period and in such view of the matter, when the defendants coming to know that the plaintiffs had failed to evince interest to go ahead with the performance of their obligation under the sale agreement within the stipulated period, accordingly, it is found that the defendants had issued the legal notice Ex.A2 apprising the plaintiffs that the sale agreement had become unenforceable on account of the failure of the plaintiffs to perform their obligation and in such view of the matter, the case of the plaintiffs that they had been ready and willing to perform their obligation always from the date of the sale agreement and it is only the defendants who had been avoiding the same on some pretext or the other, as such, cannot be believed and accepted and rightly rejected by the trial court.

23. The plaintiffs' counsel in support of his contentions placed reliance upon the decisions reported in

1. 1997 (1) CTC 287 (T. Periasamy Nadar and 5 others vs. T.D.Ramasubramaniam)
2. (2019) 3 Supreme Court Cases 704 (Kamal Kumar vs. Premlata Joshi and others).

The defendants counsel placed reliance upon the decisions reported in

1. 2013) 15 SCC 27 (I.S.Sikandar (dead) by lrs. vs. K.Subramani and others)
2. MANU/TN/7866/2007 (Sreeranga Nachiar vs. Athi Chettiar).
3. 2004(4) CTC 375 (Ranganatha Gounder vs. Sahadeva Gounder and others)

4. (1996) 4 SCC 526 (His Holiness Acharya Swami Ganesh Dassji vs. Sita Ram Thapar)
5. 2009 (4) CTC 639 (S.Krishnamurthy vs. M. Venkateswara Rao @ M.V. Rao (died) and 6 others).
6. 2014(4) CTC 290 (Farooque Dadabhoy vs. Dr. Usha S. Bhat)
7. 2011(6) CTC 112 (Citadel Fine Pharmaceuticals vs. Ramaniyam Real Estates P. Ltd. & Anr.)
8. 2010(2) MLJ 253 (R.Rajaram vs. T.R.Maheswaran)

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

24. The trial court has given valid reasons for coming to the conclusion that the plaintiffs had not been ready and willing to perform their obligation under the sale agreement and accordingly found right in declining the relief of specific performance and when the reasonings and conclusions of the trial court with reference to the same are found to be based upon the proper appreciation of the materials placed on record as well the principles of law governing the issues involved between the parties with reference to the same, in such view of the matter, I do not find any valid reason to disturb the abovesaid determination of the trial court and accordingly, I hold that the plaintiffs had not been ready and willing to perform their obligation under the sale agreement dated 17.03.2008 and resultantly, I further hold that the plaintiffs are not entitled to seek and obtain the relief of specific performance in respect of the sale agreement dated 17.03.2008. Accordingly, the point numbers 1 and 2 are answered.

Point Nos. 3 and 4

25. In the light of the abovesaid discussions the judgment and decree dated 17.09.2010 passed in O.S.No.44/2009, on the file of Additional District and Sessions Judge / Fast Track Court III, Dharapuram, are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

bca

Copy to

1. The Additional District and Sessions Judge /
   Fast Track Court III,
   Dharapuram.

2. The Section officer, V.R. Section, High Court, Madras.

+1cc to Mr.S. Saravanan, Advocate SR.No.85984

+2cc to M/s. Ramalingam Associates, Advocate SR.No.86294

A.S.No.234 of 2011

GMR(CO)
GMY(16/06/2020)