

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.08.2019

PRONOUNCED ON : 13.09.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.403 of 2011
and
CMP No.5440 of 2017

1. R.Sumathi
2. N.Dinakaran

...Appellants/
Defendants in Trial Court

Vs.

S.Nirmala

...Respondent/
Plaintiff in Trial Court

Prayer:

First Appeal filed under Order XLI(1) of CPC r/w Section 96 of Civil Procedure Code, against the judgment and decree dated 10.05.2011 made in O.S.No.7834 of 2010 on the file of the II Additional Fast Track Court, Chennai.

For Appellants : Mr.N.S.Sivakumar

For Respondent : Mr.S.Kothandaraman

JUDGMENT

Aggrieved over the judgment and decree dated 10.05.2011 passed in O.S.No.7834 of 2010 on the file of the II Additional Fast Track Court, Chennai, the defendants have preferred 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 and permanent injunction.

4.The case of the plaintiff, in brief, is that the offer was made by the defendants to sell the suit property to the

plaintiff and the plaintiff had agreed to purchase the suit property and accordingly the parties had fixed the sale price at Rs.12,50,000/- and pursuant to the same, the sale agreement had been executed between the plaintiff and the defendants on 11.03.2008 in respect of the suit property and the plaintiff had paid a sum of Rs.2,00,000/- as advance and the same had been acknowledged by the defendants 1 and 2 in the agreement. The parties had agreed that the balance sale consideration should be paid within 6 months i.e on or before 11.09.2008 subject to the compliance of handing over the vacant possession to the plaintiff at the time of registration. The plaintiff's two brothers, namely, V. Kannappan and V.Chandrasekar stood by the plaintiff's side and helped her in arranging the money to pay the sale consideration by raising personal loans apart from the savings of the plaintiff and they were in the fond hope of purchasing the suit property for the plaintiff as the plaintiff is a widow. The plaintiff had also raised funds personally by way of selling her jewels and also mortgaging her property and raised personal funds by paying interest for the same. The plaintiff has arranged the balance sale consideration of Rs.10,50,000/- within three months time and was ready and willing to purchase the suit property and orally informed the defendants about her readiness and willingness and demanded the defendants to hand over the vacant possession at the time of execution of the sale deed. The first defendant requested further time stating that she will vacate the suit property and hand over the vacant possession at the time of execution of the sale deed. Believing the words of the first defendant, the plaintiff returned to her house and had been regularly and continuously demanding the defendants to execute the sale deed in her favour. The first defendant informed that she could make an alternative arrangement of shifting her family from the suit property in the second week of July 2008 and suggested registration of the property could be carried out during the first week of August 2008. When the plaintiff approached the defendants in the first week of August, they requested further time for the execution of the sale deed and the first defendant had not come forward thereafter to fix the date for registration and therefore, the plaintiff orally demanded the defendants to register the property in her favour on or before 12.09.2008. Even then the defendants did not come forward to register the suit property in the name of the plaintiff. The plaintiff caused a legal notice on 08.09.2008 calling upon the defendants to execute the sale deed in her favour. The first defendant had received the legal notice and the second defendant had refused to receive the same. However, the defendants did not come forward to fix the date for the registration nor return the advance amount of Rs.2,00,000/- or replied to the legal notice sent by the plaintiff and the plaintiff had been always ready and willing to perform her part of the contract and the

plaintiff has now understood that the defendants are attempting to alienate the suit property to the third parties and hence the plaintiff gave another legal notice dated 18.04.2009 but the defendants did not send any reply to the same and evaded the same. The plaintiff gave objection letter to the sub registrar office, Royapuram, on 02.04.2009 against the defendants not to register the suit property to any third party. The Sub Registrar directed the plaintiff to approach the Civil Court for appropriate relief. While so, the defendants came to the plaintiff's residence and threatened her with dire consequences and also informed that they would not return the advance amount nor execute the sale deed in favour of the plaintiff and in that connection, had lodged a police complaint against the defendants for suittable action. The plaintiff came to know through the Encumbrance Certificate dated 28.07.2009 that the defendants had deceived the plaintiff by letting a new tenant in the suit property by entering into a lease agreement on 04.09.2008 and when the plaintiff questioned about the same, the defendants gave evasive replies and the defendants had violated the terms of the contract and hence according to the plaintiff, the need for the suit for appropriate reliefs.

5. The defendants resisted the plaintiff's suit contending that it is true that they had agreed to sell the suit property to the plaintiff for a sale price of Rs.12,50,000/- and that the sale agreement dated 12.03.2008 had been entered into between them and the plaintiff and that the plaintiff had paid Rs.2,00,000/- as advance on the date of agreement. The plaintiff had agreed to pay the balance sale consideration within 6 months i.e. on or before 11.09.2008 and on the payment of the same, the defendants had agreed to execute the sale deed and hand over the vacant possession of the suit property. Thereafter, whenever the defendants asked the plaintiff about the payment of balance sale consideration, the plaintiff had always sought time and even during the last week of August 2008, the defendants 1 and 2 asked about the completion of the sale as agreed to, but the plaintiff had not responded properly and the plaintiff never made any endeavour to pay the balance sale consideration of Rs.10,50,000/- before 11.09.2008 and not expressed her willingness to pay the same either orally or in writing. As the plaintiff had not paid the balance sale consideration even on the last date, the defendants informed that they are not desirous of selling the suit property to her as she had failed to perform her part of the obligation as per the agreement within the stipulated time. The defendants had received the legal notice on 18.11.2008. However, the abovesaid legal notice has been issued after the expiry of the stipulated time and the defendants issued reply through their counsel refuting the untenable contentions put forth in the said notice and also expressed their intention to return the sale

advance of Rs.1,50,000/- after deducting Rs.50,000/- as compensation for the breach of contract committed by the plaintiff. Thereafter, the plaintiff had come forward with the false suit and it is false to state that the plaintiff had been always ready and willing to pay the balance sale consideration and had been approaching the defendants repeatedly and that the defendants had been evading the execution of the sale deed and the allegations with reference to the same as made in the plaint are not true. It is false to state that the plaintiff caused legal notice on 08.09.2008 to the defendants calling upon them to register the sale deed in her favour. No such notice had been sent by the plaintiff and to the notice sent by the plaintiff on 18.11.2008, the defendants had sent a suitable reply. It is false to state that the plaintiff had sent a legal notice on 18.04.2009 and that the same had been evaded to be received by the defendants. The legal notice dated 18.11.2008 is the only communication received by the defendants from the plaintiff and the same was suitably replied by the defendants by way of a reply notice dated 28.11.2008. It is false to state that the defendants threatened the plaintiff as alleged in the plaint. The defendants had let out their property to one Marimuthu on rental basis from 2007 itself and it is false to state that he had been let out on rent only on 04.09.2008 and the defendants' property was rented out to him even before the sale agreement had been entered into between the plaintiff and the defendants. With a view to increase the rental income, the defendants had decided to enter into a lease agreement dated 04.09.2008 with Marimuthu on a lumpsum advance. Only with that intention, the lease agreement had been entered into on 04.09.2008. The plaintiff having not tendered the balance sale consideration before 11.09.2008 has got no right to question the abovesaid transaction entered into by the defendants with their tenant. The defendants had not violated the terms of the sale agreement. The plaintiff is bound to compensate the defendants for the failure to perform her part of the obligation as per the sale agreement and there is no cause of action for the suit and therefore 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 plaintiff is entitled to claim the relief of execution of the sale deed in her favour in respect of the suit property after paying the balance sale consideration of Rs.1,50,000/- to the defendants?
- 2) Whether the plaintiff is entitled to claim the relief of permanent injunction as prayed for in the plaint?
- 3) To what relief the plaintiff is entitled to?

7. In support of the plaintiff's case P.Ws.1 and 2 were examined and Exs.A1 to A13 were marked. On the side of the defendants, no oral and documentary evidence had been adduced

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 grant the relief of specific performance and the relief of permanent injunction as prayed for by the plaintiff and accordingly disposed of the suit in favour of the plaintiff. Impugning the same, the first appeal has been preferred by the defendants.

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

1. Whether the plaintiff has been always ready and willing to perform her part of the obligation in respect of the sale agreement dated 12.03.2008?
2. Whether the plaintiff is entitled to obtain the relief of specific performance in respect of the sale agreement dated 12.03.2008 as prayed for?
3. Whether the plaintiff is entitled to obtain the relief of permanent injunction as prayed for against the defendants as prayed for?
4. To what relief the plaintiff is entitled to?
5. To what relief the defendants/appellants are entitled to?

Points Nos. 1 to 3

10. It is not in dispute that the suit property belongs to the defendants and that they had entered into a sale agreement with the plaintiff to sell the same for a sum of Rs.12,50,000/- and accordingly it is found that the parties had entered into the sale agreement with reference to the same on 12.03.2008 and the abovesaid sale agreement had been marked as Ex.A1. The execution of Ex.A1 sale agreement has not been controverted by the defendants. Equally the defendants had not controverted the receipt of Rs.2,00,000/- from the plaintiff as advance towards the sale consideration on the date of sale agreement. On a perusal of Ex.A1 sale agreement, it is found that by way of the same, the parties had agreed that the balance sale consideration of Rs.10,50,000/- should be paid by the plaintiff to the defendants within six months from the date of sale agreement and that on receipt of the same, the defendants should execute the sale deed and hand over the vacant possession of the suit property to the plaintiff. That such a clause has been incorporated in Ex.A1 sale agreement fixing a particular time

limit for the completion of the sale transaction, has been admitted by both the plaintiff and the defendants.

11. Now according to the plaintiff, she has been always ready and willing to perform her part of the contract and had made arrangements to pay the balance sale consideration to the defendants towards the sale price by mortgaging her property, selling her jewels and also her brothers had assured to support her in arranging the money for paying the balance sale consideration and accordingly it is the case of the plaintiff that she had made ready the balance sale consideration within three months from the date of the sale agreement and thereafter, had been approaching the defendants to come forward and execute the sale deed. Further according to the plaintiff, the defendants had been evading the same on some reason or the other and accordingly it is put forth by the plaintiff that she had sent a legal notice dated 08.09.2008 calling upon the defendants to receive the balance sale price and execute the sale deed in her favour. The abovesaid case of the plaintiff has been stoutly repudiated by the defendants. According to the defendants, it is only they who had been repeatedly approaching the plaintiff to pay the balance sale consideration to them and complete the sale transaction and on the other hand, the plaintiff had been not ready and willing to perform her part of the contract and the defendants, in toto, disputed the case of the plaintiff that she had sent the legal notice dated 08.09.2008 calling upon them to receive the balance sale consideration and execute the sale deed and according to the defendants, no such notice had been sent by the plaintiff to them and therefore, in toto, according to the defendants, the plaintiff has not come forward to pay the balance sale price on or before 11.09.2008 as fixed under the sale agreement Ex.A1 and therefore, it is put forth by them that the plaintiff is not entitled to seek and obtain the relief of specific performance in respect of Ex.A1 sale agreement.

12. As regards the case of the plaintiff that she had sent the legal notice to the defendants on 08.09.2008, no doubt, the copy of the legal notice dated 08.09.2008 has been marked as Ex.A4. However, the acknowledgment card said to have been received from the defendants with reference to the same marked as Ex.A5 bears the date 20.11.2008. Therefore, it is highly doubtful whether at all the plaintiff would have issued the legal notice dated 08.09.2008 marked as Ex.A4 as claimed by her. On a perusal of Ex.A4 legal notice, it is found that the same had not been signed by the plaintiff's counsel and furthermore, when the plaintiff has miserably failed to establish that the same had been acknowledged by the defendants and the acknowledgment card projected by the plaintiff marked as Ex.A5 do not lend support to her abovesaid case and the plaintiff

having failed to place any other material worth acceptance to sustain her claim of the issuance of the legal notice dated 08.09.2008 as put forth by her, in all, it is found that the claim of the plaintiff that she had sent the legal notice on 08.09.2008 cannot be accepted in any manner and the abovesaid case of the plaintiff had been rightly disbelieved even by the trial court. Therefore, it is found that as regards the claim of readiness and willingness on the part of the plaintiff in paying the sale consideration on or before 11.09.2008 and her claim of continuous endeavours on her part in approaching the defendants to pay the balance sale price within the stipulated time, to buttress the abovesaid case of the plaintiff, there is no acceptable and reliable material on the part of the plaintiff. In this connection, the plaintiff examined as P.W.1, during the course of cross examination, has admitted that the time limit of six months has been fixed under the sale agreement for completing the sale transaction and further would state that she had mortgaged her property for a sum of Rs.8,00,000/- vide mortgage deed dated 09.07.2008 marked as Ex.A2 and further would admit that she would be able to purchase the suit property only if her brothers make arrangement to pay the balance sale consideration and at the time of the sale agreement she was not possessed of the entire sale consideration and her brothers had assured that they would sell their properties and give her the amount and only with the help of the amount, to be tendered by her brothers, she could complete the sale transaction and her brothers had assured her that they would sell their properties and give the amount as they were not possessed of the cash at that point of time and also admitted that at the time of sending Ex.A4 legal notice, the defendants were not in the address and therefore considering the abovesaid evidence of the plaintiff, it is found that she would claim that she had mortgaged the property for a sum of Rs.8,00,000/- on 09.07.2008. However, according to her, without the monetary support from her brothers, she would not be able to complete the sale transaction and her brothers had assured her to pay the amount after selling their properties. However, with reference to the said case of the plaintiff, there is no material available worth acceptance to evidence that her brothers were possessed of sufficient properties and able to realise the amount by selling the same and that they had assured to pay the amount to the plaintiff for completing the sale transaction. The fact remains that when the plaintiff is obliged to pay the balance sale consideration of Rs.10,50,000/- and when by way of Ex.A2 mortgage, the plaintiff was able to realise only a sum of Rs.8,00,000/-, moreover, when it is found that the plaintiff had mortgaged her property only for meeting her urgent family needs, it is evident that on the date of Ex.A2 mortgage, the plaintiff was not possessed of the entire sale consideration for tendering to the defendants. As regards the case of the plaintiff that her brothers had assured

her to provide the monetary support, there is no acceptable and convincing material on the part of the plaintiff.

13. In this connection, the plaintiff has examined her brother Kannappan as P.W.2 and P.W.2, during the course of cross examination, would state that he had assured the plaintiff that he would sell his property and give the amount to her and further admitted that he had not alienated his property and not made any agreement with reference to the same and the statement of account of his bank account is marked as Ex.A13 and he has admitted that as per Ex.A13 statement of account, he was having a sum of Rs.19,000/- in his account as on 11.03.2008 and a sum of Rs.49,000/- as on 11.08.2008 and accordingly admitted that as on the date of examination in the court only, a sum of Rs.4,00,000/- is available in his bank account and also further admitted that he has not placed any material to evidence that he had alienated his properties or the properties in the name of his wife or pledged the jewels and therefore considering the evidence of P.W.2 and the document marked as Ex.A13, his bank account statement, in all, it is found that P.W.2 had not made any endeavour to alienate his properties for providing the sum to the plaintiff for accomplishing the sale transaction in question and as on the date of 11.09.2008, at the most, it is found that he had only a sum of Rs.49,000/- to his account and in such view of the matter, when according to the plaintiff she could accomplish the sale transaction only if her brothers would provide the monetary support to her, in such view of the matter, even assuming for the sake of arguments that the plaintiff had mortgaged her property for Rs.8,00,000/- only for the purpose of paying the balance sale consideration to the plaintiff, if that be so, on receipt of Rs.8,00,000/- by way of Ex.A2 mortgage, immediately thereafter, to show her bonafides, the plaintiff should have endeavoured atleast to pay the said sum to the defendants and on the other hand, when other than the ipse dixit and untrusty testimony of the plaintiff that she had been repeatedly approaching the plaintiff in paying the balance sale consideration and that the defendants had been evading to receive the same and execute the sale deed, however, when there is no proof worth acceptance on the part of the plaintiff to show her capacity to pay the entire balance sale consideration on or before 11.09.2008 as well as her willingness to pay the same to the defendants before the stipulated time, in such view of the matter, the case projected by the plaintiff that she was possessed of the entire balance sale consideration within three months from the date of sale agreement Ex.A1 cannot at all be believed and accepted. If really the abovesaid case of the plaintiff has any element of truth and if really the plaintiff had approached the defendants to offer the balance sale price and only the defendants had been evading the same on some

pretext or the other, on noting the evasive attitude and conduct of the defendants in not coming forward to execute the sale transaction, it has not been explained by the plaintiff, as to why she has not endeavoured to take appropriate steps against the defendants immediately as per law for enforcing the sale agreement. When according to the plaintiff she had been ready and made arrangements for paying the balance sale consideration within three months from the date of sale agreement and if really the defendants had been refusing to receive the same and avoiding the sale transaction, atleast thereafter, the plaintiff should have endeavoured to issue the legal notice to the defendants calling upon them to receive the balance sale consideration and execute the sale deed and thereafter, should have instituted appropriate legal action against the defendants by filing the suit. On the other hand, as regards the abovesaid case of the plaintiff i.e. her readiness and willingness and her capacity to pay the balance sale consideration on or before the stipulated time i.e. 11.09.2008, absolutely there is no reliable material forth coming on the part of the plaintiff. As abovenoted, the claim of the plaintiff that she had sent the legal notice on 08.09.2008 is found to be a false one. In such view of the matter, it is seen that the case of the plaintiff that she had been possessed of sufficient funds for making arrangement to pay the balance sale consideration to the defendants on or before 11.09.2008 and had been always offering to pay the sum to the defendants before the stipulated time, is not borne out by acceptable and reliable proof and in such view of the matter, the contention of the defendants' counsel that there is complete absence of readiness and willingness on the part of the plaintiff in paying the balance sale consideration within the stipulated time, cannot be easily brushed aside and the abovesaid factors had been failed to be considered by the trial court by properly analysing the materials available on record. The trial court seems to have accepted the plaintiff's case on the footing that the plaintiff had made arrangements to mortgage her property for a sum of Rs.8,00,000/- by way of Ex.A2 mortgage. However, the fact remains that the plaintiff should pay the balance sale price of Rs.10,50,000/- to the defendants on or before 11.09.2008. As abovenoted, the claim of the plaintiff that her brothers had assured her to provide monetary support for paying the balance sale consideration, considering the evidence of P.W.2 and the statement of account of his bank account marked as Ex.A13, when they do not lend support that her brothers had been possessed of and provided adequate monetary support to the plaintiff to pay the balance sale consideration in entirety on or before 11.09.2008 and when there is no material evidencing that her brothers had endeavoured to sell or mortgage their properties or pledge their jewels, etc., for helping the plaintiff in paying the balance sale consideration, in such view of the matter, merely on the position that the

plaintiff had mortgaged her property by way of Ex.A2 for Rs.8,00,000/-, it cannot be inferred that the plaintiff was possessed of sufficient funds to pay the balance sale consideration to the defendants on or before 11.09.2008. If that be so, as above pointed out, what prevented the plaintiff from paying atleast the sum of Rs.8,00,000/- to the defendants before the stipulated time and if really the plaintiff had offered to pay the said amount and if really the defendants had refused to receive the said amount, as a prudent person, the plaintiff would have endeavoured to institute appropriate legal action against the defendants immediately as per law.

14. In the light of the abovesaid factors, as contended by the defendants' counsel, absolutely there is no reliable material on the part of the plaintiff to show that she was possessed of sufficient funds to pay the balance sale consideration on or before 11.09.2008 and that she had been always ready and willing to pay the balance sale consideration to the defendants on or before the stipulated time. As abovenoted, the plaintiff has miserably failed to establish that she had sent the legal notice to the defendants on 08.09.2008. According to the defendants, the plaintiff had issued the legal notice only on 18.11.2008 and the same had been suitably replied by them by way of reply notice dated 28.11.2008. However, for the reasons best known to the parties, neither the legal notice dated 18.11.2008 nor the reply dated 28.11.2008 had been projected in the matter.

15. Be that as it may, the legal notice sent by the plaintiff on 18.11.2008 would not enure to the case of the plaintiff to hold her claim of readiness and willingness in paying the balance sale consideration within the stipulated time. When the abovesaid legal notice dated 18.11.2008 is found to be issued by the plaintiff after the stipulated time, it is evident that till 17.11.2008, there is no material on the part of the plaintiff expressing and establishing her readiness and willingness in paying the balance sale consideration to the defendants and therefore, the abovesaid legal notice, though not projected in the matter, would be of no assistance to support the plaintiff's case.

16. The plaintiff would claim that she had sent another notice to the defendants on 18.04.2009 and the same had been evaded to be received by the defendants and other than marking the returned cover as Ex.A7, with reference to the same, there is no other material on the part of the plaintiff to evidence that such a legal notice had been duly sent by the plaintiff to

the defendants and the same had been evaded by the defendants and in any event, when the abovesaid legal notice is found to have been issued much after the stipulated time, even assuming for the sake of arguments that such a notice had been sent by the plaintiff, the same would not be sufficient to support the plaintiff's case qua her readiness and willingness in performing her obligation under the sale agreement within the stipulated period.

17. The case of the plaintiff that she had been always ready and willing to perform her part of the contract is also found to be a false one considering the subsequent developments which had taken place in the matter. The trial court had granted the relief of specific performance to the plaintiff by directing the plaintiff to pay the balance sale consideration within a period of 2 months from the date of decree. The judgment and decree is dated 10.05.2011. The defendants had preferred the challenge to the abovesaid judgment and decree of the trial court and it is found that the defendants along with the appeal, had preferred M.P. No.1 of 2011 to stay all further proceedings pursuant to the judgment and decree of the trial court till the disposal of the first appeal. In the abovesaid petition, originally, an interim stay had been granted by this Court and the plaintiff after entering appearance, had represented that she should be permitted to deposit the amount i.e. the balance sale consideration before the trial court and accordingly, this Court by order dated 12.10.2011 in M.P.No. 1 of 2011, taking into consideration the submissions made by the counsel for the plaintiff, accordingly directed the trial court to accept the deposit to be made by the plaintiff in the suit. It is thus found that though the further proceedings had been stayed by this court in M.P.No.1 of 2011, however, the plaintiff had been granted permission to deposit the balance sale consideration to the credit of the trial court. However, it is found that even thereafter, the plaintiff has failed to pay the entire balance sale consideration of Rs.10,50,000/- into the court and had only paid a sum of Rs.10,00,000/- into the court and according to the plaintiff, her junior counsel had inadvertently filed the schedule for the deposit of Rs.10,00,000/- only, instead of Rs.10,50,000/- and accordingly as she is obliged to pay the balance sum of Rs.50,000/- into the trial court, sought for necessary permission from this court to deposit the said sum into the court by way of the petition in M.P. No.2 of 2014. The abovesaid petition is found to be presented on 19.04.2013. It is found that though this court had granted the permission to the plaintiff to deposit the balance sale consideration into the trial court by way of the order dated 12.10.2011 in M.P.No.1 of 2011, the plaintiff had failed to comply with the abovesaid direction and deposited only Rs.10,00,000/- and not the entire

sale consideration and thereafter she had preferred the petition in M.P.No.2 of 2014 seeking permission to deposit the balance sale consideration of Rs.50,000/-, however, the plaintiff had not endeavoured to prosecute the abovesaid petition and it is found that the abovesaid petition had been dismissed for non prosecution on 24.11.2014. Therefore, the abovesaid conduct of the plaintiff would only go to expose that inasmuch as the plaintiff was not possessed of sufficient funds to pay the balance sale consideration either within the stipulated time as fixed under Ex.A1 sale agreement and even thereafter, and as abovenoted when there is no material placed on the part of the plaintiff evidencing her brothers' monetary assistance to her in paying the balance sale consideration, in such view of the matter, it is found that the plaintiff had been taking her own time in paying the balance sale consideration, and as on date, it is seen that the balance sale consideration of Rs.10,50,000/- had not been deposited by the plaintiff into the court despite the permission granted by this court to the plaintiff to pay the balance sale consideration into the court. The abovesaid conduct of the plaintiff would only project her incapacity to pay the entire balance sale consideration one way or the other and the absence of her readiness and willingness to pay the balance sale consideration to complete the sale transaction.

18. The plaintiff would put forth the case that the defendants are obliged to hand over the vacant possession of the suit property at the time of execution of the sale deed as per Ex.A1 sale agreement and according to the plaintiff instead of endeavouring to surrender the vacant possession of the suit property, it is put forth that the defendants had entered into a fresh lease arrangement with their tenant Marimuthu by way of the lease deed dated 04.09.2008 marked as Ex.A3. According to the defendants, Marimuthu has already been the tenant inducted into their property and the lease deed dated 04.09.2008 having been entered into only for a lumpsum amount towards the rent and further according to the defendants, when the plaintiff had failed to come forward to pay the balance sale consideration on or before 11.09.2008, the plaintiff cannot question the act of the defendants in entering into a fresh lease arrangement with their tenant by way of Ex.A3 lease deed and according to the defendants, on the failure of the plaintiff to perform her part of the contract, the plaintiff cannot question the defendants in entering into the lease arrangement with their tenant and accordingly put forth the case that the abovesaid case of the plaintiff would not enure to her benefit. As rightly put forth by the defendants' counsel, on a perusal of Ex.A1 sale agreement, it is found that the plaintiff is obliged to pay the balance sale consideration within six months from the date of the sale agreement and on the payment of the balance sale

consideration, the defendants should execute the sale deed and hand over the vacant possession of the suit property. As abovenoted, the plaintiff has failed to establish her capacity or means to pay the balance sale consideration on or before 11.09.2008 and also failed to establish her readiness and willingness to pay the balance sale consideration within the stipulated period and accomplish the sale transaction. Thereafter only the defendants are required to execute the sale deed in favour of the plaintiff and hand over the vacant possession of the suit property. When the plaintiff has miserably failed to establish her part of the contract and in such view of the matter, when the defendants have also clearly brought home the position that the plaintiff had failed to perform her part of the contract by way of the reply notice sent by them dated 28.11.2008 to the plaintiff's legal notice dated 18.11.2008 and when the factum of the issuance of legal notice dated 18.11.2008 and reply notice dated 28.11.2008 has not been controverted or challenged by the plaintiff, in such view of the matter, the defendants having rescinded the contract by way of the reply notice dated 28.11.2008, in such view of the matter, the conduct of the defendants in entering into the fresh lease deed with their tenant would not be sufficient to contend and the same cannot be allowed to be projected by the plaintiff to contend that the defendants had not been ready and willing to perform their part of the contract as per Ex.A1 sale agreement. When at the first instance, it is only the plaintiff who has to pay the balance sale consideration and only thereafter, the defendants are obliged to execute the sale deed and hand over the vacant possession of the suit property and when as above noted, the plaintiff has miserably failed to establish her readiness and willingness to pay the balance sale price within the stipulated period or even thereafter and even subsequent to the decree passed in the trial court and even as ordered by this Court as above discussed in entirety, in all, it is found that the plaintiff has miserably failed to establish her readiness and willingness to pay the balance sale consideration and in such view of the matter, the execution of a fresh lease deed by the defendants with their tenant on 04.09.2008 would not enure to the case of the plaintiff and the abovesaid factors had been failed to be considered by the trial court in the right perspective. In such view of the matter, the trial court is found to have factually and legally misdirected itself in determining that the plaintiff has been always ready and willing to perform her part of the contract on a wrong appreciation of the materials available on record and in such view of the matter, the reasonings and conclusions of the trial court for upholding the plaintiff's case do not merit acceptance and can only be termed as perverse and irrational and unacceptable in the eyes of law.

19. As regards the case of plaintiff that the defendants had threatened her and that she had lodged the police complaint, the same having been denied by the defendants and apart from marking the copy of the police complaint dated 09.06.2009, when there is no other material on the part of the plaintiff as to any further action had been taken pursuant to the same, in such view of the matter, the abovesaid factor projected by the plaintiff would not help her in sustaining her case in any manner.

20. The plaintiff's counsel contended that the defendants had failed to come forward to adduce evidence in the matter and on that basis, the plaintiff's case should be accepted and accordingly contended that the judgment and decree of the trial court do not warrant any interference. However, the plaintiff being the suitor and having laid the suit seeking the discretionary and equitable relief of specific performance, as rightly put forth by the defendants' counsel, the plaintiff should establish her readiness and willingness through out from the inception in paying the balance sale consideration and accomplish the sale transaction, however, as above pointed and discussed, when the abovesaid sine qua non factor has been failed to to be established by the plaintiff, in toto, in such view of the matter, the claim of the relief of specific performance prayed for by the plaintiff cannot be extended in her favour. On similar lines, the plaintiff is also found to be not entitled to seek and obtain the relief of permanent injunction as prayed for in the suit against the defendants.

CMP No.5440 of 2017

21. This Petition is filed under Order 41 Rule 27 of CPC. The petition has been laid by the appellants / defendants putting forth the case that the trial court had erred in holding that the defendants had not taken steps to vacate the tenants from the suit property and according to them, the tenants had occupied the premises even prior to the agreement and the defendants had also taken the revocation agreement from Marimuthu and other tenants and to evidence the same, they are necessitated to file the additional documents in support of their case and accordingly prayed for reception of the same as additional evidence in the appeal.

22. The abovesaid petition of the defendants had been resisted by the plaintiff contending that the defendants had failed to vacate the tenants before the stipulated period and the additional documents projected by the defendants would not suffice and buttress the defence version in any manner and the plaintiff is not the party to the documents projected by the defendants and the defendants had not placed sufficient cause

for not placing such documents before the trial court and accordingly prayed for the dismissal of the petition.

23. The point that arises for consideration in this petition is whether the same is entitled for acceptance.

Point in CMP No. 5440 of 2017

24. The defendants had come forward with the petition for the reception of additional evidence putting forth certain agreements entered into by them with their tenants. However, as rightly pointed out by the plaintiff's counsel, the defendants having not endeavoured to place any oral and documentary evidence during the course of trial and when the defendants had not placed sufficient cause as to why they had not endeavoured to produce the present materials before the trial court and furthermore, when the materials projected are found to be not necessary for adjudicating the issues involved in the matter, in all, the petition for the reception of additional evidence, not satisfying the legal requirements of Order 41 Rule 27 of CPC in any manner, in all, I hold that the petition is devoid of merits and accordingly the same is dismissed. Accordingly, the point in CMP No. 5440 of 2017 is answered.

25. The plaintiff's counsel in support of his contentions placed reliance upon the decision reported in

2011(1) SCC P. 429 (J.P. Builders and another vs. A. Ramadas Rao and another)

The defendants' counsel in support of his contentions placed reliance upon the following decisions reported in

1. (2015) 8 SCC 695 (Padmakumari and others vs. Dasayyan and others)
2. 2017 (3) CTC 344 High Court of Madras (Ravindran vs. Danton Shanmugam and others).
3. 2018 SCC online Mad 4078 (Jothi Mani vs. Pottiammal).
4. 2017 (3) CTC 693 (T.Vasantha and others vs. A. Jayaseelan and others)
5. 2010 (6) CTC 652 (Man Kaur (D) by lrs., vs. Hartar Singh Sangha).
6. 2017 (2) MWN (Civil) 446 (R.Shanmugam vs. P.Govindaraju (deceased) and others).
7. 2018 (6) CTC 56 (mad) (T.R.Murugesan vs. S. Balakrishnan and others).
8. 2018-4-L.W. 622 (K. Narasimhan (deceased) and another vs. C.P. Sanjeevi Mudaliar)
9. (2018) 9 SCC 805 (Jagjit Singh (dead) through

- lrs vs. Amarjit Singh)
- 10.2016 (6) CTC 225 (Rajammal and another vs. M.Senbagam)
- 11.2017 SCC Online Mad 973 (Nirmala S.Raj vs. P. Ravi Kumar and others)
- 12.(2011) 1 SCC 429 (J.P. Builders and another vs. A. Ramadas Rao and another)

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

26. In the light of the abovesaid discussions, it is held that the plaintiff has failed to establish her readiness and willingness to perform her part of the obligation in respect of the sale agreement dated 11.03.2008 and thereby held not entitled to seek the relief of specific performance in respect of the sale agreement dated 11.03.2008, accordingly, the plaintiff is held not entitled to seek the relief of permanent injunction as prayed for. Accordingly, the points numbers 1 to 3 are answered in favour of the defendants and against the plaintiff.

Points Nos. 4 and 5

27. For the reasons aforesaid, the judgment and decree dated 10.05.2011 passed in O.S.No.7834 of 2010 on the file of the II Additional Fast Track Court, Chennai, are set aside and resultantly the suit laid by the plaintiff in O.S.No.7834 of 2010 is dismissed with costs. Accordingly the first appeal is allowed with costs and the miscellaneous petition in CMP No.5440 of 2017 is dismissed. Consequently, other miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Additional Fast High Court Judge,
II Additional Fast Track Court,
Chennai

Copy To

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

+1cc to Mr.N.S.Sivakumar, Advocate, S.R.No.78667

+1cc to M/s.M.Balasubramanian, Advocate, S.R.No.78788

A.S.No.403 of 2011

SAI (CO)
CS/30/09/2019



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