IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on: 12..04..2019

Judgment Pronounced on: 26..04..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Appeal Suit No.64 of 2010

S.Sayee Prasad ... Appellant/Plaintiff

-Versus-

1.M/s.Kamala Industries,
Rep. its Managing Partner Mr.T.Palanisamy,
S/o.Thirumoorthy,
D.No.280, Kurichi Housing Phase I Extension,
Coimbatore 641 021.

2.The Mr.T.Palanisamy,
S/o Thirumoorthy,
Managing Partner Kamala Industries,
D.No.280, Kurichi Housing Phase I Extension,
Coimbatore 641 021.

3.Mr.P.Lakshmanan,
S/o T.Palanisamy,
Partner Kamala Industries,
D.No.280, Kurichi Housing Phase I Extension,
Coimbatore 641 021. ... Respondents/Defendants

This Appeal Suit is filed against the judgement and decree dated 22.07.2009 made in O.S.No.150 of 2007 by the learned I Additional District Judge, Coimbatore, dismissing the suit for specific performance, however, directing the defendant to return a sum of Rs.3,39,115/- with interest @ 7.5% p.a. from 10.03.1997 till date of suit and thereafter @ 6% p.a. till date of realization.

For Appellant : Mr.T.P.Manoharan, Senior Counsel for Mr.S.Sithirai Anandan

For Respondent(s) : Mr.L.Mouli for R1 to R3

JUDGMENT

The plaintiff, who lost his suit for specific performance of contract before the court below, is the appellant herein. The suit in O.S.No.150 of 2007 was filed for specific performance of contract on an agreement of sale dated 28.07.1996 entered into between the plaintiff and the defendants in respect of suit property on receiving the balance sale consideration from the plaintiff. The court below has, by judgement and decree dated 22.07.2009, dismissed the suit in respect of specific performance of contract, however, directed the defendants to return a sum of Rs.3,39,115/- to the plaintiff with interest @ 7.5% p.a. from 10.03.1997 till date of suit and thereafter @ 6% p.a. till date of realization. Challenging the dismissal of the suit in respect of specific performance of contract, the plaintiff is before this court with this appeal suit.

2. The case of the plaintiff is that the suit property absolutely belongs to the 1st defendant firm. The defendants 2 and 3 are the partners and also father and son. The suit property was allotted to the 1st defendant by Tamil Nadu Small Industries Development Limited (in short, "SIDCO"). On 29.06.1994, the defendants leased out the property to the plaintiff on a monthly rent of Rs.1,300/-. The plaintiff has been running an industry in the suit property. The defendants obtained loan from Tamil Nadu Industrial Investment Corporation Limited (in short "TIIC) and created an equitable mortgage by depositing the title deeds relating to the suit property. The defendants were liable to pay a sum of Rs.3,09,115/- with interest to the TIIC. When the defendants failed to pay the outstanding principal and interest, the TIIC had locked the preemies and removed the machineries from the industry owned by the plaintiff. Only thereafter, the defendants informed the plaintiff that the original title deeds are with TIIC and they were liable to pay a sum of Rs.3,09,115/- with interest. In the above said circumstances, the defendants made an offer to sell the leased out suit property for consideration and they had requested the plaintiff to clear off the dues payable to TIIC on behalf of them and pay the balance sale consideration to them. Since the plaintiff had already invested huge sum to put up an industry and the premises was locked and sealed by the TIIC for the loan dues, the plaintiff had agreed to the proposal of the

defendants. Accordingly, on 28.06.1996, an agreement of sale was entered into between the plaintiff and the 1st defendant, wherein the 2nd defendant had agreed to convey the suit property for a total consideration of Rs.5,30,000/- including the electricity service connection etc. As per the condition of the agreement of sale, the plaintiff had to discharge the debts payable to TIIC by the 1st defendant and the balance sale consideration was agreed to be paid within 6 months. At the time of agreement, the 2nd defendant had stated that the loan amount due was about Rs.2,60,000/- But, on verification from TIIC, the plaintiff came to know that the actual loan outstanding was Rs.3,09,115/-.

3. The 3rd defendant being the son of the 2nd defendant even though he had not signed in the sale agreement by his conduct entrusted the management of the firm to the 2nd defendant to act for and on behalf of 1st defendant in dealing with the third parties. The defendants also further agreed not to collect rent till the loans are clear off and until sale is concluded. As per the agreement of sale, the plaintiff had discharged the entire loan outstanding payable by the defendants to TIIC and pursuant to the authorization by the 2nd defendant, the plaintiff got back the title deeds which were deposited by the defendants with the TIIC and also obtained a no due certificate on 12.03.1997. Thereafter, the plaintiff had issued a notice calling upon the defendants to execute a sale deed after receiving the balance sale consideration. On receiving the notice, the defendants requested the plaintiff to pay another sum of Rs.50,000/- towards sale consideration. On 24.03.1997, the plaintiff had, accordingly, paid a sum of Rs.30,000/- to the 2nd defendant and the 2nd defendant had acknowledged the receipt of payment and made an endorsement on the agreement of sale. At the time of payment, the plaintiff informed the defendants to complete the formalities and he had also informed that he had been ready and willing to pay the balance of sale consideration at the time of registration of sale deed and conclude the contract.

4. While so, all of a sudden, the 2nd defendant had changed his attitude and without executing the sale deed requested him to pay the balance of sale consideration and the the plaintiff informed the 2nd defendant to come along with the 3rd defendant and execute and register the sale deed after receiving the balance of sale consideration. But, the defendants 2 and 3 failed to comply with the terms of the agreement of sale. In the above circumstances, the plaintiff had issued a legal notice on 06.10.1997 to the 1st defendant calling upon to execute the sale deed for which the 2nd defendant had issued a reply notice on 13.10.1997 admitting the sale agreement entered into with the plaintiff and the payment of Rs.2,60,000/- made by the plaintiff

to TICC on behalf of the defendants towards loan outstanding. In the above said reply notice, the 2nd defendant further contended that after discharging the loan outstanding, despite repeated demands made by him, the plaintiff did not pay the balance of sale consideration within the six months time stipulated under the agreement of sale. As the time is the essence of the contract, and despite the fact that they are ready and willing to perform their part of contract, it was only the plaintiff who had failed to perform his part of contract and as a result, the agreement of sale came to an end by efflux of time. The 2nd defendant had requested the plaintiff to return the original title deeds which were received from TIIC. On the same day, the 3rd defendant had issued a separate notice stating that the plaintiff is a tenant under them and he had willfully committed default in payment of rent and requesting him to pay the arrears of rent and also vacate the handover the vacant premises. Thereafter, on 27.10.1997, the 2nd defendant had issued another notice but through a different counsel denying the very execution of the sale agreement and the discharge of loan outstanding by the plaintiff to TIIC on behalf of the defendants. The 2nd defendant further stated that when he had requested the plaintiff to pay the loan outstanding of Rs.2,60,000/- to TIIC on behalf of them, the plaintiff had obtained his signatures in blank stamp papers and blank papers and utilizing the same, he had created the sale agreement in question and no sale agreement entered into by him with the plaintiff. Once again, on 07.01.1998, the defendants 2 and 3 had issued another notice to the plaintiff directing him to pay the arrears of rent and also to vacate and handover the vacant premises to them. Subsequently, the defendants have also petition in RCOP No.145 of 1998 for eviction before the Rent Controller, Coimbatore. In the mean time, the plaintiff came to know that under the sale deed executed by TIIC in favour of the 1st defendant, there is a prohibition for transfer of the the property for a period of five years from the date of execution of sale deed i.e., 08.06.1994 till 07.06.1999. Therefore, the plaintiff could not file the suit immediately and after the expiry of five years period, he has filed the suit for specific performance of contract.

5. The defendants filed their written statement inter alia contending that the suit property belongs to the 1st defendant and the same has been leased out to the plaintiff on a monthly rent of Rs.1,300/-. The defendants denied that they had agreed to convey the leased out property to the plaintiff for a consideration and the plaintiff had, on the requests made by the defendants, cleared off the loan outstanding payable to TIIC. The defendants further denied the execution of sale agreement on 28.07.1996.

6. The defendants further contended that the plaintiff is the tenant and the monthly rent was initially fixed at Rs.1,300/- which was periodically enhanced to Rs.2,000/-. The defendants had raised loan from TIIC and in June, 1996, the TIIC had demanded the defendants to settle the loan dues. The defendants came to understand that the loan outstanding was Rs.2,60,000/- and the defendants requested the plaintiff to discharge the debts payable to the TIIC and agreed to mortgage the suit property with the plaintiff. Pursuant to such understandings, the plaintiff had obtained the signatures of the 2nd defendant in blank stamp papers and blank papers. The rent was agreed to be adjusted towards the interest. Only when the plaintiff had sent a notice on 06.10.1997 alleging the execution of sale agreement, the 2nd defendant sent a reply denying execution of such agreement between them and stating that he had only mortgaged the property with the plaintiff. The 2nd defendant had expressly stated that he was not willing to renew the tenancy in favour of the plaintiff.

7. It is the further case of the defendants that at the time of entering into the lease agreement, the plaintiff was fully aware of the fact that the suit property belongs to the 1st defendant firm and the defendants 2 and 3 are Partners of the firm and fully aware the difficulties faced by the defendants. Taking advantage of the situation, the plaintiff had mislead the defendant and had managed to obtain the signatures in blank papers and stamp papers and had created the alleged agreement of sale. The alleged sale agreement was not supported by any consideration. The alleged agreement of sale would not bind on them. The 3rd defendant is one of the parners of the firm and he had never given consent for sale of the suit property to the plaintiff nor he had executed any agreement of sale in favour of the plaintiff. The defendants denied the receipt of further sale consideration and the endorsement made therefor on the reverse side of the agreement of sale. The defendants further contended the the suit which was filed in March 2000 is barred by limitation.

8. On considering the above pleadings, the court below had framed the following issues for trial:-

(1) Whether the suit is barred by limitation?

(2) Whether the agreement dated 28.06.1996 was not executed between the plaintiff and defendants?

(3) Whether the plaintiff was not ready and willing to perform his part of contract?

(4) Whether the plaintiff is entitled for specific performance of contract?

(5) To what relief?

During trial, on the side of the plaintiff, plaintiff himself was examined as P.W.1 and as many as 18 documents were marked while on the side defendants 2nd defendant was examined as D.W.1 and the 3rd defendant was examined as D.W.2 and only one document was marked on the side of the defendants.

9. The court below after having considered the pleadings of either parties and the evidences, both oral and documentary answered the Issue Nos. 1 and 2 viz. limitation and execution of agreement in favour of the plaintiff holding that the suit was not barred by limitation and the agreement of sale (Ex.A.2) between the plaintiff and the defendant is genuine and valid and it was only the 2nd defendant who had executed the sale agreement on 28.07.1996 on behalf of the firm and the third defendant had impliedly accepted it and therefore, whatever the act done by the 2nd defendant for the benefit of the firm would bind on the other partner namely, the 3rd defendant. However, in so far as, Issue No.3 regarding readiness and willingness is concerned, the court below has held that even though the plaintiff had discharged the debts payable by the defendants to TICC, on behalf of the defendants, before 10.03.1997 and had issued a legal notice on 06.10.1997, the plaintiff had not taken any steps to perform his part of obligation, especially, when the defendants had refused to execute the sale agreement by reply notice dated 13.10.2007 and 07.01.1998. Thus,the court below has held that the plaintiff had filed the instant suit only in the year 2001 after nearly three years and had come to a conclusion that the plaintiff was not ready and willing to perform his part of obligation and accordingly, answered the issue as against the plaintiff refusing to grant the relief of specific performance of contract. However, on equity, the court below has directed the defendants to return a sum of Rs.3,39,115/- with interest @ 7.5% p.a. from 10.03.1997 till the date of suit and thereafter @ 6% till realization. Challenging the dismissal of the suit in respect of specific performance of contract, the plaintiff is before this court with the instant appeal suit.

10. On considering the above, the points that arise for consideration are as follows:-

(1) Whether the plaintiff was ready and willing to perform his part of contract?

(2) Whether the plaintiff is entitled for the discretionary relief of specific performance of contract under Section 20 of the Specific Relief Act?

(3) Whether the court below was right in negativing the relief of specific

performance of contract without considering the other circumstances of the case?

Point Nos.1 to 3:-

11. It is an admitted fact that the suit property belong to the defendants and the plaintiff is a tenant under them since 1994. It is also admitted that the defendants had raised loan from TIIC and mortgaged the property in question by depositing the title deeds and there was a due of Rs.3.39,115/- payable by the defendants to TIIC.

12. It is the case of the plaintiff that for non payment of loan outstanding, TIIC initiated recovery proceedings against defendants and locked and sealed the factory premises and had also removed the machineries belonging to the plaintiff. At that time, the 2nd defendant came out with an offer to sell the property to the plaintiff and requested him to discharge the debts payable to TIIC and pay the remaining sale consideration to them. The sale consideration was fixed at Rs.5,30,000/- and it was agreed that the plaintiff had to discharge the entire debts payable to the TIIC on behalf of the defendants and the balance of sale consideration was agreed to be paid within six months from the date of agreement. As per the agreement, the plaintiff had paid a sum of Rs.3,09,115/- to TIIC and pursuant to the letter of authorization, the plaintiff collected the title deeds and other documents from TIIC. This was denied by the defendants alleging that the 2nd defendant had never entered into any agreement of sale with the plaintiff and he had only intended to mortgage the property with him. At that time, the plaintiff had obtained his signatures in blank stamp papers and blank papers and using the same, he had fabricated the sale agreement. The 3rd defendant contended that the even assuming that there was an agreement, it was signed only by the 2nd defendant and the same would not bind on the 3rd defendant who is one of the partners of the 1st defendant firm.

13. The court below after having considered the materials had come to a conclusion that the agreement of sale was true and only for the purpose of defeating the right of the plaintiff, the defendants had denied the execution of agreement of sale and further held that the 2nd defendant had acted only on behalf of the firm and the 3rd defendant by his conduct impliedly acknowledged the act of the 2nd defendant and therefore, whatever the act done by the 2nd defendant for the benefit of the firm would bind on the 3rd defendant also. This findings of the court below were not at all challenged by the defendants.

14. In order to answer the point as to whether the plaintiff had been ready and willing to perform his part of obligation

through out from the date of agreement till date of suit, let me now consider the conduct of the plaintiff as well as the defendant. No doubt, the conduct of plaintiff is more important than the conduct of the defendant. The plaintiff, who has come forward to seek an equitable relief is required to establish that he is entitled for equitable relief of specific performance.

15. The learned senior counsel for the appellant strenuously contended that the defendant who has come forward with the false plea denying the very execution of agreement of sale has to equally suffer. Having regard to the inconsistent stand that was taken by the defendant in the reply notice, the written statement and in the evidence, the learned senior counsel for the appellant submitted that the defendant cannot be shown any undue favour while considering the case on equity. But, the court below has miserably failed to take note of the conduct of the defendants while deciding the question of readiness and willingness of the plaintiff.

16. The learned senior counsel for the appellant would submit that the plaintiff has always been ready and willing to perform his part of contract and it was only the defendants who had one way or the other indulged in dilatory tactics after having executed the agreement of sale and refused to perform their part of contract and they had approached the court with unclean hands and suppressed the material facts. Thus, the conduct of the defendants in the instant case are also relevant for grant of discretionary relief of specific performance of contract. In support of his contentions, the learned senior counsel for the appellant relied on the judgments reported in S.P.Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs. (1994) 1 SCC 1; Motilal Jain v. Ramdasi Devi (2000) 6 SCC 420; Ramesh Kumar v. Furu Ram, (2011) 8 SCC 613; and Zarina Siddiqui v. A.Ramalingam @ R.Amarnathan, (2015) 1 SCC 705.

17. The learned counsel for the respondent would contend that the continuous readiness and willingness on the part of the plaintiff is a condition precedent for grant of relief of specific performance and the plaintiff is bound to establish that right from the date of execution of agreement of sale till date of decree he was ready and willing to perform his part of contract. But, the plaintiff had miserably failed to establish his readiness and willingness and even after refusal by the defendants to execute the sale deed, the plaintiff had kept quiet for more than two years which conduct of the plaintiff by itself would go to show that he was not ready and willing to get the sale deed executed in his favour. In support of his contention, the learned counsel for the respondents would place reliance heavily upon a judgement reported in N.P.Thirugnanam (Dead) by LRs v. Dr.R.Jagan Mohan Rao, (1995) 5 SCC 115. He also

placed reliance on few other judgments of the Hon'ble Supreme Court in Vasantha v. M.Senguttuvan, Manu/TN/1059/1997; K.Jayakumar v. Robert, Manu/TN/0560/2002; and Ramnath Publications Private Limited v. A.R.Madana Gopal, (2008) 8 MLJ 873.

18. Ex.A.2, the sale agreement, was entered into between the parties on 28.07.1997 by which the plaintiff was directed to discharge the debt of Rs.2,60,000/- payable by the defendants to TIIC on the mortgage loan and the remaining sale consideration was agreed to be paid within six months from the date of agreement. The total sale consideration was fixed at Rs.5,30,000/- and six months time was fixed for conclusion of the contract. Thereafter, the defendants had also given a letter under Ex.A.4 to the plaintiff on 30.07.1996 authorizing him to get back the title deeds from TIIC on payment of dues on behalf of them. Pursuant to the same, the plaintiff received the original title deeds and other documents which were deposited with TIIC by the defendants after clearing off the entire dues. The debt settled by the plaintiff on behalf of the defendants was Rs.3,09,115/- and after the settlement of dues, TIIC had also issued no due certificate under Ex.A.6 dated 12.03.1997 to the plaintiff. Thereafter, when the plaintiff had issued a notice under Ex.A.7 dated 06.10.1997 calling upon the defendants to receive the remaining part of sale consideration and execute and register the sale deed for which, the defendants had issued a reply under Ex.A.10 dated 13.10.1997 accepting the sale agreement, but, alleging that the plaintiff had paid only a sum of Rs.2,60,000/- towards loan outstanding and he had failed to pay the remaining sale consideration of Rs.2,70,000/- within a period of six months. Even though they had been ready and willing to perform their part of obligation, it was only the plaintiff who had failed to perform his part of contract and thus the agreement of sale came to an end by efflux of time. It was the specific stand of the defendant that the suit is time barred and the agreement is unenforceable and inexecutable. Within a period of two weeks thereafter, the 2nd defendant issued another legal notice through another counsel under Ex.A.12, wherein he had taken entirely different stand stating that the plaintiff continued to be the tenant under him and he had paid the rent only up to June 1996 and from July 1996, he had neglected to pay the rent in spite of several demands and thus, he had committed willful default in payment of rent and he was liable to be evicted. That apart, the 2nd defendant contended that the lease deed also expired on 29.06.1997 and therefore, he requested the plaintiff do vacate and hand over the vacant premises to them. Subsequently, on 07.01.1998, the defendants 2 and 3 issued another reply notice under Ex.A.13 denying the very execution of the agreement of sale. In his reply notice (Ex.A.12), the 2nd defendant denied the claim of

the plaintiff that he had paid a sum of Rs.3,70,000/- to TIIC and stated that the amount due to TIIC was only Rs.2,60,000/- and it was agreed between them that the plaintiff should pay the said outstanding amount. The interest for the amount paid by the plaintiff worked out to Rs.3,900/- out of which monthly rent of Rs.2,000/- was agreed to adjusted by the defendants towards interest payable to the plaintiff and the remaining amount of Rs.1,900/- was agreed to be paid to the plaintiff by the defendants and the 2nd defendant had paid interest till June 1997. Pursuant to the above arrangements, the plaintiff had obtained signatures of the 2nd defendant in various blank papers including blank stamp papers and using the same, the plaintiff had create the sale agreement and the 2nd defendant never executed any sale agreement in favour of the plaintiff.

19. As already stated above, the court below has held that Ex.A.2 Sale Agreement was true and it was the 2nd defendant who had executed the sale agreement in favour of the plaintiff agreeing to convey the suit property for a total sale consideration of Rs.5,30,000/- for the benefit of the firm and thus, the same would bind on the 3rd defendant also.

20. No doubt that granting of specific performance of contract is within the discretion of the court and such discretion should be exercised judiciously depending upon the conduct of the parties. The plaintiff has to necessarily prove and establish that his conduct was always fair and equitable. The discretion to direct specific performance of contract after lapse of considerable time has to be exercised on sound, reasonable and acceptable principles. It is also the settled principle law that while balancing the equities, one of the considerations to be kept in view is as to who was the defaulting party. It is also to be borne in mind that whether a party is trying to take undue advantage over the other and also the hardship that may be caused to the defendant by directing specific performance of contract and the totality of the circumstances is required to be seen. Like wise, when the defendant had come to the court with unclean hands and suppressed the material facts then, the court cannot refuse to grant specific performance in favour of the plaintiff.

21. In Zarina Siddiqui v. A.Ramalingam, (2015) 1 SCC 705, the Hon'ble Supreme Court has held as follows:-

> "33. The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if

the defendant does not come with clean hands and suppresses material facts and evidence and misleads the court then such discretion should not be exercised by refusing to grant specific performance.

34. In the instant case, as noticed above, although Defendant 2 held a registered power of attorney on behalf of Defendant 1 to sell and dispose of the property, but the defendants not only made a false statement on affidavit that the power of attorney had authorised the second defendant only to look after and manage the property but also withheld the said power of attorney from the court in order to misguide the court from the truth of the facts. Further, by registered agreement the defendants agreed to sell the suit premises after receiving advance consideration but they denied the existence of the agreement in their pleading. Such conduct of the defendants in our opinion, disentitles them to ask the court for exercising discretion in their favour by refusing to grant a decree for specific performance. Further, if a party to a lis does not disclose all material facts truly and fairly but states them in distorted manner and misleads the court, the court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse of process of law."

22. In P.D'Souza v. Shondrilo Naidu, 2004 (6) SCC 649, the Hon'ble Supreme Court has held as follows:-

"19. It is indisputable that in a suit for specific performance of contract the plaintiff must establish his readiness and willingness to perform his part of contract. The question as to whether the onus was discharged by the plaintiff or not will depend upon the facts and circumstances of each case. No straitjacket formula can be laid down in this behalf."

23. In the instant case, going by the conduct of the defendants, this court is of the considered view that the plaintiff had established that the defendants did not approach the court with clean hands. Though the 2nd defendant admitted the execution of the sale agreement in his reply notice issued under Ex.A10 at the earliest point of time on 13.10.1997, within

two weeks thereafter, the defendants had taken totally different stand denying the very execution of the sale agreement in Ex.A.12 and in Ex.A.13 and had set up a plea that the plaintiff had forged and fabricated the sale agreement. This conduct of the defendants are also to be taken into consideration while granting the relief of specific performance of contract.

24. Let us now consider the conduct of the plaintiff.

25. In the instant case, as per Ex.A.2-Sale Agreement, the plaintiff had discharge the entire debts payable to TIIC on behalf of the defendants on various dates from 30.07.1996 to 10.03.1997. Thereafter, on 24.03.1997, the 2nd defendant had received another sum of Rs30,000/- from the plaintiff and made an endorsement - Ex.A.8 and by his conduct the 2nd defendant had impliedly extended the period of agreement. It would clearly indicate that the time was not intended to be the essence of the contract between the parties. Thereafter, on 06.10.1997, the plaintiff had issued a legal notice (Ex.A.9) requesting the 1st defendant to receive the balance of sale consideration and execute the sale deed for which the 2nd defendant had issued a reply (Ex.A.10) on 13.10.1997 accepting the execution of the sale agreement, but, however, refusing to execute the sale deed on the ground that the agreement cannot be enforced as it is time barred. Thereafter, the 2nd defendant had issued reply notice (Ex.A.12) dated 27.10.1997 denying the very execution of the sale agreement and contending that the plaintiff was asked only to repay the loan payable by them to TIIC and they offered to mortgage the property with the plaintiff and at that time, the plaintiff had obtained his signatures in blank stamp papers and created the sale agreement in question. Thereafter, both the defendants 2 and had sent another notice (Ex.A.13) dated 07.01.1998 whereby then had terminated the lease in favour of the plaintiff and asked him to vacate and hand over the vacant premises to them. Thereafter, the defendants had initiated a proceedings under The Tamil Nadu Buildings (Lease and Rent Control) Act against the plaintiff before the Rent Controller, Coimbatore, for eviction. That apart, under Ex.A.1 sale deed executed by SIDCO in favour of the 1st defendant, there was a prohibition for transfer of the property for five years within the allotment without the permission of SIDCO and such prohibitory period expired only on 07.06.1999. So, before the expiration of such prohibitory period, the defendants could not transfer the property to the plaintiff without the permission of SIDCO. The specific plea of the plaintiff is that after the expiration of the prohibitory period imposed under Ex.A.1 sale deed, the plaintiff had filed the suit in March, 2000 in a reasonable time.

26. In Veerayee Ammal v. Seeni Ammal, (2002) 1 SCC 134, the Hon'ble Supreme Court has held as follows:-

> "11. When, concededly, the time was not of the essence of the contract, the appellant-plaintiff was required to approach the court of law within a reasonable time. A Constitution Bench of this Hon'ble Court in Chand Rani v. Kamal Rani [(1993) 1 SCC 519] held that in case of sale of immovable property there is no presumption as to time being of the essence of the contract. Even if it is not of the essence of contract, the court may infer that it is to be performed in a reasonable time if the conditions are (i) from the express terms of the contract; (ii) from the nature of the property; and (iii) from the surrounding circumstances, for example, the object of making the contract. For the purposes of granting relief, the reasonable time has to be ascertained from all the facts and circumstances of the case."

In the instant case, the circumstances discussed above were not taken note of by the court below.

27. Insofar as the past conduct of the plaintiff is concerned, it is in evidence that at the earliest point of time, when the defendants approached the plaintiff offered to sell the land, the plaintiff was reluctant to purchase the suit property. This was one of the reasons which weighed the court below to refuse to grant specific performance on the ground that he was not ready and willing to purchase the property. Yet another reason for which the relief was denied by the court below is that after the filing of the eviction petition by the defendants for nearly two years, the plaintiff did not take any steps to file the suit. But, the past conduct of the parties cannot be taken into consideration while considering the grant of decree for specific performance. The courts are only expected to consider whether the plaintiff has proved his readiness and willingness from the date of execution of the agreement till the date of filing of the suit. The materials available on record would clearly go to show that the plaintiff had performed his part of obligation as agreed between the parties and he was always ready and willing to have the sale deed executed in his favour after paying the balance of sale consideration. It was

only the defendant who had deliberately evaded to perform their part of obligation.

28. So far as the judgments relied on by the learned counsel for the respondents are concerned, they are on settled principle of law that the plaintiff must establish his readiness and willingness from the date of agreement till the date of decree and there is no quarrel about the proposition laid down in the above said judgments. But, on facts, this court has already found that the plaintiff had always been ready and willing to perform his part of obligation and it was only the defendants who had failed to perform their part of obligation and adopted dilatory tactics and refused to execute the sale deed. Therefore, the judgments relied upon by the learned counsel for the respondents are distinguishable with the instant case on facts.

29. On considering the above, this court is of the considered view that the court below has failed to consider the conduct of the defendants who had approached the court with unclean hands and by suppressing the materials facts and also the conduct of the plaintiff that he had performed his part of obligation and he had been ready and willing to pay the balance of sale consideration and to have the sale transaction completed. Considering all the above circumstances, this court is of the view that the plaintiff is entitled for a decree for specific performance of contract as prayed for. Thus, the Point Nos.1 to 3 are answered accordingly in favour of the appellant/plaintiff and against the respondents/defendants.

30. For the foregoing discussions, this court holds that the appellant succeeds in appeal and he is entitled for decree for specific performance of contract as prayed in the suit.

31. In the result, This Appeal Suit is allowed and the decree and judgement of the court below are set aside. The Original Suit is decreed as prayed for and the respondents/defendants are directed to execute and register the sale deed in favour of the appellant/plaintiff in respect of suit property pursuant to the agreement of sale entered into between them on 28.07.1996 on receiving the balance sale consideration from the appellant/plaintiff. Time for payment/deposit of balance sale consideration is two months from the date of receipt of a copy of this order and the respondents/defendants shall execute and register the sale deed in favour of the appellant/plaintiff within two weeks

thereafter. Considering the facts and circumstances, the parties are directed to bear their respective costs throughout.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The I Additional District Judge,
Coimbatore District.

+1cc to Mr.L.Mouli, Advocate Sr.40480

Appeal Suit No.64 of 2010

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srg 14/08/2019