

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2019
PRONOUNCED ON : 29.08.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.765 of 2009

S.Susheela Devi ... Appellant/Defendant

Vs.

J. Vasuki ...Respondent/Plaintiff

Prayer: First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree passed in O.S.No.281 of 2007 dated 13.10.2008 on the file of the Principal District Judge, Erode.

For Appellant : Mr. S.Parthasarathy, Senior Counsel
for M/s. V.S.Kesavan

For Respondent : Mr. V.Raghavachari

JUDGMENT

Aggrieved over the judgment and decree dated 13.10.2008 passed in O.S.No.281 of 2007, on the file of the Principal District Court, Erode, the defendant has come forward with the present 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 or in the alternative for the return of advance amount.

4. The case of the plaintiff, in brief, is that the suit property was offered for sale by the defendant and the plaintiff and the defendant entered into an agreement of sale with reference to the same on 05.02.2007 and the sale consideration was fixed at Rs.8,39,700/- i.e. at the rate of Rs.45/- per sq.ft. and on the date of agreement the defendant received an advance amount of Rs.1,20,000/- and subsequently, on 20.02.2007, the defendant received another sum of Rs.60,000/- and extended the time for the completion of the sale till the end of Aani Tamil month in 2007. The plaintiff

has been always ready and willing to pay the balance sale consideration and obtain the sale deed. However, the defendant put off the execution of the sale deed by contending that there exist certain legal impediments such as non payment of stamp duty on her purchase etc., and promising to have the same cleared before registering the same in favour of the plaintiff. On many occasions, the plaintiff had expressed her readiness and willingness to complete the sale, but, it is only the defendant who had been postponing the same, as above stated, and thereafter, when the defendant started avoiding contact with the plaintiff, the plaintiff developed suspicion and since the period agreed was nearing completion, suspecting a foul play, the plaintiff was constrained to issue a telegram to the defendant and called upon her to execute the sale deed in terms of the agreement and the same was followed by a legal notice to the defendant on 16.07.2007 wherein also the plaintiff had expressed her readiness and willingness to pay the balance sale consideration and obtain the sale deed, however, the defendant failed to comply with the demand made under the telegram and the legal notice and as the defendant further endeavouring to alienate the suit property to the third parties, the plaintiff was constrained to issue a paper publication in Dinamalar daily on 22.07.2007 warning the public from dealing with the suit property and the defendant with a view to sell the suit property to the third parties for higher price and to deprive the plaintiff of her right under the sale agreement, issued a false reply dated 13.08.2007 wherein the defendant has admitted the execution of the sale agreement, receipt of advance and the other terms, but refused to execute the sale deed claiming that the agreement has become time barred. The plaintiff has been always ready and willing to perform her part of the contract and hence, according to the plaintiff, the need for the suit for the relief of specific performance.

5. The defendant resisted the plaintiff's suit by contending that the suit laid by the plaintiff is not maintainable either in law or on facts. The execution of the sale agreement dated 05.02.2007 in the presence of the witnesses for a total consideration of Rs.8,39,700/- has been admitted by the defendant, however, according to the defendant, the plaintiff was not in a position to pay the balance sale consideration in time and complete the sale transaction and contended that 1/3 of the consideration should be paid as earnest money in the business circle and according to the defendant, the period for completing the sale transaction is fixed before the end of Panguni month, corresponding to 13.04.2007 and the plaintiff requested the defendant to extend further period till Aani month and on that request, the defendant has agreed to extend the period till Aani month as a final chance and the plaintiff has paid Rs.60,000/- to the defendant on 20.02.2007. The defendant has

disputed the case of the plaintiff that she has been always ready and willing to pay the balance sale consideration in time and that it is only the defendant who had been avoiding the execution of the sale deed by putting forth certain legal impediments such as payment of stamp duty on her purchase, etc., and that she had promised to clear the same before executing the sale in favour of the plaintiff. There is no legal bar in registering the sale deed in accordance with the terms of the agreement dated 05.02.2007. The claim of the plaintiff that she has been always ready and willing to perform her part of the contract is totally challenged and the plaintiff had not been possessed of sufficient means to pay the balance sale price and she was ready to pay only Rs.35,000/- to the defendant instead of paying the entire sale price as agreed to and disputed the claim of the plaintiff that the defendant endeavoured to alienate the suit property to the third parties for higher price. According to the defendant, time is the essence of the contract and the plaintiff has not been ready to pay the balance sum before the time limited under the agreement and disputed the case of the plaintiff that the defendant avoided her contact and also disputed the case of the plaintiff that she had sent the telegram and according to the defendant, to the legal notice issued by the plaintiff, a suitable reply has been sent and contended that the plaintiff has not complied with her part as per the terms of the sale agreement and hence according to the defendant, there is no merit in the said case and the suit is liable to be dismissed.

6. In support of the plaintiff case, P.Ws. 1 to 4 were examined and Exs. A1 to A12 were marked. On the side of the defendant, D.W.1 was examined and Ex.B1 to B4 were marked.

7. On the basis of the above pleas, following issues were framed by the trial court for determination.

1) Whether the time is the essence of contract between the plaintiff and the defendant dated 05.02.2007?

2) Whether the plaintiff was ready and willing to perform her part of the contract?

3) Whether the plaintiff is entitled for the relief of specific performance of alternative relief of refund of advance money?

4) To what relief?

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 in favour of the plaintiff as prayed for. Impugning the same, the present first appeal has been preferred.

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

1. Whether the plaintiff has been ready and willing to perform her part of the sale agreement dated 05.02.2007?
2. Whether the plaintiff is entitled to obtain the relief of specific performance in respect of the sale agreement dated 05.02.2007?
3. To what relief the plaintiff is entitled to?
4. To what relief the defendant / appellant is entitled to?

Point Nos.1 and 2

10. The suit has been laid by the plaintiff for the relief of specific performance based on the sale agreement dated 05.02.2007. The execution of the sale agreement dated 05.02.2007 marked as Ex.A1 is not in dispute. It is thus found that the plaintiff and the defendant had entered into Ex.A1 sale agreement for a sale consideration of Rs.8,39,700/-. On a perusal of Ex.A1 sale agreement, it is found that the plaintiff has paid a sum of Rs.1,20,000/- to the defendant as advance on the date of sale agreement. The receipt of the abovesaid advance amount has not been disputed by the defendant. Further, the recital of the sale agreement Ex.A1 go to show that the parties had agreed to complete the sale transaction by the end of Panguni month. It is thus found that as per the recitals contained in the sale agreement, the plaintiff should pay the balance sale consideration within the time agreed to complete the sale transaction and that the defendant should execute the sale deed in favour of the plaintiff. Though it is found that the parties had agreed to complete the sale transaction by the end of Panguni month in Ex.A1 sale agreement, it is found that, thereafter, the parties had chosen to extend the time fixed upto the month of Aani and the same could be gathered from the endorsement made in the sale agreement on 20.02.2007 and accordingly it is found that the case has been projected by the plaintiff that on 20.02.2007, she had paid a further sum of Rs.60,000/- towards the sale consideration and thereby the time for the completion of the same has been extended till the end of Aani month. The abovesaid fact has not been controverted by the defendant. In this connection, the plaintiff has examined the attestors of the abovesaid endorsement as P.Ws. 3 and 4. Both P.Ws. 3 and 4 have tendered evidence as regards the payment of Rs.60,000/- by the plaintiff to the defendant on 20.02.2007 and the extension of time fixed till the end of Aani month for the completion of the sale transaction. As abovenoted, the abovesaid factum of extension of the time has not been controverted by the defendant. According to the plaintiff, she has been always ready and willing to perform her part of the contract and according to her, it is only the defendant who had been putting off the execution of the sale deed on the

footing that certain legal impediment is existing with reference to the payment of stamp duty on her purchase and assured that she would execute the sale deed after clearing the abovesaid hurdle. On similar lines, P.Ws.3 and 4 also tendered evidence stating that the defendant had been postponing the execution of the sale deed on the footing that the issue of payment of stamp duty is required to be resolved on her purchase of the suit property. No doubt, with reference to the abovesaid issue no recital is found in Ex.A1 sale agreement. Be that as it may, considering the evidence of P.Ws. 3 and 4, in toto, as well as the evidence of P.W.2, the employee of the District Registrar's office, Karungalpalayam, Erode, it is found that the issue of payment of the balance stamp duty with penalty is pending as regards the purchase of the suit property by the defendant and the same could be gathered from the documents projected in the matter. It is thus found that as put forth by the plaintiff as well as the evidence of the defendant, it is noted that the original sale deed, by which the defendant claims to have purchased the suit property, has been impounded for the collection of deficit stamp duty and the abovesaid issue is pending before the Deputy Collector (Stamps), Erode. Considering the abovesaid factual matrix coupled with the evidence of P.Ws.3 and 4 as well as the evidence of P.W.1, plaintiff's husband, it is found that the defendant has been hesitant to come forward with the execution of the sale deed one way or the other and accordingly it is found that the defendant without any protest has also extended the original time limit fixed in the sale agreement to the end of Aani month by way of receipt of Rs.60,000/- from the plaintiff on 20.02.2007.

11. Now, according to the plaintiff she has been always willing and ready to perform her part of the contract i.e. always ready and willing to pay the balance sale consideration and obtain the sale deed from the defendant. In this connection, it is found that the materials placed on record disclose that the plaintiff at one point of time i.e on 12.07.2007, had approached the defendant and tendered the payment of Rs.35,000/- towards the sale consideration and however, the same had been refused by the defendant. Be that as it may, considering the abovesaid factors in toto as well as the evidence of the plaintiff and the defendant, it is found that the defendant has clearly admitted that she has given time to the plaintiff till 16.07.2007 for completing the sale transaction. Therefore, when the time limit has been extended till 16.07.2007 for completing the sale transaction and accordingly when the defendant herself has admitted that the plaintiff had come forward to pay a sum of Rs.35,000/- towards the sale consideration on 12.07.2007, the abovesaid facts viewed in entirety would go to show that as pleaded by the plaintiff, she has been ready and willing to pay the balance sale consideration or part there of before the expiry

of the time fixed by the parties for the completion of the sale transaction. However, as above noted, the offer of the plaintiff to pay Rs.35,000/- towards the sale consideration on 12.07.2007 has been turned down by the defendant on the footing that the abovesaid offer is time barred and however, when as above pointed out, the defendant, during the course of her evidence has admitted that she had given time limit to the plaintiff upto 16.07.2007 and when prior to the same, as above pointed out, the plaintiff has paid part of the sale consideration i.e. a sum of Rs.1,20,000/- on the date of sale agreement and Rs.60,000/- on 20.02.2007 and endeavoured to pay Rs.35,000/- on 12.07.2007, in all, it is found that the plaintiff has been, as determined by the trial court, always ready and willing to perform her part of the contract and obtain the sale deed from the defendant. However, considering the position that the issue of payment of stamp duty with penalty is pending before the appropriate authority qua the purchase of the suit property by the defendant and when the abovesaid facts had been brought home by the evidence of the P.W.2 as well as the admission of the defendant as above pointed out, in all, the case of the plaintiff that the defendant had been putting off the execution of the sale deed on that ground and assured the plaintiff that she would execute the sale deed after clearing the said issue cannot be easily brushed aside.

12. According to the plaintiff, inasmuch as the time fixed under the sale agreement is expiring on 16.07.2007 and as the defendant had not come forward to execute the sale deed by receiving the sale consideration, according to her, she had chosen to send a telegram to the defendant and the copy of the telegram sent by the plaintiff on 15.07.2007 well before the time fixed by the parties has been marked as Ex.A3. On a perusal of Ex.A3 document, it is found that the same had been addressed only to the defendant giving her address for communication. As contended by the plaintiff's counsel, the said telegram, calling upon the defendant to come to the Registrar's office on the next day i.e. on 16.07.2007 and receive the balance sale consideration and execute the sale agreement in her favour, would have been received by the defendant. Now according to the plaintiff, the defendant had failed to comply with the abovesaid demand and thereby she had been necessitated to send the legal notice immediately on the next day i.e. on 16.07.2007 and the legal notice issued by the plaintiff has been marked as Ex.A4. Even in the legal notice as well as in the telegram marked in the matter, the plaintiff has clearly expressed her readiness and willingness in paying the balance sale consideration and obtaining the sale deed from the defendant and also alleging that it is only the defendant who had been avoiding the same for one reason or the other. The abovesaid materials placed on record, in toto, would go to show that the plaintiff has been ready and willing

to pay the balance sale consideration one way or the other to the defendant and the plaintiff's offer had been, some how or the other, not entertained by the defendant. Though it is found that the parties had fixed a particular time limit for completing the sale transaction in Ex.A1 sale agreement, however, considering the conduct of the parties in extending the abovesaid time further till the end of Aani month, it is found that the time fixed under the sale agreement is not the essence of the contract as such. However, it is found that the parties had fixed the time to complete the sale transaction by 16.07.2007. Prior to the same, as above pointed out, the plaintiff had been approaching the defendant one way or the other to pay the balance sale consideration and also sent the telegram Ex.A3 as well as the legal notice Ex.A4 before the expiry of the abovesaid time limit. No doubt, the plaintiff has not placed any materials as such to hold that she had been having the balance sale consideration with her prior to 16.07.2007. Be that as it may, the legal notice sent by the plaintiff marked as Ex.A4 has been repudiated by the plaintiff by way of reply notice dated 13.08.2007. It is found that nearly one month after the issuance of Ex.A4 legal notice, the defendant had sent the reply notice marked as Ex.A6. Immediately thereafter, it is found that the plaintiff has laid the suit on 20.08.2007 i.e. within 7 days from the date of issuance of reply notice on the part of the defendant. In addition to that, it is also found that the plaintiff had also prayed the court for depositing the balance sale consideration in the court and it is found that as per the direction of the court, the plaintiff has deposited the balance sale consideration on or before 20.09.2007. The abovesaid conduct of the plaintiff, right from the inception of the sale agreement till the deposit of balance sale consideration, in toto, would go to show that the plaintiff has been truly expressing her readiness and willingness to pay the balance sale consideration one way or the other and only on account of the delay tactics of the defendant, one way or the other, the sale transaction could not be proceeded further. Furthermore, It is also noted that apprehending that the defendant is endeavouring to alienate the suit property to the third parties, the plaintiff had also caused paper publication with reference to the same warning the public not to deal with the suit property and the same could also be gathered from the paper publication filed by the plaintiff marked as Ex.A5. Ex.A5 is found to be dated 22.07.2007 i.e., she has caused the abovesaid paper publication within one week from the date of issuance of the legal notice. Only thereafter, it is found that the defendant has sent a reply notice dated 13.08.2007. As above noted, within one week from the reply notice, the plaintiff has levied the suit on 20.08.2007 and also deposited the balance sale consideration as directed by the court on or before 20.09.2007. In all, it is found that the plaintiff has been expressing her readiness and willingness to go ahead with

the terms of the sale agreement i.e. in paying the balance sale consideration and in such view of the matter, the contention put forth by the defendant that the plaintiff had not been possessed of sufficient amount to pay the balance sale consideration on or before 16.07.2007 as such cannot be readily accepted. As rightly contended by the plaintiff's counsel it is not necessary on the part of the plaintiff to jingle the coins for establishing her readiness and willingness, on the other hand, the readiness and willingness on the part of the plaintiff could always be gathered from the allied circumstances and considering the conduct of the plaintiff right from the inception of the sale agreement i.e. 05.02.2007 till the laying of the suit as well as her endeavour to deposit the balance sale consideration as per the direction of the court on or before 20.09.2007 would, in toto, disclose that the plaintiff has been ready and willing to perform her part of the contract and it is only the defendant who had been avoiding the same and accordingly, in the light of the materials placed on record, when the defendant is facing the impediment of clearance of the stamp duty liable to be paid by her towards the purchase effected in her favour qua the suit property, in the light of the abovesaid background as put forth by the plaintiff, it is found that in that context, the defendant had been putting off the execution of the sale deed in favour of the plaintiff and has now turned the scales against the plaintiff by contending that it is only the plaintiff who has been not ready to perform her part of the contract and that she has been ready and willing to perform her part of the contract. However, considering the time limit fixed by the parties under the sale agreement as well as extension of the time as agreed to by the parties and when prior to 16.07.2007, as above discussed, the plaintiff has been showing her anxiety and readiness and willingness in paying the balance sale consideration one way or the other to complete the sale transaction and also endeavouring to cause issuance of telegram, legal notice and paper publication and also to show her bonafide plea, deposited the balance sale consideration as directed by the court within the time fixed by the court and the abovesaid conduct of the plaintiff, in toto, would expose her readiness and willingness to perform her part of the contract and the abovesaid factors had been rightly assessed and determined by the trial court by appreciating the materials placed on record in the right perspective and in such view of the matter, I do not find any valid reason to interfere with the abovesaid determination of the trial court in favour of the plaintiff.

13. In the light of the abovesaid factors, when the plaintiff has established her readiness and willingness to perform her part of the contract and it is only the defendant who is the defaulting party and when the plaintiff is now found to have deposited the balance sale consideration in the

court as directed and also found to be resultantly entitled to the relief of specific performance as prayed for, in such view of the matter, the trial court is found to be justified in granting the relief of specific performance in favour of the plaintiff as prayed for.

14. With reference to the case projected by the plaintiff, the plaintiff's counsel placed reliance upon the following decisions reported in

1. Order dated 10.07.2019 in Civil Appeal No.2420 of 2018 (SC) (R.Lakshmikantham vs. Devaraj)
2. Order dated 24.01.2008 in Civil Appeal No. 647 of 2008 (SC) (Balasaheb Dayandeo Naik vs. Appasaheb Dattatraya Pawar)
3. (2014) 11 Supreme Court Cases 605 (Biswanath Ghosh (dead) by legal representatives and others vs. Gobinda Ghosh alias Gobhinda Chandra Ghosh and others)
4. (1988) 2 Supreme Court Cases 488 (Indira Kaur and others vs. Sheo Lal Kapoor)
5. (2010) 7 Supreme Court Cases 717 (Laxman Tatyaba Kankate and another vs. Taramati Harishchandra Dhatrak)
6. (2008) 11 Supreme Court Cases 45 (Silvey and others vs. Arun Varghese and another)

Similarly, in support of his contentions, the defendant's counsel placed reliance upon the following decisions reported in

1. (2018) 9 Supreme Court Cases 805 (Jagjit Singh (dead) vs. Amarjit Singh)
2. (2018) 15 Supreme Court Cases 80 (P. Meenakshisundaram vs. P. Vijayakumar and another)
3. 2019-2-L.W. 906 (A.K. Muthusamy Gounder vs. Selvakumar & others)
4. 2017 (2) MWN (civil) 446 (R.Shanmugam vs. P. Govindaraju (deceased))
5. 2019(3) CTC 215 (Krishnamoorthy vs. Nagammal and others)

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

15. For the aforesaid reasons, I hold that the plaintiff has been ready and willing to perform her part of the sale agreement dated 05.02.2007 and therefore, I further hold that the plaintiff is entitled to obtain the relief of specific

performance in respect of the sale agreement dated 05.02.2007 as prayed for. Accordingly, the point numbers 1 and 2 are answered in favour of the plaintiff and against the defendant.

Point Nos. 3 and 4

In the light of the abovesaid discussions, the judgment decree dated 13.10.2008 passed in O.S.No.281 of 2007 on the file of the Principal District Court, Erode, are confirmed and resultantly the first appeal is dismissed with costs. Consequently, connected miscellaneous petition if any is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bga

Copy to

1.Principal District Court,
Erode.

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

+lcc to Mr.V.S.Kesavan, Advocate SR.75097
+lcc to Mr.V.Raghavachari, Advocate SR.74309

A.S.No.765 of 2009

SR(CO)
CB(12/02/2020)