

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.07.2019

PRONOUNCED ON : 13.09.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.810 of 2010

M/s. Jothi Green Energy Private Limited,
Having its Administrative Office at
Rani Nilayam, 2nd Floor,
No.1, Aaradhana Street,
Opposite to North Usman Road,
T.Nagar, Chennai rep by its Manager
G. Mahadev Singh.

Appellant/Plaintiff

Vs.

1. B.M.Yosuf
2. Rahamathullah
3. Mahabool

... Respondents/Defendants

Prayer: Appeal Suit filed under Order 41 Rule 1 r/w Section 96 of Civil Procedure Code as against the judgment and decree dated 05.07.2010 in O.S. No.23 of 2008 on the file of the Principal District Judge, Dharmapuri.

For Appellant : Mr. A.Tamilvanan
for M/s. V.R.Shanmuganathan

For Respondents: Mr. V.Raghavachari

JUDGMENT

Aggrieved over the judgment and decree dated 05.07.2010, passed in O.S. No.23 of 2008, on the file of the Principal District Court, Dharmapuri, the plaintiff 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.

4. The case of the plaintiff, in brief, is that the plaintiff company is a private limited company and the plaintiff schedule properties belong to the defendants and the defendants had executed an agreement of sale dated 26.01.2006, in favour of the plaintiff company, agreeing to sell the plaintiff schedule properties at Rs.1,41,000/- per acre and the total sale consideration comes to Rs.19,96,560/- for the entire extent of 14.16 acres and pursuant to the sale agreement, the defendants had also received an advance amount of Rs.50,000/- at the time of the execution of the sale agreement and agreed to receive the balance sale consideration after surveying the lands and fixing the boundaries for the plaintiff schedule properties within a period of three months from the date of the agreement and also agreed to execute and register the sale deed within the abovesaid stipulated period. The defendants have further received a sum of Rs.3,50,000/- on 25.08.2006 and another sum of Rs.2,00,000/- on 18.10.2006 and made an endorsement with reference to the same in the sale agreement. The defendants have thus received a total sum of Rs.6,00,000/- from the plaintiff and agreed to receive the balance sale consideration of Rs.13,96,560/- at the time of the execution of the registration of the sale deed, after the completion of the survey and fixation of the boundaries in the plaintiff schedule properties. The plaintiff has always been ready and willing to perform its part of the contract and the plaintiff has got ready funds to pay the balance sale consideration and obtain the sale deed executed from the defendants and in this connection, the plaintiff had approached the defendants several times to complete the transaction, however, the defendants had been postponing the same by giving some reasons or other and thereby delaying the sale transaction. The plaintiff had approached the defendants in the last week of March through common friends and mediators to complete the sale transaction. The defendants asked the plaintiff to wait for 15 days. The plaintiff, believing the same, had waited for another 15 days with ready funds and when the plaintiff finally approached the defendants in the second week of April 2007 to complete the sale transaction, the defendants had started refusing and had gone to the extent of demanding more money than the amount agreed to be paid under the sale agreement. The plaintiff refused to pay the extra amount demanded by the defendants. The defendants threatened the plaintiff that they would create documents in favour of others in respect of the plaintiff schedule properties and hence, according to the plaintiff, inasmuch as the defendants had committed the breach of contract unreasonably, accordingly, it was constrained to issue legal notice dated 13.04.2007, calling upon the defendants to receive the balance sale consideration to execute and register the sale deed in

terms of the sale agreement and to the same, the defendants sent a reply dated 23.05.2007 containing false allegations. Hence the suit for appropriate reliefs.

5. The defendants resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and admitted that they had entered into a sale agreement to sell the suit properties with the plaintiff on 26.11.2006 for the sale consideration recited therein and also admitted that they had received a sum of Rs.50,000/- as advance on the date of the sale agreement and also admitted that they agreed to receive the balance sale consideration within three months from the date of the sale agreement. However, the defendants denied that they had agreed to survey the suit properties and fix the boundaries within a period of three months as put forth by the plaintiff. According to them, such conditions have not been incorporated in the sale agreement. Furthermore, according to the defendants, there are recitals contained in the sale agreement that the defendants have to furnish the chitta, adangal, FMB, Encumbrance certificate, family particulars and the old title deeds within one month and on the furnishing of the same, the plaintiff should tender half of the sale price and enter into a fresh agreement to sale with the plaintiff and despite the defendant having furnished all the abovesaid documents to the plaintiff within one month as stipulated, the plaintiff had conveniently failed to advert to the terms of the sale agreement and not paid the sale price within the time fixed under the sale agreement. The defendants have denied that they had received a sum of Rs.2,50,000/- on 25.08.2006 by way of cash and a post dated cheque of Rs.1,00,000/- dated 07.09.2006 and made endorsement to that effect in the sale agreement. The defendants denied that they had received a sum of Rs.2,00,000/- on 18.10.2006 towards the sale consideration and made endorsement in the sale agreement. The defendants further denied the plaintiff's case that they had agreed to receive the balance sale price at the time of the execution and registration of the sale deed. The defendants denied the case of the plaintiff that it had been always ready and willing to perform its part of the contract and it is possessed of ready funds to complete the sale transaction. The plaintiff's conduct in not paying the half of the sale price within one month as per the agreement and also the issuance of post dated cheque dated would speak volumes of its readiness and willingness to pay the balance sale price as stipulated in the sale agreement. The defendants denied that the plaintiff had further approached them for the completion of the sale transaction by way of tendering the balance sale consideration and that the defendants had been delaying the same on some reasons or the other. The plaintiff had never been ready and willing to complete the sale transaction and also denied that

the plaintiff had approached the defendants through mediators and well wishers for completing the sale transaction in the month of March 2007 and the defendants had requested 15 days time to complete the transaction. The defendants further denied that they had demanded extra amount over and above the sale consideration as put forth in the plaint. The sale deed had become lapsed as the plaintiff had failed to perform its part of the contract and there is no agreement to sell in existence after 26.02.2006. The endorsement dated 25.08.2006 in the sale agreement had nullified the contract dated 26.01.2006 as such. According to the defendants, there is no contract in the eyes of law and therefore, the defendants cannot be alleged to have committed any breach of contract. The defendants sent a suitable reply to the legal notice sent by the plaintiff and the plaintiff has no cause of action to lay the suit and therefore, the suit is liable to be dismissed.

6. On the basis of the pleas set out by the respective parties, the following issues were framed by the trial Court for determination:

1. Whether the defendants to receive the balance of sale consideration after surveying the suit property and fixing the boundaries for the same within a period of 3 months from the date of agreement?

2. Whether a note order in the sale agreement stipulating a period of one month for the defendant to submit Chitta, Adangal, FMB, encumbrance certificate, family particulars and old title deeds to the plaintiff?

3. Whether the defendants have furnished all the documents referred to in issue No.2 to the plaintiff within a month?

4. Whether the defendants have received a sum of Rs.2 Lakhs as alleged in the plaint?

5. Whether the agreement dated 26.01.2006 was abandoned by the plaintiff?

6. Whether the plaintiff is entitled to the relief of specific performance as prayed for?

7. To what any relief the plaintiff is entitled to?

Additional issues:

1. Whether the sale agreement deed is not a concluded contract?

2. Whether it is established that the plaintiff is always ready and willing to perform its part of the contract?

3. Whether the time is essence of contract principle is applicable to the present fact of this case?

4. Whether the plaintiff is entitled to refund the amount from the defendants?

7. In support of the plaintiff's case, PWs 1 and 2 were examined, Exs.A1 to A5 were marked. On the side of the defendants, DWs 1 to 5 were examined, Exs.B1 and B2 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the plaintiff's suit with costs. However, held that the plaintiff is entitled to get the refund of the advance amount of Rs.6,00,000/- with interest at the rate of 7.5% per annum from the date of the sale agreement till the date of decree and thereafter, the plaintiff is entitled to get interest at 6% per annum from the date of the decree till realization. Aggrieved over the same, the plaintiff has come forward with the First Appeal.

9. The following points arise for determination in the First Appeal:

1. Whether the plaintiff has been always ready and willing to perform its part of the contract in respect of the sale agreement dated 26.01.2006?

2. Whether the plaintiff is entitled to obtain the relief of specific performance as prayed for in respect of the sale agreement dated 26.01.2006?

3. To what relief the plaintiff/appellant is entitled to ?

4. To what relief the defendants/respondents are entitled to ?

Point Nos.1 and 2:

10. The suit has been laid by the plaintiff against the defendants for the relief of specific performance based on the sale agreement dated 26.01.2006 marked as Ex.A1. It is not in dispute that the defendants had executed Ex.A1 sale agreement in favour of the plaintiff agreeing to sell the suit properties to the plaintiff for a total sale price of Rs.19,96,560/- which amount had been calculated at Rs.1,41,000/- per acre and the total extent of the suit properties measuring an extent of acre 14.16 cents. It is also seen that the parties are not in dispute that the defendants received a sum of Rs.50,000/- towards the sale price as advance from the plaintiff on the date of the sale agreement Ex.A1. The plaintiff would plead that by way of the sale agreement Ex.A1, the defendants should survey the suit properties and fix the boundaries of the same within a period of three months from the date of the sale agreement. The abovesaid case projected by the plaintiff has been stoutly repudiated by the defendants. On a perusal of Ex.A1 sale agreement, as rightly put forth by the defendants, there are no recitals contained therein that the defendants had agreed to survey the suit properties and fix the boundaries thereto within a period of three months from the date of the sale agreement. On the other hand, the sale agreement mainly recites that the plaintiff should pay the balance sale price within three months from the date of the sale agreement and on the receipt of the same, the defendants should execute and register the sale deed in favour of the plaintiff qua the suit properties. There is a foot note in the sale agreement which recites that the defendants should furnish the chitta, adangal, FMB, Encumbrance certificate, family particulars and the old title deeds in respect of the suit property within one month to the plaintiff from the date of the sale agreement and on the furnishing of the same, the plaintiff should pay half of the sale consideration to the defendants and enter into a fresh sale agreement with the defendants qua the suit property. Such a foot note is forming part and parcel of Ex.A1 sale agreement is not an issue between the parties. It is found that inclusive of the abovesaid foot note, the parties had signed the agreement in the presence of the witnesses. Now according to the defendants, as per the foot note, they had furnished the abovesaid documents to the plaintiff within the period stipulated and even thereupon, the plaintiff has not come forward to pay the half of the sale consideration as agreed to under the sale agreement. No doubt, with reference to the claim of the defendants that they had furnished the abovesaid documents to the plaintiff within the stipulated period of one month from the date of Ex.A1, there is no material put forth by the defendants, other than the oral evidence adduced on the part of the defendants. However, as rightly pointed out by the trial Court, in the case of the failure of the defendants to furnish the abovesaid documents

within the period stipulated by the parties, the plaintiff, being the agreement holder, should have endeavoured and called upon the defendants to furnish the documents to it as agreed to under the sale agreement. However, it is found that no such effort has been made by the plaintiff as above noted. The first defendant, examined as DW1, has asserted both during the chief examination as well as during the course of cross examination that they had entrusted the documents to the plaintiff within the time stipulated. However, would further state that they had not obtained any acknowledgement from the plaintiff with reference to the same. Though the plaintiff would claim that the defendants had not furnished the abovesaid documents, as above noted, it had not sent any notice to the defendants immediately calling upon them to furnish the abovesaid documents to it as agreed to under the sale agreement. According to the plaintiff, it has been always ready and willing to perform its part of the contract and was possessed of ready funds to pay the balance sale consideration to the defendants and obtain the sale deed from them, accordingly pleaded that it had been approaching the defendants with reference to the same on many occasions as well as through common friends and mediators in the last week of March 2007 and even approached them in the second week of April 2007 and according to the plaintiff, despite the endeavours of the plaintiff to complete the sale transaction, it is only the defendants who had been evading the same on some pretext or the other and further, according to the plaintiff, the defendants had demanded extra amount for the completion of the sale transaction over and above the sale consideration fixed under the sale agreement which had been refused by the plaintiff and hence, according to the plaintiff, on account of the abovesaid attitude of the defendants, it had been constrained to issue the legal notice dated 30.04.2007, calling upon the defendants to receive the balance sale price and complete the sale transaction. The abovesaid legal notice has been marked as Ex.A2. If really, the defendants had not furnished the documents to the plaintiff as recited in the foot note of the sale agreement within the time stipulated therein, the plaintiff should have at least referred to about the same in the legal notice Ex.A2 and would have complained that the defendants had failed to furnish the abovesaid documents to the plaintiff within the time stipulated. However, no such case has been putforth by the plaintiff in the legal notice Ex.A2 complaining of the non furnishing of the documents to it by the defendants. Therefore, the abovesaid facts read together would only lead to the conclusion that inasmuch as the defendants had furnished the abovesaid documents to the plaintiff within the time stipulated, it is found that the plaintiff had no occasion to complain about the same in the legal notice marked as Ex.A2. On the other hand, in the legal notice, the plaintiff would only claim that the defendants had agreed to survey the suit properties and fix

the boundaries. However, as abovenoted, when such recitals are not incorporated in Ex.A1 sale agreement, the abovesaid claim of the plaintiff had been rightly repudiated by the defendants in the reply notice as well as in the suit. Therefore, it is found that, in toto, the defendants had indeed furnished the documents within the stipulated time and despite the same, the plaintiff had not endeavoured to pay the half of the sale consideration and enter into a fresh sale agreement with the defendants as recited in the foot note. Therefore, the abovesaid conduct of the plaintiff would only go to expose that it has not been ready and willing to perform its part of the contract and obtain the sale deed from the defendant. Equally, the conduct of the plaintiff in not paying the half of the sale price to the defendants despite the furnishing of the requisite documents by the defendants would go to expose that the plaintiff has been not possessed of sufficient funds and accordingly, not evinced interest to pay half of the sale consideration to the defendants as agreed to in the foot note. However, considering the further endorsement made by the parties in the sale agreement on 25.08.2006, it is found that, on that date, the defendants had received a sum of Rs.2,50,000/- by way of cash and also the sum of Rs.1,00,000/- by way of a post dated cheque dated 07.09.2006 towards the balance sale consideration and accordingly, in toto, received a sum of Rs.4,00,000/- and agreed to execute the sale deed in favour of the plaintiff within three months from 25.08.2006. The endorsement made by the parties to that effect in the sale agreement also recites that they have agreed to abide by the earlier conditions fixed under the sale agreement dated 26.01.2006. Therefore, by way of the abovesaid endorsement, the defendants have also not disputed the receipt of Rs.4,00,000/- from the plaintiff on 25.08.2006 both by way of cash and post dated cheque as endorsed in the sale agreement dated 25.08.2006. As rightly put forth by the defendants' counsel, if really, the defendants had not furnished the abovesaid documents to the plaintiff as agreed to by them and as recited in the foot note, necessary recitals pointing to the same would have been made in the endorsement dated 25.08.2006. However, no such recitals are incorporated, particularly, that the defendants had not furnished the said documents and that they should furnish the said documents within the time fixed by the parties by way of the abovesaid endorsement. The abovesaid factors also would only go to show that the defendants had indeed furnished the requisite documents to the plaintiff within the stipulated period as put forth by them.

11. From the materials placed on record, it is found that on 25.08.2006, the plaintiff had paid a sum of Rs.1,00,000/- by way of a post dated cheque. As to why a post dated cheque had been issued by the plaintiff, there is no proper explanation. If according to the plaintiff, they had been possessed of ready

funds to pay the balance sale consideration as per the terms of the sale agreement, they should have endeavoured to pay the entire sale consideration on 25.08.2006 and obtain the sale deed from the defendants. On the other hand, they had endeavoured only to pay a sum of Rs.1,00,000/- by way of a cheque, that too, a post dated cheque and it is found that the cheque issued by the plaintiff is found to have been issued by a third party who had been having transaction with the plaintiff and further materials placed on record would go to show that the abovesaid cheque had been dishonoured and thereafter, the defendants were necessitated to obtain the cash of Rs.1,00,000/- from the plaintiff in lieu of the same. The abovesaid factors would speak volumes about the falsity of the plaintiff's case as regards their solvency to pay the balance sale consideration to the defendants as put forth by them.

12. As above noted, the plaintiff has not paid the half of the sale price to the defendants despite the defendants having furnished the requisite documents to it within one month from the date of the sale agreement. Be that as it may, the parties had chosen to extend the period for the completion of the sale agreement for a further period of three months from 25.08.2006. Accordingly, it is seen that the period fixed by way of the abovesaid endorsement would expire on 25.11.2006. Furthermore, as could be seen from the materials placed on record, the defendants have also received a sum of Rs.2,00,000/- from the plaintiff on 18.10.2006 and made an endorsement to that effect in the sale agreement. The receipt of Rs.2,00,000/- from the plaintiff on 18.10.2006 has not been controverted by the defendants, however, the endorsement dated 18.10.2006 does not speak of any extension of time for the completion of the sale agreement. It is thus found that as per the endorsement dated 25.08.2006, the plaintiff should pay the balance sale consideration on or before 25.11.2006 and complete the sale transaction. On the other hand, other than the payment of Rs.2,00,000/- on 18.10.2006, it is found that the plaintiff has not endeavoured to pay the balance sale consideration to the defendants as agreed to between the parties by way of the endorsement dated 25.08.2006. Though the plaintiff would claim that it has been always ready and willing to perform its part of the contract and possessed of ready funds, however, with reference to the abovesaid case of the plaintiff, there is no acceptable and reliable materials on the part of the plaintiff. In this connection, the plaintiff has examined PW2 and as rightly found by the trial Court, on a perusal of the evidence of PW2, it is found that the plaintiff has not been ready and willing to perform its part of the contract and PW2 would only speak about some mediation effected by him between the parties and he would state that the plaintiff had approached him to mediate two months after the sale agreement and further admit

that the plaintiff had not paid the amount as agreed to under the sale agreement and therefore, considering the evidence of PW2, it is found that he had been approached by the plaintiff only two months after the agreement to mediate and the facts remains that the plaintiff has failed to pay the half of the sale price within one month from the date of the sale agreement and further, the plaintiff has also not paid the balance sale consideration within the period of three months as per the endorsement dated 25.08.2006. It is thus found that after 18.10.2006, the plaintiff has not even moved its little finger to pay the balance sale consideration to the defendants and obtain the sale deed qua the suit properties. The claim of the plaintiff that it had approached the defendants on several occasions and in fact had approached them during the last week of March 2007 and that the defendants had promised to complete the sale transaction within 15 days and thereafter, it had approached the defendants in the second week of April 2007 and that the defendants had demanded extra amount are all found to be without any basis and proof and in such view of the matter, it is found that merely on the abovesaid bare plea, we cannot come to the conclusion, as determined by the trial Court, that the plaintiff has been always ready and willing to perform its part of the contract. If really, the plaintiff had been possessed of sufficient funds and being the agreement holder, should have approached the defendants for paying the sum on or before 25.11.2006. On the other hand, even according to the plaintiff, it has approached the defendants only during the last week of March 2007 and thereafter in the second week of April 2007. As above noted, for the abovesaid case of the plaintiff, there is no reliable proof whatsoever forthcoming on the part of the plaintiff. Thereafter, it is found that only on 30.04.2007, the plaintiff had chosen to issue the legal notice calling upon the defendants to receive the balance sale consideration and execute the sale deed. As abovenoted, the abovesaid legal notice has been repudiated by the defendants by way of a reply notice dated 23.05.2007, marked as Ex.A3 and the defendants by way of the legal notice dated 23.05.2007, repudiated the claim of the plaintiff that it has been always ready and willing to perform its part of the contract and possessed of ready funds and would complain that the plaintiff had failed to abide by the terms of the sale agreement and pay the balance sale consideration as agreed to and accordingly, put forth the case that the right which the plaintiff had by way of the sale agreement had lapsed and therefore, put forth the case that the plaintiff is not entitled to utilise the sale agreement Ex.A1 and thereafter, it is found that the plaintiff has come forward with the suit by presenting the plaint dated 14.12.2007 i.e., nearly six months after the issuance of the reply notice dated 23.05.2007, Ex.A3. Thereafter, it is found that the plaintiff had deposited the balance sale consideration in the Court as per

the order of the Court dated 26.11.2008.

13. On a perusal of the materials placed on record, when it is found that the defendants had come forward to enter into the sale agreement in favour of the plaintiff only to complete the sale transaction within the stipulated time frame work and as abovenoted, the defendants had agreed to fix a particular time limit for completing the sale transaction one way or the other and when as above pointedout, the defendants have established the production of the documents to the plaintiff as agreed to within one month from the date of the sale agreement and the plaintiff has not complained about the same in the subsequent acts entered into with the defendants as well as in the legal notice and though time may not be the sine qua non factor for the completion of the sale transaction qua the immovable properties, however, considering the purpose for which the sale agreement had been entered into between the parties and also the parties are very particular that they should complete the sale transaction within three months from the date of the endorsement and despite the abovesaid position, when it is found that the plaintiff has not endeavoured to pay the balance sale consideration within the original time limit fixed under the sale agreement as well as within the time limit extended by way of the endorsement dated 25.08.2006 and on the other hand, had chosen to issue the legal notice only on 30.04.2007 and thereafter had come forward with the suit on 14.12.2007 would only go to expose that right from the inception the plaintiff has not been ready and willing to perform its part of the contract and accordingly, put forth a false case of inaction on the part of the defendants that they had been evading to perform their part of the contract one way or the other. As abovenoted, when the parties had not agreed to survey the properties and fix boundaries and when as above pointedout, the defendants had performed their part of the contract and the plaintiff has miserably failed to establish its readiness and willingness to pay the balance sale price within the time limit originally fixed under the sale agreement as well as the extended time limit fixed under the endorsement dated 25.08.2006, in all, it is found that the trial Court has rightly assessed and analysed the case projected by the respective parties and rightly come to the conclusion that the plaintiff has miserably failed to establish its readiness and willingness to perform its part of the contract and thereby, it is found that the trial Court is wholly justified in declining the relief of specific performance prayed for by the plaintiff.

14. In the light of the above said discussions, I hold that the plaintiff has failed to establish its readiness and willingness to enforce the sale agreement dated 26.01.2006 as per the recitals contained therein and accordingly, I further

hold that the plaintiff is not entitled to seek the relief of specific performance in respect of the sale agreement dated 26.01.2006 and accordingly the Point Nos. 1 and 2 are answered against the plaintiff and in favour of the defendants.

Point Nos. 3 and 4:

15. In the light of the abovesaid discussions, the judgment and decree dated 05.07.2010, passed in O.S. No.23 of 2008, on the file of the Principal District Court, Dharmapuri are confirmed and resultantly, the First Appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

sli

To:

The Principal District Judge,
Dharmapuri.

Copy to:

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

+1cc to Mr.V.Ragavachari, Advocate, S.R.No. 78644
+1cc to Mr.T.Panchatsaram, Advocate, S.R.No. 79652

A.S.No.810 of 2010

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