IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
06~02~2019	20~02~2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

S.A.No.318 of 2012

A.K. Muthusamy Gounder ... Appellant/1st Respondent/Plaintiff

Versus

1. Selvakumar
2. Periasamy ... Respondents 1 & 2/Appellants/ Defendants 2 & 3

3.Shanmugasundararajan ... Respondent3/Respondent2/ Defendant1

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 17.08.2011 made in A.S.No.101 of 2010 on the file of the Principal District Judge, Erode, reversing the Judgment and Decree dated 30.06.2010 made in O.S.No.25 of 2010 on the file of the Subordinate Judge, Sathyamangalam.

For Appellant .. Mr.G. Suryanarayanan for M/s. R.T. Doraisamy

For Respondents.. Mr.A.K. Kumarasamy, Senior Counsel for M/s.Kaithamalai Kumaran[for R1 & R2]

M/s.M.S.Aravindhan [for R3]

JUDGMENT

Aggrieved over the Judgment of the First Appellate Court reversing the Judgment and Decree of the trial Court in granting decree for specific performance in favour of the Plaintiff, the present Second Appeal came to be filed. For the sake of convenience, the parties are arrayed as per their own ranking before the trial Court.

2.brief facts leading to file this Second Appeal is as under:

2.(a) It is the case of the Plaintiff that the First Defendant entered into an registered sale agreement of the suit property for a sale consideration of Rs.4,10,000/- on 13.8.2001 and received a sum of Rs.25,000/- from the Plaintiff as advance. It is specifically agreed that the sale shall be completed within three months from the date of agreement. On 9.11.2001 the Plaintiff met the First Defendant at Coimbatore along with balance sale consideration of Rs.3,85,000/- for registering the sale deed. The First Defendant has informed the Plaintiff that the Second and Third Defendants have fabricated a false agreement in the name of the First Defendant and hence the First Defendant filed suit in O.S.No.309 of 2001. Therefore, informed the Plaintiff that after disposal of the above suit he would execute the sale deed. Accordingly, on 11.2.2001 the First Defendant extended another three months time for completion of the sale and made endorsement in the presence of the witnesses. The Plaintiff also came to know that the Second and Third Defendants have obtained Interim Injunction against the First Defendant not to sell the property. The Plaintiff came to know about the above Injunction in the month of December 2001. Since the First Defendant has informed the Plaintiff that the agreement relied upon by the Second and Third Defendants are false and fabricated, the Plaintiff was ready to purchase the suit property by paying remaining sale consideration for which the First Defendant advised him to take legal advise. Accordingly, he took him to First Defendant's Advocate on 26.12.2001. The Advocate has informed the Plaintiff that since there is an Injunction, he cannot purchase the property. Accordingly, the First Defendant agreed that after the vacation of the Injunction he would execute the sale deed.

2.(b) The Plaintiff was always ready and willing to purchase the property. The Injunction order passed by the trial Court was appealed in C.M.A.No.50 of 2002. The said C.M.A.was allowed on 20.4.2004. Thereafter the Plaintiff repeatedly demanded the First Defendant to execute the sale deed. However, the First Defendant dragging the matter. Thereafter, the Plaintiff has met the First Defendant personally on 20.12.2004 and requested him to execute the sale deed. However, he refused to extend the sale agreement further. Hence, the Plaintiff issued legal notice dated 30.12.2004 to all the defendants. The Second and Third Defendants were aware of the agreement dated 13.8.2001. They have not made the Plaintiff as a party to the suit in O.S.No.309 of 2001. The agreement dated 14.02.2001 alleged to have entered between the First to Third Defendants has been fabricated and forged by the defendants. Hence, the Plaintiff has filed suit for Specific Performance.

2.(c) The First Defendant admitting the execution of the sale agreement dated 13.8.2001, but denied the receipt of Rs.25,000/- as advance. It is the contention of the First Defendant that six months prior to 13.08.2001 he has entered into the agreement with Second and Third Defendants for Rs.3,00,000/-on 14.02.2001 and on that date the First Defendant received Rs.2,50,000/- as advance and agreed to complete the sale within 10 months. He has also delivered possession to the Second and Third Defendants. The Plaintiff has approached the First Defendant in the first week of August 2001 and requested to sell the property to him. Even though the Plaintiff was fully aware of the sale agreement in favour of Second and Third Defendants, he offered higher price of Rs.4 lakhs and above and assured the First Defendant that he would meet the claim of the Second and Third Defendants and their documents and this Defendant need not bother about it. At that stage also he has insisted this defendant to execute the sale agreement so that he can handle Second and Third Defendants. He forced him to accept the terms. The Plaintiff is an influenced man. Accordingly, agreement dated 13.8.2001 came into existence.

2.(d) Second and Third Defendant have acted otherwise after they filed suit for Specific Performance in O.S.No.309 of 2001 and obtained Ad-Interim Injunction against him. The Plaintiff in fact, took charge of the defence in that suit. Even in the notice stage, the Plaintiff took responsibility to meet the case of the Second and Third Defendants. It was the Plaintiff who engaged the counsel for the First Defendant and paid fees and gave instruction for written statement. The Plaintiff assured that he would get favourable order from the Court, so that he would evict the Second and Third Defendants from the suit property. As days went by, the First Defendant realised that there is no point in defending O.S.No.309 of 2001, since he did not have any valid defence. The Plaintiff has not prepared to purchase the property before the final disposal of the suit. The First Defendant also advised by his well wishers to honour the agreement of sale dated 14.02.2001 and executed the sale deed in favour of the Second and Third Defendants. The Plaintiff has only filed the present suit after the sale of suit property and it is also denied by this Defendant that he met the Plaintiff and the Defendant on 13.08.2001 and he took him to the Advocates office for advice all are denied. Hence submitted that the Plaintiff is not entitled for Specific Performance.

2.(e) It is the contention of the Second and Third Defendants that these Defendants have entered into a sale agreement on 14.02.2001 with the First Defendant and paid a sum of Rs.2,50,000/- as advance. The time for performance is 10 months. They have taken possession of the property on the date of agreement itself. As the First Defendant did not come forward to execute the sale agreement as per the terms, Second and Third Defendants constrained to institute suit for specific performance in O.S.No.309 of 2001. The Plaintiff was aware of the above agreement. He has always had an eye over the above property. After institution of O.S.No.309 of 2001, Second and Third Defendants came to know that the Plaintiff created a registered agreement of sale dated 13.8.2001. This agreement was a result of collusion between the Plaintiff and the First Defendant with the sole aim to defeat the right of the these defendants. At the instigation of the Plaintiff, the First Defendant put a false plea that the agreeement dated 14.02.2001 was forged one. Since the First Defendant realised that it is impossible to evict the Second and Third Defendants from the suit property, at the intervention of panchayatdars, First Defendant was agreed to sell the property to these Defendants in pursuance of agreement of sale and by receiving the balance sale consideration of Rs.50,000/- he executed the sale deed. The agreement dated 13.08.2001 is not a genuine one. It has been brought out with ulterior motive to defeat the rights of the Second and Third Defendants. The agreement is subsequent to the agreement dated 14.02.2001.

2.(f) The Plaintiff was also aware of the suit in O.S.No.309 of 2001 as soon as it was instituted. It was the Plaintiff who was conducting the suit on behalf of the First Defendant. It was the Plaintiff who chose the lawyer for the First Defendant. The endorsement alleged dated 11.12.2001 on the agreement dated 13.8.2001 is created one. In the previous suit, counsel for the First Defendant was engaged by the Plaintiff. Thereafter, he changed. The plea that the Plaintiff was always ready and willing is also denied. The Plaintiff have money and men power and indulged in speculative acts on the strength of his power and influence. Hence, prayed for dismissal of the suit.

3. The trial Court has framed the following issues:

1. Whether the Plaintiff is entitled to Specific Performance as prayed for?

2. Whether he is entitled to Permanent Injunction as prayed for in the suit?

3. Whether there is any cause of action for the suit?

4. To what other relief?

4. On the side of the Plaintiff, P.Ws.1 to 3 were examined and Exs.P.1 to P.21 marked. On the side of the Defendants D.Ws1 to 4 were examined and Exs.D1 to D15 were marked. After the trial, the trial court has decreed the suit on the ground that the registered agreement will prevail over the unregistered agreement and the suit property has been transferred during the pendency of the suit. The First Appellate Court framed points for consideration and finally allowed the appeal filed by the Second and Third Defendants, against which the present Second Appeal came to be filed by the Plaintff. I have heard the learned counsel for both sides in the notice of motion stage itself. In this Second Appeal the Appellant has raised the following Substantial Questions of Law:

> "a) Whether the Lower Appellate Court is committed error in set aside the Judgment and Decree of the Trial Court made in O.S.No.25 of 2010 without giving any finding whether the Sale Deeds under Ex.B.15 and A-18 are hit byt las of lispendence, since the same were executed during pendency of O.S.No.25 of 2010?
>
> b) Whether the Lower Appellate Court is correct in relying upon the Written Statement of First Defendant and came to the conclusion that Ex.B2 unregistered Sale Deed is true and valid when the First Defendant did not come to the witness box and prove his version in the Written Statement?
>
> c) Whether the Lower Appellate Court is committed error in not drawing adverse inference against the First Defendant, since he did not come to the witness box and remained exparte?
>
> d) Is the First Defendant not defrauding the Court by filing the Written Statement in the present suit stating he has executed unregistered Sale Agreement under Ex.B.2, suppressing the fact that he already filed Written Statement in O.S.No.309 of 2001 filed by the Second and Third Defendants and stated that he never executed Ex.B.2 in favour of Plaintiff therein and it was forged by the the Plaintiff?
>
> e) Whether the Lower Appellate Court is committed error in dismissing the suit, ignoring the fact that the First Defendant admitted the Execution of Ex.A.1 registered Sale Agreement in favour of the Appellant and made an endorsement in Ex.A.2 for extension of 3 months time even

after filing of the suit in O.S.No.309 of 2001 by the Second and Third Defendants?"

5.(a) The learned counsel for the Appellant/Plaintiff vehemently contended that the suit agreement is admittedly registered agreement dated 13.08.2001. Subsequent to such agreement an unregistered agreement has been created by anti-dating among the defendants to non-suit the registered agreement and the Second and Third Defendants filed a suit in O.S.No.309 of 2001. It is contention of the learned counsel that the conduct of the First Defendant clearly show that the unregistered agreement set up by the Second and Third Defendants is a fabricated one. In the written statement filed in O.S.No.309 of 2001 it is the specific contention of the First Defendant that he never executed agreement and the same has been forged. Whereas in the present suit, the First Defendant has taken a totally contradictory stand and admitted the execution of the agreement dated 14.2.2001, besides he has also admitted the execution of the suit agreement dated 13.8.2001. The explanation offered by the First Defendant in his written statement in the present suit is nothing but an after thought. He has not come to the witness box. Further, during the pendency of the suit in O.S.No.309 of 2001, before the trial of the suit the First Defendant has transferred the property in favour of Second and Third Defendants by registered document on 14.2.2005. The suit for Specific Performance was filed on 7.1.2005. Sale took place during the pendency of the suit certainly hit by doctrine of lis pendence. The Plaintiff in his pleadings clearly explained how the sale could not be completed within the time stipulated in the agreement. Therefore, merely because the suit was filed in the year 2005, the same cannot be a ground to non-suit the Plaintiff.

5.(b) The question of ready and willingness does not arise at all, since the property was transferred during the pendency of the suit. Second and Third Defendants are not bonafide purchasers for the value without notice. Admittedly, they are aware of the earlier agreement dated 13.8.2001 and purchased the property during the pendency of the suit. Therefore, they cannot be called as a bonafide purchasers for the value and the Plaintiff clearly explained in his plaint that he was always ready and willing to perform his part of contract. Once the prior agreement is shown to be fabricated document, the contention of the Defendants that the agreement was prior to the suit agreement cannot be given any credence. It is the further contention of the learned counsel that the Defendants were issued notice on 30.12.2004 about the existence of the suit agreement. Having received the notice they have not replied. Despite the legal notice, the property has been transferred during the pendency of the suit. These facts clearly established the factum that they are not the bonafide purchasers for value. Hence submitted that merely because the Second and Third Defendants filed an earlier suit, the same cannot be a ground to non-suit the Plaintiff. The First Appellate Court has not analysed the entire facts property and merely believed the version of the First Defendant who has not even entered into the box. Hence submitted that the Judgment of the First Appellate Court is to be interfered and the decree and judgment of the trial Court to be restored. In support of his contention he relied the following Judgments:

1. M.M.S. Investments, Madurai and Others v. V.V. Veerappan and others [2007 AIR (SC) 2663]

2. Ramalingam Pillai vs. Ammani Ammal and Ors. [MANU/TN/0751/2008]

3. Sarju Pershad vs. Rajas Jwaleshwari Pratap Narain Singh and Ors.[MANU/SC/0002/1950]

4. Ghnshyambhai Dhirubhai Barvaliya V. Rasikbhai Dhirubhai Ambaliya and Ors. [MANU/GJ/0001/2017]

5. Kulandaisamy Gounder and Ors. v. R.Srikumar and Ors. [MANU/TN/1914/2011]

6.(a) Learned Senior Counsel appearing for the Respondents submitted that admittedly the Second and Third Defendents are the prior contractees in respect of the suit properties. They have paid a substantial consideration on 14.02.2001 itself when they entered into the agreement of sale executed by the First Defendant. It is only the First Defendant who is neighbouring land owner got registered agreement subsequently to non-suit the Defendants. In fact Plaintiff insisted the First Defendant to execute the Registered agreement for sale on 13.08.2001. The evidence adduced by either side of the party clearly proved the fact that the Plaintiff clearly aware of the previous agreement entered into between the First Defendant and the Second and Third Defendants. Second and Third Defendants have filed a suit for specific performance in O.S.309 of 2001 as the First Defendant failed to complete the sale which itself clearly indicates that plaint sale agreement is prepared only to non-suit the Plaintiff. Though the suit filed by the Second and Third Defendants, the First Defendant denied the execution of the agreement. The First Defendant has explained his admission in the subsequent written statement wherein he clearly sated that the Plaintiff being the adjacent land owner wanted to bring the Second and Third Defendants in terms and got registered the sale agreement without paying any amount. Hence submitted that only the Plaintiff has created the subsequent document. His conduct in waiting till 2005 in filing the suit for Specific Performance clearly probabalise the defendants case that the Plaintiff has created the second agreement.

6.(b) It is his further contention that the specific covenants agreed in the suit agreement that sale should be completed within three months and the remaining sale consideration shall be paid or deposited before the Court. The Plaintiff has not complied any of these conditions in the agreement. Having pleaded that the agreement was extended only because of the suit filed by the Second and Third Defendants, in his evidence he has taken a contradictory view that he did not aware of the suit. The above conduct of the Plaintiff clearly indicate that the registered sale agreement came to be filed only to defeat the lawful agreement executed in favour of the Second and Third Defendants much prior to the suit agreement. The conduct of the Plaintiff clearly indicate that he was not ready and willing to purchase the property. No evidence whatsoever filed before the court that he had capacity to mobilise the remaining sale consideration of Rs.3,85,000/-. The amount also not deposited at the time of filing the suit. Only in the year 2010 after the trial court decree, the amount has been deposited. Therefore submitted that the Plaintiff cannot enforce the agreement when he has not shown the ready and willingness from the very inception of the agreement. Hence prayed for dismissal of the appeal. In support of his submission he relied upon the judgments:

1. R. Rajaram v. T.R.Maheswaran [2000 (10) 2 MLJ 253]

2. Arunachala Mudaliar v. Jayalakshmi Ammal and another [2003 (1) CTC 355]

7. I have considered the submissions and perused the materials. The suit has been filed to enforce the suit agreement dated 13.08.2001 executed by the First Defendant in favour of the Plaintiff for sale of the suit property for a total sale consideration of Rs.4,10,000/-. It is the case of the Plaintiff, on the date of agreement he paid Rs.25,000/- as advance and remaining sale consideration of Rs.3,85,000/- agreed to be paid within three months from the date of the agreement or in the event of the 1st Defendant failed to execute document within three months balance sale consideration shall be deposited in the Court and he has to file a suit for specific performance. It is the main contention of the Plaintiff that he was always ready and willing to pay the remaining sale

consideration. When he met the First Defendant on 09.01.2001 at Coimbatore with remaining sale consideration, First Defendant informed him that the Second and Third Defendants have filed suit in O.S.No.309 of 2001 based on the agreement which never executed by him. Therefore, three months further time was extended by the First Defendant in the presence of the witnesses on 11.02.2001. Even after the First Defendant was delaying performance and stated that since there is an injunction order, he could execute the document only after the injunction is vacated in the suit in O.S.No.309 of 2001. It is the further contention of the Plaintiff that even though he has expressed his willingness to purchase the property, pending suit, the First Defendant took him to his lawyer. As his lawyer advised the consequences of the purchase during the pendency of the Injunction Order, First Defendant requested the Plaintiff to wait for some time till the disposal of the Injunction Application. Accordingly, the Plaintiff waited and finally the Injunction Application was disposed of on 20.4.2004 in CMA No.50 of 2002. Thereafter, he met the First Defendant personally as the same has not been yielded any result he sent a legal notice on 30.12.2004. The Plaintiff has filed a suit for the first time on 07.02.2005 to enforce the agreement dated 13.02.2001.

8. It is the contention of the Plaintiff that the agreement based on which the suit in O.S.No.309 of 2001 was filed by the Second and Third Defendants against the First Defendant was a reason for filing suit with delay. It is curious to note that the First Defendant filed a written statement in O.S.309 of 2001 denying the execution of the agreement in favour of the Second and Third Defendants on 14.02.2001. Whereas in the written statement filed in the present suit he has explained his admission made in the previous written statement. It is the specific contention of the First Defendant/Vendor that the Plaintiff in fact adjacent land owner he had an eye over the property. After coming to know about the agreement for sale in favour of the Second and Third Defendants, the Plaintiff wanted to register the agreement and offered higher rate and assured that he would settle the Second and Third Defendants. Accordingly, without any amount of consideration the registered agreement dated 31.08.2001 was executed. However, no amount whatsoever received on that date. No doubt there were two contradictory admissions from the First Defendant. Admittedly, the First Defendant was not examined before the Court. It is curious to note that having denied the agreement dated 14.02.2001 in favour of the Second and Third Defendants in the suit filed in O.S.No.309/2001. The First Defendant in fact executed the sale deed in favour of the Second and Third Defendants on 14.02.2005 during the pendency of the suit filed by the Second and Third Defendants viz., O.S.No.309 of 2001 and also pendency of the suit filed by the Plaintiff. In fact the

Plaintiff has filed the suit in 7.2.2005. This aspect there is no dispute.

9. The First Defendant has taken a different stand in two proceedings with regard to earlier agreement. Having taken different stand in his written statement he sought to explain his admission in subsequent proceedings viz., the present suit, wherein it is the contention of the First Defendant that the written statement itself has filed in the previous suit only at the instance of the Plaintiff and Plaintiff had engaged lawyer for the First Defendant. Having taken such stand the First Defendant has not chosen to examine himself before the Court. Be that as it may. He has executed registered sale deed transferring the suit property in favour of the Second and Third Defendants. In the above sale deed he has confirmed the execution of the agreement dated 14.02.2001 in favour of the Second and Third Defendants. When the maker of the agreement himself admitted the execution of the previous document viz., the agreement dated 14.02.2001 in favour of the Second and Third Defendants, the existence of the above agreement cannot be disbelieved. At the same time it has to be seen whether such document has been created or forged as contended by the Plaintiff in collusion between the First to Third Defendants. It is the specific case of the Plaintiff that though three months time is fixed in the agreement, on 11.9.2001 itself he came to know about the pending suit i.e., O.S.No.309 of 2001 filed by the Second and Third Defendants based on the agreement dated 14.02.2001 and the First Defendant informed him that the above agreement is forged one. Therefore, three months time is further extended. On a careful perusal of the endorsement made in the agreement dated 12.11.2001 marked as Ex.A.2 there is no whisper in the endorsement as to the reason for such extension of time. If really as stated by the Plaintiff that 3 months further time was extended only because of the pendency of the suit, filed by the Second and Third Defendants, the normal contact of human being would demand that further extension made only because of such pendency of the suit. Absolutely, there is no reference in the endorsement while extending the further time for three months. Ex.A.2 shows time has been extended upto 12.02.2002. The contention of the Plaintiff that subsequently he came to know that the Injunction was obtained by the Second and Third Defendants, therefore sale could not be completed and the First Defendant has informed him that he would complete the sale after the vacation of the Injunction itself appears to be improbable. According to the Plaintiff he took the advice of the lawyer in the month of December 2001 itself. Having taken legal advice he has not made any attempt to get the agreement renewed further time for the reason of the suit filed by the Second and Third Defendants. If really the agreement has intended for the purchase of the property and the Plaintiff in fact intended to

enforce the contract his normal contact would be to get the agreement extended on the real facts. Whereas Ex.A.1 is totally silent about the real facts as contended by the Pliantiff in the plaint.

10. It is the specific case of the Second and Third Defendants that the Plaintiff has already aware of agreement dated 14.02.2001, thereafter he got subsequent registered agreement only to non-suit them. The Plaintiff having pleaded in his entire plaint that the delay in filing of the suit is only because of the suit filed by the Second and Third Defendants and he came to know about that suit on 19.11.2001 itself. When his pleadings is considered along with his evidence, in the cross examination he has categorically admitted that he came to know about the prior agreement dated 14.2.2001 executed by the First Defendant in favour of the Second and Third Defendants only after five years and he has not aware of the filing of the suit by the Second and Third Defendants and he has also not aware of the transfer of property in favour of Second and Third Defendants. He has also admitted that he did not know about the suit filed till the date he examined in the Court. He has also stated in his evidence there is no specific reason for filing the suit with delay on 7.1.2005 and he does not aware whether the agreement dated 14.2.2001 is fabricated or valid. He has also does not aware whether the Second and Third Defendants were in possession of the property on the basis of the agreement entered in their favour. Further, he has also not aware of the Injunction order. He has also not aware of any appeal filed against the Injunction Order. From the entire cross examination he has totally shown his ignorance about any pending suits and agreement said to have been executed by the First Defendant in favour of the Second and Third Defendants. Similarly he has also admitted in his evidence that he has no special reasons for filing the suit belatedly. These facts clearly indicate that the reasons pleaded in his plaint for delaying in filing suit is invented later stage to get over the dealy in filing the suit. It is curious to note that there is a specific time agreed in the agreement Ex.A1 to pay the remaining consideration of Rs.3,85,000/- within three months. Of course the above time limit has been extended for another three months. Thereafter, the Plaintiff remain silent despite his allegation that the matter is delayed due to the pendency of the suit. Whereas for the first time on 30.12.2004 he sent legal notice.

11. It is curious to note that O.S.No.309 of 2001 has filed, when the agreement dated 14.2.2001 came into existence in favour of the Second and Third Defendants. The suit was adjudicated till 2005. The Plaintiff conduct as per his pleadings against normal human conduct. Having got the registered agreement in his favaour and having known somebody

allegedly set up previous agreement and suit is filed, his immediate reaction or conduct would be to rush to the Court to enforce the agreement in his favour, but he remained silent. This conduct in fact goes against the Plaintiff in seeking specific performance. It is the case of the Defendants that they are already in possession of the suit Property. They are also tenants prior to the agreement. Of course it has not been established. Once the plaintiff want to assail the previous contract on the ground of forgery or collusion, he must establish the same. Of course the First Defendant has not come to the Court. In the absence of any other evidence to show that the agreement dated 14.2.2001 said to have been executed in favour of the Second and Third Defendants prior to the suit agreement is a result of forgery, Court cannot presume that there was a forgery or collusion between First to Third Defendants. The conduct of the Plaintiff in remaining silent for more than three years in fact probablise the defence that in fact registered agreement came to be executed subsequently. The Plaintiff could have proved the forgery. To prove the forgery the presence of First Defendant is not required. The signatures of the First Defendant are in existence in both the agreements, he ought to have taken steps to get expert opinion. But he has not done any such exercise. Therefore, the forgery cannot be presumed based on the registered sale agreement. As long as the law did not prohibit unregistered sale agreement merely because the registered agreement came to be executed subsequently, the Court cannot presume that unregistered agreement is only after thought. At the relevant point of time, when the agreement dated 14.02.2001 came into existence, registration of the agreement for sale is only optional and not mandatory. This is also taken note of the First Appellate Court. It is further to note that there is a specific condition in the agreement. that in the event of the First Defendant failed to execute the sale deed within three months, the amount should be deposited in the Court. When there is a specific covenant agreed between the parties when the amount has not deposited in the court, the Plaintiff certainly is not entitled for specific performance. In this regard in Arunachala Mudaliar v. Jayalakshmi Ammal and another [2003 (1) CTC 355] this Court has held as follows:

> 25. The obvious lacunae in the plaintiff's case have been pointed out above. The plaintiff has not deposited the amount that she should have deposited as per Ex-A7 before filing the suit for specific performance. The defendant had raised the plea that the deposit was not made and it would show the plaintiff's lack of bona fides. In spite of that the plaintiff not only does not deposit the amount before filing the suit, but P.W.1, the plaintiff's husband glibly

says in his evidence that he has deposited the amount. The plaint does not even refer to any readiness or willingness to deposit and the suit notice claimed to have been issued has not been proved to have been issued. In the particular circumstance of the case and in view of the specific recitals regarding the deposit the plaintiff cannot be content with citing the explanation to Section 16(c) of the Act without proving his readiness and willingness clearly and beyond doubt.

12. Similarly in R.Rajaram v. T.R. Maheswaran [2010(2) MLJ 253] this Court has held that when the deposit of balance sale consideration was an essential term of contract and such deposit has not been made, the Plaintiff is not entitled for Specific Performance.

13. It is further to be noted that to show that the Plaintiff is all along ready and willing to perform his part of obligation from the inception of the contract, there is no evidence available on record to show that he had capacity to mobilise the funds or had sufficient funds in his account. No materials whatsoever placed. Therefore, the readiness in this case is totally silent on the part of the Plaintiff from the very inception. As far as the willingness is concerned, despite aware of the fact that some third parties are trying to set up title to the property sought to be purchased by the Plaintiff, the Plaintiff remained silent. He has not taken any immediate action to enforce the contract within the time limit fixed in the contract. This one circumstance clearly indicate that the willingness is also totally absent on the part of the Plaintiff. Once the readiness and willingness is totally absent, the Plaintiff is certainly not entitled for specific performance.

14. The Learned counsel for the Appellant/Plaintiff vehemently contended that the question of readiness and willingness does not arise in this case since the property has been transferred. In support of his contention he has placed reliance of the Judgment in M.M.S. Investments, Madurai and Others v. V.V. Veerappan and others [2007 AIR (SC) 2663] in which the Honourable Apex Court has held as follows:

> "6. Questioning the plea of readiness and willingness is a concept relatable to an agreement. After conveyance the question of readiness and willingness is really not relevant. Therefore, the provision of the Specific Relief Act, 1963 (in short the 'Act') is not applicable. It is to be noted that the decision in Ram Awadh's case (supra) relates

to a case where there was only an agreement. After the conveyance, the only question to be adjudicated is whether the purchaser was a bona fide purchaser for value without notice. In the present case the only issue that can be adjudicated is whether the appellants were bona fide purchasers for value without notice. The question whether the appellants were ready and willing is really of no consequence. In Ram Awadh's case (supra) the question of the effect of a completed sale was not there. Therefore, that decision cannot have any application so far as the present case is concerned. Once there is a conveyance the concept would be different and the primary relief could be only cancellation. "

15. In the above case the Hourable Apex Court taking all the fact that after the suit for specific performance was decreed the property was transferred to third parties. In the above situation the Apex Court held that the question of readiness and willingness does not arise at all. It is to be noted that admittedly, the Defendant has pleaded the earlier contract. According to them it is only a suit agreement, was created to non-suit them. Admittedly, the contract relied upon by the Second and Third Defendants dated 14.2.2001 which is prior to the suit agreement. Therefore, above contract also admitted by the First Defendant and executed the sale deed. In that situation, subsequent contract cannot be enforced against the earlier contractee and admittedly the suit has been filed based on the earlier contract and admittedly the suit property has been transferred based on the earlier contract in this case. Therefore, the subsequent contract viz., Ex.A.1 cannot be enforced against the title owner.

16. No doubt, the property has been transferred during the pendency of the suit filed by the Plaintiff on 14.2.2001 at the most such transfer hit by Doctrine of Lis Pendens as the property has been transfered after legal notice and also pendency of the suit. The effect of Doctrine of Lis Pendens embodied in Section 52 of the Transfer of Property Act, not to annul all voluntary transfer effected by the parties to suit but only renders it subservient to the rights of parties thereto under decree or order which may be made in the suit. Therefore, transfer effected during the pendency of the Suit will remain valid subject to the result of the suit. Therefore, such transfer is depending upon the results of the suit. When the Plaintiff failed to establish his right to get specific performance and he has not shown his ready and willingness from the very beginning, the suit for Specific Performance has to necessarily fail. Admittedly, the sale deed was executed based

on the prior contract and substantial portion of sale consideration has also paid on the date of agreement itself i.e., on 14.02.2001. Therefore, merely because the property was purchased during the pendency of the suit, such sale cannot be invalid. Accordingly, the Substantial Questions of Law are answered against the Appellant and the Second Appeal is dismissed. The Judgment and Decree of the First Appellate Court is confirmed.

17. In view of the above, the Second Appeal is dismissed. No costs.

"For Being Mentioned"

The above case is taken up today for "being mentioned" at the oral instance of the learned counsel for the Appellant.

2. In the Second Appeal, judgment was pronounced on 20.02.2019. Today the learned counsel appearing for the Appellant would submit that after passing of decree and judgement in the First Appeal, the Appellant has deposited the remaining sale consideration in before the trial Court and hence, the same may be ordered to the returned to the Appellant.

3. In view of the submission made by the learned counsel for the Appellant, the amount deposited in the trial court is ordered to be returned to the Appellant/Plaintiff.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ggs.
To
1. The Principal District Judge, Erode
2.The Subordinate Judge, Sathyamangalam

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S.A.No.318 of 2012

SSI(CO)
SP(30/05/2019)