IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.11.2019

PRONOUNCED ON : 03.01.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.478 of 2013

Easwari ... Appellant

Vs.

Mohamed Ibrahim
S/o.Abdul Muthalif,
Proprietor of Allayah Trading Est.,
Having the place of business at
No.4, Sikkathal Khail Road
(Behind Naif Road)
P.O.Box.No.41316, Deria, Dubai, U.A.E.
And permanently residing at
No.63, South Street, Sethur,
Thirunallar Commune,
Karaikal Town. ... Respondent

Prayer:- First Appeal has been filed under Section 96 of The Civil Procedure Code against the judgment and decree dated 26.02.2013 passed in O.S.No.2 of 2010 on the file of the District Court, Karaikal.

For Appellant : Mr.S.Sounthar

For Respondent : Mr.T.P.Manoharan,SC
for M/s.K.P.Jotheeswaran

JUDGMENT

Aggrieved over the judgment and decree dated 26.02.2013 passed in O.S.No.2 of 2010 on the file of the District Court, Karaikal, the plaintiff has preferred the first appeal.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for Specific Performance or in the alternative for the refund of the advance amount with interest as set out in the plaint.

4.The case of the plaintiff is that on 07.06.2007, the defendant and the plaintiff entered into an agreement of sale in respect of the defendant's property described in the plaint schedule and it was mutually agreed by the parties under the sale agreement that the defendant should sell the suit property to the plaintiff or her nominee for total sum of Rs.2,50,000/- and the sale should be concluded within a period of 11 months from the date of the agreement and the defendant should produce the encumbrance certificate for a period of 13 years in respect of the suit property and also the receipts for the payment of tax up to date, title deed, map, patta and also to get the suit property measured within the stipulated period and thereupon, the plaintiff should pay the balance sale consideration and obtain the execution of the sale deed from the defendant. It is further put forth that the defendant received a sum of Rs.2,00,000/- as advance on the date of the sale agreement. The sale agreement had been duly registered on the same date. The defendant had not complied with any of the conditions stipulated in the agreement abovestated and though the plaintiff was ever ready and willing to perform her part of the contract and eagerly waiting to settle the balance sale consideration, however, the defendant had not handed over to the plaintiff the antecedent title deed, encumbrance certificate, patta, map etc., for her scrutiny to enable her to purchase the requisite stamp papers for the preparation of the sale deed and furthermore, according to her, on 13.12.2007, the defendant met the plaintiff and received a further sum of Rs.40,000/- and assured to complete his part of the agreement within 11 months as stipulated in the agreement and for the abovesaid payment, the plaintiff obtained due receipt from the defendant. The period of 11 months stipulated in the sale agreement had expired on 06.05.2008. The plaintiff had been repeatedly requesting the defendant to receive the balance sale consideration and execute the sale deed, however, the defendant had not been responding to the same and prolonging the matter by giving evasive replies. The defendant failed to comply with his part of the contract. During last year, the defendant without fulfilling his part of the contract left India on account of his employment and after sometime, the defendant called the plaintiff over mobile phone and informed that he would return to India and execute the sale deed in favour of the plaintiff. Only a sum of Rs.10,000/- remain to be paid by the plaintiff. The plaintiff therefore issued an advocate notice on 23.06.2009 calling upon the defendant to perform his part of the contract. Though the defendant had duly acknowledged the said notice, neither complied with the demand made thereunder nor issued any reply. Hence, the suit for appropriate reliefs.

5.The defendant resisted the plaintiff's suit contending that the document, under which the plaintiff has laid the suit, is not a sale agreement in the real terms of the sale and there is no sale contract between the parties. The actual transaction between the defendant and the plaintiff's husband is a loan transaction. In order to meet the financial commitments of the defendant's father-in-law Mohamed Ibrahim, he availed a loan of Rs.2,50,000/- from the plaintiff's husband. To secure the said debt, the defendant's father-in-law drew and issued a cheque for the sum borrowed in favour of the plaintiff's husband. However, at the instance of the plaintiff's husband, the defendant entrusted the title deeds pertaining to the suit property in the name of his father to the plaintiff's husband. The defendant has not executed any sale agreement in favour of the plaintiff. Subsequently, due to the friction between the defendant and his wife, the relationship between the defendant and his father-in-law became strained and the defendant's father-in-law and brother-in-law tried to grab the defendant's family properties. The defendant had obtained a decree for prohibitory injunction against them in

O.S.No.80/2010 on the file of the Principal District Munsif Court, Karaikal. The plaintiff's husband had initiated criminal prosecution under Section 138 of the Negotiable Instrument Act against the defendant's father-in-law on the file of the Court of Judicial Magistrate No.II, Karaikal. The matter had been settled. The plaintiff's husband therefore is bound to return the original title deed to the defendant. Even on the date of the alleged sale agreement, the value of the suit property is Rs.10,00,000/- and it's present value is RS.40,00,000/-. The case of the plaintiff that the defendant had agreed to sell the suit property for Rs.2,50,000/- is false. There was no consensus ***ad idem*** between the parties to the alleged sale agreement. The plaintiff has not come to the Court with clean hands. The plaintiff's husband is an usurious money lender. He is using his wife as a tool and filed the case falsely. Likewise the alleged registration of document in question is false and similarly, the further payment pleaded is a cock and bull story. The plaintiff is not entitled to obtain the equitable relief of specific performance. The alleged conversation over mobile phone pleaded in the plaint is specifically denied. There was no service of pre-suit notice or suit summons upon the defendant. The plaintiff is not entitled to either the main prayer or the alternative prayer and the claim of interest is baseless and in the additional written statement, the defendant has putforth the case that the portion of the suit property was owned and possessed by his father Abdul

Muthalif and he leaving behind his widow and 4 daughters apart from the defendant and therefore, the abovesaid widow and 4 daughters of Abdul Muthalif are necessary parties to the lis and for non-impleadment of them, the suit is bad in toto. Accordingly, the defendant prayed for dismissal of the plaintiff's suit.

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

> "***1.Whether the sale agreement is not a sale agreement but a loan transaction?***
>
> ***2.Whether the plaintiff is always ready and willing to perform his part of contract?***
>
> ***3.Whether the plaintiff is entitled for a decree directing the defendant to execute the sale deed in her father after receiving the balance sale consideration or in the alternative for a decree directing the defendant to pay Rs.3,05,266.66 with future interest at 12% on Rs.2,40,000/- from the date of plaint till realization with costs?"***

Additional Issue

Whether the suit is bad for non-joinder of necessary parties?

7.In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to A4 were marked. No oral and documentary evidence has been marked in support of the defendant's version.

8.On the basis of the materials placed on record and the submissions made, the trial Court was pleased to decline the relief of specific performance prayed for by the plaintiff and granted the alternative relief in favour of the plaintiff as determined by it and accordingly, disposed of the plaintiff's Suit. Aggrieved over the same, the plaintiff has preferred the first appeal.

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

"***1.Whether the sale agreement dated 07.06.2007 is true, valid and binding on the defendant?***

2.Whether it is true that the plaintiff has paid a sum of Rs.40,000/-towards the balance sale consideration on 13.12.2007 as claimed by her?

3.Whether the plaintiff is always ready and willing to perform her part of the contract?

4.Whether the plaintiff is entitled to seek the relief of specific performance in respect of the sale agreement dated 07.06.2007?

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

6.To what relief the defendant is entitled to?"

10. *Point Nos.1 to 4*

The suit has been laid by the plaintiff based on the sale agreement dated 07.06.2007 claiming the relief of specific performance or in the alternative for the refund of the advance amount with interest as put forth in the plaint. According to the plaintiff, the defendant had agreed to sell the suit property to her for a sum of Rs.2,50,000/- and accordingly, entered into a sale agreement on 07.06.2007 and received a sum of Rs.2,00,000/- as advance on the date of the sale agreement and assured to produce the encumbrance certificate, title deeds, map, patta etc., to the plaintiff within the stipulated period of 11 months and the plaintiff promised to pay the balance sale consideration of Rs.50,000/- within the stipulated period and obtain the sale deed and further, according to the plaintiff, the defendant had failed to perform his obligations of the agreement and failed to hand over the documents as abovestated within the stipulated period and it is further putforth by the plaintiff that he had paid a sum of Rs.40,000/- to the defendant on 13.12.2007 and obtained due receipt pertaining to the same and even thereafter, the defendant has not performed his part of the contract and on the other hand, the plaintiff is always ready and willing to perform her obligations under the contract and part with the balance sale consideration of Rs.10,000/- and obtain the sale deed from the defendant and on the other hand, it is put forth that the defendant left India and went abroad without fulfilling his part of the contract and called over Mobile phone and informed that he would complete the contract on return to India and the plaintiff therefore issued the legal notice on 23.06.2009 and even thereafter, despite the receipt of the same, the defendant had failed to come forward and execute the sale deed as per the terms of the sale agreement and hence, the suit for appropriate reliefs.

11.Per contra, according to the defendant, there is no privity of contract between him and the plaintiff as alleged in the plaint with reference to the suit property and it is put forth by him that his father-in-law availed loan of Rs.2,50,000/- from the plaintiff's husband and issued a cheque for the amount borrowed and at the instance of the plaintiff's husband, the defendant entrusted the title deed of the suit property to the plaintiff's husband standing in the name of his father and the suit property was worth Rs.10,00,000/- on the date of the sale agreement and therefore, the defendant would not have endeavored to sell the suit property to the plaintiff for Rs.2,50,000/- as put forth in the plaint and it is stated that the plaintiff's husband is engaged in money lending business and disputed the alleged assurance given to the plaintiff over mobile phone that he would complete the sale on return to India and challenged the further payment alleged in the plaint as totally a false case and according to the defendant, with a view to grab his family properties, the suit has been falsely laid by the plaintiff and therefore, the plaintiff is not entitled to claim the reliefs prayed for.

12. In the light of the abovesaid factors, the plaintiff has to primarily establish that the sale agreement in question had been really executed by the defendant in her favour with the intention of handing over the suit property to her as per the terms set out therein. The sale agreement dated 07.06.2007 has been marked as Ex.A1. According to the plaintiff, she has paid a sum of Rs.2,00,000/- on the date of the sale agreement. It is further put forth that the defendant had assured to

entrust the title deed and other documents pertaining to the suit property within the stipulated period of 11 months from the date of the sale agreement. It is found that as per the terms set out in the sale agreement, the parties had agreed to complete the sale agreement within a period of 11 months from the date of the sale agreement which expires on 06.05.2008. The defendant would mainly take the plea that the title deed pertaining to the suit property had been entrusted to the plaintiff as a security for the loan borrowed by his father-in-law from the plaintiff's husband and he had not executed any sale agreement in favour of the plaintiff agreeing to sell the suit property to her as put forth in the plaint. However, with reference to the abovesaid plea put forth by the defendant, the defendant has not endeavored to examine himself or his father-in-law, who is alleged to have borrowed the loan from the plaintiff's husband or placed any other material to sustain his defence version. On the other hand, it is found that the plaintiff had chosen to examine her husband as PW1 and one of the attestors to the sale agreement as PW2 and from the evidence of PWs1 & 2 in toto, it is found that the plea of loan transaction alleged by the defendant for the execution of the sale agreement as such cannot be maintained and on the other hand, it is found that the sale agreement in question had come into existence only on the acceptance of the defendant to sell the suit property in favour of the plaintiff as alleged in the plaint and accordingly, it is seen that the sale agreement Ex.A1 had come into existence between the parties.

13.The defendant has also taken the plea that the portion of the suit property belongs to his father and the non-impleadment of the other legal heirs of his father is bad in law. However, as rightly determined by the trial Court, when the abovesaid case of the defendant is denied by the plaintiff and the defendant had also not placed any material to show as to the other legal heirs of Abdul Muthalif, the defendant's father, are necessary parties to the suit, in such view of the matter, the abovesaid plea taken by the defendant that the plaintiff's suit is bad for non-joinder of necessary parties cannot be acceded to in any manner.

14.Furthermore, the defendant has not come forward to enter into the witness box to deny the execution of the sale agreement in favour of the plaintiff marked as Ex.A1. Ex.A1 sale agreement is found to be a registered instrument. Accordingly, it is found that considering the evidence of PWs 1 & 2 in toto and when there is nothing brought on record from them during the course of cross examination that the sale agreement had been taken only as a security for the alleged loan transaction as pleaded by the defendant, in such view of the matter, the contention of the defendant that there is no privity of contract between him and the plaintiff qua the execution of the suit sale agreement Ex.A1, as such, cannot be believed and accepted.

15.The main question that has to be determined in this matter is whether the plaintiff has been always ready and willing to perform her part of the contract from the inception of the sale agreement. As above pointed out, as per the terms of the sale agreement, the parties had intended to complete the sale transaction within the stipulated period i.e within the period of 11 months from the date of the sale agreement. Even as per the case put forth in the plaint, the 11 months time stipulated in the agreement expired on 06.05.2008. Whether the parties had intended that the time limit fixed in the sale agreement is the ***sine qua non*** factor for the completion of the sale agreement has to be seen. With reference to the same, the plaintiff's husband was examined as PW1 during the course of cross examination has admitted that the period of 11 months set out in the sale agreement has been primarily intended to be the essence of the contract between the parties. Therefore, it is seen that the parties had been very particular that the sale transaction contemplated under Ex.A1 agreement should be completed within the stipulated period i.e. on or before 06.05.2008. The only reason put forth by the plaintiff for not paying the balance sale consideration within the stipulated period is that the defendant has not produced the title deeds, encumbrance etc., in respect of the suit property within the stipulated period as assured by him. From the materials placed on record, it is found that the plaintiff's husband is engaged in money lending business and the same has not been controverted by the plaintiff's husband and the same has also been adverted to by PW2. Therefore, the case projected by the plaintiff as if the agreement in question had been entered into between the parties without any ascertainment of the defendant's title to the suit property, as such, cannot be readily believed and accepted. On the other hand, it is found that only after the ascertainment of the defendant's title to the suit property, the sale agreement in question, had been entered into between the parties concerned and accordingly, the sale agreement had also been registered. Furthermore, PW2, the attestor, during the course of cross examination has admitted that the defendant had handed over the original document for the purpose of writing the sale agreement and does not know to which document the abovesaid title deed relates to and further also admitted that even prior to the execution of the sale agreement Ex.A1, the defendant had handed over to the plaintiff, the encumbrance certificate,patta, chitta and other documents. Therefore, it is seen that when the defendant had already furnished the encumbrance certificate,patta, chitta and other documents pertaining to the suit property and also handed over the title document for the purpose of writing sale agreement, in the light of the abovesaid factors, to say that the sale agreement could not be proceeded with on the part of the plaintiff only on account of the failure of the defendant to hand over the title deed, patta etc., pertaining to the suit property, as such, cannot be believed and accepted. As abovenoted, if the plaintiff had not been sure of the defendant's title to the suit property prior to the execution of the sale agreement, the plaintiff would not have entered into an agreement of sale with the defendant and also not chosen to reduce the same into writing and got it registered. Therefore, the case projected by the plaintiff that the plaintiff had not come forward to perform his part of the contract i.e payment of the balance sale consideration within the stipulated period on the premise that the defendant had not furnished encumbrance certificate, title deed etc., and the same is the reason for not paying the balance sale consideration within the agreed period, as such, cannot be believed and accepted.

16.If really the defendant had not furnished the abovesaid documents within the stipulated period as alleged by the plaintiff, assuming the plaintiff's case as regards the payment of the balance sale consideration of Rs.40,000/- on 13.12.2007 is true, as rightly contended by the defendant's counsel, without the obtainment of the documents pertaining to the suit property, the plaintiff would not have volunteered to pay the balance sum of Rs.40,000/- to the defendant on 13.12.2007 as alleged in the plaint. Therefore, from the case projected by the plaintiff that he had further paid a sum of Rs.40,000/- to the defendant on 13.12.2007 towards the balance sale consideration, would only probabilise the defence version that inasmuch as the defendant had furnished all the documents pertaining to the suit property, it is found that the plaintiff had pleaded that he had also paid a sum of Rs.40,000/- on 13.12.2007. No doubt, the abovesaid case of the plaintiff has not been admitted by the defendant as such.

17.The plaintiff, as above noted, had admitted that time fixed under the sale agreement is the essence of the contract. If really the plaintiff had been anxious and eager to complete the sale consideration and obtain the sale deed by paying the balance sale consideration of Rs.50,000/- on or before 06.05.2008, then the plaintiff, as the agreement holder, should have endeavoured in all manner to pay the abovesaid sum to the defendant within the agreed time. On the other hand, it is found that even as per the case of the defendant, she had paid a part of the balance sale consideration amounting to Rs.40,000/- on 13.12.2007 and it is found that with reference to the same, she had obtained the receipt from the defendant. The trial Court had accepted the abovesaid case of the plaintiff on the footing that the defendant has not specifically denied the receipt of Rs.40,000/- from the plaintiff on

13.12.2007. On the other hand, on a perusal of the written statement filed by the defendant, it is seen that the defendant has clearly averred that the further payment pleaded on the part of the plaintiff is a cock and bull story. Therefore, when the defendant has in toto disputed the alleged further payment of Rs.40,000/- as put forth by the plaintiff on 13.12.2007, it is for the plaintiff to establish that she had indeed paid the abovesaid sum to the defendant as pleaded by her. In this connection, the receipt dated 13.12.2007 has been marked as Ex.A2. However, when with reference to the abovesaid case of the plaintiff, there is no independent witness other than her husband PW1 and if really the plaintiff had paid a sum of Rs.40,000/- to the defendant, in the normal course, she would have endeavoured to perform the abovesaid task in the presence of an independent witness. On the other hand, to say that the abovesaid sum had been paid by the plaintiff to the defendant only in the presence of her husband, as such, cannot be believed and accepted. Furthermore, if really the abovesaid sum had been paid to the defendant, the plaintiff would have naturally obtained necessary endorsement with reference to the same in the sale agreement itself. Merely because, the defendant had not let in oral evidence repudiating the receipt marked as Ex.A2, on that ground, it cannot be held straightaway that the plaintiff has established the payment of Rs.40,000/- under Ex.A2 receipt. When with reference to the abovesaid payment, despite the denial of the same on the part of the defendant in toto, the plaintiff having not established the said case by acceptable and reliable evidence, accordingly, the trial Court is, in my considered opinion, found to have erred in upholding the abovesaid aspect of the plaintiff's case on the footing that the same had not been specifically controverted by the defendant in the written statement.

18.If really the plaintiff had been anxious and ready to go ahead with the sale agreement as contended by the defendant's counsel, the plaintiff would have endeavoured to pay the entire balance sale consideration either on 13.12.2007 or subsequent thereto immediately. On the other hand, when it is the case of the plaintiff that only a sum of Rs.50,000/- remain to be paid, to exhibit her readiness and willingness at least the plaintiff should have endeavoured to pay the entire balance sale consideration on 13.12.2007 and on the other hand, her case that she had endeavoured to pay only Rs.40,000/- on that date as such, does not inspire confidence. As abovenoted, even the abovesaid payment has not been established by the plaintiff by acceptable and reliable material.

19.According to the plaintiff, after the payment of Rs.40,000/- under Ex.A2, she is required only to pay Rs.10,000/- towards the balance sale consideration. It is put forth by her that though she had been ready to part with the said sum, the defendant did not come forward to receive the sum and execute the sale deed. It is also put forth that the defendant, without fulfilling his part of the contract, left India on account of his employment and that he had contacted the plaintiff over mobile phone and informed that he would return to India and execute the sale deed in favour of the plaintiff. The abovesaid case of the plaintiff has been stoutly repudiated by the defendant. In this connection, PW1, during the course of cross examination, has admitted that he does not remember the number of the defendant's mobile phone and further admitted that there is no proof to sustain that the defendant had contacted the plaintiff over mobile phone and he would also go to state that it is the plaintiff, who had contacted the defendant through his friends' cellphone and would also state that he does not know the name of the defendant's friend. Therefore, when PW1 is unable to sustain the case projected by the plaintiff as regards the alleged assurance given by the defendant over mobile phone with reference to the completion of the sale transaction on return to India, it is found that the abovesaid case of the plaintiff cannot at all be accepted in any manner. Therefore, the endeavour of the plaintiff that she has been always ready and willing to perform her part of the contract and it is only the defendant, who had been evading the same, as such, cannot be accepted in any manner.

20.According to the plaintiff, only a sum of Rs.10,000/- remained to be paid towards the sale price. As abovenoted, the plaintiff has agreed that the time stipulated under the sale agreement is the essence of the contract. If really the plaintiff had paid Rs.40,000/- on 13.12.2007 and had been ready to pay the further balance sum of Rs.10,000/- within the stipulated period and only the defendant had been avoiding the same, on noticing the abovesaid conduct of the defendant, the plaintiff would have endeavoured to send a communication to the defendant as per law calling upon him to receive the balance sale consideration and execute the sale deed. As regards the case of the plaintiff that the defendant left India on account of his employment without fulfilling his part of the contract, there is no convincing material as such. As abovenoted the case of the plaintiff that the defendant contacted the plaintiff over mobile phone and assured to execute the sale deed on return to India is also not fortified by acceptable and reliable materials.

21.Though the plaintiff would claim that she had sent the legal notice calling upon the defendant to receive the balance sum and execute the sale deed even before the stipulated period during the course of evidence, however, no material, as such pointing to the same, has been projected by the plaintiff. Therefore, it is seen that the plaintiff has projected falsely that she had sent the legal notice before the expiry of the stipulated period and on the other hand, it is seen that she had sent the legal notice belatedly after the expiry of the stipulated period i.e. only on 23.06.2009.

22. As such, it is found that the plaintiff had chosen to issue the advocate notice only on 23.06.2009 nearly one year after the expiry of the stipulated period calling upon the defendant to perform his part of the contract. The abovesaid notice has been marked as Ex.A3. The plaintiff would claim that the defendant had received the said notice and the acknowledgement card has been marked as Ex.A4. The defendant in the written statement has disputed the service of the pre-suit notice on him as alleged in the plaint. In such view of the matter, it is for the plaintiff to establish that Ex.A3 notice had been duly served upon the defendant. With reference to the same, the plaintiff would rely upon only the acknowledgement card alleged to have been received from the defendant marked as Ex.A4. However, PW1 during the course of cross examination has admitted that the defendant's signature is not available in Ex.A4, the acknowledgement Card and also would state that he does not know whose signature is available, which is found in blue colour in Ex.A4 acknowledged card. Therefore, when the acknowledged card projected by the plaintiff marked as Ex.A4 is admitted to be not containing the

defendant's signature and PW1 is unable to identify the author of the signature available in Ex.A4, in such view of the matter, to say that legal notice sent by the plaintiff had been acknowledged by the defendant, as such, cannot be accepted in any manner.

23.Be that as it may, as above noted, the legal notice had been issued by the plaintiff nearly one year after the expiry of the stipulated period. In the light of the above said factors, according to the defendant's counsel, assuming that the sale agreement put forth by the plaintiff is true, inasmuch as the plaintiff had not established her readiness and willingness to pay the balance sale consideration within the stipulated period or within a reasonable time thereafter and on the other hand, endeavoured to issue the legal notice itself nearly one year after the expiry of the stipulated period, on that basis alone, it is put forth that the plaintiff should be not granted the relief of specific performance. Therefore, according to him, the trial Court is justified in declining the relief of specific performance prayed for by the plaintiff on account of her failure to establish her readiness and willingness to perform her obligations under the contract within the stipulated period or within a reasonable time thereafter. In this connection, the defendant's counsel relied upon the decision of the Apex Court reported in ***2005 (5) CTC 800 (SC),(Aniglase Yohannan Vs. Ramlatha and others),*** wherein it has been held that the party seeking the benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The position of law has been outlined in the abovesaid decision is set out as follows:

> ***"Lord Campbell in Cork V.Ambergate, etc. and Railway Co., 1851 (117) ER 1229, observed that in common sense the meaning of such an averment of readiness and willingness must be that the non-completion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it had it not been renounced by the Defendant.***
>
> ***The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get***

the relief on perusal of the plaint he should not be denied the relief."

24.The abovesaid principles of law has been outlined by the Supreme Court in the decision reported in **2011 (4) CTC 640 (SC) (Saradamani Kandappan Vs. S.Rajalakshmi)** and the same is extracted below:

> ***"25.The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and `non-readiness'. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not***

because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for Rs.One lakh and received Rs.Ten Thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining Rs.Ninety Thousand, when the property value has risen to a crore of rupees.."

28. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam (supra) :

(i) Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser was `ready and willing' to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also `frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor

and possession has been delivered in part performance, where equity shifts in favour of the purchaser."

25.Further, the supreme court, holding that the compliance with the requirement of Section 16(c) is mandatory and in the absence of proof of the same, the plaintiff cannot succeed, in the judgment reported in ***2010 (7) SCC 717 (Laxman Tatyaba Kankate and another V. Taramati Harishchandra Ddhatrak)*** has outlined the position of law as follows:

"1. It will also be useful to refer to the provisions of Section 20 of the Act which vests the Court with a wide discretion either to decree the suit for specific performance or to decline the same. Reference in this regard can also be made to the case of Bal Krishna v. Bhagwan Das 2008 (12) SCC 145, where this Court held as under :-

13. ....The compliance with the requirement of Section 16(c) is mandatory and in the absence of proof of the same that the plaintiff has been ready and willing to perform his part of the contract suit cannot succeed. The first requirement is that he must aver in plaint

and thereafter prove those averments made in the plaint. The plaintiff's readiness and willingness must be in accordance with the terms of the agreement. The readiness and willingness of the plaintiff to perform the essential part of the contract would be required to be demonstrated by him from the institution of the suit till it is culminated into decree of the court.

14. It is also settled by various decisions of this Court that by virtue of Section 20 of the Act, the relief for specific performance lies in the discretion of the court and the court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the court would take into consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or

misrepresentation, can be granted if it would give an unfair advantage to the plaintiff and where the performance of the contract would involve some hardship on the defendant, which he did not foresee. In other words, the court's discretion to grant specific performance is not exercised if the contract is not equal and fair, although the contract is not void.

"Similar view was taken by this Court in the case of Mohammadia Cooperative Building Society Ltd. v. Lakshmi Srinivasa Cooperative Building Society Ltd. and Others, 2008 (7) SCC 310, where the Court reiterated the principle that jurisdiction of the Court to grant specific performance is discretionary and role of the plaintiff is one of the most important factor to be taken into consideration. We may also notice that in the case of P.V. Joseph's son Mathew v. N. Kuruvila's Son AIR 1987 SC 2328, this Court further cautioned that while exercising discretionary jurisdiction in terms of Section 20 of the Act, the Court should meticulously consider all facts and circumstances of the case. The Court is expected to take care to see that the

> ***process of the Court is not used as an instrument of oppression giving an unfair advantage to the plaintiff as opposed to the defendant in the suit."***

26.The same principles had also been outlined by the Supreme Court in the decision reported in ***2007 (6) MLJ 1505 (SC) (Banshilal Soni V. Kastoor Chand Begani)*** as follows:

> ***". . .if there was no demand or notice for nearly 20 months, after the execution of the sale agreement, it cannot be stated that the person was ready and willing to perform his part of the contract."***

27.The abvoesaid principles of law has also been considered and followed by this Court in the decision reported in ***2012 (4) CTC 100 (Pappammal @ T.Pappa Vs. P.Ramasamy).*** Reiterating the abovesaid position of law, the Division Bench of this Court in the decision reported in ***2018 (4) CTC 13 (S.Sarojini and another V. P.Mariappan and another)*** has explained the position of law with reference to the same and the same is extracted below:

> ***"Specific Relief Act, 1963 (47 of 1963), Section 16(c) – Specific***

Performance – Readiness and Willingness – Readiness and Willingness of Plaintiff to be continuous at all stages from date of Agreement till date of Decree in Suit – blemish less conduct throughout a sine qua non for grant of Decree of Specific Performance.

The law is now fairly well settled by means of a catena of decisions of the Hon'ble Supreme Court and this Court and also of various other High Court's that the readiness and willingness on the part of the Agreement-holder must be continuously shown at all stages right from the date of Agreement, till the date of Decree that is passed in the Suit. The conduct of the Agreement-holder must be blemish less through out to entitle him for the equitable relief of specific performance."

<u>Specific Relief Act, 1963 (47 of 1963), Section 20</u> – Decree of Specific Performance – Discretion of Court – Exercise of – Decree of Specific Performance not to be granted only because it is lawful to do so – plaintiff not

entitled to Decree, if same gives him undue advantage – Conduct of Plaintiff to be fair at all times – Discretion of Court to be exercised in light of sound and reasonable judicial principles.

In a Suit for Specific Performance, the Court has to keep in mind that the discretionary power vested in it is by virtue of Section 20 of the Specific Relief Act. It is now a well settled Principle of Law that the Court is not bound to grant Specific Performance merely because it is lawful to do so. The Court should meticulously consider all the facts and circumstances of the case and ensure that it is not used as an instrument of oppression to have an unfair advantage to the Plaintiff. Since the relief of Specific Performance is given exercising the Equity jurisdiction, the conduct of the plaintiff should be fair. The discretion that is exercised by the Court is not arbitrary but it is guided by sound and reasonable judicial principles."

28.Further, holding that the plaintiff would not be entitled to seek the relief of specific performance on account of the plaintiff's lethargy has been explained in the decision reported in ***2013 (3) MWN (Civil) 330 (P.Jaswant Kumar Vs. M.Rajashekar)*** and the same is extracted below:

> ***"SPECIFIC RELIEF ACT, 1963 (47 OF 1963), Section 16(c) – Suit for Specific Performance of Agreement of Sale – Plaintiff, whether ready and willing to perform his part of contract – Entire Sale consideration paid by plaintiff on date of Agreement itself – However, no steps taken by plaintiff to get Sale Deed executed – Notice sent by plaintiff to Defendant after four years had elapsed from date of Agreement – Suit for Specific Performance filed by plaintiff six years after Agreement of Sale was entered between parties – Attitude of Plaintiff, held, lethargic – Plaintiff in facts and circumstances of case, not entitled to relief of Specific Performance – Order of lower Courts decreeing Suit filed by Plaintiff, set aside – Appeal allowed."***

29.Therefore, considering the principles of law outlined in the abovesaid decisions as regards the readiness and willingness on the part of the plaintiff in performing her part of the contract for entitling her to obtain the discretionary and equitable relief of the specific performance and applying the same to the case at hand, when as above pointed out, the plaintiff has not established her readiness and willingness as such and as above pointed out, failed to establish the payment of Rs.40,000/- on 13.12.2007 as alleged by her and had endeavoured to issue the legal notice only on 23.06.2009 nearly one year after the stipulated period and also failed to establish that the legal notice had been duly acknowledged by the defendant, in such view of the matter, as contended by the defendant's counsel, it has to be held that when the plaintiff has miserably failed to establish her readiness and willingness continuously and throughout from the date of the agreement till the date of decree, the same would only disentitle her to obtain the equitable relief of specific performance as pointed out in the abovesaid decisions.

30.The plaintiff's counsel in support of his contention placed reliance upon the decision reported in (***1965) 2 SCR 221 (Mademsetty Satyanarayana Vs. G.Yelloji Rao and others)*** and the decision rendered by the Supreme Court ***dated 10.07.2019 in Civil Appeal No.2420/2018 (R.Lakshmikantham Vs. Devaraji).*** On a perusal of the abvoesaid decisions, it is found that in the case involved in the abovesaid decisions particularly, the decision of the Supreme Court dated ***10.07.2019 in Civil Appeal No.2420/2018 (R.Lakshmikantham Vs. Devaraji),*** in that case, it is found that considering the factor that the plaintiff had issued the legal notice immediately after the expiry of the stipulated period i.e. the sale agreement involved in that case coming into existence on 22.09.2002 fixing three months period for the completion of the sale transaction and the plaintiff in that case having established the issuance of the legal notice on 18.12.2002 and the subsequent notice on 19.12.2002 and finally another notice on 07.07.2003, accordingly, on that footing, it is found that the plaintiff having established his readiness and willingness, it is seen that the Apex Court in the abovesaid decision has held that merely on the factor of a short delay in the filing the suit, that cannot be held against the plaintiff for holding that he was not ready and willing and accordingly, relying upon the decision of the Apex Court reported in ***AIR 1965 SC 1405 (Mademsetty Satyanarayana Vs. G.Yelloji Rao and others)*** above referred to, held that the plaintiff in that case is entitled to obtain the relief of specific performance. However, as rightly contended by the defendant's counsel, when as far as the case at hand is considered, when the plaintiff has failed to establish that she has been ready and willing to pay the balance sale consideration within the stipulated period and had also failed to establish the payment of Rs.40,000/- on 13.12.2007 and in that regard, other than the ***ipsi dixit*** testimony of her husband PW1, there is no other independent material pointing to the same and thereafter, had chosen to issue the legal notice only on 23.06.2009 nearly one year after the expiry of the stipulated period and also failed to establish the acknowledgement of the receipt of the legal notice, in the abovesaid scenario, it is found that there is complete absence of readiness and willingness on the part of the plaintiff and the readiness and willingness on the part of the plaintiff being the ***sine qua non*** factor for entitling her to seek and obtain the relief of specific performance as pointed out by the Apex Court in the decisions relied upon by the defendant's counsel, in all, it has to be held that the plaintiff has failed to establish her readiness and willingness to perform her part of the contract and on that ground, it has been held that the plaintiff is not entitled to obtain the relief of specific performance as prayed for.

31.In the light of the abovesaid discussions, I hold that though the sale agreement dated 07.06.2007 Ex.A1 is true and valid, however, I hold that the plaintiff has failed to establish that she has paid a sum of Rs.40,000/- to the defendant towards the balance sale consideration on 13.12.2007 as claimed by her and I further hold that the plaintiff has failed to establish her readiness and willingness in performing her part of the contract and therefore, hold that, as determined by the trial Court, the plaintiff is not entitled to obtain the relief of specific performance in respect of the sale agreement dated 07.06.2007. Accordingly, the point Nos.1 to 4 are answered.

32.**Point Nos.5 & 6**

In the light of the abovesaid discussions, the judgment and decree dated 26.02.2013 passed in O.S.No.2 of 2010 on the file of the District Court, Karaikal, declining the relief of specific performance as prayed for by the plaintiff are confirmed and further, the judgment and decree of the trial Court are modified and in the alternative, I hold that the plaintiff is entitled to receive a sum of Rs.2,00,000/- only with interest at 12% from the date of the agreement till the date of the plaint and thereafter, at 6% per annum from the date of the plaint till realisation with proportionate costs. Accordingly, the first appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No
sms

03.01.2020

To
The District Court, Karaikal.

Copy to

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

A.S.No.478 of 2013

T.RAVINDRAN, J.

sms

Pre-delivery Judgment made in A.S.No.478 of 2013

03.01.2020

Pre-delivery Judgment made in A.S.No.478 of 2013

To
The Hon'ble Mr.Justice T.RAVINDRAN

Most respectfully submitted
sms
P.A.to the Hon'ble Judges.