



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2020  
(Reserved on 13.11.2019)

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

Appeal Suit(MD)No.80 of 2013

C.Anwar Ali ... Appellant/Plaintiff

vs.

T.Ramani Gopal ... Respondent/Defendant

Appeal Suit filed under Section 96 of the Civil Procedure Code, against the judgment and decree passed in O.S.No.100 of 2008 dated 17.02.2011 on the file of the 1<sup>st</sup> Additional District Judge, Madurai.

For Appellant : Mr.M.Vallinayagam, Senior Counsel  
for Mr.V.Meenakshi Sundaram

For Respondent : Mr.T.Ramani Gopal/party in person

**JUDGMENT**

This Appeal Suit has been filed against the judgment and decree passed in O.S.No.100 of 2008 dated 17.02.2011 on the file of the 1<sup>st</sup> Additional District Judge, Madurai.

For convenience, the parties are referred to as per their rank in the suit.

2.The case of the plaintiff is that the defendant is the owner of the property in S.Nos.129/3, 129/2 and 127/3 measuring 14 acres and 30 cents situated at Ambalakaranpatti Village, Melur Taluk, Madurai District and he offered to sell the same to the plaintiff for a total sale consideration of Rs.24,52,540/- at the rate of Rs.1715/- per cent and the same was reduced into writing by an agreement for sale dated 02.07.2007 and the period of three months was fixed from 02.07.2007 for executing the sale deed. As per the above agreement, the defendant received consideration of Rs.4,00,000/- as advance from the plaintiff and within three months, it was agreed to pay the balance consideration by the plaintiff. Since there was a doubt about the actual measurement of the above property, it was agreed between the parties that within the said period, the defendant has to measure the property with the help of a



competent surveyor by laying survey stones in the presence of the plaintiff and a detailed survey sketch has to be prepared and then the plaintiff has to pay the balance consideration for executing the sale deed. According to the plaintiff, the defendant without measuring the property in his presence, sent a telegram to the plaintiff stating that the said property had been measured on 29.09.2007 and asked him to perform his part of the contract, for which, the plaintiff sent a reply notice through his advocate on 12.10.2007 stating that survey was not done in his presence. The defendant in turn sent reply notice on 24.10.2007 with false allegations and hence the plaintiff sent a rejoinder notice on 05.11.2007, for which, the defendant replied on 14.11.2007. The defence of the defendant was that time is the essence of the contract as it was expired, the advance amount already paid is forfeited. Thereafter, the plaintiff requested the defendant to receive the balance sale consideration and to execute the sale deed, but the defendant refused to do so. Hence, the plaintiff has filed the present suit for specific performance by directing the defendant to comply with the terms of agreement for sale dated 02.07.2007 and to execute the sale deed by receiving the balance sale consideration.

3.The defendant filed written statement contending that the sale agreement was reduced into writing on 03.07.2007 and not on 02.07.2007 as alleged by the plaintiff and it was not stated in the agreement that detailed survey sketch has to be prepared after measurement. The only condition to be performed by the defendant is to measure the suit property with the help of a Surveyor and to fix boundaries. There is no clause in the agreement that the defendant has to show original documents to the plaintiff before execution of the sale deed. The legal notices issued by the plaintiff would go to show that he is not willing to perform his part of contract. According to the defendant, the parties are bound by the terms of the agreement for sale and not by the terms and conditions put forth in the legal notices. As the plaintiff did not avail the opportunity given by the defendant in the reply notices dated 23.10.2007 and 14.11.2007, he lost the advance amount and the agreement stood cancelled. The defendant would also state that the plaintiff has no source to mobilise the funds for paying the balance sale consideration. Thus, he prayed for dismissal of the suit.

4.Before the trial Court, the plaintiff examined himself as PW1 and marked Exs.A2 to A9. The defendant examined himself as DW1 and marked Exs.B1 to B22. The trial Court considering the oral and documentary evidence on either side, dismissed the suit by judgment and decree dated 17.02.2011, holding that the plaintiff was not at all ready and willing to perform his part of contract at any point of time, though the defendant was able to perform his part. Aggrieved by the dismissal of the suit, the unsuccessful plaintiff has filed this Appeal Suit.

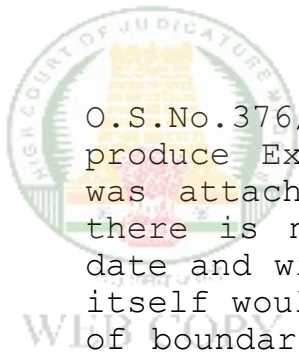


5.Learned Senior Counsel appearing for the appellant would contend that when the factum of measurement of the suit property by a competent Surveyor and demarcating the boundaries in the presence of the plaintiff as per the sale agreement, was not proved by examining the Surveyor, the trial Court ought to have decreed the suit. Further, Ex.B5-diary of the Surveyor marked to prove the factum of measurement, cannot be looked into unless its author is examined. He would further contend that there is no forfeiture clause in the sale agreement, as such, time is not the essence of the contract. When the defendant himself admitted execution of Ex.A1, the trial Court ought not to have ventured upon the date of its execution. The finding of the trial Court that the plaintiff was not ready and willing to perform his part on the ground that he has put new terms and conditions in the legal notice is not correct as those conditions are statutory obligations to be satisfied by the vendor before executing sale deed.

6.Adding further, learned Senior Counsel would contend that the defendant deliberately not disclosed the pendency of O.S.No.376/2006 filed by one Kaleeswari with whom original title deed in respect of one of the suit items is available and therefore, the request of the plaintiff in his legal notices seeking production of the original title deed, encumbrance certificate, survey sketch and income-tax clearance certificate cannot be said to be the new terms and conditions. When there is no evidence to show that the plaintiff has no means to make balance sale consideration, the trial Court ought not to have held that he is not ready and willing to complete the sale. In support of his contentions, learned Senior Counsel would rely on the judgments reported in (2018) 1 MLJ 257, Chakravarthy vs. Jayaraman and 2018 (3) MWN (Civil) 405, V.Indirani vs.P.R.Balakrishnan. Thus, he would pray for setting aside the judgment and decree of the trial Court.

7.The respondent appeared in person and filed detailed counter. He would state among other things that only to discharge his loan under O.S.No.376/2006 and to avoid seizure of the suit property, he entered into the agreement of sale with the plaintiff and therefore would state that time is the essence of contract, that is why, the sale agreement contained the forfeiture clause. When the plaintiff did not perform his part of contract in time, the defendant gave additional time to perform his part, but the plaintiff failed to avail the same and sent legal notice introducing new terms and conditions and insisted upon the defendant to hand over original title deeds of the suit properties to him without even making balance consideration. He would further state that the plaintiff has no means to complete the sale and he was unable to mobilise funds to pay the court fee and therefore, the present suit was filed after eight months.

8.The party in person would further contend that the plaintiff  
<https://hcservices.ecolm.gov.in/hcservices/> negates the allegation that the suit property was attached in



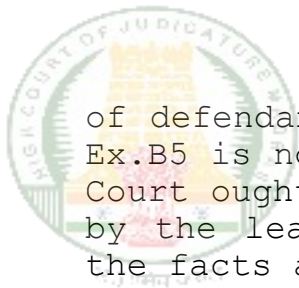
O.S.No.376/2006 without any proof, whereas, the defendant would produce Ex.B3-encumbrance certificate to prove that neither there was attachment nor encumbrance over the suit property. Further, there is no explanation by the plaintiff as to the difference in date and witnesses between Ex.A1 and Ex.B1-sale agreements and Ex.B5 itself would clearly prove the factum of measurement and demarcation of boundaries of the suit property by the Surveyor in the presence of the plaintiff. Thus, he would state that the trial Court has rightly decreed the suit and therefore, the interference of this Court is not necessary.

9.Heard the learned counsel for the appellant as well as the learned counsel for the respondent.

10.Perusal of record shows that the defendant admitted the execution of Ex.A1-sale agreement and receipt of Rs.4,00,000/- as advance amount from the plaintiff and it was mutually agreed between the parties to measure the suit property by the defendant within three months. The recital in Ex.A1 shows that the defendant has to show the measurements to the plaintiff and fix boundaries, that means, he has to make measurements in the presence of the plaintiff. The defendant in his evidence would state that adjacent land owners were issued with notices about the measurement of the suit property by the Surveyor in Ex.B5, whereas, he would admit that no notice was sent to the plaintiff regarding the measurement and would state that he directly met the plaintiff and informed about the same, which was repudiated by the plaintiff in his evidence stating that the defendant sent a telegram dated 06.10.2007 falsely stating that he had shown measurements to the plaintiff. It is also the evidence of the defendant that he did not obtain any certificate from the Surveyor for the alleged measurement. Thereafter, there was exchange of notices between the plaintiff and the defendant making allegations and counter allegations and there was also police complaint. It is a common knowledge that parties to the agreement are bound by its terms and therefore, this Court need not venture into the allegations and counter allegations levelled between the parties by way of notices and complaints.

11.Now the only question to be decided is whether the defendant measured the suit property by the Surveyor in the presence of the plaintiff or not.

12.Perusal of record shows that the defendant marked Ex.B5 which is a diary of the Surveyor to prove that he completed his part of contract by measuring the suit property, whereas, at Column No.23 to Ex.B5 shows that the measurement is not completed and further, the defendant did not choose to examine the Surveyor who alleged to have measured the suit properties in the presence of the plaintiff. If that is done, truth would have come to light. It is well settled that unless the author of the document is examined to prove its genuineness, the document cannot be relied upon. Thus the contention



of defendant that he performed his part of contract by relying upon Ex.B5 is not proved. Therefore, in my considered opinion, the trial Court ought not to have dismissed the suit. The judgments relied on by the learned Senior Counsel for the appellant are applicable to the facts and circumstances of the present case.

13. Accordingly, judgment and decree passed by the trial Court in O.S.No.100 of 2008 dated 17.02.2011, is set aside and the suit is decreed as prayed for. The respondent is directed to comply with the terms of agreement for sale dated 02.07.2007 and thereafter execute the sale deed in favour of the plaintiff after receiving balance sale consideration of Rs.20,52,450/- from the plaintiff. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this judgment.

With the above direction, Appeal Suit is allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The 1<sup>st</sup> Additional District Judge,  
Madurai.

Copy to:  
The Section Officer, (2 Copies)  
VR Section,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.T.RAMANIGOPAL, Advocate ( SR-2785[F] dated 24/01/2020 )

+1 CC to M/s.D.NALLATHAMBI, Advocate ( SR-3065[F] dated 27/01/2020 )

JUDGMENT MADE IN  
A.S(MD)No.80 of 2013  
DATED : 24.01.2020

JMN(12.02.2020) 5P : 6C