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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :03.03.2021

PRONOUNCED ON:18.03.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.528 of 2009

and

M.P.No.1 of 2009

K.Varatharaj,
Son of Kuppana Gounder,
Gangapuram,
Erode Taluk.

... Appellant/1st Respondent/Plaintiff

Vs.

1. Thulasimani,
S/o, Thangamuthu Gounder,
Kummakalipalayam,
Vadamugham Vellode Post,
Perundurai Taluk.

2. Soundaram,
W/o, Duraisamy,
Velliangattu Thottam,
Koonampatti,
Vadamugham Vellode Post,
Perundurai Taluk.

3. Chinnammal,
Wife of Kumarasamy,
Kangapuram,
Kangapuram Village,
Erode Taluk.

4. Annakodi,
Wife of Periyana Gounder,
Kangapuram,
Kangapuram Village,
Erode Taluk.



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5. Mallika,
Wife of Thulasimani,
Koonampatti,
Vadamugham Vellode Village,
Perundurai Taluk.

[Notice dispensed with for
Respondents 2 to 5 in the lower
appellate court and Hence
notice is dispensed with in the
second appeal also]

... Respondents/Respondents 2 to 5/Defendants 3 to 6

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Learned Principal District Judge, Erode, in A.S.No.64 of 2008 dated 12.12.2008 reversing the judgment and decree of the Learned Principal Subordinate Judge, Erode in O.S.No.579 of 1998 dated 22.11.2007.

For Appellant : Mr.A.K.Kumarasamy, SC
for M/s.Kaithamalai Kumaran

For R1 & R5 : Mr.N.Manokaran

R2 to R4 : Given up

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 12.12.2008 passed in A.S.No.64 of 2008 on the file of the Principal District Court, Erode, reversing the judgment and decree dated 22.11.2007 passed in O.S.No.579 of 1998 on the file of the Principal Subordinate Court, Erode.

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

3. The plaintiff in O.S.No.579 of 1998 is the appellant in this second appeal.

4. Suit for specific performance or for the alternative relief of the recovery of the advance amount with interest, by creating the charge over the suit property.



WEB COURT

5. Briefly stated, the case of the plaintiff is that the suit property belonged to the first defendant and the first defendant agreed to convey the suit property to the plaintiff for a sum of Rs.2,00,000/- and the plaintiff having agreed to purchase the same for the abovesaid consideration, the parties entered into the written agreement of sale on 28.03.1998 and a sum of Rs.1,00,000/- was given by the plaintiff to the first defendant on the date of the sale agreement and it was agreed that a balance sum of Rs.50,000/- should be paid by the plaintiff within three months from the date of sale agreement and the time fixed for the completion of the sale agreement is five months from the date of the sale agreement with usual default clauses and the plaintiff has been always ready and willing to pay the balance sale consideration and to obtain the sale deed. The plaintiff paid Rs.50,000/- on 04.06.1998 and in evidence of the same, the first defendant has acknowledged the receipt of the said amount on the reverse side of the sale agreement and thereafter, the plaintiff had been requesting the first defendant to receive the balance sale consideration and to execute the sale deed, however the first defendant had been evading to execute the sale deed on some pretext or the other by giving false promises and also endeavored to alienate the suit property to third parties and hence the plaintiff gave a publication in the newspaper by giving details of the sale agreement dated 28.03.1998 and warning to the intended purchasers of the suit property. Subsequent there to, the second defendant has caused a publication in the newspaper stating that he had purchased the suit property on 16.06.1998 from the first defendant for a valid consideration and the abovesaid case of the second defendant is not true and false and the second defendant is the son-in-law of the first defendant and he is fully aware of the sale agreement dated 28.03.1998 and the defendants 1 and 2 have colluded and brought about the sale deed dated 16.06.1998 with ulterior motive to cheat the plaintiff and deprive the rights of the plaintiff and the sale deed dated 16.06.1998 is not true, valid and binding on the plaintiff. Hence the plaintiff issued the legal notice dated 12.08.1998 to the defendants to come forward and execute the sale deed and to the same, only the second defendant sent a reply containing false allegations and hence according to the plaintiff, he has been necessitated to institute the suit against the defendants for appropriate reliefs. Pending suit, the first defendant had died and his LRs had been brought on



record and prayed for the disposal of the suit in his favour.

6. The second defendant resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and according to him, the sale agreement dated 28.03.1998 is a fabricated document and putforth the case that the value of the suit property has been inflated to give a colour of reality to the suit agreement and contended that that it is false to state that a sum of Rs.1,00,000/- was paid by the plaintiff to the first defendant on the date of the sale agreement and further the plaintiff had paid a sum of Rs.50,000/- on 04.06.1998 and obtained the endorsement of the first defendant and according to the second defendant, all the abovesaid pleas are totally false and according to him, he had purchased the suit property on 16.06.1998 from the first defendant and he had sold the property to discharge the debts and though the plaintiff is claiming to have entered into the sale agreement for an extent of 2 acres and 4 cents in the suit survey number, he has filed the suit seeking the relief of specific performance for 2 acres and 39 cents and even without knowing the correct extent of the suit property, the case has been falsely projected by the plaintiff that he had agreed to purchase the same under the suit agreement and the second defendant refuted the publication caused by the plaintiff in the newspaper on 11.07.1998 by way of issuing a publication on 15.07.1998 and to the notice sent by the plaintiff, a proper reply has been given by the second defendant and according to the second defendant, the case has been falsely laid by the plaintiff in collusion with the first defendant and in any event, the second defendant is a bonafide purchaser for the value without notice of the suit agreement and the plaintiff has come forward with the false pleas and not entitled to seek any of the reliefs as claimed in the plaint and prayed for the dismissal of the plaintiff's suit.

7. In support of the plaintiff's case, P.Ws.1 to 5 were examined. Exs.A1 to A8 were marked. On the side of the second defendant, D.Ws.1 to 5 were examined. Exs.B1 to B20 were marked. Exs.X1 and X2 were also marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to grant the reliefs of



specific performance in favour of the plaintiff and rejected his alternative plea and accordingly disposed of the plaintiff's suit. Impugning the same, the second defendant preferred the first appeal. The first appellate court on an appreciation of the materials placed on record, both oral and documentary and the submissions put forth by the respective parties, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the second defendant, dismissed the plaintiff's suit. Challenging the same, the second appeal has been laid.

9. At the time of admission of the second appeal the following substantial question of law was formulated for consideration.

Whether the second defendant is entitled to challenge Ex.A1 when the first defendant did not challenge the agreement of sale executed by him?

10. The substantial question of law formulated in the second appeal is whether the second defendant is entitled to challenge the sale agreement Ex.A1 when the first defendant did not challenge the agreement of sale executed by him. The suit has been laid by the plaintiff claiming the relief of specific performance on the basis of the sale agreement Ex.A1 said to have been executed in his favour by the first defendant qua the suit property. The first defendant had not contested the plaintiff's suit and remained exparte. It is only the second defendant, who had been all along contesting the plaintiff's suit by putting forth the defence version that the sale agreement Ex.A1 is not true, valid and binding on him and that he had purchased the suit property from the first defendant on 16.06.1998 by way of a registered sale deed marked as Ex.B6 and according to the second defendant, Ex.A1 sale agreement is a fabricated document created at the instance of the plaintiff and the first defendant and also put forth the case that in any event, he is the bonafide purchaser for value without notice and accordingly prayed for the dismissal of the plaintiff's suit. As far as the substantial question of law formulated in the second appeal, the same could be answered by holding that the second defendant, being the subsequent purchaser, is also entitled to challenge the sale agreement by contending that the sale agreement is not a valid and true document and that the



plaintiff is not ready and willing to perform his part of the contract and also that he is the bonafide purchaser for value without notice and the abovesaid position of law has been outlined by the Apex Court in the decision reported in 2018 (11) SCC 761 [B.Vijaya Bharathi Vs. P.Savitri and others] as follows:

Contract and Specific Relief - Specific Relief Act, 1963 - Ss.16(c) and 19(b) - Absence of readiness and willingness to perform plaintiff vendee's part of agreement for sale of immovable property - Reiterated, said defence is also available to subsequent purchasers, and if such plaintiff vendee cannot establish that it was ready and willing to perform, fact that subsequent purchasers may not be bona fide purchasers would not come in the way of stating that suit for specific performance must be dismissed at the threshold because of lack of readiness and willingness, which is a basic condition for the grant of specific performance.

Held:

The first defendant ran away from the Registering Authority making it clear that she did not want to act in furtherance of the Agreement in executing a General Power of Attorney in favour of the plaintiff's husband. There was no conveyance in favour of the plaintiff. Defendant 1 then sold the property to Defendant 2 and Defendant 2 in turn sold it to Defendant 3. However, no prudent person would stay quiet for a period of one year and eleven months after such an unequivocal repudiation of the agreement if they were really interested in going ahead with the sale transaction. The only inference, therefore, from this is that the plaintiff cannot possibly be said to be ready and willing throughout to perform their part of the agreement.

Further, though aware of two conveyances of the same property, the plaintiff did not ask for their cancellation. This again, would stand in the way of a decree of specific performance for unless the sale made by Defendant 1 to Defendant No.2, and thereafter by Defendant 2 to Defendant 3 are set aside, no decree



for specific performance could possibly follow. The High Court was clearly right in finding that the bar of [Section 16\(c\)](#) was squarely attracted on the facts of the present case, and that therefore, the fact that Defendants 2 and 3 may not be bona fide purchasers would not come in the way of stating that such suit must be dismissed at the threshold because of lack of readiness and willingness, which is a basic condition for the grant of specific performance.

The obligation imposed by Section 16 is upon the Court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a), (b) and (c) thereof. A court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another.

It is open to any defendant to contend and establish that the mandatory requirement of [Section 16\(c\)](#) has not been complied with and it is for the Court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit.

11. The abovesaid position of law has also been reiterated by the Apex Court in the recent decision rendered by it dated 16.02.2021 in Civil Appeal No.543 of 2021 [Kadupugotla Varalakshmi Vs. Vudagiri Venkata Rao and others] and following the decision reported in 2000 (2) SCC 428 [Ram Awadh (Dead) by Lrs and Others Vs. Achhaibar Dubey and Another] held that even the subsequent purchaser is entitled to contend that the plaintiff is not entitled to seek and obtain the relief of specific performance on various grounds and the position of law enunciated by the Apex Court in the abovesaid case is extracted below:

" The submissions advanced on behalf of the appellant i.e., subsequent purchaser were not taken into account on the premise that it would not be open to a subsequent purchaser to



challenge the readiness and willingness on part of the plaintiff. The High Court had relied upon the decision of this Court rendered in Jugraj Singh and Another Vs. Labh Singh and Others [(1995) 2 SCC 31] to come to such conclusion.

It must be stated here that the principles laid down in Jugraj Singh and Another (supra) were not accepted by a larger Bench of this Court. The relevant discussion in paragraph 6 in the case of Ram Awadh (Dead) by Lrs and Others Vs. Achhaibar Dubey and Another [(2000) 2 SCC 428] was as under:

"6. The obligation imposed by section 16 is upon the court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a), (b) and (c) thereof. A Court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore no question of the plea being available to one defendant and not another. It is open to any defendant to contend and establish that he mandatory requirement of Section 16(c) has not been complied with and it is for the court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. We are of the view that the decision in Jugraj Singh case [(1995) 2 SCC 31] is erroneous."

12. Resultantly the Apex Court after holding that the High Court fell in error in holding that the subsequent purchaser is not entitled to raise any submission on the issue of readiness and willingness, remit the matter back to the High Court for a fresh consideration of the case on merits.

13. Inasmuch as, according to the second defendant, the suit agreement is a false and fabricated record created by the plaintiff and in collusion with the first defendant and when further according to him, he had purchased the suit property from the first defendant under the Ex.B6 sale deed merely because, the first defendant had remained exparte, it cannot be held that the second defendant is disentitled to raise the pleas



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open to him as per law in challenging the plaintiff's case by contending that the suit agreement is a fabricated record and that the plaintiff is not ready and willing to perform his part of the contract and that the plaintiff is not entitled to seek the equitable and discretionary relief of specific performance.

14. Considering the materials available on record, at the foremost, when it is found that the suit agreement is only entered into between the plaintiff and the first defendant for 2 acres and 4 cents, however, the plaintiff having come forward with the suit seeking for the relief of specific performance for 2 acres and 39 cents, when the plaintiff has not even endeavored to amend the plaint suitably, despite having gathered knowledge that the plaintiff and the first defendant intended to enter into a agreement of sale for 2 acres and 39 cents, the plaintiff cannot be allowed to bases his case on the footing that as the boundaries prevail over the extent, despite the position that the agreement covers only two acres and 4 cents, he is entitled to seek the relief for the entire 2 acres and 39 cents. When the plaintiff is fully aware of the discrepancy in the extent of the subject matter covered in the sale agreement, the plaintiff should have taken steps to amend the plaint as per law and despite the abovesaid position, the plaintiff having not endeavored to amend the plaint by giving the correct description of the suit property and thus as contended by the defendants' counsel, as the plaintiff and the first defendant had not entered into a valid agreement for 2 acres and 39 cents and the plaintiff without knowing the actual extent of the suit property, he having entered into the agreement only for a lesser extent and even after coming to know of the same, the plaintiff having not chosen to amend the plaint as per law, in my considered opinion, the discretionary and equitable relief of specific performance cannot be extended in favour of the plaintiff.

15. On a perusal of the sale agreement Ex.A1, it is found that the same is engrossed on a 10 rupees stamp paper purchased from the stamp vendor R.Ramasamy at Karur. As per the endorsement available in the stamp paper, it is found to have been sold on 19.03.1998 to one Nallathambi Gounder residing at Koonampatti. Contending that the abovesaid stamp paper is antedated and to establish his case, the second defendant had produced Exs.X1 and X2 being the registers summoned from the



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District Registrar, Karur. It is found that as per Ex.X2, there is no entry that the stamp paper in serial No.2923 was sold on 19.03.1998 to one Nalla Thambi and the serial number found in the stamp paper of Ex.A1 is 2923. But as per the evidence of P.W.1, the plaintiff during the cross examination, the first defendant purchased the stamp paper at Perunthurai. Therefore, as rightly concluded by the first appellate court, when the burden is heavy upon the plaintiff to establish the authenticity of the sale agreement, particularly, when the second defendant has thrown a challenge that the sale agreement is not a true and valid document and when as per the available records, the stamp paper bearing serial No.2923 is not sold to Nallathambi on 19.03.1998 by the stamp vendor R.Ramasamy and on the other hand, the stamp paper bearing serial No.2923 was sold to one K.Velusamy on 20.03.1998, the case projected by the plaintiff that the first defendant had purchased the stamp paper at Karur on 19.03.1998 on which the sale agreement has been engrossed cannot at all be believed and accepted and when according to the plaintiff, he is directly not aware of the purchase of the stamp paper for the sale agreement and when it is seen that the abovesaid factors would go to show that as the sale agreement had been concocted by the plaintiff one way or the other, the discrepancy having occurred even with reference to the truth and validity of the stamp paper on which the sale agreement had been engrossed and the abovesaid factors having not been explained by the plaintiff in the proper perspective and in an acceptable manner, the first appellate court is found to be justified in disbelieving the genuineness of Ex.A1 sale agreement on the abovesaid grounds.

16. The plaintiff being a resident of Gangapuram village and the suit property located 25Km away from his village, ie., at Vellode village and when according to the plaintiff, he has not perused the title deeds of the vendor ie., the first defendant or the encumbrance certificate relating to the suit property before entering into the sale agreement and when as above pointed out, the plaintiff without any verification of the lie of the suit property, the title of the suit property, the extent of the suit property, particularly, he having chosen to go for the sale agreement for an extent of 2 acres and 4 cents and on the other hand, he having come forward with the relief of specific performance for the extent of 2 acres and 39 cents, all these would only go to point out that, inasmuch as, the sale



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agreement had been brought about falsely by way of fabrication, the plaintiff had not even ventured to verify the title of the first defendant qua the suit property and the abovesaid factors has been rightly taken into consideration by the first appellate court for declining the relief of specific performance, on the footing that the abovesaid factors undermine the truth and validity of the sale agreement Ex.A1. As regards the evidence of the attesor examined as P.W.2, when P.W.2 is also not aware of the purchase of the stamp paper on which Ex.A1 had been engrossed and when he had admitted the extent of the suit property in Ex.A1 is only 2 acres and 4 cents and when further admitted that the scribe has not signed in Ex.A1 and when from the materials placed on record, the concerned scribe had been suspended for misconduct, it is found that the first appellate court is justified in not accepting the evidence of P.W.2 for upholding the truth and validity of the sale agreement Ex.A1.

17. When the very basis of the truth and validity of the sale agreement Ex.A1 has not been established by the plaintiff, particularly qua the purchase of the stamp papers used for the same, the extent of the property covered in the sale agreement and the failure of the plaintiff to verify the title of the first defendant qua the suit property prior to the sale agreement, in such view of the matter, the case of the plaintiff that he had paid Rs.1,00,000/- as advance on the date of the sale agreement cannot at all be believed and has been rightly rejected by the first appellate court. Equally, the first appellate court is also found to be justified in not placing reliance upon the evidence of the attesor P.W.4 qua the payment of Rs.50,000/- as further sale price based on the endorsement marked as Ex.A7. The reasons given by the first appellate court for not accepting the evidence of P.W.4 are not shown to be unacceptable and unreliable.

18. The plaintiff would claim that he has been always ready and willing to pay the balance sale consideration and obtain the sale deed. However, considering the conduct of the plaintiff, there is no explanation on the part of the plaintiff as to why he has not endeavored to deposit the balance sale consideration in the court amounting to Rs.50,000/-. Furthermore, when it is found that the plaint had been presented by the plaintiff with deficit court fees and only on representation, necessary court fees had been paid by the



plaintiff, the abovesaid conduct of the plaintiff has been rightly taken into account by the first appellate court in holding that he was not having the sufficient means to perform his part of the contract and accordingly not ready and willing to pay the sale consideration required to be paid by him under the alleged sale agreement and on that ground also rightly determined that the plaintiff is not entitled to secure the equitable and discretionary relief of specific performance.

19. Considering the evidence adduced by the second defendant, both oral and documentary, it is found that the second defendant had purchased the suit property from the first defendant and the first defendant had chosen to alienate the suit property to the second defendant only for discharging his debts and when there is no material on the part of the plaintiff that the second defendant was aware of the alleged sale agreement Ex.A1 prior to Ex.B6 sale deed, merely because, the second defendant is the son-in-law of the first defendant that by itself could not be sufficient to hold that the second defendant had prior knowledge of the sale agreement Ex.A1.

20. In any event, as above pointed out, the plaintiff has not established that the sale agreement Ex.A1 is a true and valid document and the same had been really executed by the first defendant in his favour agreeing to convey the extent of 2 acres and 39 cents and when as above pointed out, the extent covered in the sale agreement is incorrect, the truth and validity of the stamp papers on which the sale agreement Ex.A1 has been engrossed has not been established by the plaintiff, and when the evidence of the attestors P.W.2 and P.W.4 are found to be not satisfactory and trustworthy and when the plaintiff has failed to establish his readiness and willingness, all put together, the first appellate court, considering the principles of law enunciated by the Apex Court and our High Court in the various decisions as referred to in the judgment, was justified in rejecting the plaintiff's case. As rightly concluded by the first appellate court, the trial court appears to have shift the burden on the second defendant and thereby erroneously proceeded to grant the relief of specific performance in favour of the plaintiff.

21. In support of his contentions, the second defendant's counsel placed reliance upon the decisions reported in



1. 2013 (15) SCC 27 [I.S.Sikandar (dead) By LRs Vs. K.Subramani and others]
2. 2007(9) SCC 660 [M.M.S.Investments, Madurai and Others Vs. Veerapan and others]
3. 2018 (11) SCC 761 [B.Vijaya Bharathi Vs. P.Savtri and others]
4. 2008 (3) MLJ 638 [P.Retneswamy Vs.A.Raja and another]
5. 2001 (6) SCC 600 [A.C.Arualappan Vs. Athalya Naik]
6. 2013(4) SCC 546 [Garre Mallikharjuna Rao (dead) by LRs and others Vs. Nalabothu Punniiah]
7. 2013 (5) MLJ 667 [T.Raman and another Vs. A.Devaraj & Another]
8. 2011(2) CTC 1 (FB) [Latif Estate Line India Ltd., Vs. 1. Hadeeja Ammal and others]

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

22. For the reasons aforesaid, the substantial question of law formulated in the second appeal is accordingly answered against the plaintiff and in favour of the defendants.

23. In conclusion, the judgment and decree dated 12.12.2008 passed in A.S.No.64 of 2008 on the file of the Principal District Court, Erode, reversing the judgment and decree dated 22.11.2007 passed in O.S.No.579 of 1998 on the file of the Principal Subordinate Court, Erode are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

mfa

To

1. The Principal District Judge,
Principal District Court,
Erode.



2.The Principal Subordinate Judge,
Principal Subordinate Court,
Erode.

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+1CC to Mr.S.Kaithamalai Kumaran, Advocate, SR.No. 17802

+1CC to Mr.N.Manokaran, Advocate, SR.No.17858

S.A.No.528 of 2009

and

M.P.No.1 of 2009

NRL(CO)

B.VC (16/09/2021)