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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

SA NO.398 OF 2012
AND MP NO.1 OF 2012

Marimuthu Ammal (Died)

A.Nagarajan

...Appellant/Appellant/1st Defendant

Vs.

1.A.Venkatesan

P.Sando Murthy (Died)

...Respondent/1st Respondent/Plaintiff

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 09.08.2011 passed by the learned Additional District Judge, Fast Track Court No.II, Poonamallee, in A.S.No.27 of 2010 in confirming the judgment and decree dated 30.09.2002 passed by the learned Subordinate Judge, Poonamallee, in O.S.No.25 of 1991.

For Appellant	:	Mr.T.Karunakaran
For Respondent	:	Mr.J.Kalidas

J U D G M E N T

Challenging the concurrent findings of the Courts below, the defendant has preferred the above Second Appeal.

2.For the sake of convenience, the parties are called with respect to their status in the Suit.

3.The brief facts leading to the case is as follows:

The first respondent / plaintiff had entered into an agreement of sale of property situated in S.No.68/1B-2 in Nandambakkam Village, measuring an extent of 0.03 Cents by way of an unregistered Sale Agreement dated 15.12.1989. The total sale consideration was fixed as Rs.40,000/- and the plaintiff has paid a sum of Rs.16,005/- on 15.12.1989 agreeing to pay the balance amount of Rs.23,995/- within a period of three months



and get the Sale Deed executed. According to the plaintiff, he was put in possession. However, the second defendant in the Suit created problem by claiming title to the Suit property and he made illegal attempts to dispossess the plaintiff on 15.12.1989 and 28.12.1989. In the meanwhile, the first defendant had given permission by letter dated 23.12.1989 to put up further construction. Thereafter, the plaintiff lodged a police complaint against the second respondent and filed a Suit in O.S.No.1478/90 on the file of District Munsif, Poonamallee and obtained interim orders. Since the second defendant was claiming independent title, the plaintiff, issued a legal notice dated 27.02.1990 calling upon the first defendant to clear off her title as against the second defendant to the satisfaction of the plaintiff. In spite of receiving the notice, the first defendant has not taken any steps. By notice dated 05.03.1990, a reply was given. Thereafter, on 15.10.1990, the first respondent issued a legal notice which was followed by another notice dated 26.11.1990 for a sum of Rs.16,005/- which was paid by the plaintiff towards advance. On 10.12.1990, the plaintiff issued a reply notice and filed the Suit. On 04.01.1991, the plaintiff has returned the demand draft and filed the Suit and deposited the balance sale consideration on 04.01.1991 before the Trial Court. The Trial Court decreed the Suit in respect of specific performance, however, dismissed the same in respect of permanent injunction. The Lower Appellate Court has confirmed the findings of the Trial Court. Against which, the appellant / first defendant has preferred the above Second Appeal.

4. In fact, by an order dated 24.01.2014 the Second Appeal was allowed by this Court. However, when it was taken on appeal before the Hon'ble Supreme Court, the judgment of this Court was set aside with a direction to this Court to frame substantial question of law and to hear the appeal afresh and dispose of the same within a period of six months.

5. Accordingly, this Court has admitted the Second Appeal on 29.07.2019 and framed the following substantial question of law:-

"Whether both the Courts below are right in concluding that the plaintiff was always ready and willing to perform his part of the contract and whether he was possessed of sufficient means."



6.Today when the matter is taken up for hearing, the learned counsel on either side have argued elaborately on the basis of the above substantial question of law.

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7.From the perusal of the materials, the undisputed fact remains that there was an agreement of sale between the appellant / first defendant and the first respondent/plaintiff on 15.12.1989 and the sale consideration was agreed as Rs.40,000/-, out of which a sum of Rs.16,005/- was paid towards advance. It is further agreed that the sale transaction shall be completed within a period of three months, failing which, the advance amount will be forfeited. Thereafter, it appears that there was some dispute between the first respondent / plaintiff and the second defendant, pursuant to which, the first respondent / plaintiff has issued a legal notice dated 27.02.1990, wherein he has called upon the first defendant to settle the dispute between herself and her sister's son, the second defendant, otherwise, he was unable to proceed further in the sale transaction and also called upon the appellant / first defendant to furnish all the information and particulars and also produce all relevant documents to support her title within 10 days of the notice.

8.Thereafter, a legal notice was issued after a period of eight months by the appellant / first defendant. On 05.03.1990, the appellant / first defendant has issued a reply notice calling upon the first respondent / plaintiff to pay the balance amount and complete the registration of sale deed within the period stipulated in the agreement, failing which, the advance amount shall be forfeited. After a period of seven months, on 15.10.1990, the appellant / first defendant has issued another notice reiterating the same. The first respondent / plaintiff has issued a reply notice dated 12.11.1990 vide Ex.A6 denying the claim of the first defendant that time is the essence of the contract and demanded the first defendant to clear off her title and get the sale deed registered. But, with an ulterior motive, sent a notice forfeiting the advance amount though he was ready and willing to have the sale deed executed in his name and he has money ready with him. Thereafter, he called upon the first defendant to fix a date for execution and registration of the sale deed, failing which, he will take further legal action. Thereafter, the first defendant has issued a notice on 27.11.1990 - Ex.A7, returning the advance amount to the tune of Rs.16,005/-.



9. Even though the plaintiff in his reply notice, which was marked as Ex.A6, has categorically stated that he was ready with the money and called upon the first defendant to fix a date for execution and registration of the sale deed, while deposing as P.W.1, would state that on the date of entering into the sale agreement, he was not having any money and he was only in possession of jewels. Other than this, there was no evidence to prove the readiness and willingness of the plaintiff to get the sale deed executed. Contrary to the contents of Ex.A6, in his cross examination, he would depose that he has not applied for any loan and has not taken any steps to mobilise the funds and he has not deposed anything about his readiness and willingness to get the sale deed executed.

10. It is well settled that under Order VI Rule 3 of Code of Civil Procedure, the pleading should be specific and the plaint shall contain specific averments as to the conduct of parties. The plaint shall not have loose words, without support of any concrete action. In this Suit, even though the plaintiff has pleaded that he was ready and willing, it is not specifically explained as to how he was ready and willing and the possession of money to perform his part of contract was also not explained. Further, in his evidence, the plaintiff as P.W.1 deposed that he was not having any money other than the jewels and no specific details as to whether he has liquidated the jewels and get the money ready or mobilised the money through other sources. On the other hand, the deposition shows that he has not taken any steps to secure loan or to mobilise money.

11. It is well settled by very many judgments that the readiness and willingness as specified under Section 16(c) of the Specific Relief Act, 1963, shall be explained on day today basis. Even though the plaintiff has issued a legal notice vide Ex.A3 dated 27.02.1990, he kept quiet and had not taken any steps towards the performance of the contract. Even though the legal notice issued in Ex.A3 was replied by the first defendant, calling upon the plaintiff to complete the sale transaction within a period of three months, he has not performed his part. Again on 15.10.1990, vide Ex.A5 the first defendant has issued a notice that she has not completed the transaction within a period of three months and since the period has expired, the amount of advance stood forfeited and she will sell the property to someone else. Even after this, the plaintiff has not taken any steps, which resulted in Ex.A7 equivalent to Ex.B11 by which the first defendant has returned the advance amount. There is no explanation for the period between 02.07.1990 and 12.11.1990



towards the steps taken by the plaintiff to show his readiness and willingness. In spite of the legal notice calling upon the plaintiff to get the sale transaction completed within a period of three months and after issuance of legal notice forfeiting the advance amount and till the receipt of the demand draft to the tune of Rs.16,005/- paid towards advance, the plaintiff has not come forward to pay the balance sale consideration and show his readiness and willingness in performing his part of the contract. Mere pleading that the plaintiff is ready and willing with money is not enough, but it should be proved by action.

12.In the instant case, the plaintiff has not proved his readiness and willingness. Therefore, I do not find that the plaintiff was ready and willing in performing his part of contract. Hence, the question of law is answered in favour of the appellant/defendant and against the first respondent / plaintiff.

13.It is also submitted that during the pendency of the first appeal, the first respondent / plaintiff filed an execution petition before the Sub Court, Tambaram, which is not connected to the Suit proceedings.

14.In view of the above findings, the judgment and decree dated 09.08.2011 passed by the learned Additional District Judge, Fast Track Court No.II, Poonamallee, in A.S.No.27 of 2010 confirming the judgment and decree dated 30.09.2002 passed by the learned Subordinate Judge, Poonamallee, in O.S.No.25 of 1991, stands set aside, as the sale transaction is illegal. The appellant / first defendant is entitled to take appropriate steps to cancel the sale deed.

15.The Second Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

TK



To

1.The Additional District Judge
Fast Track Court No.II,
Poonamallee.

2.The Subordinate Judge
Poonamallee.

+3 Ccs to Mr.T.Karunakaran, Advocate sr 43518

+1 CC to Mr.S.Jaganathan for M/s.J. Kalidass, Advocate sr 43708.

SA NO.398 OF 2012

NR(CO)
SP(08/06/2022)