



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

A.S. (MD)Nos.88, 89 and 90 of 2018

A.S. (MD)No.88 of 2018:-

T.Rajaram

... Appellant/Plaintiff

Vs.

Gopal @ Gopi (Died)

1.Gangadharan

Sangiliammal (Died)

2.Jaya

3.Susila

4.Lalitha

Padma (Died)

5.Ayyammal

6.Subbiah

7.Minor.Ashok

8.Minor.Malavika

(Minor respondents 7 and 8 are represented through their father and guardian/6th respondent)

... Respondents/Defendants

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code read with Order 41 and 41-A of Civil Procedure Code, against the judgment and decree in O.S.No.59 of 2008 dated 18.08.2016 on the file of the learned VI Additional District Court, Madurai.

For Appellant : Mr.K.K.Ramakrishnan
For Mr.J.Anandkumar

For Respondents : Mrs.Jessi Jeeva Priya
For R1 to R5

A.S. (MD)No.89 of 2018:-

T.Rajaram

... Appellant/8th Defendant

Vs.

Padma (Died)

1.P.Subbiah

2.Minor.Ashok

3.Minor.Malavika

... Respondents 1 to 3 /
Plaintiffs 2 to 4

(Minor respondents 2 and 3 are represented through their father and guardian/1st



respondent)

Sangiliammal (Died)
4.Gangadharan
Gopal @ Gopi (Died)
5.Jaya
6.Susila
7.Lalitha
8.Ayyammal

... Respondents/ 4 to 8/
Defendents 2,4 to 7

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code read with Order 41 and 41-A of Civil Procedure Code, against the judgment and decree in O.S.No.174 of 2008 dated 18.08.2016 on the file of the learned VI Additional District Court, Madurai.

For Appellant : Mr.K.K.Ramakrishnan
For Mr.J.Anandkumar

For Respondents : Mrs.Jessi Jeeva Priya
For R4 to R8
For R1 to R3 No appearance

A.S. (MD)No.90 of 2018:-

T.Rajaram ... Appellant/ 2nd Defendent
Vs.

Padma (Died)
1.Gangadharan
2.P.Subbiah
3.Minor.Ashok
4.Minor.Malavika

...Respondents 1 to 4 /
Plaintiffs

(Minor respondents 3 and 4 are represented
through their father and guardian/2nd
respondent)

Gopal @ Gopi (Died)
5.Jaya
6.Susila
7.Lalitha
8.Ayyammal

...5 th to 8th Respondents/
3rd to 6th Defendants

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code read with Order 41 and 41-A of Civil Procedure Code, against the judgment and decree in O.S.No.165 of 2008 dated 18.08.2016 on the file of the learned VI Additional District Court, Madurai.

For Appellant : Mr.K.K.Ramakrishnan



For Mr.J.Anandkumar

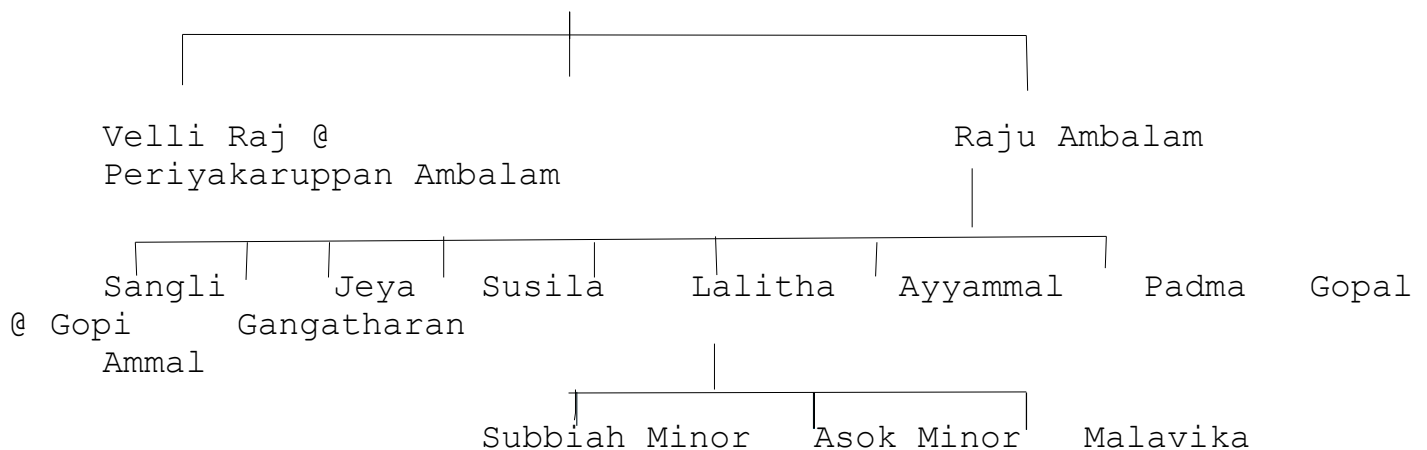
For Respondents : Mrs.Jessi Jeeva Priya
For R1,R5 to R8
For R2 to R4 - No appearance

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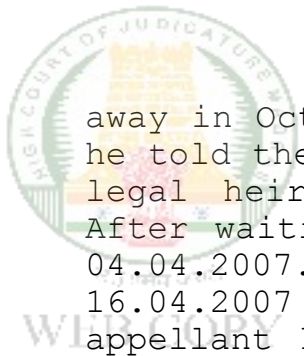
COMMON JUDGEMENT

These three appeals are directed against the judgments and decrees passed by the learned VI Additional District Judge, Madurai on 18.08.2016 in O.S.Nos.59, 165 and 174 of 2008. O.S.No.59 of 2008 was filed by the appellant/Rajaram seeking the relief of specific performance. O.S.No.165 of 2008 was filed by Padma seeking the relief of partition in respect of the suit property. O.S.No.174 of 2008 was also filed by the said Padma seeking the relief of permanent injunction. To understand the facts of the case better, the family genealogical tree is set out herein:-

Ponnusamy Ambalam



2.The case of the appellant/Rajaram is that in respect of the suit property, a sale agreement dated 14.12.2005 was executed in his favour. The suit schedule comprises two items. The first item belonged to Raju Ambalam while the second item belonged to his son namely., Gopal @ Gopi. Raju Ambalam and Gopal @ Gopi had agreed to sell the suit property at the rate of 6,500/- per cent. They had also received a sum of Rs.4,00,000/- from the appellant on the date of sale agreement. Subsequently on 19.12.2005, Gopal @ Gopi had received a further sum of Rs.1,00,000/-. According to the appellant, he was always ready and willing to perform his part of the contract by paying the balance sale consideration but Raju Ambalam had informed him that there were some issues to be resolved within the family and wanted the appellant to wait. Unfortunately, Raju Ambalam fell ill and the appellant was not in a position to compel them to conclude the sale transaction. Raju Ambalam passed



away in October, 2006. When the appellant approached Gopal @ Gopi, he told the appellant that after obtaining the death certificate and legal heir certificate, he would conclude the sale transaction. After waiting for a while, the appellant issued legal notice dated 04.04.2007. Gopal @ Gopi received the same and sent a reply dated 16.04.2007 denying the notice averments. Left with no option, the appellant had filed O.S.No.59 of 2008 for specific performance of the sale agreement dated 14.12.2005, after receiving the balance sale consideration of Rs.14,43,500/- from him.

3.Gopal @ Gopi received the suit summons but did not enter appearance. He was set ex-parte. The seventh defendant/Padma one of the daughters of Raju Ambalam filed written statement opposing the suit claim. It was adopted by the other defendants. Subsequently the said Padma also passed away and her legal representatives were brought on record. The very same Padma filed the other two suits seeking the relief of partition and permanent injunction. O.S.No.165 of 2008 filed by Padma for the relief of partition included not only the items that were the subject matter of the sale agreement dated 14.12.2005 but also the other properties of Raju Ambalam. Since there was a broad overlap between the three suits, they were taken up together and tried.

4.Rajaram examined himself as P.W.1 and three others as P.W.2, P.W.3 and P.W.4 and Exs.A1 to A9 were marked. On the side of the defendants, one Jeya another daughter of Raju Ambalam examined herself as D.W.1 and Exs.B1 to B34 were marked.

5.After a consideration of the evidence on record, the learned trial judge partly allowed O.S.No.59 of 2008. While holding that the appellant/Rajaram was not entitled to the relief of specific performance, the advance amount of Rs.5,00,000/- was directed to be returned with interest at the rate of 6% per annum with effect from 01.01.2006. O.S.No.165 of 2008 was decreed. Preliminary decree was granted in O.S.No.174 of 2008 also. Challenging the same, these appeals have been filed. A.S.(MD)No.88 of 2018 is directed against the judgment and decree passed in O.S.No.59 of 2008, A.S.(MD)No.89 of 2018 is directed against the judgment and decree passed in O.S.No.174 of 2008 and A.S.(MD)No.90 of 2018 is directed against the judgment and decree passed in O.S.No.165 of 2008.

6.The point for determination arising in A.S.(MD)No.88 of 2008 are as follows:-

"(a) Whether the plaintiff/appellant was ready and willing to perform his part of the contract right from the inception?

(b) Whether suit item No.1 was the exclusive property of Raju Ambalam and whether suit item No.2 was the exclusive property of Gopal @ Gopi? and



(c) Even if the properties are joint family properties, whether the appellant/plaintiff is entitled to specific performance insofar the share of Gopal @ Gopi is concerned?"

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7. Heard the learned counsel on either side.

8. The learned counsel for the appellant filed his written arguments. According to him, suit item No.1 was the exclusive property of Raju Ambalam and suit item No.2 was the exclusive property of Gopal @ Gopi. Therefore, Raju Ambalam and Gopal @ Gopi were entitled to deal with them as their absolute properties. Jeya who was examined on the side of the defendants was absolutely incompetent to depose as regards the character of the properties. Jeya's husband namely., Agni Ambalam had attested Ex.A1/sale agreement. The learned counsel for the appellant relied on the following decisions:-

"(i) *Commissioner of Wealth Tax, Kanpur and Others vs. Chander Sen and Others* reported in (1986) 3 SCC 567

(ii) *Yudhishter vs. Ashok Kumar* reported in (1987) 1 SCC 204

(iii) *D.S. Lakshmaiah and Ors. vs. L. Balasubramanyam and Ors.* reported in (2003) 10 SCC 310

(iv) *Bhagwat Sharan (Dead) thr. L.Rs. vs. Purushottam and Ors.* reported in (2020) 6 SCC 387

(v) *P.Govindaswamy and another vs. S.Narayanan and others* reported in 1987 (Supp) SCC 58

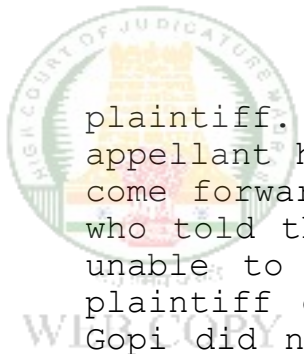
(vi) *F.C.I. vs. Yadav Engineer & Contractor* reported in 1982 (2) SCC 499

(vii) See *Mademsetty Satyanarayana vs. G. Yelloji Rao and others* reported in AIR 1965 Supreme Court 1405

(viii) *Sirdar K.B. Ramachandra Raj Urs. (Dead) through L.Rs. vs. Sarah C. Urs. and Ors.* Reported (2019) 10 SCC 343 and

(ix) *Kammana Sambamurthy (D) by Lrs. vs. Kalipatnapu Atchutamma (D) and Ors* reported (2011) 11 SCC 153"

9. The learned counsel for the appellant faulted the finding of the trial court as regards the readiness and willingness of the



plaintiff. In the plaint, it had been specifically pleaded that the appellant had called upon Raju Ambalam even during his life time to come forward to complete the sale transaction. It was Raju Ambalam who told the appellant that due to some family problems, they were unable to execute the sale deed. The version projected by the plaintiff could have been rebutted only by Gopal @ Gopi. Gopal @ Gopi did not enter appearance. No written statement was filed by him. He was set ex-parte. Therefore, it is not open to the surviving defendants to contest the claim of the plaintiff that he was always ready and willing to perform his part of the contract. He would also point out that when the suit for specific performance was filed within the period of limitation, delay cannot be put against the plaintiff. The plaintiff was no doubt called upon to deposit the balance sale consideration by the trial court, when he applied for the relief of interim injunction. Since the plaintiff genuinely believed that some of the parties were acting in tandem with each other so as to defeat his rights, he did not deposit the amount. It was a bonafide reaction. The failure to comply with the condition set out in the interim order ought not to be put against the plaintiff at the time of final disposal. The learned counsel would allege that the partition suit was engineered to defeat the legitimate rights of the plaintiff under the sale agreement. The learned counsel for the appellant would also contend that the subject matter of sale agreement was not available for being partitioned. He also alternatively submitted that in the event of this Court not agreeing with him, decree ought to be granted atleast in respect of the share of Gopal @ Gopi. The appellant is ready to relinquish his claim in respect of the remaining portion. Such a relinquishment can be made even orally and there is no necessity that it should be specifically pleaded. In this regard, he placed reliance on the decision of the Supreme Court reported in **(2020) 6 SCC 387 (Bhagwat Sharan (Dead through legal representatives) v. Purushottam and Others.**

10.Per contra, the learned counsel for the respondents submitted that the impugned judgment passed by the trial court is well reasoned and that it does not call for interference.

11.I carefully considered the rival contentions and went through the evidence on record. There is no doubt that Ex.A1/sale agreement dated 14.12.2005 was executed by Raju Ambalam and his son Gopal @ Gopi. There is also no doubt that a sum of Rs.4,00,000/- was paid by the appellant on the date of agreement and a further sum of Rs.1,00,000/- subsequently. The court below has given a categorical finding that Ex.A1 was validly entered into. The first question that calls for my consideration is whether the appellant had established his "readiness and willingness" as required by Section 16 of the Specific Relief Act, 1963. The appellant must aver and prove that he was always ready and willing to perform the essential terms of contract, which were to be performed by him. The

suit agreement envisages that the transaction was to be concluded within a period of four months. The said period expired on 14.04.2006. Raju Ambalam died on 06.10.2006. The appellant issued Ex.A4/notice calling upon Gopal @ Gopi to come forward for executing the sale deed. In Ex.A4/notice, the appellant had clearly mentioned that even though he was ready to pay the balance sale consideration and get the sale deed registered at his expense, Gopal @ Gopi was dragging on the matter. The notice called upon Gopal @ Gopi to obtain the death certificate and legal heir certificate and intimate the appellant. If Gopal @ Gopi failed to do so, it was made clear that action for securing specific performance of the agreement would be taken. After receiving the notice, Gopal @ Gopi gave his reply dated 16.04.2007 (Ex.A5). A reading of Ex.A5 would show that Gopal @ Gopi went to the extent of denying all the notice averments. In other words, Gopal @ Gopi had categorically declined to execute the sale deed. In the face of such a refusal, the appellant ought to have filed the suit immediately. The appellant did not do so. In the meanwhile, Padma had filed her injunction suit on 13.07.2007 itself. The appellant also filed his written statement in the injunction suit on 02.01.2008. Padma issued notice on 11.01.2008 seeking partition. Three months thereafter on 28.04.2008, the appellant herein filed O.S.No.59 of 2008, seeking the relief of specific performance. It is true that the suit for specific performance was filed in time. But filing the suit within limitation period is one thing, being entitled to the discretionary and equitable relief of specific performance is entirely another. Section 16 of Specific Relief Act, 1963 expects the agreement holder to be always ready and willing to perform his part of the contract. In this case, the delay of a full one year after receiving Ex.A5/reply dated 16.04.2007 from Gopal @ Gopi goes against the appellant's claim of having been ever ready and willing. But it is not the only circumstance. After filing the suit, the appellant filed I.A.No.185 of 2008 seeking temporary injunction. While granting the same, the trial court directed the appellant to deposit the balance sale consideration. The appellant did not do so. Even though the appellant failed to comply with the condition stipulated by the trial court, I.A.No.185 of 2008, filed by the appellant came to be allowed. Challenging the same, the defendants filed C.M.A. (MD)No.1283 of 2015 before this Court. Before this Court it was conceded that I.A.No.185 of 2008 came to be allowed by overlooking the failure on the part of the plaintiff to deposit the balance sale consideration. Therefore, the order passed by the trial court was set aside and I.A.No.185 of 2008 filed by the appellant was dismissed and a direction was given for disposal of the suit itself. These two circumstances are totally fatal to the case of the plaintiff. I went through the plaint to see if any explanation has been given as to why the suit was not filed immediately after receipt of the reply dated 16.04.2007. The plaint is conspicuously silent on this. The delay of one year in filing the suit even after knowing that the executant of Ex.A1 had declined to come forward to conclude the sale transaction and the failure to comply with the



direction of the trial court to deposit the balance sale consideration are good enough grounds for denying the relief of specific performance. In this view of the matter, it is unnecessary for me to consider the other questions of law on which the learned counsel for the appellant argued at considerable length.

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12. Now the question is whether the decrees and judgments should be affirmed as such. I am clearly of the view that after taking a sum of Rs.5,00,000/- from the appellant way back in the year 2005, the executants namely., Raju Ambalam and Gopal @ Gopi without any justification delayed the execution of the sale deed. I have non-suited the appellant only in view of his failure to file the suit immediately after receipt the reply notice dated 16.04.2007. Awarding only 6% interest to the appellant appears to be grossly unfair. Therefore, even while sustaining the judgment and decree passed by the trial court in denying the relief of specific performance, I direct the respondents to return the advance amount of Rs.5,00,000/- to Rajaram with interest at the rate of 18% per annum with effect from 01.01.2006. The learned counsel for the respondents would state that the direction to refund the advance amount with interest as decreed by the trial court has been complied with. Of course, the additional amount will have to be paid in view of this decree now passed by this Court. The judgment and decree passed by the trial Court in O.S.No.59 of 2008 is accordingly modified.

13. A.S.(MD)No.88 of 2018 is partly allowed and A.S.(MD)Nos.89 and 90 of 2018 are dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The VI Additional District Judge,
Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,

+3 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-19964,19965,19966[F]
dated 23/06/2021)

Madurai.

**A.S. (MD) Nos.88, 89 and 90 of 2018
23.06.2021**

RK (04.08.2021) 9P 7C