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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.03.2022

Delivered on : 08.04.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S. KANNAMMAL

A.S.No.523 of 2013

K.S.T.Arumugham

...Appellant/Defendant

Vs.

Kasi Arulselva Sekar @ P.K.A.S.Sekar

...Respondent/Plaintiff

Prayer : Appeal Suit filed under Section 96 and Order 41 Rule 1 of the Code of Civil Procedure against the judgment and decree dated 06.06.2012, passed in O.S.No.107 of 2007 on the file of the Additional District Court (Fast Track Court No.2), Cuddalore.

For Appellant : Mr.R.Gururaj

For Respondent: Mr.P.Mani

J U D G M E N T

The appeal has been filed against the judgment and decree, dated 06.06.2012, passed in O.S.No.107 of 2007 on the file of the Additional District Court (Fast Track Court No.2), Cuddalore.

2.The defendant, who suffered a decree for specific performance before the trial Court, is the appellant herein.

3.For the sake of convenience, the appellant shall hereinafter be referred to as "defendant" and the respondent shall be referred to as "plaintiff".

4.The case of the plaintiff is as follows :

- The defendant had approached the plaintiff to sell the suit property for a sale consideration of Rs.10,00,000/- and accordingly, on 03.02.2006, they had entered into a sale agreement.
- A sum of Rs.6,30,000/- was paid by the plaintiff as advance towards the sale consideration on the same date and the time for completion of the contract was fixed as two years



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from the date of agreement of sale.

- In spite of repeated requests made by the plaintiff, since the defendant did not come forward to execute the sale deed, the plaintiff caused a legal notice on 02.10.2006, demanding the defendant to execute the sale deed, however, the said notice was not received by the defendant, nor did he come forward to execute the sale deed.
- The plaintiff is always ready and willing to pay the balance sale consideration and get the sale deed executed in his favour, but the defendant evaded the contract and ultimately, the plaintiff learnt that the defendant is trying to alienate the suit property to third parties.
- Hence, the plaintiff filed the suit for specific performance, delivery of possession, recovery of advance amount of Rs.6,30,000/-, injunction restraining alienation of suit property by the defendant and for costs.

5. The defendant filed his written statement with the following contentions :

- The sale agreement itself is a sham and nominal one.
- The plaintiff is a money-lender. The defendant, with good intention to help his friend one Natarajan to repay the loan obtained by the said Natarajan from one Kumaravel, approached the plaintiff for a loan of Rs.3,50,000/- for Natarajan.
- However, the plaintiff agreed to give the loan only to the defendant, since the defendant hails from a reputed family, with interest @ 36% p.a., and demanded execution of a promissory note as well as a sale agreement as security by the defendant towards the aforesaid loan.
- The defendant was cornered, and in order to get the loan for the sake of Natarajan, accepted the plaintiff's demand and accordingly, the defendant executed a promissory note for the loan amount of Rs.3,50,000/- on 04.05.2004 and a sale agreement on 05.05.2004 in respect of the suit property, which was executed only for the purpose of security for the loan, wherein, the sale consideration was formally mentioned as Rs.8,50,000/-, though the value of the suit property was five times more than that value.
- To enable repayment, time period of two years was fixed, which was mentioned as time for completion of sale agreement dated 05.05.2004.
- The plaintiff paid the loan amount of Rs.3,50,000/- to Natarajan and through him to Kumaravel, and both of them signed as witness to the sale agreement dated 05.05.2004, however, to cover the interest, it was mentioned as if an advance of Rs.5,00,000/- was paid by the plaintiff, in the



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said sale agreement.

- Natarajan was regularly paying the monthly interest @ Rs.10,500/- per month to the plaintiff.
- Natarajan expressed his inability to discharge the principal within two years and therefore, the plaintiff wanted a renewal of the agreement.
- Accordingly, a sale agreement was executed by the defendant with the plaintiff on 03.02.2006, which is the subject matter of the present suit. In this agreement, the sale consideration was mentioned as Rs.10,00,000/- and advance amount was shown as Rs.6,30,000/-, whereas, in fact, no amount was paid, and the time period was mentioned as two years.
- Both the sale agreements dated 05.05.2004 and 03.02.2006 were prepared by the same licenced scribe Sathiyagnanam and typed by one Vetrivel.
- The defendant and the typist Vetrivel alone signed the sale agreement dated 03.02.2006 and neither the witnesses nor the scribe signed.
- Apprehending any action by the plaintiff based on the promissory note earlier executed, the defendant agreed to register the sale agreement dated 03.02.2006, and accordingly, registered the same.
- Totally, both the sale agreements dated 05.05.2004 and 03.02.2006 are sham transactions, which are not intended for sale, but only made for security purpose for the loan obtained from plaintiff for Natarajan.
- The defendant did not receive any legal notice from the plaintiff nor did he evade any notice. The plaintiff has somehow managed to get a false endorsement to that effect.
- The suit property is the defendant's residential house and it is a joint family property and he has only 1/4th share in the suit property and he has no necessity to dispose it off, inasmuch as he is in a sound financial condition and hails from a wealthy family in Panruti.
- The plaintiff has completely suppressed the earlier transaction dated 05.05.2004 and has come to Court with unclean hands, hence, the suit is liable to be dismissed.

6. On the above pleadings, the trial Court framed the following issues:

- i. "Whether the suit agreement is true and valid and whether the defendant has executed the same ?
- ii. Whether the plaintiff has paid a sum of Rs.6,30,000/- to the defendant as advance towards sale consideration ?
- iii. Whether the plaintiff is entitled to the relief of specific performance ?
- iv. Whether the plaintiff is entitled to the relief of



permanent injunction ?

v. Whether the plaintiff is entitled to the other reliefs as prayed for ?

vi. To what other reliefs the plaintiff is entitled to ?”

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7. The plaintiff examined himself as P.W.1 and marked Exs.A1 to A6. On the side of the defendant, D.W.1 to D.W.3 were examined and Exs.B1 to B6 were marked.

8. The trial Court, on considering the oral and documentary evidence on record, came to a conclusion that the sale agreement dated 03.02.2006 (Ex.A2) is true and valid and the plaintiff is entitled to the reliefs of specific performance, delivery of possession and injunction and accordingly, by a judgment and decree dated 06.06.2012, decreed the suit with costs.

9. Challenging the judgment and decree, dated 06.06.2012, passed by the trial Court, the defendant has filed the present appeal before this Court.

10. Mr. R. Gururaj, learned counsel appearing for the appellant/defendant made the following submissions before this Court :

- The trial Court has not gone into the issue of readiness and willingness of the plaintiff, which is an important aspect to be considered in a suit for specific performance.
- The plaintiff was not at all ready and willing to execute his part of the agreement at any point of time, hence, the trial Court ought not to have exercised its discretion in favour of the plaintiff.
- The plaintiff has not proved the sale agreement Ex.A2 itself by examining any witness on his side, which itself proves that it is a sham and nominal one.
- The plaintiff has suppressed the earlier agreement dated 05.05.2004 (Exs.B1 and B2) and hence, the plaintiff has approached the Court with unclean hands.
- D.W.1 and D.W.2 have deposed that both the agreements dated 05.05.2004 (Ex.B2) and 03.02.2006 (Ex.A2) are not intended for sale, but only for security for the loan of Rs.3,50,000/- obtained by the defendant for Natarajan, from the plaintiff.
- Vide Exs.B4 to B6, the loan amount was regularly repaid to the plaintiff.
- The suit property is the residential house of the defendant and is worth not less than five times the value mentioned in the agreement of sale (Ex.A2).
- The suit property is a joint family property and the defendant has no right to sell the entire property.
- Therefore, the trial Court ought not to have granted the relief of specific performance or injunction in favour of



the plaintiff and prayed to set aside the judgment and decree of the trial Court.

11. Per contra, Mr. P. Mani, learned counsel appearing for the respondent/plaintiff made the following submissions before this Court:

- The sale agreement dated 03.02.2006 (Ex.A2) for a total sale consideration of Rs.10,00,000/- is true and valid and the plaintiff has paid a major part of the sale consideration, i.e., a sum of Rs.6,30,000/- as advance and he had also deposited the balance amount in the Court, which shows his readiness and willingness to perform his part of the agreement.
- The defendant has received Rs.6,30,000/- as advance towards sale consideration, which he (D.W.1) has admitted before the Registrar, during registration of the sale agreement Ex.A2.
- However, the defendant has taken an entirely false plea before the Court, putting up a new story, which itself shows the conduct of the defendant in evading from performing the contract.
- The defendant also evaded from receiving the legal notice dated 02.10.2006 (Ex.A5) sent by the plaintiff and he did not even choose to approach the plaintiff for performance of the agreement.
- Contrarily, the defendant is trying to alienate the suit property to third parties.
- The plea of the defendant stating that the suit property is a joint family property is false. This is evident from the title deeds Exs.A3 and A4.
- Therefore, the trial Court, on proper appreciation of oral and documentary evidence on record, has rightly granted the reliefs prayed for by the plaintiff, hence, the learned counsel prayed for dismissal of the appeal.

12. This Court gave its anxious consideration to the rival submissions and also perused the entire materials available on record.

13. It is surprising to note that the trial Court has not even framed an issue with regard to readiness and willingness of the plaintiff, which is an essential criterion in deciding a suit for specific performance. Based on the rival submissions before this Court, the following points arise for consideration:

- i. Whether the sale agreement dated 03.02.2006 (Ex.A2) is true and valid and executed by the defendant?
- ii. Whether the defendant has received a sum of Rs.6,30,000/- as advance towards sale consideration from the plaintiff?



- iii. Whether time is the essence of the contract ?
- iv. Whether the plaintiff has shown his readiness and willingness to perform his part of the contract ?
- v. Whether the plaintiff is entitled to the relief of specific performance ?
- vi. Whether the plaintiff is entitled to the other reliefs as prayed for by him ?
- vii. To what other relief, the plaintiff is entitled to ?

Point Nos.1 and 2 :

14. Pointing out to Ex.B3, which is a photocopy of Ex.A2 taken immediately after the defendant and the typist signed the document and before signing of the witnesses or plaintiff, the learned counsel for the defendant submitted that the sale agreement (Ex.A2) was not executed in the presence of witness, hence, it is not valid. In this regard, he relied upon the judgment of this Court in the case of Thirumeni v. Amirthalingam [(1997) 3 LW 102], wherein, it is stated that interpolation of signature of the witnesses at a later point of time itself would make the document invalid. In response to the said contention, the learned counsel for the plaintiff submitted that, both D.W.1 and D.W.2 have admitted in their evidence, the execution of sale agreement (Ex.A2), therefore, the document cannot be said to be invalid.

15. It can be seen that the defendant (D.W.1), in his proof affidavit as well as in the cross-examination, has clearly admitted the execution of the sale agreement dated 03.02.2006 (Ex.A2). He has also admitted his signature in Ex.A2. The defendant, in his written statement also, has clearly narrated the execution of sale agreement dated 03.02.2006 (Ex.A2), but the only dispute is with regard to purpose for which the document (Ex.A2) is intended.

16. The learned counsel for the plaintiff submitted that, when the parties have reduced the terms of the agreement in writing, there cannot be any evidence contrary to the terms contained therein. In response, the learned counsel for the defendant relied upon the judgments of the Hon'ble Supreme Court in Hindu Public and another v. Rajdhani Puja Samithee and others [1999 AIR (SC) 964] and Gangabai v. Chhabubai [1982 AIR (SC) 20] and submitted that, oral evidence is admissible to show that a written document is sham and is meant for a different transaction altogether.

17. The defendant (D.W.1) has admitted that he has filed an Insolvency Petition in I.P.No.1 of 2010 after institution the present suit and the plaintiff is a party to that Insolvency proceedings; he has not replied to the notice sent by the plaintiff; he did not send any legal notice informing about the



earlier agreement dated 05.05.2004; he has not filed any document to show that the suit property has a value of more than Rs.50 Lakhs; there is no signature in Exs.B4 to B6; he has not pleaded anything about Ex.B6 in his written statement; all facts can come to light if Natarajan is examined, but he is not going to examine Natarajan.

18.It is the case of the defendant that he borrowed money from the plaintiff for Natarajan to repay the loan obtained by Natarajan from Kumaravel. Kumaravel was examined as D.W.2. D.W.2, in his proof affidavit, has reiterated the "loan-security" theory of the defendant and has also deposed that the earlier sale agreement dated 05.05.2004 is not intended for sale, but only for security; the loan was for Rs.3,50,000/- with interest @ 36% p.a.; Natarajan repaid interest for few months. D.W.2, in the cross-examination, has admitted that he was not summoned by the Court, but he came to Court at the instance of the defendant; he does not know anything about the subsequent sale agreement dated 03.02.2006 (Ex.A2); but he admitted the signature of the defendant in Ex.A2; the defendant informed him that, after 05.05.2004, he executed a subsequent agreement; Rs.5,00,000/- was written as advance in Ex.A2, but, he did not enquire as to why it was written so; only Rs.3,50,000/- was given.

19.D.W.3, who is admittedly the scribe of the document Ex.A2, in the cross-examination, has clearly admitted that the sale agreement (Ex.A2) was executed for a sale consideration of Rs.10,00,000/- and on the day, Rs.6,30,000/- was received; the document was registered; it was registered only after the defendant admitted in the presence of the Registrar that he had received a sum of Rs.6,30,000/-; the defendant signed in Ex.A2 only after admitting the contents therein; the defendant did not say anything that he did not receive the amount nor did he (defendant) refuse to sign the document. The relevant portion of the evidence of D.W.3 is as follows :

"கிரய ஒப்பந்தம் 10 லட்சம் போட்டு அன்று 6 லட்சத்தி முப்பதாயிரம் வாங்கப்பட்டுள்ளது என்றால் சரிதான். அது பதிவு செய்யப்பட்டதா என்றால் பதிவு செய்யப்பட்டது. ஆறுமுகம் ஆறு லட்சத்தி முப்பதாயிரம் ரூபாய் வாங்கிக் கொண்டேன் என்று பத்திர பதிவு, அலுவலகத்தில் சொன்ன பிறகுதான் பதிவு செய்தார் என்றால் சரிதான். வா.த.சா.ஆ.2ல் ஒப்பந்தத்தில் கண்ட சரத்துக்களை ஒப்பக் கொண்டுதான் ஆறுமுகம் கையெழுத்து போட்டார் என்றால் சரிதான். வாதி பிரதிவாதிகள் சரத்துக்களை சொல்லித்தான் நான் அதை தயார் செய்வேன். "

20.On a perusal of the evidence of Kumaravel (D.W.2), who according to the defendant is the ultimate beneficiary of the loan obtained from the plaintiff, it is seen that he has nowhere stated that the loan was obtained by the defendant from



plaintiff to help Natarajan in repaying the loan obtained from him (Kumaravel) or that he received back his money from Natarajan through plaintiff. Even assuming he got back his loan amount from Natarajan through plaintiff and his loan transaction with Natarajan got ceased, it is not known as to how Kumaravel (D.W.3) was aware that Natarajan kept on paying the interest for few months to plaintiff. A careful reading of the evidence of D.W.2 leaves room for doubt that D.W.2 was tutored by the defendant to suit his case. Further, the documents Exs.B4 to B6 filed by the defendant to show that he has repaid the loan amount to the plaintiff merely contain some figures with no worthy details, whatsoever, or signature, and this Court can infer nothing from them so as to support the case of the defendant.

21. Moreover, if Ex.A2 was a loan-security transaction, there is no necessity for the defendant to deposit the title deeds with the plaintiff, but the plaintiff is in possession of the original title deeds of the suit property and he has marked the same as Exs.A3 and A4. The judgment relied upon by the learned counsel for the defendant in Thirumeni (supra) with regard to interpolation of signature of witness, is not applicable to the facts of the present case, since the parties to the agreement herein themselves have admitted the execution and contents of the document and the witnesses, whose signatures are said to be added subsequently, are not examined at all in this case, nor relied upon. The defendant has not merely signed the document Ex.A2, but has executed it only after reading its contents and has actively participated in the registration of the document Ex.A2 without raising any objection, but by conceding the receipt of Rs.6,30,000/- before the Registrar, as admitted by D.W.3. Therefore, the judgments relied upon by the learned counsel for the defendant in Hindu Public and another (supra) and Gangabai (supra) are not applicable to the lis on hand. Further, Natarajan, around whom the entire case of the defendant revolves, is not examined by the defendant for the reasons best known to him. Moreover, the defendant, who claims himself to be a wealthy person to stand as security for another person Natarajan, accepts that he has initiated Insolvency proceedings, making the plaintiff a party. The defendant claims that he is residing in the suit property, which is a joint family property, where he has no right to sell. The plaintiff has marked the title documents of the suit property and D.W.1 himself admits in cross-examination that his legal heirs have no interest over the suit property. Though this Court cannot render any finding with regard to the title of the suit property in a suit for specific performance, it is very uncommon, rather far from practicality, for a person to risk his dwelling house as security, which he claims he has no right to sell, to a money-lender, that too on two occasions, for the sake of a third



person for availing loan, and also registering the same, in addition to the promissory note executed by him for the same loan transaction. On a perusal of the entire oral and documentary evidence, this Court can come to a only conclusion that the defendant has miserably failed to substantiate the "loan-security" theory put forth by him.

22. For all the above reasons, this Court finds that the sale agreement (Ex.A2) is true and valid and it is executed by the defendant and is intended only for sale of the suit property. The defendant has received a sum of Rs.6,30,000/- from the plaintiff as advance towards sale consideration. Point Nos.1 and 2 are answered accordingly.

Point Nos.3 and 4:

23. Though there is no much quarrel with regard to time as being essence of the contract, it is clearly averred in the sale agreement (Ex.A2) that the time stipulated is two years for performance of the contract. The plaintiff (P.W.1) himself has admitted in the cross-examination that two years was fixed initially in the agreement dated 05.05.2004 (Ex.B2) for son's marriage and at the verge of expiry of the aforesaid document, the subsequent agreement (Ex.A2) was executed, again specifying the time limit as two years for performance of the contract. Ex.A2 also contains clauses for forfeiture of advance amount and liberty to file suit for specific performance, if the respective parties fail to perform their part of the contract within the time stipulated therein. The Hon'ble Supreme Court in the case of K.S.Vidyanadam and others v. Vairavan [1997 (1) CTC 628] has held that, 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. Therefore, this Court finds that time is the essence of the contract in the present case. Point No.3 is answered accordingly.

24. Relying upon the judgments of the Hon'ble Supreme Court in the cases of K.S.Vidyanadam and others (supra), N.P.Thirugnanam v. Dr.R.Jagan Mohan Rao and others [1995 AIR (SCW) 3803] and a judgment of this Court in Kalianna Gounder, S/o.Komaraswami Gounder and others v. Kalianna Gounder, S/o.Appavu Gounder and others [1986 2 MLJ 470], the learned counsel for the defendant submitted that the plaintiff has to show his continuous readiness and willingness to perform his part of the contract, however, the plaintiff has failed to do so in the case on hand. In response to the said contention, the learned counsel for the plaintiff submitted that the plaintiff has paid the balance sale consideration before the trial Court



and has shown his readiness and willingness to perform his part of the contract.

25. As found in the foregoing paragraphs, the parties entered into a sale agreement in respect of the suit property as early as on 05.05.2004 for a consideration of Rs.8,50,000/- and an advance of Rs.5,00,000/- was paid to the defendant. However, after that, there is no evidence on record to show that the plaintiff has taken any steps to pay the balance sale consideration to the defendant nor had he called upon the defendant to receive the balance sale consideration and execute the sale deed in his favour. The plaintiff (P.W.1), in his proof affidavit, has alleged that the defendant demanded higher sale price, however, the allegation remains unproved. Be that as it may, the plaintiff has not chosen to file any suit against the defendant based on the said agreement dated 05.05.2004, rather, has come forward to enter into a subsequent agreement with the defendant on 03.02.2006 (Ex.A2) with enhanced sale consideration. Even thereafter, till the issuance of legal notice on 02.10.2006 (Ex.A5), the plaintiff has not proved that he has taken any steps to show his readiness or willingness to the defendant to execute his part of the agreement. Further, even after the notice was returned as "not found" on 11.10.2006, the plaintiff waited for nearly one year to file the present suit for specific performance on 09.10.2007. Though the learned counsel for the plaintiff contends that no notice was received from the defendant repudiating the contract or expressing his non-willingness to perform the contract and therefore, the delay in filing the suit cannot be attributed to the plaintiff, useful reference can be made to the judgment of this Court in S.S.Chokkalingam v. R.B.S.Mani and others [1994 (1) LW 321], relied upon by the learned counsel for the defendant, wherein, a Division Bench of this Court has held as follows :

"The contention was that a notice repudiating the contract was not given by the vendor and a reasonable opportunity was not offered to the purchaser to perform his part of the contract and as such, a decree for specific performance must be granted. Rejecting the said contention, the court said:

"One of the essential factors in a suit for specific performance of a contract is that the plaintiff must first allege and then if he is traversed, prove (a) that he has performed all the conditions which under the contract he was bound to perform, and (b) that he has been, ready and willing at all times from the time of the contract down to the date of suit, to perform his part of the contract. It is true that in a contract for sale and purchase of land time is not essence of contract but



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either party can make it so by giving notice. A similar intention may be inferred from the nature of the property, surrounding circumstances and whether commercial element is involved. Readiness and willingness to perform and includes ability to perform. It is incumbent upon the buyer to satisfy the court that he was ready and willing with the money, or had the capacity to pay for the property and that he had at all events made proper and reasonable preparations and arrangements for securing the purchase money.""

It is well settled that the plaintiff, who approaches the Court for the relief of specific performance of the contract, apart from anything, has to exclusively aver and prove his continuous readiness and willingness from the date of the contract till the hearing of the suit. Such a view been fortified by the Hon'ble Supreme Court time and again in various judgments including the ones relied upon by the learned counsel for the defendant supra, and more particularly in Saradamani Kandappan v. S.Rajalakshmi and others [2011 (4) CTC 140] and Padmakumari and others v. Dasayyan and others [2015 (6) CTC 545], wherein, the Hon'ble Supreme Court, while accepting the broad proposition of law that the time is not an essence of the contract in relation to contracts relating to immovable property, has upheld the dicta in K.S.Vidyanadam and others v. Vairavan (supra) and held that the plaintiff will have to show continuous readiness and willingness. If the plaintiff is shown to be not ready and willing even for a particular period, that by itself would be a ground to non-suit the plaintiff, particularly, in a suit for specific performance relating to land, where prices are always in the raise. Even though time is not essence of the contract in respect of the agreement for sale of immovable property, the plaintiff must exhibit readiness and willingness and approach the Court within a reasonable time. The period of 3 years prescribed under Article 54 of the Limitation Act is only an outer time limit and the plaintiff ought not to wait till the expiry of 3 years period to file the suit almost at the end of the term claiming that he is ready and willing to perform his part of the contract.

26. On a perusal of the notes papers in the suit, it can be seen that, pursuant to the orders passed by the trial Judge on 09.08.2010, the plaintiff has deposited the balance sale consideration of Rs.3,70,000/- on 20.08.2010. However, except merely averring in the legal notice (Ex.A5) that he is ready with the balance sale consideration, there is no documentary proof on record to prove his financial capacity at the relevant point of time. Even assuming for the sake of arguments that the



plaintiff was ready in financial capacity to pay the balance sale consideration within the time stipulated in the agreement, the plaintiff fails in the aspect of willingness as discussed above. Point No.4 is answered accordingly.

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27. In the present case, admittedly, the suit property is the dwelling house of the defendant. In a suit for specific performance, the Court is also bound to see the hardship caused to the defendant on granting the relief of specific performance, as held by the Hon'ble Supreme Court in *Nirmala Anand v. Advent Corporation (P.) Ltd. and Others* [(2013) 8 SCC 131].

28. More importantly, the plaintiff has completely suppressed the earlier sale agreement, dated 05.05.2004, entered into between the plaintiff with the defendant in respect of the suit property, in the plaint. Without any plea in that regard, the plaintiff, in his evidence, has admitted and narrated the entire transaction in respect of the sale agreement dated 05.05.2004, its execution and payment of Rs.5,00,000/- on 05.05.2004. The plaintiff admits in the cross-examination that he paid Rs.1,30,000/- at the time of execution of the subsequent agreement dated 03.02.2006 (Ex.A2), which is the subject matter of the present suit, i.e., totally, a sum of Rs.6,30,000/-. Therefore, the subsequent agreement dated 03.02.2006 (Ex.A2) is virtually a renewal of the earlier agreement dated 05.05.2004, albeit not having specifically recited to that effect. When such is the case, the plaintiff, who has approached the Court for an equitable relief, ought to have disclosed the entire facts before the Court.

29. For all the above reasons, this Court is not inclined to grant the relief of specific performance to the plaintiff. Point No.5 is answered accordingly.

Point Nos.6 and 7 :

30. Since this Court found that the plaintiff is not entitled to the relief of specific performance, the other reliefs for delivery of possession and injunction are also rejected. However, in a suit for specific performance, the Court is vested with discretion to do justice. Since this Court has found that the plaintiff has paid a total sum of Rs.6,30,000/- to the defendant as advance, the plaintiff is entitled to refund of advance amount. In *Silvey and others v. Arun Varghese and others* [(2008) 11 SCC 45], the Hon'ble Supreme Court has held that, in a suit for specific performance, the conduct of the defendant has also to be taken into account. In the light of the same and having regard to the mischievous conduct of the defendant in putting up a completely false theory before the Court and misleading the Court, equity shifts in favour of the plaintiff, therefore, the advance amount shall



bear an interest @ 12% p.a. from the date of the suit till the date of realisation. Point Nos.6 and 7 are answered accordingly.

31. In fine, the judgment and decree of the trial Court is set aside. The suit in O.S.No.107 of 2007 is partly allowed. There shall be a decree in the suit as follows :

- i. The suit in O.S.No.107 of 2007 is dismissed insofar as specific performance, delivery of possession and injunction are concerned.
- ii. The defendant shall refund the advance amount of Rs.6,30,000/- (Rupees Six lakhs and thirty thousand only) to the plaintiff, with interest @ 12% p.a. from the date of the suit till the date of realization.
- iii. The parties shall bear their own costs in the suit.

32. Accordingly, this appeal is partly allowed. There shall be no order as to costs in the appeal.

33. The plaintiff is permitted to withdraw the balance sale consideration of Rs.3,70,000/- deposited by him before the trial Court, by filing an appropriate application.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To :

1. The Additional District Judge,
(Fast Track Court No.2),
Cuddalore.
2. The Section Officer | with a direction to send back the
(V.R. Section), | original records to the Court below,
High Court, Madras. | immediately

+1cc to Mr.D.Baskar, Advocate, S.R.No.24439

A.S.No.523 of 2013

PA(CO)
RGA(18/05/2022)