



AS.No.817 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2022

PRONOUNCED ON : 06 .06.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.817 of 2012

A. Nourullah

... Appellant

Vs.

1. V.N.Bharath Raja

2. K.Subramaniam

...Respondents

**Prayer:-** This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC, against the judgement and decree, dated, 06.03.2012, made in OS.No.33 of 2008, by the Principal District Judge, Krishnagiri.

For Appellant : Mr.M.Vijayan  
for Mr.Karan & Uday

For Respondents : No appearance

**JUDGEMENT**

1. This Appeal Suit has been filed, by the Plaintiff, against the judgement and decree, dated, 06.03.2012, made in OS.No.33 of 2008, by the Principal District Judge, Krishnagiri.
2. The case of the Plaintiff, as set out, in the plaint is that the plaintiff and the defendants entered into a sale agreement on 01.03.2007 to sell the suit properties and another extent of Ac.1.04 which belonged to defendants at



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Rs.4,730/- per cent of Junjupalli Village, for which, an advance amount of Rs.5,00,000/- was received by them. The total extent of land agreed to sell was Ac.4.49-1/4 and its value is Rs.21,24,952/-. Therefore, balance sum of Rs.16,24,952/- was payable by plaintiff. The plaintiff called upon the defendants on 20.03.2007 and several subsequent dates to receive the balance of sale consideration amount, execute the sale deed in favour of the plaintiff. But they simply postponed the same to perform their part of agreement. Hence, the plaintiff issued notice dated 22.12.2007 to the defendants, for which the defendants issued a false reply dated 01.01.2008 but posted on 03.01.2008. They neither give the survey number nor show the title deed of the said land of Ac.1.04. On enquiry, the plaintiff later found that Rajammal and two others filed a suit against the defendants and 7 others for declaration of title and permanent injunction in respect of property in S.No.171/3 Hec.0.72.0 including a Well and electric motor pumpset and the same was decreed on 12.02.2007. Patta for the said property stands in the names of Pushparaj alias Devaraj, Minor Murugan and Sampath Kumar. The plaintiff found that the defendants have got title and possession in respect of suit property alone and that relief of specific performance is sought only in respect of the same. The plaintiff is prepared to purchase the remaining properties mentioned in the suit agreement in the event of the defendants establish their title and possession. It is seen that the defendants are trying to alienate the suit properties. Hence the



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plaintiff filed a suit for specific performance and permanent injunction and for costs of the suit.

3. The case of the Defendants, as set out in the written statement filed by the 1<sup>st</sup> defendant and adopted by the 2<sup>nd</sup> defendant are as follows:

The suit is not maintainable either in law or on facts. The suit for specific performance of contract in respect of some of the properties only referred to in the agreement deed is not maintainable. The agreement dated 01.03.2007 was in respect of 4 items and it is composite one. The plaintiff cannot split the contract into components. The law of specific relief prohibits splitting of contract and enforcing the same. The contract should have been enforced in toto and if that is not possible, the plaintiff should rescind the contract and seek refund of advance amount and for other remedies if he is able to establish misrepresentation on the part of the defendants. In the agreement, it is clearly mentioned that the plaintiff should pay the balance of sale consideration amount of Rs.16,24,592/- within 3 months time and get the sale deed. At the time of entering into the agreement, it was made clear that time was the essence of contract and the defendants agreed to sell the suit lands and other two items of lands just because defendants wanted to purchase some other lands. It is clearly mentioned in the agreement deed dated 01.03.2007 that if the plaintiff fails to take the sale deed within 3 months time, the agreement



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would get automatically cancelled and the plaintiff should lose the advance amount of Rs.5,00,000/-. The plaintiff did not meet the defendants on 20.03.2007. The plaintiff did not contact the defendants within 3 months period and the plaintiff was not ready and willing to perform his part of contract. It is false to say that the defendants are trying to alienate the suit properties. Even if the defendants want to sell the same in favour of third parties, the plaintiff cannot prevent it. The suit itself is not maintainable because the plaintiff has not come forward to enforce the whole of the agreement. There is no cause of action for filing the suit and hence, they pray for the dismissal of the appeal.

4. On the pleadings of the parties, issues were framed by the Trial Court as follows:

- "1. Whether the plaintiff is entitled to the relief of specific performance?*
- 2. Whether time is essence of contract?*
- 3. Whether plaintiff is entitled to enforce the agreement only in respect of the suit properties alone?"*

5. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A6 were marked and PW1 and PW2 were examined. On the side of the Defendants, Ex.B1 to Ex.B5 were marked and DW1 to DW3 were examined. The Trial Court had dismissed the suit. Aggrieved against the same, this Appeal Suit has been filed by the Plaintiff.

6. This Court heard the submissions of the learned counsel on either side.



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7. The learned counsel for the appellant has submitted that the appellant has entered into a sale agreement on 01.03.2007 for the purchase of four properties, out of which, two properties cannot sell to this appellant because the respondent played fraud on him. Therefore, he filed a suit for specific performance for remaining two properties mentioned in the plaint schedule. Therefore, he prays to allow this appeal.

8. In this case, a perusal of 'A' schedule reveals that four properties were mentioned. But in the 4th item, survey number of extent of 1.04 acre of land and schedule were not mentioned. For that, proper explanation has also not been given by the respondents. Furthermore, at the time of entering into the agreement in the recital, he obtained certain properties through Sale deed and certain properties through Agreement deed. So at the time of entering into the agreement, he was not in possession of the entire land.

9. In this case, the appellant also, without verifying the original documents, entered into an agreement deed and the respondents also, without having the title deed, entered into a sale agreement. Once the appellant has come to know that with regard to certain properties mentioned in the suit agreement, is unable to execute immediately, he has to bring it to the knowledge of the respondents. Before entering into an agreement, he has to take all precautionary steps, but he miserably failed to do so. In this case, what are all the steps taken by the respondents to rectify the defect of certain properties also not mentioned in



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Ex.A1. Regarding the extent of 1.04 acre of land, the respondent has not filed the alleged sale agreement. If the sale agreement Ex.A1 is unable to execute, the respondents have to issue notice to the appellant showing his inability to execute the sale deed. For that the respondents also miserably failed .

10. The case of the plaintiff is that he is ready to purchase the clear title properties of the respondents. But the sketch shows that the properties are composite one and it cannot be divisible.

11. In C2 sketch, S.No.171/3 is also situated at the backside of the suit schedule properties. In his contention it is stated that the price of the land is fixed at Rs.4730/- for the entire properties. If it is divided so, the front portion of the properties has high value and back side properties has lower value. Considering this aspect, the properties cannot be divisible.

12. Under these circumstances, the sale agreement cannot be executable with regard to two properties. In this case, both the parties are miserably failed to perform their conditions laid down in the sale agreement. Hence, this appeal is partly allowed. The appellant is not entitled to specific performance but he is entitled for refund of the advance amount of Rs.5 lakhs with interest from the date of agreement at 12% p.a. till the date of decree of the suit and after that, 6% p.a., till the date of realisation.

13. In fine, this Appeal Suit is partly allowed. No costs.

06.06.2022



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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

GV

To

1. The Principal District Judge, Krishnagiri.
2. The Record Keeper, VR Section, Madras High Court



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**A.A.NAKKIRAN, J.**

gv

Pre-Delivery Judgement in  
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**06.06.2022**