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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2022

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.Nos.1971 and 1972 of 2002

M.Perumal ...Appellant / respondent in both appeals

Vs.

R.Angappan ...Respondent/appellant in both appeals

Common Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the judgment and decree dated 20.11.2001 made in A.S.Nos.115 and 116 of 2000 on the file of the Court of the III Additional District Judge, Salem reversing the judgment and decree dated 14.03.2000 made in O.S.No.2155 of 1996 and O.S.No.603 of 1991 on the file of the Court of the Principal District Munsif, Salem.

For Appellant : Mr.T.M.Naveen
in both S.As

For Respondent :Mr.S.Kalyanaraman
in both S.As for Mr.Jayaraman



COMMON JUDGMENT

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The plaintiff in O.S.No.603 of 1991 for specific performance and the defendant in O.S.No.2155 of 1996 for declaration, recovery of possession and for mesne profits is the appellant before this Court.

2. The suits in question are O.S.No.603 of 1991 and O.S.No.2155 of 1996 on the file of the Principal District Munsif, Salem. It is the case of the plaintiff in O.S.No.603 of 1991 that he had originally entered into an Agreement of Sale dated 13.09.1982 in respect of the suit properties and other properties from one Abdul Hai, S/o.Abdul Mazeed. However, since the plaintiff was not able to get permission from his department, he was unable to conclude the agreement. The Vendor insisted that the plaintiff should get the sale deed executed in his favour quickly. Therefore, the plaintiff had requested the defendant to advance the sale amount to the said Abdul Hai and conclude the sale agreement. The defendant had also advanced a sum of Rs.10,000/- on behalf of the plaintiff and had executed the sale deed in his favour. On the very same day, the defendant had also agreed to sell the suit property to the plaintiff and accordingly, an Agreement of Sale dated 14.03.1983 was entered into



between the plaintiff and the defendant in respect of the suit properties.

The sale consideration was fixed at a sum of Rs.12,000/- (Rs.2,000/- more than the price at which the property was purchased by the defendant) and the plaintiff had paid a sum of Rs.3,000/- as advance. The defendant had agreed to execute the sale within a period of 2 years from the date of the agreement.

3. The plaintiff submits that on 10.03.1985, he had paid a sum of Rs.2,000/- to the defendant, for which, an endorsement was made on the reverse of the said agreement and the time for performance was extended by a further period of 2 years. Once again on 07.03.1987, another sum of Rs.2,000/- was paid and an endorsement was made on the reverse of the agreement and the period was extended by 2 years. Thereafter, on 05.03.1989, the plaintiff had paid a further sum of Rs.2,000/- and an endorsement regarding this payment was made on the reverse and signed by the defendant in the agreement. A further period of 1 ½ years was given for concluding the contract. The plaintiff would submit that in all he paid a sum of Rs.9,000/- and what remained to be paid was a sum of Rs.3,000/-. The plaintiff would submit that he has



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always been ready and willing to perform his part of the contract. It is the defendant who promised to execute the sale deed as soon as the plaintiff had paid the balance sale consideration. However, when the plaintiff asked him to execute the Sale Deed, he informed him that he had some work in Karnataka and after finishing the same, he would execute the sale deed.

4. It is the contention of the plaintiff that the defendant had never been in possession of the properties, since it is the plaintiff who has been put in possession of the suit properties when the agreement of sale was entered into between him and the said Abdul Hai. He had entered possession of the property pursuant to the Sale Agreement dated 14.03.1983. Therefore, he is entitled to the benefits of Section 53 A of the Transfer of Property Act. The plaintiff would submit that he had dug a well in the suit properties by spending huge amounts for carrying the floor work, putting up windows and doors in the suit properties. The plaintiff would submit that since the defendant was not coming forward to execute the Sale Deed, he was constrained to file the suit in question.



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5. The defendant, on entering appearance, has filed his written statement *inter-alia* denying the contents of the plaint. The earlier agreement between the plaintiff and the Abdul Hai was denied as also the Agreement of Sale dated 14.03.1983 and the subsequent extensions. It is the case of the defendant that the said Abdul Hai had sold the suit properties to him for a valid sale consideration and he had got into possession of the properties. The plaintiff had requested the defendant to lease out the properties to him and pursuant to a written Tenancy Deed between the plaintiff and the defendant, the defendant had got into possession of the suit properties. It is the case of the defendant that the plaintiff had not paid the rent and when he had lodged a complaint with the Sooramangalam Police Station, he was asked to approach the Civil Court. Thereafter, the defendant had issued a legal notice to the plaintiff and filed R.C.O.P.No.99 of 1990 on the file of the Additional District Munsif Court, Salem, which was pending. The defendant would submit that he was not aware of the sale agreement between the plaintiff and the Abdul Hai. He would also submit that the plaintiff has not expended any amounts upon the suit properties as alleged by him.



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6. The trial Court had framed the following issues, which translated into English would read as follows:

(i) *Whether the plaintiff is entitled to a decree for specific performance?*

(ii) *What other reliefs the plaintiff was entitled to?*

7. The plaintiff had examined himself as P.W1 and one Kandhan, Arumugam, Sitharajan and K.D.Rajan were examined as P.Ws.2 to 5 respectively. Exs.A1 to A23 were marked on the side of the plaintiff. The defendant had examined himself as D.W1 and marked Exs.B1 and B2.

8. The learned Principal District Munsif, Salem on considering the evidence decreed the suit as prayed for. Challenging the said judgment and decree, the defendant had filed an appeal in A.S.No.115 of 2000 dated 20.11.2000 on the file of the District Court, Salem. The learned District Judge, Salem on considering the evidence on record and after perusing the judgment of the trial Court, had proceeded to allow the



appeal and set aside the judgment and decree of the trial Court.

Challenging the same, the plaintiff is before this Court.

9. The second appeals have been admitted on the following substantial questions of law:

“(a) Whether in view of Section 53-A of the T. P. Act, after agreeing to sell the suit property to the Appellant and also recognised and confirmed his continuous possession of the same in part performance of the said sale agreement, the only remedy open to the respondent is not to recover the balance sale consideration from him and consequently, the appellant's suit for specific performance is not entitled to be decreed and his suit for recovery of possession is not liable to be dismissed?

[b] Whether the case of the respondent, who had not only suppressed the Ex.A.5, Sale Agreement and made per-se false statement, but also, forged the signature of the appellant, fabricated a lease agreement dated 11.04.1985 and based on the same, filed eviction petition against the appellant, is not liable to be rejected as based on falsehood and he is playing fraud on the court and the appellant?

c] Whether after the appellant has proved Ex.A.5, Sale Agreement and the endorsements made thereon by



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the respondent and also his readiness and willingness to perform his part of the agreement, can his suit for specific performance be dismissed and the suit filed by the respondent for recovery of possession be decreed?”

10. Mr.T.M.Naveen, learned counsel appearing on behalf of the appellant/plaintiff would submit that the sale in favour of the defendant by Abdul Hai was only Benami for and behalf of the plaintiff. It had been agreed that the suit properties would be conveyed to the plaintiff once he gets the permission of his department. That apart, it was his contention that it is the plaintiff who is in possession of the suit schedule properties and that the attempts of the defendant to evict the plaintiff through rent control proceedings had failed, since there was no landlord-tenant relationship between the parties. He would submit that the plaintiff was ready and willing throughout and it was only the defendant, who has been putting off the sale. He would therefore submit that the appeal has to be allowed and the suit be decreed. He would further submit that since there is no landlord-tenant relationship between the parties and as the plaintiff has been put in possession of the property pursuant to an Agreement of Sale, the suit for declaration, recovery of possession and damages in O.S.No.2155 of 1996 also has to be dismissed.



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11. Per contra, Mr.S.Kalyanaraman appearing on behalf of Mr.S.Jayaraman would submit that plaintiff who comes to Court with the case that he has entered into an Agreement of Sale to purchase the properties as early as in the year 1983 is yet to pay the entire sale consideration. This very act would clearly show that the plaintiff is neither ready nor willing to proceed with the sale. The reason for not going ahead with the Sale Deed cannot be countenanced, since permission from the department has not been contemplated in the agreement of sale as a contingency for concluding the sale. He would further submit that for over 9 years from the date of the original agreement with Abdul Hai, the plaintiff has not moved a little finger to get the permission. This itself would show that the plaintiff is not serious in proceeding with the sale. He would submit that the suit for specific performance has to necessarily be dismissed. Once it is held that no rights flow to the plaintiff under the Agreement of Sale, then the plaintiff should automatically proceed to vacate the suit premises and hand over vacant possession to the plaintiff, who admittedly is the owner of the property.



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12. Heard the learned counsel on both sides and perused the materials on records.

13. Readiness and willingness is a *sine qua non* for granting the discretionary relief of specific performance. The lack of readiness and willingness on the part of the appellant is manifest from the very first agreement that he had entered with Abdul Hai. A perusal of Ex.A1 would show under the Agreement of Sale dated 08.09.1982, the plaintiff had undertaken to purchase the suit properties and another property for a total sale consideration of Rs.22,000/- and a sum of Rs.1,000/- was paid as an advance. A further sum of Rs.2,000/- was to be paid within a period of one month and 2 months thereafter, the balance sale consideration had to be paid. The endorsement in the agreement on 08.09.1982, which was marked as Ex.A2 would show that the plaintiff had not paid the sum of Rs.1,000/- as agreed in the Agreement and the endorsement would further read that the agreement was cancelled and another agreement dated 13.09.1982 had been entered into between the two. The agreement dated 13.09.1982 has not been produced on the side of the appellant. Thereafter, even under the suit agreement, the plaintiff



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has only taken extensions and to date the balance sale consideration has not been paid. This clearly manifests the lack of readiness and willingness on the part of the appellant. Therefore, the substantial question of law No.(c) has to be necessarily be answered against the appellant. It is the case of the appellant that he had been put in possession under the earlier agreement with Abdul Hai entered in the year 1982. The possession of the property is therefore only pursuant to an agreement of sale. To take shelter under this provision, the plaintiff has to prove the following:-

- (a) That there is a written contract between him and the defendant;*
- (b) The possession should have been given to the plaintiff under the contract;*
- (c) That he has done something in furtherance of the agreement; and*
- (d) He is willing to perform his part of the contract.*

The plaintiff has failed to pay the balance sale consideration as agreed and this Court has held that he has not been ready or willing to proceed



with the contract. The Hon'ble Supreme Court in the judgment reported in **2011(13) SCC 232 [Najegowda and Another Vs. Gangamma and Others]** has held that if a party cannot fulfill any one of the conditions listed below, he cannot take advantage of Section 53A of the Transfer of the Property Act.

“9. From a plain reading of the aforesaid provision, it is evident that a party can take shelter behind this provision only when the following conditions are fulfilled. They are:

(i) The contract should have been in writing signed by or on behalf of the transferor;

(ii) The transferee should have got possession of the immovable property covered by the contract;

(iii) The transferee should have done some act in furtherance of the contract; and

(iv) The transferee has either performed his part of the contract or is willing to perform his part of the contract.

A party can take advantage of this provision only when it satisfies all the conditions aforesaid. All the postulates are sine qua non and a party cannot derive benefit by fulfilling one or more conditions.”

14. A learned Judge of this Court in the judgment reported in **1999 (3) CTC 724 [S. Maruthai and Another Vs. Gokuldos Dharam Doss and 4 others]** held as under after relying upon the judgments of the Hon'ble Supreme Court held as follows:-



“Therefore as under [Section 16\(c\)](#) of the Specific Relief Act, the transferee relying on [Section 53A](#) of the Transfer of Property Act, to protect his possession, must show his readiness and willingness continuously from the date of the agreement till the hearing of the suit. “

Therefore, since the plaintiff has failed to prove his readiness and willingness, he cannot seek the protection of the provisions of Section 53A of the Transfer of Property Act. Therefore, the substantial question of law (a) is also answered against the plaintiff. Since the substantial questions of law (a) and (c) are answered against the plaintiff, the substantial question of law (b) is redundant and does not further the case of the plaintiff. Consequently, S.A.No.1972 of 2002 is dismissed.

15. In the light of the judgment passed in S.A.No.1972 of 2002 and the findings in substantial question of law No.(a) in the said appeal, no further orders are required to be passed in S.A.No.1971 of 2022. Therefore, S.A.No.1971 of 2022 is also dismissed. No costs.

14.11.2022

Index : Yes/No
Speaking order/non-speaking order
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To

1. The III Additional District Judge, Salem
2. The Principal District Munsif, Salem.
3. The Section Officer, V.R.Section, High Court, Madras



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P.T.ASHA, J.,

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