



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.549 of 2012
and M.P.No.1 of 2012

A.Ranganathan

...Appellant/Plaintiff

Vs.

A.Ganesan

...Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the decree and judgment of the First Additional District Judge Court, Coimbatore in A.S.No.120 of 2007 dated 28.09.2011 confirming the Decree and Judgment of the Principal Subordinate Judge Court, Coimbatore in O.S.No.231 of 2005 dated 23.11.2005.

For Appellant : Mr.K.P.Chandrasekaran

For Respondent : Ms.S.Janani for
M/s.Sai Krishnan

JUDGMENT

The plaintiff is the appellant in the present second appeal. The appellant filed the suit for specific performance based on the Sale Agreement dated 19.01.2005. The case of the appellant is that the total sale consideration was fixed as Rs.1,23,200/- (Rupees One Lakh Twenty Three Thousand and Two Hundred only) and an advance of Rs.10,000/- (Rupees Ten Thousand only) was paid to the defendant and the agreement itself fixed time period of three months for the completion of the sale. The further case of the appellant is that he was always ready and willing to perform his part of the contract and since the respondent/defendant was not coming forward to receive the balance consideration and execute the Sale Deed, the appellant proceeded to file the suit for specific performance.



2.The respondent/defendant filed the written statement and took a stand that time was the essence of the contract and the appellant never showed readiness and willingness to perform his part of the contract and hence, the appellant is not entitled for the relief sought for in the suit.

3.Both the Courts below on considering the facts and circumstances of the case and after analyzing the oral and documentary evidence, came to a conclusion that the appellant is not entitled for the relief of specific performance. Aggrieved by the same, the present second appeal has been filed before this Court.

4.Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the respondent.

5.This Court has carefully considered the submissions made on either side and also the materials available on record.

6.It is clear from the findings rendered by both the Courts below that the sale agreement itself had fixed three months time for the completion of the transaction and time was the essence of the contract. The Sale Agreement is dated 19.01.2005. It is seen that the appellant had taken the first step only in the month of May, 2005 which is much after the three months time fixed in the Sale Agreement. That apart, both the Courts below found that the appellant did not have sufficient means to pay the balance sale consideration of Rs.1,13,200/- (Rupees One Lakh Thirteen Thousand and Two Hundred only) and even EX.A4 that was marked on the side of the appellant showed that the amount was made ready only after filing of the suit and after the expiry of the time fixed under the Sale Agreement. Both the Courts below found that the appellant did not plead and prove his readiness and willingness and had fallen short in seeking for the equitable relief of specific performance.

7.This Court does not find any perversity in the findings of both the Courts below and there are no grounds to interfere with the same. No substantial questions of law are involved in the second appeal.



8. In the result, the second appeal is liable to be dismissed. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

ssr

To

1. The First Additional District Judge Court,
Coimbatore.
2. The Principal Subordinate Judge Court,
Coimbatore.
3. The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.T.Saikrishnan, Advocate SR.8265

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sj[col]
srg 03/03/2022