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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25 / 04 / 2022

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NO.324 OF 2016
AND CMP NOS.6035 & 6036 OF 2016

Shanmuga Gramani

...Appellant/Plaintiff

VS.

Babu Gramani

...Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, 1908, against the judgment and decree passed in A.S.No.40 of 2013 dated 27.11.2015 on the file of the Principal District Judge at Tiruvallur, reversing the judgment and decree passed in O.S.No.111 of 2010 dated 30.11.2012 on the file of the Subordinate Judge at Tiruvallur.

For Appellant : Mr.V.Manohar

For Respondent : Mr.K.Balaji

J U D G M E N T

Aggrieved over the reversal of the decree granted in favour of the appellant, by the First Appellate Court, the appellant preferred the above Second Appeal.

2.For the sake of convenience, the parties are called as per their litigative ranking before the Trial Court.

3.The case of the plaintiff is that he wanted to purchase 3.75 acres of lands from one Ramachandra Naidu and Tmt. Vijayammal. Since he was in shortage of funds, he approached the defendant for loan and borrowed a sum of Rs.2,00,000/- from him for interest @ Rs.2.50 per Rs.100/- per month. At the time of registration of the Sale Deed for the above said lands, the defendant insisted that the property must be registered in his name as security for his loan and undertook to convey the same to the plaintiff when he repays the same with interest. Accordingly, a Sale Deed for an extent of one acre of land was registered in the name of the plaintiff and remaining 2.75 acres of land, which is the subject matter of the Suit was registered in the name of the defendant. During July 2002, the plaintiff paid a sum of



Rs.50,000/- towards principal and Rs.5,000/- as interest and got a new consent letter from the defendant on that day and requested the defendant to reduce the interest rate from Rs.2.50 to Rs.2.00 per Rs.100/- per month. Accordingly, a fresh consent letter dated 27.04.2002 was issued by the defendant in favour of the plaintiff, in the presence of the witnesses. Thereafter, the plaintiff approached the defendant to repay the loan amount with interest and sought for execution of the Sale Deed, in his name. But however, the defendant refused to do the same. Thereafter, in the presence of the Mediators, namely Venkataraja, Gajendra Naidu and Kader Basha and other village elders, a Settlement was arrived at between the parties on 10.10.2007. Further, a Deed of Sale Agreement was executed on 10.10.2007 wherein the defendant agreed to sell the property for a total sale consideration of Rs.7,25,000/- and received Rs.1,25,000/- as advance. It was agreed by the parties that the balance sale consideration of Rs.6,00,000/- shall be paid within a period of one month and any breach of this term of the vendor, the defendant will be liable to pay twice the sale consideration. If any breach is committed by the purchaser, the advance amount of Rs.1,25,000/- shall stand forfeited. According to the plaintiff, the defendant evaded from performance of the contract in spite of his efforts. Therefore, he issued a legal notice on 07.12.2007, to which the defendant issued a reply notice. The plaintiff sent a rejoinder notice on 02.01.2008 and filed the Suit for specific performance.

4.The defendant denied the averments made in the plaint and stated that he purchased the property of entire 2.75 acres of lands by way of a registered document from the original owners and he is in possession and enjoyment of property by raising crops over the same. The documents as produced by the plaintiff are cooked up, false and fabricated. The plaintiff has no capacity to purchase any property, but he is a Court bird and able to manipulate things and the Court Fee paid is also defective and the Suit is liable to be dismissed.

5.The Trial Court, after framing appropriate issues, has held that the consensus of ad-idem as well as the readiness and willingness has been proved by the plaintiff and thus, decreed the Suit. On appeal, the First Appellate Court has held that the consensus of ad-idem has been proved, but readiness and willingness is not proved and hence, reversed the judgment and decree of the Trial Court. Aggrieved over the same, the plaintiff has preferred the above Second Appeal and the same was admitted on 12.07.2016, on the following substantial questions of law:-

"i) Whether the Lower Appellate Court is right in reversing the judgment and decree of the trial court and dismissing the suit on the reason that the plaintiff was not ready and



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willing to perform the contract in the absence of detailed discussion on such issue and giving a finding on facts and circumstances?

ii) Whether the learned Lower Appellate Court Judge is empowered to reverse the judgment and decree of the trial Court without assailing the said finding and without rendering independent finding?

iii) Whether the judgment and decree of the Lower Appellate Court is justified for the reason that there was compliance of Section 16 (c) of the Specific Relief Act right through from the date of agreement is established through records and evidence of competent person?"

6.From the evidence of the defendant, who examined as D.W.1 it is found that he had admitted the execution of the consent letter as well as the sale agreement which were marked as Exs.A1 and A2. He would also categorically state that he had voluntarily executed the same without any coercion. Relying on the clear admission, the First Appellate Court has confirmed the findings of the Trial Court that there was consensus of ad-idem. Therefore, it only remains as to whether the plaintiff proved his readiness and willingness to perform his part of contract or not.

7.Heard the submissions made on either side and perused the materials available on record.

8.The learned counsel appearing for the defendant would rely on a judgment of the Hon'ble Supreme Court in N.P.THIRUGNANAM (D) BY LRS. VS. DR.R.JAGAN MOHAN RAO AND OTHERS [1995 (5) SCC 115] wherein it is observed that the continuous readiness and willingness on the part of the plaintiff is a condition precedent for grant of relief. Since the plaintiff has not proved that he was ready with the money within the specified time of one month and filed the Suit with a delay, he is not entitled to the relief and it is not applicable to the contending circumstances of the case.

9.The learned counsel appearing for the defendant would also rely on a judgment of the Hon'ble Supreme Court in H.P.PYAREJAN VS. DASAPPA (DEAD) BY LRS. [2006 (2) SCC 496] to the point that the basic principles behind the claim of the discretionary relief is that the plaintiff must manifest that his conduct has been blemishless throughout. When the plaintiff has not proved his readiness and he has no financial capacity to perform his part of the contract is well established and he could not be granted with the relief.



10.The judgments relied on by the learned counsel for the respondent are not applicable to the present case on hand for the discussions to be made in the following paragraphs.

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11.It is well settled legal principle that in a Suit for specific performance, the averments as to readiness and willingness shall be considered as a whole and if the conduct of the parties proves that the plaintiff was ready and willing, the Court shall exercise its discretion in his favour and it shall not reject it applying a mathematical formula capable of being expressed only in specific terms and words.

12.In the instant case, the materials goes to show that the plaintiff had consistently approaching the defendant for execution of the Sale Deed. There was a mediation in the presence of three mediators and Ex.A2 sale agreement was entered between the parties. This execution of the Sale Agreement is admitted by the defendant himself as D.W.1. It is averred that the plaintiff had continuously approached the defendant to execute the Sale Deed by tendering the balance sale consideration. The time fixed was only one month. A reading of the Ex.B3, the rejoinder notice issued by the plaintiff will narrate the antecedents of the Sale Agreement dated 10.10.2007, wherein it is clearly stated that the plaintiff has entered into a sale transaction with the original owners and he has registered 2.75 acres of land in the name of the defendant for the purpose of security and that there is no transaction between the original owners and the defendant at any point of time. From the date of registration of the Sale Deed, in respect of the Suit property, the plaintiff is in possession and he has planted Groundnut, Casuarina Trees and saplings and he is rearing the same. The loan transaction between the plaintiff and the defendant, the mediation held in the presence of P.W.2 to P.W.4 and the Sale Agreement dated 10.10.2007 is also admitted. In the very same rejoinder, it is categorically mentioned that the plaintiff has approached the defendant with the balance sale consideration, but he only evaded and therefore, on the advice of the mediators he deposited the money in Andhra Bank vide Receipt No.183136 in Account No.20070175 in the name of his son S.Srinivasan. Even though the defendant in the proof affidavit and in the written statement has denied the execution of the consent letter, sale agreement as false and fabricated, he has not come forward with the specific denial that money was not deposited in the particular account. On the other hand, the plaintiff who examined himself as P.W.1 categorically stated that he mobilized the balance sale consideration of Rs.6,00,000/- within one month and approached the defendant for executing the sale agreement, to which he refused. Again the mediators had interfered and requested the defendant to execute the sale deed, to which also, the defendant evaded. The final mediation was held on 07.12.2007 and thereafter, on the advice of the mediators he deposited



13. Further, P.W.1 during his cross examination, would state that 10 days before the deadline, he approached the defendant to receive the balance sale consideration and execute the sale deed. On the other hand, the defendant demanded to reduce Rs.2,00,000/- and requested the plaintiff to leave one acre of land in his favour. Refusing to the demand of the defendant, the plaintiff has issued legal notice. He would further reiterate that he has taken Rs.6,00,000/- in cash and approached the defendant along with the mediators within one month. Even before the mediators, the defendant demanded that the said one acre of land shall be left to him after deducting Rs.2,00,000/-. Therefore, from the evidence of P.W.1, it is categorically prove that the plaintiff has approached the defendant with the balance sale consideration of Rs.6,00,000/- within the specified period and the defendant wanted one acre of land to be left to himself after deducting Rs.2,00,000/-. Thereafter, the plaintiff had deposited Rs.6,00,000/- on 11.12.2007 in Andhra Bank and issued a legal notice. The information regarding the deposit also made known to the defendant with receipt number as well as account details.

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15.The defendant who examined himself as D.W.1 would make an "omni bus" denial as to the execution of the agreement and deposit of money in the Bank. On the other hand, during his cross examination, the defendant would state that in the case of the plaintiff's brother Dakshinamoorthy, he advanced money for purchase of property and registered the same in his name and on repayment of loan amount, he has conveyed it in favour of him. Further, when he was confronted with the receipt of depositing a sum of Rs.6,00,000/-, he would deny the question as he was not aware of the deposit and marking of the receipt, was objected by the defendant. On the other hand, there is no objection by the defendant that the fact of deposit was false. The further deposition of the defendant goes to show that he was not aware of the original owners and the sale transaction made in his favour in respect of the suit property and also about the cultivation of Casuarina trees in the suit land. During further cross examination, he would depose that he was not aware of the deposit of balance sale consideration of Rs.6,00,000/- and the money is still lying in the deposit, but never denied that there is no such deposit in spite of being informed as early as on 02.01.2008 vide Ex.B3 marked by him. Therefore, the finding of the First Appellate Court that non-production of the deposit receipt or account details will disprove the case of the plaintiff that he has not made any attempt to show that he was ready and willing to perform his contract is erroneous and contrary to the evidence. On the basis of the materials placed before this Court, I find that the plaintiff has clearly proved his readiness and willingness as contemplated under Section 16(c) of the Specific Relief Act, 1963.

16.It is well settled that the factum of readiness and willingness to perform the plaintiff's part of the contract is to be assessed with reference to the conduct of the parties and attending circumstances. The Court may infer from the facts and circumstances whether the plaintiff was always ready and willing to perform his part of contract. The facts of this case would amply elucidate that the defendant is a money lender and he is in the habit of getting the sale deed registered in his name towards security of loan. The plaintiff had jingled the coins in front of him, within the specified time, but it was not accepted by the defendant and that he refused to perform his part of the contract. The consistent case of the plaintiff that the defendant wanted one acre of land left to him by deducting Rs.2,00,000/- and offered to execute the sale deed in respect of the remaining extent of land that is to say 1.75 acres. This undisputed fact goes to show that not only the plaintiff was always ready and willing, but in fact both the parties were willing to perform their part of contract, but for the hitches discussed above. This evidence goes without any objection and establish the readiness and willingness of the plaintiff beyond any doubt.



17. In view of the above discussions, the questions of law 1 and 3 are answered in favour of the appellant / plaintiff. The First Appellate Court without considering the evidence has rendered a finding on the readiness of the plaintiff. Hence, the reversal of the judgment by the First Appellate Court without appreciating the evidence in proper perspective is not sustainable and hence, the second question of law is also answered in favour of the appellant / plaintiff and the Suit is decreed as prayed for.

18. Accordingly, the judgment and decree passed in A.S.No.40 of 2013 dated 27.11.2015 on the file of the Principal District Judge at Tiruvallur stands set aside and the Second Appeal stands allowed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK

To

1. The Principal District Judge at Tiruvallur.

2. The Subordinate Judge at Tiruvallur.

+1cc to Mr.V.Manohar, Advocate SR. No. 28073

+1cc to Mr.K.Balaji, Advocate SR. No. 28321

SA NO.324 OF 2016

SR (CO)

PR (31/05/2022)