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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.02.2022

Pronounced on : 24.02.2022

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Appeal Suit No.82 of 2014

1.Ratnam.

2.B.Ethiraju.

... Appellants / Defendants 1 & 2

/versus/

P.Kuppusamy.

... Respondent / Plaintiff

Prayer: Appeal Suit has been filed under Section 96 of C.P.C., against the judgment and decree passed by the II Additional District and Sessions Judge, Tirupur in O.S.No.149 of 2011 dated 01.10.2013 partly decreeing the suit.

For Appellants : Mrs.Chitra Sampath,
Senior Counsel
for Mr.S.Thangavel

For Respondent : Mr.V.Lakshmi Narayanan for
Mr.P.Nethaji

J U D G M E N T

O.S.No.149/2011 on the file of II Additional District and Sessions Judge, Tiruppur, for the reliefs of specific performance and permanent injunction was partly allowed by the trial Court vide decree dated 01/10/2013. This appeal is filed by the defendants against the decree of the Trial Court which partly allowed the suit to the effect of directing the defendants to execute the sale deed within a period of two months on receipt of the balance sale consideration of Rs.7,91,580/-.

2. It is to be recorded at this juncture, the relief to grant permanent injunction to restrain the defendants from interfering his possession of the suit properties on premise that the possession of the suit properties were handed over to the plaintiff as part performance of the sale agreement dated 22/12/2010, on receipt of part sale consideration of Rs.10 lakhs, was disallowed by the Trial Court. The plaintiff



preferred an appeal against the disallowed portion before this Court and the said appeal came to be dismissed as withdrawn vide order dated 07/02/2018 in A.S.No.225/2014.

3. For the sake of convenience, the parties are referred as per their status and ranking mentioned in the plaint.

4. The background facts leading to this appeal in nutshell:-

The suit properties consists of two items. The first item property is agricultural dry land in the suit village bearing Old S.No.423/3 measuring about 4.82 acres: UDR new survey No.423/3A measuring 1.85.00 hectare and the second item property is 0.12 cents of land in the cart track running through two survey numbers.

5. The defendants 1 and 2 are the owners of the first item land and the second defendant is the owner of the 2nd item which is 0.2 cents, out of 0.20 cents land running through S.No.409/2C and 10 cents out of 3.06 acres running through S.No.408/C2.

6. Both the defendants joined together and entered into the suit subject sale agreement with the plaintiff on 22/12/2010 on the following terms:-

(i). The price of the property fixed at Rs.3,82,000/- per acre.

(ii). Rs.10 lakhs has been paid as advance and the contract to be concluded within 3 months from the date of agreement.

(iii). In case of default on the part of the vendor, the vendee shall enforce the agreement through Court by way of specific performance suit.

(iv). In case of default on the part of the vendee, the money advanced by the vendee shall stand forfeited.

7. The case of the plaintiff is that, he was ready and willing to complete the contract within the time prescribed. The defendants handed over the possession of the property and the title deed to him, as part performance, on receipt of substantial part of the sale consideration. Later they refused to execute the sale deed, in spite of causing notice to them on 19/03/2011 informing that he will be waiting for them at Sub-Registrar Office for fulfilling his part of agreement and the defendants shall come to the Sub-Registrar Office and execute the sale deed on receipt of the balance sale consideration.



8. It is contended by the plaintiff that the defendants, having agreed to sell the second item property measuring 0.12 cents, later want to exclude that property which is a cart track leading to the land to be purchased. Having specifically agreed to sell the land measuring 0.12 cents along with the easement of way through the cart track and the land measuring about 1.85.00 hectare, the defendants cannot retract their agreed terms. Therefore, the plaintiff is entitled for the relief of specific performance of the agreement dated 22/12/2010 and having put in possession of the property as part performance, their peaceful possession should not be disturbed by the defendants or their agent.

9. The defendants admits the execution of the agreement dated 22/12/2010 and the receipt of the advance of Rs.10,00,000/- as part consideration. However, they deny the plaint averment about handing over of the possession on the date of agreement itself as part performance. According to them, the possession was never given to the plaintiff and when the plaintiff forcible tried to take possession of the property, a complaint to the police was lodged and the plaintiff gave an undertaking that he will workout his remedy before the competent Civil Court.

10. The case of the defendants is that the sale agreement does not include the entire cart track 0.12 cents of the land, should be excluded from the sale transaction, since the defendants own property on the south side of the suit land and the said cart track is the only access to reach their land. The plaintiff, who was aware of the fact, when requested to exclude the cart track, he was not willing. Suppression of material facts and false averment about possession, dis-entitle the plaintiff seeking equitable relief of specific performance.

11. The Trial Court, based on the pleadings, framed the following issues:

1. Whether the plaintiff is entitled for the relief of specific performance, permanent injunction and costs as prayed ?

2. Whether the contention of the defendant that the plaintiff was never ready and willing to perform his part of agreement is correct ?

3. Whether the contention of the defendant that the possession of the suit property was never given to the plaintiff is correct ?

4. Is any other relief the plaintiff entitled?

12. Before the trial Court for the plaintiff, he and 3



other witnesses namely Mr.Subramaniam (witness to the agreement), Mr.Chinnadurai (witness to the agreement) and Mrs.Rajalakshmi (daughter-in-law of the plaintiff) were examined. 13 exhibits were marked. For the defendants, the second defendant and one Mr.Surendra Prakash (subsequent purchaser) were examined and 11 exhibits were marked.

13. The trial Court partly allowed the suit to the effect that the plaintiff is entitled for a decree of specific performance. Plaintiff should pay the balance sale consideration of Rs.7,91,500/- within two months from the date of decree and the defendants should execute the sale deed, on receipt of the balance sale consideration. The sale shall be subjected to the rights of other share holders in the cart track (second item) and the plaintiff shall not interfere with the rights of the other share holders in the cart track.

14. The Trial Court further held that, the plaintiff failed to prove, when the possession of the suit property was given to him. The contradictions in the evidence among the witnesses regarding the handing over of the possession at different point of time was the reason stated by the trial Court to hold that the plaintiff is not entitled to get the relief of permanent injunction.

15. The grounds of appeal:

The Learned Senior Counsel for the appellants submitted that, the Trial Court while rightly rejected the plea of the plaintiff regarding possession ought to have dismissed the suit in entirety on the sole ground that the person, who seeks equity should come to Court with clean hands. Whereas, in this case, the proven falsehood of the plaintiff dis-entitles him to the relief of specific performance also which is an equitable relief.

16. The learned Senior Counsel for the appellants submitted that P.W.2 and P.W.3 are not competent to speak about the suit agreement. They were not present at the time of executing the agreement. The suit agreement was prepared in duplicate simultaneously. While the agreement deed Ex.B-1 the copy given to the defendants not signed by any witnesses, Ex.A-1, which is the copy of the agreement produced by the plaintiff from his custody, contains the signatures of P.W.2 and P.W.3 as witnesses. This is obviously an insertion made at a later point of time and it amounts to material alteration of the suit document. Particularly, the Learned Senior Counsel appearing for the appellants emphasised that P.W-2 is the son-in-law of the plaintiff and P.W-3 is a land broker, who works for commission. They are interested witnesses and not trustworthy. The deed in



duplicate prepared simultaneously and the plaintiff's document Ex.A-1 was tampered subsequently for the sake of the litigation. Therefore, the evidence of the witnesses whose signature not found in Ex.B-1, should be eschewed in toto.

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17. Further pointing out the contractions among the witnesses and embellishment of the plaintiff case by introducing P.W-4, (who is the daughter-in-law of the plaintiff) to reconcile the falsehood regarding readiness and availability of cash in the plaintiff's bank account, which patently found to be false as per the bank pass book and statement of accounts marked as Ex.A-11 to Ex.A-13, the Learned Senior Counsel for the appellants submitted that, the trial Court erred in holding that the plaintiff was always ready and willing to perform his part of agreement, even though the plaintiff, who admitted in his cross examination that neither his son nor his daughter-in-law had any role in this deal and the plaintiff's own documents Ex.A-12 reveal that he had balance of Rs.8,775/- only as on 28/02/2011 and as on 31/03/2011 he had only Rs.6,320.89/-. Particularly, on 22/03/2011, he had cash balance of Rs.7,430.30 only. There is no proof that he withdrawn money from his bank account before he went to the Sub-Registrar office on 22/03/2011 when he called upon the defendants to come to the Sub-Registrar office to collect the balance sale consideration and execute the sale deed.

18. It was also contended that, mere presence in the Sub-Registrar office on 22/03/2011 for being a witness to a document registered on that date, is not a proof for ready and willingness. In the absence of proof for availability of funds to pay the balance sale consideration, and draft sale deed and other preparations necessary for executing a deed will only indicate the lack of ready and willingness. In the instant case, the plaintiff admits that, he on 22.03.2009 he carried cash with him to Sub Registrar Office to pay the balance consideration. He pleads that the money was withdrawn from his bank account. After confronting the plaintiff with his bank pass book which exposed his lie, the plaintiff has introduced his daughter-in-law as a witness to explain the availability of cash through different sources including selling of cattle and her jewels. However this also stands to be false not only for want of evidence to show the source but also by the categorical admission by the Plaintiff in the cross examination, that his son or daughter in law are no way connected with the deal. No doubt, on subsequent date i.e., on 08/04/2011 the plaintiff's son had transferred a sum of Rs.8,00,000/- into the plaintiff's account, but it proves that the plaintiff was not ready with cash on 22/03/2011 or soon before that date which was the last date to complete the contract as per the agreement.



19. The Learned Senior Counsel for the appellants submitted that, the conduct of the plaintiff who caused the legal notice Ex.A-6 dated 19/03/2011 after receipt of Ex.B-2 the notice dated 16/03/2011 from the defendant's lawyer per se would expose his malafide intention to protract the execution of the agreement on some pretext and not in true sense ready and willing.

20. Per contra, the learned counsel for the respondents/plaintiffs would submit that, as per the sale agreement a sum of Rs.10 lakhs was received by the defendants and they agree to execute the sale deed, within three months on receipt of the balance consideration. In the agreement, the schedule of property is morefully described and there is no ambiguity in respect of the 2nd item of the property. However, the 2nd defendant was not interested in parting away the 2nd item property, which is a cart track. He delayed the execution which led to issuance of legal notice dated 19.03.2011 and telegram on the same which are marked as Ex.A.5 and Ex.A.6. The defendants calculatively delayed the receipt of the notice and telegram to avoid being present before the Sub Registrar for execution. The absence of witnesses signature in the agreement copy given to the plaintiff will no way support the case of the defendants since he agrees the execution of the agreement and receipt of the part sale consideration and in fact accepting the validity of the agreement, he had caused notice dated 17.03.2011 which is marked as Ex.A.9. Therefore, he cannot approbate as well as reprobate the agreement. There is no suppression of facts or falsehood in the case of the respondent as alleged by the appellants. The passbook entries of the plaintiff (Ex.A.12) would sufficiently prove that the plaintiff/respondent is a man of means to purchase the suit land and he has already paid Rs.10 lakhs towards part consideration and he is ready and willing to pay the balance sale consideration. The vendor need not jingle the coin to this Court and it is sufficient to show source to honour the agreement and in fact the balance sale consideration now deposited in the suit account as per the terms of the decree.

Points for consideration:-

(i).Whether the discrepancies in Ex.A.1 and Ex.B.1 sale agreements will render the agreement invalid.

(ii). Whether the plaintiff suffers suppression of fact and falsehood which will dis-entitle the plaintiff seeking equitable relief of specific performance?

(iii).Whether the finding of the Trial Court that the plaintiff has proved his



readiness and willingness to perform the contract is erroneous since same is not supported by Ex.A.12?

21. The Learned Counsel appearing for the appellants relying upon the decision of the Division Bench of this Court in Nallaya Gounder and another -v- P.Ramaswami Gounder (Died) reported in 1993 (2) LW 86 would submit that, the plaintiff has not come forward to the Court with clean hands in asking for the equitable relief. The concocted story that possession of the suit property was handed over to the plaintiff soon after the execution of the sale agreement. Though it does not find part of the sale agreement was falsified through cross examination of the plaintiff's witness, who had deposed that possession was not given on the same day but on subsequent dates in two parts. Further, the letter of the plaintiff given to the police pursuant to the complaint given by the defendant clearly admits that he took possession only in the month of April 2011. In the judgment cited supra, at paragraph Nos.16 & 17, Court has held that:-

"16. Under S. 16(c) of the Specific Relief Act, specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms, the performance of which has been prevented or waived by the defendants. Learned senior counsel for the appellants submitted that the plaint in this case did not contain any averment to the effect that the plaintiffs made a demand for specific performance and there was a refusal on the part of defendants 1 to 3 to comply with the said demand. It will not be sufficient if the plaintiff pleads and proves that he is ready and willing to perform his part of the contract, but he must also plead that he made a demand on the defendant for performance of the contract and the defendant refused to comply with the same and that the language refused to comply with the same and that the language of R. 3 of O. 6, of the Code of Civil Procedure is mandatory and any plaint in a suit for specific performance has to be strictly in conformity with Form No. 47 or 48 of Appendix A of the Code of Civil Procedure



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Learned counsel for the appellants further pointed out that the plaint does not contain averments regarding cause of action also. He relied on the decision in Abdul Khader Rowther v. Sara Bai (1989 (4) S.C.C. 313) wherein the Apex Court has laid down: "A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 or the First Schedule in the Civil Procedure Code. In a suit for specific performance it is incumbent on the plaintiff not only to set out agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement pleaded by him but the defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement. Neither in the plaint nor at any subsequent stage of the suit the plaintiff has taken those pleas. As observed by this Court in Prem Raj v. D.L.F. Housing and Construction (Private) Limited (1968 (3) SCR 648) that it is well settled that in a suit for specific performance plaintiff should allege that he is ready and willing to perform his part of the contract and in the absence of such an allegation the suit is not maintainable."

17. A perusal of Form Nos. 47 and 48 shows that in a suit for specific performance there must be averments to the effect that plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so. The plaintiff was still ready and willing specifically to perform the agreement on his part, of which the defendant had notice. And we find from the plaint that besides stating that they are ready and willing to perform their part of the contract mention is made of the plaintiffs convening panchayat thrice and defendants 1 to 3 agreeing to execute the conveyance and later on selling the properties in favour of the appellants under Ex. B1 and B.9. So in our view there is sufficient compliance of the requirements of Forms 47 and 48 of Appendix-A of the Code of



Civil Procedure."

22. In the case in hand, the plaintiff alleged to have caused notice dated 19.03.2011 and from the postal endorsement, it is clear that the same was received by the defendants only on 23.03.2011. Whereas, the plaintiff, in the notice has called upon the defendants to come to Sub Registrar Office on 22.03.2011 to get the balance consideration and execute the sale deed. Such notice which was sent belatedly with an intention that it should reach only after the date fixed will reveal the plaintiff had no intention to really complete the transaction but only to create evidence that he was ready and willing to perform the contract.

23. Further, the Learned Senior Counsel for the appellants would rely upon the judgment of this Court in Farooque Dadabhoy -vs- Dr.Usha S.Bhat reported in 2014(4) CTC 290, wherein, this Court has held that when the time is essence of contract and no documents placed before this Court to show that the plaintiff has kept the sale consideration ready with him while sending communications to the defendant to register the Sale Deed and he has not purchased the required stamp papers for preparation of Sale Deed, then the relief of Specific Performance cannot be granted. To buttress her submissions, the Learned Senior Counsel appearing for the appellants would rely upon the following paragraphs.

"30. It is trite that remedy of Specific Performance is purely an equitable remedy. The Plaintiff in such a Suit must come to the Court with clean hands. Entire facts of the case have to be pleaded without any kind of reservation. There should be no attempt on the part of the Plaintiff to conceal or suppress material facts. Similarly, there should not be any kind of attempt to mislead the Court. Whether it is favourable or unfavorable, the Plaintiff must disclose the entire details of the transaction. The conduct of the Plaintiff should be trustworthy. The course of conduct adopted by the Plaintiff should be fair. Any suppression of material particulars would be treated as unfair, which would disentitle him from seeking the equitable remedy of Specific Performance.

31. Since the remedy of Specific Performance is a discretionary remedy on equitable grounds, Plaintiff has to produce



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materials with respect to his readiness and willingness at all point of time. The conduct of the Plaintiff also assumes significance in a case of this nature. The Court was expected to weigh the materials produced by the Plaintiff to come to a definite conclusion with regard to the readiness and willingness to perform the contractual obligation voluntarily undertaken by the Plaintiff. Any action on the part of the Plaintiff to take undue advantage of the situation would result in denial of the equitable remedy. In short, the conduct of the Plaintiff throughout should be taken note of to decide the genuineness of the claim and his bona fides."

24. Per contra, the Learned Counsel appearing for the respondent while defending the judgment of the Trial Court would submit that the defendants have admitted the execution of the sale agreement and through his own notice dated 17.03.2011 (Ex.A.9) had come forward to execute the sale deed as per the terms of agreement. While so, it is immaterial whether there was any attesting witnesses to the agreement as found in Ex.A.1 or not. Likewise the rejection of plea to grant permanent injunction by the Trial Court ipso facto will not dis-entitle the plaintiff seeking the relief of specific performance. More so, the plaintiff has paid substantially towards the sale consideration and he was always ready and willing to perform his part of contract.

25. Regarding the readiness, the Learned Senior Counsel for the appellants would submit that the evidence of P.W.4, who is the daughter-in-law of the plaintiff is more cogent and relevant. The Trial Court has rightly believed her evidence and granted the relief of Specific Performance and in fact after the decree, the plaintiff has deposited the balance sale consideration in the Court which is the conclusive proof for his ready and willingness. The Learned Senior Counsel for the appellants would also point out the entries in pass book (Ex.A.12) to prove, the plaintiff had more than Rs.8 lakhs on 08.04.2011 in his account.

26. From the submissions made by the respective counsels and on perusal of the evidence, it is amply clear that the appellants were ready to sell the property as per the terms of agreement and they caused legal notice calling upon the plaintiff to complete the contract within a period of three months time prescribed. While so, the necessity for the plaintiff to approach the Court for specific performance has



arisen because there was some understanding regarding the description of the 2nd item of the property and the extend of transferable right in the 2nd item property, which is cart track.

27. Perusing the schedule of the property, we find that 0.12 cents of land in an undivided cart track intended to be conveyed under the sale agreement in favour of the plaintiff. The phrase used in the agreement is that, "பின்னும் க.ச.409.2 பு.ஏ 0.20 இதில் மேற்படி காலையில் கிழகோடு தென்வடலாக அதாவது பி.ஏ.பி வாய்க்காலுக்கும் தெற்கு க.ச.422 நெ காலைக்கும் மேற்கு, கீழ்க்கண்ட க.ச.408/சீ2 நெ காலை கிரைய பூமிக்கும் வடக்கு, மேற்படி க.ச.409/2சீ நெ காலையில் பாலகிருஷ்ணன் ராஜேஸ்குமார், லலித்குமார் ஆகியோர்கள் மீதி பூமிக்கும் கிழக்கு இதன் மத்தியில் வடபுறம் கிழமேல் லிங்ஸ் 39-1/2 தென்புறம் கிழமேல் லிங்ஸ் 39-1/2 மேல்புறம் தென்வடல் லிங்ஸ் 50 கிழபுறம் தென்வடல் லிங்ஸ் 48 இந்த அளவுகள் கொண்ட பு.ஏ.0.02 சென்டு. க.ச.408/சீ2 நெ காலை பு.ஏ.0.02க்கு 3.06க்கு தீர்வை ரூ.5.19 இதில் மேற்படி காலையில் கிழபுறம் தென்வடலாக அதாவது மேலே கண்ட 409/2சீ நெ காலை பூமிக்கும் தெற்கு, செந்தில்குமார் பூமிக்கும் மேற்கு, க.ச.433/3ஏ நெ காலைக்கும் வடக்கு, மேற்படி க.ச.408/சீ2 நெ காலையில் பாலகிருஷ்ணன் வகையரா பூமிக்கும் கிழக்கு இதன் மத்தியில் வடபுறம் கிழமேல் லிங்ஸ் 39 1/2 தென்புறம் கிழமேல் லிங்ஸ் 37 மேல்புறம் தென்வடல் லிங்ஸ் 259 கிழபுறம் லிங்ஸ் 257 இந்த அளவுகள் கொண்ட பு.ஏ.0.10 சென்ட். ஆக மேற்படி காலைகள் இரண்டிலும் சேர்ந்து மொத்தம் பு.ஏ.0.12 இந்த பூமியும் மேற்படி பூமியன் வழியாக பி.ஏ.பி வாய்க்காலில் இருந்து பூமிகளுக்கு ஆட்கள், கால்நடைகள், வண்டி வாகனங்கள் போய் வந்து கொள்ளும் தடபாத்தியம் மாழ்ஸ்படியும் சகிதம்." While so, it is alleged by the defendants that the plaintiff insisted to convey the entire cart track in their favour for which the defendants were not agreeable. The plaintiff contrarily pleads that the defendants want to exclude the 2nd item of the property in entirety from transferring it to plaintiff, therefore, there was stalemate in enforcing the agreement.

28. The Trial Court having understood the crux of the dispute had recorded that conveyance of 0.12 cents of land in the cart track will not affect the right of the other shareholders and had restrained the plaintiff from interfering and enjoying of the cart track by other shareholders.

29. In this connection, it is also relevant to refer Ex.B.12 which is the subsequent agreement entered by the 2nd defendant in favour of one Mr.Sundaresh Prakesh (D.W.2) which was after dismissal of the appeal for default and before its restoration. In the said sale agreement also the description of the 2nd item property is similar to what is described in Ex.A.1. Therefore, the defendants cannot now say that they never had intention of alienating 2 cents of land out of 10 cents in S.No.408/C2 and 10 cents of land out of 3.06 acres of land in S.No.409/2C. In any case, undivided share in the land where the cart track is located cannot be conveyed exclusively to the plaintiff in toto since the defendants himself have only a limited right and title over the said cart track, which to be



enjoyed along with other co-sharers.

30. The plea of suppression of facts and the defence taken by the defendants that the plaintiff has come to Court within unclean hands may not have much significance in the present case because the defendants admits substantially the case of the plaintiff which includes the execution of the sale agreement and receipt of the consideration. Also from their conduct, it is clear that the defendants were ready to execute the sale deed on receipt of balance sale consideration. While so, the entire dispute has cropped up because of misunderstanding of the recital about the 2nd item property in the agreement schedule. Since the Trial Court has clarified the same and which is now been reiterated by this Court, this Court finds that the appeal deserves to be dismissed.

31. It is open to the appellants to withdraw the money deposited by the respondent herein and execute the sale deed within a period of one month from the date of receipt of a copy of this order. Failing which the respondent shall move to the Court concern for execution of the sale deed as per the decree of the Trial Court which is subsequently clarified and confirmed by this Court in this Appeal. Accordingly, the Appeal is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

bsm

To:-

1. The II Additional District and Sessions Judge,
Tiruppur.

Copy To:

The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.S.Thangavel, Advocate, S.R.No.12107
+1cc to M/s.P.Nethaji, Advocate, S.R.No.12085

A.S.No.82 of 2014

NRL(CO)
SB(07/03/2022)