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S.A.No.1113 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1113 of 2021
and
C.M.P.No.21361 of 2021

1.A.V.Munusamy

2.Anjala

3.M.Sugumar

4.P.Thiruvengadam

...Appellants/Respondents/Defendants

Vs.

K.Kalyani

...Respondent/Appellant/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 22.02.2021 in A.S.No.30 of 2017 on the file of the learned II Additional District Judge, Vellore at Ranipet (A.S.No.153 of 2017 – learned District Judge, Vellore), reversing the Judgment and Decree dated 06.04.2016 in O.S.No.105 of 2014 on the file of the learned Subordinate Judge, Arakkonam.



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For Appellants : Mr.N.Manoharan
For Respondent : Mr.P.Subba Reddy

JUDGMENT

The defendants are the appellants before this Court challenging the Judgment and Decree passed in A.S.No.30 of 2017 by the learned II Additional District Judge, Vellore at Ranipet, reversing the Judgment and Decree in O.S.No.105 of 2014 on the file of the learned Subordinate Judge, Arakkonam. The parties are referred to in the same rank and array as before the trial Court.

2.The facts in brief which are necessary for disposing of the Second Appeal are as follows:

The plaintiff had filed O.S.No.131 of 2010 for specific performance of the contract of sale. It is the case of the plaintiff that the 1st defendant is the owner of the suit schedule property and he had offered to sell the suit property to the plaintiff for a total sale



consideration of Rs.4,45,000/-. Immediately, the plaintiff has paid a sum of Rs.3,50,000/- to the 1st defendant and the 1st defendant had also assured to execute the Sale Deed after receiving the balance sale consideration in due course. The 1st defendant was employed in the Food Corporation of India and is residing in the same Street as that of the plaintiff. The defendants would submit that a sum of Rs.3,50,000/- was paid under trust and the plaintiff had requested the 1st defendant to execute and to register the Sale Deed on 07.01.2004 and the 1st defendant had agreed to do so. However, on 07.01.2004, when the plaintiff had requested the 1st defendant to handover the original documents he had stated that the same was pledged with the Department as he had obtained a loan from the Department and the same could be redeemed only from out of the sale consideration and therefore, he could not execute and get the registered Deed on the said date. However, he had assured that he would redeem the documents within one month. Therefore, the plaintiff agreed to have the power of attorney executed. Accordingly on the very same day the defendants



had executed a registered power of attorney in favour of the plaintiff.

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3.The plaintiff would submit that on 08.01.2004, she had paid a sum of Rs.50,000/- to the 1st defendant and the balance sale consideration of Rs.45,000/- was paid on two occasions as Rs.20,000/- and Rs.25,000/-. The plaintiff would submit that she had obtained a simple mortgage for a sum of Rs.3,50,000/- and a Promissory Note for a sum of Rs.50,000/- since the Sale Deed was yet to be executed. The plaintiff would submit that she waited for three months to execute the Sale Deed and when she had called upon the 1st defendant to execute the Deed he had given an evasive reply and postponed the execution and registration of the Sale Deed under one pretext or the other. Since the plaintiff had a doubt she verified with the Surveyor of the Sub Registrar's Office where she came to know that the 1st defendant had cancelled the power of attorney dated 07.01.2004 on 09.08.2006 itself. This was done without any prior intimation to the plaintiff and even thereafter, there was no notice of cancellation. The



plaintiff therefore lodged a complaint with the Superintendent of Police, Vellore on 28.03.2007. Thereafter, the 1st defendant issued a Legal Notice dated 16.05.2007 putting forth totally false allegations. Meanwhile, on the basis of the complaint, the Police had summoned the 1st defendant and in order to avoid prosecution, the 1st defendant agreed to come forward to settle the dispute and demanded a sum of Rs.7 lakhs as sale consideration. He had acknowledged the receipt of a sum of Rs.3,25,000/- which had been already paid and agreed to adjust it towards part payment of the sale consideration. On 28.04.2007, an Agreement of Sale was executed in favour of the plaintiff by the 1st defendant along with his wife and son who are the defendants 2 and 3 herein. As per the terms of the Sale Agreement, the plaintiff was required to pay the balance sale consideration of Rs.3,75,000/- within 90 days from the date of the Agreement. The plaintiff would submit that though she was ready to have the Sale completed the defendants failed to perform their part of the contract. Finally, a Legal Notice was sent to the defendants on 26.03.2008 to



which there is no response from them. The plaintiff would submit that she was always ready and willing to perform her part of the contract which is to bear the expenses for registration and to pay the balance sale consideration of Rs.3,75,000/-. The plaintiff therefore filed the suit for Specific Performance.

4.The defendants had filed a Written Statement denying the Agreement of Sale and the fact that they had agreed to sell the property to the plaintiff. He had also denied the receipt of the monies as stated in the Plaint and also the subsequent Agreement of Sale for Rs.7,00,000/-. He would submit that the 1st defendant had borrowed a sum of Rs.20,000/- as a hand loan from the husband of the plaintiff and at that time, the plaintiff's husband had insisted upon the 1st defendant signing in blank stamp papers as a security for the same. As the defendants had great faith and confidence in the plaintiff's husband, he had signed the same as requested. That apart, the defendants were in urgent need of money were therefore forced to sign



in the blank papers. The defendants were also asked to execute a power of attorney as additional security. Thereafter, when the true intent of the plaintiff was revealed the defendants had cancelled the power of attorney. The defendants would further contend that the plaintiff had given a false police complaint against the defendants. The police had threatened the defendants to execute the Agreement of Sale and therefore the defendants had executed the same. These defendants had issued a notice to the police, however, there was no response from the police. The defendants would submit that the plaintiff and her husband has manipulated the Sale Agreement as if it was executed on 28.04.2007 using the blank signed stamp papers and also manipulated the documents as if the defendants had borrowed Rs.2 lakhs from the plaintiff. These defendants had never agreed to sell the property and also have not received a single penny towards advance and therefore, they sought for dismissal of the suit.

5.The trial Court on an elaborate consideration of the evidence



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on record dismissed the suit. The said Judgment and Decree was taken up on appeal by the plaintiff in A.S.No.30 of 2017 on the file of the learned II Additional District Judge, Vellore at Ranipet. The learned Judge by her Judgment and Decree dated 22.02.2021 allowed the appeal and decreed the suit. The Appellate Court has come to the conclusion that since the defendants have raised a plea of forgery they are bound to prove the same and they miserably failed to do so. The plaintiff has examined herself and PW2 who had witnessed the execution of Ex.A.3 - Sale Agreement. PW2 deposed that the defendants had agreed to sell the suit property for the sale consideration of Rs.7 lakhs and that the defendants had received the advance amount of Rs.3,25,000/- and when they had executed the Sale Agreement on 28.04.2007. The Appellate Court had also held that the plaintiff was ready and willing to pay the balance sale consideration of Rs.3,75,000/-. The learned Judge has held that no suspicious circumstances for the execution of the Deed has been made out by the plaintiff and that apart, they have not been able to prove that the



Police officials threatened them into executing Ex.A.3 - Sale Agreement. The learned Appellate Judge has observed that the plaintiff is ready and willing to perform their part of the contract and therefore, set aside the Judgment and Decree passed by the trial Court and decreed the suit. Aggrieved by the same, the defendant are before this Court.

6.The above Second Appeal was admitted on the following substantial questions of law:

“(i)When the plaintiff has failed to establish that she was always ready and willing to perform her part of contract in terms of Ex.A1 agreement, whether the decree for the specific performance granted by the First Appellate Court can be sustained?

(ii).Whether the findings of the First Appellate court are vitiated by failure to consider the defence plea that Ex.A1 sale agreement is not intended to be an agreement



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for sale, but the agreement created using signed blank stamp papers given as security for loan transaction under compulsion?

(iii).Whether the first Appellate Court is right in decreeing the suit without advertng to the personal bars under sections 16(c) and 20 of the Specific Relief Act 1963 even assuming that without admitting the fact that the suit agreement is intended for sale?”

7.Mr.N.Manokaran, learned counsel appearing for the defendant/appellant would draw the attention of this Court to the pleadings set out by the plaintiff. He would submit that a perusal of contents in Para 3 of the Plaint would clearly show that no dates have been given with reference to the agreement or with reference to the alleged payment of an advance amount, etc., The plaintiff's case is that a sum of Rs.3,50,000/- has been paid as soon as the parties have agreed to the sale. A sum of Rs.50,000/- has been thereafter paid on



08.01.2004 when the 1st defendant had agreed to execute and to register the Power Deed in favour of the plaintiff on 07.01.2004. The power of attorney was also executed on the said date. He would argue that there is no proof to show that the amounts have been paid by the plaintiff to the defendants towards sale consideration. Further, there is no pleading with reference to the readiness and willingness. The defendant had executed a Mortgage Deed for a sum of Rs.3,50,000/- and a Promissory Note for a sum of Rs.50,000/-. He would fairly concede that the defendants have not contested the suit after filing the Written Statement. However, being a suit for specific performance, the onus is on the plaintiff to prove the readiness and willingness as also the execution and passing of the consideration. He would submit that even as earlier as on 16.05.2007, the defendants had issued the first Legal Notice to the plaintiff and it was not the plaintiff who had sent the first notice. Except for a stray statement in Para 9, the plaintiff has not pleaded or proved her readiness and willingness as contemplated under Form - 47 Appendix-A of the Code of Civil



Procedure. He would submit that the Appellate Court had not discussed the issue of readiness and willingness to simply state that the plaintiff is ready and willing to pay the sale consideration and to have the Sale Deed executed.

8. With reference to the arguments on readiness and willingness, the learned counsel would rely upon the following Judgments:

- (1) (2008) 4 Supreme Court Cases 530**
[Thiruvengadam Pillai v. Navaneethammal and another]
- (2) (2011) 1 Supreme Court Cases 429**
[J.P.Builders and another v. A.Ramadas Rao and another]
- (3) (2015) 8 Supreme Court Cases 695**
[Padmakumari and others v. Dasayyan and others]
- (4) 2018 (1) CTC 701**
[M.Jayaprakash Narayanan v. Santhammal and others]

The plaintiff has waited for 2 years and 9 months to approach the



Court that it is their contention that the parties had entered into the Sale Agreement as early as in the year 2004.

9.Per contra, Mr.P.Subba Reddy, learned counsel appearing for the defendants would submit that the amounts as per the agreement has been paid to the first defendant and the plaintiff has been always ready and willing to proceed with the execution and registration of the Sale Deed and it is only the defendants who were putting of the same. He would submit that the Appellate Court has rightly considered the above and decreed the suit. He would submit that if the case of the defendants was to be believed there was no necessity for them to execute the registered power of attorney on 07.01.2004. Therefore, the very execution of the power of attorney would prove that the parties had entered into the Agreement of Sale.

10.Heard the learned counsels appearing on either side and perused the papers.



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11.If the pleadings of the plaintiff is considered as a whole it would appear that the plaintiff had paid a sum of Rs.4,45,000/- even prior to the issue of the legal notice by the defendant and the complaint by the plaintiff to the police authorities. Thereafter, under the agreement of sale dated 28.04.2007 which is said to be executed pursuant to the intervention of the Police authorities, a sum of Rs.3,25,000/- is said to have been paid on the date of the agreement which would indicate that the plaintiff has totally paid a sum of Rs.7,70,000/- whereas the original case of the plaintiff is that the sale consideration of Rs.4,40,000/- was paid and thereafter, the defendant had demanded an enhanced sale consideration of Rs.7,00,000/-. Therefore, it clearly appears that the plaintiff has not come to Court with a definite case. Further, there is no plea of readiness and willingness except for a stray statement that the plaintiff is ready and willing. There are no further submissions on the readiness and willingness.



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12.The Hon'ble Supreme Court in the Judgment reported in ***(2008) 4 Supreme Court Cases 530 [Thiruvengadam Pillai v. Navaneethammal and another]*** has stated that where the agreement of sale is denied by the defendant it is for the plaintiff to prove that the defendants had executed the agreement and it is not for the first defendant to prove the negative.

13.In the instant case, the plaintiff has not given the dates on which the agreement in respect of the suit property had been finalized particularly, when the defendant denies the agreement of sale dated 28.04.2007 by stating that blank signed stamp papers which was given at the time of borrowing have been manipulated to create the agreement of sale. The plaintiff has not discharged this onus cast upon him. The agreement of sale, from the averments in the Plaint appears to have been entered into sometime in 2004 and the recitals contains no detail with reference to the date on which the sum of



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Rs.3,50,000/- has been paid to the plaintiff and neither is any document available to prove the same. The first Legal Notice is issued by the defendants on 07.01.2004 and the General power of attorney was executed by the first defendant on 26.02.2002 and it was cancelled by the first defendant on 09.08.2006 after the first notice. The Agreement dated 28.04.2007 which is executed after the cancellation of the power would show that a sum of Rs.3,25,000/- has been paid on the said date, i.e., on 28.04.2007. On 16.05.2007, the defendants have issued a legal notice contending that the plaintiff has misused the signed blank papers which was given as security for the loan of Rs.20,000/- borrowed by then in the year 2006. They also contended that the blank signed forms have been misused. On 06.07.2007, a reply legal notice has been issued, however, the suit is filed only on 02.07.2010. Further, the 1st legal notice that was issued by the defendant was on 16.05.2007 wherein it has been clearly stated that the respondent has misused the blank signed stamp papers to create the Agreement of Sale. Therefore, even as early as on



16.05.2007, the Agreement of Sale has been denied. A perusal of the records would show that the plaintiff has not proved continuous readiness and willingness. It has been time and again held that even without a defense stating that there is no plea of readiness and willingness taken, the plaintiff is bound to plead and prove the readiness and willingness and Courts are bound to raise this as an issue and return a finding thereon.

14.The Hon'ble Supreme Court in ***(2011) 1 Supreme Court Cases 429 [J.P.Builders and another v. A.Ramadas Rao and another]*** at Para 27 has observed as follows:

“27.It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the Court is not bound to grant specific performance and is left with no



other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties."

15.In the Judgment of the Division Bench of this Court in **2018 (1) CTC 701 [M.Jayaprakash Narayanan v. Santhammal and others]**, the principle has been once again reiterated in Para 13 as follows:

"13. A person seeking equitable relief must show his readiness and willingness from the inception of contract till the contract culminated into sale deed. Ready and willingness is a continuous process must be present through out the period of contract. Readiness is the capacity of a person to pay the remaining consideration. Willingness is a mental attitude to



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perform the part of his obligation. When both elements namely readiness and willingness are established by the plaintiff, then only the relief of specific performance can be granted. Though plaintiff in his plaint at paragraph 7 has stated that he was ready and willing to perform his part of the contract absolutely there is no pleading in the entire pleadings with regard to the nature of his performance of contract. Ready and willingness not only to be pleaded but also to be proved before the Court of law.”

16.The Hon'ble Supreme Court in **(2015) 8 Supreme Court Cases 695 [Padmakumari and others v. Dasayyan and others]** has observed that a mere statement of the plaintiff that he is ready and willing to perform his part of the contract and that the balance sale consideration has been paid, is not sufficient.



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17. In the instant case, the only pleadings taken by the plaintiff is in Para 5 wherein the plaintiff has stated as follows:

“The plaintiff submits that she is always ready and willing to perform her part of the contract, namely, to bear the expenses for registration and to pay the balance sale consideration of Rs.3,75,000/- to the defendants.”

which is identical to the case referred to in the Judgment supra. The Hon'ble Supreme Court has also observed as follows in Para 22:

“22. Upon a careful reading of the abovesaid paragraph we have to hold that the plaintiff has not complied with the legal requirement which is mandatory as provided under Section 16 (c) of the Specific Relief Act. Section 16(c) fell for consideration and has been interpreted by this Court in a number of cases, referred to supra, upon which reliance has rightly been placed



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and the said decisions are applicable to the fact situation in support of defendant Nos. 12 to 15 and, therefore, we have to hold that the concurrent finding of fact recorded by the High Court on Issue No. 1 is erroneous in law and is liable to be set aside.”

In the light of the above decisions and considering the fact that the plaintiff has not come to the Court with clean hands, the substantial questions of law are answered in favour of the defendants. This Second Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

31.10.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

1.The II Additional District Judge,
Vellore at Ranipet.



2.The Subordinate Judge,
Arakkonam.

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P.T. ASHA, J,

mps

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