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A.S.No.215 of 2017 and
C.M.P.No.10721 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

A.S.No.215 of 2017 and
C.M.P.No.10721 of 2022

A.K.Isravel Dharmaraj

... Appellant

Vs.

1.Mrs.G.Sivakumari,
Rep. By her Power of Attorney,
Mr.G.Sivashanmugam.

2.Mr.V.Jayachandran

... Respondents

Prayer : This Appeal has been filed under Section 96 of C.P.C., to set aside the judgment and decree dated 31.07.2015 passed in O.S.No.90 of 2008 on the file of the Additional District Court, Chengalpattu and allow the suit.

For Appellant : Mr.Suryanarayanan

For Respondents : Ms.Lita Srinivasan for R1



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JUDGMENT

This Appeal Suit has been filed to set aside the judgment and decree dated 31.07.2015 passed in O.S.No.90 of 2008 on the file of the Additional District Court, Chengalpattu.

2. The appellant has also filed a petition in C.M.P.No.10721 of 2022, to admit the additional documents viz., (i) Pass Book; (ii) Bank Statement from 02.04.2005 to 04.02.2010 from Union Bank of India for Account No.481702010003661 in A.S.No.215 of 2017 on the file of this Court and mark the same.

3. Heard Mr.Suryanarayanan, learned counsel for the appellant and Ms.Lita Srinivasan, learned counsel for the first respondent and perused the materials placed on record.

4. The appellant is the plaintiff. The suit has been filed for the relief of specific performance along with the relief of declaration to declare the registered sale agreement deed dated 14.05.2007 as null and void. The said suit was dismissed. However, the alternate relief of refund of the advance sum



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appeal.

of Rs.2,00,000/- was ordered. Aggrieved over that, the plaintiff has filed this

5. The short facts of the case of the appellant/plaintiff are as under:

The first defendant is entitled to an extent of 10 Cents out of 66 Cents in S.No.150/1 of No.4, Urapakkam Village, Chengalpattu Taluk, Kanchipuram District. On 15.04.2006, the plaintiff has entered into a sale agreement with the first defendant for purpose of selling the suit property measuring an extent of 10 Cents in favour of the plaintiff for a sale consideration of Rs.10,00,000/- and on the date of sale agreement itself earnest money of Rs.2,00,000/- was paid. The parties agreed to complete the sale transaction within a period of three months. Despite the plaintiff is ready and willing to perform the contract on his part and to execute the sale deed by paying the balance sale consideration, the first defendant did not come forward to execute the sale deed. Later, the plaintiff came to know that the first defendant had entered into an agreement of sale with the second defendant and executed a sale agreement on 14.05.2017. Since the conduct of the first defendant was patent that he was evading the terms of the sale agreement executed in favour of the plaintiff, the plaintiff had issued legal notice on 03.03.2008. The same was received by the



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first defendant on 06.06.2008. Since the first defendant did not execute the sale deed even after receiving the pre-litigation notice, the plaintiff has filed a suit for the relief of specific performance and to declare the sale agreement dated 14.05.2007 as null and void.

6. The facts stated in the written statement of the first defendant are as follows:

The first defendant resisted the suit by stating that the plaintiff was not ready and willing to perform his part of contract and the conduct of the plaintiff will also prove that he was neither ready nor willing to perform his part of contract. Despite the time agreed was just three months, he was protracting the time without paying the balance sale consideration. Since the plaintiff did not get the sale deed executed within the prescribed time, the sale agreement in favour of the plaintiff got cancelled. Therefore, the first defendant has got right to enter into another sale agreement subsequently with the second defendant. Since the suit of the plaintiff is devoid of merits, the same should be dismissed.

7. The written statement filed by the second defendant reads as



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follows:

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The second defendant has stated that he is a bonafide person who has entered into a sale agreement with the first defendant only after expiry of the sale agreement executed by the first defendant in favour of the plaintiff. After executing the sale agreement, the second defendant asked the first defendant to cancel the earlier sale agreement. But he came to know that the sale agreement itself got expired due to efflux of time. Despite the sale agreement in favour of the second defendant was known to the plaintiff, he did not object and hence the relief sought against the second defendant is not maintainable.

8. On the basis of the above pleadings, the learned Trial Judge has framed the following issues:

“1. Whether the plaintiff is entitled for specific performance?

2. Whether the sale agreement dated 14.05.2007 executed by first defendant in favour of 2nd defendant is null and void?

3. Whether the sale agreement is time barred and cannot acted upon is true?

4. To what relief?

The above issues are recasted as follows:



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1. Whether the plaintiff is ready and willing to perform his part of contract as contended by himself?

2. Whether the plaintiff is entitled for the relief of specific performance directing the 1st defendant to execute sale deed in favour of plaintiff based on suit sale agreement dated 15.04.2006.

3. Whether the plaintiff is entitled for the relief of declaring the sale agreement deed dated 14.05.2007 in document No.6732/07 on the file of SRO, Guduvancheri executed by 1st defendant in favour of second defendant as null and void ab-initio and does not bind the plaintiff?

4. To what other relief plaintiff is entitled to?"

9. During the course of the trial, on the side of the plaintiff, the plaintiff himself was examined as P.W.1 and exhibits A1 to A10 were marked. On the side of the first defendant, two witnesses were examined as D.W.1 & D.W.2 and no document is marked. The second defendant did not let in any oral evidence. At the conclusion of trial and on considering the materials available on record, the learned Trial Judge had chosen to dismiss the suit, however, granted the alternate relief of refund of the advance sum of Rs.2,00,000/- to the plaintiff with interest at the rate of 9% per annum from the date of sale agreement till the date of decree and at the rate of 6% per annum from the date



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of decree till the date of realisation. Aggrieved over the above judgment, the plaintiff has filed this Appeal.

10. Mr.Suryanarayanan, learned counsel for the appellant submitted that the sale agreement Ex.A1 is not denied by the first defendant; even though the time for sale was agreed for three months, the time is not the essence of contract; it was not specifically stated in the sale agreement Ex.A1 that time is the essence of contract; in fact, the first defendant had a problem in getting patta in his name and in this regard, there were pending disputes and even according to the evidence of the first defendant (D.W.1), those disputes had been resolved only during the year 2010; the subject matter of the property being a vacant land, patta is one of the essential document which has to be given to the purchaser at the time of the sale; since the first defendant was not ready with patta, the plaintiff could not get the sale deed executed in time; even though the plaintiff was calling upon the first defendant to get the balance sale consideration and complete the sale transaction, the first defendant did not come forward; but on the other hand, he had executed an another sale agreement in favour of the second defendant by suppressing the interest of the plaintiff in the suit property.



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10.1. The appellant has also filed a petition to receive the additional documents under Order 41 Rule 27 of C.P.C.; along with the said petition, the appellant annexed his Bank Pass Book to show his readiness and willingness to perform his part of contract and submitted that unless the above additional document is received, the appellant will be prejudiced and the additional document which is now sought to be produced, if received, will change the result of the suit itself.

10.2. The seller has got the duty to clear the encumbrance if any in the suit property and pass free title without any dispute; since the issuance of patta in the name of the first defendant was lingering, the plaintiff could not immediately get the sale deed executed despite he was ready; the learned Trial Judge without considering the above material aspects, had chosen to record a finding that the plaintiff was not ready and willing to perform his part of contract and dismissed the suit; therefore, it requires interference of this Court.

10.3. In the sale agreement it is not specifically stated that time is not the essence of contract, the Courts need not hesitate to grant the relief of specific performance; the Trial Court has not taken into consideration of all the



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hardships caused to the plaintiff in getting the sale deed executed; in support of the above contention, he relied on the judgment of the Hon'ble Supreme Court held in the case of *Ferrodous Estates (Pvt.) Ltd. Vs. P.Gopirathnam (Dead) and Ors. reported in AIR 2020 SC 5041*.

11. Ms.Lita Srinivasan, learned counsel for the first respondent submitted that the appellant has not proved his readiness and willingness, he just wanted the first respondent to come to him and discuss about the sale transaction; being the agreement holder, the appellant has got the duty to prove his continuous readiness and willingness; even in the plaint filed by the appellant/plaintiff, it was not stated that he could not get the sale agreement executed because of any dispute relating the patta; infact, patta was never a problem; even at the time of executing the agreement, the first defendant held joint patta; since there was some acquisition by the Highways Department for extension of road, there was a small doubt whether the plaintiff is entitled to 10 Cents or 13 Cents out of total 66 Cents; without pleadings on these lines in the plaint, the appellant/plaintiff is not entitled to make his submissions on the above ground.



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11.1. The learned counsel for the first respondent objected for receiving the additional document by stating that the appellant / plaintiff ought to have exercise due diligence before the Trial Court itself; no reason has been stated as to why he could not produce the additional document before the Trial Court; even if it is considered to be received as an evidence that will not help the plaintiff, because the plaintiff did not have sufficient bank balance continuously, but for holding a sum of Rs.18,00,000/- for a very short duration and that was also subsequently withdrawn by him and thereafter he did not have any substantial balance in his account.

11.2. The appellant has not taken any steps to produce the Bank Pass Book before the Trial Court itself, despite the said document was in his custody; since the plaintiff did not prove his readiness and willingness through his conduct, the learned Trial Judge had recorded a finding that the plaintiff did not prove his readiness and willingness; the position of law after the amendment has changed that the plaintiff need not plead his readiness and willingness, but however, he has the responsibility to prove the same; since the suit has been filed prior to the amendment, as per the law stood at that point of time, it is obligatory on the part of the plaintiff to plead that he is always ready



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and willing to perform his part of contract; the plaintiff never pleaded nor proved before the Trial Court about his readiness and willingness; in support of her contention, reliance was placed on the judgment of the Hon'ble Supreme Court held in the case of *Vijay Kumar and Others Vs. Om Parkash reported in (2019) 17 SCC 429*.

12. Points for consideration:

- (i) Whether the judgment of the learned Trial Judge is fair, proper and legal?
- (ii) Whether the additional document now wanted to be produced before the Court should be received as an additional evidence?

13. The fact that the appellant and the first respondent was known to each other and executed a sale agreement on 15.04.2006 is not in dispute. The further fact about the sale agreement in which the plaintiff had agreed to purchase an extent of 10 Cents in S.No.150/1 belonging to the first respondent also accepted. The total sale consideration for the subject matter is Rs.10,00,000/- and out of which, Rs.2,00,000/- was paid as advance on the date of the sale agreement itself. The sale agreement would show that the time



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for performing the contract was agreed at three months.

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14. One important thing which is to be noted is the nature of the property which was agreed to be sold in favour of the appellant by the first respondent. Even in the plaint of the plaintiff / appellant, he has averred that the first defendant was the absolute owner of the patta house site measuring an extent of 10 Cents out of 66 Cents in S.No.150/1. So, the suit property is a patta house site. That means, the owner of the property does not have any title deed but she had obtained patta in her favour probably due to her enjoyment. So it is obvious that the one and only important document relevant to the suit property is the patta. In that case, without verifying patta, no prudent purchaser will enter into a sale agreement with the owner. Had there been title deeds and the patta is only supportive or auxiliary document, it is understandable that the purchaser would not have bothered much about the patta, while executing the sale agreement by relying on the title deeds. Since the suit property is described as a patta housing site, the plaintiff would have primarily verified the patta in order to confirm whether the first defendant is the owner of the suit property.



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15. As rightly pointed by the learned counsel for the first respondent that it is not the case where the seller *viz.*, the first respondent did not have any patta, but she had joint patta. Admittedly, the property agreed to be sold is the portion of the suit property consists of a larger extent of 66 Cents. So, the patta cannot be standing in the name of the single person unless it was subdivided. So the patta seems to have stood in the name of the other persons including the name of Sivakumari who is the first defendant in the suit.

16. Even according to the evidence of D.W.1 during the cross examination, it has been stated that the individual patta in her name can be obtained only in the year 2010 by way of taking several proceedings. It is the allegation of the appellant that in the year 2007, the first defendant had executed another sale agreement in favour of the second defendant for the same property. The legal notice was issued in the year 03.03.2008 and the suit has also been filed in the same year. The relief sought in the suit is to declare the sale agreement dated 14.05.2007 as null and void and also to direct the first defendant to execute the sale deed in favour of the plaintiff. So the position in the year 2008 when the suit was filed was not different, because the problem with regard to obtaining the individual patta got resolved only in the



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year 2010 only. Had the appellant was ready and willing to perform his part of contract, the patta could not have been a hurdle because at the time of filing of the suit also the property stood in joint names and that did not prevent the plaintiff from filing the suit for claiming the relief of specific performance.

17. The plaintiff did not opt to cancel the sale agreement by stating that the first defendant did not have clear title. Only because the plaintiff / appellant believed that the first defendant did possess clear title irrespective of the problem developed in getting individual patta in her name, he has filed the suit for specific performance. Even though three months time is not the essence of contract, the appellant who has filed the suit has got the duty to prove before the Court that he is always ready and willing to perform his part of contract. Only because of the default on the part of the first defendant to receive the balance sale consideration, he did not get the sale deed executed. The plaintiff has not stated any reasons or any adverse conduct on the part of the first defendant that prevented him from proceeding further.

18. The first legal notice was issued in the year 2008 and it is two years subsequent to the sale agreement. No acceptable explanation was given for the



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long period of two years and why the appellant did not take the matter to the next level and to complete the sale transaction. Despite the plaintiff / appellant has stated in his plaint that he has been calling upon the first defendant frequently to come and receive the balance sale consideration and execute the sale agreement, it was not substantiated. Excepting the self assertive oral evidence of P.W.1., no independent evidence is produced to show that whether he was waiting at the Office of Sub-Registrar, whether he had taken any witnesses or whether he had sent message to any persons etc. Just because the sale agreement does not specify that time is the essence of contract, it does not imply that the plaintiff can at his leisure to pay the balance sale consideration without any time limit.

19. In the judgment relied on by the learned counsel for the appellant in the case of *Ferrodous Estates (Pvt.) Ltd. Vs. P.Gopirathnam (Dead) and Ors. reported in AIR 2020 SC 5041*, it is held that when the agreement holder faces with hardship, some consideration can be shown for the delay. In the said case, reliance was placed on the judgment of *Satya Jain Vs. Anis Ahmed Rushdie, reported in (2013) 8 SCC 131*. The relevant paragraphs are extracted hereunder:



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“40. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by [Section 20](#) of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasised that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in [P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi](#) [(2007) 10 SCC 231] and more recently in [Narinderjit Singh v. North Star Estate Promoters Ltd.](#) [(2012) 5 SCC 712 : (2012) 3 SCC (Civ) 379] may be usefully recapitulated.

41. The twin inhibiting factors identified above if are to be read as a bar to the grant of a decree of specific performance would amount to penalising the plaintiffs for no fault on their part; to deny them the real fruits of a protracted



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litigation wherein the issues arising are being answered in their favour. From another perspective it may also indicate the inadequacies of the law to deal with the long delays that, at times, occur while rendering the final verdict in a given case. The aforesaid two features, at best, may justify award of additional compensation to the vendor by grant of a price higher than what had been stipulated in the agreement which price, in a given case, may even be the market price as on date of the order of the final court.

*42. Having given our anxious consideration to all the relevant aspects of the case we are of the view that the ends of justice would require this Court to intervene and set aside the findings and conclusions recorded by the High Court of Delhi in *Anis Ahmed Rushdie v. Bhiku Ram Jain* [*Anis Ahmed Rushdie v. Bhiku Ram Jain*, RFA (OS) No. 11 of 1984, decided on 31-10-2011 (Del)] and to decree the suit of the plaintiffs for specific performance of the agreement dated 22-12-1970. We are of the further view that the sale deed that will now have to be executed by the defendants in favour of the plaintiffs will be for the market price of the suit property as on the date of the present order. As no material, whatsoever is available to enable us to make a correct assessment of the market value of the suit property as on date we request the learned trial Judge of the High Court of Delhi to undertake the said exercise with*



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such expedition as may be possible in the prevailing facts and circumstances.”

20. But in the case in hand, there is no hardship came in the way of performing the sale agreement. Even the alleged hardship now argued before the Court was not pleaded by the plaintiff / appellant in his plaint. Even for some extraneous reasons patta was a problem, the position at the time when the suit was filed was in no way better that how it was on the date when the sale agreement was executed. So the appellant cannot tell the lame reason that the first defendant was not able to get patta in time and that caused the hardship. At the risk of repetition, it is reiterated that even at the time of executing the sale agreement, there was a joint patta and the first defendant is also a party.

21. In this context, it is relevant to cite the judgment of the Hon'ble Supreme Court relied on by the learned counsel for the first respondent in the case of ***Vijay Kumar and Others Vs. Om Parkash reported in (2019) 17 SCC 429***. In the said judgment it is held that the plaintiff who got the sale agreement in his favour and who has filed a suit has got the duty to prove the



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readiness and willingness through out the contract and his failure to do so, will dis-entitle him to get the relief of specific performance. In the said judgment, it is held as under:

“6. In order to obtain a decree for specific performance, the plaintiff has to prove his readiness and willingness to perform his part of the contract and the readiness and willingness has to be shown through out and has to be established by the plaintiff. In the case in hand, though the respondent- plaintiff has filed the suit for specific performance on 29th April, 2008, the respondent-plaintiff has not shown his capacity to pay the balance sale consideration of Rs.22,00,000 (Rupees Twenty Two Lakhs). In his evidence, the respondent- plaintiff has stated that he has borrowed the amount from his friends and kept the money to pay the balance sale consideration. As rightly pointed out by the Trial Court, the respondent-plaintiff could not produce any document to show that he had the amount of Rs.22,00,000 (Rupees Twenty Two Lakhs) with him on the relevant date; nor was he able to name the friends from whom he raised money or was able to raise the money. Further more, as rightly pointed out by the Trial Court, the respondent-plaintiff could have placed on record his Accounts Book, Pass Book or the Statement of Accounts or



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any other negotiable instrument to establish that he had the money with him at the relevant point of time to perform his part of the contract. We are, therefore, in agreement with the view taken by the Trial Court that the respondent-plaintiff has not been able to prove his readiness and willingness on his part.”

22. It is needless to state that the relief of specific performance is a discretionary relief. While granting the relief of specific performance, the Court ought to consider and weigh the relative advantage of the parties. While evaluating the above aspect, the Court has to consider the conduct of the parties as well. As already elaborated, the appellant did not exhibit a conduct which would show his readiness and willingness. He did not even care to produce the Bank Pass Book which is very much in his custody at the time of trial. Even though it is not necessary that the plaintiff should prove his readiness by showing his bank balance, the willingness which is his state of mind should be proved atleast from his conduct. Even if it is agreed for the sake of argument that the appellant was capable of paying the balance sale consideration and hence he was ready, he failed to prove the aspect of willingness. The learned Trial Judge has rightly analysed the evidence on



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record and rendered a finding that the plaintiff did not prove his willingness to the satisfaction of the Court.

23. It is submitted by the learned counsel for the appellant that the suit property is only a land property and hence it cannot have the prime advantage of price escalation within a year and hence that cannot be the deciding factor in denying the relief to the plaintiff / appellant.

24. Irrespective of the value of the property, the other hardships that would cause to the vendor should also be taken into consideration, while exercising discretion. The vendor would have got several reasons to sell the property. Had the sale been completed within time, the vendor could have met her commitments or done any reinvestment. So it cannot be blindly stated that in cases where the time is not the essence of contract, the delay cannot be considered so seriously. As stated already, the appellant has not proved his willingness and even readiness for that matter for the satisfaction of the Court. However, the learned Trial Judge has chosen to grant the relief of refund of the advance amount with reasonable interest. In my considered view, I find no reasons for interference.



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25. In the result, **this Appeal Suit is dismissed** and the order passed by the Additional District Judge, Chengalpattu, dated 31.07.2015 in O.S.No.90 of 2008 is confirmed. The miscellaneous petition filed in **C.M.P.No.10721 of 2022, to receive the additional documents, is also dismissed.** No costs.

24.08.2022

Index: Yes/No

Speaking / Non Speaking Order

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To
The Additional District Judge,
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