



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.476/2017

G.Shanmugam

.. Appellant / Plaintiff

Vs.

S.Jagadeeswari

.. Respondent / Defendant

Prayer:- Second Appeal preferred under 100 of CPC against the judgment and decree of the learned VII Additional Judge, City Civil Court at Chennai dated 11.03.2016 passed in AS.No.447/2013 confirming the judgment and decree of the learned II Assistant Judge, City Civil Court, at Chennai dated 19.06.2013 passed in OS.No.4894/2007.

For Appellants

: Ms.R.Charubala

JUDGMENT

- (1) The plaintiff in the suit in OS.No.4894/2007 on the file of the learned II Assistant Judge, City Civil Court, Chennai, is the appellant in this Second Appeal.
- (2) The appellant filed the suit in OS.No.4894/2007 for specific performance of an Agreement of Sale dated 19.01.2004.
- (3) It is the case of the appellant/plaintiff that the suit property belonged to the defendant and that, he had entered into an Agreement for selling the property on 19.01.2004. It is admitted that there was an Agreement on 19.01.2004 in respect of the suit property by which the plaintiff/appellant came forward to purchase the property for a total consideration of Rs.6,50,000/- and paid a sum of Rs.3 lakhs as advance. However, it was agreed in the Agreement of Sale that the sale should be completed within 10 days from the date of Agreement which expired on 29.01.2004.



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- (4) It is the further case of the plaintiff that the defendant who had agreed to execute the Sale Deed after receiving the balance of sale consideration, did not produce the original Title Deed or patta and therefore, the plaintiff could not pay the balance as it was agreed under the Agreement. It is admitted even in the plaint that the defendant issued a Lawyer Notice on 01.07.2004 revoking/rescinding the Sale Agreement on the ground that the plaintiff has not come forward to complete the sale transaction within the time stipulated in the Agreement of Sale. Though the plaintiff sent a reply on 19.07.2004 to the defendant, expressing his willingness to purchase the schedule mentioned suit property by paying the balance sale consideration, the defendant did not come forward to sell the schedule mentioned property.
- (5) It is admitted that the suit for specific performance was filed only on 10.01.2007.
- (6) The suit was contested by the defendant by filing a written statement. Even though the Agreement of Sale dated 19.01.2004 was admitted by the defendant, the defendant contended that time was agreed to be the essence of the Agreement and that, the plaintiff never came forward to fulfil his obligation under the contract of sale. It was further stated that the defendant after noticing that the plaintiff had no intention to fulfil his obligation under the contract of sale, issued a notice terminating the contract clearly stating that the plaintiff had committed breach of contract. The subsequent reply notice issued by the plaintiff was also an attempt to mislead anyone with a mala fide intention. The defendant also specifically mentioned in the written statement that he had produced all the original documents for scrutiny by plaintiff before entering into the Agreement and that the plaintiff entered into the Agreement only after satisfying himself that the defendant had a valid marketable title in respect of the suit property. It is also stated that the defendant can hand over the original title deed document only when the plaintiff come forward to complete the sale transaction and it was never agreed that the defendant would hand over or show the Title Deed to the plaintiff before receiving the balance sale consideration.
- (7) The Trial Court, after framing necessary issues specifically held that the plaintiff has not proved his readiness and willingness to perform his part of the contract under the Sale Agreement dated 19.01.2004. Even before issuing a notice to the defendant, it is admitted



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that the plaintiff gave a police complaint. This prompted the defendant to get anticipatory bail from the learned Principal Judge, City Civil Court at Chennai. Since the plaintiff had agreed to pay the balance within ten days from the date of Agreement, the Trial Court found that the plaintiff was not ready to pay the amount within the time stipulated. Satisfied with the defendant's contention that the property itself was agreed to be sold at the time when the defendant had arranged the marriage of her daughter, the Trial Court found that the plaintiff is not entitled to the discretionary relief of specific performance without proving his readiness and willingness. After holding that the plaintiff is not ready and willing to perform his part of contract, the suit was dismissed. However, the defendant was directed to refund the advance of Rs.3 lakhs to the plaintiff with 6% interest. Aggrieved by the judgment and decree of the Trial Court, the appellant preferred AS.No.447/2013 on the file of the Additional City Civil Court, Chennai.

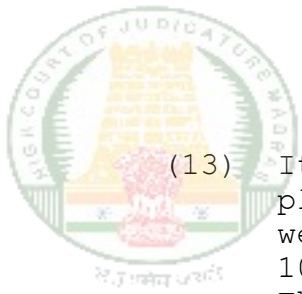
- (8) The Lower Appellate Court also concurred with the findings of the Trial Court and held that the plaintiff is not entitled to the relief of specific performance as he has not proved his readiness and willingness in terms of the Agreement. As against the concurrent judgments and decrees of the Courts below, the appellant/defendant has preferred the above Second Appeal.
- (9) In the Memorandum of Grounds of Appeal, the appellant has raised the following substantial questions of law:-
''[1]Whether the First Appellate Court was right in confirming the judgment and decree of the Trial Court on the principles of time bound contract in respect of an immovable property?
[2]Whether the 1st Appellate Court was right in stepping into the shoes of Trial Court in recording the payment made in full satisfaction of the decree?
[3]Was the 1st Appellate Court is right in coming to the conclusion that this appellant the amount in full satisfaction of the decree?''
- (10) The learned counsel for the appellant submitted that time is not an essence in the contract in respect of immovable property. The Courts below have failed to advert with regard to the legal position and came to a wrong conclusion that time was the essence of the Agreement. The learned counsel then submitted that the appellant was always ready and willing to perform his part of the contract and that, it was the defendant who did not come



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forward to execute the Sale Deed. The learned counsel then submitted that though the defendant was directed by the Trial Court to return the advance amount with interest, the same was returned only during the pendency of appeal and not immediately as per the judgment and decree of the Trial Court. It is the grievance of the learned counsel for the appellant that the Courts below have not appreciated the evidence and pleadings of the parties in a proper perspective.

- (11) This Court has carefully considered the submissions made by the learned counsel for the appellant in the light of the pleadings and available evidence apart from the concurrent findings of the Courts below.
- (12) It is settled that in a suit for specific performance, the plaintiff has to plead and prove readiness and willingness to perform his or her part of contract in terms of the Agreement of Sale. In this case, the Agreement of Sale was entered into on 19.01.2004. Though a sum of Rs.3 lakhs was paid under the Agreement as advance out of the total consideration of Rs.6.50 lakhs, time fixed to pay the balance sale consideration was ten days from the date of Agreement. Despite the fact that the plaintiff had agreed to pay the balance on or before 29.01.2004, there is no attempt to pay the amount as agreed by the plaintiff. However, the excuse for not paying the amount even as per the pleading is that the defendant has not handed over or shown the original title document or patta in respect of the suit property. It is seen that the plaintiff never issued any notice asking the defendant to produce the original title document or patta in respect of the suit property till the Advocate Notice was issued by the defendant on 01.07.2004. By the said notice, the defendant has rescinded the contract specifically stating that the plaintiff has not come forward to pay the balance sale consideration as agreed under the suit Agreement. However, a reply was issued as if the plaintiff was ready and willing to pay the money. It is seen that the plaintiff has stated that the time mentioned in the Agreement of Sale is not an essence and that the time limit is liable for extension. It was further stated that the defendant had not shown the entire documents in original nor the Encumbrance Certificate or Patta. The reply notice would certainly indicate that the plaintiff was not even ready on the date of issuing the reply to the notice dated 01.07.2004. After the reply, the defendant issued another notice dated 17.08.2004 calling upon the plaintiff to come and receive the advance amount paid by plaintiff.



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(13) It is to be noted that the reply was given as if the plaintiff was willing to complete the transaction within a week. However, the suit came to be filed only on 10.01.2007 just nine days before the limitation expired. This clearly shows the conduct of the appellant/plaintiff.

(14) The Hon'ble Supreme Court and this Court has time and again reiterated the position that the suit for specific performance is an equitable relief and the plaintiff who is guilty of delay and laches in approaching the Court, cannot get the equitable relief of specific performance. The defendant has not agreed under the Sale Agreement to produce the original document or patta in respect of the suit property. It is the specific case of the defendant that the plaintiff entered into the Agreement only after satisfying himself about the title and the enjoyment of the suit property by the defendant. In such circumstances, the contention of the learned counsel for the appellant that the appellant could not complete the transaction without seeing the original title deed or patta, cannot be believed. Though the defendant has come forward to rescind the contract by issuing notice on 01.07.2004, the appellant/plaintiff has filed the suit only on 10.01.2007, nearly two and half years after the notice dated 01.07.2004 rescinding the contract. In the absence of any explanation for the long delay in filing the suit for specific performance, the Courts below are right in holding that the appellant/plaintiff was never ready and willing to perform his part of contract and that he is not entitled to the equitable relief of specific performance particularly when there is no explanation for the long delay in approaching the Court.

(15) As it has been reiterated by the Hon'ble Supreme Court and this Court, the appellant/plaintiff has not come to Court within a reasonable time after repudiation of the contract for not performing the contract in terms of Agreement of Sale. The conduct of the appellant/plaintiff in this case makes it clear that the appellant/plaintiff was never ready and willing to perform his part of the contract and was finding reasons one after another to postpone performance of his part of contract. As a matter of fact, in the reply to the notice issued by the defendant, the appellant/plaintiff has specifically stated as if the respondent/defendant has agreed to show several documents of title to prove his title and possession over the suit property. When the Agreement of Sale itself was rescinded by a notice dated 01.07.2004, for breach of contract committed by the appellant/plaintiff, the appellant/plaintiff has waited for another two and half



years to file a suit for specific performance and this will certainly disentitle the appellant/plaintiff from enforcing the contract of sale.

(16) Both the Courts below have concurrently held that the appellant/plaintiff is not ready and willing to perform his part of contract. This Court is inclined to add one more reason for upholding the concurrent findings of the Courts below in dismissing the suit for specific performance, namely the unexplained delay in approaching the Court.

(17) Having regard to the concurrent findings of the Courts below and the reasons assigned above, this Court has no other option except to dismiss this vexatious Second Appeal filed by the appellant/plaintiff.

(18) In the result, the Second Appeal is dismissed with cost confirming the judgment and decree dated 11.03.2016 made in AS.No.447/2013 by the learned VII Additional Judge, City Civil Court at Chennai, confirming the judgment and decree dated 19.06.2013 made in OS.No.4894/2007 by the learned II Assistant Judge, City Civil Court, at Chennai.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

AP

To

1. The VII Additional Judge
City Civil Court, Chennai.
2. The II Assistant Judge
City Civil Court, Chennai.
3. The Section Officer
VR Section, High Court
Chennai.

SA.No.476/2017

RLD(CO)
SU(26/05/2022)