



A.S.(MD)No.1 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 19.10.2022

PRONOUNCED ON:13.12.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.1 of 2013

and

C.M.P.(MD)No.8388 of 2022

1. M.Chandrakantham(died) : Appellant / Plaintiff

2. Paramaguru
(2nd appellant is brought on record as
LR of the deceased sole appellant vide
order dated 29.07.2022 made in
C.M.P.(MD)No.5896 of 2022)

Vs.

1.T.Ramakrishnan
2.Nithiyanandam
3.Ramanujam

Muthammal (died)

4.Rajeswari

Manickam Subramanian(died)

5.Muthuram Kumar
6.Manickavalli
7.Muthuselvi



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8.Ram Rathinakumar

: Respondents /
Defendants 1-3, 5, 7-10
: Respondent No.9

9.Akilandeswari

(9th respondent is brought on record as
LR of the deceased sole appellant vide
order dated 29.07.2022 made in
C.M.P.(MD)No.5896 of 2022)

(Respondents 2 and 3 are given up
since they remained exparte)

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil
Procedure against the Judgment and Decree, dated 28.08.2012 passed in
O.S.No.28 of 2004, on the file of the Additional District and Sessions
Judge, Dindigul.

For Appellant : Mr.T.Arul
for Mr.M.R.Sreenivasan

For Respondents :Mr.S.Suresh Kumar Issac Paul
for R.1
: Mr.M.Karuppasamy
for R.9
: No Appearance for R.4 to R.8
: R.2 and R.3-given up



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The Appeal Suit is directed against the judgment and decree passed in O.S.No.28 of 2004, dated 28.08.2012, on the file of the Additional District Court, Dindigul.

2. The gist of the plaintiff's case in short is as follows:

(a) The first defendant executed an agreement for sale in favour of the plaintiff on 25.05.1997 and received Rs.1,00,000/- as advance. Subsequently he received Rs.1,00,000/- on 10.07.1997. Since the first defendant could not execute the conveyance with clear title, the plaintiff assigned agreement in favor of one Gurusamy Nadar on 05.11.1997, who in turn demanded specific performance of the said agreement from the defendant. The first defendant expressed his inability to perform his part of the contract and sent a notice terminating the contract.

(b) The first defendant has then approached the plaintiff and offered to sell the property for Rs.11,00,000/- and hence, the assignment was cancelled and a fresh agreement was entered into between the plaintiff and the first defendant on 16.03.1998. As per the new



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(c) The defendants 2 and 3 are the tenants in the suit property and they are bound to vacate and deliver the possession of the property to the plaintiff. Since there are two mortgages in respect of the suit property, the defendants 4 and 5 have been impleaded and that the said mortgages have to be discharged only out of the balance sale price. During the pendency of the suit, the fourth defendant had died and hence, his legal representative was arrayed as the sixth defendant and since the sixth defendant had also died, his son and daughters have been impleaded as defendants 7 to 10. Hence, the above suit for specific performance and other reliefs.

3. The defence of the first defendant in short is as follows:

(a) The contention of the plaintiff that she is always been ready and willing to perform her part of contract is absolutely false. Gurusamy Nadar is a close associate of the second defendant – the husband of the plaintiff. The plaintiff's husband, after coming to a decision that the first defendant is a good title owner, renewed the agreement on 16.03.1998. The plaintiff was adopting delaying tactics after receiving the notice regarding the termination of the agreement. The suit is barred by



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limitation. The plaintiff has no cause of action for the suit and the alleged cause of action is false.

(b) The plaintiff has no sufficient funds to complete the same. There existed vast difference between the actual price and the agreement price. The plaintiff has filed the above suit in order to drag on the proceedings without rent. The plaintiff ought to have deposited the balance amount into the Court. The plaintiff is living in a rented house and has debts and hence, she has been entering into mortgage / othi over her other properties. Hence, the suit is liable to be dismissed.

4. The fifth defendant and the defendants 7 to 10 who were impleaded as the legal representatives of the sixth defendant have filed their written statements contending that in case, if the suit is decreed, the plaintiff should be directed to pay Rs.5,25,000/- to the fifth defendant and Rs.5,82,500/- to the defendants 7 to 10.

5. On the basis of the above pleadings, the trial Court has framed the following issues:



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(1) Whether the sale agreement dated 05.11.1997 entered into between the plaintiff and the first defendant is true?

(2) Whether the plaintiff is entitled to get the relief of specific performance?

(3) What other relief?

6. Additional issues were framed by the trial Court on 08.06.2001:

(1) Whether the suit sale agreement is invalid?

(2) Whether the plaintiff was ready and willing to perform her part of contract?

(3) Whether the suit sale agreement can be enforced, when the description of the property is not correct?

7. Further additional issues were framed by the trial Court on 20.01.2010:

(1) Whether the first defendant had mortgaged the suit property in favour of the second defendant on 23.04.1997?

(2) Whether the fourth defendant had executed a Will dated 11.10.2000 in favour of the seventh defendant?



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8. The first defendant has filed a suit in O.S.No.81 of 2004 for permanent injunction restraining the defendants and their men therein from in any manner interfering with the peaceful possession and enjoyment of the suit property against the plaintiff herein and her husband – second defendant herein. It is evident from the records that the joint trial of the above suits were ordered and the evidence was ordered to be recorded in O.S.No.28 of 2004. During trial, the plaintiff has examined herself as P.W.1 and two other witnesses Thiru.Pavul Taminic and Thiru.Sivagnanam as P.W.2 and P.W.3 respectively and exhibited 13 documents as Exs.A.1 to A.13. The defendants 1, 5 and 7 have examined themselves as D.W.1 to D.W.3 respectively and exhibited 10 documents as Exs.B.1 to B.10.

9. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both sides, has passed the common judgment dated 28.08.2012 dismissing both the suits. Admittedly, the first defendant has not preferred any appeal challenging the dismissal of the suit in O.S.No.81 of 2004. But the plaintiff, aggrieved by the impugned judgment and decree passed in O.S.No.28 of 2004, has filed the present Appeal Suit.



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10. In the Appeal Suit, the appellant/plaintiff has raised the following grounds:

(1) The learned trial Judge erred in law in non-suiting the plaintiff on the ground that the plaintiff did not have sufficient means and was not ready and willing to perform her part of contract, which is against the evidence adduced in the case.

(2) The purchaser need not actually tender money or deposit in Court except when he is directed by the Court and it is not necessary for the purchaser to show that he was having money with him to pay sale consideration.

(3) The first defendant has entered into a fresh agreement on 16.03.1998 to sell the suit property for Rs.11,00,000/- and the advance of Rs.2,00,000/- has been credited and the time to pay the balance was stated as 2 ½ months.

(4) The plaintiff was always ready and willing to perform her part of contract and sent Ex.A.4 notice on 28.05.1998 to the first defendant requesting him to inform her of the encumbrances and debts over the property.



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(5) The plaintiff has been residing in her own house “Nithiya Chandra Illam” and the same would show that the plaintiff owns property.

(6) The trial Court has failed to consider Exs.A.11 to A.13 and the evidence of P.W.2., and that the plaintiff's husband was having electrical goods shop and had sufficient means to purchase the suit property.

(7) The evidence of D.W.1 would show that he was not willing to allow the plaintiff to discharge the mortgage.

(8) The trial Court has erred in holding that the plaintiff was not at all ready and willing to perform her part of contract.

(9) The observation of the trial Court that the plaintiff had no wherewithal to purchase the suit property as she has not produced the pass book and other records is against all principles of law. Hence, the appeal is liable to be allowed.

11. The points that arise for consideration are

(1) Whether the trial Judge erred in deciding that the plaintiff has not been ready and willing to perform his part of contract, despite showing ample evidence that he had sold her property and received the amount under Ex.A.13 receipt, that her husband was having electrical



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goods shop and that she was possessing jewels and that thereby she had necessary wherewithal to purchase the suit property?

(2) Whether the appellant/plaintiff has always been ready and willing to perform her part of contract?

(3) Whether the Appeal Suit is to be allowed?

(4) To what other reliefs the parties are entitled ?

12. The second appellant has filed a petition in C.M.P.(MD)No. 8388 of 2022 under Order 41 Rule 27 of the Code of Civil Procedure for reception of additional evidence. The point for consideration in the above petition is as to whether the documents now produced are to be received as additional evidence?

13. Pending appeal, the appellant had died and hence, his son and daughter have been impleaded as the second appellant and the ninth respondent respectively. The second appellant has filed an affidavit in support of the above petition and whereunder he has stated that the trial Court has held that at the time of sale agreement, his mother did not have sufficient means to pay, that her mother had filed Ex.A.12 – General Power of Attorney in favour of one Veluchamy dated 06.03.1997 to sell



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the property, who in turn sold the property to various persons, that the said Veluchamy had given Rs.10,25,000/- for which his mother had issued a receipt under Ex.P.13, that the trial Court doubted the veracity of Ex.A.13, since her mother had not examined anyone connected with the documents and that she did not prove her solvency on the date of agreement, that they could not file the documents now produced at the earliest point of time and non-filing of the same is neither wilful nor deliberate and that the petitioner/second appellant will be put to irreparable loss and hardship, if the documents now produced are not received as additional evidence. The second appellant has sought to receive the sale deeds in favour of Palanisamy Pillai, Murugan, Pappathiammal, Kaliammal and Manikantan, Thangavel and Beerbath and the Encumbrance Certificate for the period from 01.01.1997 to 01.01.1999 and the copy of the sale deed stands in the name of the second appellant.

14. The learned Counsel for the appellant would contend that the trial Court disbelieved Exs.A.12 and A.13 and hence in order to substantiate that Exs.A.12 and A.13 are genuine documents and that the Power of Attorney holder Veluchamy under Ex.A.12 had executed



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several sale deeds for valuable consideration, the second appellant is constrained to file the above application for reception of additional evidence.

15. The learned Counsel for the respondents would strongly contend that the documents now sought to be produced were the records available during the trial period, that the appellant has not offered any reason or explanation for non-production of the same at that period and that since the trial Court has given a specific finding that the plaintiff did not prove her readiness and willingness to perform her part of contract, the petitioner/appellant is not entitled to adduce additional evidence to canvass the point that the plaintiff was ready and willing to perform her part of contract.

16. Under Order 41 Rule 27 C.P.C, additional evidence can be admitted only under the following three circumstances:

*“Production of additional evidence in Appellate Court (1)
The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if (1) the court from whose decree the appeal is preferred has refused to admit evidence which*



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ought to have been admitted, or (2) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or (3) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.”

17. In the case on hand, the documents 1 to 6 sought to be produced are of the year 1997 and the eighth document is of the year 1996 and the seventh document is the Encumbrance Certificate for the period between 01.01.1997 to 01.01.1999 and as such, all the documents were very much available at the time of trial. Admittedly, the suit was filed on 05.06.1998. As rightly pointed out by the learned Counsel for the respondents, the copies of the documents now sought to be produced have been obtained recently. It is not the case of the petitioner/appellant that his mother – plaintiff had produced the said documents before the trial Court and the trial Court had refused to admit the same as evidence.



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It is also not the case of the petitioner that despite diligence, those documents were not within his mother's knowledge or she was unable to produce the same. As rightly contended by the learned Counsel for the respondents, the petitioner/appellant has not canvassed any reason or explanation for non-production of the said documents before the trial Court. Since the petitioner has not shown the existence of any of the conditions required for the reception of the additional evidence as contemplated under Order 41 Rule 27 C.P.C., the same cannot be received as evidence at this stage. Hence, this Court concludes that the above petition is devoid of merits and the same is liable to be dismissed.

18. It is not in dispute that the plaintiff and the first defendant entered into a sale agreement on 25.06.1997 under Ex.A.1 and whereunder both of them have agreed and fixed the sale price at Rs.13,50,000/-. It is also not in dispute that the first defendant has received a sum of Rs.1,00,000/- as advance on 25.06.1997 itself and subsequently received a further sum of Rs.1,00,000/- as advance on 10.07.1997 under Ex.A.2. It is also not in dispute that the plaintiff had assigned Ex.A.1 – sale agreement in favour of Gurusamy Nadar and subsequently the plaintiff and the first defendant have entered into



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another sale agreement on 16.03.1998 under Ex.A.3 and whereunder both of them have agreed and fixed the sale price at Rs.11,00,000/- and the period of performance as 2 ½ months.

19. The plaintiff's case is that she has been always ready and willing to perform her part of contract, that she has sent a legal notice dated 28.05.1998 under Ex.A.4 to the first defendant directing him to perform his part of contract, that the first defendant having received the legal notice has sent a notice dated 31.05.1998 under Ex.A.6, terminating the agreement unilaterally and a reply notice dated 02.06.1998 under Ex.A.7 refusing to comply with the notice demand and that therefore, the plaintiff is constrained to file the above suit claiming the relief of specific performance.

20. The main defence of the first defendant is that the plaintiff was not ready and willing to perform her part of contract, that since the plaintiff has refused to perform her part of contract within the time agreed, the first defendant was constrained to send a notice terminating the contract and that since the plaintiff has sent a notice directing the first defendant to comply with the several demands, unconnected with the suit



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agreement, the first defendant had sent a suitable reply under Ex.A.7 and that the plaintiff is not entitled to get the equitable relief of specific performance. Considering the rival contentions, the main point in dispute is as to whether the plaintiff has been ready and willing to perform her part of contract.

21. Before entering into further discussion, it is time to consider the legal position. Section 16(c) of the Specific Relief Act, 1963 contemplates that 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 the terms the performance of which has been prevented or waived by the defendant. Explanation (ii) to clause (c) of Section 16 of the Act provides that the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. Section 16(c) of the Specific Relief Act lays down the conditions precedent to the enforcement of specific performance of a contract. It is pertinent to note that Section 16(c) of the Act is couched in a negative form and it mandates that specific performance of a contract cannot be enforced in



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favour of a person, who has failed to aver and to prove his readiness and willingness to perform his part of the contract.

22. Continuous readiness and willingness on the part of the plaintiff to perform his part of the contract is a condition precedent to grant the relief of specific performance. In order to ascertain as to whether the plaintiff has been ready and willing to perform his part of contract, the Court must take into consideration his conduct prior to and subsequent to the filing of the suit along with other other attendant circumstances. No doubt, there existed distinction between the two words “readiness” and “willingness” and the readiness refers to financial capacity and willingness refers to the conduct of the plaintiff wanting performance.

23. At this juncture, it is necessary to refer the following decision of the Division Bench of this Court in ***A.Ramadas Rao and Others Vs. J.P.Builders*** reported in ***(2010)3 MLJ 870***, wherein, this Court has held as follows:



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“17. “Readiness and willingness”:

We have given anxious consideration to the rival contentions. Section 16(c) of the Specific Relief Act postulates “readiness and willingness” on the part of the plaintiff. It is a condition precedent for obtaining relief of grant of specific performance. In a suit for specific performance, the plaintiff must allege and prove a continuous “readiness and willingness” to perform the contract on his part from the date of the contract to the time of hearing. The onus is on the plaintiff although in the absence of any evidence to the contrary it may be easily discharged. The requirement of law is two fold, (i) that the plaintiff must aver in the plaint and (ii) that he must prove by evidence that he has always been ready and willing to perform his part of the contract.”

24. The Hon'ble Supreme Court in ***R.C.Chandlok and another Vs. Chuni Lal Sabharwal and Others*** reported in ***AIR 1971 SC 1238***, has held that readiness and willingness cannot be treated as a straight-jacket formula and the same has to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned.



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25. In ***N.P.Thirugnanam Vs. Dr.R.Jagan Mohan Rao and others*** reported in ***(1995)5 SCC 115***, the Hon'ble Supreme Court has held as follows:

“Section 16(c) of the Act envisages that plaintiff must plead and prove that he had 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 those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is



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ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of contract.

26. The learned Counsel for the appellant has relied on the judgment of the Hon'ble Supreme Court in ***Ramathal Vs. Maruthathal and Others*** reported in ***2018-1-L.W.385***, wherein the Hon'ble Apex Court, after referring to its earlier judgment in ***K.Prakash Vs. B.R.Sampath Kumar*** reported in ***2015(1)SCC 597***, has observed as follows:

*“21.The learned Senior Counsel appearing for seller contends that the Specific Performance being an equitable remedy, condition precedent of 'readiness and willingness' has to be specifically pleaded and proved by the buyer for enforcement of the specific performance (refer ***K.Prakash V. B.R.Sampath Kumar, 2015-2-L.W. 419=2015(1)SCC 597***). She further submits that there are only vague averments in the pleading that the buyer was ready and willing to perform is*



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part of the contract. There is no dispute with regard to the proposition that in a suit for specific performance burden is always on the plaintiff to aver and prove that they are always ready and willing to perform their part of the contract throughout. Section 16(C) of the Specific Relief Act mandates that not only there be a plea of readiness and willingness but it also has to be proved by acceptable evidence. Requirement of fulfilling the conditions under Section 16(C) of the Specific Relief Act, 1963, is a condition precedent for obtaining the relief of specific performance. Whereas in the instant case the plaint as well as the documents available on record goes to show that it was specifically pleaded that buyer was ready and willing to perform his part of the contract. Additionally the evidence of P.W.1 also proves readiness and willingness on the part of the buyer. In light of the aforesaid discussion, the contention of the learned Senior Counsel appearing on behalf of the seller is repelled as being meritless.”

27. Bearing the above legal position in mind, let us consider the case on hand. No doubt, as rightly contended by the learned Counsel for the appellant, the plaintiff has raised necessary pleadings with regard to readiness and willingness. The plaintiff, in her plaint, has specifically stated that she has always been ready and willing to perform her part of contract. Now coming to second part of Section 16(c) of the Specific



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Relief Act, it has been seen whether the plaintiff has proved her readiness and willingness. It is not in dispute that they have fixed the sale price at Rs.11,00,000/- and the plaintiff has already paid Rs.2,00,000/- and the remaining amount to be payable is Rs.9,00,000/-.

28. The case of the plaintiff is that the second defendant – husband of the plaintiff had gifted some properties under Ex.A.11 in the year 1996, that she had executed a Power of Attorney in favour of one Veluchamy under Ex.A.12 giving power to sell that property, that she had received Rs.10,25,000/- from the said Veluchamy as sale price and after receiving the same, she had issued the receipt under Ex.A.13 to the said Veluchamy and that thereforfe, she was possessing Rs.10,25,000/- during the relevant point of time.

29. It is their further case that she was owning jewels and that she has decided to sell the jewels for paying the sale price and the relevant portion of the evidence is extracted hereunder:

“ எனக்கு பணம் தயாராக உள்ளது. நகையை விற்று நான் கிரையம்
பெற தயாராக உள்ளேன். மூப்பாது நான் பணத்தை நகையாக
வைத்துள்ளேன். நகையை விற்று நான் பணம் தருவன்.””



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30. As rightly contended by the learned Counsel for the respondents, when the plaintiff was possessing Rs.10,25,000/- allegedly received under Ex.A.13, there was no reason for selling the jewels, so as to enable her to pay the sale price. As rightly observed by the trial Court, the plaintiff has not chosen to examine the said Veluchamy alleged to be the Power Agent of the plaintiff and who had allegedly paid Rs. 10,25,000/- to the plaintiff and got the receipt under Ex.A.13. Admittedly, the plaintiff has also not taken any steps to examine any of the purchasers nor chosen to produce the copy of the sale deeds alleged to have been executed by her through her Power Agent.

31. The plaintiff, in her cross-examination, would admit that she is having bank account in Palani Canara Bank, that she has not paid any income tax and that she was having money in her hand. As rightly observed by the learned trial Judge, the plaintiff has neither produced the bank Passbook nor the particulars of the jewels she was owning at that time. Considering the above aspects, the learned trial Judge has rightly come to a decision that the plaintiff was not ready to pay the balance sale price and to get the sale deed executed.



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32. Even assuming for arguments sake, that the plaintiff has proved her readiness, it has to be seen as to whether she was willing to perform her part of contract. As already pointed out, after entering into Ex.A.1 agreement and after paying Rs.2,00,000/- as advance, she had assigned the sale agreement in favour of one Gurusamy Nadar. The plaintiff, in her cross-examination, would admit that since Gurusamy Nadar had informed her that he was not willing to purchase the property and hence, she can take made over from him and on that basis, she had received the made over. As rightly contended by the learned Counsel for the respondents, the plaintiff has not assigned any valid reason or explanation as to why she had assigned the sale agreement to the said Gurusamy Nadar.

33. In the second agreement dated 16.03.1998, the plaintiff has agreed to take possession of the property through Court, as that property was allotted to the first defendant in the final decree passed by the Subordinate Court, Dindigul and that she had also agreed to take Court proceedings in respect of the suit property, if necessary. It is evident from the said document that the plaintiff had agreed to pay the balance



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sale price of Rs.9,00,000/- within 2 ½ months, ie., before 30.05.1998 and to get the sale deed executed and registered. No doubt, the plaintiff has sent a legal notice within the time agreed ie., on 28.05.1998 under Ex.A.4. In Ex.A.4 notice, the plaintiff has nowhere whispered that he was ready and willing to pay the balance sale price of Rs.9,00,000/- and directing the first defendant to receive the sale price and to execute the sale deed and got it registered. But on the other hand, she has raised some new demands. In Ex.A.4 notice, the plaintiff has stated that she came to know that there were two mortgages for Rs.4,00,000/- in respect of the suit property, that the plaintiff is also having other promissory notes debts and that the first defendant has to furnish the debt particulars and after getting particulars, she would verify the same and would confirm by issuing a paper publication and that thereafter, she will be ready to clear the debts. For better appreciation, the relevant portion is extracted hereunder:

“தேற்கிடையில் நமது கடச்சிக்காரர் விசாரித்தபொழுது மொத்தம் ரூபாய் நான்கு லட்சத்திற்கு தாவாச் சொத்தின் மூலம் ரூ. 40 லட்சம் கடன் ரூபாய்தகவும்இ அது தவிர பிராமுசரி மூலம் ரூ. 40 லட்சம் கடன் ரூபாய்தகவும் தெரிய வருகிறது. ஆதனால் நீங்கள் இந்த மூலம் கண்ட ஒரு வார வாய்தாவில் கடன் விவரங்களை நமது கடச்சிக்காரரிடம் எழுத்து முலம் தெரிவிக்க வேண்டும். இவை கடன் விவரங்களை அறிவித்தபின்இ நமது கடச்சிக்காரர் அவற்றை சரிபார்த்து



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விளம்பரம் முலம் உறுதி செய்தபின் நமது கட்சிக்காரர் :
கடன்களை கிரையப்பத்திரத்தில் சாட்டுதல் ஁பாட்டு தீர்ப்பதற்கு
தயாராக உள்ளார்.”

34. The demands put forth by the plaintiff in the legal notice does not find place in the agreement. As rightly contended by the learned Counsel for the respondents, P.W.1, in her evidence, would admit that she was aware of the mortgage debts even at the time of the second agreement. As already pointed out, even according to the plaintiff, she has sent the first notice on 28.05.1998 just two days prior to the expiry of the period agreed between the parties. Though the plaintiff has alleged that the first defendant was approached several times to comply with the terms of the agreement, the plaintiff has not furnished the particulars of such demand, nor any evidence to substantiate the same. As rightly contended by the learned Counsel for the respondents, the demands made in Ex.A.4 legal notice would go to show in clear terms that the plaintiff was not at all willing to perform her part of contract.

35. No doubt, the plaintiff in the plaint has prayed for the relief of specific performance directing the first defendant to execute the sale



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deed for Rs.11,00,000/- as per contract and to receive the balance sale price of Rs.9,00,000/- and to deliver the possession of the suit property to the plaintiff. The plaintiff neither in the body of the plaint nor in the prayer column has prayed for the compliance of the notice demand. In paragraph No.6 of the plaint, the plaintiff has alleged that the first defendant is bound to disclose all his debts if any before conveying the property as per the contract. But according to the learned Counsel for the respondents, there was no agreement between the parties.

36. Considering the above, the finding of the trial Court that though the plaintiff has pleaded that she has been ready and willing to perform her part of contract, has failed to prove the same, cannot be found fault with and this Court is in entire agreement with the consequent decision of the trial Court that the plaintiff is not entitled to get the equitable relief of specific performance. Hence, this Court concludes that the Appeal Suit is devoid of merits and the same is liable to be dismissed.

37. In the result, the Appeal Suit is dismissed and the Judgment and Decree dated 28.08.2012, passed by the Additional District and



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Sessions Judge, Dindigul in O.S.No.28 of 2004 is confirmed. The
Miscellaneous Petition in C.M.P.(MD)No.8388 of 2022 is dismissed.

The parties are directed to bear their own costs.

13 .12.2022

Index : Yes : N
Internet : Yes : No

SSL

To

1. The Additional District and Sessions Court,
Dindigul.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

A.S.(MD)No.1 of 2013

13.12.2022