



A.S(MD)No.107 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S(MD)No.107 of 2010

and

M.P(MD)No.1 of 2010

Mariammal @ Malaiyammal

... Appellant

vs.

M.Durai

... Respondent

Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the judgment and decree passed in O.S.No.48 of 2008 dated 29.01.2010 on the file of the learned Additional District Judge/Fast Track Court No.1, Thoothukudi.

For Appellant : Mr.V.Meenakshi Sundaram
For Respondent : Mrs.P.Jessi Jeeva Priya for
Mr.G.Aravinthan

JUDGMENT

The appellant is the defendant in O.S.No.48 of 2008 on the file of the learned Additional District Judge/Fast Track Court No. 1, Thoothukudi. The respondent as plaintiff filed the above suit for



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the relief of specific performance. After trial, the said suit was decreed. Challenging the judgment and decree, the defendant has filed this appeal.

2. Brief facts in the plaint are as follows:-

The defendant purchased the suit property by way of Exs.A2 to A6 and constructed houses therein and residing in one of the houses and the other houses are occupied by her tenants. She negotiated for sale of the suit property to the plaintiff for a sum of Rs. 14,70,000/-. Draft sale deeds were drafted on 04.04.2008, however, the date was wrongly mentioned in the stamp papers. Thus, the parties entered into a sale agreement on 09.04.2008 and a sum of Rs.5,50,000/- was paid to the defendant by the plaintiff as advance. As per the sale agreement, the sale has to be completed within three months on or before 09.07.2008. On 31.05.2008, the plaintiff approached the defendant along with Rs.3,50,000/-, but the defendant refused to receive it. Thereafter, despite several demands, the defendant did not come forward to perform her part. Hence, the suit.



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3. Brief facts in the written statement are as follows:-

The defendant admitted the sale agreement dated 09.04.2008, but denied the occurrence on 31.05.2008. According to the defendant, despite repeated demands, the plaintiff did not come forward to perform his part. Thus, the suit is liable to be dismissed.

4. Based on the pleadings, the trial Court framed the following issues:-

1) Whether the plaintiff is entitled to the relief of specific performance as prayed for?

2) To what relief the plaintiff is entitled to?

5. In order to substantiate the case, on the side of the plaintiff, two witnesses were examined as PWs 1 and 2 and 17 documents were marked as Exs.A1 to A17. On the side of the defendant, two witnesses were examined as DW1 and DW2 and Exs.B1 and B2 were marked.



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6. The trial Court, considering the pleadings, oral and documentary evidence, decreed the suit. Challenging the judgment and decree, the defendant has filed this appeal.

7. The learned counsel for the appellant/defendant would submit that though the appellant and the respondent entered into the sale agreement, the respondent was not ready and willing to perform his part of contract and therefore, the purpose for which they entered into the sale agreement itself got defeated, since the respondent did not come forward to pay the balance sale consideration and get the sale deed executed. She would further state that the relief of specific performance is discretionary relief and the respondent has to prove his case that he was always ready and willing to perform his part of contract. Even after the decree passed in the suit, the respondent did not deposit the balance sale consideration which clearly shows that the respondent was not ready and willing to perform his part of contract. The subsequent conduct of the respondent is also not satisfactory. It is a settled proposition of law that from the date of sale agreement, the conduct of the



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parties has to be looked into throughout. In this case, the conduct of the respondent clearly shows that he was never ready and willing to perform his part of contract. Further, the trial Court failed to appreciate the fact that in the sale agreement, considering the need of money, time has not been mentioned as the essence of the contract. Since the sale agreement was prior to the amendment to the Specific Relief Act, 1963 and that the relief of specific performance is discretionary, the Court has to look into the conduct of the parties. Though the respondent stated that on 31.05.2008, he went to the house of the appellant along with Rs.3,50,000/- and since she did not receive the money, the respondent made an endorsement in the backside of the agreement and also got signature of a witness who was also a witness to the original sale agreement, but however, the respondent has not proved that on that day, the appellant refused to receive money and even otherwise, it is not the case of the respondent that he brought the entire balance sale consideration to get the sale deed executed. The trial Court failed to appreciate the evidence in proper perspective and erroneously decreed the suit. Therefore, the judgment and decree of the trial Court is liable to be set aside.



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sale consideration, even then, the respondent filed application to permit him to deposit the amount. From the inception, the respondent was ready to perform his part of contract and even the suit itself filed within the stipulated time and the respondent continuously shown his readiness and willingness and also the document to show that he mobilised the fund and was having sufficient means to pay the balance sale consideration. Thus, he would submit that there is no merit in this appeal and the same is liable to be dismissed.

10. Heard both sides and perused the records.

11. Admittedly, the appellant and the respondent entered into a sale agreement on 09.04.2008. The total sale consideration was fixed at Rs.14,70,000/- and on the same day, the respondent paid Rs.5,50,000/- as advance and the time fixed for completion of sale agreement is three months from the date of agreement. The sale agreement and the receipt of advance of Rs.5,50,000/- and the time fixed for completing the sale within a period of three months are not in dispute. According to the appellant, the respondent never ready



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and willing to perform his part of contract and he had no financial capacity and the respondent failed to establish that he was always ready and willing to perform his part of contract. The suit was filed in the year 2008 and the same was decreed on 29.01.2010. Even the suit was pending for more than a year, but the respondent/plaintiff did not deposit the money into the Court and even after the decree also, he did not deposit. However, the case of the respondent is that he was always ready and willing and even within the stipulated time, the respondent was prepared to pay a portion of the sale consideration, but the appellant refused the same and therefore immediately, he filed the suit.

12. On reading of the entire pleadings oral and documentary evidence, this Court finds that the respondent has proved the agreement and also the readiness and willingness to perform his part of contract and the trial Court also rightly appreciated the evidence and granted the decree for specific performance. As rightly pointed out by the learned counsel for the appellant, the sale agreement is prior to the amendment and therefore it is the discretionary relief. It is a settled proposition of law, for sale of immovable property, time



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is not ordinarily essence of the contract, unless the warranting circumstances pleaded and established. In this case, such circumstances have not been specifically stated either in the agreement or in the pleadings or established in the evidence and due to the non performance within the stipulated time, the respondent undergone irreparable loss. As far as the payment of balance sale consideration is concerned, even assuming that the appellant had not come forward to receive the balance sale consideration, as a plaintiff, the respondent should have deposited the money before the Court. Even though non deposit of money at the time of filing the suit may not be the sole ground to disallow the claim of the respondent, but however, in order to show the bonafideness, the respondent has stated that he is having money by selling his properties and he is ready to deposit the balance sale consideration before the trial Court after getting permission from the Court. As stated by the learned counsel for the appellant, even after the stay obtained by the appellant in this appeal, still, the respondent could have obtained permission from the Court and could have deposited the amount either before this Court or in any one of the Nationalised Banks in an interest bearing deposit, but he failed to do so.



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Admittedly, the respondent is doing the real-estate business and he has utilised the said amount in his real-estate business which is a commercial transaction and he could have earned some profit out of that money.

13. Though the respondent as directed by this Court on 23.06.2022, deposited the balance sale consideration of Rs. 9,20,000/- along with the stamp duty @ 7% for Rs.14,70,000/- amounting to Rs.1,03,000/- totalling Rs.10,23,000/- considering the facts and circumstances and the long pendency of the case, the respondent is directed to pay interest at the rate of 18% per annum on the balance sale consideration of Rs.9,20,000/- from the date of suit till the date of deposit to the credit of A.S(MD)No.107 of 2010 on the file of this Court, within a month from today. At this juncture, the learned counsel for the respondent represented that the respondent already deposited the balance sale consideration including the stamp duty of Rs.1,03,000/- for registration of the sale deed. Therefore, the respondent is directed to deposit the interest amount after deducting Rs.1,03,000/-, since the said amount has already been deposited before this Court by the respondent along



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with the balance sale consideration. However, it is made clear that the respondent has to pay stamp duty separately. On such deposit, the appellant is directed to execute the sale deed in favour of the respondent within a period of one month thereafter. On execution of sale deed, the appellant is permitted to withdraw the interest amount along with the balance sale consideration and stamp duty totalling at Rs.10,23,000/- already deposited before this Court. The appellant is also permitted to withdraw the sale consideration of Rs. 5,50,000/- deposited before the trial Court along with accrued interest, if any.

14. With the above directions, the Appeal Suit is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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28.06.2022

Index : Yes / No

Internet : Yes

Issue judgment copy by 04.07.2022e

To

The Additional District Judge,
Fast Track Court No.1,
Thoothukudi.



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P.VELMURUGAN, J.

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