



A.S.(MD)No.10 of 2011

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.06.2022

DELIVERED ON : 06.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.(MD)No.10 of 2011

S.K.Ravichandran

... Appellant / Plaintiff

-Vs-

M.Thanapathy

... Respondent / Defendant

PRAYER: Appeal Suit is filed under Section 96 of the Code of Civil Procedure to set aside the decree and Judgment dated 16.02.2010 made in O.S.No.42 of 2007, on the file of the Additional District Court / Fast Track Court No.2, Tuticorin.

For Appellant : Mr.V.Meenakshi Sundaram

For Mr.G.Mohan Kumar

For Respondent : Mr.S.Meenakshi Sundaram

Senior Counsel, for Mr.R.Manimaran



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JUDGMENT

The appellant / plaintiff has filed O.S.No.42 of 2007 on the file of the learned Additional District Judge, Fast Track Court No.2, Tuticorin, for specific performance and permanent injunction, wherein the respondent is the defendant.

2.The brief facts of the plaint are as follows:-

The suit property belongs to the defendant. The defendant had entered into a written sale agreement with the plaintiff on 19.08.2007 for the sale consideration of Rs.11,80,000/- (Rupees Eleven Lakhs and Eighty Thousand Only) at Chennai. Out of which, the plaintiff has paid a sum of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand Only) as advance on the same day itself. It was agreed that after receipt of balance sale consideration of Rs.10,30,000/- (Rupees Ten Lakhs and Thirty Thousand Only) from the plaintiff on or before 15.10.2007, the sale deed should be executed and registered. When the plaintiff tendered the balance sale consideration to the defendant, he told that he will come to Thoothukudi before 15.10.2007. Since there was no reply from the defendant till the end of September, 2007, the plaintiff met the defendant at Chennai during



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the first week of October, 2007. The defendant promised that he will come to Thoothukudi on 09.10.2007. Since the plaintiff was present on that date at Thoothukudi Melur Sub Registrar's Office with the balance sale consideration, the defendant did not turn up. Therefore, the plaintiff sent a telegram and also a detailed letter to the defendant on 12.10.2007, requesting the defendant to come to the Sub Registrar's Office on 15.10.2007 between 10 a.m., to 5.30 p.m. On that date also, the plaintiff was present. Though the defendant had received the telegram and letter sent by the plaintiff, he had either come to the Sub Registrar's Office or sent a reply. Thereafter, the plaintiff came to know that the defendant was trying to alienate the suit property with third parties. Hence, the suit is filed for specific performance and permanent injunction.

3.The brief facts of the written statement filed by the defendant are as follows:-

The defendant has admitted the execution of the sale agreement. The plaintiff did not call the defendant in the first week of October, 2007. The telegram had been sent after 4 days on 12.10.2007, instead of 09.10.2007. The defendant came to Thoothukudi on 17.10.2007 and had been waiting at the Sub



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Registrar's Office from 10 a.m. Though the plaintiff never turned up till 2.30 p.m., the defendant sent a telegram to the plaintiff at 3.30 p.m on 17.10.2007, cancelling the agreement dated 19.08.2007. The allegation of alienation with the third parties is baseless. Since the defendant had cancelled the sale agreement on 17.10.2007, the plaintiff is not entitled to execute the sale deed.

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

“1. Whether the plaintiff is entitled to the relief of specific performance as prayed for in the suit?;

2. Whether the plaintiff is failed to settle the balance sale consideration within the stipulated time?;

3. Whether the plaintiff is entitled to the relief of permanent injunction? and

4. To what relief the plaintiff is entitled?.

5. In order to substantiate the case, during the trial on the side of the plaintiff, he examined himself as P.W.1 and 5 documents were marked as Exs.A.1 to A.5. On the side of the defendant, he examined himself as D.W.1 and 3 documents were marked as Exs.B.1 to B.3.



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6.On conclusion of the trial, after hearing the arguments advanced on either side, the trial Court dismissed the suit on 16.02.2010, directing the defendant to return the advance amount of Rs.1,50,000/- to the plaintiff within one month from the date of the Judgment.

7.Challenging the said judgment and decree dated 16.02.2010, the plaintiff has filed the present Appeal Suit before this Court.

8.The learned counsel for the appellant would submit that the execution of the sale agreement dated 19.08.2007 has been admitted by the respondent in the written statement itself. Therefore, once he admitted the execution of the sale agreement, it is the duty of the appellant to prove his readiness and willingness to perform his part of contract from the date of agreement till the date of passing a decree in the suit. Even on 09.10.2007, the appellant went to the Sub Registrar's Office with the balance sale consideration, whereas the respondent never turned up. Therefore, he sent a telegram on 12.10.2007, requesting the respondent to come to Thoothukudi-Melur Sub Registrar's Office on 15.10.2007. The appellant



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has also sent a detailed letter, intimating that he would wait in the Registration Office with the balance sale consideration. Despite the same, the respondent did not turn up. The time stipulated in the agreement is on or before 15.10.2007. Till 15.10.2007, the appellant was always ready and willing to perform his part of contract and has also expressed his willingness over phone to the respondent. Whereas, the respondent was not ready and willing to perform his part of contract. Since the respondent tried to sell away the property to third party, the appellant has filed the suit for the relief of injunction not to alienate the property to third party.

9.He would further submit that the respondent has stated in his written statement that he came on 17.10.2007 and waited at the Sub Registrar's Office, however, the plaintiff never turned up. Therefore, he sent a telegram and subsequently, cancelled the sale agreement. Unilateral cancellation is not permissible under law and further, the respondent has also not proved as to whether he came on 17.10.2007 to the Registration Office to perform his part of contract. Therefore, the trial Court failed to appreciate the fact that the respondent admitted the execution of the sale agreement and also the appellant



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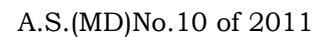
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has financial capacity to get sale deed by paying balance sale consideration.

Further, the trial Court disbelieved the case of the appellant and dismissed the suit for specific performance.

10.He would further submit that it is no doubt that the relief of specific performance itself is a discretionary remedy, whereas the respondent admitted the execution of the sale agreement and the appellant has also proved that on two occasions, though he went to the Registration Office and was waiting for the arrival of the respondent, the respondent never turned up. The respondent himself admitted that he did not come to the Registration Office either on 09.10.2007 or on 15.10.2007. Therefore, he cannot say that the appellant never came to the Registration Office on two occasions.

11.He would further submit that in the written statement, the respondent has stated that the appellant has no funds to purchase the property. In order to prove his financial capacity, the appellant has marked Ex.A.5 Passbook, wherein he has maintained substantial amount for the sale consideration. It is settled principles of law that the purchaser need not have money always in his hand. If



12. In support of his contention, he relied on the Judgments in *A. Kanthamani Vs. Nasreen Ahmed* reported in (2017) 4 SCC 654 and *Brahm Dutt Vs. Sarabjit Singh* reported in (2018) 1 LAR 119.

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his presence in the Registration Office on 09.10.2007 in the manner known to law.

14.He would further submit that the appellant along with his brother met the respondent on 10.10.2007 and the respondent stated that he would be available on 17.10.2007 in Thoothukudi. Accordingly, he has also travelled from Chennai to Thoothukudi. In order to prove the same, he has also produced the train and bus ticket, which was marked as Ex.B.1. He went to the Registration Office and was waiting there for the arrival of the appellant on 17.10.2007. However, the appellant never turned up and he has also telephoned the appellant several times. The appellant refused to pick up the phone, knowing fully well that the respondent was calling the appellant for the purpose of executing the sale deed. Therefore, he contacted one of the brothers of the appellant, who told that the appellant has no money and he is making arrangement to purchase and re-sell the property. Therefore, the respondent sent a telegram to the appellant, intimating his arrival, which was marked as Ex.B.2.



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15.He would further submit that since the appellant did not come forward to get the sale deed by paying balance sale consideration and he was not ready and willing to perform his part of contract, the respondent cancelled the sale agreement and when the respondent communicated the appellant, regarding the cancellation of the agreement deed, the appellant has not challenged the cancellation of the sale agreement. Without challenging the cancellation of the sale agreement, the Suit is not maintainable.

16.In support of his contention, he relied on the following Judgments:-

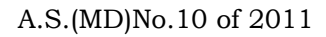
(i)***I.S.Sikandar (D) by LRS., Vs. K.Subramani and others*** reported in ***(2013) 15 SCC 27***;

(ii)***Ravindran Vs. Danton Shanmugam*** reported in ***(2017) 3 MLJ 265***;

(iii)***Mohinder Kaur Vs. Sant Paul Singh*** reported in ***(2019) 9 SCC 358***

and

(iv)***Prabakaran Vs. Geetha*** reported in ***2022 (3) CTC 650***.



18. It is not in dispute that the property is belonged to the respondent; both the appellant and the respondent entered into sale agreement dated 19.08.2007 for sale consideration of Rs.11,80,000/-; the appellant has paid a sum of Rs.1,50,000/- as advance; and the balance sale consideration of Rs.10,30,000/- was to be paid on or before 15.10.2007. The only dispute is that according to the appellant, he was ready and willing to perform his part of contract, however, the said fact has been stoutly denied by the respondent. The trial Court has found that the appellant was not ready and willing to perform his part of contract.

19. Now, points arise for consideration are that (i) whether the appellant was ready and willing to perform his part of contract from the date of agreement till the date of passing the decree in the suit and (ii) since the suit is for specific performance, whether the appellant has pleaded and proved the same.



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20. In order to substantiate the stand taken by the appellant that he was ready and willing to perform his part of contract, the appellant contended that the sale agreement entered into on 19.08.2007; the appellant has paid advance amount on the same day itself and the balance sale consideration was to be paid on or before 15.10.2007. Therefore, the appellant went to the Registration Office, however, the respondent never turned up. The appellant, subsequently, sent telegram on 12.10.2007, requesting the respondent to come to Thoothukudi Melur Sub Registrar's Office on 15.10.2007 and after receiving the balance sale consideration, execute the sale deed. The respondent never turned up on that day also. The said fact was stoutly denied by the respondent. Therefore, it is the burden on the appellant to establish as to whether he went on 09.10.2007 and 15.10.2007 to the Registration Office and though the same was intimated to the respondent, he has not come to the Registration Office, therefore, he could not execute the sale deed on or before 15.10.2007.

21. Though in order to prove the readiness as stated by him, he went to the Registration Office on 09.10.2007 and 15.10.2007 along with one Subramanian, during the cross-examination he admitted that he has not purchased



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any stamp papers and has not prepared any draft sale deed. When the respondent denied the same, the appellant ought to have examined the said Subramanian to prove the fact that he went to the Registration Office with balance sale consideration and ready to get the sale deed in his favour. In view of the same, this Court finds that there is no possibility to believe that he was present in the Registration Office on 09.10.2007 and 15.10.2007.

22.This Court, after careful perusal of the plaint, averments, written statement, issues framed by the trial Court and oral and documentary evidence adduced by both parties, finds that though the appellant contended that he went to the Registration Office on two occasions and was waiting for arrival of the respondent with balance sale consideration to get the sale deed from the respondent, he has not established the said fact in the manner known to law.

23.For the sale deed, normally, the purchaser will bring one witness and the vendor will bring one witness. Though the appellant was present along with one Subramanian, he has not examined the said Subramanian and established his presence in the Registration Office in order to prove that he was ready and willing



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to perform his part of contract on that date. Therefore, the appellant has not inspired the confidence of this Court.

24.It is pertinent to note that the existence of the agreement is not in dispute. As per Section 16 of the Specific Relief Act, 1963, the plaintiff would always ready and willing to perform his part of contract, whereas in this case, though the appellant pleaded that he was ready and willing, he has failed to substantiate the same. Further, since the relief of specific performance is an equitable remedy, the appellant has to necessarily prove his readiness and willingness in performing his part of contract from the date of the agreement till the date of passing a decree in the suit. In view of the above, this Court finds that the appellant was not ready and willing to perform his part of contract, hence, he is not entitled for the relief of specific performance. Therefore, the finding of the trial Court in this regard has no perverse and the same is confirmed.

25.It is the contention of the learned counsel for the respondent that the suit itself was not maintainable on the ground that though the respondent cancelled the agreement, the appellant has not challenged the cancellation. In this



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regard, the learned counsel for the appellant would submit that the sale agreement does not speak about the termination of the contract. Unilateral cancellation is not permissible under law, except where the agreement is determinable in terms of Section 14 of the Specific Relief Act. Such cancellation cannot be raised as a defence in a suit for specific performance. If any such plea is raised by the respondent, the Court can just ignore the same and the plaintiff need not challenge the unilateral cancellation separately. Further, the plea regarding the maintainability of the suit is to be raised at the first instance in the written statement. Therefore, the said plea cannot be adjudicated in the appeal. The citation referred to by the learned counsel for the respondent is not applicable to the present case on hand.

26.A careful perusal of the sale agreement Ex.A.1 clearly shows that the time stipulated for the balance sale consideration is on or before 15.10.2007, it does not speak about the termination of the contract, in case the appellant will not pay the balance sale consideration on particular date. Therefore, the law does not permit unilateral cancellation as referred to above.



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27.It is settled principle of law that the appellant has to prove his case on his own strength and cannot take advantage of loopholes left by the respondent. It is contended that the appellant has no funds to purchase the property. In order to prove his financial capacity, the appellant has produced his bank statement, which was marked as Ex.A.5. As already stated by the appellant, he need not have the entire balance sale consideration always with his hand in order to prove his readiness. If the appellant is able to prove that he can mobilise the fund, his readiness can be established and it is not necessary that he should always carry the money with his hand.

28.As far as the willingness is concerned, even though the appellant has financial capacity to prove his readiness, he has to prove the willingness to perform. Though he has stated that he was present on two occasions at the Registration Office with one Subramanian, when the same was denied by the respondent, the appellant did not choose to examine the said Subramanian. Therefore, this Court finds that the appellant has not approached the Court with clean hands and he is not entitled to get the discretionary relief of specific performance.



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29. Though the respondent stated that he approached the brother of the appellant, who told that the appellant had no sufficient money to get the sale deed, he has also not examined any person to prove the same. Further, Ex.B.1 travel ticket indicates that two persons travelled, however, the respondent has not established that who is other person travelled along with the respondent. Even in the ticket also, the name of the respondent was not found. Mere producing the tickets is not sufficient to prove that he was present in the Registration Office on 17.10.2007. Therefore, the respondent has also not established his readiness and willingness, presence in the Registration Office and also cancellation of the agreement.

30. In the result, this Court finds that this appeal fails and there is no valid ground to interfere with the Judgment of the trial court. Therefore, this Appeal Suit stands dismissed and the decree and Judgment of the trial Court is confirmed. No costs.

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Internet : Yes / No

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To

1.The Additional District Judge,
Fast Track Court No-2, Tuticorin.

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



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P.VELMURUGAN, J.

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Judgment made in
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