



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.(MD).No.207 of 2011

and

A.S(MD)No.600 of 2011

A.S(MD)No.207 of 2011

1.A.R.Azhagappan

2.A.Pandian

... Defendants 1 & 2/
Appellants

-Vs-

1.C.Chidambaram

2.M.Chidambaram

3.G.Ramanathan

4.S.Arumugam

5.M.Muthaiah

6.K.Renganathan

7.K.Velayutham

8.V.Swaminathan

9.P.Rajalingam

10.K.Rajendran

11.P.Balakrishnan

12.A.Karuppaiah

... Plaintiff/1st Respondent



13.V.Muthuramalingam
14.S.Karunanithi
15.K.Sundararaj

....Defendants 3 to 16/Respondents

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, against the decree and judgment of the learned Additional District Judge (Fast Track Court No.II), Pattukkottai, dated 28.12.2010 made in O.S.No. 112 of 2009.

For Appellants	: Mr.A.Arun Prasad
For R1	: Mr.N.Balakrishnan
For R2 to R15	: No appearance

A.S(MD)No.600 of 2011

C.Chidambaram

... Appellant/Plaintiff

-Vs-

1.A.R.Azhagappan
2.A.Pandian
3.M.Chidambaram
4.G.Ramanathan
5.S.Arumugam
6.M.Muthaiah
7.K.Renganathan
8.K.Velayutham
9.V.Swaminathan
10.P.Rajalingam



11.K.Rajendran
12.P.Balakrishnan
13.A.Karuppaiah
14.V.Muthuramalingam
15.S.Karunanithi
16.K.Sundararaj

....Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, against the decree and judgment of the learned Additional District Judge (Fast Track Court No.II), Pattukkottai, dated 28.12.2010 made in O.S.No. 112 of 2009.

For Appellant : Mr.N.Balakrishnan

For R1 & R2 : Mr.A.Arunprasad

For R3 to R 16 : No appearance

COMMON JUDGMENT

The appellant in A.S(MD)No.600 of 2011 is the plaintiff in O.S.No.112 of 2009 and the first respondent in A.S.(MD)No.207 of 2011. The appellants in A.S(MD)No.207 of 2011 are the defendants 1 & 2 in the above said suit and the respondents 1 & 2 in A.S(MD)No.600 of 2011. The



other respondents are the defendants stated to have been Othithars and therefore, they have been impleaded as parties in order to get the binding decree. Since both the appeals arise out of a same judgment and the parties are one and same, therefore, both the appeals are disposed of by common judgment. The parties are referred to as per A.S(MD)No.600 of 2011.

2. The appellant in A.S(MD)No.600 of 2011 has filed a suit in O.S.No.112 of 2009 against the respondents for specific performance of the sale agreement, dated 24.12.2007 and for permanent injunction restraining the defendants in order to disturb the peaceful possession of the plaintiff and alternatively claiming advance amount of Rs.17,00,000/- with 12% interest and also claiming a sum of Rs.1,000/- for damages for breach of contract and the cost of the suit.

3. The trial Court, after trial, partly decreed the suit and directed the defendants 1 & 2 to pay a sum of Rs.5,00,000/- with 12% interest from 24.12.2007 till the date of payment to the plaintiff as alternative relief. The



suit was dismissed with reference to other reliefs as against D1 and D2 and the suit was dismissed in full against defendants 3 to 16. The cost is to be payable only by defendants 1 and 2. Challenging the said decree and judgment, the plaintiff has filed the appeal in A.S.(MD)No.600 of 2011 and the defendants 1 & 2 have filed the appeal in A.S(MD)No.207 of 2011.

4. Brief facts of the case of the plaintiff, as per the plaint, are that the suit properties are situated at Sengemangalam Village comprised in Patta No.171, Peravurani Taluk, Thanjavur District within the jurisdiction of this Court. The suit properties belonged to the joint family consisting of the first defendant and his father. The suit properties were allotted to the share of the first defendant. The second defendant is the son of the first defendant. The defendants 1 and 2 herein have duly entered into the agreement of sale with the plaintiff, whereby, they have offered to sell the suit properties to the plaintiff and the plaintiff has also accepted to purchase the suit properties for a total sale consideration of Rs.20,00,000/-. The defendants 1 and 2



executed an agreement of sale, dated 24.12.2007 in favour of the plaintiff and received an advance amount of Rs.5,00,000/- on the very same date. It was agreed by the defendants 1 and 2 that the balance of Rs.15,00,000/- has to be paid within 3 months and the sale deed is to be executed by the defendants 1 and 2 in favour of the plaintiff or his nominee. The period of 3 months did not expire for paying the balance amount, on 15.03.1998 a further sum of Rs.10,00,000/- was paid by the plaintiff to the first defendant as he required for urgent expenses and the first defendant gave consent deed for the same and leaving only a balance of Rs.5,00,000/- and the first defendant gave the consent letter to the plaintiff assuring his son second defendant would come and sign the document later. But the second defendant could not come and sign. The first defendant again demanded the plaintiff a sum of Rs.2,00,000/- for discharging the debt due to one Azhagarsamy, S/o.Muthiah and a receipt dated 23.06.2008 was given to the plaintiff for having received Rs.2,00,000/- and since almost major portion of the sale amount was paid by the plaintiff, the defendants 1 and 2 have handed over possession of the suit properties to the plaintiff and made



WEB COPY

endorsement in the receipt dated 23.06.2008 disclosing delivery of possession given. In this receipt, the first defendant has agreed to execute the sale deed as and when demanded after receiving the balance in sole price. The plaintiff has always been ready and willing to perform his part of the contract. The contract is being one in respect of immovable property time is not essence of the contract.

5. The defendants 1 and 2 have not been willing to perform their part of the contract and to issue the lawyer notice, dated 15.06.2009 setting forth all untenable contentions. The plaintiff issued a reply notice on 22.07.2009 setting forth true facts. The plaintiff is always ready and willing to perform his part of the contract and duly get the sale deed executed and registered. The defendants are indiscriminately creating documents contrary to the terms of the receipt dated 23.06.2008 in the shape of othi, lease, mortgage etc. The above documents are not true and valid document and the defendants themselves have not in possession either to execute any othi deed or to give possession of the sale when their othi document was created.



All these documents are sham and nominal documents and the plaintiff is in continuous possession of the suit properties. The defendants are making frivolous attempts to disturb the possession of the plaintiff in the suit properties. The alleged othidhars and lessees are impleaded as defendants 3 to 16 being proper and necessary parties in order that the decree that may be passed in this suit may be binding on them, hence the plaintiff prays that, directing the defendants 1 and 2 to execute the sale deed in favour of the plaintiff in terms of the agreement of sale in favour of the plaintiff and the defendants 1 and 2 within a time stipulated by this Court, failing which, itself execute the sale deed on behalf of the defendant in terms of the said agreement of sale, consequentially pass a decree of permanent injunction restraining the defendants from in any way interfering with the peaceful possession and enjoyment of the suit properties by the plaintiff, or in the alternative directing the defendants to repay the amount of Rs.17,00,000/- received by him as advance sale consideration with subsequent interest at 12% and direct the defendants to pay a sum of Rs.1000/- as damages for breach of contract of sale and to pay the cost of the suit.



WEB COPY

6. The first defendant resisted the suit by filing a written statement stating that the suit properties are not an absolute property of the first defendant. The suit properties belong to the defendants 1 & 2 jointly. The first defendant's father's brother Muthusamy Udaiyar is residing in the next house of the defendants 1 & 2. But he has no talking terms with the 1st defendant's family. The first defendant's above said uncle Muthusamy Udaiyar wanted to purchase the suit properties from the defendants 1 and 2 and hence, he approached the defendants 1 and 2 through the plaintiff herein. The defendants 1 and 2 have also agreed to sell the suit properties to the 1st defendant's uncle Muthusamy Udaiyar through the plaintiff. The defendants 1 and 2 agreed to sell the suit properties for a sum of Rs. 30,00,000/- entered into a sale agreement, dated 24.12.2007 with the plaintiff. To avoid the stamp duty, the plaintiff mentioned the sale price in the sale agreement as Rs.20,00,000/- and agreed to pay the remaining sale price of Rs.10,00,000/- in each to the defendants 1 and 2 at the time of completion of sale. The plaintiff has paid Rs.5,00,000/- on the date of sale



agreement and to agreed the remaining amount of Rs.25,00,000/- within 3 months. The first defendant has not received any money from the plaintiff subsequent to the date of sale agreement, in particular a sum of Rs. 10,00,000/- and 2,00,000/- and has not executed the alleged consent document dated 15.03.1998 and the receipt dated 23.06.2008 in favour of the plaintiff. The defendants 1 and 2 have not handed over the possession of the suit properties to the plaintiff. The alleged consent document and receipt are not valid as the second defendant did not sign on the alleged documents.

7. The first defendant had coconut business and money dealing with one Azhagarsamy on cash basis and advance cash basis. In that connection, the above said Azhagarsamy obtained the signatures of the first defendant in the bills, vouchers, blank papers and stamp papers. Plaintiff used those stamp papers given to the Azhagarsamy and created the payment receipt said to have been executed by the first defendant. The defendants 1 and 2 have jointly leased out suit properties to the defendants



3,5,12 to 16 through a lease deed, dated 29.05.2009 and the possession of the suit property was also handed over to the above said lessees for one year. The defendants 1 and 2 have borrowed a sum of Rs.3,00,000/- from the defendants 3 to 13 and executed a registered usufructuary mortgage deed, dated 29.06.2009 with reference to the suit properties, in favour of the defendants 3 to 13. The possession of the suit properties were handed over to the defendants 3 to 13 and they have been enjoying the suit properties till date. The mortgage is for 3 years. The above said defendants are bonafide mortgagees.

8. The plaintiff was not willing and ready to complete sale transaction. The plaintiff has assaulted the second defendant and threatened the first defendant. Hence, the first defendant filed the complaint before the police and F.I.R., was also registered in Cr.No.130/2009 by the Thiruchitrambalam Police as against the plaintiff and his men on 02.06.2009. Subsequently, the second defendant has issued a lawyer notice dated 15.06.2009 condemning the attitude of the plaintiff. The time is an



essence of the contract. The present suit is the counter blast of police complaint and lawyer notice by this defendant. The other allegations Othithars and lessees are not correct. The question of making attempt to disturb the possession of the plaintiff did not arise as the plaintiff is not in possession and the other defendants are in possession of the suit property. The plaintiff is not entitled for refund of Rs.17,00,000/- and at the rate of 12% P.A. There is no such agreement for payment of interest. There is no cause of action for the suit. The court fees paid is not correct. The plaintiff is not entitled for any damages for breach of contract of sale. Hence this suit is dismissed with exemplary costs.

9. The second defendant resisted the suit by filing a written statement denies all the allegations except those which are specifically admitted by him. First defendant is the father of this defendant. The suit property is jointly owned by the first and second defendants. The first defendant's brother and this defendant's paternal uncle lives near to the house of this defendant. This defendant's paternal uncle was interested to



WEB COPY

purchase the suit property through the plaintiff as this defendant's paternal uncle was not in talking terms. It is not true that this defendant and his father agreed to sell the suit properties under the sale agreement, dated 24.12.2007 to the plaintiff for a sum of Rs.20,00,000/-. The sale consideration mentioned in the sale agreement dated 24.12.2007 is not true. The sale consideration has been mentioned as Rs.20,00,000/- in the sale agreement dated 24.12.2007 only to reduce the stamp fees. It is not true that the plaintiff has paid a sum of Rs.10,00,000/- on or before 15.03.2008 to the first defendant. It is also not true that the first defendant has executed a receipt for acknowledging the receipt of the money. The first defendant and one Alagarsamy are coconut merchants. In the said transactions, the first defendant had put his signature in unfilled stamp papers as well as on white sheets. The signed white papers and signed unfilled stamp papers from the said Alagarsamy has been obtained by the plaintiff for the fabrication of the plaint document Nos.2 and 3. The stamp papers used for the alleged document executed on 15.03.2008 were purchased on 29.06.2007 prior to the sale agreement itself shows that the plaint document No.2 is a fabricated



WEB COPY

one by using 20/- rupees stamp paper in which the first defendant has given to one Alagarsamy. There are also material alteration in the plaint document No.2. It is also not true that the first defendant had executed plaint document No.3 on 23.06.2008 and also received a sum of Rs.2,00,000/- from the plaintiff to pay the debt to the said Alagarsamy. The plaintiff was not ready and willing to perform his part of contract. The defendant has cancelled the sale agreement by sending a lawyer's notice to the plaintiff. Only after receipt of the lawyer's notice from this defendant the plaintiff has given reply. The allegations mentioned in the notice, dated 27.02.2009 is false.

10. Written statement filed by the third defendant adopted by the defendants 4 to 16 except defendant No.10. The suit properties belong to the defendants 1 & 2 jointly. The defendants 1 and 2 have also agreed to sell the suit properties to the first defendant's uncle through the plaintiff for a sum of Rs.30,00,000/-. The defendants 1 and 2 entered into a sale agreement dated 24.12.2007 with the plaintiff in the above said



understanding. The defendants 1 and 2 received a sum of Rs.5,00,000/- as advance and the time for performance is fixed three months and the plaintiff has to pay the balance amount of Rs.25,00,000/-. The first defendant and one Alagarsamy are coconut merchants. In that connection, the said Alagarsamy obtained the signatures of the first defendant in the bills, vouchers, blank papers and stamp papers. The plaintiff utilized those stamp papers in the name of Alagarsamy and created the payment receipt as if the same was executed by the first defendant.

11. On the basis of the above pleadings, the learned trial Judge framed the following issues for consideration:

(I) Whether the plaintiff is entitled to the relief of specific performance of the suit Agreement of Sale dated 23.12.2007?

(ii) Whether the plaintiff is entitled to the decree for permanent injunction?

(iii) Whether the plaintiff is in possession and enjoyment of the suit property?



- (iv) Whether the plaintiff was and is ready and willing to perform his part of the contract?*
- (v) Whether the sale consideration of Rs.20,00,000/- (Twenty lakhs only) as mentioned in the suit sale agreement is not correct?*
- (vi) Whether the Ex.A2 and A3 are true, valid and binding on the second respondent?*
- (vii) Whether the lease deed in favour of D3, D5, D12 to D16 are true, valid and binding on the plaintiff?*
- (viii) Whether the Othi in favour of D3 to D13 is true, valid and binding on the plaintiff?*
- (ix) Whether the plaintiff is entitled to the alternative relief? If what is the amount to which the plaintiff is entitled?*
- (x) To what relief?*

12. In order to substantiate the case, on the side of the plaintiff, 4 witnesses were examined as PW1 to PW4 and 5 documents were marked as Ex.A1 to Ex.A5. On the side of the defendants, three witnesses were examined as D.W.1 to D.W.3 and 2 documents were marked as Ex.B1 and Ex.B2.



WEB COPY

13. On completion of trial and on hearing of the arguments advanced on either side, the learned trial Judge, considered the oral and documentary evidence produced before the Court partly decreed the suit and directed the defendants 1 & 2 to pay a sum of Rs.5,00,000/- with 12% interest from 24.12.2007 till the date of payment to the plaintiff as alternative relief. The suit was dismissed with reference to other reliefs as against D1 and D2 and the suit is dismissed in full against defendants 3 to 16. The cost is to be payable only by defendants 1 and 2.

14. The learned counsel appearing for the appellant in A.S(MD)No.600 of 2011 would submit that the suit properties belongs to the respondents 1 & 2 and they entered into an agreement of sale with the appellant. The respondents 1 & 2 agreed to sell the properties to the appellant and they have executed the agreement of sale, dated 24.12.2007 in favour of the appellant and received an advance amount of Rs.5,00,000/- on the very same day. The total sale consideration was fixed at Rs.20,00,000/-.



WEB COPY

The appellant has agreed to pay the balance sale consideration within 3 months from the date of the sale agreement and after receiving the balance sale consideration, the sale deed has to be executed by the respondents 1 & 2 in favour of the appellant or his nominee. Even prior to the expiry of three months, the respondents 1 & 2 approached the appellant on 15.03.1998 and received a sum of Rs.10,00,000/- and the first respondent gave a consent letter to the appellant assuring that his son/second respondent would come and sign the document later. But the second respondent did not come and sign the same. The first respondent again demanded a sum of Rs.2,00,000/- from the appellant for discharging the debt due to one Azhagarsamy and received the said amount on 23.06.2008. Since almost major portion of the sale consideration was paid by the appellant, the respondents 1 & 2 handed over the possession of the suit properties to the appellant and made an endorsement in the receipt, dated 23.06.2008 disclosing delivery of possession given. The contract is being in respect of immovable property, time is not essence of contract. Since the respondents 1 & 2 were unwilling to perform their part of the contract,



WEB COPY

issued an advocate notice, dated 15.06.2009 with false allegations.

Therefore, the appellant sent a reply notice dated 22.07.2009 setting forth true facts. The appellant is always ready and willing to perform his part of the contract and duly get the sale deed executed and registered. The respondents 1 & 2 created the documents contrary to the terms of the receipt, dated 23.06.2008 in the shape of Oathi, lease, mortgage etc., with the respondents 3 to 16. Though the appellant was in continuous possession of the suit properties, the respondents 1 & 2 are making frivolous attempts to disturb the possession of the appellant. The alleged Othidars and lessees were impleaded as defendants 3 to 16 being a proper and necessary parties in order to get the binding decree. Therefore, the appellant has filed the suit for specific performance and also permanent injunction and alternative relief of refund of Rs.17,00,000/- as advance amount paid by him along with the interest at the rate of 12% per annum with costs.

15. In order to substantiate the case, on the side of the appellant four witnesses were examined. The appellant was examined as P.W.1, P.W.2



WEB COPY

was examined to prove the agreement of sale, P.W.3 was examined to prove Ex.A2 and he was the first attesor in the alleged Ex.A2 and he is also stood as attesor No.2 in the Ex.A1 sale agreement. Therefore, the appellant has proved the agreement of sale. The respondents 1 and 2 also admitted the agreement and receipt of a sum of Rs.5,00,000/- as advance. Even though, they have denied the receipt of Rs.12,00,000/-, Ex.A2 and Ex.A3 would show that the first respondent signed in the same and once they admitted the signature, they cannot denied the execution of the sale agreement. Even though, the appellant proved the execution of the sale agreement, Ex.A1 agreement of sale and also proved the receipt of Rs.12,00,000/- under Ex.A2 and Ex.A3, in order to substantiate the same, he examined three more witnesses apart from the appellant. He has also categorically stated that the trial Court accepted the agreement of sale executed by the respondents 1 & 2 and receipt of Rs.5,00,000/- partly decreed the suit. However, the trial Court has failed to accept Ex.A2 and Ex.A3 which were produced by the appellant and disbelieved the evidence of the appellant, dismissed the suit not only for granting of specific performance but also dismissed for refund



WEB COPY

of advance amount of Rs.12,00,000/- also. Now, the trial Court has failed to appreciate the oral and documentary evidence of the appellant. Therefore, the judgment and decree of the trial Court is liable to be set aside and the decree for specific performance is to be granted. Even after the agreement, the respondents 1 and 2 colluded with the other respondents created the documents. Once the agreement is admitted and proved that the appellant is ready and willing to perform the part of contract, a creation of other documents with the other respondents clearly shows that the respondents 1 & 2 are not ready and willing to perform their part of contract, therefore, the trial Court ought to have granted the relief of specific performance. Even otherwise at least ought to have granted a decree for payment of entire advance amount of Rs.17,00,000/-, but the trial Court erroneously dismissed the relief of specific performance and also did not grant the decree for refund of entire advance amount. Only the suit was decreed partly and directed the respondents 1 & 2 to pay a sum of Rs.5,00,000/- with interest at the rate of 12%, which warrants interference.



WEB COPY

16. The learned counsel appearing for the respondents 1 & 2 in A.S.(MD)No.600 of 2011 and the appellants in A.S.No.207 of 2011 would submit that once the trial Court came to the conclusion that Ex.A2 and Ex.A3 are forged documents and that was created by the appellant and the appellant has not approached the Court with unclean hands, rightly dismissed the suit for specific performance and also rightly dismissed the refund of advance amount of Rs.12,00,000/-, the trial Court ought to have dismissed the suit in toto and granting refund of Rs.5,00,000/- with interest and cost, is erroneous. The person who approached the Court without clean hands and suppressed the material facts and created a forged documents in order to get a decree, the trial Court could have initiated the criminal proceedings against the appellant. Therefore, the appeal filed by the appellant in A.S.(MD)No.600 of 2011 is liable to be dismissed and the appeal filed by the respondents 1 & 2 in A.S.(MD)No.207 of 2011 is liable to be allowed.

17. Heard the learned counsel appearing for the appellant and the



WEB COPY

respondents, perused the pleadings, issues framed by the trial Court, oral and documentary evidence adduced and produced by both parties.

18. Admittedly, the suit properties belongs to the respondents 1 and 2. In the written statement, the respondents 1 & 2 have admitted that they entered into the agreement of sale with the appellants. In the said agreement, they agreed to sell the suit properties to the appellant and executed the agreement of sale in favour of the appellant, dated 24.12.2007. Based on the agreement, they received a sum of Rs.5,00,000/- as advance amount from the appellant. However, the case of the appellant is that total sale consideration was fixed at Rs.20,00,000/-. On the date of agreement, under Ex.A1 he paid a sum of Rs.5,00,000/- to the respondents 1 and 2 and the time was stipulated for completing the sale was three months. Within three months, the first respondent approached the appellant on 15.03.1998 and received a further sum of Rs.10,00,000/- for the urgent expenses and also the first respondent gave the consent letter that the second respondent would come and sign in the consent letter. The first respondent received



WEB COPY

another sum of Rs.2,00,000/- on 23.06.2008 for discharging the debt due to one Azhagarsamy. Both the respondents 1 and 2 handed over the possession of the suit properties to the appellant and made an endorsement in the receipt dated 23.06.2008 in which they have disclosed the delivery of possession given to the appellant. Though the major portion of the amount has been paid, the appellant was always ready and willing to perform his part of contract and it is the agreement of sale of immovable property, the time is not essence of the contract. The appellant was always ready and willing to perform his part of contract, all of a sudden, the respondents 1 & 2 issued a notice through an Advocate on 15.06.2009 stating false allegations, in which, the appellant on the next day suitably replied the same.

19. Since the respondents 1 & 2 have not come to fulfil their part of contract, the appellant filed the suit. The specific case of the respondents 1 and 2 is that they agreed to sell the property to the first respondent's paternal uncle namely, Muthusamy Udaiyar through the appellant for a sum



WEB COPY

of Rs.30,00,000/- and entered into an agreement of sale, dated 24. 12.2007 with the appellant. In order to avoid stamp duty and other proportionate expenses, the amount of Rs.20,00,000/- has been mentioned in the agreement as sale consideration. The appellant agreed to pay the remaining sale price of Rs.10,00,000/- to the respondents 1 and 2 at the time of completion of sale. The appellant has only paid a sum of Rs.5,00,000/- as advance and he agreed to pay the remaining amount of Rs.25,00,000/- within three months. The first respondent has not received a sum of Rs.10,00,000/- and Rs.2,00,000/- and has not executed the alleged consent document, dated 15.03.1998 and the receipt dated 23.06.2008 in favour of the appellant. Further case of the respondents 1 and 2 is that the first respondent had conducted coconut business and money dealing with one Azaharsamy on cash basis and advance cash basis. In that connection, the aforesaid Azhagarsamy obtained the signatures of the first respondent in the bills, vouchers, blank papers and stamp papers. The appellant used those stamp papers in the name of Azhagarsamy and created the payment receipt said to have been executed by the first respondent. The appellant was not



ready and willing to perform his part of contract and the respondents 1 and 2 questioned the same, the appellant assaulted the second respondent and threatened the first respondent. Hence, the first respondent filed the complaint before the police and FIR was registered in Cr.No.130 of 2009 by the Thiruchitrambalam police as against the appellant and his man on 02.06.2009. Subsequently, the second respondent has issued a lawyer notice on 15.06.2009 condemning the attitude of the appellant. The contention of the respondents 1 and 2 that the appellant has not proved his case that he is ready and willing to perform his part of contract, the trial Court has rightly dismissed the suit for specific performance and the trial Court while coming to the conclusion that Ex.A2 and Ex.A3 were forged by the appellant, could not be granted for repayment of Rs.5,00,000/- with interest and costs and hence, the respondents 1 & 2 have filed the other appeal.

20. A careful perusal of the oral and documentary evidence it shows that the respondents 1 and 2 categorically admitted the execution of



WEB COPY

sale agreement for a sale consideration of Rs.20,00,000/- on 24.12.2007 in favour of the appellant and they received an advance amount of Rs.5,00,000/- on the very same day. It was agreed by the respondents 1 & 2 that the balance amount of Rs.15,00,000/- has to be paid within three months and after receiving the sale consideration, the sale deed is to be executed by the respondents 1 and 2 in favour of the appellant. Though the respondents have stated contra to the agreement that they agreed to sell the properties for Rs.30,00,000/- and not for Rs.20,00,000/-, for which, there is no evidence at all. Even though, the appellant has stated that since it is an agreement to sell the immovable property, the time is not essence of the contract. Once the respondents 1 and 2 received the balance sale consideration as alleged by the appellant, then it is the duty of the appellant to prove the same that he is ready and willing to perform his part of contract within the stipulated time. Though the appellant has stated that he paid further sum of Rs.10,00,000/- on 15.03.1998 but he has not stated why he has not paid the balance sale consideration within the reasonable time and got the sale deed executed. Though he has stated that further a sum of



WEB COPY

Rs.2,00,000/- was paid only on 23.06.2008, the time to execute the sale deed was fixed for only three months, but he has not stated that why he has paid that amount on 23.06.2008. The appellant, in order to prove the agreement of sale and also the receipt of further sale consideration of Rs.12,00,000/-, examined P.W.2 to P.W.4 and they have stated in their evidence that the respondents 1 and 2 entered into the sale agreement with the appellant for a sum of Rs.20,00,000/- and they paid a sum of Rs. 5,00,000/-, Rs.10,00,000/- and Rs.2,00,000/- and also executed Ex.A1 to Ex.A3.

21. Though the respondents 1 and 2 admitted the execution of the sale agreement and in the agreement, payment of Rs.5,00,000/- as advance is shown. However, when the appellant has stated that on 15.03.1998 he paid Rs.10,00,000/- to the second respondent and further Rs.2,00,000/- on 23.06.2008, the respondents 1 and 2 have denied the same. Therefore, the appellant has not taken any steps to prove Ex.A2 and Ex.A3 apart from examining the witnesses.



WEB COPY

22. A reading of the evidence of P.Ws.2 to 4 shows that there are lot of contradictions in their evidence and further P.Ws.2 to 4 are the interested witnesses and when the agreement is entered by both the respondents 1 and 2, whereas, in Ex.A2 signed only by the first respondent. Even otherwise, the appellant has to prove that he was always ready and willing to perform his part of contract within the stipulated time and he cannot take advantage of the loopholes left by the respondents.

23. A careful reading of the oral and documentary evidence it shows that Ex.A1 is admitted and the appellant has not proved with cogent and convincing evidence that he was always ready and willing to perform his part of contract by paying the balance consideration of Rs.15,00,000/-. When the respondents 1 and 2 strongly denied that the appellant was not ready and willing to perform his part of contract, the respondents 1 & 2 only admitted Ex.A1-Sale Agreement, there are material alteration in Ex.A2 also and therefore, the trial Court has rightly disbelieved the Ex.A2 document.



Once the court finds that the appellant has not approached the Court with clean hands and went to the extent of tampering the document, he is not entitled to get the discretionary relief of specific performance. Therefore, the trial Court has rightly dismissed the suit for the relief of specific performance. Since this Court as the first appellate Court is a fact finding Court it has to re-appreciate the entire evidence and give an independent findings.

24. A reading of the evidence of D.W.1 and D.W.2 and Ex.A2 shows that there was a material alteration in Ex.A2. The witnesses of the appellant have not explained sufficiently. Since they have not given any satisfactory evidence, this Court also has not believed Ex.A2, the second respondent has also not signed in the said Ex.A2. Therefore, this Court finds that the appellant has not approached the Court with clean hands and therefore, he is not entitled to get a equitable remedy of specific performance. Therefore, this Court finds that the appellant is not entitled to get the decree for specific performance and finds that the trial Court has



rightly dismissed the suit and no valid grounds to interfere with the findings of the trial Court.

25. As far as the refund of advance amount is concerned, the case of the appellant is that he paid a sum of Rs.5,00,000/- on the date of agreement, dated 24.12.2007, subsequently, the first respondent received a sum of Rs.10,00,000/- on 15.03.2008 and on 23.06.2008 a sum of Rs.2,00,000/- and the first respondent gave a consent letter. Though the appellant has stated that the first respondent promised that the second respondent would come and sign in the consent letter, but the second respondent did not come and sign in the consent letter, but without getting the consent letter from second respondent for earlier alleged payment of Rs. 10,00,000/- advance amount and he has paid a sum of Rs.2,00,000/- on 23.06.2008 this is not a believable one. Therefore, as already held that Ex.A2 was not proved by the appellant in the manner known to law and there was a material alteration in Ex.A2 and therefore, Ex.A2 was disbelieved. It was also held that the appellant has not given any satisfactory



WEB COPY

explanation regarding the alteration, therefore, the trial Court has not believed Ex.A2.

26. Normally, if the sale agreement was entered and further payment is being made before executing the sale deed, the amount paid by the purchaser would be endorsed in the reversed side of the agreement of sale or otherwise they will get the receipt for advance amount. Ex.A2 shows that it is a consent deed, even in that, the second respondent has not signed which creates a doubt and also which is unnatural one. Usually, when the normal courses are being deviated and proper explanation has to be given in the deed itself or explained the circumstances, therefore, a reading of the materials, oral and documentary evidence, this Court finds that the appellant has not proved his case with cogent evidence. When the appellant has not given possible explanation as to why the appellant has not obtained any acknowledgment in the sale agreement, this Court finds that the appellant has not proved the payment of Rs.10,00,000/- on 15.03.2008 and Rs.2,00,000/- on 23.06.2008, therefore, the trial Court has rightly



disallowed the refund of Rs.12,00,000/- alleged to have paid under Ex.A2 and Ex.A3. Since the respondents have admitted the Ex.A1 agreement and receipt of Rs.5,00,000/- on the date of the agreement, they admitted that they did not repay the amount. The appellant if at all failed to fulfil his part of contract within the time when the respondents issued the notice Ex.A4 on 15.06.2009, they should have refunded the said amount. Since the respondents 1 and 2 received the said amount and they have not refunded the amount and they are liable to repay the said advance amount and therefore, the trial Court has rightly partly decreed the suit directing the respondents 1 and 2 to pay sum of Rs.5,00,000/- with interest at the rate of 12% from the date of the agreement till the date of the payment and also with proportionate costs.

27. Therefore, this Court does not find any perversity in the judgment and decree of the trial Court and both the appellants and respondents in both appeals failed to canvas their grounds before this Court and this Court does not find any merit in both the appeals and both appeals



WEB COPY

are liable to be dismissed. Accordingly, both appeals are dismissed. There shall be no order as to costs.

Index : Yes / No

Speaking Order : Yes / No
am

22.07.2022

To

1. The Additional District Judge
(Fast Track Court No.II),
Pattukkottai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



P.VELMURUGAN, J.

am

**A.S.(MD).No.207 of 2011
and
A.S(MD)No.600 of 2011**

22.07.2022