



A.S(MD)No.16 of 2010

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2022

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN**

A.S(MD)No.16 of 2010

Thangavel (Died)

2.Mrs.T.Kalavathi

(2nd appellant is brought on record as LR of the
deceased sole appellant vide court order
dated 13.10.2022)

... Appellant

Vs.

Madhan

2.T.Priya

3.T.Anitha

4.C.Premkumar

5.V.Chinnasamy

6.V.Selvan

(Respondents 2 to 6 are impleaded vide Court
Order, dated 13.10.2022 made in

C.M.P(MD)Nos.1509/2022 and 2219/2017)

... Respondents

PRAYER: First Appeal filed under Section 96 of the Civil Procedure Code, against the judgment and decree allowing the suit made in O.S.No.98 of 2008, dated 19.11.2009, on the file of the Additional Sessions Judge-cum-Fast Track Court, Dindigul.



A.S(MD)No.16 of 2010

WEB COPY

For Appellant	: Mr.G.Prabhu Rajadurai for Mr.T.Lajapathi Roy
For R1	: Mr.S.Anand Chandrasekar for M/s.Sarvabhauman Associates
For R2 & R3	: Mr.G.Karthik
For R4 to R6	: No appearance

JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
SUNDER MOHAN,J.

This appeal is filed by the defendant arising out of the judgment and decree passed in O.S.No.98 of 2008 for specific performance.

2. According to the plaintiff, who is the first respondent in this appeal, the suit property is an ancestral property of the defendant. The defendant got the property by way of partition between him and his brothers. On 16.09.2005 the defendant agreed to sell 5 acres 8 ½ cents at the rate of Rs.6,19,000/- per acre to the plaintiff. It is an un-registered agreement. As per the terms of agreement, 4 months time was fixed to complete the contract and a sum of Rs.2,00,000/- was received by the defendant as advance. The agreement could not be completed due to some litigations over the property. Further, the defendant has issued notice on



A.S(MD)No.16 of 2010

16.09.2006 calling upon the plaintiff to perform the contract within 15 days or else, the contract will be cancelled. Thereafter, the plaintiff when approached the defendant in person, he demanded further money and promised to clear the cloud over the property. Believing his words, a sum of Rs.1,50,000/- as cash was given to the defendant on 25.07.2007. Receipt of money was also endorsed in the agreement.

3. In addition, a cheque for Rs.3,50,000/- was issued. The said amount was paid believing the words of the defendant that he will make use of the money to clear the litigation of the property. When the plaintiff became suspicious about the conduct of the defendant, informing the bank not to honour the cheque and accordingly, cheque of Rs.3,50,000/- for part sale consideration was not honoured. In the said circumstances, to enforce the contract, notice dated 14.05.2008 was caused to the defendant for which, the defendant gave a reply through the lawyer on 17.05.2008 with all frivolous reasons. The defendant in his reply stated that he is not the absolute owner of the suit property and his two daughters have 1/3rd share each in the suit property. Therefore, the contract cannot be enforced.



A.S(MD)No.16 of 2010

WEB COPY

4. Referring the pending suits between him and others in respect of the suit property, the defendant attempts to evade the enforcement of the contract. Hence, specific performance of the contract in terms of the contract or alternate relief of return the advance money with interest has been filed.

5. In the written statement, the defendant agreed that the contract entered between him and the plaintiff in respect of the suit property. However, the defendant has not performed his part of contract within the time prescribed. Having failed to perform the contract the plaintiff is liable to forfeit the advance. In reply notice, he has also made it clear that the suit property cannot be alienate by him since there are other share holders in the property. The additional advance of Rs.1,50,000/- as cash and Rs.3,50,000/- as cheque was received by him with that money he can clear all the litigations. The said cheque was dishonoured on the instruction of the plaintiff to his bank to stop the payment. The plaintiff has torpedoed the agreement by committing breach of contract hence he is not entitled for specific performance.



A.S(MD)No.16 of 2010

WEB COPY

6. The trial Court framed the following issues based on the pleadings:-

- 1)Whether the plaintiff is ready and willing to perform the contract?
- 2)Whether the suit is barred by limitation?
- 3)Whether the plaintiff is entitled for the relief of specific performance?
- 4)Whether the plaintiff is entitled for alternative relief of refund of advance money?

5)What other reliefs?

7. To substantiate the plaintiff's case, three witnesses were examined and 8 exhibits were marked. On the side of defence, three witnesses were examined and 10 exhibits were marked.

8. The trial Court, after appreciating each evidence, held that the plaintiff is entitled for relief of specific performance.

9. Being aggrieved, the appeal is filed by the defendant. Pending appeal, the defendant died and his legal representatives are brought on record.



A.S(MD)No.16 of 2010

WEB COPY

10. Learned counsel appearing for the appellant would submit that the Court below has failed to note that the cheque for Rs.3,50,000/- given by the plaintiff was dishonoured at the instruction of the plaintiff. This clearly establishes that the plaintiff was neither ready nor willing to perform the contract. The failure on the part of the plaintiff to prove the continuous readiness and willingness been ignored by the trial Court. The witness has admitted that the vendor was in need of money in view of his daughter's marriage and therefore, entered into the contract and fixed 4 months time for performance. This indicates that the time is essential of the contract. Further, the buyer has not performed his part of contract in spite of extending time and has approached the Court belatedly, thus, the suit is barred by limitation which had not been taken into account by the trial Court.

11. The appellant would also submit that the relief of specific performance being a discretionary and equitable relief, the conduct of the buyer, dishonoured the cheque for no plausible reason ought to have been taken note by the trial Court and it should not have passed the decree for specific performance.



A.S(MD)No.16 of 2010

WEB COPY 12. Heard the learned counsel for the appellant and the learned counsel for the respondent.

13. This Court on perusing the records and evidence finds that the recital of the agreement prescribes period of performance and the right to purchaser to enforce the contract through the Court on deposit of sale consideration. At the time of contract, Rs.2,00,000/- been received as advance. But for the reason known to the parties, the contract could not be fulfilled within four months as agreed in the contract.

14. The reasons as spoken by the witnesses reveals that a rival claim over the title set up by way of suits and therefore, the buyer has become suspicious about the conduct of the vendor. Strangely, in this case, even after specific clause prescribing time for performance, the vendor himself has come forward to receive further part payment of Rs.1,50,000/- by cash and Rs.3,50,000/- by way of cheque. This receipt of money on 25.07.2007 as found in the endorsement on the back of Ex.A1 and marked as Ex.A3 is subsequent to the issuance of notice on 16.09.2006 repudiating the contract and therefore, subsequent conduct of the



A.S(MD)No.16 of 2010

WEB COPY

buyer as well as the vendor supersedes the earlier notice, dated 16.09.2006 marked as Ex.A2.

15. It is the duty of the Court to see whether the vendor and the buyer when agreed to revive the contract after the notice for repudiation had been ready and willing to perform their contract as agreed.

16. In this regard, the plaintiff states that though he paid cheque for Rs.3,50,000/-, he was forced to instruct the bank for stop payment because the conduct of the vendor was suspicious. Ex.B3 is the communication from the bank regarding the return of cheque by the plaintiff for want of fund. If the reasoning given by the plaintiff that he instructed the bank to stop payment because the vendor's conduct was suspicious and felt that the vendor was not ready to perform the contract then the cause of action to file the suit for specific performance or to seek alternate relief of refund of money starts from that day. The plaintiff has failed to act vigilantly to enforce his right as per the contract. He had waited for more than a year that too after the vendor caused the notice dated 1.12.2007 marked as Ex.D7 repudiating the contract for the second time.



A.S(MD)No.16 of 2010

WEB COPY

There is no explanation for not approaching the Court to enforce the contract and getting equitable relief within a reasonable time.

17. That apart, even looking from the other angle, the terms of the contract and the evidence indicates that the property was agreed to be sold by the defendant to meet out his daughter's marriage and precisely that is why even after causing notice Ex.A2 for repudiating the contract has agreed to receive the additional sale consideration, but unfortunately substantial amount of the additional sale consideration offered by the buyer by way of cheque could not be realised and on the date of filing the suit i.e., on 11.08.2008, the amount received by the vendor is only Rs.3,50,000/- as against the total sale consideration of Rs.33,00,000/-.

18. The suit for specific performance was filed nearly two years after the date of contract. In between, the vendor has caused two notices for repudiating the contract, the buyer has not honoured the cheque for Rs.3,50,000/- issued towards part payment of the sale consideration. These facts would necessarily indicates that the plaintiff was not ready and willing to perform his contract at all



A.S(MD)No.16 of 2010

point of time. Therefore, he is not entitled for equitable relief, but at the same time, he is entitled to the alternate relief of refund of advance money of Rs.3,50,000/-.

19. The appellant is liable to return the money received as advance with interest at 9% from the date of presentation of plaint till the date of realisation.

20. In the result, the appeal is partly allowed. The decree of specific performance granted by the trial Court is set aside and the alternate relief sought by the plaintiff is allowed with a direction to the appellant/defendant to return Rs.3,50,000/- with 9% interest from 01.08.2008 till the date of realisation. The parties shall bear their respective costs.

[G.J.,J.] [S.M.,J.]
22.12.2022

Index : Yes / No
Internet : Yes / No
am



WEB COPY



A.S(MD)No.16 of 2010

DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN,J.

am

JUDGMENT MADE IN
A.S(MD)No.16 of 2010

22.12.2022