



A.S. (MD) No.47 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S. (MD) No.47 of 2011

and

M.P. (MD) No.1 of 2011

and

C.M.P(MD)No.1861 of 2017

P.Ramachandran (Died)

... Appellant/Plaintiff

2.Pichaiammal

3.Suresh

4.Seethalakshmi

5.Kanthammal

(Appellants 2 to 5 are brought on record as
LRs of the deceased sole appellant vide Court
Order dated 10.03.2022 made in
C.M.P(MD)Nos.12109 and 12110/2019
in A.S(MD).No.47 of 2011)

Vs.

1.M.Saraswathy

2.M.Kannan

3.B.Rajeswari

... Respondents/Defendants



A.S. (MD) No.47 of 2011

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, against the judgment and decree, dated 11.03.2011 made in O.S.No.206 of 2008 on the file of the I Additional District Judge, Madurai.

For Appellants : Mr.R.Devaraj
for Mr.R.Niresh Kumar
For Respondents : Mr.M.Kaliaraj

J U D G M E N T

This Appeal Suit has been preferred challenging the judgment and decree of the learned I Additional District Judge, Madurai, dated 11.03.2011 made in O.S.No.206 of 2008.

2. The appellant is the plaintiff. The respondents are the defendants. The appellant had filed a suit in O.S.No.206 of 2008, on the file of the I Additional District Judge, Madurai against the respondents for specific performance. The said suit was dismissed. Challenging the said judgment and decree, the plaintiff has filed the present appeal before this Court.



A.S. (MD) No.47 of 2011

WEB COPY

3. According to the case of the plaintiff, as per the plaint, the suit properties items 1 to 3 are situated at Thanakkankulam and Thirupparankundram Village, Madurai South Taluk. The first item of the property was purchased by the first defendant through a registered sale deed, dated 18.05.1995 from one Ponnuthai and the second item was purchased by the first defendant from one Gurusamy and the 3rd item was purchased by the husband of the first defendant by a registered sale deed, dated 18.05.1995. After the death of the first defendant's husband, the defendants 1 to 3 have succeeded to the estate of the deceased. The defendants offered to sell the first item of the suit property for sale consideration of Rs.2,00,000/- and the second and third items of the suit property for sale consideration of Rs.12,00,000/-. On 04.05.2006, two sale agreements were entered into for the first item and the item Nos.2 & 3 and an advance of Rs.2,000/- and Rs.6,50,000/- was paid and the same was registered. The sale transaction has agreed to be completed within one year from 04.05.2006. The plaintiff received a Lawyer notice stating that the schedule mentioned property has been attached to recover the debt



A.S. (MD) No.47 of 2011

repayable by the husband of the first defendant. On a perusal of the records from the office of the Sub-Registrar, a suit has been filed before the III Additional Subordinate Court for recovery of Rs.4,00,000/-. The plaintiff has compelled the defendants to discharge the Court attachment and to produce the original records. The defendants stated that it was in the State Bank of India, Madurai as security. The defendants did not take any action to clear the subsisting encumbrance. The plaintiff is always ready and willing to perform his part of contract. In the meanwhile, the third item of the property was brought for sale by Punjab National Bank under SARFAESI Act and an Appeal No.161/2008 was filed and the same is pending. The defendants have not yet repaid the loan amount payable by them. In the above said circumstances, the plaintiff seeks for a decree and judgment for a specific performance and for costs.

4. The defendants resisted the suit by filing a written statement stating that the plaintiff approached the defendants and offered to purchase the suit properties 2 and 3 worth about Rs.12,00,000/- and an advance



A.S. (MD) No.47 of 2011

amount of Rs.6,50,000/- was received and a promise was made to pay the remaining sale consideration within a year. The defendants were ready to register the sale deed and asked the plaintiff several times to register the sale deed within November 2006. The plaintiff paid further sale consideration of Rs.4,50,000/- on several occasions and totally a sum of Rs.11,00,000/- paid by the plaintiff in this regard. The plaintiff alone dragging on the defendants for a long time and the agreements got expired on 04.05.2007 and so, the plaintiff cannot claim any right upon the sale agreement. The plaintiff has not mentioned any reason for his delay in filing the suit. The plaintiff has not come with clean hands. The plaintiff has valued the properties at a less market rate and prayed for dismissal of the suit.

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

- (i) Whether the plaintiff is entitled to specific performance of the contract, dated 04.05.2006 between the plaintiff and the defendants?*
- (ii) Whether the plaintiff was ready and willing to perform*



A.S. (MD) No.47 of 2011

his part of the contract dated 04.05.2006?

(iii) Whether the suit is liable to be dismissed for the reason stated in the statement?

(iv) To what relief if any the plaintiff is entitled to?

6. In order to substantiate the claim of the plaintiff, on the side of the plaintiff, two witnesses were examined as PW1 and PW2 and Exs.A1 and A8 were marked. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and two documents were marked as Ex.B1 to Ex.B2.

7. After completing the trial and on hearing of arguments advanced on either side, the learned trial Judge, considered the evidence available on record and dismissed the suit.

8. The learned counsel for the appellants would submit that the respondents have entered into two sale agreements. One is for item No.1 and another is for item Nos.2 & 3. For first item of the suit property, a sum



A.S. (MD) No.47 of 2011

of Rs.2,00,000/- was fixed as sale price. As per the first agreement, he has paid a sum of Rs.2,000/- as advance and for second agreement, a sum of Rs.12,00,000/- was fixed as sale price and he has paid a sum of Rs.6,50,000/- as advance amount and time fixed for completing the sale transaction was one year from the date of sale agreement, dated 05.05.2006. The appellant is always ready and willing to perform his part of contract. He has received the notice on behalf of one Sakthivel stating that the husband of the first respondent had borrowed money and for the balance amount, a suit in O.S.No.84 of 2005 was filed against the defendants 1 & 2, on the file of the III Additional Subordinate Judge, Madurai and also an order of attachment was obtained with regard to the schedule mentioned properties. Suppressing the said attachment, the respondents 1 to 3 entered into a agreement of sale. Though the appellant is always ready and willing to perform the contract, the respondents suppressed the fact that already a loan transaction is pending and the document is with the Bank. When he insisted to register the sale deed and for production of original document, at that stage, he came to know that already there was an encumbrance and also



A.S. (MD) No.47 of 2011

a Court attachment regarding the first item of the property and the documents with regard to the third item of the property is with the bank for security purpose, however, no encumbrance with regard to the second item of the property. Though the trial Court failed to appreciate the fact that the appellant was always ready and willing to perform his part of contract, the trial Court ought to have granted a decree for second item of the suit property, even though the appellant is ready and willing to purchase the second item of the property. The trial Court failed to appreciate the above facts and dismissed the suit in respect of all the items. He would also submit that the appellant has deposited the entire balance sale consideration and hence a decree for specific performance has to be granted or otherwise, refund of the advance amount has to be ordered.

9. The learned counsel appearing for the respondents would submit that the appellant knowing fully well the fact that when there was a loan transaction and the properties were also attached by Court order, he is claiming that he is ready and willing to perform his part of contract. He



A.S. (MD) No.47 of 2011

would further submit that the respondents are ready to settle the matter with regard to refund of advance amount.

10. Heard the learned counsel appearing for the appellant and the respondents, perused the pleadings, issues framed by the trial Court and oral and documentary evidence adduced and produced by both parties.

11. Though execution of the agreement was not specifically denied by the respondents, but however, the written statement as well as the records clearly shows that the properties were already attached through Court order and also there was a deposit of title deed with the Bank and therefore, there was a SARFEASI proceedings. The case of the appellant is that he was not aware of the encumbrance. Further prior to filing of the suit, he had received a notice and it clearly shows that there was an encumbrance and also a SARFEASI proceeding. Therefore, the trial Court found that the appellant is aware of the debts and therefore, he is not entitled for the relief of specific performance. Though the appellant has stated that prior to the



A.S. (MD) No.47 of 2011

agreement, he is not aware that there was an encumbrance, if at all, the appellant is a bonafide purchaser, before entering into an agreement for payment of advance amount of Rs.6,50,000/-, ought to have verified with the parent documents and should have verified with the original encumbrance, therefore, which clearly indicates that the appellant knowing fully well of the fact that there was an encumbrance, even prior to filing of the suit, he received notice from the third party and stating that he had paid a sum of Rs.4,00,000/- to the respondents and there was a Court proceedings, which clearly shows that in order to defeat the claim of the third party and bank, both appellants and respondents collusively entered into an agreement and subsequently, even in order to defeat the bank claim, they filed the suit. He is a bonafide purchaser without notice and appellant is ready to purchase the second item of the property, he is ready to discharge the loan and got the sale deed and he has not stated in the pleadings and the affidavit. Therefore, the trial Court has come to the conclusion that he is not entitled for the relief of specific performance. It is settled proposition of law that the relief of specific performance is a discretionary relief and a



A.S. (MD) No.47 of 2011

person who approached the Court for getting discretionary relief, has to come to the Court with the clean hands and disclose the entire facts, but whereas, in this case, the entire pleadings and material evidence on record shows that the appellant has not come with clean hands and they suppressed the material facts and therefore, they are not entitled for the discretionary relief of specific performance. Though the first appellate Court is a fact finding Court, it has to appreciate the entire evidence independently. This Court carefully considered the findings, entire pleadings, both oral and documentary evidence adduced and produced by both parties. The Court attachment for the third party claim and also there was a SARFEASI proceedings for the security purpose and therefore, that fact has been suppressed and even after knowing that the appellant is not ready to discharge those liability. Therefore, under these circumstances, the findings has been given by the trial Court that the appellant is not entitled to get the relief of specific performance. However, the respondents admitted that they received a sum of Rs.2,000 and Rs.6,50,000 as advance for two agreements. Therefore, the respondents are directed to refund of a sum of Rs.6,52,000/-



A.S. (MD) No.47 of 2011

to the appellant within a period of one month. But the learned counsel for the appellant has also deposited the balance sale consideration and the appellant is permitted to withdraw the amount, which has deposited before the Court, if the amount is deposited in an interest bearing deposit, get the deposited amount with accrued interest.

12. With the above modification, the appeal is dismissed and the judgment and decree of the trial Court are confirmed. No costs. Consequently, connected miscellaneous petition is closed.

24.06.2022

Index : Yes / No

Speaking Order : Yes / No

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A.S. (MD) No.47 of 2011

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To

1. The I Additional District Court,
Madurai.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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A.S. (MD) No.47 of 2011

P.VELMURUGAN, J.

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A.S. (MD) No.47 of 2011

24.06.2022