



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2022

CORAM:

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

Second Appeal (MD) No.147 of 2010

Kasidurai

.. Appellant/Appellant/Defendant

-vs-

Issac Packiaraj

.. Respondent/Respondent/Plaintiff

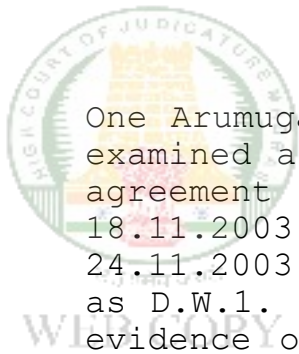
Prayer :- Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 04.05.2009 in A.S.No.69 of 2005 on the file of the Additional District Court (Fast Track Court No.I), Thoothukudi as confirmed by the Judgment and Decree dated 31.01.2005 passed in O.S.No.419 of 2003 by the Subordinate Judge, Thoothukudi.

For Appellant : Mr.S.Selva Aditya
for Mr.G.Prabhu Rajadurai
For Respondent : Mr.M.C.Swamy

JUDGMENT

The defendant in O.S.No.419 of 2003 on the file of Sub Court, Thoothukudi, is the appellant in this second appeal. The second appeal arises out of a suit for specific performance.

2. The case of the plaintiff is that on 01.03.1999, the defendant entered into a sale agreement with him for selling the suit shops for a sale consideration of Rs.1,25,000/-. The defendant received a sum of Rs.1,00,000/- as advance. The time for completion of the sale transaction was fixed as two years. The plaintiff was always ready with the balance sale consideration and kept on requesting and demanding that the defendant should come forward to execute the sale deed. Since the defendant was evading, the plaintiff issued notice dated 18.11.2003. After receiving the same, the defendant issued reply dated 24.11.2003 containing false averments. Since the defendant denied having entered into sale agreement with the plaintiff, the plaintiff filed the instant suit on 13.12.2003. The defendant filed written statement controverting the plaintiff's averments. Based on the divergent pleadings, the trial court framed an issue as to whether the defendant was obliged to execute the sale deed. The plaintiff examined himself as P.W.1.



One Arumuga Nainar, who was the attestor of the suit agreement, was examined as P.W.2. Ex.A1 to Ex.A3 were marked. Ex.A1 is the suit agreement dated 01.03.1999, while Ex.A2 is the notice dated 18.11.2003 issued by the plaintiff. Ex.A3 is the reply dated 24.11.2003 issued by the defendant. The defendant examined himself as D.W.1. Ex.B1 and Ex.B2 were marked. After consideration of the evidence on record, the trial court, by judgment and decree dated 31.01.2005, decreed the suit as prayed for. Aggrieved by the same, the defendant filed A.S.No.69 of 2005 before the Additional District Judge/Fast Tract Court No.I, Thoothukudi. The first appellate court by the impugned judgment and decree dated 04.05.2009, confirmed the decision of the trial court and dismissed the appeal. Aggrieved by the same, the defendant filed this Second Appeal.

3. The second appeal was admitted on 01.03.2022 on the following substantial questions of law:-

"(i) Whether the Courts below erred in law in overlooking the circumstances such as meager consideration, agreement written in a concur paper with a signature of respondent over a Revenue stamp and the contradictory statement of PW1 and PW2 with regard to the place of execution besides other reasons would establish that there was no agreement to sell the suit properties?

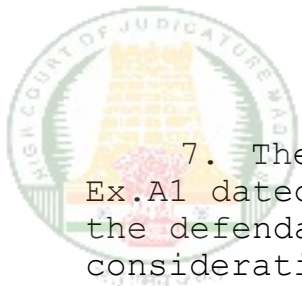
(ii) Whether the Courts below erred in law in granting a decree of specific performance even when the plaintiff has not averred and proved that he was always ready and willing to perform his part of the contract as proved under Section 16(c) of the Specific Relief Act, 1963? and

(iii) Whether the Courts below erred in their failure to consider the absence of necessary circumstances under which a discretion to grant a relief of specific performance is to be exercised under Section 20 of the Specific Relief Act, 1963?"

4. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgments and decrees passed by the Courts below and allow the second appeal.

5. Per contra, the learned counsel appearing for the respondent submitted that the impugned judgments and decrees do not call for any interference. He also would point out that no substantial question of law really arise for consideration.

6. I carefully considered the rival contentions and went
<https://hcservices.com/tutorials/hcservices> evidence on record.



7. The suit is one for specific performance and is based on Ex.A1 dated 01.03.1999. The plaintiff would claim that under Ex.A1, the defendant agreed to sell the suit shops in his favour for a sale consideration of Rs.1,25,000/-.

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8. Per contra, the stand of the defendant is that there was a financial transaction between him and the plaintiff and that at the time of borrowal of a sum of Rs.18,000/-, the plaintiff had obtained the signature in a blank paper on a revenue stamp and that it was later fabricated into sale agreement. The Courts below have concurrently rendered a finding that Ex.A1 is a sale agreement and that the defendant had received a sum of Rs.1,00,000/- on 01.03.1999. Since this is a second appeal filed under Section 100 of Civil Procedure Code, the concurrent findings of the Courts below as regards the genuineness of Ex.A1 cannot be gone into. It is a pure finding of fact and I therefore, confirm the finding of the Courts below that Ex.A1 is a sale agreement. I therefore, answer the 1st substantial question of law against the appellant.

9. The learned counsel appearing for the appellant primarily focused his attention on the statutory requirement set out in Section 16(c) of the Specific Relief Act, 1963. The defendant no doubt challenged the very genuineness of the suit agreement. But notwithstanding the stand taken by the defendant, the Courts below were obliged to render a finding as to whether the plaintiff was always ready and willing to perform his part of the contract.

10. The learned counsel appearing for the respondent submitted that no doubt, the Courts below failed to frame a specific issue in this regard. But then the plaintiff should not really suffer for the omission on the part of the Courts below. In any event, the first appellate court had given a categorical finding that the plaintiff was always ready and willing to perform his part of the contract. He placed reliance on the decision of the Hon'ble Supreme Court reported in **(2019) 3 SCC 520 (Vijay A. Mittal and Ors. vs. Kulwant Rai (Dead) thr. L.Rs. and Ors)**, in which it was held that a finding on the issue of readiness and willingness is one of the important and relevant findings in a suit for specific performance of an agreement. It is a finding based on facts and once it is recorded, it becomes a finding of fact. Unless such finding is found to be against the pleadings or contrary to the evidence or the law governing the issue, it is binding on the High Court.

11. The suit agreement is dated 01.03.1999. The sale consideration was fixed at Rs.1,25,000/-. According to the plaintiff, a sum of Rs.1,00,000/- was paid on 01.03.1999 itself. What remained to be paid was only an amount of Rs.25,000/-. It is not known as to why a long period of two years was fixed for payment of the said amount.



12. Be that as it may, the period of two years expired on 28.02.2001 itself. The suit notice came to be issued only on 18.11.2003.

13. The learned counsel appearing for the appellant would draw my attention to Ex.B1, dated 18.11.2003. It can be seen from Ex.B1 that a complaint was lodged by the defendant against the plaintiff before the local police station and that there was also an enquiry. Ex.A2 notice is also dated 18.11.2003. The stand of the appellant's counsel is that in order to tie the hands of the local police and to give the colour of civil transaction, Ex.A2 came to be issued. The dates are too much of a coincidence. Ex.B1 is the receipt issued by the local police on the complaint of the defendant. There is absolutely no evidence indicating that the plaintiff was always ready and willing to perform his part of contract from the expiry of the period set out for completion of said transaction till 18.11.2003. In other words, from 01.03.2001 till 18.11.2003, which is more than 2½ years, there has been total silence and inaction on the part of the plaintiff. The suit itself came to be filed only in December, 2003. No doubt, technically, the suit was filed within the limitation period. But then the relief of specific performance is discretionary. The trial court also did not frame any issue as regards the readiness and willingness on the part of the plaintiff. The first appellate court had also causally rendered a finding.

14. I went through the pleadings and also the evidence on record. The plaintiff has not at all established that he was ready and willing to perform the contract. The basic requirement laid down in Section 16(c) of the Specific Relief Act has not at all been fulfilled in this case. Therefore, the 2nd and 3rd substantial questions of law are answered in favour of the appellant. The impugned judgment and decree is set aside. The second appeal is allowed. The suit is dismissed.

15. The Courts below have concurrently rendered a finding that the defendant has received a sum of Rs.1,00,000/- from the plaintiff on 01.03.1999. There is nothing on record to indicate that the defendant was paying any interest. Therefore, the appellant is directed to pay a sum of Rs.1,00,000/- to the plaintiff with interest @ 12% per annum from the date of sale agreement till the date of payment. Time for payment to the appellant is eight weeks. If the appellant fails to pay the amount decreed, the respondent is at liberty to file execution petition.

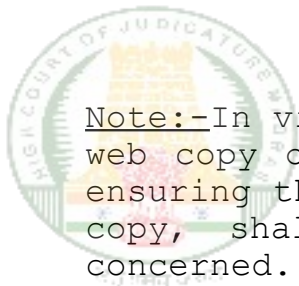
Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)



Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

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

2.The Subordinate Judge,
Thoothukudi.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-12873[F]
dated 18/03/2022)

+1 CC to M/s.G.RAJARAMAN, Advocate (SR-13122[F] dated 21/03/2022)
S.A.(MD) No.147 of 2010
Dated: 17.03.2022

SP (CO)
GC (13.04.2022) 5P 7C