



15.Athimuthu

16.Lakshmi Narayanan

17.Gomathy

18.Victor

19.Rosal Flemin

... Respondents 2 to 19 /
Respondents 5 to 22 /Defendants 5 to 22

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.6 of 2009, dated 29.04.2010 on the file of the Principal District Court, Tirunelveli reversing the judgment and decree passed in O.S.No.59 of 2007, dated 30.01.2009 on the file of the Subordinate Court, Valliyoor.

For Appellants : Mr.D.Srinivasaragavan
for Mr.S.P.Maharajan

For R1 : Mr.J.Bharathan

JUDGMENT

This second appeal arises out of a suit for specific performance. The trial court dismissed the suit. However, the first appellate court by the impugned judgment and decree dated 29.04.2010 reversed the decision of the trial court and decreed the suit as prayed for. Aggrieved by the same, this second appeal came to be filed.

2. The second appeal was admitted on the substantial question of law as to whether the first appellate court was justified in decreeing the suit when the plaintiff did not satisfy the statutory requirement of readiness and willingness as contemplated under Section 16(c) of the Specific Relief Act.

3. In fact, the second appeal was filed only by the power agent of the defendants 1 to 3. The principals were shown as the respondents. I pointed out to the learned counsel appearing for the appellant that the second appeal will be clearly not maintainable because the power agent cannot have an interest in the matter apart from that of the principals. Realizing the fatal lacuna with which the appeal was suffering, steps were taken to have the principals transposed as co-appellants.

4. Now the flaw pointed out by the learned counsel appearing for the first respondent had been remedied. There cannot be any



objection for considering the matter on merits. It is true that there was an agreement between the plaintiff and the fourth defendant entered into on 04.12.2003. It was a registered agreement. A sum of Rs.25,000/- was paid as advance and time for performance was fixed as one year. The total sale consideration was fixed as Rs.3,25,000/-. After the suit was filed, the fourth defendant not only accepted the agreement but undertook to execute the sale deed. There upon, the trial court gave a direction that the plaintiff should deposit a sum of Rs.2,50,000/-. The plaintiff was to deposit the said amount on or before 20.12.2007. Even though the defendant came forward to conclude the sale transaction and the Court also gave a specific direction to the plaintiff to deposit the balance amount, the plaintiff did not do so. He deposited the amount only on 07.03.2008. This single circumstance was sufficient to show that the plaintiff was not 'always ready'. The requirement contemplated under Section 16(c) of the Specific Relief Act was clearly not fulfilled in this case and that is why, the trial court rightly non-suited the plaintiff. Without appreciating this basic aspect, the first appellant court erroneously decreed the suit. By his own showing, the plaintiff had dis-entitled himself to the relief of specific performance. I therefore answer the substantial question of law in favour of the appellants.

5. The learned counsel appearing for the appellants drew my attention to the decision reported in **2022 SAR (Civ) 349 (Shenbagam vs. K.K.Rathinavel)**. The Hon'ble Supreme Court in the said decision rendered on 20.01.2022 held that the plaintiff must exhibit readiness and willingness throughout the transaction. In this case, atleast for a period of four months, the plaintiff lack financial capacity to pay the balance sale consideration. Though he might have been willing to pay the sale consideration, he was not able to conclude his part of the contract.

6. The impugned judgment and decree passed by the first appellate court is set aside. The decision of the trial court is restored. It is stated that the appellants have deposited the amount of Rs.75,000/- with interest before the trial court. It is open to the plaintiff to withdraw the amount deposited by him as well as by the appellant with accrued interest. The second appeal is allowed. No cost.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To

1.The Principal District Court, Tirunelveli.

2.The Subordinate Court, Valliyoor.

Copy To

The Section Officer,
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Madurai.

+1CC to M/S.C.VAKEESWARAN, Advocate SR-19476 dated 19/04/2022

+1CC to M/S.S.P.MAHARAJAN, Advocate SR-19650 dated 20/04/2022

S.A. (MD) No.822 of 2010
19.04.2022

RK(06/06/2022) 4P 7C