



Cross.Objection(MD)No.17 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :10.08.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CROSS.OBJECTION(MD)No.17 of 2006

IN

A.S.No.10 of 2004

John Babu

:Cross-Objector/Respondent/
Plaintiff

.Vs.

1.F.M.Antony

2.Skolastica

: Respondents/Appellants/
Defendants

PRAYER: Cross-Objection filed under Order 42 Rule 22 of Civil Procedure Code praying this Court to dismiss A.S.No.10 of 2004 with costs and to modify the decree of the Lower Court for Specific Performance of sale of 10 acres out of 20 acres 12 cents of the suit schedule property and to direct the first appellant/defendant to execute the sale deed and on his failure, to execute the sale through the process of Court.



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For Cross Objector : Mr.V.M.Balamohan Thampi

For Respondents : Mr.R.Murali
for M/s.V.J.Latha

JUDGMENT

The Cross-Objection is filed seeking to dismiss A.S.No.10 of 2004 with costs and to modify the decree of the Lower Court for Specific Performance of sale of 10 acres out of 20 acres 12 cents of the suit schedule property and to direct the first appellant/defendant to execute the sale deed and on his failure, to execute the sale through the process of Court.

2.Since the appeal suit is dismissed, Cross-Objection filed by the Cross-Objector is treated as an appeal.

3.The Plaintiff is the Cross-Objector and the defendants are the respondents in the present Cross-Objection. The defendants have filed the appeal suit in A.S.No.10 of 2004 and the same was dismissed on 28.07.2017 along with the same,the present Cross-objection is filed. The appellant as



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plaintiff has filed O.S.No.148 of 1998, on the file of the trial Court and after trial, the trial Court has dismissed the relief of specific performance, however, granting the alternative relief of refund of advance amount, against which, the defendants in the suit filed the appeal suit in A.S.No.10 of 2004. Seeking dismissal of the appeal suit and by claiming consequential prayer the appellant, the plaintiff as Cross-Objector, has filed the present Cross-Objection.

4.The brief facts of the plaint reads as follows:

The property in R.S.No.516 situated in Vezhimalai Village belongs to the defendants. On 3.6.1995, the respondents/defendants agreed to sell the suit property for a total sale consideration of Rs.6 lakhs and has also executed a sale agreement on receipt of Rs.3 lakhs towards advance amount. The suit property is measuring to an extent of 20 acres and 12 cents. Both the parties have agreed to conclude the sale as per the sale agreement on or before 10.12.1995 by receiving the balance sale



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consideration and to execute the sale deed in favour of the plaintiff. On the date of sale agreement, the possession of the suit property was handed over to the plaintiff. The defendants/respondents have agreed to measure the suit property before executing the sale deed and according to the extent of land, had agreed to modify the sale consideration. When the plaintiff measured the suit property, there was only 10 acres and not 20.12 acres as mentioned by the defendants. When the same was revealed to the defendants and asked them to measure the suit property, they refused for the same. Hence the plaintiff has sent a legal notice to the defendants to satisfy the contract as per the agreement. The defendants refused to accept the same and it was returned to the plaintiff. The Plaintiff is always ready and willing to perform his part of contract, but the defendants have evaded for the same. Even though the possession was with the plaintiff, since there is a clause in the sale agreement to execute the sale deed within three months from the date of sale agreement, the plaintiff has again sent a legal notice on 11.6.1997 to the defendants to perform their part of contract. In the said legal notice, the plaintiff has requested the defendants to mention the date for execution of



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the sale deed and to get the sale consideration as per the extent of land available in the suit property. The defendants failed to reply for the same and hence it is necessary to appoint an Advocate Commissioner to measure and to find out the exact extent of the suit property. Hence the plaintiff has filed this suit for the relief of specific performance and the suit has to be decreed as prayed for.

5.The averments in the written statement filed by the first defendant, which was adopted by the second defendant, reads as follows:

The suit property in S.No.516 belongs to the defendants 1 and 2 equally and they enjoyed the same jointly. The sale agreement, as told by the plaintiff, is a forged one and invalid in the eye of law. The first defendant has not executed any sale agreement as averred by the plaintiff and the second defendant is not a party to the said sale agreement and has also not signed in the same. Hence the alleged sale agreement will not bind on the second defendant. The said sale agreement was created by the plaintiff with



false averments and it is not true to say that on the date of sale agreement, the defendants have received a sum of Rs.3 lakhs as advance. One Murugan has acted as a Mediator between the plaintiff and the first defendant. In his shop only, it was agreed for sale of the suit property and to pay Rs.3 lakhs as advance amount for the sale. On 3.6.1995, the sale agreement was executed. The plaintiff, first defendant and one Lioncious went to the shop of one Murugan and at that time, the plaintiff has brought a typed sale agreement, in which, the advance amount was mentioned as Rs.25,000/- instead of Rs.3 lakhs. The first plaintiff has go through the same and the second defendant denied to sign in the same. On compromise by the said Murugan, the plaintiff has agreed to pay a sum of Rs.3 lakhs as advance amount. At the relevant point of time, the plaintiff is not having the said amount and hence requested that he got the amount from his brother at Azhagiyamandapam, who has done the finance business. The plaintiff requested the first defendant to correct the advance amount in the sale agreement and by showing the same, he would get the amount from his brother. On the request of plaintiff and the Mediator Murugan, the said



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amount was corrected by the first defendant and signed in the same. As told by the plaintiff, the plaintiff never returned back with the advance amount. After waiting for some time, the first defendant went to his home. The first defendant requested Murugan to meet the plaintiff and to ask about the advance amount and hence the said Murugan and one Lioncious meet the plaintiff and plaintiff told them that he was unable to mobilise the money and hence he was not willing to purchase the suit property as told by him. Hence the sale agreement was not a concluded one and no amount was paid as per the sale agreement. When Murugan asked the plaintiff to return the sale agreement, he told him that it was misplaced somewhere and will return the same when the same was traced out. As of now, the suit property was valued twice and hence with a bad intention, the plaintiff has filed the present suit. It is not true to say that the possession of the suit property was handed over to the plaintiff on the date of sale agreement. The suit property was in joint possession of the defendants and it was not mentioned in the sale agreement that the sale consideration will be reduced as per the extent of the suit property. It is not true to say that the plaintiff has measured the



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suit property and found that there was only 10 acres and not 20.12 acres as averred by the defendants. It is not true to say that the first defendant has received a sum of Rs.3 lakhs as advance amount from the plaintiff and also that the first defendant was asked to measure the suit property and there is no necessity for the same. It is not true to say that the defendants have delayed to measure the suit property as requested by the plaintiff. The plaintiff with a bad intention has sent a legal notice to the defendants. Since the second defendant has not signed in the sale agreement, it will not bind him in any way. Since 6 months time was granted for execution of the sale deed, time is very essential in this case and it was also mentioned that the sale agreement will not be executable after six months time over as mentioned in the sale agreement. Hence the plaintiff cannot file a suit for the relief of specific performance. After 10.12.1995, the plaintiff cannot claim to execute the sale deed and that the plaintiff has filed the suit after the principle of limitation. The plaintiff has no cause of action to file the suit and hence, he is not entitled for any relief as sought for. As there is no valid sale agreement between the plaintiff and first defendant, the suit is not



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maintainable. Hence it is necessary to dismiss the suit filed by the plaintiff.

6.The averments in the rejoinder filed by the plaintiff reads as follows:

The sale agreement, dated 3.6.1995 is a valid one and both the first and second defendants signed the same and hence it will bind on the second defendant. After receipt of Rs.3 lakhs as advance amount only, the first defendant has signed in the sale agreement. It is not true to say that the first defendant has not received a sum of Rs.3 lakhs as advance amount. The Plaintiff has not known the said Murugan. One Paramanantham and Adhanpillai has acted as Mediators for the purchase of the suit property by the plaintiff. The above said persons, brother-in-law of second defendant one Lioncious and one Nelson signed as Attestors in the sale agreement. It was told that the suit property measures an extent of 20.12 acres and its sale price is Rs.6 lakhs. On 3.6.1995, the sale agreement was typed and after that only, the first defendant went to the house of the plaintiff and demanded



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a sum of Rs.3 lakhs as advance amount in front of the attestors. Hence the plaintiff cancelled the amount typed as Rs.25,000/- and the same was rewritten as Rs.3 lakhs and singed in the same. It was agreed in the sale agreement to execute the sale deed within six months from the date of sale agreement. The plaintiff never went to the shop of one Murugan with the first defendant and one Lioncious and it is not true to say that they will act as mediators. It is not true to say that the plaintiff was unable to mobilise the sale consideration and hence he was not in a position to purchase the suit property. On 3.6.1995 itself, the defendants have handed over the possession of the suit property to the plaintiff. Since there was smaller extent mentioned in the sale agreement, it was agreed to decrease the sale consideration as per the extent available. It is not true to say that the suit filed by the plaintiff was affected by the principle of limitation. The plaintiff has time limit to execute the sale agreement. The plaintiff has filed the suit without following the principle of limitation. The Plaintiff can file a suit requesting the relief to execute the sale deed within a period of three years from the date of sale agreement.



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7. On the basis of the above pleadings, the trial Court has formulated the following issues for consideration:

1. Whether it is correct to say that the sale agreement, dated 3.6.1995 is a forged one and not with proper sale consideration?

2. Whether the plaintiff is entitled to get the relief of specific performance as sought for?

3. To what other relief, the plaintiff is entitled to?

8. Before pronouncing judgment, the trial Court has issued the following additional issues for consideration:

1. Whether the suit filed by the plaintiff is barred by the principle of limitation:

9. In order to substantiate the case of the parties, during trial, on



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the side of the plaintiff, five witnesses were examined as P.W.1 to P.W.5 and Ex.A1 to A13 were marked. On the side of the defendants, three witnesses were examined as D.W.1 to D.W.3 and no exhibits were marked. On conclusion of trial and upon hearing the arguments and considering both oral and documentary evidence, the trial Court while dismissing the prayer for specific performance, has granted the alternative relief of refund of advance amount of Rs.3 lakhs with interest at the rate of 9%. As against the same, the present cross-objection has been filed by the plaintiff before this Court.

10.The learned counsel for the Cross-Objector/Plaintiff would submit that the Cross-Objector and the respondents in the Cross-Objection enter into a sale agreement on 3.6.1995 for a total sale consideration of Rs.6 lakhs and on the date of sale agreement, the cross-objector paid a sum of Rs.3 lakhs as advance amount to the respondents and the total extent of suit property is 20.12 cents. It is further agreed that on or before 10.12.1995, the cross-objector has to pay the balance sale consideration and measure the



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extent of the suit property and as per the measurement found, the respondents have to execute the sale deed by receiving the corresponding balance sale consideration. Failing to do so, the cross-objector has issued a legal notice before the expiry period 10.12.1995 to the respondents, marked under Ex.A2 and the said notice returned as refused to receive. However, he would submit that as on the date of sale agreement, the suit property was handed over to the cross-objector. Since the respondents refused to receive the legal notice, the cross-objector measured the suit property and found that there is only 10 acres and therefore the cross-objector sent another legal notice on 11.06.1997 to the respondents and the said notice also returned as refused. Thereafter, the cross-objector filed the present suit within three years from the date of sale agreement. Therefore the suit is filed in time. He would further submit that the respondents have never denied the sale agreement and never denied the readiness and willingness on the part of the cross-objector. Since the first respondent alone signed in the sale agreement, he has not denied the agreement. However, the trial Court has found that the sale agreement is a genuine one. Since the respondents have



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not denied the readiness and willingness of the cross-objector, the trial Court ought to have decreed the suit for the real extent of suit property of 10 acres available as per the measurement made by the Cross-Objector/plaintiff. Since the total sale consideration fixed for 20 acres of land at Rs.6 lakhs, as there is only 10 acres physically available, the cross-objector has already paid Rs.3 lakhs and hence the total consideration is paid for available 10 Crores. Therefore the plaintiff filed the suit for executing the sale deed only to an extent of 10 acres of suit property. Therefore the trial Court has failed to appreciate both oral and documentary evidence and even without framing necessary issues regarding readiness and willingness, has simply dismissed the suit for specific performance, however granting the relief of refund of the advance amount which was received by the respondents at the time when the sale agreement was executed. Since the appeal suit filed by the respondents was dismissed, they do not have any stand regarding the genuineness of the sale agreement and readiness and willingness of the plaintiff. There is no specific plea regarding the denial of the sale agreement and about the readiness and



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williness of the plaintiff. Therefore the Cross-Objector has established that the sale agreement is genuine and he is always ready and willing to perform his part of contract. Therefore the Cross Objection has to be allowed and to decree the suit for specific performance.

11.Since the appeal suit filed by the respondents was dismissed by this Court for their non-cooperation, this Court heard the arguments of the learned counsel for the Cross-Objector and pronounced this judgment.

12.The main contention of the Cross-Objector is that there is a sale agreement, dated 3.6.1995 and the cross-objector has also paid a sum of Rs.3 lakhs as advance amount. Though the sale consideration is fixed at Rs. 6 lakhs for 20 acres of suit property, now the available extent is only 10 acres and therefore, the corresponding sale consideration for 10 acres, ie Rs. 3 lakhs and the same has already been paid. Therefore the Cross-Objector sent a legal notice marked under Ex.A2, which was returned as refused marked under Ex.A3 and again sent a legal notice marked as Ex.A4, which



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was also returned as refused, marked under Ex.A5. Subsequently, the plaintiff/cross-objector filed the suit in the year 1998. Though the date of sale agreement is 3.6.1995, the time stipulated for performing the sale agreement is only 10.12.1995. Though the Cross-Objector has sent notice on 4.12.1995, it was returned as refused on the same date, he has specifically stated that all the documents regarding the suit property and possession was handed over to the Cross-Objector. The learned counsel for the cross-objector would further submit that as per the sale agreement both the parties should present for measurement of the land since the legal notice, dated 4.12.1995 was returned as refused and that the sale deed has to be executed on or before 10.12.1995. If the properties and documents are available with the cross-objectors and that the respondents refused to receive the legal notice and therefore, the cross-objector should have taken steps to measure the suit property and filed the suit before the trial Court. Though the learned counsel for the Cross- Objector stated that they subsequently measured the property, the documents would clearly say that the plaintiff measured the suit property only in the year 1997 and it is not



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known as to why the plaintiff has waited till 1997 to sent another legal notice and he filed the suit only on 8.6.1998 just one day prior to the period limitation of three years got expired. Though there is three years time limitation for filing the suit, it is not for postponing the agreement. Once the Cross-Objector filed the suit for specific performance, it is the duty of the plaintiff to prove the readiness and willingness and the plaintiff has to aver the readiness and willingness and mere averment is not sufficient and he has to prove the same.

13. So far as the readiness and willingness is concerned, even as per the sale agreement, the total extent of suit property agreed to sell is 20 acres and 12 cents and the total sale consideration is Rs.6 lakhs. Since the available extent of land is only 10 acres, the cross-objector has paid the total sale consideration of Rs.3 lakhs for available extent. Still the cross-objector/plaintiff has to prove his readiness and willingness as enunciated under Section 16(c) of the Specific Relief Act and it is for the plaintiff to aver and prove the readiness and willingness and mere proving of readiness



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alone is not sufficient or proving of willingness alone is not sufficient.

Therefore, it is for the plaintiff to plead and prove both the readiness and willingness from the date of inception of the sale agreement till the pronouncing of the judgment that the plaintiff is always ready and willing to perform his part of contract. When seeing the conduct of the Cross-Objector, the date of sale agreement is 3.6.1995 and he sent the first legal notice on 4.12.1995 which was returned on the same day itself as refused. When the property is with him, the cross-objector has not explained as to why he is waiting till 11.6.1997 for sending another notice and nearly for 1 ½ years, he has not taken any steps to measure the suit property within the reasonable time or at least approach the Court and appoint an Advocate Commissioner and measure the property and got the sale deed executed. From the above discussion, it is seen that the Cross-Objector has come to the Court with unclean hands and has not proved that he is always ready and willing to perform his part of contract from the date of inception of the sale agreement till the date of filing the suit. Therefore, this Court comes to the conclusion that the Cross-Objector/Plaintiff has not proved his readiness



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and willingness and as such, the cross-objection is devoid of merits and deserves dismissal.

14.For the foregoing reasons, the cross-objection is dismissed. No costs.

Index : Yes / No

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Internet:Yes/No

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To

1.The Subordinate Judge,
Sub-Court,
Padmanabhapuram,
Kanyakumari District.

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



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