



A.S.(MD)Nos.156 and 197 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 31.10.2022

PRONOUNCED ON:23.12.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)Nos.156 and 197 of 2014

and

M.P.(MD) No.1 of 2014

A.S.(MD)No.156 of 2014

1.E.Saroja

2.Pappammal

: Appellants / Defendant 10 and 11

Vs.

1.R.Nagarajan

: Respondent / Plaintiff

2.Sakunthala

3.Ammami Ammal

4.Balakrishnan

5.Vasudevan

6.Palaniammal

7.Saraswathi

8.Maruthamuthu

9.Rajendran

10.Bhuvaneswaran

: Respondents/Defendants 1 to 9



A.S.(MD)Nos.156 and 197 of 2014

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree, dated 27.03.2014 in O.S.No. 43 of 2009 on the file of I Additional District Judge, Trichy.

For Appellants : Mr.K.Prabhakar

For Respondents :Mr.K.Govindarajan
for R.1
: No Appearance for R.2 to R.10

A.S.(MD)No.197 of 2014

1.Maruthamuthu
2.Rajendran : Appellants / Defendant 7 and 8

Vs.

1.R.Nagarajan : Respondent / Plaintiff

2.Sakunthala
3.Ammami Ammal
4.Balakrishnan
5.Vasudevan
6.Palaniammal
7.Sarasu : Respondents/Defendants 1 to6

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree, dated 27.03.2014 in O.S.No. 14 of 2011 on the file of I Additional District Judge, Trichy.



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For Appellants : Mr.K.Prabhakar

For Respondents :Mr.K.Govindarajan
for R.1

: No Appearance for R.2 to R.7

COMMON JUDGMENT

The Appeal Suit in A.S.(MD)No.156 of 2014 is directed against the judgment and decree passed in O.S.No.43 of 2009, dated 27.03.2014, on the file of I Additional District Court, Trichy.

2. The gist of the plaint is as follows:

(a) The plaintiff and the first defendant have entered into a sale agreement dated 26.03.2008, wherein the first defendant claiming herself to be the owner of the suit property vide sale deed dated 08.11.2002 agreed to sell the same and that both the parties have fixed the sale price at Rs.13,00,000/- and the period of performance as four months from 26.03.2008 to 25.07.2008. The first defendant has received a sum of Rs.2,00,000/-as advance on the date of sale agreement from the plaintiff. The plaintiff has always been ready and wiling to perform his part of contract by paying the balance sale price and get the sale deed executed



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and registered. But the first defendant has been evading in performing her part of contract on one reason or the other.

(b) The plaintiff came to understand that the first defendant has filed a suit in O.S.No.92 of 2008, on the file of the District Munsif Court, Thuraiyur against the defendants 2 to 6 for the relief of declaration and permanent injunction and in that suit, the present suit survey number 311/7 is involved. The plaintiff, on coming to know about the same, issued a legal notice dated 24.07.2008 to the first defendant calling upon her to get the balance of sale consideration and executed the sale deed, after clearing the encumbrances involved in the suit in O.S.No.92 of 2008.

(c) The first defendant issued a telegram on 25.07.2008 through her Advocate Thiru.N.Rengasamy calling upon the plaintiff to complete the sale transaction on that date itself and in the said telegram, it has been stated that the first defendant will be waiting at the Registrar's office at Thuraiyur on 25.07.2008 itself. The plaintiff, on getting the said telegram, has also gone to the Registrar office, Thuraiyur on 25.07.2008 and waited for the whole day, but the first defendant did not turn up. The



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plaintiff came to know that in order to wriggle out of the contract, on some wrong advise, has sent the telegram. Thereafter, the first defendant has sent a legal notice on 30.07.2008, terminating the sale agreement, on the ground that the plaintiff did not turn up on 25.07.2008 and get the sale deed executed.

(d) The plaintiff has then sent a rejoinder dated 31.07.2008 to the telegram dated 25.07.2008. Since the first defendant started making hectic attempts to sell the suit property in collusion and conspiracy with the defendants 2 to 6 to the defendants 7 and 8 in contravention of the suit sale agreement, the plaintiff has filed a suit in O.S.No.288 of 2008, on the file of the District Munsif Court, Thuraiyur against the defendants 1 to 8 for permanent injunction restraining the first defendant from alienating the suit properties either to the defendants 7 and 8 or others and that the suit is pending. Pending the above suit, the first defendant through her power agent K.V.Rajendran sold the suit properties to the defendants 10 and 11, vide sale deed dated 23.01.2009 with an intention to defraud the plaintiff and as such, the sale deed in favour of the defendants 10 and 11 is not valid and the plaintiff is not bound by the sale. The defendants 10 and 11 are not the *bonafide* purchasers for value



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and they have only purchased litigation. The first defendant has allegedly sold the property in favour of the defendants 10 and 11 for total price of Rs.3,77,000/- and the same itself would speak about the litigious spirit of the first defendant and exposes the fraudulent conduct of the first defendant.

(e) The correct Survey Number of the first item of the suit properties is 311/7. The first defendant got the suit properties vide sale deed dated 08.11.2002 from one Kolandayee Ammal, vide sale deed dated 12.05.1997 wherein the Survey Number of the suit property was wrongly stated as 312/7. Taking advantage of the said mistake, the defendants 7 to 9 surreptitiously purchased the first item of the suit property from the defendants 2 to 6 - legal heirs of Sivan Moopan Perumal. Hence, for an effective and binding execution, the defendants 7 to 9 are also added as parties to the suit. Hence, the suit for specific performance.

3. The defence of the seventh defendant, adopted by the defendants 3, 8 to 11, in short is as follows:



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(a) This defendant is not aware of the alleged sale agreement and the alleged payment of advance. The plaintiff is guilty of indulging in forum shopping. The intention of the plaintiff is only to get an interim order and to harass these defendants in order to achieve ulterior objective of making an unjust enrichment. As a party to the suit in O.S.No.282 of 2008, on the file of the District Munsif Court, Thuraiyur, this defendant or the other defendants were not served with any notice in respect of the alleged petition under Order II Rule 2 C.P.C. The cause of action for the present suit and the suit in O.S.No.282 of 2008 are one and the same. Hence, the present suit itself is barred under Order II Rule 2 C.P.C.

(b) In view of the cloud in the title, this Court when especially a title suit is pending cannot grant the relief of specific performance. Unless the Court decides on merits whether the cancellation is valid or not and further decides the strongest circumstances that really warrant granting the reliefs of specific performance, this Court cannot grant an interim order to restrain these defendants from dealing with the property. The sale deed has been valued as per the guideline value while the property was transferred for a proper value. The plaintiff did not express his willingness and readiness at any material point of time. The plaintiff



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at best has only paid Rs.2,00,000/- and without prejudice to any of the contentions, this defendant is willing to deposit the amount into the Court or with such lawful amount as this Court directs. The first defendant's father-in-law is a heart patient who underwent bypass surgery recently and that the daughter of the first defendant was about to be admitted in a school at Namakkal where the annual fee payable is Rs.1,00,000/-. Admittedly the agreement of sale has been terminated after giving sufficient time and opportunity to the plaintiff and he is not ready and willing at all material points of time. There cannot be a trial without trial.

(c) The defendants 7 to 9 have purchased the property from one Ammani Ammal. The plaintiff has no right to insist upon the specific performance from the defendants 7 to 9, unless the plaintiff has entered into any sale agreement with Ammani Ammal. The claim of the plaintiff is that the purchasers from the first defendant are bound to convey the property to him. There is no cause of action for the suit and the one alleged is false and fraudulent. Hence, the suit is liable to be dismissed.



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4. On the basis of the above pleadings, the trial Court has recasted the following issues:

- (1) Whether the suit barred under Order II Rule 2 C.P.C.,?
- (2) Whether the plaintiff is always ready and willing to perform his part of contract?
- (3) Whether the plaintiff is entitled to specific performance directing the defendants 1 and 7 to 11 to execute the sale deed in favour of plaintiff in respect of suit properties as per the sale agreement dated 26.03.2008 after receiving the balance sale consideration?
- (4) Whether the defendants 7 to 9 are the bonafide purchasers?
- (5) To what relief?

5. During trial, the plaintiff has examined himself as P.W.1 and exhibited 18 documents as Exs.A.1 to A.18 and the contesting defendants have examined the defendants 7 and 8 as D.W.1 and D.W.2 respectively and exhibited 10 documents as Exs.D.1 to D.10. The learned trial Judge, upon consideration of the oral and documentary evidence and on hearing the arguments of both sides, has passed the impugned judgment dated 27.03.2014, decreeing the suit as prayed for and directed the plaintiff to deposit the balance sale consideration into the Court within a period of



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one month from the date of receipt of the decree and after deposit of the balance sale consideration, the defendants 1, 10 and 11 were directed to execute the sale deed in favour of the plaintiff within a period of one month. Aggrieved by the said judgment and decree, the defendants 10 and 11 have preferred the present Appeal Suit.

6. In the Appeal Suit, the appellants/defendants 10 and 11 have raised the following grounds:

(a) The plaintiff was never ready and willing to perform his part of the contract and the trial Court has erred in exercise of its discretion in granting the specific performance.

(b) The agreement dated 26.03.2008 stipulates that the sale deed must be executed within a period of four months on or before 25.07.2008 and the first defendant had called upon the plaintiff to come to the office of the Sub Registrar on 25.07.2008 and to execute the sale deed after the payment of balance consideration. Since the plaintiff has failed to turn up, the first defendant had cancelled the agreement dated 26.03.2008, vide notice dated 30.07.2008.



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(c) The plaintiff has filed the above suit for specific performance without claiming any prayer for setting aside the cancellation of the sale agreement and the trial Court has failed to consider the legal position that no prayer for specific performance of the sale agreement can be granted without specific prayer for declaration that the cancellation is bad in law.

(d) The trial Court has also failed to appreciate that the suit is barred under Order II Rule 2 C.P.C.

(e) The trial Court has completely given a go by to the evidence of P.W.1 which would show that the plaintiff was neither ready and willing to perform his contract.

(f) The plaintiff has accepted that he was aware of the dispute between the first defendant and the defendants 2 to 6. The plaintiff is in real estate business, but he did not take any steps to renegotiate the duration of four months stipulated in the contract.

(g) The plaintiff has not canvassed any reason or ground for 8 months delay in filing the suit for specific performance or for not filing the specific performance suit along with the suit for bare injunction.

(h) The trial Court has failed to appreciate that even as per the plaint, there was a discrepancy in the description of the suit property



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between the title deed of the first defendant and the title deed of the first defendant's vendor.

(i) The trial Court has failed to appreciate that the plaintiff had deliberately failed to perform his part, citing the discrepancy in description of the property, despite being aware of it, even at the time of entering into the sale agreement.

(j) The trial Court had exceeded beyond the scope of the suit and gone into roving enquiry on the question of title.

Hence, the appeal is to be allowed and the judgment and decree dated 27.03.2014, passed in O.S.No.43 of 2009, on the file of I Additional District Court, is liable to be set aside.

7. The points that arose for consideration are;

(1) Whether the trial Court erred in rendering a finding that the plaintiff has always been ready and willing to perform his part of the contract, despite the fact that the plaintiff has miserably failed to prove his continuous readiness and willingness to perform his part of the contract from the date of agreement till the disposal of the case?



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(2) Whether the suit for specific performance of a sale agreement without a prayer for declaration that the cancellation of sale agreement is bad in law, is legally sustainable?

(3) Whether the plaintiff has pleaded and proved his continuous, readiness and willingness to perform his part of contract?

(4) Whether the Appeal Suit is to be allowed?

8. For the sake of convenience and brevity, the parties will be referred as per their status and ranking in the trial Court.

Points 1 to 4:

9. It is not in dispute that the first defendant, claiming to be the owner of the suit properties has agreed to sell the suit properties to the plaintiff and the plaintiff has also agreed to purchase the same, that both of them have entered into a sale agreement dated 26.03.2008 and whereunder both of them have fixed the sale price at Rs.13,00,000/- and the period of performance as four months and that the plaintiff has paid a sum of Rs.2,00,000/- and the first defendant has received the same towards advance.



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10. The case of the plaintiff is that he came to understand that the first defendant has filed a suit in O.S.No.92 of 2008, on the file of the District Munsif Court, Thuraiyur against the defendants 2 to 6 for declaration and permanent injunction in respect of a portion of the suit properties, that the plaintiff has then sent a notice dated 24.07.2008 under Ex.A.2 to the first defendant calling upon her to clear the encumbrances involved in the suit in O.S.No.92 of 2008 and to receive the balance of sale price and execute the sale deed, but the first defendant has managed to return the said notice under Ex.A.14, that on 25.07.2008, the first defendant sent a telegram under Ex.A.3, through her Advocate Rengasamy calling upon the plaintiff to come to the Registrar Office at Thuraiyur on 25.07.2008 for completing the sale transaction, that the plaintiff on getting the information, had gone to the Registrar Office on 25.07.2008 itself and waited for the whole day, but the first defendant did not turn up, that the first defendant has then sent a notice to the plaintiff on 30.07.2008 under Ex.A.4 informing the plaintiff that since he alone did not turn up on 25.07.2008 and get the sale deed executed, the said sale agreement got terminated, that the plaintiff has then sent a rejoinder notice dated 31.07.2008 under Ex.A.5 and that since the first defendant started making hectic attempts to sell the suit property in



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collusion and conspiracy with the defendants 2 to 8, the plaintiff was constrained to file a suit in O.S.No.282 of 2008, on the file of the District Munsif Court, Thuraiyur for permanent injunction restraining the first defendant from selling the suit properties to the defendants 7 and 8 and others.

11. It is the further case of the plaintiff that thereafter the first defendant through her Power Agent sold the suit properties to the defendants 10 and 11, vide sale deed dated 23.01.2009 with an evil intention to defraud the plaintiff and that since the defendants 7 to 9 had surreptitiously purchased the first item of the suit property from the defendants 2 to 6, the defendants 2 to 6 and 7 to 9 were also added as parties for effective and binding adjudication.

12. At the outset, it is pertinent to note that the first defendant and the defendants 2, 4 to 6 had remained exparte. and that the seventh defendant alone has filed the written statement, which was adopted by the defendants 3, 8 to 11. As already pointed out, the first defendant has sent Ex.A.3 telegram and legal notice dated 30.07.2008 directing the plaintiff to perform his part of the contract. Considering the above, it is



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clearly evident that the first defendant has specifically admitted Ex.A.1 sale agreement. It is not in dispute that after the filing of the suit in O.S.No.92 of 2008 by the first defendant against the defendants 2 to 6, the defendants 2 to 6 sold their properties to the defendants 7 to 9 and that the first defendant, after the filing of the suit in O.S.No.282 of 2008 by the plaintiff for permanent injunction, sold the suit properties to the defendants 10 and 11. Admittedly, the seventh defendant is the husband of the eleventh defendant.

13. In a suit for specific performance, a party claiming that relief is duty bound to comply with the mandatory requirement contemplated under Section 16(c) of the Specific Relief Act, 1963. To put it in other way, Section 16(c) of the Specific Relief Act bares the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of the contract.

14. The Hon'ble Supreme Court in ***Umabai V. Nilkanth Dhondiba Chavan*** reported in ***(2005)6 SCC 243*** has held that a finding as to whether the plaintiffs were all along and still ready and willing to perform their part of the contract, was a mandatory requirement under



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Section 16(c) of the Specific Relief Act and the relevant passage is extracted hereunder:

“So far there being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of [Section 16\(c\)](#) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But [Section 16\(c\)](#) of the said Act makes it clear that mere plea is not sufficient, it has to be proved.”

15. It is settled law that for the relief of specific performance, the plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract and it is the bounden duty of the plaintiff to prove his readiness and willingness by adducing evidence. The Hon'ble Apex Court in ***H.P. Pyarejan vs Dasappa(Dead) by L.Rs. & Others*** reported in ***(2006)2 SCC 496*** has specifically observed that even in the first appeal, the first Appellate



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Court is duty bound to examine whether there was continuous, readiness and willingness on the part of the plaintiff to perform the contract.

16. No doubt, as rightly pointed out by the learned Counsel for the plaintiff, the plaintiff in the plaint has raised necessary averments to the effect that he has always been ready and willing to perform his part of the contract. The learned Counsel for the plaintiff would contend that since the first defendant had remained exparte, the other defendants 2 to 9 being the parties unconnected with the suit sale agreement and the suit property and the defendants 10 and 11, who have not filed any written statement of their own, being the subsequent purchasers of the suit properties cannot be allowed to raise any objection with regard to the plaintiff's readiness and willingness. No doubt, as rightly contended by the learned Counsel for the plaintiff, the subsequent purchasers the defendants 10 and 11, have not filed any written statement and they have only adopted the written statement filed by the seventh defendant. It is pertinent to note that even in the absence of any objections raised by the defendants or the defendants remained ex-parte, even then the plaintiff is duty bound to prove his continuous readiness and willingness to perform his part of the contract.



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17. Admittedly, the suit sale agreement Ex.A.1 was entered into between the plaintiff and the first defendant on 26.03.2008 and four months period fixed for performance was shown as 26.03.2008 to 25.07.2008. The plaintiff in his evidence would admit categorically that he is involved in real estate business. The plaintiff in his cross-examination would say that after entering into Ex.A.1 sale agreement, he demanded the first defendant to execute the sale deed within 1 ½ months, but the first defendant had sought some time as he was not having sufficient time. Admittedly, the plaintiff has sent a legal notice on 24.07.2008, just one day prior to the expiry of the sale agreement and in that notice, the plaintiff has directed the first defendant to clear the encumbrances involved in O.S.NO.92 of 2008 and then to receive the balance sale price and execute the sale deed. According to the plaintiff, after Ex.A.1 sale agreement, he came to know about the filing of the suit in O.S.No.92 of 2008, by the first defendant against the defendants 2 to 8.

18. It is the specific contention of the plaintiff that after receiving the telegram of the first defendant, he went to concerned Registrar Office



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and was waiting there for the first defendant, but she has not turned up.

But according to the first defendant, as evident from her legal notice that she was waiting in the Sub Registrar Office for the plaintiff and the plaintiff has not turned up. Whatever it is, the plaintiff in cross-examination would admit that he went to the Sub Registrar Office on 25.07.2008 only to clarify about the encumbrances involved in O.S.No. 92 of 2008 and the relevant portion of P.W.1 evidence is extracted hereunder:

“ me;j je;jpapy; gjpthsh; mYtyj;jpy; fhj;jpUg;gjhft[k;,
clBd te;j fpiuak; bra;j bfhs;SA;fs; vd;W fz;oUe;jj. ehd;mA;F
brd;wpUe;Bjd;. Mdhy; ghf;fp bjhif bfhz;L bry;ytpy;iy.
Vw;bfdBt xU jhth epYitapy; cs;sJ vd;W Bfl;f BghBdd;.
25.07.08 je;jp thA;fp clBd brd;Bwd;. md;iwf;F fpiuak; bra;a
ehd; jahuhf bry;ytpy;iy. Vd; vd;why; tHf;F epYitapy; cs;sJ. “

19. Though the plaintiff has been alleging that he was ready and willing from the date of agreement, the plaintiff has not produced any iota of evidence to show that he had attempted to pay the balance sale price



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and get the sale deed executed, during the period of four months fixed for the performance under Ex.A.1. As already pointed out, even on 25.07.2008, the day on which four months period gets expired, it is the specific admission of the plaintiff that he was not ready and willing to get the sale deed executed.

20. The only reason canvassed by the plaintiff for not performing his part of contract at that time is the pendency of the suit in O.S.No.92 of 2008. Admittedly, the first item of the suit properties is situated in S.No.311/7 to an extent of 1.67 Acres and the second item of the property in S.No.310/7 to an extent of 61 cents of land totalling 2.2 acres of land. It is also not in dispute that in the sale deed of the first defendant, the Survey Number of the first item of the property is correctly stated as S.No.311/7, but in the sale deed dated 12.05.1997 executed in favour of Kolandayee Ammal by Sivan Moopan Perumal and his wife, the first item of the suit property was wrongly stated as S.No.312/7 instead of S.No.311/7. As rightly contended by the learned Counsel for the contesting defendants, the plaintiff in his plaint has specifically admitted the above mistake as an obvious mistake rather than inadvertent mistake and the relevant passage No.15 of the plaint is extracted hereunder:



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“15. The correct survey number for the first item of the suit property is 311/7. In the sale deed in favour of the first defendant, correct survey number is referred to. First defendant got the suit properties in and by virtue of registered sale deed dated 08.11.2002 from one Kulundayee Ammal, wife of late Perumal. In the said sale deed survey number for the suit first item is correctly stated as S.F.No. 311/7. Xerox copy of the said sale deed in favour of the first defendant is produced herewith as document No.10. The said Kulundhayee Ammal, wife of Perumal got the same in turn from Sivan Mooppan Perumal and his wife Kulundhayee Ammal in and by virtue of registered sale deed dated 12.05.1977 wherein the survey number for the first item of the suit property was wrongly stated as S.F.312/7 instead of S.F.No.311/7. This is an obvious mistake rather than inadvertent mistake. Xerox copy of the registration copy of the said sale deed dated 12.05.1977 in favour of Kulundhayee Ammal is produced herewith as document No. 11. It was found by the first defendant and he hurriedly filed the suit in O.S. No.92 of 2008 in the Court of the District Munsif, Thuraiyur against the legal heirs of Perumal viz., the defendants 2 to 6.”

21. It is pertinent to note that the plaintiff in his cross-examination would say that he is not having any objection to get the sale deed as per



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the first defendant has issued a legal notice terminating the sale agreement, this Court is also at loss to understand as to why the plaintiff instead of filing the suit for specific performance, has laid the suit in O.S.No.282 of 2008 for bare injunction. Admittedly the plaintiff has not offered any acceptable reason or explanation for the same. After getting the permission under Order II Rule 2 C.P.C., the plaintiff had again remained silent for some more months and nearly after 8 months from the expiry of the suit sale agreement, laid the above suit on 28.03.2009 for specific performance.

23. It is pertinent to note that the suit in O.S.No.92 of 2008 was very much pending on the date when the present suit for specific performance came to be filed. As rightly contended by the learned Counsel for the contesting defendants, the plaintiff has not offered any reason or ground for the delay of 8 months in filing the present suit. When the plaintiff himself was very much aware that the mentioning of Survey Number in the sale deed of the first defendant's vendor is only an obvious mistake and that his sale deed contains the correct Survey Number and when the plaintiff himself had admitted that he is ready to take the sale as per the sale deed of the first defendant, this Court is at



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loss to understand as to why the pendency of the suit in O.S.No.92 of 2008 was shown as a reason for not proceeding with his part of contract.

24. Considering the above, it is clearly evident that the plaintiff has miserably failed to prove that he has been ready and willing to perform his part of the contract from the date of agreement. But the learned trial Judge, without considering the evidence in proper perspective and by giving importance to the irrelevant aspects, has recorded an erroneous finding that the plaintiff has proved his continuous readiness and willingness to perform his part of contract.

25. The learned Counsel for the contesting defendants would submit that the plaintiff has claimed the relief of specific performance directing the defendants 1, 7 to 11 to execute the sale deed. Admittedly, the defendants 7 to 9 have purchased the properties from the defendants 2 to 6. Moreover, the defendants 7 to 9 are not the parties to the suit sale agreement. Clause (a) of Section 15 of the Specific Relief Act contemplates that any party to the contract can seek specific performance of said contract. As rightly contended by the learned Counsel for the contesting respondents, since the defendants 2 to 9 are not parties to



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Ex.A.1 sale agreement, the very impleadment of the other defendants is not only improper, but creates a doubt about the genuineness of the plaintiff's claim.

26. The learned Counsel for the contesting defendants would further submit that the first defendant, vide her legal notice dated 30.07.2008 under Ex.A.4, has cancelled the sale agreement and that therefore, the present suit for specific performance without any prayer for declaration that the cancellation of the sale agreement is bad, is legally unsustainable and he relied on the following decisions:

(i) ***(2013)15 SCC 27 (I.S.Sikandar (dead) by LRs Vs. K.Subramani and Others).***

“37. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of Agreement of Sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of Agreement of Sale



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and consequential relief of decree for permanent injunction is not maintainable in law.

38. Therefore, we have to hold that the relief sought for by the plaintiff for grant of decree for specific performance of execution of sale deed in respect of the suit schedule property in his favour on the basis of non existing Agreement of Sale is wholly unsustainable in law. Accordingly, the point No. 1 is answered in favour of the defendant No.5.”

(ii) (2019)9 SCC 358 (Mohinder Kaur Vs. Sant Paul Singh)

“8. The agreement was cancelled by the appellant on 01.09.1989 and the consideration already paid confiscated under intimation to the respondent. The respondent never challenged the communication of cancellation. In Sikandar (supra) it was observed as follows:

“37. As could be seen from the prayer sought for in the original suit, the Plaintiff has not sought for declaratory relief to declare the termination of Agreement of Sale as bad in law. In the absence of such prayer by the Plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of Agreement of Sale and



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consequential relief of decree for permanent injunction is not maintainable in law.

38. Therefore, we have to hold that the relief sought for by the Plaintiff for grant of decree for specific performance of execution of sale deed in respect of the suit schedule property in his favour on the basis of non existing Agreement of Sale is wholly unsustainable in law....”

27. In the case on hand, as already pointed out, the first defendant has cancelled the sale agreement vide legal notice dated 30.07.2008 and whereunder it was informed that the advance already paid should be confiscated. Considering the above and on applying the legal position above referred, this Court has no hesitation to hold that the present suit for specific performance of the sale agreement without any prayer for declaration that the cancellation of the sale agreement is bad in law, is legally not sustainable.

28. In view the above, the judgment and decree of the trial Court is liable to be interfered with. Accordingly, the above points are answered.



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29. The Appeal Suit in A.S.(MD)No.197 of 2014 is directed against the judgment and decree passed in O.S.No.14 of 2011, dated 27.03.2014, on the file of I Additional District Court, Trichy.

30. The gist of the plaint is as follows:

(a) The plaintiff and the first defendant have entered into a sale agreement dated 26.03.2008, wherein the first defendant claiming herself to be the owner of the suit property vide sale deed dated 08.11.2002 agreed to sell the same and that both the parties have fixed the sale price at Rs.13,00,000/- and the period of performance as four months from 26.03.2008 to 25.07.2008. The first defendant has received a sum of Rs.2,00,000/- as advance on the date of sale agreement from the plaintiff. The plaintiff has always been ready and willing to perform his part of contract by paying the balance sale price and get the sale deed executed and registered. But the first defendant has been evading in performing her part of contract on one reason or the other.



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(b) The plaintiff came to understand that the first defendant has filed a suit in O.S.No.92 of 2008, on the file of the District Munsif Court, Thuraiyur against the defendants 2 to 6 for the relief of declaration and permanent injunction and in that suit, the present suit survey number 311/7 is involved. The plaintiff, on coming to know about the same, issued a legal notice dated 24.07.2008 to the first defendant calling upon her to get the balance of sale consideration and executed the sale deed, after clearing the encumbrances involved in the suit in O.S.No.92 of 2008.

(c) The first defendant issued a telegram on 25.07.2008 through her Advocate Thiru.N.Rengasamy calling upon the plaintiff to complete the sale transaction on that date itself and in the said telegram, it has been stated that the first defendant will be waiting at the Registrar's office at Thuraiyur on 25.07.2008 itself. The plaintiff, on getting the said telegram, has also gone to the Registrar office, Thuraiyur on 25.07.2008 and waited for the whole day, but the first defendant did not turn up. The plaintiff came to know that in order to wriggle out of the contract on some wrong advise, has sent the telegram. Thereafter, the first defendant



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has sent a legal notice on 30.07.2008, terminating the sale agreement, on the ground that the plaintiff did not turn up on 25.07.2008 and get the sale deed executed.

(d) The plaintiff has then sent a rejoinder dated 31.07.2008 to the telegram dated 25.07.2008. Since the first defendant started making hectic attempts to sell the suit property in collusion and conspiracy with the defendants 2 to 6 to the defendants 7 and 8 in contravention of the suit sale agreement, the plaintiff has filed a suit in O.S.No.288 of 2008, on the file of the District Munsif Court, Thuraiyur against the defendants 1 to 8 for permanent injunction restraining the first defendant from alienating the suit properties either to the defendants 7 and 8 or others. Hence, the plaintiff is constrained to file the above suit for permanent injunction restraining the first defendant from alienating the suit properties either to the defendants 7 and 8 or others in contravention of the suit sale agreement dated 26.03.2008. The plaintiff is reserving his right to file the suit for specific performance with agreement and is also filed a petition under Order II Rule 2 C.P.C., to get necessary permission. Hence, the above suit for permanent injunction.



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31. The defence taken by the first defendant in short is as follows:

The plaintiff in his plaint would state that he entered into an agreement of sale with the first defendant and an agreement was executed on 26.03.2008 and on the date of agreement itself, he paid Rs.2,00,000/- as advance to the first defendant and the balance was payable by the plaintiff within four months from the date of agreement. He has further pleaded that he was always ready and willing to perform his part of contract and the first defendant was not co-operating in executing the sale deed and that the first defendant was attempting to alienate the suit property in favour of the third parties contrary to that agreement dated 26.03.2008 and because of that, the plaintiff had to file a suit for permanent injunction reserving his right to file a suit for performance at a later point of time. In the said suit, the plaintiff filed a petition for temporary injunction in I.A.No.843 of 2008. The plaintiff having failed to get temporary injunction order, he immediately filed another suit against the defendants 1 to 8 and also impleaded three more persons in the suit. The plaintiff has also filed a petition in I.A.No.230 of 2009 and succeeded in getting temporary injunction against the defendants 7 to 11. After filing of the suit for specific performance and after getting



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temporary injunction, the present suit has become redundant. The attitude of the plaintiff is nothing but an abuse of process of law. Hence, the suit is liable to be dismissed.

32. The defendants 2 to 6 and the defendants 7 and 8 have filed memos adopting the written statement filed by the first defendant.

33. On the basis of the above pleadings, the trial Court has framed the following issues:

- (1) Whether there was an agreement between the plaintiff and 1st defendant with regard to suit schedule property?
- (2) Whether the plaintiff is exceeding the covenants of the suit agreement?
- (3) Whether the plaint is maintainable?
- (4) Whether the plaintiff is entitled for the relief as prayed for?
- (5) To what relief?

34. During trial, the plaintiff has examined as P.W.1 and exhibited 18 documents as Exs.A.1 to A.18. On the side of the contesting defendants, the defendants 7 and 8 have been examined as D.W.1 and



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D.W.2 respectively and exhibited 10 documents as Exs.B.1 to B.10. The learned trial Judge, upon considering the evidence both oral and documentary, and on hearing the arguments of both sides, passed the impugned judgment dated 27.03.2014 granting permanent injunction as prayed. Aggrieved by the said judgment and decree, the defendants 7 and 8 have preferred the present Appeal Suit.

35. In the Appeal Suit, the appellants/defendants 10 and 11 have raised the following grounds:

(a) The first defendant had cancelled the agreement dated 26.03.2008 by notice dated 30.07.2008.

(b) The plaintiff without a prayer for declaration that the cancellation is void, has filed a suit for bare injunction.

(c) The trial Court has failed to appreciate that no right would accrue to the plaintiff under a cancelled sale agreement and a prayer for injunction by a prospective purchaser cannot be sustained without a prayer for declaration that cancellation is void.



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36. The points that arose for consideration are;

(1) Whether the trial Court erred in granting permanent injunction despite showing that no right had accrued to the plaintiff under cancelled sale agreement and as such, the prayer for bare injunction by prospective purchaser cannot be sustained?

(2) Whether the appeal is to be allowed?

Points 1 and 2:

37. As already pointed out, the plaintiff has filed the above suit for permanent injunction against the defendants 1 to 8 restraining the first defendant from selling the properties to the defendants 7 and 8 or others in contravention of the sale agreement dated 26.03.2008. As already pointed out, the evidence recorded in O.S.No.43 of 2009 was ordered to be taken as evidence to the present suit. It is pertinent to note that the learned trial Judge, after decreeing the suit for specific performance has also granted permanent injunction as prayed for by the plaintiff. Now in



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the appeal in A.S.(MD)No.156 of 2014, this Court has reversed the judgment and decree of the trial Court by holding that the plaintiff has failed to prove his continuous readiness and willingness to perform his part of the contract and that his suit for specific performance without any prayer for declaration that the cancellation of the agreement is void is legally not maintainable. Since the plaintiff's suit for specific performance is dismissed, the plaintiff, admittedly, having no right or interest over the suit property, is not entitled to get the permanent injunction restraining the alienation.

38. As already pointed out, after filing of the present suit, the first defendant sold the suit properties to the defendants 7 and 8. Since the suit for specific performance was dismissed, this Court has no other option but to hold that the plaintiff is also not entitled to get the permanent injunction consequently. Hence, this Court concludes that the judgment and decree passed by the trial Court is liable to be set aside. Accordingly, the above points are answered.

39. In the result, the Appeal Suit in A.S.(MD)No.156 of 2014 is allowed, by setting aside the judgment and decree dated 27.03.2014



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passed in O.S.No.43 of 2009, by I Additional District Judge, Trichy.

Consequently, the connected Miscellaneous Petition is closed. The Appeal Suit in A.S.(MD)No.197 of 2004 is allowed by setting aside the judgment and decree dated 27.03.2014 passed in O.S.No.14 of 2011, by I Additional District Judge, Trichy. Both suits in O.S.No.43 of 2009 and O.S.No.14 of 2011 are dismissed. There shall be no order as to costs.

23.12.2022

Index : Yes : No

Internet : Yes : No

SSL

To

1. I Additional District Court, Trichy.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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23.12.2022