



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S(MD)NO.7 OF 2016

S.Vasudevan :Appellant/Plaintiff

.VS.

A.Jeyanthi :Respondent/Defendant

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code against the judgment and decree made in O.S.No.11 of 2012, dated 22.09.2015, on the file of the Additional District Judge, Pudukkottai.

For Appellant :Mr.C.Selvaraj

For Respondent :Mr.K.S.Vamsiidhar

JUDGMENT

Aggrieved over the decree and judgment of the trial Court in dismissing the suit for specific performance, the present appeal suit came to be filed by the unsuccessful plaintiff.

2.The parties called as per their own ranking before the trial Court.



3.The brief facts leading to the filing of the appeal suit is as follows:

The defendant has executed a sale agreement, dated 19.08.2005 agreeing to sell the suit property for a total sale consideration of Rs.16,22,400/- and received a sum of Rs.2 lakhs on the date of registered sale agreement and they have also agreed to complete the sale within eight months from the date of sale agreement. It is specifically stated in the agreement that the defendant has to produce the Chitta, Adangal and also the original title deeds within the time agreed between the parties. However, from the date of sale agreement, the defendant has not produced the chitta, adangal and the original title deeds. Therefore the Plaintiff has issued a legal notice on 6.10.2006. However, the same has been evaded by the defendant. Thereafter, on 20.10.2006, the defendant has issued a notice contending that the sale agreement dated 9.8.2005 got expired by efflux of time and also cancelling the agreement unilaterally, which has been replied by the plaintiff. Thereafter, the defendant has also issued reply along with a cheque for Rs. 2 lakhs. The said legal notice was also replied by the plaintiff properly. The plaintiff has also issued publication on 14.1.2007 in Thinathanthi and also publication in English Daily Hindu on 25.2.2007 and also issued notices. The plaintiff is always ready and willing to perform his part of contract. Hence the suit



has been filed to enforce the contract.

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4.The averments in the Written statement, filed by the defendant/respondent is as follows:

Admitting the agreement for sale of suit property for a total sale consideration of Rs.16,22,400/- and the receipt of advance amount of Rs.2 lakhs. It is specifically denied by the defendant that she has agreed to furnish the relevant revenue records as required by the Plaintiff's lawyer. Before the sale agreement, the plaintiff has got the copy of all the revenue records for consulting his lawyer and after assessing the marketable title of the suit properties only, the plaintiff negotiated for the sale. The allegation that the plaintiff has approached the defendant on many occasions demanding the copy of the title deeds and the defendant is evading deliberately is denied. The plaintiff is a big Industrialist and he has his own lawyer and without consulting his lawyer, even he is not doing anything. The Plaintiff never approached this defendant or her husband or any other person, demanding the copy of the title deeds or for the execution of the sale deed. The defendant is residing at Trichy and his village address is Amburpatty Village, Kulathur Taluk, Pudukkottai District. The plaintiff is well aware of the same. However, he has deliberately sent the notice on



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1. Whether the plaintiff is entitled to the relief of specific performance ?
2. Whether the plaintiff was always ready and willing to perform his part of contract?
3. To what other relief, the plaintiff is entitled to?

6.Before the trial Court, on the side of the plaintiff, P.W.1 to P.W.3 were examined and Ex.A1to Ex.A11 were marked. On the side of the defendant, D.W.1 to D.W.4 were examined and Ex.B1 to Ex.B13 were marked. Further Ex.C1 and Ex.C2 were also marked.

7.Based on the evidence adduced on both sides, the trial Court dismissed the suit on the ground that the plaintiff has not established the readiness and willingness, besides he has also not sought for any declaration as the cancellation of the sale agreement by the defendant. Aggrieved over the same, the present appeal suit came to be filed by the unsuccessful plaintiff.

8.It is the contention of the learned counsel for the appellant that the sale agreement is a registered one and eight months time stipulated to complete the entire sale. It is specifically agreed between the parties to the agreement that the defendant shall furnish all the revenue records and title deeds to the satisfaction



of the plaintiff's lawyer within eight months period. However, the defendant has not provided those documents, as agreed. Hence it is his contention that though time was fixed in the sale agreement, the parties have never intended to make the time as the essence of the contract. The plaintiff has demanded the defendant to furnish the revenue records and title deeds and since those documents were not furnished, the plaintiff has no other option except to issue the legal notice, dated 6.10.2006. However the said legal notice was evaded by the defendant on the ground that she has gone to the work elsewhere. Thereafter the defendant has issued legal notice on 20.10.2006 stating that as if the appellant is not ready and willing to perform his part of contract and she is ready to return the advance amount to the appellant herein. The said notice was effectively replied by the appellant on 3.11.2006 denying all the allegations and rescinding the previous legal notice, dated 6.10.2006. The respondent also sent a rejoinder with cheque for a sum of Rs.2,01,000/- which has also been properly replied and sent back the cheque and the appellant has also issued publication in Dinathanthi on 14.1.2007 and in the English Daily Hindu on 25.2.2007 with regard to the sale agreement. Despite several efforts taken by the appellant, as the defendant has not come forward to furnish the documents as sought for by the Plaintiff, the Plaintiff had filed the suit for enforcing the contract. It is his



further contention that the trial Court has not appreciated the evidence and documents and had erroneously come to the conclusion that the plaintiff has not established the readiness and willingness. The plaintiff has established his readiness and willingness by issuing legal notice on 6.10.2006 and sale consideration also deposited before the trial Court on 14.11.2009. Therefore once the plaintiff has shown his readiness and willingness by depositing the balance sale consideration into the Court and when the sale agreement is admitted, the plaintiff is certainly entitled to the relief of specific performance. The defendant, in fact, has evaded notice issued by the plaintiff as early as on 6.10.2006. It is his further contention that though the remaining sale consideration has been deposited in the year 2009, that cannot be a ground to hold that the plaintiff is not ready and willing. It is his contention that readiness and willingness has to be assessed from the conduct of the parties. As reciprocal terms are not honoured by the respondent and as the suit is filed in time, it is very well maintainable as the plaintiff has already deposited the remaining sale consideration, is certainly entitled to the relief of specific performance.

9. In support of his submissions, he has also relied upon the judgment reported in **2011 (2) MWN(Civil) 819 in the case of**



**A.N.Arunachalam .vs. T.Sivaprakasam and another and
(2019) 8 SCC 62 in the case of R.Lakshmikanthan v.s.
Devaraji.**

10.It is the contention of the learned counsel for the respondent that the sale agreement, dated 19.8.2005. The time fixed for completion of sale is eight months. Whereas the legal notice was sent for the first time after the expiry of time, ie, on 6.10.2006 to the wrong address of the defendant to show that as if the plaintiff was ready and willing to perform his part of contract. It is his contention that the appellant as an Industrialist, he always consult with his lawyer. It is his specific case that the copies of the revenue documents had already been handed over to the appellant at the time of entering into the sale agreement. Therefore the question of again producing the documents to the satisfaction of the plaintiff's lawyer does not arise at all. The very contention of the plaintiff that the plaintiff is requesting the defendant on several occasions to furnish those documents cannot be countenanced. Even the plaintiff's evidence disprove the above contention. Whereas, the defendant has sent a legal notice on 20.10.2006 cancelling the contract which has been marked under Ex- A4, which has been replied by the plaintiff only on 3.11.2006. The defendant has also returned the amount by way of cheque



marked under Ex.A7 on 17.11.2006. It was also replied by the plaintiff marked under Ex.B1, dated 21.11.2006. Thereafter the plaintiff kept quiet and issued publication on 14.1.2007 under Ex.A9 and on 25.1.2007 under Ex.A10. In the meanwhile, the defendant has already filed caveat petition in the year 2006 itself ie., Ex.B6. Similar caveats also filed in Ex.B7 and Ex.B8 in the year 2007 and 16.6.2007. Thereafter the suit has been filed. Even at that time, no amount whatsoever was deposited by the appellant. The plaintiff was cross-examined on 22.10.2009, wherein, he has clearly admitted that he has not deposited the money into the Court. Thereafter, in the month of November 2009, he had deposited the amount into the Court to show as if he was ready and willing to perform his part of contract and the very conduct of the plaintiff clearly indicate that he was not ready and willing to perform his part of contract. Till the deposit of the remaining sale consideration into the trial Court in the year 2009, to show that he is ready and willing, no document whatsoever was filed to show his capacity to mobilize the funds. No bank accounts have been filed to show that he had ready money. Therefore his contention that the adjacent property, after the suit agreement, was sold for more than Rs.70 lakhs per acre. Therefore taking advantage of the escalation of the price, the plaintiff has created a cause of action alleging that he is ready and willing to perform his part of contract and



filed the suit. Hence his contention that the plaintiff is not entitled to the relief of specific performance.

11.In support of his contention,the learned counsel for the respondent placed reliance on the following decision.

1.AIR 2022 Supreme Court 3361 in the case of U.N.Krishnamoorthy(since deceased) through legal representatives .vs.A.M.Krishnamoorthy.

12.In the light of the above submissions, now the point that arose for consideration is:

1.Whether the plaintiff was always ready and willing to purchase the property from the inception of contract till the end?

2.Whether the trial Court is right in holding that without declaratory relief to declare the cancellation of the agreement by the defendant, suit is not maintainable, as agreed?

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

13.Admittedly, the suit agreement Ex.A1 executed by the



defendant namely the respondent herein for sale of suit property for a total sale consideration of Rs.16,22,400/- and received a sum of Rs.2 lakhs as advance amount. The execution of the sale agreement and the receipt of the advance amount is not in dispute. On a perusal of Ex.A1, it is agreed between the parties that sale shall be completed within a period of eight months and in the event of the parties refused to execute the sale, the party in default, is liable to pay a sum of Rs.1 lakhs to the other side. That apart, it is also agreed in the agreement that the defendant has to furnish all the revenue records and original title deeds for the satisfaction of the lawyer of the plaintiff. The recitals in the sale agreement makes it clear that though eight months time agreed to complete the sale, the subsequent recitals for payment of damages in the event of default within the agreed time and also the production of revenue records and the other documents to the satisfaction of the lawyer of the plaintiff makes it clear that the parties not made the time stipulated in the contract as an essence of contract. In the light of the above facts, now it has to be seen whether the plaintiff was ready and willing to perform his part of contract from the very inception of the sale agreement till the end.

14.It is now well-settled that ready and willingness of the parties to the contract can be ascertained from the conduct of both



he shown ignorance about the defendant residing at Trichy.

Similarly, P.W.2 and P.W.3 also has spoken about the fact that they have met the defendant on many occasions requesting to perform the part of contract. They have also feign ignorance about the defendant residing in Trichy. Be that as it may, the Court has to decide only on the basis of the pleadings and evidence. It is the specific pleading of the plaintiff that he has made frequent requests to the defendant to perform her part of contract. On a perusal of the entire cross examination of P.W.1, this Court is of the view that the contention of the plaintiff that he made frequent requests to the defendant ever-since the date of agreement, cannot be countenanced. His evidence itself indicates that the sale transaction has been finalized only with the husband of the defendant namely, D.W.1. Further he has also categorically admitted that after the date of contract namely, 19.8.2005, he never met the defendant. He has admitted in his cross examination dated 25.11.2009 that he has never met the defendant till the date of his examination after 19.8.2005. He has also admitted that he does not know where the Amburpatti Village situates and how to reach the said village. When the plaintiff has not even met the defendant from the date of contract till his cross-examination on 25.11.2009 and he does not even know where the village Amburpatti situates and does not know how to reach the said



village. His pleadings in the plaint that he has frequently requested the defendant to furnish the revenue documents, is highly improbable. Further the cross-examination also clearly show that on the date of sale agreement, he has verified the copy of the title deeds and he has also admitted that original title deeds only handed over at the time of registration of the sale deed. Therefore the plaintiff himself has verified the document , xerox copy of the title deeds at the time of contract, the question of again producing the original title deeds by the defendant, does not arise at all. However Ex.A2 issued for the first time on 6.10.2006. The specific allegation made is that since the defendant has not produced the original title deeds for perusal, the sale could not be completed. It is relevant to note that in Ex.A2 no-where it is mentioned that the defendant evaded to produce the revenue records. Ex.A2 speaks about the original title deeds. Therefore the contention that he has also waiting for the revenue records and that the sale could not be completed, is also improbable. It is further to be noted that the defendant has issued a notice cancelling the sale agreement on 20.10.2006, which is marked as Ex.A4 and Ex.B1. Even after receipt of such notice, after ascertaining the mind of the defendant that she has never intended for the execution of the sale deed, the Plaintiff has not taken any steps to immediately file the suit to enforce the contract. On the



other hand, he has sent a reply notice Ex.A5 and again a rejoinder Ex.A7 has been sent by the defendant, dated 17.11.2006 and once again the plaintiff has sent a reply on 21.11.2006. It is also relevant to note that immediately after reply notice Ex.A8, dated 21.11.2006, caveat petition is filed by the defendant on 23.11.2006 as against the plaintiff. From these documents, it is clearly established that the defendant in fact has expressed her mind not to go for the sale. Even then the plaintiff has not taken any steps to file the suit, on the contrary, he has chosen to give publications under Ex.A9 and Ex.A10, dated 14.1.2007 and 25.1.2007. Even thereafter, he has not filed the suit but the suit has been filed only on 27.8.2007. Though the deposit of the remaining sale consideration is not mandatory but such deposit by the plaintiff voluntarily is a relevant factor to assess the readiness and willingness. Admittedly, in this case, plaintiff while filing the suit on 27.8.2007, the plaintiff has not deposited the remaining sale consideration and till he was examined in chief on 8.10.2009 and he was cross-examined on 22.10.2009. Till such time, he has not made any attempt to pay the remaining sale consideration by way of deposit before the trial Court. Only after his cross-examination in part, he has deposited the amount in the month of November 2009. This fact clearly indicate that only after he confronted in the cross-examination on 22.10.2009 to get over the admission, the



amount has been deposited later. From the very conduct, from the inception despite the fact that the defendant has not shown readiness and willingness and taken a stand of cancelling the contract, the plaintiff has kept quiet from the year 2006 to till the date of deposit. It is relevant to note that even before the filing of the suit, to show that he was having sufficient capacity to raise the funds from the date of contract, no document whatsoever was filed by the plaintiff like Bank Passbook or the statement etc. A specific suggestion has also been put to the plaintiff that the adjacent land was purchased by one Inwell company and he is the very good friend of that company owner. He has not denied his friendship with the owner of the said company. He has admitted that he was the friend of the said Srinivas, owner of the Inwell company for more than 20 years. The said adjacent land is also purchased from the defendant. He has also admitted that the suit property was purchased only for the purpose of Inwell Company.

“மொத்த தொகை ரூ.16,22,600 ஆகும். ஆதில் முன் பணம் கொடுத்தது ரூ.2,00,000/- நான் கொடுத்துள்ள முன் பணம் மொத்த தொகையில் 12% தான். இந்த இடம் இன்வெல் கம்பெனிக்காகத்தான் வாங்கியது. இந்த வழக்கு ஒப்பந்த தேதியில் தான் இன்வெல் கம்பெனிக்கான இடம் இதே பிரதிவாதிகளிடம் இருந்து வாங்கப்பட்டது என்றால் அந்த விவரம்



எனக்குத் தெரியாது. இரண்டும் வழக்கு கிரய ஒப்பந்தமும் பிரதிவாதி இன்வெல் கம்பெனிக்கு கொடுத்த கிரயப்பத்திரமும் அடுத்து அடுத்து ஒரே தேதியில் சார்பதிவாளர் அலுவலகத்தில் பதிவானது என்றால் அதுபற்றி எனக்குத் தெரியாது.“

15.His close friend has purchased the adjacent property on the same day, which is not denied and the plaintiff has admitted that the said property also purchased for the purpose of that company. Be that as it may, no document whatsoever was filed to show that he had ready money or cash in his account, from the inception of the contract to establish the readiness and willingness. After reply notice, dated 20.10.2006, he never met the defendant or her husband and not even verified what is the market value of the property. He never made any attempt to consult the issue with the respondent. However he has also admitted that the suit has been filed after the period of 2 years from the date of agreement. He has not stated in the Chief-examination that with whom he had requested the defendant to perform his part of contract. Neither in the pleadings nor in the evidence, it is silent about the persons through whom he contacted, requesting the defendant to perform the part of contract, whereas, for the first time during the evidence, P.W.2 and P.W.3 were examined to show as if they also requested the defendant to perform her part of contract. P.W.2 was



defendant in her legal notice, dated 20.10.2006-Ex.A4. The immediate reaction of the plaintiff must have been to exhibit his readiness and willingness to rush to the Court by filing the suit, however the same has not been done so.

17.Despite various correspondence spanning from 20.10.2006 and caveat petition filed by the defendant in the year 2006-07, the suit has been filed very casually with much delay. From 20.10.2006, for the first time when the defendant disclosed her intention to avoid the execution of contract, if really the plaintiff was intended to enforce the contract and intended to purchase the property and he was ready and willing, his immediate reaction would be to file the suit for enforcing the contract, whereas, he has filed the suit only on 27.08.2007 with much delay. These facts cannot be ignored altogether in assessing the factum of readiness and willingness.

18.Readiness and willingness are the distinct acts. The readiness is the capacity to mobilize the funds in paying the remaining sale consideration. Willingness is the mental attitude to purchase the property. Only when these two acts go together, readiness and willingness could be established. In the absence of any one of the acts, the plaintiff merely on the basis of the



agreement cannot contend that he was always ready and willing to perform his part of contract. Admittedly, registered agreement was entered between the parties only after perusing the copy of the title deeds, as per the plaintiff's own evidence. Such being the position, if really he has the intention to complete the sale in time and he was ready and willing, he would have at least verified the encumbrance on his own to find out whether there is any encumbrance in the suit property. No such attempt whatsoever was made, particularly, when the very adjacent property was already sold to the close friend of the plaintiff by the defendant. Therefore without taking any steps in this regard, one cannot contend that he was always ready and willing to perform his part of contract.

19. When the defendant has disclosed her mind to repudiate the contract, still the plaintiff is keeping silent and filing the suit only in the year 2007 and thereafter, after his cross examination only in order to fill up the lacunae in his evidence, deposited the amount into the Court in the year 2009. These facts clearly indicate that the plaintiff was not ready and willing to perform his part of contract. The defendant has also established on record that on 8.1.2007, after the contract, the price of the properties has been escalated and in this regard, he has also filed Ex.B1. Therefore



when the price of the suit properties has increased day by day, the plaintiff taking advantage of the same and keeping silent without taking any steps to enforce the contract and now merely on the basis of the registered sale agreement, without establishing the readiness and willingness, is certainly not entitled to the relief of specific performance.

20.No doubt in the judgment in ***A.N.Arunachalam .vs. T.Sivaprakasam and another reported in 2011(1)MWN(Civil) 819***, this Court held as follows:

"12.....Therefore, as per Section 92 of the Indian Evidence Act, no one is permitted to let in evidence contra to a registered document. Hence the parties have to prove that the document in question, is in accordance with law. The burden is upon the respondents/defendants to prove that the document has been executed as "Bokkiam(usufructuary mortgage)."

21.Absolutely, there is no dispute with the preposition laid down in the above judgement. But the same cannot be applied mechanically and the readiness and willingness has to be assessed based on the facts of each and every case. In ***(2019) 8 SCC 62 in the case of R.Lakshmikanthan v.s. Devaraji***, has held that reciprocal promises has to be performed first. Mere delay cannot



be a ground for refusing the relief of specific performance, since statute prescribes period of limitation to file the suit. If the suit is in time, delay is sanctioned by law; if it is beyond the time, the suit will be dismissed, as barred by time and in either case, no question of equity arises.

22.The above judgment deals with the period of limitation to file the suit and reciprocal promises. This Court, as discussed above, from the very conduct, the plaintiff has not shown readiness and willingness from the beginning to the end. Therefore the judgments cited by the appellant will not be helpful to his case.

23.In ***AIR 2022 Supreme Court 3361(SC)*** cited supra, the Honourable Apex Court held that mere making subsequent deposit of balance sale consideration after a lapse of seven years would not establish his readiness to perform his part of contract. In this case also, if really the plaintiff is intended to purchase the property, immediately he was ready and willing from the date of contract and his immediate action would be to pay the balance sale consideration, the moment when the defendant discloses her mind to avoid the contract. But at every stage, the plaintiff was just indulging in sending notice and reply and he has not taken any effective steps to enforce the contract and approached the Court



within a reasonable time. Merely because limitation period is three years as per Section 54 of the Limitation Act to file a suit for specific performance, that period of limitation provided in the statute will not prove his readiness and willingness. Readiness and willingness has to be independently be established from the date of inception of the sale agreement, which has not been done so in this case. Accordingly Point No.1 is answered.

24.The trial Court finding that unless declaratory relief is sought for to cancel the sale agreement marked under Ex.A4, the suit is not maintainable, in view of this Court, is not correct. Unilateral cancellation is not valid in the eye of law. Such being the position, the finding of the trial Court that declaratory relief is necessary for seeking the relief of specific performance is not correct and accordingly Point No.2 is answered.

25.However, though no alternative relief for return of advance amount is sought for, considering the fact that reception of Rs.2,00,000/- received as advance and the same also retained by the respondent, the plaintiff/appellant is entitled to the alternative relief of return of advance amount with interest at the rate of 7.5% from the date of sale agreement till the date of realization within a period of two months from the date of



receipt of a copy of this judgment. The appellant is also entitled to withdraw the amount deposited in the Court towards the remaining sale consideration with accrued interest, if any.

26.In the result, the appeal suit is dismissed. The decree and judgment of the trial Court dismissing the suit for specific performance is confirmed. Alternatively, the suit is decreed for return of advance amount amount of Rs.2 lakhs with interest at the rate of 7.5% p.a from the date of sale agreement till the date of realization. The plaintiff is permitted to withdraw the remaining sale consideration deposited in the Court with accrued interest from the Court below, by filing necessary application. No costs.

22.06.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Additional District Judge,
Pudukkottai.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

vsn

JUDGMENT MADE IN
A.S(MD)No.7 of 2016

22.06.2023