



S.A(MD)No.886 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.886 of 2014

Subbaiah

...Appellant

-Vs-

1.Jai Singh

2.Kadar Maideen

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.20 of 2008 on the file of the Subordinate Judge, Pudukkottai, dated 24.04.2012 reversing the judgment and decree passed in O.S.No.65 of 2004, dated 27.02.2007 on the file of the District Munsif Court, Aranthangi.

For Appellant : Mr.K.Baalasundharam

For R1 : Mr.N.Balakrishnan

For R2 : No appearance



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JUDGMENT

The plaintiff in the suit is the appellant. The suit is for specific performance. The said suit was partly decreed for specific performance of first item of the suit properties alone and in respect of the second item, the respondents were directed to hand over the possession of the property without any decree for performance. Aggrieved by the same, the first respondent/second defendant filed an appeal in A.S.No.20 of 2008 on the file of the Sub Court, Pudukkottai and the said appeal was allowed. Hence, the appellant is before this Court.

2. According to the appellant/plaintiff, he entered into a sale agreement with the second respondent on 12.09.1997 under Ex.A.1. As per the terms of the said agreement, he agreed to purchase the second item of suit properties for a sale consideration of Rs.90,000/-. On the date of agreement itself, the appellant paid a sum of Rs.5,000/- as advance to the second respondent and the balance sale consideration Rs.85,000/- was agreed to be paid on or before three months from the date of agreement. It was also agreed that at the time of execution of sale agreement, the property shall be measured to find out the exact extent of the property covered by the agreement and in case of discrepancy in the extent, the



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sale consideration has to be proportionately adjusted. It was pleaded by the appellant that he was ready and willing to perform his part of the contract by paying balance sale consideration, but the second respondent evaded the receipt of balance sale consideration and consequently, he was constrained to issue a notice to the second respondent on 30.07.1999 expressing his willingness to pay the balance sale consideration of Rs.85,000/- and get a sale deed executed in his favour. The said notice was returned to the appellant with an endorsement 'unclaimed'. It was further pleaded that on enquiry, the appellant came to know that the second respondent sold the suit properties to the first respondent on 16.10.1998. Again, the appellant issued another notice to the respondents on 11.07.2000 calling upon the second respondent to act in accordance with the agreement and execute the sale deed. The second respondent issued a reply notice stating that the appellant failed to pay the entire sale consideration and get the sale deed executed within the time specified under the agreement and thereafter, the advance amount was paid back to the appellant and the suit agreement got cancelled. The first respondent herein in his reply claimed that he was a *bona fide* purchaser for value. Therefore, the appellant was constrained to file a suit for specific performance.



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3.The respondents herein filed a written statement, wherein they admitted the execution of sale agreement. However, it was pleaded that though the respondents were willing to act in accordance with the terms of the agreement, the appellant/plaintiff was not ready and willing to perform his part of the contract and get the sale deed executed within the time stipulated in the agreement.

4. It was pleaded by the second respondent in his written statement that the suit agreement was entered into to meet the medical expenses of his father and hence, the time of three months stipulated in the agreement was the essence of the contract. It was also claimed that the advance amount received by the second respondent was paid back to the appellant and the agreement got rescinded. The first respondent filed a separate written statement claiming himself as a *bona fide* purchaser for value.

5. The trial Court, on the basis of the evidence available on record, came to the conclusion that the second respondent failed to prove that he paid back the advance amount to the appellant and get the agreement rescinded. The trial Court also had given a factual finding that the first respondent had knowledge about the



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suit sale agreement and hence, the sale deed executed by the second respondent in favour of the first respondent was not valid. On these findings, the relief of specific performance was granted in favour of the appellant in respect of first item of the agreement mentioned properties. As far as the second item of agreement mentioned properties was concerned, the trial Court held that it was poramboke property and hence, the second respondent had no right to enter into an agreement. However, the trial Court granted a decree for possession in respect of second item of the properties by directing the respondents to hand over the possession to that effect. Aggrieved by the judgment and decree passed by the trial Court, the first respondent herein/second defendant filed a first appeal in A.S.No.20 of 2000 on the file of the Sub Court, Pudhukkottai. The learned First Appellate Judge on re-appreciation of evidence available on record, came to the conclusion that the appellant/plaintiff failed to prove that he was ready and willing to perform his part of the contract from the inception and hence, he was not entitled to decree for specific performance. Therefore, the judgment and decree passed by the trial Court was set aside by the Appellate Court and the suit was dismissed. Aggrieved by the same, the appellant has come by way of this second appeal.



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6. At the time of admission, the following substantial questions of law were formulated by this Court:

“a) Whether depositing of balance of consideration in a specific performance suit is essential to get a decree within the meaning of Section 16(c) of the Specific Relief Act, 1963 ?

b) Whether the financial capacity of the plaintiff and the averments in the plaint about the readiness and willingness to perform his part of the contract are enough to prove the fact that he has been ready and willing to perform the essential terms of the contract within the meaning of Section 16(c) of the Specific Relief Act, 1963?

c) When the case pleaded by the vendor is found to be false, whether it is a circumstances in favour of the purchaser in a specific performance suit or not?

d) When the subsequent purchaser has got knowledge about the prior agreement of sale, whether he is entitled to all benefits as a bonafide purchaser for value without notice of any defective title within the meaning of Section 40 of Transfer of Property Act, 1882?”

7. The learned counsel for the appellant elaborating the substantial questions of law submitted that in the present case, the contesting respondent



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admitted the execution of suit sale agreement, but, however pleaded that the suit sale agreement was cancelled and advance amount was repaid to the appellant. Both the Courts below have given a factual finding that the respondents failed to prove the repayment of advance amount to the appellant. When the main defence pleaded by the respondents is disbelieved, the Lower Appellate Court ought not to have disturbed the findings of the trial Court with regard to the main relief of specific performance. As far as the readiness and willingness is concerned, it was argued by the learned counsel for the appellant that there was a recital in the suit sale agreement that before execution of sale deed, the properties covered by the agreement shall be measured and in case of deficit in the extent, the sale consideration shall be proportionately reduced, but however, the second respondent had not taken any steps for measuring suit properties and that resulted in delay in approaching the Court.

8. The learned counsel for the respondents tried to sustain the judgment passed by the Lower Appellate Court on the ground that in a suit for specific performance, it is incumbent on the plaintiff to prove that he has been ready and willing to perform his part of the contract from the inception of the agreement till



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the date of filing of the suit. In the case on hand, though the appellant pleaded readiness and willingness in his plaint, absolutely there is no evidence available on record to support the said plea. Therefore, the First Appellate Court was justified in rendering the factual findings that the appellant failed to prove the readiness and willingness.

9. Heard the arguments of the learned counsel for the appellant and the learned counsel for the first respondent. Perused the records and typed set of papers.

10. It is seen from the records that the suit sale agreement was dated 12.09.1997. The agreed sale consideration was fixed at Rs.90,000/- and the appellant agreed to pay the balance sale consideration of Rs.85,000/- within a period of three months and get the sale deed executed. Though the time stipulated in the suit sale agreement was only three months, the first notice issued by the appellant/plaintiff under Ex.A.2 is dated 30.07.1999. There is no explanation on the part of the appellant/plaintiff why there was a delay of more than 1 ½ years in issuing the first notice calling upon the second respondent to



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execute the sale deed. Further, even after issuance of first notice under Ex.A.2, the plaintiff has not approached the Court immediately and he waited for one year and issued a second notice under Ex.A.4 on 11.07.2000. Only thereafter, the suit was filed on 11.09.2000. Therefore, the appellant/plaintiff has not let in any evidence to prove why he waited from December 1997 to September 2000 for filing the suit. It is settled law that in a suit for specific performance, the plaintiff has to prove his readiness and willingness to perform his part of the contract from the inception of the agreement till the date of filing of the suit. In the case on hand, except the interested testimony of the plaintiff, there is no other acceptable evidence available on record to prove the readiness and willingness of the plaintiff. Hence, I agree with the findings rendered by the First Appellate Court that the appellant/plaintiff failed to prove the readiness and willingness and consequently, he was not entitled to decree for specific performance.

11. In view of the discussions made earlier, the questions of law raised at the time of admission are answered against the appellant. Consequently, the Second Appeal fails.



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12. The learned counsel for the appellant submitted that though on the question of readiness and willingness, the prayer for specific performance was negatived by the Lower Appellate Court, there is a factual finding by the First Appellate Court that the second respondent failed to prove the plea raised by him as if the advance amount was returned to the appellant. In that case, the appellant is entitled to decree for recovery of advance amount.

13. The learned counsel for the first respondent has no serious objection for granting a decree for return of the advance amount. Though the appellant/plaintiff has not made a specific prayer for return of advance amount, this Court, in exercise of its inherent power, grants a decree for return of advance amount, especially, when there is no serious objection on the part of the first respondent. Therefore, there shall be a decree for return of advance amount of Rs.5,000/- with interest at the rate of 6% p.a., from the date of plaint till the date of realization of the amount against the second respondent.

14. In nutshell,

(a) this Second Appeal stands dismissed, by confirming the judgment



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and decree passed in A.S.No.20 of 2008 on the file of the learned Subordinate Judge, Pudukkottai, dated 24.04.2012 with a modification herein after mentioned;

(b) the appellant / plaintiff is entitled to a decree for recovery of advance amount of Rs.5,000/- from the second respondent with interest at the rate of 6% p.a., from the date of plaint to the date of realization; and

(c) In the facts and circumstances of the case, there would be no order as to costs.

23.12.2022

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
cp

To

- 1.The Subordinate Judge,
Pudukkottai.
- 2.The District Munsif, Aranthangi.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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S.SOUNTHAR, J.

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