



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 14.03.2022
Delivered On : 07.06.2022

WEB COPY

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THE HONOURABLE MRS. JUSTICE R. THARANI

S.A. (MD)No.570 of 2015

G.Selvi ... Appellant / Appellant / Defendant

Vs.

R.Balasundararaj ... Respondent / Respondent / Plaintiff

Prayer : This Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 18.03.2014 made in A.S.No.24 of 2012 on the file of the Additional District and Sessions Court, Dindigul by confirming the judgment and decree dated 12.11.2011 made in O.S.No.180 of 2009 on the file of the Additional Sub Court, Dindigul.

For Appellant : Mr.S.Jawahar
For Respondent : Mr.S.venkatesh

JUDGMENT

This appeal is filed against the judgment and decree in A.S.No.24 of 2012 on the file of the Additional District and Sessions Court, Dindigul by confirming the judgment and decree in O.S.No.180 of 2009 on the file of the Additional Sub Court, Dindigul.

2. The appellant herein is the defendant. The respondent is the plaintiff in the original suit. The respondent herein has filed a suit for a prayer of specific performance with an alternative prayer to refund the advance amount with interest.

3. Brief substance of the plaint in O.S.No.180 of 2009 is as follows:-

The suit property belonged to the defendant. He purchased the property on 15.06.2004 through a registered sale deed. The defendant agreed to sell the property for a sale consideration of Rs.1,50,000/- and he received a sum of Rs.1,00,000/- as advance and executed the sale agreement on 26.12.2007. The balance was agreed to be paid within a period of one year. On the date of agreement itself, the defendant handed over the original title deed. The plaintiff was ready to pay the balance amount of Rs.50,000/- and he approached the defendant in person and through others. But the



defendant has not come forward to execute the sale deed. The plaintiff sent a notice on 20.12.2008 and the same was returned. Again on 02.01.2009, the plaintiff sent another notice. On 06.01.2009, the defendant received the notice. He sent a reply notice with false particulars. The plaintiff has filed a lodgment schedule for deposit of Rs.50,000/-/. The suit is filed for specific performance. If the remedy is not granted to the plaintiff, an alternative prayer for refund of advance amount with interest has to be granted to the plaintiff.

4. Brief substance of the written statement filed by the defendant in O.S.No.180 of 2009 is as follows:-

The suit property belonged to the defendant. The value of the property is much higher than Rs.1,50,000/- as per the guideline value prevailing on 26.12.2007. The defendant and her husband approached the plaintiff on 26.12.2007 to borrow Rs.1,00,000/-. The plaintiff asked to execute a mortgage deed. But without registering a mortgage deed, fraudulently, the plaintiff colluded with the witness Perumal and scribe Veerappanaidu has created the sale agreement. Instead of Rs.1,00,000/-, the plaintiff gave only Rs.90,000/- after deducting Rs.10,000/- towards interest for a period of three months. He has deducted another Rs.1,000/- as fees for the scribe and Rs.3,000/- was deducted for commission to witness Perumal. After the completion of three months, the defendant was paying Rs.3,000/- per month towards interest. The plaintiff sent a lawyer notice. The defendant is ready to repay the loan amount with statutory interest from the date of plaint after deducting the amount already paid towards interest. The value of the property is Rs.5,00,000/-. The suit is to be dismissed.

5. On the above pleadings, the trial court framed the following issues:-

1. Whether the defendant borrowed a sum of Rs.1,00,000/- from the plaintiff? Whether the amount is not received as an advance amount as stated by the plaintiff?

2. Whether the defendant paid a sum of Rs.3,000/- per month as interest?

3. Whether the plaintiff is entitled for the relief of specific performance?

4. Whether the plaintiff is entitled for the alternative relief of refund of Rs.1,00,000/- with 24% interest?

5. What are the other reliefs available to the plaintiff?

6. Two witnesses were examined and six documents were marked on the side of the plaintiff. One witness was examined and no document was marked on the side of the defendant. After considering both sides, a preliminary decree was passed by the trial Court in



O.S.No.180 of 2009, dated 12.11.2011.

7. Against the judgment and decree, the defendant filed an appeal in A.S.No.24 of 2012 on the file of the Additional District and Sessions Court, Dindigul on the following grounds:-

The trial Court failed to consider the oral and documentary evidence in the proper perspective. The plaintiff has admitted that on 26.12.2007, the defendant and her husband demanded a loan of Rs.1,00,000/-. But the trial court failed to consider that it is only a loan transaction. The trial court failed to consider that the plaintiff has sought for an alternative prayer for refund of Rs.1,00,000/-. The document was not executed with a motive to create a sale agreement. The defendant is an uneducated lady. The document was not read over to her. The suit is time barred. The defendant handed over the title deeds only with the motive to create a mortgage. The plaintiff failed to prove that he is ready and willing to perform his part of the contract.

8. The first Appellate Court framed the following issue:-
"Whether the appeal is to be allowed?"

The appeal was dismissed by the first Appellate Court.

9. Against the dismissal of the appeal, the defendant approached this Court by way of second appeal on the following grounds:-

Both the courts below failed to appreciate the factual and legal position. Both the courts below failed to see the intention of the parties in executing Ex.A1 and failed to consider that the real intention is only to create a mortgage. Ex.A1 was not a sale agreement. It was a document executed for a loan transaction. The independent attester was not examined. Ex.A1 was not properly proved. There is no necessity to fix one year for payment of the balance 1/3rd of the sale consideration. Ex.A2 was send to the wrong address. Readiness and willingness was not expressed in Ex.A4 which was issued beyond the agreement period.

10. The second appeal was admitted on 02.12.2019 on the following substantial questions of law:-

1. *Whether the courts below were correct in disposing of the suit for specific performance, without deciding the issue as to whether the plaintiff is always ready and willing to perform his part of the contract, which is a mandatory requirement under Section 16(C) of the Specific Relief Act?*

2. *Whether the lower Appellate Court was right in not framing the points for determination under Order 41 Rule 31 of C.P.C and analysing the evidence independently?*



Issue No:-1

11. On the side of the appellant, it is stated that the trial Court failed to frame an issue whether the plaintiff was ready and willing to perform his part of the contract. The property is a house at Dindigul and that no step was taken by the plaintiff to pay the balance amount and to execute the sale deed and that no issue was framed by the trial court as to the genuineness of the agreement and that the trial Court has also failed to frame an issue regarding the subject matter of the suit.

12. On the side of the appellant, it is stated that the appellant borrowed a sum of Rs.1,00,000/- from the plaintiff and handed over the title deeds and that in the guise of registering a mortgage deed, the plaintiff created a registered sale agreement and that P.W.1-Balasundararaj has admitted that the value of the property is Rs.5,00,000/- and that he has also admitted that the defendant and her husband came to the house of the plaintiff with a request for a loan.

13. On the side of the appellant, it is stated that readiness and willingness ought to have been proved by the plaintiff. A Judgment of this Court reported in 2013 (3) MWN (Civil) 71 (V.S.Alamelu Vs. Thavamani and others) is cited.

14. On the side of the appellant, it is stated that Readiness and willingness has to be determined from the facts and circumstances of the particular case. Section 16(c) of the Specific Relief Act, 1963, mandates readiness and willingness on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. In a suit for specific performance, the plaintiff must prove his continuous readiness and willingness to perform his part of the contract i.e., from the date of the contract and the onus is on the plaintiff and that even in the absence of specific plea by the opposite party, the Court is bound to consider the readiness and willingness and to dismiss the suit when there is non-compliance of Section 16(c) of the Specific Relief Act, 1963.

15. On the side of the appellant, it is stated that the first legal notice was send only to a wrong address and that P.W.1 has admitted that he did not know the address of the defendant and that to fill up the lacuna in this case, the plaintiff sent the earlier notice to some other address. Only after a lapse of one year, the second notice was send to the correct address. After six months, the suit was filed. Under Section 16(C) of the Specific Performance Act, the plaintiff is bound to prove his readiness and willingness and to prove the contract.

16. A judgment of this Court reported in 2013 (3) MWN
<https://hcservices.ecourts.gov.in/hcservices/>



(Civil) 110 (Arumugam Vs. Shunmugam Pillai) is cited wherein it is stated as follows:-

"23. The Hon'ble Apex Court has repeatedly held that in a suit for specific performance, the concerned plaintiff has to aver and prove his readiness and willingness from the date of execution of sale agreement as per the statutory provisions mentioned in Section 16(c) of the Specific Relief Act, 1963 and further, the Hon'ble Apex Court has observed that simply because a suit for specific performance has been instituted within the period of limitation, discretionary relief of specific performance cannot be granted, unless the concerned plaintiff has averred and proved his readiness and willingness to perform his part of the contract from the date of execution of sale agreement.

24.

Therefore, it is quite clear that in the instance case, the plaintiff has virtually failed to aver and prove his readiness and willingness to perform his part of the contract from the date of execution of Ex.A1. Since the plaintiff has failed to discharge his statutory obligation enshrined in Section 16(c) of the Specific Relief Act, 1963, it is needless to say that the plaintiff is not entitled to get the discretionary relief of specific performance. "

17. Another Judgment of this Court reported in **2019 (2) MWN (Civil) 546 (K.L.Damodaran Vs. Venkatappa Naidu)** is cited wherein it is stated as follows:-

"20. The second question is regarding the readiness and willingness of the plaintiff. It is a settled position of law that the plaintiff in the suit for specific performance has to be always ready and willing to perform his part of the contract. The Hon'ble Supreme Court had time and again reiterated that the readiness and willingness should be right from the date of the contract till the date of execution of the sale. In Saradamani Kandappan Vs. S.Rajalakshmi 2011 (4) CTC 640 (SC), the Hon'ble Supreme Court had held that a suit for specific performance need not be decreed merely because it is filed within the period or within the period fixed under law. "

18. A Judgment of this Court reported in **2019 (3) MWN (Civil) 374 (R.Gnana Arulmoni Vs. R.S.Maharajan)** is cited wherein it is stated as follows:-

"10. Hence, consistently this Court and the Hon'ble Supreme Court has repeatedly held that the plaintiff, who has not pleaded and proved readiness and willingness, is not entitled to the relief of specific performance.



Even though this Court found there are other reasons for denying specific relief to the plaintiff, the core fact that the plaintiff was not ready to perform his part of the contract in terms of the agreement, when the suit was filed is established on the admitted facts. Hence, the plaintiff is not entitled to the relief. "

19. A Judgment of this Court reported in **2019 (3) T.N.C.J 42 (S.Logammal Vs. P.Subbulakshmi)** is cited wherein it is stated as follows:-

"Now it is well settled principle that the relief of specific performance is nothing, but discretionary relief. Even though there was a pleading available in the plaint filed by the plaintiff in respect to the readiness and willingness, being the plaintiff has to prove the case through the relevant evidence as he is always ready to pay the balance sale consideration and is willing to execute a sale deed. "

20. Another Judgment of this Court reported in **2020 SAR (Civ) 23 (Ravi Setia Vs. Madan Lal & others.)** is cited wherein it is stated as follows :-

" 10.

To our mind, this is sufficient evidence of the incapacity or lack of readiness and willingness on the part of the plaintiff to perform his obligations. Undoubtedly, the time for deposit could be extended under Section 28 of the Act. But the mere extension of time for deposit does not absolve the plaintiff of his obligation to demonstrate readiness and willingness coupled with special circumstances beyond his control to seek such extension. "

21. A Judgment of the Hon'ble Supreme Court reported in **2022 SAR (Civ) 349 (Shenbagam Vs. K.K.Rathinavel)** is cited, wherein it is stated as follows:- "25.

The foundation of a suit for specific performance lies in ascertaining whether the plaintiff has come to the court with clean hands and has through his conduct, demonstrated that he has always been willing to perform the contract. There is a conspicuous absence in judgment of the trial court of any reference to evidence led by the respondent in indicate his willingness to perform the contract. The trial court merely adverted to "document produced on behalf of the plaintiff" and concluded that he had sufficient means to purchase the suit property. Apart from this observation, the judgment fails to analyse the terms of the agreement, the obligations of the parties and the conduct of the respondent or the appellant."



22. On the side of the respondent / plaintiff, it is stated that the readiness and willingness of the plaintiff was not at all questioned by the defendant in her written statement. In the written statement, the defendant questioned only the nature of the document and claimed that the document was executed in the guise of a mortgage. The plaintiff has already paid a sum of Rs.1,00,000/- as advance and the receipt was admitted by the defendant. The plaintiff was always ready to pay the balance of Rs.50,000/-. The plaintiff / respondent has sent two notices, wherein, he has mentioned that he is ready and willing to perform his part of the contract. Copy of the notices were marked Ex.A2 and Ex.A4. Ex.A5 were the acknowledgment cards. Ex.A6 was the reply notice sent by the defendant.

23. On the side of the respondent, a judgment of this Court reported in **2010-5-MLJ-899 (D.Ananda Moorthy Vs.P.Chandrakala)** is cited, wherein, it is stated as follows:-

"34. The suit sale agreement Ex.A1 has come into existence on 25.06.1997 wherein the period of part performance on the part of either party has been fixed as two years. The averments made in the plaint are that despite of repeated demands made by the plaintiff, the defendant has not come forward to execute a sale deed in her favour and ultimately Ex.A3, the notice dated 29.05.2000 has been given to the defendant and the defendant has given a false reply notice dated 21.06.2000. The husband of the plaintiff who has been examined as P.W.1 has given evidence satisfactorily to the effect that the plaintiff is always ready and willing to perform her part of the contract. It is not the contention of the defendant that the plaintiff is not in a position to give balance of sale consideration of Rs.20,000/-. Therefore, it is quite clear that on the side of the plaintiffs, readiness and willingness have been clearly pleaded and also proved. Considering the fact that the readiness and willingness have been clearly pleaded and proved on the side of the plaintiff, it is needless to say that the entire effort taken by the counsel appearing for the appellant / defendant has become inert.

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44. In many places, it has been discussed and ultimately found that Ex.A1 is a sale agreement and in pursuance of Ex.A1, the plaintiff has shown her readiness and willingness always and therefore, the plaintiff is entitled to get the relief of specific performance.

24. On the side of the respondent, it is stated that if the motive is to execute only a mortgage deed, there is no necessity to register the document at all. It is further stated that no document was filed on the side of the defendant to prove that the document



was only meant to be a mortgage deed and that as the document is a registered one, it is the duty of the defendant to prove that the document is not genuine, especially when the signature was not at all denied by the plaintiff.

25. From the records, it is clear that the appellant did not deny the signature in the document dated 26.12.2007. The husband of the defendant has signed in Ex.A1 as a witness. When the signature in a registered document is admitted, a person, who signed the document is bound by the recital in the document. Hence, it is decided that the sale agreement is genuine.

26. Notices were sent on the side of the plaintiff mentioning that the plaintiff was ready and willing to perform his part of the contract. Already 2/3 of the sale consideration was paid as advance. The defendant failed to question the readiness and willingness of the plaintiff in her written statement. Hence, framing an issue regarding the readiness of the plaintiff is not necessary. Hence, this question raised by the appellant is not sustainable.

Issue No.2:

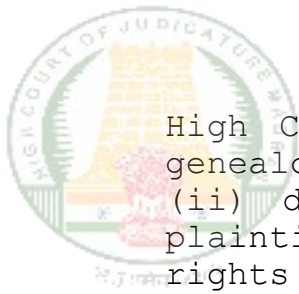
27. On the side of the appellant, it is stated that the lower appellate court is wrong in not framing points for determination under Order 41 Rule 31 of C.P.C and that the first appellate court failed to analyze the evidence independently.

28. On the side of the appellant, it is further stated that under Order 41 Rule 31 of C.P.C., the first appellate Court is bound to frame points for determination. A Judgment of the Hon'ble Supreme Court reported in **(2015) 1 Supreme Court Cases 291 (Vinod Kumar Vs. Gangadhar)** is cited, wherein it is stated as follows:-

"19. Being the first appellate Court, it was the duty of the High Court to have decided the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 of CPC mentioned above. It was unfortunately not done, thereby, resulting in causing prejudice to the appellant whose valuable right to prosecute in the first appeal on facts and law was adversely affected which, in turn, deprived him of a hearing in the appeal in accordance with law. It is for this reason. We are unable to uphold the impugned judgment of the High Court."

29. Another Judgment of the Hon'ble Supreme Court reported in **(2017) 2 SCC 415 (Laliteshwar Prasad Singh and others Vs. S.P.Srivastava (dead) through legal representatives)** is cited, wherein it is stated as follows:-

"15. In the light of the above, when we consider the present case, we find that in terms of Order 41 Rule 31 CPC, the High Court neither has framed the points for determination nor discussed the evidence adduced by the defendants. The



High Court seemed to have only considered two aspects: (I) genealogical table produced by the first respondent-plaintiff (ii) documentary evidence adduced by the first respondent-plaintiff, that is Ex.13 series -entry in survey record of rights and rent receipts (Exts.1/J and 1/K to 1/M) filed by the first respondent-plaintiff. The documentary evidence adduced by the first respondent-plaintiff has been refuted by the second respondent-defendant. That apart, the second respondent-defendant mainly relied upon the following evidence of the first respondent-plaintiff."

30. On the side of the appellant, it is stated that the trial court has framed five issues and the first appellate court failed to frame issues to be decided. Though no separate issues are framed, the first appellate court has discussed all the points for consideration in the judgment. The first appellate Court framed only one issue whether the appeal is to be allowed. But while discussing the single issue, the first appellate court has discussed all the possible issues in detail. In view of the fact that the first appellate court has discussed all the possible issues, the questions raised by the appellant are not sustainable.

31. On the side of the respondent, it is stated that already final decree was passed and the trial Court has executed a sale deed in favour of the plaintiff.

32. In the above circumstances, the second appeal is dismissed confirming the judgment and decree dated 18.03.2014 made in A.S.No.24 of 2012 on the file of the Additional District and Sessions Court, Dindigul by confirming the judgment and decree dated 12.11.2011 made in O.S.No.180 of 2009 on the file of the Additional Sub Court, Dindigul. No costs.

Sd/-

Assistant Registrar(CS-II)

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/07/2022

Sub Assistant Registrar(CS)

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To

1.The Additional District and Sessions Court,
Dindigul.

2.The Additional Sub Court,
Dindigul.



3.The V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.SIVAJI, Advocate (SR-24373[F] dated 07/06/2022)

+1 CC to M/s.S.JAWAHAR, Advocate (SR-24700[F] dated 09/06/2022)

S.A. (MD) No.570 of 2015
07.06.2022

DKS (CO)
KB(07.07.2022) 10P 7C