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A.S.No.870 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:01.03.2023

Delivered on: 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

A.S.No.870 of 2008

Elango

.. Appellant/1st defendant

Vs.

1.K.Kamalaveni(died)

2.P.Subramanigounder (died)

3.P.Arumugam

4.K.M.Palanisamy

5.P.Sengottuvelu

6.M.Gurusamygounder

7.K.G.Somasundaram

8.E.Aswin

9.Umayavalli



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10.P.S.Moorthy

11.Uthami

12.Vijayakumar

13.Kavitha

14.M.Ramesh Kumar

15.S.Pappyammal

16.S.Kuppusamy

17.Minor K.K.Jagadeesh

R10 to 13 brought on record as
LR's of the deceased 2nd respondent
vide order of Court dated 02.01.2020 made
in C.M.P.No.27022/2019
in A.S.No.870 of 2008

R14 impleaded as proposed respondent
vide order of Court dated 25.02.2020
made in C.M.P.No.1954 of 2020
in A.S.No.870 of 2008

R15 brought on record LR's of the deceased
2nd respondent viz., P.Subrmanigounder
vide court order dated 22.04.2022 made in
C.M.P.No.12557/2021 in A.S.No.870 of 2008

R16 and 17 brought on record LR's of the deceased
1st respondent viz., K.Kamalaveni vide court
order dated 22.04.2022 made in
C.M.P.No.12544/2021
in A.S.No.870 of 2008

.. Plaintiffs/Respondents



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Prayer:- Appeal Suit filed under Section 96 of Code of Civil Procedure against the judgment and decree dated 30.06.2008 made in O.S.No.172 of 2007 on the file of the First Additional District Court, Erode.

For Appellant : Mr.N.R.Elango, Senior Counsel
for
Mr.G.R.Deepak

For Respondents : Mrs.AL.Ganthimathi, Senior Counsel
for R3 to 7& 10 to 16

Mr.GRM.Palaniappan for R8 & 9

R17-Minor rep by R16

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The above first appeal has been preferred by the unsuccessful first defendant in a suit for specific performance, challenging the judgment and decree passed in O.S.No.172 of 2007 on the file of the I Additional District Judge, Erode. The array of parties before the Trial Court is being adopted for the sake of convenience.

2. Brief facts of the plaint in O.S.No.172 of 2007 are as hereunder:

The plaintiffs entered into an unregistered agreement of sale on



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15.09.2004 to purchase agricultural lands measuring about 3 acres and 63½ cents situated at Perundurai Village and Taluk, from the defendants who are father and son. The total sale consideration agreed to between the parties under the said sale agreement dated 15.09.2004 was Rs.27,823/- per cent and an advance of Rs.11,00,000/- was paid by the plaintiffs. The 1st defendant entered into an agreement of sale as Kartha of the Hindu Undivided family, for himself and also on behalf of his then minor son i.e the 2nd defendant. The parties had categorically admitted to complete the transaction by the end of Tamil month “ஐப்பசி” i.e., on or before 15.11.2004. In other words, a time period of two months was fixed for concluding the sale transaction. It was also agreed under the said agreement that the 1st defendant had to take steps for conversion of the guideline value from house site to agricultural land at his cost. It was also agreed that till such conversion of guideline value, the agreement would be in force. The plaintiffs came to know that guideline was converted into agricultural/acre value basis and they requested the 1st defendant to come forward to execute the sale deed stating that the plaintiffs were continuously ready and willing to perform their part of contract by paying the balance sale consideration and get the sale deed registered at their



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costs. The plaintiffs caused a legal notice dated 10.04.2007 calling upon the defendants to receive the balance sale consideration and execute the sale deed. The 1st defendant sent a reply notice dated 17.04.2007 to which the plaintiffs sent a rejoinder notice dated 30.04.2007 enclosing a copy of the sale agreement in view of the denial of the very agreement itself by the 1st defendant in his reply notice dated 17.04.2007. There upon, the 1st defendant sent a notice on 05.05.2007 with false and vexatious allegations. Under such circumstances, the plaintiffs approached the Court with a suit for specific performance with an alternate relief seeking refund of a sum of Rs.14,54,567/- together with interest at 12% per annum.

The written statements filed by the defendants in brief:

3. The 1st and 2nd defendant filed independent written statements. The 1st defendant denied that he had entered into the suit sale agreement on 15.09.2004 and contended that suit properties were ancestral properties and therefore the 1st defendant has no *locus* to sell the same to the plaintiffs. The truth and genuineness of the sale agreement dated 15.09.2004 was disputed and the 1st defendant also stated that prevailing property prices were much higher and therefore the 1st defendant would not



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have agreed to sell the suit properties at Rs.27,823/- per cent. The 1st defendant further stated that he had no intention to sell the properties and sought for dismissal of the suit.

4. The 2nd defendant filed an independent written statement and attacked the maintainability of the suit on the ground that the 1st defendant had not obtained any permission for alienation of his share and that the suit agreement would not even bind the 2nd defendant. The father of the 2nd defendant never agreed to sell the suit properties and the plaintiffs have fraudulently created the suit agreement.

5. In pursuance of an interlocutory application, I.A.No.998 of 2007, by an order dated 16.11.2007, the 3rd defendant viz., the wife of the 1st defendant and mother of the 2nd defendant was impleaded as 3rd defendant in the suit. The 2nd defendant also contended that along with the 3rd defendant, he had filed a suit for partition and separate possession besides maintenance. The 3rd defendant filed an independent written statement putting forth her contentions that she had filed a suit in O.S.No.149 of 2005 since the 1st defendant, her husband did not maintain the family and



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that she had also obtained a decree in her favour in O.S.No.149 of 2005 and sought for dismissal of the suit for specific performance.

6. Reply statement filed by the plaintiffs in brief:

The plaintiffs contended that the 1st defendant was estopped from questioning the validity of the agreement and that the suits referred to by defendants 2 and 3 were collusive actions. The suit agreement would bind the 2nd and 3rd defendants and hence prayed that the suit has to be decreed as prayed for.

7. Thereafter, the 1st defendant filed an additional written statement, summary of which is briefly set out hereunder:

The 1st defendant alleged that the plaintiffs are not agriculturists but money lenders and that only in respect of a loan raised by the 1st defendant from the plaintiffs on 16.09.2004, the plaintiffs have taken the agreement as security without actual transfer of possession. He would also contend that the plaintiffs have not approached the Court with clean hands and the 1st defendant reiterated his prayer for dismissal of the suit.



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8. To this additional written statement, the plaintiffs were permitted to file a further reply statement, brief summary of which runs thus:

The allegation that the plaintiffs were money lenders and that the plaintiffs have taken the sale deed only in the name of security was denied and ultimately prayed that the plaintiffs were entitled to the relief of specific performance.

9. The Trial Court framed the following issues:

- 1. Whether the suit property does not exclusively belong to the 1st defendant?*
- 2. Whether the suit agreement is a fabricated document?*
- 3. Whether the suit agreement will not bind the second defendant?*
- 4. Whether a partition decree has been passed relating the schedule properties and the same will bind the plaintiff?*
- 5. Whether the plaintiff is entitled for a decree as prayed for?*



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6. To what other reliefs, the plaintiff is entitled to?

10. On the side of the plaintiffs, three witnesses were examined viz., the 7th plaintiff and two witnesses viz., S.Deivasigamani and Sankara Naryanan and Exs.A1 to A34 were marked on the side of the plaintiffs. On the side of the defendants, the 1st defendant and 2nd defendants were examined as D.W.1 and D.W.2 and Exs.B1 to B3 were marked on their side.

11. The Trial Court after considering the oral and documentary evidence on record, found that the plaintiffs were entitled to the relief of specific performance and decreed the suit. Aggrieved by the said judgment and decree passed by the Trial Court the 1st defendant has come before this Court by way of First Appeal, challenging the findings of the Trial Court on the following grounds amongst other grounds:

1. The Trial Court has failed to see that the plaintiffs having not approached the Court with clean hands was not entitled to the equitable relief of specific performance;



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2. The Trial Court ought not to have decreed the suit, when the interest of a minor is involved;

3. The Trial Court ought not to have compared signatures of the 1st defendant to come to a conclusion;

4. Suit is bad for misjoinder, since seven plaintiffs not having common interest have come together;

5. The suit itself was filed on the verge of expiry of period of limitation and therefore, it clearly establishes that the plaintiffs were never ready and willing to perform their part of contract;

6. The plaintiffs were not entitled to discretionary relief having regard to Sec. 20 of the Specific Relief Act, 1963(in short 'Act')

12. This Court has heard Mr.N.R.Elango, learned Senior counsel appearing for Mr.G.R.Deepak, for the appellant/1st defendant and Mrs.AL.Gandhimathi, learned Senior Counsel appearing for the respondents R3 to 7& 10 to 16 and Mr.GRM.Palaniappan for the respondents 8 and 9.



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13. Having regard to the submissions made by the respective Senior counsels, this Court formulates the following points to be determined in this First Appeal:

“ A) Whether the suit agreement dated 15.11.2004 is only a sale agreement or whether it was executed only as a security for loan transaction;

B) Whether the plaintiffs have been ready and willing to perform their part of the contract;

C) Whether the plaintiffs are entitled to equitable discretionary relief of specific performance.”

D) In the event of the plaintiffs not being entitled to a decree of specific performance, would they be entitled to atleast the alternate relief for refund of advance.

14. Before proceeding to deal with the four key points to be



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determined in this Appeal, this Court is rather surprised to note that the Trial Court has not even framed an issue as to whether the plaintiffs were ready and willing in terms of Sec.16 of the Act. In a suit for specific performance, it is fundamental for a Court to decide the issue of 'readiness and willingness'. Unfortunately, the Trial Court has not even adverted to this issue and has proceeded to decide the suit framing other issues which are actually only subsidiary or secondary issues that will have to be determined in a suit for specific performance.

15. Answering point A, this Court has perused the suit sale agreement dated 15.09.2004. The 1st defendant has not denied execution of the said agreement. Infact, in the written statement originally filed by the 1st defendant, though the 1st defendant has denied the very agreement, from the oral evidence it is seen that one of the witnesses to the suit sale agreement dated 15.09.2004, one Mr.Deivasigamani has been examined as P.W.2 The oral testimony of P.W.2 appears to be very natural and this Court is able to see that P.W.2 has spoken about the manner in which the suit sale agreement came to executed between the plaintiffs on one side and the 1st defendant for himself and on behalf of his minor son the 2nd



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defendant, on the other side.

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16. The Trial Court has also rightly taken note of the evidence of the 1st defendant admitting to the fact that he had signed in stamp papers and that he had availed a loan of Rs.15,00,000/- from the plaintiffs. Noticing that such new pleas were for the first time placed before the Court by way of oral evidence, the Trial Court rightly found that the suit sale agreement dated 15.09.2004 was a true and valid document and not fabricated as alleged by the defendants. This Court does not find any valid reasons or justification for interfering with the well considered finding of the Trial Court in this regard. Question A is answered accordingly.

17. Coming to point B, in a suit for specific performance, it is now very well settled position of law that a plaintiff approaching the Court seeking specific performance of an agreement of sale is bound to plead and prove that he was always ready and willing to perform the essential terms of the contract to be performed by him. Sec.16 (c) of the Act is extracted hereunder:

“ 16. Personal bars to relief.—Specific performance of a contract cannot be enforced in



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favour of a person-

.....

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.”

18. It is to be noted that Sec.16 itself creates a personal bar to relief of specific performance. Therefore, from the very framing of the section, it can be inferred that it is the duty of the plaintiff to lead credible evidence to make out a case that he would be entitled to specific performance of the subject contract. In this context, it would be relevant to refer to some of the salient features of the suit sale agreement dated 15.09.2004:

1. It has been agreed that from the date of agreement within a period of two months i.e in Tamil month 'ஐப்பசி', the plaintiffs would be obliged to pay the balance sale consideration.

2. The parties agreed to a forfeiture clause mentioning that in the event of the plaintiffs not paying the balance sale consideration within the agreed period i.e two months the entire advance of Rs.11,00,000/- would



3. The third and most important clauses agreed to between the parties is extracted hereunder:

“ கிரய காலத்திற்குள் இதனடியில் கண்ட பூமிக்கு சம்பந்தப்பட்ட சார் பதிவாளர் அலுவலகத்தில் வழிகாட்டி பதிவேட்டில் தற்போது மனையிடமாக இருப்பதை பூமி மதிப்பாக நம்மில் 1 லக்கமிட்டவர் தன் சொந்த செலவிலும் பொறுப்பிலும் மாற்றித்தர கட்டுப்பட்டவர் ஆவார். ஒரு வேளை மேற்படி கிரய காலத்திற்குள் நம்மில் 1 லக்கமிட்டவரால் பூமி மதிப்பாக மாற்றித் தர இயலவில்லை எனில், எப்போது மாற்றித் தருகிறாரோ அதுவரை இந்தக் கிரய எக்ரிமெண்டானது அமுலில் இருந்து வர வேண்டியது.”

19. This Court notices certain important dates which would be relevant to decide the issue of readiness and willingness.

1. Date of sale agreement -15.09.2004
2. 15.11.2004- time for paying the balance sale consideration.
3. 10.04.2007- notice from plaintiffs to defendants
4. 17.04.2007- reply notice sent by the 1st defendant



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5. 30.04.2007- rejoinder

6. 05.05.2007- reply to rejoinder

20. It is strenuously argued by the learned Senior counsel for the plaintiffs that the defendants have taken contradictory pleas and having denied the suit sale agreement itself in entirety it was not really incumbent on the plaintiffs to prove 'readiness and willingness' and she further contended that in any event the plaintiffs have pleaded that they are always ready and willing to perform their part of contract not only in the plaint but also in the pre-suit notices exchanged between the parties.

21. This Court is unable to find any force in the submissions made by the learned counsel for the plaintiffs/respondents. Even in a case where the defendants remain ex-parte, the Court would not automatically grant a decree for specific performance in favour of the plaintiffs. The plaintiffs are bound to establish that they were always ready and willing to perform their part of the essential terms of the contract/agreement of sale. It is not sufficient compliance of the law to merely state and plead that the plaintiffs were always ready and willing.



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22. A reading of Sec. 16 (c) extracted herein above, clearly shows that it is not only a question of pleading but also proof of such readiness and willingness, which is material and mandatory for a plaintiff seeking the discretionary relief of specific performance before the Court of Law. Infact, Sec.16 (c) of the Act has been amended by Act 18 of 2018 w.e.f 01.10.2018 and after the amendment, in Sec.16 (c), the legislature has omitted the requirement of pleading by removing the words 'to aver'. Even though the amendment Act would not apply to the facts of the present case, yet it is referred to for the reason that the legislature has continued to insist on proof of 'readiness and willingness'. Therefore, prior to the amendment as well as post the amendment of Sec.16(c) the requirement to establish and prove 'readiness and willingness' is not done away with. On the other hand, such proof is *sine qua non* for a plaintiff to become entitled to the relief of specific performance which is an equitable and discretionary one.

23. This Court finds that the earliest notice that emanated from the plaintiffs was only on 10.04.2007, which is more than 31 months from the date of the suit agreement in September 2004. There is absolutely no



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whisper on the side of the plaintiffs to justify such long silence. Infact, this Court has already noticed that at more than one place parties had agreed that balance consideration should be paid within a period of two months i.e on or before 15.11.2004. In this factual background, the total silence and inaction on the part of the plaintiffs is not at all explained.

24. The learned Senior counsel appearing for the plaintiffs contended that the last clause in the sale agreement which has already been extracted herein above at paragraph 18, would come to the rescue of the plaintiffs and drew the attention of this Court to the said clause.

25. On a careful reading of the last clause in the sale agreement dated 15.09.2004, what emerges is that before the expiry of the two months period fixed by the parties, the 1st defendant, at his cost, should get the guideline valuation corrected from house site to agricultural and that in the event of the 1st defendant being unable to do the same within the agreed time period of two months, till such time the valuation is corrected/changed the sale agreement would be in force. This Court does not read this clause to extend the time for payment of the balance sale consideration. On the



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contrary, it merely states that the agreement would be in force, the only inference being the sale deed would be registered after the guideline value is revised/corrected. If it was the intention of the parties that the plaintiffs would also get extension of time to pay the balance sale consideration then the clauses in the sale agreement would not have been worded in the manner they have been. Therefore, this Court is not impressed by the argument advanced by the learned Senior counsel for the plaintiffs in this regard.

26. Learned Senior counsel for the 1st defendant relied on the following judgments:

1. Jaswinder Karu (now deceased) through her legal representatives and others Vs. Gurmeet Singh and Others, (2017) 12 SCC 810

2. Jayakanthan and others Vs. Abaykumar, 2017 (3) MWN (Civil) 105

3. Bhagirath Vs. Ram Ratan, (2017) 6 MLJ 237 (SC)

4. B.Vijaya Bharathi Vs. P.Savitri & Others,



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2018 (1) MWN (Civil) 105

*5. M.Jayaprakash Narayanan Vs. Santhammal
and others, 2018 (1) CTC 701*

*6. K.Manivannan Vs. Chairman, Intellectual
Property Appellate Board and Others, 2018(1) CTC
715*

*7. R.Shanmugam Vs. P.Govindaraju (deceased)
and Others, 2017(2) MWN (Civil) 446*

*8.G.Kasi Reddiyar and another Vs. K.Ravi,
2017(3) MWN (Civil) 185*

*9.Babulal Tater and Others Vs. Harakh Chand
and Others, 2017 (5) CTC 403*

*10.U.N.Krishnamurthy (since deceased)Thr.Lrs
Vs. A.M.Krishnamurthy, 2022 SCC Online Sc 840*

*11.C.S.Venkatesh Vs. A..S.C. Murthy, (2020) 3
SCC 280*

*12.Abdullakoya Haji and others Vs. Rubis
Tharahil and another, (2019) 17 SCC 216*

*13.Vijay Kumar and others Vs. Om Prakash,
(2019) 17 SCC 429*



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14.Ritu Saxena Vs. J.S.Grover and another,
(2019) 9 SCC 132

15.Kamal Kumar Vs. Premlata Joshi and
others, (2019) 3 SCC 704

16.J.P.Builders and another Vs. A.Ramadas Rao
and another, (2011) 1 SCC 429

27. Learned Senior counsel for the plaintiffs relied on the following judgments:

1.Madhukar Nivrutti Jagtap and others Vs.
Pramilabai Chandulal Parandekar (dead) through
legal representatives and others, (2020) 15 SCC 731

2. A.Kamalammal Vs. K.R. Balasubramaniam
and Others , 2022 SCC Online Mad 3693.

28. Learned Senior counsel for the 1st defendant took us through the various judgments relied upon by him to strengthen his arguments with regard to i) the plaintiffs not at all being ready and willing to perform their part of contract; ii) it would be inequitable to grant a decree of specific performance when there has been inordinate delay on the plaintiffs part and iii) conduct of the plaintiffs was germane and ought to be primarily



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factored before granting a decree. The ratio laid down in the various judgments relied upon by the learned Senior counsel for the 1st defendant are all fairly well settled and this Court has been applying the ratio laid down by the Hon'ble Supreme Court and this Court in several other cases concerning specific performance of agreements of sale.

29. Learned Senior counsel for the plaintiffs drew the attention of this Court to the judgment of the Hon'ble Supreme Court in *Madhukar's* case and argued that the Apex Court had in that case laid down the ratio that the plaintiffs had three years time for filing a suit for specific performance and therefore during such period, it is not necessary for the plaintiffs to show any overt act at their end in furtherance of the agreement of sale. However, we notice that in the very same judgment, the Hon'ble Supreme Court has clearly held that i) the question as to whether the plaintiff seeking specific performance was ready and willing to perform his part of the contract has to be examined with reference to all facts and the surrounding factors of the given case and ii) the plaintiff must be found standing with the contract and his conduct should not be carrying any blameworthiness so as to render a decree for specific performance inequitable and iii) the requirement of



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'readiness and willingness' is not theoretical but is essentially a question of fact, which needs to be determined with reference to pleadings and evidence of parties as also to all the material circumstances having a bearing on the conduct of parties, the plaintiff in particular. On the facts of the case before the Hon'ble Apex Court, after examining and scanning through the records, the Apex Court found that the conduct of the plaintiff was not blame worthy and his approaching the Court belatedly could not be put against him. This Court, however does not find any such identical or similar facts which were before the Hon'ble Supreme Court in the said case, for us to apply the ratio as emphasised by the learned Senior counsel for the plaintiffs that within the period of three years limitation the plaintiffs cannot be expected to show any further act in terms of the agreement of sale. Infact, in many of the judgments of the Hon'ble Supreme Court some of which have been relied on by the Senior counsel for the 1st defendant, the Hon'ble Supreme Court has time and again categorically held that delay in approaching the Court especially in a suit for specific performance would invariably be fatal to the case of the plaintiffs.

30. In fact, this Court would usually refer to the ratio laid down by the



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Hon'ble Supreme Court in ***Man Kaur Vs. Hartar Singh Sangha*** reported in ***(2010) 10 SCC 512***. In the said judgment, the Hon'ble Supreme Court held as follows:

“

A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of plaintiff is something which need not be proved, if the plaintiff is able to establish that defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where



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there is a contract for sale for a consideration of Rs.10 lakhs and earnest money of Rs.1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs.15 lakhs. In such a case there is a clear breach by defendant. But in that case, if plaintiff did not have the balance Rs.9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by defendant, as he was not 'ready and willing' to perform his obligations."

31. The ratio laid down by the Hon'ble Supreme Court would squarely apply to the facts of the present case. Even though the plaintiffs allege that the defendants committed breach, yet it is incumbent on the plaintiffs to aver and prove that they were always ready and willing to perform all the essential terms of agreement of sale which were required to be performed by them.

32. This Court has already discussed the relevant dates. No doubt the plaintiffs have pleaded in the notice and the plaint that they have been



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ready and willing to perform their part of the agreement of sale. However, we are unable to accept such empty pleadings on the side of the plaintiffs. The pleadings should be supported by concrete proof. Here, the plaintiffs have not let in any iota of evidence to show that they were possessed of sufficient funds to pay the balance sale consideration at least within the two months period contemplated under the agreement of sale. Infact, the plaintiffs have not even filed a shred of documentary evidence before the Trial Court to show that they were ready with the balance sale consideration at least at the time of filing of the suit, leave alone the long period between the date of agreement and date of filing of the suit. Clearly, the plaintiffs have miserably failed to establish that they were ready and willing to perform their part of the agreement of sale.

33. In fine, this Court holds that the plaintiffs have not been ready and willing to perform their part of the essential terms of the agreement of sale dated 15.09.2004. Even in terms of Sec.20 as it stood prior to the Amendment Act 18 of 2018, the jurisdiction to decree a suit for specific performance is always discretionary and the Court is not bound to grant the relief merely because it is lawful to do so. The Section also mandates that



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the discretion of the Court should not be arbitrary but sound and reasonable and guided by judicial principles.

34. This Court has already found that the plaintiffs have not made out a case that it is not a personal bar to grant a decree for specific performance in their favour. This Court finds that the Trial Court has misdirected itself by even omitting to frame the most vital issue pertaining to 'readiness and willingness' and consequently erred in granting a decree for specific performance on improper appreciation of oral and documentary evidence adduced by parties. Point B is answered accordingly.

35. From the dates and events admitted by both sides, it is seen that Ex.A1-Agreement is dated 15.09.2004. As per the Agreement-Ex.A1, the total consideration was fixed at the rate of Rs.27,823/- per cent. There is a clause in the suit agreement that the vendor has agreed to convert the classification of the land from house site to agricultural land in the Guideline Register at the cost and responsibility of defendants. Ex.A32 dated 05.07.2006 is marked by which it is seen that the valuation of suit property has been changed and the District Registrar [Stamps] has directed



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to fix the value of the suit property at the rate of Rs.3,50,308/- per acre.

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Therefore, the value of the suit property as per the Guideline Register is reduced to Rs.3,504/- per cent, even though the plaintiffs have agreed to purchase the property at the rate of Rs.27,823/- per cent. Despite the fact that Ex.A32 is dated 05.07.2006, the plaintiffs have not stated as to when he came to know about the conversion though the plaintiffs have admitted it specifically and also contended that non performance of their part of the contract was on account of the delay in getting conversion. Since conversion has actually been obtained by the defendants even according to the plaintiffs in the plaint, the delay in performance, in coming forward to pay the balance within the time stipulated in the Agreement is not explained by the plaintiffs. Even though it was agreed that the balance of sale consideration should be paid within two months from the date of Agreement [i.e., on or before 15.11.2004], the suit itself was filed on 19.05.2007. By asking the defendants to reduce the Guideline value by converting the suit property to agricultural land valuation, the plaintiffs attempt payment of lesser stamp duty than required for the property as per the market value. In other words, the plaintiffs who have agreed to purchase the property accepting the market value at the rate of Rs.27,823/-



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per cent, wants to pay a lower stamp duty by valuing the property at the rate of Rs.3,504/- per cent. This clause in the Agreement, if permitted, would defeat the provisions of the Indian Stamp Act. An Agreement with an object to evade revenue to the Government is opposed to public policy.

36. Section 23 of the Indian Contract Act, 1872 reads as follows:-

“ What consideration and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless— —The consideration or object of an agreement is lawful, unless—” it is forbidden by law; 14 or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. ”

37. By Section 10 of Contract Act, only something which is for lawful consideration and with a lawful object is enforceable. Therefore, on the first principle, this Court has to see whether the term regarding conversion



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of property into agricultural land, is enforceable or not. In view of the specific provision under Section 23 of the Indian Contract Act, this Court is of the view that the particular clause which is in the nature of requiring the defendants to go for conversion so as to evade stamp duty, is opposed to public policy and also under the Indian Stamp Act. The term of the contract which is meant for the purpose of statutory obligation of a party implies that the plaintiffs by having the conversion clause in the Agreement seeks to cause injury to the Government in terms of Section 23 of the Indian Contract Act.

38. Section 27 of the Indian Stamp Act, 1899 reads as follows:-

Facts affecting duty to be set forth in instrument. –The consideration (as in force in the State of Tamil Nadu) (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

39. A combined reading of Section 23 of the Indian Contract Act and



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Section 27 of the Indian Stamp Act, would only result in holding that the specific clause in the Agreement requiring the defendants to go for conversion for the purpose of paying lesser stamp duty is an unconscionable covenant, the object of which is to defeat the provisions of the Indian Stamp Act and therefore, this clause is not enforceable. The legal impediment of having such a clause also prompts us to hold that the Agreement is so unconscionable. It is to be pointed out that the plaintiff is required to pay more than Rs.90 lakhs towards balance of consideration. We have already seen that only a sum of Rs.11,00,000/- was paid as advance. For the purpose of paying lesser stamp duty than payable as per the market value, the plaintiff seeks to withhold a sum of Rs.90 lakhs. In other words, the defendants are denied their entitlement to get the balance of sale consideration [a sum of Rs.90 lakhs] as stipulated in the Agreement, just to avoid payment of more stamp duty. Calculating interest on pro rata basis corresponding to the value of the withheld sum of Rs.90,00,000/-, this Court holds that the defendants are put to great hardship and they are put in a disadvantageous position by virtue of non performance of the contract on an interpretation which suits well to the plaintiff. Having regard to the conduct of plaintiff and the legal injury that



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is caused to the defendants on account of the conversion clause in the Agreement, this Court cannot exercise the discretion in favour of plaintiff by granting equitable relief of specific performance. Hence, Point C is answered against plaintiff.

40. This Court has already found that the suit agreement is true and valid. Admittedly, the plaintiffs have paid an advance of Rs.11,00,000/- and there is also an alternate prayer for refund of a sum of Rs.14,54,567/- together with interest at 12% per annum. Considering the over all facts and circumstances and the materials available before this Court, this Court deems it just and proper to grant the alternate relief prayed for by the plaintiffs. Accordingly, the plaintiffs shall be entitled to the alternate relief of refund of advance viz., Rs.11,00,000/- together with interest at 12% per annum from the date of suit agreement till the date of payment.

41. The defendants are directed to pay the said sum of Rs.11,00,000/- together with interest at 12% per annum as indicated above within a period of two months from the date of receipt of a copy of this judgment.



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42. In the result, the First Appeal is partly allowed and the decree of the Trial Court in O.S.No.172 of 2007 on the file of the First Additional District Court, Erode dated 30.06.2008 is set aside and the alternate relief of refund of advance is decreed, directing the appellants/defendants to pay the respondents/plaintiffs the sum of Rs.11,00,000/- together with interest at 12% per annum from 15.09.2004, till the date of payment within a period of two months from the date of receipt of a copy of this judgment. Considering the over all circumstances of the case, there shall be no order as to costs.

(S.S.S.R.J) & (P.B.B.J)
16.03.2023

Internet : Yes
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

To

1.The Judge,
First Additional District Court, Erode.

2.The Section Officer
VR Section,
High Court, Madras



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S.S.SUNDAR, J.,
and
P.B.BALAJI, J
kpr

Pre-delivery judgment in
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16.03.2023