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A.S.No.952 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

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1. K.Subbarayulu (Died)
 2. Lakshmi
 3. Padma
 4. Anandhan
 5. Thirumal
 6. Jayalakshmi
- (A1 died, A2 to A6 are brought
pm record as legal heirs of the
deceased first appellant viz.,
K.Subbarayulu vide order of
this Court dated 07.06.2023 made in
C.M.P.Nos.6528, 6530 & 6532 of 2023 in
A.S.No.952 of 2015)

... Appellants

-Vs-

1. M.Kothandan
2. G.Parithi
3. S.Athimoolam

... Respondents

PRAYER: Appeal Suit filed under Section 96 of C.P.C., to set aside the judgment and decree dated 13.07.2015, passed in O.S.No.18 of 2014, on the file of the learned Principal District Judge, Vellore.

For Appellants : Mr.R.Bharanidharan

For Respondents : No appearance



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JUDGMENT

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This appeal is directed as against the judgment and decree dated 13.07.2015 passed in O.S.No.18 of 2014, by the learned Principal District Judge, Vellore, thereby dismissed the suit filed by the deceased first appellant for specific performance.

2. The first appellant is the plaintiff and the respondents are the defendants. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff is that the first defendant entered into agreement for sale dated 03.09.2012, with the plaintiff to sell the suit property for a total sale consideration of Rs.12,20,900/- at the rate of Rs.2,900/- per cent for the total extent of 4.21 acres of the property. On the date of agreement for sale, the first defendant received a sum of Rs.1,00,000/- as advance. The period of contract is fixed as four months. Thereafter, the first respondent also received a sum of Rs.10,000/- for his family necessity on 21.11.2012 and the same has been endorsed on the back side of the suit agreement. Though the plaintiff willing to perform



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his part of contract, the first defendant evading the same. Thereafter, the plaintiff came to understand that the defendants 2 & 3 purchased suit property by the registered sale deed dated 17.06.2013. Therefore, the plaintiff caused notice on 26.06.2013 and filed this suit.

4. On receipt of the notice, the defendants failed to appear before the trial Court as such they were set exparte. After hearing the plaintiff, the suit was posted for judgment. However, after perusing of records, the trial Court reopened the suit for clarification. Thereafter, there was no representation on the side of the plaintiff. On going through the evidence and records, the trial Court dismissed the suit. Aggrieved by the same, the plaintiff filed this present appeal.

5. The learned counsel appearing for the appellants submitted that the trial Court dismissed the suit on two grounds. The first ground is that the plaintiff failed to challenge the sale deed executed in favour of the defendants 2 & 3. The second ground is that the plaintiff failed to prove his readiness and willingness to perform his part of the contract. The plaintiff need not to challenge the sale deed executed in favour the



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defendants 2 & 3, since already the agreement entered between the plaintiff and the first defendant was pending. That apart, the plaintiff always ready and willing to perform his part of contract. Further, the defendants failed to appear before the trial Court and therefore, the plaintiff is entitled for the relief of specific performance.

6. Heard the learned counsel appearing for the appellant/plaintiff. Though notice served on the respondents no one is appeared on behalf of the respondents/defendants either in person or through counsel.

7. On perusal of records revealed that the defendants 1 to 3 were set exparte before the trial Court. The plaintiff was examined as P.W.1 and marked documents in Ex.A.1 to Ex.A.8. The sale agreement, which was entered between the plaintiff and the first respondent, was marked as Ex.A.1. On perusal of the sale agreement dated 03.09.2012, it is seen that by way of installments, the remaining sale consideration to be paid by the plaintiff within a period of four months to the first defendant. If the plaintiff failed to pay the balance sale consideration within a period



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of four months, the entire advance amount have to be returned. Therefore the time limit is the essence of the contract.

8. The time fixed in the agreement for sale was expired on January, 2013 itself. However, the plaintiff failed to pay the balance sale consideration within a period of four months. Therefore, the first defendant had executed sale deed in favour of the defendants 2 & 3 by the registered sale deeds dated 17.06.2013. Only thereafter, the plaintiff caused notice to the defendants on 26.06.2013. On receipt of the same, the first defendant had issued reply notice on 03.09.2013. Even then, the plaintiff did not file suit immediately and he had filed suit after the period of nine months. Therefore, the plaintiff failed to prove his readiness and willingness to perform his part of contract. Even after filing the suit, the plaintiff failed to deposit the balance sale consideration before the trial Court. Therefore, the trial Court rightly dismissed the suit and this Court finds no infirmity or illegality in the order passed by the trial Court.



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WEB COPY 9. Accordingly, the Appeal Suit stands dismissed. There shall be no order as to costs.

12.12.2023

Index : Yes / No

Internet : Yes / No

Speaking order /Non-speaking order

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To
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1. The Principal District Judge,
Vellore.



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G.K.ILANTHIRAIYAN, J.

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