



AS.No.570 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2023

CORAM:

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

AS.No.570 of 2016

K.Elangovan

... Appellant

Vs.

A.Santhi

...Respondent

PRAYER: Appeal Suit is filed under Section 96 of CPC against the judgment and decree dated 01.03.2016 passed in OS.No.179 of 2014 on the file of the Principal Subordinate Court, Cuddalore.

For Appellant : Mr.P.Mathivanan

For Respondent : No appearance

JUDGMENT

This Appeal suit is filed against the judgment and decree dated 01.03.2016 passed in OS.No.179 of 2014 on the file of the Principal Subordinate Court, Cuddalore thereby decreed the suit for specific performance.



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2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The appellant is the defendant and the respondent is the plaintiff. The case of the plaintiff is that the plaintiff entered into an agreement for sale in respect of the suit property on 23.03.2007 for total sale consideration of Rs.9,25,000/-. Even prior to the agreement for sale, the plaintiff had paid a sum of Rs.4,00,000/- on 11.02.2005 and subsequently on various dates, the remaining sale consideration was also paid to the defendant. On the date of agreement for sale, the plaintiff was put in possession of the suit property. When the plaintiff was always ready and willing to perform her part of contract, the defendant failed to execute sale deed. Therefore, the plaintiff caused legal notice on 16.01.2012 and filed the suit.

4. Resising the same, the defendant filed written statement and stated that when the possession of the suit property handed over, the agreement for sale has to be necessarily registered. Therefore, the unregistered agreement for sale cannot be enforceable. The defendant was working as Assistant Manager in



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India Airport Commissioner and he purchased vacant land in the year 1998. Thereafter, he availed loan from Divan Housing Finance Corporation, Coimbatore by mortgaging the original document and put up construction of house. He had resided for some period of time and leased out the suit property. While being so, the husband of the plaintiff wanted to take the house on bokkiem for a sum of Rs.5,00,000/- and the same was reduced into writing for eleven months. Every 11 months once, the husband of the plaintiff used to send the bokkiem deed through postal and the same was signed and renewed once in eleven months since the defendant was working away from Cuddalore. After period of two years, the plaintiff who intended to grab the property, forged as agreement for sale. The defendant is earning sufficiently and there is absolutely no necessity for him to sell the suit property, that too for meagre price of Rs.9,25,000/-. It is worth about more than Rs.25,00,000/- in the year 2005 itself.

5. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-



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- (i) Whether this Court having pecuniary jurisdiction to file this case?
- (ii) Whether the suit sale agreement is not legally enforceable one?
- (iii) Whether the suit is dismissed for suppressing of material facts?
- (iv) Whether the plaintiff has no sufficient mesne to enter into sale agreement?
- (v) Whether the plaintiff is entitled to get the decree for specific performance as prayed for?
- (vi) Whether the plaintiff is always and willing to perform his contract of the sale agreement?
- (vii) To what other relief, the plaintiff is entitled to ?

5.1 Subsequently, the trial court re-framed the issues as follows:

- (i) Whether the suit sale agreement is forged one?
- (ii) Whether this Court is having jurisdiction to try this suit?
- (iii) Whether the plaintiff is entitled to the relief of specific performance?
- (iv) To what relief the plaintiff is entitled to?



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6. In support of the plaintiff's case, P.W.1 to P.W.5 were examined and sixty one documents were marked as Ex.A.1 to Ex.A.61. On the side of the defendant, D.W.1 was examined and no documents were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit on condition to deposit the balance sale consideration of Rs.5,25,000/- within a period of one month from the date of the decree. Aggrieved by the same, the defendant has preferred this appeal suit.

7. The learned counsel for the defendant would submit that in order to decree the suit for specific performance, the trial court ought to have framed the issue with regards to readiness and willingness of the plaintiff. Without even framing any issue, the trial court decreed the suit as if the plaintiff proved her readiness and willingness to perform her part of contract. In the pre-suit notice, the plaintiff stated that the entire sale consideration was paid in one stroke, but in the plaint, it is stated that on the date of the agreement for sale, a sum of Rs.4,00,000/- was paid and subsequently the entire amount has been duly paid to the defendant. In fact, even after the decree, the plaintiff failed to deposit the



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balance sale consideration so far. The defendant is working as Assistant Manager in India Airport Commissioner and absolutely no need to sell the house property. He entered into bokkiem agreement with the plaintiff by receiving a sum of Rs.5,00,000/-. Once in eleven months, it was renewed for continuation of bokkiem. Since the defendant was out of Cuddalore due to his avocation, the plaintiff used to send the copy of the bokkiem deed for signature of the defendant. Later it was misused and fabricated as if agreement for sale and filed the present suit.

8. Heard, the learned counsel appearing for the appellant/defendant. Though notice was served on the respondent and counsel entered into court appearance earlier, no one is present today before this Court either in person or through pleader.

9. On the basis of the submissions made by the learned counsel for the defendant, the following points arise for consideration of this appeal suit:

- 1. Whether the trial court framed the issue with regards to the readiness and willingness?*
- 2. Whether the plaintiff proved her readiness and*



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willingness to perform her part of contract?

10. Admittedly, the trial court failed to frame any issue with regards to readiness and willingness of the plaintiff. According to the plaintiff, the entire sale consideration was paid on the date of the agreement itself as per the pre-suit notice dated 16.01.2012. Whereas on perusal of the plaint, the plaintiff agreed to purchase the suit property for a total sale consideration of Rs.9,25,000/-. On 11.02.2005, the plaintiff had paid a sum of Rs.4,00,000/- as advance. Thereafter, he had paid balance sale consideration on several occasions. Therefore, the entire sale consideration was duly received by the defendant. According to the plaintiff, the entire sale consideration was paid by way of cash. However, there is no iota of evidence produced by the plaintiff to substantiate the said contention. Admittedly, the plaintiff and the defendant had entered into bokkiem deed and accordingly, the plaintiff was put in possession of the suit property. The plaintiff had marked Ex.A1 to A61 and all are pertaining to prove her possession. Insofar as the payment of sale consideration is concerned, except the agreement for sale, the plaintiff failed to produce any single document.



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11. Though the plaintiff had examined PW1 to PW5, all the witnesses are contradictory in nature and failed to corroborate each other. It is well settled position of law that the plaintiff who comes to the court and claiming the discretionary relief of specific performance, has to satisfy the court whether he/she has got an unblemished conduct right from the date of execution of the agreement to the end of the proceedings. Even after the findings of the trial court that the plaintiff is directed to deposit the balance sale consideration of Rs.5,25,000/- within a period of one month from the date of the decree, i.e. from 01.03.2016, the plaintiff failed to deposit the said sale consideration. Even assuming that the plaintiff is aggrieved over the decree with regards to the payment of balance sale consideration, the plaintiff should have filed appeal. So far, the plaintiff did not file any appeal as against the judgment and decree passed by the trial court thereby directed the plaintiff to deposit a sum of Rs.5,25,000/- as balance sale consideration within a period of one month from the date of the decree. On perusal of records and as stated supra, the trial court failed to frame any issue with regards to readiness and willingness of the plaintiff. Though the trial court found that the plaintiff failed to prove that the



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balance sale consideration was already paid on various dates, the trial court directed the plaintiff to deposit the balance sale consideration within a period of one month from the date of the decree. Therefore, the trial court should have framed the issue with regards to readiness and willingness of the plaintiff to perform her part of contract. This issue is most crucial one in a suit for specific performance, that has been dealt with in a very absurd manner by the trial court. Mere non framing of a issue may not be a fatal, however this Court finds that the trial court has totally misdirected itself in not considering the conduct of the plaintiff.

12. According to the plaintiff, the defendant agreed to sell his house for a total sale consideration of Rs.9,25,000/- in which a sum of Rs.4,00,000/- was paid on 11.02.2005. Balance sale consideration was paid on 23.03.2007 and two years time was fixed for execution of sale deed. No prudent man would keep quiet for a period of seven years to issue notice, that too after payment of the entire sale consideration. Therefore, the trial court ought to have framed the issue with regards to readiness and willingness of the plaintiff to perform her part of contract.



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13. Further, Section 16(c) of the Specific Relief Act mandates that the discretionary relief of specific performance of the contract can be granted only in the event of plaintiff not only makes necessary pleadings but also establishes that she had all along ready and willing to perform her part of contract. Such readiness and willingness on the part of the plaintiff is not confined only to the stage of filing of the plaint, but also at the subsequent stage i.e. at the hearing and after the suit.

14. As stated supra, even after the decree, the plaintiff failed to show her readiness and willingness to perform her part of contract. In view of the same, the judgment and decree of the trial court is liable to be set aside. Accordingly, this appeal suit is allowed and the judgment and decree dated 01.03.2016 passed in OS.No.179 of 2014 on the file of the Principal Subordinate Court, Cuddalore is set aside. 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

- 1.The Principal Subordinate Court,
Cuddalore
- 2.Section Officer,
V.R.Section,
High Court of Madras



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G.K.ILANTHIRAIYAN, J.

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