



S.A.No.1439 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.No.1439 of 2007

Harikrishnan

.. Appellant

Vs.

1. K.S.Kothandaraman (died)
2. Nagarathinam
3. Indirani
4. K.Deivanayagi
5. K.Inthumathy
6. K.Saranya
7. K.Tamilselvi
(RR4 to 7 brought on record as legal representatives
of the deceased R1 vide order dated 03.06.2019
made in C.M.P.No.19248 and 19255 of 2018)

.. Respondents

Prayer: The Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree passed by the Additional Subordinate Judge (FAC) Chengalpattu on 22.03.2007 in A.S.No.135 of 2005 reversing the decree and judgment passed by the learned District Munsif, Thirukazhukundram, on 26.09.2005 in O.S.No.105 of 2002.



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For Appellant	: Mr.R.Rajesh
For Respondent 1	: Died
For Respondents 2 & 3	: Mr.V.Venkatasamy
For Respondents 4 to 7	: Mr.R.Thiagarajan

J U D G M E N T

The second defendant has challenged the judgment and decree passed by the Additional Subordinate Judge (FAC), Chengalpattu in A.S.No.135 of 2005. By the said judgment, the learned Judge had reversed the judgment and decree passed by the District Munsif, Thirukazhukundram in O.S.No.105 of 2002.

2. The facts which have resulted in filing the second appeal are set out briefly herein below.

3. The plaintiff (deceased 1st respondent herein) had filed the suit in question for specific performance of the agreement dated 21.03.1987. It is the case of the plaintiff that on 21.03.1987, he had entered into an agreement



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with the defendant, who was the absolute owner of the suit schedule property, to purchase the suit property for a total sale consideration of Rs.29,000/-. A sum of Rs.4,000/- was paid on the very same day and the parties had agreed that the remaining amount would be paid within a period of three months. Thereafter, on 19.06.1987, the defendant had received a further sum of Rs.1000/- for which an endorsement was made in the reverse of the agreement and the parties had agreed that the time is not the essence of contract. While so, in the month of July 1987, the defendant attempted to alienate the property and therefore, the plaintiff was constrained to issue a legal notice dated 16.07.1987 expressing his readiness and willingness to perform his part of the contract and to tender the balance amount of Rs.24,000/-. The notice was served on the defendant on 22.07.1987. However, the defendant had neither complied with the request nor replied to the notice. The plaintiff would state that he has always been ready and willing to perform his part of the contract and therefore, he has come forward with the suit in question. After filing of the suit, the plaintiff deposited the entire sale consideration of Rs.24,000/- on 30.06.1989.



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WEB COPY 4. The first defendant died pending the suit and the second and third defendants, who are his sons, were impleaded as legal representatives of the first defendant and thereafter, the third defendant had also passed away and fourth and fifth defendants were impleaded as legal representatives of the third defendant. The second defendant had filed the written statement denying the execution of the sale agreement. He would also contend that the suit property was the exclusive property of the first defendant who is said to have executed the agreement of sale. The receipt of the advance amount of Rs.4000/- and further sum of Rs.1000/- was denied by the second defendant. The second defendant would contend that the first defendant was an alcoholic and it was the plaintiff who supplied him with the alcohol. That apart, the deceased first appellant was also mentally imbalanced and therefore, it is their contention that the agreement must have been obtained fraudulently. The property value was more than a sum of Rs.10,00,000/- and therefore, there is no question of property having been sold for a sum of Rs.29,000/-.



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5.The trial Court had framed three issues and put the parties to trial.

The plaintiff examined himself as P.W.1 and one Lakshmanan as P.W.2, to prove the execution of agreement and marked Ex.A1 to Ex.A5. The second defendant examined himself as D.W.1 and marked Ex.B1 to Ex.B12. After considering the evidence, the trial Court dismissed the suit by holding that the sale deed Ex.A1 and the endorsement for payment of further advance in Ex.A2 were not genuine. The learned Judge had also taken into account the delay between the execution of the agreement and the filing of the suit and holding that the plaintiff has not given any explanation for this delay, arrived at the conclusion that the plaintiff was not entitled to specific performance. Aggrieved by the said judgment and decree the plaintiff had preferred A.S.No.135 of 2005 on the file of Additional Subordinate Court, Chengalpattu. The learned Judge, after considering the evidence on record, proceeded to allow the appeal. Aggrieved by the same, the plaintiff has preferred the above second appeal which has been admitted on the following substantial questions of law.

*“1. Whether the Judgment and Decree of the
Fir09.01.2023st Appellate Court is legally sustainable in as*



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much as it has interfered with the discretion exercised by the trial Court in not granting the relief of the specific performance when especially the plaintiff/1st respondent has filed the suit belatedly?

2. Whether the Judgment and Decree of the First Appellate Court in reversing the Judgment and Decree of the Trial Court is legally sustainable in as much as the plaintiff/1st respondent was not ready and willing to perform his part of contract and he has filed the suit of specific performance belatedly?"

6. Mr.Rajesh, learned counsel appearing for the defendant would contend that Ex.A1 was entered into on 21.03.1987 and the time for performance was fixed on or before 21.06.1987. The agreement was further extended by a period of one month on 19.06.1987, on which date, a further sum of Rs.1000/- was paid by the plaintiff to the defendant and endorsement to this effect has been made on the reverse of the agreement of sale and this endorsement has been marked as Ex.A2. The learned counsel would submit that the balance sale consideration was just a sum of Rs.24,000/- and there is



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no explanation as to why the plaintiff has not come forward to file the suit immediately. That apart, the learned counsel would submit that the endorsement in Ex.A2 would recite that on or before 19.07.1987, the plaintiff has to prepare the sale deed and request the defendant to execute the same. However, in the instant case, the plaintiff has not prepared the sale deed, but, on the contrary, has filed the suit without even getting the sale deed ready. That apart, the suit has been filed 15 months later which would go to show that the plaintiff was not ready and willing to have the sale deed executed. In support of his contention with reference to the readiness and willingness, the learned counsel had relied on the judgments reported in **[AIR 2017 (SC) 3934]**, **[2015 3 CTC 229]**, **[AIR 1998 MAD 304]** and **[AIR 2004 MAD 520]**.

7. Per contra, Mr.R.Thiagarajan, learned counsel appearing for the 4th to 7th defendants would submit that time was never the essence of the contract and this fact is clear from the extension of time on 19.06.1987. That apart, the plaintiff has deposited the entire sale consideration during the pendency of



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the suit and thereby proving his readiness and willingness. He would submit that Ex.A2 has been signed not only by the first defendant, but also by the second and third defendants. The first defendant, who has executed the sale deed, has not filed the written statement denying the contentions raised in the suit. He would rely upon the judgment of ***Kamal Kant Jain Vs Surinder Singh (D) thr.L.Rs.*** in [AIR 2017 SC 5592] to counter the argument made by the defendant that the plaintiff, before instituting the suit, has not filed the letter inspirit of Ex.A2 endorsement. In this regard, he has also relied on the judgment of this Court in the case of ***G.Bhoopathy Vs A.Sundaramoorthy and others*** in [SA466 of 2008]

8. Heard the learned counsel on either sides.

9.The execution of the agreement of sale and the endorsement have not been denied, nor has it been stated that the same was obtained fraudulently. The fact that all the defendants were aware of the execution of the document is evident from the fact that the second defendant has signed the sale



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agreement Ex.A1 and he has also signed the endorsement in Ex.A2 along with the third defendant. Therefore, the findings of the Appellate Court with reference to the validity of the agreement of sale has to necessarily be confirmed. The defendant has raised the plea that the plaintiff is not ready and willing to perform his part of contract since there is a delay of one and a quarter years in filing the suit from the expiry date fixed in Ex.A2, endorsement and that there is no explanation for this delay. However, it is seen from the conduct of parties that time was not the essence of the contract, the agreement of sale Ex.A1 had provided that the sale should be concluded within a period of three months before the expiry of the said period. Ex.A2 came to be executed on 19.07.1987 extending the period by further period of one month, which expired on 21.07.1987. The legal notice has been issued by the plaintiff calling upon the defendant to execute the sale deed on 16.07.1987 itself under Ex.A3. The defendant has remained silent though he has received the said notice on 22.07.1987. Since the defendant has not come forward to execute the sale deed, the suit came to be filed. It is also seen that pending the suit, the defendant has deposited the entire sale consideration



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thereby proving his readiness and willingness. At the very first instance, i.e on 16.07.1987 even before the expiry of the period granted in Ex.A2, the plaintiff has clearly and categorically put the defendant on notice that he is ready and willing to proceed with the execution of the sale deed and it is the defendant who has not come forward to execute the same. Therefore, the substantial questions of law has to be answered against the defendant and the Second appeal filed by the defendant stands dismissed and confirming the judgment and decree in A.S.No.135 of 2005 on the file of Additional Subordinate Court (FAC), Chengalpattu. No costs.

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Index : Yes / No
Speaking/Non-speaking Order
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P.T.ASHA, J.

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To

1. The learned Additional Subordinate Judge (FAC),
Chengalpattu.
- 2.The learned District Munsif,
Thirukazhukundram,

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