



SA.No.755 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.755 of 2010

and

MP.No.1 of 2010

C.K.Rajendran

... Appellant

- Vs -

N.Ravi Chandran

... Respondent

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 8.12.2009 made in A.S.No.56 of 2009 on the file of the First Additional District Judge, Coimbatore modifying the judgment and decree dated 19.02.2008 made in O.S.No.609 of 2006 on the file of the Principal Sub-Court, Coimbatore.

For Appellant : Mr.S.Sadasharam

For Respondent : Mr.P.Navaneethakrishnan

JUDGMENT

The instant Second Appeal has been filed at the instance of the plaintiff. The respondent herein was the defendant before the Trial Court.



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2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

3. The brief facts, which give rise to the instant second appeal is that the plaintiff entered into a Sale Agreement on 06.06.2005 with the defendant agreeing to purchase the suit property for a sum of Rs.4,00,000/- and on the date of the Sale Agreement, the plaintiff has paid a sum of Rs.50,000/- as advance and another two payment of each sum of Rs.5,000/- on 21.06.2005 and 27.06.2005. Thus, the plaintiff submits that he has paid an advance of Rs.60,000/- and has been ready and willing to perform his part of the contract. However, the defendant evaded in performing his part of the contract. Hence, the plaintiff has issued a legal notice on 07.08.2006 calling upon the defendant to make himself available on 17.08.2006 at about 10.30.a.m before the Sub Registrar Office, Periyanaickenpalayam, Coimbatore enabling the plaintiff to pay the balance sale price of Rs.3,40,000/- and get the sale deed registered in his favour. The defendant replied to the said notice with untenable pleas. Hence, the plaintiff has come forward with a suit for specific performance.

4. The said suit was resisted by the defendant by contending that the plaintiff was never ready and willing to purchase the suit property at any



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point of time and that if the plaintiff's intention was really to perform his part of contract, the plaintiff would not have kept quiet for more than one year. It is the specific submission of the defendant that the plaintiff had neither the money nor any idea to purchase the property. It is the further submission of the defendant that the plaintiff has been waiting to find out another buyer for higher price. Hence, this defendant submits that the plaintiff is not entitled for a specific performance.

Evidence, Documents and finding of the both the Court below:-

5. Before the Trial Court, the plaintiff has marked 6 documents as Exs.A1 to A6, and examined 2 witnesses as PW1 and PW2. On behalf of the defendant, he himself was examined as DW1 and no documents have been marked.

6. After having considered the oral and documentary evidence, the Trial Court found that the alleged Agreement dated 06.06.2005 was not at all a Sale Agreement and has ultimately, dismissed the suit. Aggrieved with the said finding, when the plaintiff approached the First Appellate Court, the First Appellate Court reversed the finding of the Trial Court as to the finding of the validity of the Sale Agreement and found that the Sale Agreement dated 06.06.2005 was entered between the plaintiff and the defendant.



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However, the First Appellate Court declined the relief of specific performance as the plaintiff has not proved the ready and willingness. Aggrieved with the same, the plaintiff is before this Court by way of this Second Appeal.

Submissions of either side counsel:-

7. The learned counsel for the appellant would vehemently submit that the findings recorded by the First Appellate Court is without any evidence. It was also contended by the learned counsel for the appellant that according to Ex.A1-Sale Agreement, time was not essence of the contract. The learned counsel for the appellant would further contend that the very issuance of legal notice on 07.08.2006 calling upon the defendant to come to the Sub Registrar Office, Periyanaickenpalayam to execute the Sale Deed, would demonstrate their ready and willingness. It was also contended by the learned counsel for the appellant that when the Trial Court did not frame any issue as to the ready and willingness, the findings recorded by the First Appellate Court on the issue of ready and willingness is contrary to the settled legal principles. It is the further contention of the learned counsel for the appellant that when the First Appellate Court have rightly arrived at a conclusion that Ex.A1-Sale Agreement was really intended to sell the suit property, it ought to have decreed the suit. Therefore, the learned counsel for the appellant prayed to



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allow the Second Appeal. The learned counsel for the appellant relied upon the following judgments in support of his contention:-

1. ***R.Lakshmikantham Vs. Devaraji*** reported in **(2019) 8 SCC 62 ;**
2. ***Ferrodous Estates (Pvt) Ltd., Vs. P.Gopirathnam*** reported in **2020 SCC OnLine SC 825;**
3. ***V.S.Ramakrishnan Vs. P.M.Muhammed Ali*** reported in **2022 LiveLaw (SC) 935.**

8. Per contra, the learned counsel for the respondent would vehemently contend that the First Appellate Court is the final Court of facts. Therefore, contended that though there was no issue framed by the Trial Court as to the ready and willingness, framing of issue by the First Appellate Court and its finding is well merited. It is the further submission of the learned counsel for the respondent that under Section 16(c) of The Specific Relief Act, it is the duty of the plaintiff to prove the ready and willingness. The learned counsel for the respondent would submit that when the plaintiff has categorically pleaded that he was ready and willing to perform his part of contract, and that when such defence was specifically disputed in the written statement, more particularly about the financial capacity of the plaintiff, the plaintiff



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ought to have let in evidence to prove the same. Therefore, would contend that the order of the First Appellate Court is liable to be confirmed. The learned counsel for the respondent relied upon the following judgments in support of his contention:-

1. ***Shenbagam & others Vs. K.K.Rathinavel*** reported in ***CDJ 2022 SC 072***;
2. ***Kumaravel Vs. A.Sadiq Batcha & Others*** reported in ***CDJ 2022 MHC 8931***.

9. I have given my anxious consideration to either side submissions.

Analysis of the submissions:-

10. The learned counsel for the appellant by relying the judgments of ***R.Lakshmikantham***'s case [cited supra] and ***Ferrodous Estates***'s case (cited supra) would contend that the delay on the part of the plaintiff cannot be found against the plaintiff as the time is not essence of the contract in respect of the immovable property. It is pertinent to mention here that under Section 16(c) of The Specific Relief Act, it is the duty of the plaintiff to aver and prove their ready and willingness. At this juncture, the learned counsel for the appellant would rely upon the judgment of the Hon'ble Supreme Court in ***V.S.Ramakrishnan***'s case [cited supra], and would contend that when the



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Trial Court did not frame any issue as to the ready and willingness, then the suit has to be remitted back for fresh disposal. But the facts of the said case is not applicable to the present case. Here, in the case on hand, there is pleading in respect of ready and willingness. Hence, the First Appellate Court has rightly framed the issue in respect of the ready and willingness. It is common knowledge that the First Appellate Court is the final Court of facts. Therefore, even if there is no issue framed by the Trial Court, the First Appellate Court can re-appreciate the available materials and can decide the points afresh.

11. On close reading of the above referred judgment, it is amply clear that for mere non framing of the issue on the question of ready and willingness, the suit was not directed to be remitted back to the Trial Court, but the Hon'ble Supreme Court directed to remit back the matter on the ground that without framing an issue in respect of ready and willingness, the Trial Court gave a finding on the same. In the case on hand, the Trial Court while dismissing the suit, as rightly contended by the learned counsel for the appellant, though not framed the issue in respect of ready and willingness, has dismissed the suit on a different ground that Ex.A1-Sale Agreement was not really intended to sell the suit property. Therefore, the rulings relied by



the learned counsel for the appellant is not applicable to the facts of this case.

12. At this juncture, this Court would like to rely upon the judgment of the Hon'ble Supreme Court in the case of ***J.P.Builders and another Vs. A.Ramadas Rao and Another*** reported in ***(2011) 1 SCC 429***. The relevant portions of the judgment are paragraphs 25 and 27, which read as follows:-

“25. 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 . It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous “readiness and willingness” to perform the contract on his part from the date of the contract. The onus is on the plaintiff.

26.

27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform



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*must be established throughout the relevant points of time.
“Readiness and willingness” to perform the part of the
contract has to be determined/ascertained from the conduct of
the parties.”*

13. Therefore, as per Section 16(c) of the Specific Relief Act, the plaintiff must aver and prove the ready and willingness. In the above referred judgment, the Hon'ble Supreme Court by referring the judgment in ***His Holiness Acharya Swami Ganesh Dassji Vs. Sita Ram Thapar*** reported in ***(1996) 4 SCC 526*** has held that, the readiness means the capacity of the plaintiff to perform his part of the contract, which would include the financial position to pay the purchase price and the willingness means the conduct of the plaintiff in getting the agreement fulfilled. Therefore, the word “ready and willingness” means the financial capacity of the plaintiff and his conduct.

14. While considering this aspect, the First Appellate Court, being the final Court of facts, has gone into various aspects as to the long delay viz., for a period of one year in approaching the Court, and also no action by the plaintiff to show his capacity to pay the remaining sale consideration, and his conduct of not scrutinising the title over the suit property, has held that the plaintiff was not ready and willing to perform his part of the contract.



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15. At this juncture, the learned counsel for the appellant would submit that their notice under Ex.A5 calling upon the defendant to come to the Sub Registrar Office would demonstrate their ready and willingness. However, the appellant's mere presence before the Sub Registrar Office on the particular day without any proof as to the purchase of the stamp papers to engross the Sale deed will in no way be considered as ready and willingness of the appellant. Here, admittedly, there is no evidence as to the financial capacity of the plaintiff as well as the positive conduct to get the Sale Deed. Therefore, this Court is of the firm view that the finding of fact recorded by the First Appellate Court is based on merits and in accordance with law.

16. At this juncture, this Court would like to extract paragraph 36 of ***Shenbagam's*** case (cited supra). The Hon'ble Supreme Court, in the above judgment followed the case of ***K.S.Vidyandam and ors. Vs. Vairavan*** reported in ***(1997) 3 SCC 1***, and held as follows:-

“36. True enough, generally speaking, time is not of the essence in an agreement for the sale of immovable property. In deciding whether to grant the remedy of specific performance, specifically in suits relating to sale of immovable property, the courts must be cognizant of the



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conduct of the parties, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree. The remedy provided must not cause injustice to a party, specifically when they are not at fault. In the present case, three decades have passed since the agreement to sell was entered into between the parties. The price of the suit property would undoubtedly have escalated. Given the blemished conduct of the respondent-plaintiff in indicating his willingness to perform the contract, we decline in any event to grant the remedy of specific performance of the contract. However, we order a refund of the consideration together with interest at 6% per annum.”

17. While considering the ready and willingness, the escalation of the price of the property and possible unfair benefit from the decree would also have to be considered. While looking at the judgment of the First Appellate Court with the prism of the above precedents, this Court do not find any perversity further from the submissions made by the learned counsel for the appellant, this Court could not find any material to deviate from the well merited findings of the First Appellate Court. Thus, there is no substantial question of law arising in this matter.

18. In the result, the Second Appeal is dismissed. There shall be no



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order as to costs. Consequently, connected MP is also closed.

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Index : yes/no

Speaking/Non Speaking Order

Neutral Citation Case: Yes/No

To

1. The Principal Sub Court,
Coimbatore.
2. The First Additional District Court,
Coimbatore.



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C.KUMARAPPAN, J

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