



S.A.No.1465 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 25.08.2023

Delivered on: 15.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.No.1465 of 2011

V. Banumathi W/o. Venugopal

... Appellant /
Plaintiff

Vs.

1. Mir. Afsal Hussain S/o.Mir Jaffar Hussain
2. Sukal @ Mir. Mohab Hussain S/o. Afsal Hussain
3. Mir. Mohamed Ali @ Gunal S/o. Afsal Hussain
4. Minor Bisa Fathima D/o. Afsal Hussain
[Minor is represented by her father and guardian
Mir. Afsal Hussain]

... Respondents / Defendants

PRAYER: The Second Appeal has been filed under Section 100 of the Civil Procedure Code against the decree and judgment in A.S.No.17 of 2009 passed by the learned Additional District Judge, Krishnagiri dated 28.01.2011 confirming the decree in O.S.No.251 of 2003 dated 07.05.2009 on the file of the learned Additional Special Judge, Krishnagiri.



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For Appellant : Mr. M. Santhana Raman

For Respondents : Mr. S.D.S. Philip

J U D G M E N T

1. The unsuccessful plaintiff in a Suit for specific performance, is the appellant, who has preferred the present second appeal.

2. In order to adjudicate the second appeal, I am briefly extracting the pleadings before the Trial Court:

The plaintiff's case is that she entered into an agreement of sale with the defendants on 27.12.2001 and also paid an advance of Rs.1 lakh. It is the case of the plaintiff that the balance consideration of Rs.2 lakhs was to be paid within 3 months and at the cost of the plaintiff, a sale deed would have to be executed and registered. It is the further case of the plaintiff that she was ready to pay the balance consideration of Rs.2 lakhs, but the defendants were postponing the execution of sale deed under some pretext or the other. The plaintiff came to know that the 1st defendant has applied for lease of granite quarry in the suit property on 15.02.2000 and had also filed a revised quarry



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lease application on 27.07.2001 for quarrying granite in the suit property.

According to the plaintiff, the 1st defendant never disclosed the same to the plaintiff while entering into the agreement of sale on 27.12.2001.

3. It is the further case of the plaintiff that she has already purchased lands adjoining the suit property from the defendants under two registered Sale Deeds dated 15.02.2001 and 07.06.2001 and only in order to conveniently enjoy the properties, she had evinced interest to purchase the suit property as well. Pleading readiness and willingness to pay the balance sale consideration, the plaintiff filed the suit seeking relief of specific performance by execution of sale deed in respect of the suit property in her favour and also delivery of possession.

4. The 1st defendant filed a written statement stating that the suit property belongs to the 1st defendant and defendants 2 to 4, who were minors and therefore the defendants cannot sell the minors' share and the suit agreement to the contrary was not binding on the defendants 2 to 4 and that the same was unenforceable against them.



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5. It is the case of the 1st defendant that the suit agreement was not entered into with an intention to actually convey the suit property to the plaintiff. It is the specific stand of the 1st defendant that he had applied for quarry lease to the Government and he was in urgent need of a sum of Rs.1 lakh and considering that he had already dealings with the plaintiff's husband and the plaintiff, he requested the plaintiff's husband to advance a sum of Rs.1 lakh to which the plaintiff's husband agreed, on condition that an agreement of sale should be executed in favour of the plaintiff as a security for repayment of the said sum of Rs.1 lakh. According to the 1st defendant, on the date of alleged agreement of sale, the prevailing market value was not less than Rs.2.5 lakhs per acre and no prudent owner of property would agree to sell his / her property at a throw way the price of Rs.3 lakhs. The 1st defendant has also denied that the plaintiff was ready and willing to pay the balance sale consideration. In so far as the 1st defendant's application for quarrying lease, it is contended that the plaintiff was fully aware of the same and only for the said purpose, a sum of Rs.1 lakh was taken as loan from the plaintiff. Further according to the defendants, the plaintiff has been set up by one Mr. Karunakaran, who is



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granite quarry owner in the vicinity of the suit land and his agenda was to prevent the 1st defendant from getting a quarry lease.

6. Before the trial Court, the plaintiff was examined as PW1 and one Mr. Seethapathy was examined as PW2. Ex.A1, namely the original Sale Agreement was exhibited as the only document on the side of the plaintiff.

7. On the side of the defendants, the 1st defendant was examined as DW1 and Mr. Muthusamy was examined as DW2 and Ex.B.1 to Ex.B.4 were exhibited. The Trial Court's finding was that the plaintiff had failed to establish her readiness and willingness and dismissed the suit.

8. Aggrieved by the said dismissal of the suit against the plaintiff, the plaintiff had preferred a first appeal on the file of Principal District Judge, Krishnagiri. The 1st Appellate Court, on independent assessment of the findings, concurred with the findings of the trial Court and dismissed the appeal.

9. As against the concurrent findings rendered by the Trial Court as



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well as the 1st Appellate Court, the plaintiff, as appellant, is before this Court.

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10. Considering the above pleadings and findings of the Courts below, I frame the following substantial questions of law:

(i) Whether the concurrent findings rendered by the Trial Court as well as by the 1st Appellate Court regarding the absence of readiness and willingness on the part of the plaintiff, is perverse.

(ii) whether the Trial Court as well as the 1st Appellate Court failed to place the burden of proving the loan transaction, on the respondents.

(iii) whether the Courts namely, the Trial Court as well as the 1st Appellate Court were justified in placing reliance on the recitals of previously exhibited documents between the parties in order to non suit the plaintiff, denying the relief of specific performance.

11. I have heard Mr. M. Santhana Raman, counsel for the appellant and Mr. S.D.S. Philip, counsel for the respondents. I have also perused the original records and also pleadings of the respective parties and also the oral and documentary evidence adduced before the Trial Court. I have also carefully perused the judgments of the Trial Court and also the 1st Appellate



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Court.

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12. The counsel for the appellant would mainly revolve his arguments on three grounds namely:

Firstly, the plaintiff was always ready and willing to perform her part of the contract and the Courts below have not objectively considered the pleadings and evidence in this regard.

Secondly he would contend that when the defendants had taken up a plea that agreement of sale was only a loan transaction, the burden ought to have been placed on them to establish the said defence. However, according to the counsel for the appellant, the Courts below have placed the burden erroneously on the plaintiff and thereby denied the relief of specific performance.

Thirdly, the counsel for the appellant would also submit that the Courts ought not have placed any reliance whatsoever on the sale deeds executed by the defendants in favour of the plaintiff in respect of adjoining lands to hold that against the plaintiff and thereby deny her the relief of specific



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performance.

13. Per contra, the learned counsel for the respondents would submit that the Courts below have rightly dismissed the suit for specific performance as the Courts have elaborately considered all the contentions and pleas put forth by the appellant and negatived the same. According to the counsel for the respondents, no interference is warranted from this Court.

14. At the outset, it is the settled position of law that in a suit for specific performance, the plaintiff is obligated to prove readiness and willingness to perform the contractual obligations under the agreement of sale. The suit agreement of sale was entered into on 27.12.2001 and according to the plaintiff, the total sale consideration agreed upon between the parties was Rs.3 lakhs and a sum of Rs.1 lakhs was paid as advance and that it was agreed between the parties that the balance sum of Rs.2 lakhs shall be paid by the plaintiff within 3 months from the date of agreement of sale. There is no dispute with regard to the payment of sum of Rs.1 lakh.

15. Though it is the specific case of the defendants that the said sum



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of Rs.1 lakh was not an advance under any sale agreement, but only received as a loan to meet urgent business needs of the 1st defendant and it is also stated that the said agreement was entered into only for the purpose of securing the amount of Rs.1 lakh and that the defendants agreed for execution of the suit agreement of sale as the 1st defendant was hardpressed for money at the relevant point of time and this was a condition that was laid by the husband of the plaintiff, at the outset, I am unable to accept the said contention raised by the defendants that it was only a loan transaction and not an agreement of sale. Once the defendants admitted the execute the agreement of sale, it is not open to them to go back and take a different stand or plead a different story all together, especially in the light of Sections 91 and 92 of Indian Evidence Act. It is not open to the defendants to plead anything contrary to the written contract, namely, the suit agreement of sale.

16. The counsel for the appellant relied a Division Bench judgment of this Court reported in *(1993) 2 LW 205* .

I respectfully agree with the ratio laid down by the Division Bench of



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this Court holding that "***it is not open to the defendant to raise a plea that the terms of the agreement should be ignored as the real purpose was to secure the loan transaction.***"

17. Placing further reliance on the said judgment, the counsel for the appellant would state that the Division Bench of this Court has granted relief of specific performance holding that *normal rule is that once the agreement of sale is made out, the Court should enforce the agreement of sale.* However, on perusal of the said judgment, I find that the Division Bench has clearly mentioned "***unless there are circumstances.....***" meaning it is not an absolute proposition of law.

18. The law does not absolve the plaintiff from proving the mandatory requirements of readiness and willingness as required under Specific Relief Act, 1963. In testing the readiness and willingness of the plaintiff, the facts that

(a) the plaintiff did not even issue a pre-suit notice calling the defendants to come forward to execute a sale deed, expressing her readiness



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and willingness to pay the balance sale consideration amount of Rs.2 lakhs;

(b) not taking any steps whatsoever to fulfill her part of the agreement of sale within the stipulated period of 3 months, which ended on 26.03.2002;

(c) having filed the suit only on 17.09.2003, well beyond the expiry of the period contemplated under the agreement namely 3 months from the date of agreement of sale.

The above facts clearly would show that the plaintiff has miserably failed to establish both readiness as well as willingness on her part to have the agreement of sale concluded by paying the balance sale consideration of Rs.2 lakhs. Though the counsel for the plaintiff / appellant would contend that the financial capacity of the plaintiff was never disputed by the defendants since the defendants have themselves sold adjoining properties to the plaintiff in the recent past, however, this specific argument of the counsel for the appellant cannot be accepted for the simple reason that the law of specific performance has marched to a longway since the early decisions rendered under the act. Today the law has been settled and the Hon'ble Apex Court and this Court, in



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very many cases, have held that a plaintiff who seeks to enforce an agreement of sale is bound to establish both readiness and willingness and cannot pick holes in the case of the defendants or weaknesses in the pleadings and evidence on the defendants' side to claim entitlement to a decree for specific performance.

19. A Division Bench judgment of our Court in ***Elango vs. K. Kamalaveni and others reported in 2023 (2) CTC 535***, where, speaking for the Division Bench, I had an occasion to discuss the scope of readiness and willingness in a suit for specific performance, analysing the ratio laid down by the Hon'ble Supreme Court in several cases. In the said decision of the Division Bench, it has been held that empty pleadings of readiness and willingness would not take the plaintiff any where and that such pleadings are to be supported by concrete proof by way of evidence adduced at trial. Applying the said ratio of the Division Bench to the facts of the present case, the plaintiff is not entitled to the equitable and discretionary relief of specific performance.

20. No doubt, the Courts below were not justified in looking into the



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previous registered sale deeds to non suit the plaintiff, in so far as the suit agreement of sale is concerned. However, this does not, in any way, dilute the other well considered findings of the Courts below regarding the plaintiff not being ready and willing to perform her part of the agreement of sale.

21. The relief of specific performance is equitable and also discretionary. Therefore, the plaintiff who seeks such relief has to establish & fulfill the mandate of Section 16(c) of the Specific Relief Act, 1963 that he / she has been ready and willing at all relevant points of time, to conclude the transaction, by completing / complying all the obligations that remained to be fulfilled on his / her part under the agreement of sale. Here admittedly, the plaintiff has not taken any diligent steps either during the 3 months period fixed under the agreement of sale or for a period close to a year and a half thereafter, before which she came to Court seeking the relief of specific performance. The Courts below have rightly discussed the oral evidence adduced by the parties and also the documentary evidence filed by them in a proper perspective before coming to the conclusion that the plaintiff is not entitled to any discretionary relief of specific performance.



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22. Here, in the instant case, the truth of the agreement of sale is one aspect only and the other aspect which needs to be established by the plaintiff is her readiness and willingness, which she has miserably failed to do and as rightly found by the Trial Court as well as the 1st Appellate Court. The plaintiff is not entitled to the decree of specific performance and permanent injunction.

23. From the above discussions, I do not find any justifiable ground or reason warranting interference with the concurrent findings rendered by the trial Court as well as the 1st Appellate Court. The substantial questions of law are accordingly answered.

24. In fine, the Second Appeal stands dismissed. There is no order as to costs.

15.09.2023.

Internet: Yes
Index: Yes/No
mjs

To

1. The Additional District Judge, Krishnagiri



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2. The Additional Special Judge, Krishnagiri.

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P.B.BALAJI,J

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