



WEB COPY



SA.No.237 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.237 of 2011

and

M.P.No.1 of 2011

1. R. Chinnappa Asari (deceased)

2. Ranganathan

3. Ramanathan

... Appellants

(Appellants 2 and 3 brought on record
as legal heirs of the sole appellant
deceased vide order of Court
dated 06.01.2017 in
C.M.P.No.19443 to 19445 of 2016
by TRNJ)

- Vs -

1. R. Brihman

2. Bannari

3. Krishnamurthy

4. Rangasamy Gounder

... Respondents

Second Appeal filed under Section 100 of the Civil Procedure Code
against the Judgment and decree dated 16.06.2010 made in A.S.No.103 of



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2003 on the file of the learned First Additional District Judge of Coimbatore confirming the Judgment and decree dated 03.12.2002 made in O.S.No.564 of 1992 on the file of the learned Second Additional Subordinate Judge Coimbatore.

For Appellant : Mr.S. Mukunth,Senior counsel for
M/s .Sarvabhauman Associates
For Respondent -1 : No Appearance
For Respondents 2 and 3 : Mr.V. Sivakumar
For Respondent -4 : No Appearance

JUDGMENT

The instant second appeal has been filed at the instance of the sole plaintiff . The respondents are the defendants before the Trial Court.

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

3.The brief averments which give rise to the instant second appeal is that the plaintiff and the defendants entered into a sale agreement on 19.05.1991, agreeing to sell the suit property for a total sale consideration of Rs. 41,000/-. The plaintiff paid a sum of Rs.31,000/- on various dates and



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only Rs.10,000/- was due to be paid by the plaintiff to the defendants. The Sale deed ought to have been executed on 18.11.1991, but it was not done so. It appears that the plaintiff sent a legal notice on 04.11.1991 expressing his unwillingness to pursue with the sale agreement and wanted to have the refund of the advance amount. The plaintiff has filed a suit during 1992 and while the suit was pending, it appears that the plaintiff made an application for amendment of the prayer in I.A.No.21 of 2021 seeking the relief of specific performance and it was allowed on 30.04.2001.

4. The said suit was resisted by the defendants 1 to 3 by contending that the plaintiff was not at all ready and willing to perform his part of the contract, and that since the factum was proved from the original prayer of the plaint, where the relief of specific performance was not sought for.

5. Before the Trial Court, the plaintiff examined himself as P.W.1 and one more witness was examined as P.W.2. On behalf of the defendants, the first defendant was examined as D.W.1. On behalf of the plaintiff 10 documents were marked as Ex.A1 to Ex.A10. On behalf of the defendants no documents were marked.



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6.Both the Trial Court as well the First Appellate Court dismissed the suit for specific performance on the finding that the plaintiff was not ready and willing to perform his part of the agreement.

7.Heard both side counsel, this Court has given its anxious consideration to either side submissions.

8.The sum and substance of the contentions of the learned senior counsel appearing on behalf of the appellants is that the plaintiff was ready and willing to perform his part of the agreement, and that the amendment towards the prayer for specific performance, which was allowed in I.A.No.21 of 2021 would relate back to the date of filing of the suit, and that as a consequence the plaintiff is entitled for a decree for specific performance.

9. However, the learned counsel for respondents 2 and 3 would invite the attention of this Court to Ex.A5 legal notice dated on 04.11.1991. Wherein in paragraph no.10, it was pleaded that the plaintiff is not willing to



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pursue the execution of the sale deed. Based on such stand, the learned counsel for the respondents 2 and 3 would submit that the same would exemplify and demonstrate the unwillingness of the plaintiff. Apart from the above submission the learned counsel for the respondents 2 and 3 would also take on another defence of limitation. It is pertinent to mention here that the suit for specific performance has to be filed within a period of 3 years from the date of the completion of the time for performance.

10. On perusal of the sale agreement, it is seen that the time for performance was fixed as six months. If that being the case, the suit ought to have been filed on or before September 1994. Whereas, the amendment application was filed in I.A.No.21 of 2001 well after the period of limitation.

11. Therefore, this Court is of the view that the finding of fact recorded by both the Courts below that the plaintiff was not at all ready and willing to perform his part of the agreement is well merited and this Court does not find any material to deviate from the said finding. Apart from that, as rightly contended by the learned counsel for respondents 2 and 3, the suit for specific performance even otherwise, barred by limitation. Therefore, no



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substantial question of law arises for consideration in this second appeal.

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12. In the result, this second appeal is dismissed by confirming the Judgments and decree passed by the both the Courts below. There shall be no order as to costs. Consequently the connected miscellaneous petition is closed.

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smn

Index: yes / no

Neutral citation

Speaking / Non speaking order

To

1.The First Additional District Judge, Coimbatore

2. The Second Additional Subordinate Judge's Court, Coimbatore.



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C.KUMARAPPAN, J

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