



A.S.No.178 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.178 of 2021
and C.M.P.No.8302 of 2021

S.P.Senthilkumar

...Plaintiff /appellant

Vs

1. Jayachitra
2. Subbulakshmi

... Defendants/Respondents

Prayer: Appeal Suit is filed under Section 96 of C.P.C against the Judgement and Decree dated 23.02.2021 made in O.S.No.338 of 2016 on the file of the Hon'ble IV Additional District Court, Coimbatore.

For Appellant : Mr.N.Kumar Rajan

For Respondents : Mr.N.Ponraj



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JUDGMENT

The plaintiff in a suit for specific performance is the appellant before this Court.

2. The facts which has led to the filing of the above second appeal are briefly set out herein below and the parties, for ease of understanding, are referred to in the same litigative status as before the trial Court.

3. The plaintiff had filed the suit O.S.No.338 of 2017 on the file of the IV Additional District Court, Coimbatore seeking specific performance of the agreement dated 31.01.2013 and for the relief of permanent injunction restraining the defendants from alienating or encumbering the suit property or in the alternative for refund of the sum of Rs.16,15,000/- @ 18% per annum on the sum of Rs.10,00,000/-



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from the date of the suit till the date of realization.

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4. It is the case of the plaintiff that the suit schedule property absolutely belonged to defendants under a partition deed dated 15.06.1998 in which the property is detailed as “B” schedule. The defendants had represented to the plaintiff that they intend to sell the suit property. After due negotiations, the parties have arrived at a sale consideration of Rs.20,00,000/- and they had reduced their agreement into writing in the form of Sale agreement on 31.01.2013, which was registered on the file of the Sub Registrar Office, Pollachi as document No.778 of 2013. At the time of execution of the sale deed, a sum of Rs.10,00,000/- was paid as an advance and 11 months time was given for the payment of the balance sale consideration. This 11 month window was given on account of the fact that the defendants had to measure the property, demarcate the same with boundaries and produce the encumbrance certificate for 30 years as also the revenue records at their own cost. It is the case of the plaintiff that the time was never the



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essence of the contract.

5. The plaintiff has always been ready and willing to perform his part of the contract. The defendant who was bound to perform certain obligations under the agreement of sale has not proceeded to do so. Meanwhile, the first defendant's brother and the second defendant's son, Nagamanickam had entered into a separate registered sale agreement with the plaintiff on 10.09.2013 in respect of the property, which is situate adjacent to the suit property. Both the parties did not take any steps to have the property measured and the boundaries fixed. Since the defendants were not proceeding to perform their obligations, the plaintiff had issued a legal notice on 16.12.2015 calling upon them to come and execute the sale deed. The defendants had received a legal notice on 21.12.2015 and 22.12.2015 respectively. On receipt of this notice, the defendants had come forward and requested a further time of six months for completing their obligations. The plaintiff would submit that the revenue records were required for registering the



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document and it is for this reason that the plaintiff was insisting that the defendants should have the revenue records mutated in their names and to handover the revenue receipts to him. Since they did not come forward to execute the sale deed, the plaintiff has filed the suit.

6. The defendants had filed a written statement *inter-alia* contending that the first defendant's husband and the second defendant's son-in-law were running a milk company. The first defendant's husband and the plaintiff were friends and owing to their profession, selvakumarasamy had obtained a loan of Rs.10,00,000/- from the plaintiff on 31.01.2013 and as a security for the loan, the agreement of sale was executed. The parties did not have intention to sell the property. As against the loan, the plaintiff would submit that a sum of Rs.8,00,000/- has been paid and the defendants would submit that they are ready to pay the balance amount. According to the defendants, the suit property was worth over a sum of Rs.1,60,00,000/-.



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By no stretch of imagination would the defendants had agreed to sell the suit property for a sum of Rs.20,00,000/-. Therefore, they sought for dismissal of the suit.

7. The IV Additional District and Sessions Judge, Coimbatore had framed the following issues:

- 1) Whether the sale agreement executed by defendants only for the purpose of security for obtaining the loan amount of Rs. 10,00,000/- on 31.01.2013 in favour of plaintiff? or Whether the sale agreement executed by the defendants in favour of plaintiff for specific performance as stated in the agreement?*
- 2) Whether the plaintiff is always ready and willing to perform his part of the contract throughout the agreement period?*



3) Whether the plaintiff is entitled to get the relief of specific performance and injunction as asked for in the suit?

4) Whether the plaintiff is entitled to get the alternative relief of refund of advance amount with interest and entitled to get the charge over the property?

5) To what other relief the plaintiff is entitled to?

8. The plaintiff had examined himself as P.W1 and one Karthik, the attesor of the sale agreement was examined as P.W2 and marked Exs.A1 to A7. The second defendant's son Nagamanikam was examined as D.W1 and the first defendant's husband, Selvakumarasamy was examined as D.W2 and Exs.B1 and B2 were marked.



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9. The learned Judge has non suited the plaintiff on the ground that he has not proved his readiness and willingness. The learned Judge has observed that as per the agreement, the balance sale consideration had to be paid within a period of 11 months which period came to an end on 03.02.2014. However, the plaintiff has issued a legal notice only a year and 10 months thereafter on 16.12.2015. The learned Judge had also taken note of the admission of P.W1 that his request was only made to Selvakumarasamy and not to the defendants. The learned Judge has also taken note of the fact that P.W2 had some axe to grind with the said Selvakumarasamy, the husband of the first defendant, in respect of the transaction involving the sale of 10 plots and that apart, he had filed a cheque case against the first defendant's brother, Marudhachalam. P.W2 had also admitted that the defendants had not told him anything about selling of the property. Therefore, the learned Judge proceeded to dismiss the suit. Challenging the same, the plaintiff is before this Court.



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10. The point for consideration in the above appeal are:

- 1. Whether the plaintiff has proved his readiness and willingness for performing his part of the contract?*
- 2. Whether the plaintiff is entitled to the alternative relief since the defendants have admitted to the fact that the first defendant's husband had borrowed a sum of Rs.10,00,000/- for which the property was offered as security?*

11. The learned counsel for the plaintiff would submit that the lower appellate Court has failed to appreciate that as per the terms of the agreement, the defendants were bound to provide the encumbrance certificate for 30 years, mutate the revenue records, measure the property and fix the boundaries. Since they had not come forward to complete this work, the plaintiff could not proceed further with the sale deed, as these documents were required at the time of the registration



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of the sale deed. He would submit that as soon as they had definitely come to know that the defendants were not going to perform their obligations, a legal notice has been issued. Therefore, the learned District Judge has erred in coming to the conclusion that there was no readiness and willingness displayed on the side of the plaintiff. He would submit that even in their written statement, the defendants have stated that the agreement of sale had been executed as security for a loan of Rs.10,00,000/-. Though the defendants would submit that nearly Rs.8,00,000/- had been paid towards the principal and interest, there is not a shred of documentary evidence to prove the same. He therefore submit that the learned Judge ought to have granted the alternate relief.

12. Per contra, Mr.N.Ponraj, learned counsel appearing on behalf of the defendants, would submit that the trial court has rightly held that the plaintiff has not proved his readiness and willingness to perform his



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part of the contract, which is the mandatory provision for invoking the discretionary relief of specific performance and which is mandated under Section 16(c) of the Specific Relief Act. He would further submit that the claim of over Rs.16,00,000/- is without any basis, particularly when the plaintiff has not given credit to the amounts paid by the plaintiff.

13. Heard the learned counsel on either side and perused the materials available on record.

14. The case of the plaintiff is that he and the defendants had entered into an agreement on 31.01.2013, which was reduced into writing and registered as Document No.778 of 2013 on the file of the Sub Registrar Office, Pammal. A sum of Rs.10,00,000/- was paid as an advance, and the balance payable is a sum of Rs.10,00,000/-, and certain obligations were insisted upon for receiving the balance sale



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consideration and having the sale deed executed. On the other hand, the defendants would deny the fact that the parties had entered into an agreement of sale to purchase the suit property. On the contrary, it is the case of the defendants that the first defendant's husband availed a loan of Rs.10,00,000/- from the plaintiff for which the agreement of sale had been offered as collateral security and there was no consensus-ad-idem between the parties with regard to the sale of the suit property. The property in question was likely to fetch a much higher sale consideration than what was agreed upon and therefore, the contention that the defendant had agreed to sell the property is without any basis.

15. The plaintiff in a suit for specific performance is bound to prove his readiness and willingness as held by the learned IV Additional District and Sessions Judge, Coimbatore. As per the agreement of sale, the plaintiff was bound to pay the balance sale



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consideration and have the sale executed within a period of 11 month which ended on 03.02.2014. The plaintiff has not shown any evidence to the effect that between 03.02.2014 and 16.12.2015 they were reading and willing. It was only when the plaintiff issued the legal notice-Ex.A5 that he had expressed his readiness and willingness to go ahead with the contract. Therefore, for over a period of one year and 10 months there has been a total inaction on the part of the plaintiff. Further the evidence reveals that there are business relationships between the plaintiff and the first defendant's husband, Selvakumarasamy and his entire communication has also been with him and not with the defendants. P.W2 has also adduced evidence to the effect that there was a transaction between P.W2 and the first defendant's husband with reference to sale of 10 plots. That apart P.W2 has initiated Section 138 proceedings against the first defendant's brother-in-law, Marudhachalam. Therefore, the evidence of P.W2 is that of an interested evidence and cannot be relied upon. Further, the



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execution of the agreement has been accepted by the defendants and it is their contention that it was offered as security for a loan.

16. Considering the fact that the plaintiff has not been able to establish their readiness and willingness, the trial Court has rightly dismissed the suit and I see no reason to interfere with the same. Therefore, the first point for consideration is answered against the plaintiff.

17. However, the defendants have admitted the loan and the fact that the property has been offered as security for the loan. Therefore, in the absence of proof to show that the loan has been discharged, the defendants are bound to refund the sum of Rs.10,00,000/-. However, considering the fact that the plaintiff has come forward with the case that the agreement of sale was intended only as sale and not as security, the defendants shall refund the sum of Rs.10,00,000/- within a period



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of three months from the date of receipt of a copy of the order, failing which, the said amount will earn interest @ 9% per annum from the said date till the date of payment. Therefore, the second point of consideration is answered in favour of the appellant. Consequently, the first appeal is partly allowed. No costs. C.M.P. is closed.

21.11.2023

Index: Yes/No
Speaking order/non-speaking order
srn

To

1. The IV Additional District Court, Coimbatore.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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