



A.S.No.667 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

A.S.No.667 of 2014
and
M.P.Nos.1 & 2 of 2014

Baskaran Appellant/Plaintiff

Vs

1. Dhanabagiyam
2. Shanthi
3. Rajalakshmi
4. Mahalakshmi

(Memo recorded dated 28.09.2021
Memo SR No.29297, R4 died,
R1 to R3 brought on record as LRs
of the deceased 4th respondent, vide
Court order dated 08.10.2021 made
in A.S.No.667 of 2014.)

.... Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of CPC against the Judgment and Decree dated 31.10.2013 made in O.S.No.187 of 2009 on the file of the II Additional District Judge, Salem.

For Appellant	: Mr.P.Jagadeesan
For R1 to R3	: Mrs.A.S.Manisha for Mrs.P.Veena Suresh



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JUDGMENT

This Appeal Suit has been filed against the Judgment and Decree dated 31.10.2013 made in O.S.No.187 of 2009 on the file of the II Additional District Judge, Salem, thereby dismissing the suit for specific performance.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The appellant is the plaintiff and the respondents are the defendants in the suit filed for specific performance. The case of the plaintiff is that the defendants owned the property and they have offered to sell the same for a total sale consideration of Rs.13,30,000/-. The first defendant derived title over the property by way of Will executed by his father. After the demise of his father, he had executed a Settlement Deed on 24.07.2002 in favour of the second defendant registered vide document No.1312/2002. Thereafter, they had entered into an agreement for sale with the plaintiff on 27.08.2007 and also paid a sum of



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Rs.50,000/- as advance. As per the agreement, the contract period was fixed at six months. On 09.09.2007, a further sum of Rs.50,000/- was also paid in favour of the defendants. When the plaintiff was always ready and willing to perform his part of contract, a cousin brother of the first defendant issued legal notice dated 07.09.2007 to the plaintiff as well as the defendants, questioning the right of the defendants in respect of the suit property and also filed a suit in O.S.No.1091 of 2007 on the file of the District Munsif, Salem, for declaration and permanent injunction in respect of the suit property. Subsequently, the said suit was decreed on 05.01.2009 and the plaintiff filed a suit for specific performance. In fact, aggrieved by the said Judgment and Decree, the counter party also filed an appeal suit in A.S.No.8 of 2009. Hence, the suit.

4. Resisting the same, the defendants filed written statement stating that the plaintiff never had shown his readiness and willingness to perform his part of the contract. That apart, they never intended to sell the property since it is the only property for means of



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their livelihood. In fact, the defendants 2 to 5/respondents herein did not execute any agreement for sale and did not receive any advance from the plaintiff. On 09.09.2007 also no advance amount was received by them. Though the suit for declaration and injunction was pending at the time of agreement, the plaintiff failed to show his readiness and willingness to pay the balance sale consideration. That apart, they have also taken a specific stand that it was only a loan transaction and they were never agreed to sell the property.

5. On hearing the rival pleadings, the learned Trial Judge framed the following issues for determination of the suit :-

"1. Whether the defendants agreed to sell the suit property to the plaintiff and entered into an sale agreement dated 27.08.2007 ?

2. Where the sale agreement is a fraudulent document ?

3. Whether the endorsement dated 09.09.2007 is true ?

4. Whether the plaintiff is always ready and willing to perform his part of contract ?



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5. Whether the plaintiff is entitled for the relief of specific performance as prayed for ?

6. To what relief, if any, the plaintiff is entitled ? "

6. On the side of the plaintiff, he had examined P.Ws.1 to 3 and marked Exs.A1 to A13. On the side of the defendants, they had examined D.W.1 to D.W.3 and marked Exs.B1 to Ex.B6. The Court had marked Ex.X1. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the Trial Court dismissed the suit for specific performance and ordered to refund the advance amount with interest at the rate of 12% per annum. Aggrieved by the same, the present Appeal Suit.

7. The learned counsel for the appellant/plaintiff would submit that though the plaintiff was very much ready and willing to perform his part of contract, the cousin brother of the first defendant had filed a suit for declaration and injunction in respect of the very same property in O.S.No.1091 of 2007. Therefore, the defendants dragged the



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plaintiff by not executing any agreement for sale, though he was ready to perform his part of the contract. Immediately after dismissal of the suit in O.S.No.1091 of 2007, the defendants filed an appeal suit in A.S.No.8 of 2009. Therefore, immediately after dismissal of the suit, the plaintiff did not file any suit for specific performance. He further submitted that the Trial Court dismissed the suit only on the ground that the plaintiff failed to prove his readiness and willingness to perform his part of the contract and therefore it is not possible to decree the suit for specific performance. Though the plaintiff was ready and willing to perform his part of the contract, the Trial Court, without considering the same, mechanically dismissed the suit.

8. Per contra, the learned counsel appearing for the defendants/respondents would submit that the plaintiff was ready to show his readiness and willingness to perform his part of contract. Though a suit was filed as against the first defendant in O.S.No.1091 of 2007 for declaration and injunction, there was no interim order. The pendency of the suit was not an impediment to perform his part of the contract. Even



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the plaintiff did not cause any notice to the defendants. Immediately, after the Judgment and Decree passed in the suit as directed by the Trial Court, the defendants had deposited the advance amount with interest. The suit property is a residential property and the defendants 2 to 5, being wife and female children of the first defendant, are living in the suit property. Therefore, he prayed for dismissal of the appeal.

9. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.

10. On hearing the arguments on either side, the point for consideration arising in this appeal is that,

“(i) Whether the plaintiff is proved his readiness and willingness to perform his part of contract ?

(ii) Whether the suit filed by the first defendant is an impediment for execution of sale deed in O.S.No.1091 of 2007. The said impediment is for execution of sale



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deed or to perform his part of the contract ?

(iii) Whether the suit is barred by limitation ?

11. Admittedly, the first defendant derived title over the property through Will. As per the Will, after the life time of the first defendant, the absolute right goes to the male child. The first defendant and the second defendant gave birth to male child. However, the male child died within a period of six months from birth. Thereafter, they gave birth to defendants 3 to 5. Therefore, the first defendant had absolute right over the property and executed a Settlement Deed in favour of the second defendant. Thereafter, all the defendants entered into an agreement for sale with the plaintiff and offered to sell the property for a total sale consideration of Rs.13,30,000/- and also received a sum of Rs.50,000/- as advance. Thereafter, on 09.09.2007, another sum of Rs.50,000/- was paid as part of consideration. In fact on 07.09.2007, the cousin brother of the first defendant, viz., the plaintiff in O.S.No.1091 of 2007, caused notice to the plaintiff and the defendants, thereby called upon them not to alienate the property, since the first defendant had no



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title over the property as per the Will. Even then, the plaintiff had paid a sum of Rs.50,000/- as part of sale consideration to the defendants on 09.09.2007. It shows that the legal notice or the suit filed by the cousin brother of the first defendant are not an impediment for the plaintiff to pay the balance sale consideration. Thereafter, the suit was filed in O.S.No.1091 of 2007 for declaration and injunction in respect of the property. The said suit was dismissed by a Judgment and Decree dated 05.01.2009. Even then, the plaintiff failed to cause any notice to show his readiness and willingness to perform his part of the contract. Admittedly, the contract period was fixed as six months from the date of agreement for sale i.e. 27.08.2007. Therefore, the plaintiff failed to show his readiness and willingness to perform his part of the contract. Hence, the first point is answered as against the plaintiff.

12. As stated supra, pending suit in O.S.No.1091 of 2007, there was no interim order. Therefore, the pendency of the suit itself is not an impediment for the plaintiff to perform his part of the contract. That apart, after dismissal of the suit by a Judgment and Decree dated



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05.01.2009, the plaintiff failed to cause any notice to show his readiness and willingness to perform his part of the contract. After 10 months from the date of dismissal of the suit, the plaintiff filed a suit for specific performance. Therefore, the suit itself is barred by limitation. Hence, the Trial Court rightly dismissed the suit for specific performance and ordered to refund the advance amount of Rs.50,000/- with interest at the rate of 12% per annum.

13. The Judgment in A.S.No.8 of 2009 dated 14.12.2011 is marked as Exs.A14 and A15. Even before the Judgment and Decree, the plaintiff filed a suit. Therefore, those documents are not helpful to the case of the plaintiff to prove his readiness and willingness to perform his part of the contract.

14. In view of the above, this Court finds no infirmity or illegality in the Judgment and Decree dated 31.10.2013 passed in O.S.No.187 of 2009 by the II Additional District Judge, Salem. Accordingly, this Appeal Suit stands dismissed. Consequently, connected



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miscellaneous petitions are closed. No costs.

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Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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To

1. The II Additional District Judge,
Salem.

2. The Section Officer,
V.R.Section,
High Court,
Madras.

G.K.ILANTHIRAIYAN, J.



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