



S.A.No.83 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

S.A.No.83 of 2021
and C.M.P.No.1831 of 2021

P.Nachimuthu Gounder

... Appellant

Vs.

1. K.S.Venkatachalam

2. Mumtaz

3. S.Kasturi

4. A.Sirajudeen

5. J.Kumaravel

6. A.Kalidass

7. Vadivel

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., pleased to set aside the Decree and Judgement dated 16.12.2019 passed in A.S.No.33 of 2019 by the V Additional District and Sessions Court, Coimbatore confirming the Decree and Judgement dated 28.08.2017 passed in O.S.No.206 of 2007 by the First Additional Sub Court, Coimbatore.



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For Appellant : Mr.C.D.Sugumar
For Respondents : M.V.Venkatasamy for R1
Mr.L.Mouli for R5 to R7

JUDGMENT

This Second Appeal has been filed against the Judgement and Decree passed by the V Additional District and Sessions Court, Coimbatore, in A.S.No.33 of 2019 dated 06.12.2019, confirming the Judgment and Decree passed by the First Additional Subordinate Court, Coimbatore in O.S.No.206 of 2007 dated 28.08.2017.

2. The plaintiff is the appellant herein. He had filed the Suit seeking for specific performance and permanent injunction. The suit was dismissed and the same was confirmed by the first appellate Court. Aggrieved against the same, the appellant/plaintiff has filed this present Second Appeal.

3. For the sake of convenience, the parties are referred to as they are arrayed in the Original Suit.



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deed. Later, the plaintiff came to know that the 1st defendant, by suppressing the sale agreement entered between them, attempted to sell the suit property to the third party for a higher amount. Thereby, the plaintiff had issued a suit notice to the 1st defendant on 23.03.2007 and also published a caution notice on 23.03.2007 in the Malai Malar daily. He contended that the 1st defendant wantonly refused to receive the suit notice and attempted to remove the polls in the suit site.

4.4 The plaintiff was ready and willing to perform his part of the contract before expiry of the period of agreement and was ready to pay the balance amount of Rs.98,967/- to the 1st defendant and get the sale deed at his expenses. Hence, the plaintiff filed the Suit seeking for specific performance and permanent injunction.

5. The first defendant has filed the written statement denying the averments in the plaint. The crux of the averments in the written statement is as under :-

5.1. The first defendant is the absolute owner of the property situated in S.F.No.336/2C having purchased the same from one



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V.Premakumari vide sale deed dated 24.09.1998 and he is in possession and enjoyment of the same from the date of purchase. He had taken some money as hand loan from the plaintiff for the purpose of purchase of some property, for which, the plaintiff had obtained some signature in stamp papers and now, taking advantage of the same, he is threatening the 1st defendant to execute the sale deed with regard to the suit property.

5.2. On 26.03.2007, the plaintiff, with some other persons trespassed into the suit property and attempted to fence it. While so, the plaintiff himself had given a false complaint, as if the first defendant is attempting to dispossess the plaintiff. Thereby, the first defendant has filed a civil suit in O.S.No.708 of 2007 for permanent injunction on the file of the 1st Additional District Munsif, Coimbatore against the plaintiff and obtained an order of status quo in I.A.No.732 of 2007 and the main suit is pending. Thereby, the plaintiff has filed this suit as counter blast by creating forged and fabricated documents in order to grab the property which belongs to the first defendant. The first defendant has no intention to sell his property and that the cause of action alleged is false and the plaintiff is not entitled to equitable relief of specific performance. Hence, the suit may be dismissed.



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6. The trial Court has framed the following issues on the basis of the pleadings.

1. Whether the plaintiff is entitled for the relief of specific performance as prayed for?
2. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
3. Whether the alleged sale agreement is fabricated one or not?
4. To what other relief the plaintiff is entitled?

7. During the trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and Ex.A1 to Ex.A5 were marked. On the side of defendants, the first defendant was examined as DW1 and Ex.B1 was marked.

8. After considering the oral and documentary evidence, the trial Court dismissed the suit in respect of specific performance and decreed the suit by granting a relief of refund of the advance amount. Aggrieved over the same, the plaintiff has preferred the first appeal in AS.No.33 of 2019, before the V Additional District and Sessions Court, Coimbatore.



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9. The first appellate Court, based on the grounds of appeal, had framed the following points for determination.

1. Whether the plaintiff has failed to prove the execution of that suit sale agreement dated 06.07.2006 by the 1st defendant and passing of the sale consideration of Rs.2 lakh under the said sale agreement in Ex.A1?
2. Whether the trial Court erred in deciding that the plaintiff was not ready and willing to perform his part of the contract?
3. Whether the trial Court erred in rejecting the relief of specific performance?
4. Whether the trial Court erred in granting refund of advance amount with interest without prayer?
5. Whether the trial Court erred in granting interest for the pre-suit period for refund of the advance amount?
6. Whether the judgment passed by the trial Court is illegal and perverse and the same is liable to be set aside?

10. The first appellate court, having analysed the oral and documentary evidence and the findings of the trial Court, found that there is



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no illegality or perversity in the judgment of the trial Court rejecting the relief of specific performance and granting the relief of refund of advance amount, however, the interest awarded for the pre suit period alone has to be set aside in compliance with Section 34 of CPC and remaining part of the decree of the trial Court has to be confirmed and thus dismissed the Appeal Suit in A.S.No.33 of 2019 while setting aside the interest amount at 18% per annum for the pre-suit period. Aggrieved against the same, the present Second Appeal has been filed.

11. This Court had admitted this Second Appeal on the following substantial questions of law vide order dated 29.03.2021:-

“1. Whether the Courts below were right in holding that the appellant/plaintiff has failed to perform his part of the contract disregarding the Exhibits A1 and A2, which is the notice sent by the appellant/plaintiff to the first respondent/defendant with in the period of contract.

2. Whether the Court below were right in holding that the appellant/plaintiff is not entitled for the relief of specific performance of the contract since he



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failed to prove that he has been put in possession of the suit property by the first respondent/defendant.”

12. Mr.C.D.Sukumar learned counsel for the appellant submitted that the appellant had always shown his readiness and willingness to perform his part of the contract. He also submitted that the sale agreement was entered on 06.07.2006 fixing the time limit as six months and the consideration at Rs.2,98,967/- and the appellant had paid an advance of Rs.1,50,000/-. He further submitted that on 30.12.2006, even prior to the expiry date by six months, at the instance of the first defendant, plaintiff handed over the post dated cheque bearing No.008335 dated 11.02.2007 for a sum of Rs.1lakh and thereby, the agreement was extended for a further period of three months and on 20.01.2007, the defendant had received a sum of Rs.50,000/- by way of cash. The learned counsel for the appellant/plaintiff submitted that despite the insistence of the appellant/plaintiff to come for registration of the sale deed, the first defendant/R1 did not appear on that date and thereby, the suit was filed and prior to filing the suit on 02.04.2007, pre suit notice was issued on 23.03.2007. He further submitted that the plaintiff had also shown his



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readiness and willingness to complete the agreement and also the plaintiff was put in possession of the property, whereas, the Courts below have failed to take into consideration the same and erred in holding that the plaintiff had failed to perform his contract, disregarding the documents Ex.A1 (sale agreement) and Ex.A2 (office copy of legal notice) filed on the side of the plaintiff and thereby, he seeks for setting aside the judgments rendered by the Courts below and prayed for decreeing the suit for specific performance.

13. Learned counsel for the respondents submitted that it is the specific plea of the respondents that the plaintiff, by forging the blank papers signed by the first defendant, which was given in lieu of a loan transaction, has fabricated the document and also pleaded that he was put in possession, whereas, the Courts below have rightly found that he was not handed over possession. He further submitted that it is the further case of the plaintiff that the additional amount of Rs.50,000 was paid and cheque for Rs.1 lakh was given, however, the cheque had bounced and thus, the appellant/plaintiff has not proved his readiness and willingness to perform the contract and thereby, both the Courts below have rightly held that the petitioner is not entitled for specific performance. He further submitted that in respect of the



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finding of the trial Court for repayment of the amount, the first defendant/R1 has filed the appeal suit A.S.No.4 of 2018 and it was partly allowed, thereby, the decree was modified and the first defendant is directed to refund a sum of Rs.2 lakhs with interest 12% per annum and the Appeal Suit filed by the plaintiff/appellant in A.S.No.33 of 2019 was dismissed. He further submitted that the appellant/plaintiff has not shown any proof for his readiness and willingness to perform his part of the contract and the Courts below have rightly found that the plaintiff has not proved his readiness and willingness and also found that the alleged document was a fabricated one and dismissed the suit.

14. In support of his contention, he relied on the judgment passed by the Hon'ble Apex Court in the case of ***P.Meenakshisundaram vs. P.Vijayakumar and another*** reported in ***(2018) 15 SCC 80*** and the relevant portion is extracted hereunder :-

"8. As regards suit for specific performance, the law is very clear that the plaintiff must plead and prove his readiness and willingness to perform his part of the contract all through i.e. right from the date of the contract till the date of hearing of the suit. If Respondent 1 was well aware



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about the encumbrance and the parties had chosen that the balance consideration be paid to the appellant before 20-3-2001 so that the sale deed could be registered without any encumbrance, it was for Respondent 1 to have taken appropriate steps in that behalf for completion of transaction. The facts on record disclose that the first step taken by Respondent 1 after the suit agreement was well after four months, when further amount of Rs 2 lakhs was paid on 21-1-2001. Thereafter nothing was done till 20-3-2001 by which the transaction had to be completed. The record is completely silent about any communication sent around 20-3-2001 towards completion of transaction. As a matter of fact the first step thereafter was six months after the deadline, namely, on 22-9-2001 when the communication (Ext. A-6) was sent along with amount of Rs 10 lakhs. The written submissions filed on behalf of Respondent 1 also do not indicate any steps till this time so as to say that he was all the while ready and willing to complete the transaction.

9. The assertion made by Respondent 1 in Para 7 of the plaint is a mere assertion without any relevant details as to what exactly he had done towards fulfilment of his obligations and completion of the transaction. The factual aspects as detailed above are quite clear that Respondent 1 had completely failed in his obligations and was not ready and willing to perform his part of the contract. Even going



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by the case set up by Respondent 1, that around 29-7-2002 an arrangement was arrived at, under which out of the balance amount Rs 19.5 lakhs, Rs 13.5 lakhs were to be made over by Respondent 1 to the bank directly and rest of the sum of Rs 6 lakhs was to be paid to the appellant in cash, the facts do not indicate any observance of these conditions. Beyond filing an application for impleadment which came to be dismissed, Respondent 1 did not take any step. The amount of Rs 13.5 lakhs was independently deposited and discharge was obtained by the appellant.

10. If Respondent 1 was put in possession of the suit property pursuant to the arrangement as suggested by him, his corresponding obligation under such arrangement was also twofold, namely, to pay off the dues to the Bank directly and pay rest of the sum to the appellant. There is nothing on record which could be consistent with discharge of such obligation on the part of Respondent 1.

11. The case put up by Respondent 1 that he was put in possession pursuant to an arrangement arrived at on or around 29-7-2002 is not free from doubt. In a matter where Rs 19.5 lakhs were still outstanding, it is not possible to accept that the vendor may put the purchaser in possession when the original agreement did not contemplate handing over of the possession even before execution of the sale deed. The contemporaneous facts including the aspects



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that the appellant had initiated criminal proceedings and made complaints to various authorities about forcible possession having been taken by Respondent 1, also indicate falsity in the claim of Respondent 1. Be that as it may, the basic issue is whether Respondent 1 was ready and willing to perform his part of the contract which in our considered view has to be answered against him. We are conscious that two courts have arrived at a finding of fact but in our view such finding is completely opposed to and contrary to the facts on record and is completely unsustainable.

12. We, therefore, reject the claim of Respondent 1 and hold that the suit for specific performance preferred by Respondent 1 is required to be dismissed. At the same time we accept the counterclaim made by the appellant and hold that he is entitled to recovery of possession. It appears that the assertions in the counterclaim that the Kalyana Mandapam was fetching Rs 1,80,000 per annum were not disputed or denied by Respondent 1. On the score that the appellant was wrongfully denied and deprived of the earnings from Kalyana Mandapam for the last 16 years, he would be entitled to reasonable return. But at the same time he had retained and enjoyed sum of Rs 18 lakhs which he had received by way of advance from Respondent 1. In the circumstances, though we would direct refund of the sum of Rs 18 lakhs, we further deem it appropriate to direct that in



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the circumstances neither would Respondent 1 be entitled to any interest on the sum of Rs 18 lakhs which was given by way of advances under the suit agreement to the appellant nor would the appellant be entitled to any sum by way of mesne profits for the last 18 years of wrongful possession of the suit property by Respondent 1.”

He also relied on the judgment passed by this Court in the case of

V.Suresh Kumar vs. A.Ramasamy and another reported in **(2020) 4 CTC**

798 and the relevant portion is extracted hereunder:-

“14. As admitted by both the parties, there was an Agreement of Sale entered into between the Appellant/Plaintiff and the First Respondent/First Defendant, dated 23.12.2007, wherein, the First Respondent/First Defendant agreed to sell the properties for a sum of Rs.33,00,000, measuring an extent of 12,000 sq.ft. in Plot Nos.6 to 10, comprised in R.S. No.43/4A part in Killiyur Village. Yercaud Taluk. The Appellant/Plaintiff also agreed to purchase the five Plots at the rate of Rs.275 per sq.ft. and at the time of entering into the Agreement, Rs.5,00,000 was paid by the Appellant/Plaintiff towards advance to the First Defendant. By virtue of the said Agreement, both the parties agreed to execute the Sale Deed within 90 days from the date of entering into the Agreement. However, 90 days expired on 23.03.2008 and the



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Appellant/Plaintiff never showed his readiness and willingness to purchase the property. In a Suit for Specific Performance, readiness and willingness is an important factor. Unless and until, the readiness and willingness is not proved, certainly, the relief of Specific Performance cannot be granted. In the present case, within 90 days, the Appellant/Plaintiff ought to have shown his readiness to perform his part of the Agreement. However, even beyond the period of 90 days, the Appellant/Plaintiff paid a sum of Rs.5,00,000 on 20.02.2009. The subsequent payment was received by the First Respondent/First Defendant as well. In this context, we would like to point out that, merely because, the First Respondent/First Defendant received the part of the Sale consideration even after the expiry of the time limit stated in the Agreement/Ex.A.1, that by itself, will not give any right to the Appellant Plaintiff to seek for the execution of the Sale Deed beyond the period of 90 days on the ground that time is not essence of the Contract. The Court below though came to the conclusion that time is not essence of the Contract since the Appellant/Plaintiff paid balance Sale consideration after the expiry of 90 days specified in the Agreement and the First Defendant also received, however, rightly denied to grant the relief of Specific Performance.

14.1 In a Suit for Specific Performance, it is for



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the Appellant/Plaintiff to prove his readiness and willingness to perform his part of the Contract. But, there is no iota of evidence to show that the Appellant/Plaintiff was ready and willing to perform his Contract. At the time, when the Agreement was entered into between the Appellant/Plaintiff and First Respondent/First Defendant, the Appellant/Plaintiff paid Rs.5,00,000 towards Advance and after the expiry of 90 days specified in the Agreement, he made payment for balance Sale consideration, which would clearly prove that he was not ready and willing to pay the entire amount. Even assuming that there was no Agreement to pay the entire amount, after the expiry of 90 days, he has made Part payment. The moment, when the Appellant made part payment after the expiry of 90 days, it is clear that the Appellant/Plaintiff was not ready and willing to perform the Contract with the entire Sale consideration even after the expiry of 90 days. The Part payment made by the Appellant to the First Respondent/First Defendant after the expiry of 90 days period would show that the Appellant/Plaintiff was not in a position to pay the entire Sale consideration. As stated above, in a Suit for Specific Performance, it is for the Appellant/Plaintiff to prove always his readiness and willingness to perform the Contract until the time of filing the Suit. But making part payment after the expiry of 90

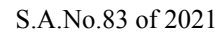


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days would only show that the Appellant/Plaintiff was not in a position to make the entire payment and ultimately, lacks the requirement of readiness and willingness to make payment throughout the Contract period until the filing of the Suit, which is a foremost requirement in a Suit for Specific Performance. This aspect was not dealt with by the Court below. On this ground alone, the Suit filed for Specific Performance of Agreement of Sale by Appellant/Plaintiff is liable to be dismissed. However, the Court below apart from finding that the Appellant/Plaintiff was not willing to perform the part of the Agreement, found that the Appellant/Plaintiff was not able to prove identity of the property.”

15. Heard both sides, perused the judgments of the Courts below and also the grounds raised by the appellant.

16. It is the case of the plaintiff that the plaintiff and the first defendant had entered into the suit agreement of sale, Ex.A1 on 6.7.2006 for total sale consideration of Rs.2,98,967/- fixing the time for execution of the sale deed was six months and the plaintiff had paid an advance amount of Rs.1,50,000/-. The admitted fact is that the plaintiff is a neighbouring land



18. It is seen that both the courts below have elaborately analysed the oral and documentary evidence adduced by both the parties and found that execution of the agreement of sale, Ex.A1 is not a fabricated one as claimed by the first defendant. Though the first defendant has taken a stand as if it is only a loan transaction and the plaintiff had fabricated the



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agreement of sale by using the signatures affixed by him on blank stamp papers as demanded by the plaintiff, the endorsement made by the first defendant on 20.1.2007 acknowledging further payment of Rs.50,000/- appears to be made by the own handwriting of the first defendant and it was also admitted by DW1 during the cross-examination, which aspect was rightly considered by the courts below as a vital point for disbelieving the version of the first defendant that it is only a loan transaction.

19. The Courts below have also considered the fact that the first defendant remained silent even when the post dated cheque for Rs.1,00,000/- given by the plaintiff was dishonoured and rightly found that such silence on the part of the first defendant leads to an inference that it could not be a loan transaction and the agreement of sale, Ex.A1 was intended to be acted upon.

20. While such being the case, the plaintiff appears to have claimed that he was put in possession of the suit property on 20.1.2007 on payment of subsequent amount viz., Rs.50,000/-. However, the courts below have observed that the endorsement made in lieu of such payment does not disclose any parting with possession of the suit property. Further, it is clear



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that not even a piece of evidence has been produced by the plaintiff to prove his possession and enjoyment of the suit property, which aspect has been properly appreciated by the courts below.

21. It is true that the plaintiff had issued Exs.A1 and A2 notices even before expiry of the period specified in the agreement of sale demanding the first defendant to execute the sale deed, however, it appears that the plaintiff had admitted during his cross examination that he was not possessing sufficient funds to conclude the sale and the post dated cheque for Rs.1,00,000/- issued by the plaintiff was dishonoured. Such aspects have been appreciated by the courts below in proper perspective to arrive at a conclusion that the plaintiff was not ready and willing to perform his part of the contract.

22. Having arrived at a conclusion that the plaintiff has not proved his ready and willingness to perform his contract, the Trial Court, by applying the ratio of equity, granted the relief of refund of advance amount of Rs.2,00,000/- paid by the plaintiff. The appellate Court, by considering the fact that the plaintiff had taken initiative to amend the plaint with



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alternative relief and failed in his attempt and that he had paid court fee for the entire value of the suit agreement which is Rs.99,967/- affirmed the relief of refund granted by the Trial Court, however, in compliance of Section 34 CPC, has rightly set aside the interest for the pre-suit period.

23. A perusal of the entire materials including the judgments of the courts below, it is found that the appellant/plaintiff has not proved his readiness and willingness to perform his part of the contract and thus, he is, certainly, not entitled to the relief of specific performance, however, applying the ratio of equity, the Trial Court had shown indulgence in granting the relief of refund of advance amount of Rs.2,00,000/- paid by the plaintiff and the interest component has been rightly analysed by the first appellate court to set aside the same for the pre-suit period and this Court does not find any infirmity in the judgments rendered by both the Courts below.

24. Having carefully analysed the materials available on record including the judgments of both the Courts below, this Court is of the view that there is no illegality or perversity in the findings of the courts below and



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thereby, both the substantial questions of law are answered against the appellant/plaintiff.

25. In the result, the Second Appeal fails and the same is dismissed confirming the judgment and decree of the courts below. No costs. Consequently, the connected Miscellaneous Petition is closed.

30.08.2023

ham/ssk

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1. The V Additional District and Sessions Court, Coimbatore.
2. The First Additional Sub Court, Coimbatore.
3. The Section Officer, VR Section, High Court of Madras.



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