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S.A.No.195 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.195 of 2017
and C.M.P.No.4260 of 2017

K.Ponnusamy

...Appellant

Vs.

1.Savithiriammal @ Venkatalakshmiammal

2.B.Ragupathy

3.B.R.Jayanthi

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 09.09.2016 in A.S.No.18 of 2014 on the file of the learned V Additional District and Sessions Judge, Coimbatore with no concurrent findings and dismissing the appeal confirming the judgment and decree dated 20.12.2013 in O.S.No.609 of 2011 on the file of Second Additional Subordinate Judge, Coimbatore.

For Appellant : Mr.T.S.V.Krishnan

For Respondents : Mr.N.Manokaran
for R1 to R3



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J U D G M E N T

The unsuccessful plaintiff is the appellant. He filed a suit for specific performance of agreement dated 03.01.2005. The suit was dismissed by the trial Court and aggrieved by the same, the appellant preferred an appeal and the same was also dismissed. Hence, challenging the concurrent findings against him, the plaintiff has come up by way of this second appeal.

2. According to the appellant/plaintiff, he entered into suit sale agreement dated 03.01.2005 with the first respondent for purchase of property with an extent of eight cents at the rate of Rs.45,000/- per cent. Therefore, the total sale consideration comes to Rs.3,60,057/- and on the date of agreement a sum of Rs.25,000/- was paid by him as advance. Under agreement, the time limit of three months was prescribed for completion of sale transaction. On 28.03.2005, the first respondent received further sum of Rs.5,000/- from appellant and made an endorsement agreeing to extend the time limit till the disposal of the suit concerning agreement mentioned property. Since the first respondent failed to inform the appellant about the decree passed in her



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favour, the appellant issued a legal notice to the first respondent on 02.04.2010 calling upon her to receive the balance sale consideration and complete the sale transaction. The first respondent in her reply notice dated 03.05.2010 denied the very execution of the sale agreement. Thereafter, the appellant issued another notice on 03.06.2011 requesting the first respondent to complete the sale transaction. The first respondent came up with a reply on 16.06.2011 with untenable allegations. In the meantime, the first respondent sold the property to the respondents 2 and 3 on 23.05.2011. Immediately, the appellant was constrained to file a suit for specific performance. The appellant also sought for declaration that the sale deed executed by the first respondent in favour of respondents 2 and 3 on 23.05.2011 was null and void. He also sought for injunction restraining the respondents 2 and 3 from encumbering the suit properties.

3. The first respondent filed a written statement denying the execution of the suit sale agreement and the endorsement thereon. It was the case of the first respondent that the appellant was a money lender and he borrowed a sum of Rs.25,000/- from the appellant to meet the medical expenses of her husband. At the time of borrowal, the appellant got the



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signatures of the first respondent in stamp papers and green sheets. The first respondent never agreed to sell the property to the appellant and though the first respondent approached the appellant to repay the amount borrowed by her, the appellant demanded exorbitant interest and refused to accept the same. The suit has been filed by the appellant suppressing the real loan transactions between the parties. On these grounds, the first respondent sought for dismissal of the suit. The respondents 2 and 3, who are alienees from first respondent filed separate written statement and resisted the suit by claiming themselves as bonofide purchasers of the property without notice of agreement.

4. Before the trial Court, the appellant was examined as PW.1 and eight documents were marked as Exs.A1 to A8. The first respondent was examined as DW.1 and attestor under Ex.A1 sale agreement was examined as DW.2. The third respondent was examined as DW.3. On behalf of the respondents, four documents were marked as Exs.B1 to B4.

5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant failed



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to prove that Ex.A1 sale agreement was executed by first respondent and consequently, dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in A.S.No.18 of 2014, on the file of the V Additional District and Sessions Judge, Coimbatore. The First Appellate Court on re-appreciation of evidence available on record, came to the conclusion that the suit sale agreement was executed by the first respondent in favour of appellant. However, the First Appellate Court came to the conclusion that the appellant failed to prove his continuous readiness and willingness and consequently he was not entitled for decree of specific performance, hence the appeal was dismissed by the First Appellate Court.

6. At the time of admission, this Court formulated the following substantial question of law by order dated 13.03.2017:

“Whether the lower appellate Court is correct in law in not affording the protection to the appellant/plaintiff under Article 113 of the Limitation Act, 1963?.”

7. The learned counsel appearing for the appellant submitted that the First appellate Court non-suited the appellant on the ground that he failed to file a suit, immediately, after reply by the first respondent denying execution



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of suit sale agreement and the said reason of the First Appellate Court is contrary to settled law. It was the submission of the learned counsel that under Article 54 r/w Article 113 of Limitation Act, the appellant has got three years time to file a suit for specific performance from the date of refusal. In the case on hand, the execution of the agreement was denied by the first respondent by her reply notice dated 03.05.2010 and the present suit has been laid on 28.07.2011 within the time limit of three years, as per second limb of Article 54 of Limitation Act. Merely because there is some delay on the part of the appellant in filing the suit, the same cannot be the reason to deny the relief of specific performance. The learned counsel further submitted that the First Appellate Court after analyzing the evidence available on record, came to the conclusion that the suit sale agreement was genuine one. The first respondent failed to intimate the disposal of the suit filed by her regarding the agreement mentioned property. The appellant on his own found out the disposal of the suit in the year 2009 and thereafter, filed a suit for specific performance. Therefore, the conclusion reached by the first Appellate Court that the appellant failed to prove his readiness and willingness is contrary to the evidence available on record.



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8. In support of his contention, the learned counsel appearing for the appellant relied on the following judgments:

(i) *Madamsetty Satyanarayana Vs. G.Yelloji Rao and other* reported in *1965 AIR (SC) 1405*;

(ii) *P.Daivasigamani Vs. S.Sambandan* reported in *AIR 2022 SC 5009*;

(iii) *Saradamani Kandappan and others Vs. S.Rajalakshmi and others* reported in *CDJ 2011 SC 621 : 2004 (4) CTC 640*;

(iv) *Kalyanpur Lime Works Ltd., Vs. State of Bihar and another* reported in *1954 AIR (SC) 165*;

9. The learned counsel appearing for the respondents submitted that the agreement was entered into on 03.01.2005 and under the terms of agreement, time for performance was fixed as three months. Subsequently, under the agreement, time was extended by another three months. The time limit of three months fixed by endorsement in Ex.A1 dated 28.03.2005 expired on 27.06.2005. Therefore, the suit for specific performance should have been filed within three years from 27.06.2005, however, the same has been filed only on 28.07.2011 beyond the period of three years. Therefore, the



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suit is barred by limitation.

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10. The learned counsel appearing for the respondent further submitted that though under the suit sale agreement, an endorsement was made thereon for extending the three months period fixed for performance, the suit was filed by the appellant after six years. Absolutely, there is no explanation or evidence on the part of the appellant to show that he had been continuously ready and willing from 2006 to 2011. The learned counsel further submitted that the first notice was issued by the appellant only on 02.04.2010 and the same was replied by the first respondent on 03.05.2010. In the reply notice after denying the execution of suit sale agreement, the first respondent sought for copy of the sale agreement for her perusal. However, the same was not furnished and appellant waited for one year and second notice was issued on 03.06.2011, thereafter, the suit was filed on 28.07.2011. Therefore, it is the submission of the learned counsel for the respondent that the appellant failed to prove continuous readiness and willingness and taking into consideration the entire evidence available on record, the First Appellate Court rightly came to the conclusion that the appellant failed to prove readiness and willingness.



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11. In support of his contention, the learned counsel for the respondent relied on the following judgments:

- (i) *U.N.Krishnamurthy Vs. A.M.Krishnamurthy* reported in *AIR 2022 SC 3361*;
- (ii) *Shenbagam Vs. K.K.Rathinavel* reported in *AIR 2022 SC 1275*;
- (iii) *M.Kumar V. V.Balan* reported in 2021 (4) *CTC 330*;
- (iv) *M.Jayaprakash Narayanan Vs. Santhammal and others* reported in 2018 (1) *CTC 701*.

12. The First Appellate Court non-suited the appellant only on the ground of readiness and willingness. A perusal of terms of Ex.A1 agreement would suggest three months time was fixed for performance. Subsequently, an endorsement was made by the first respondent on 28.03.2005 extending the time for performance. The same reads as follows:

இந்த ஒப்பந்தத்தை ஹை சோத்து சம்பந்தமான வழக்கின் தீர்ப்பு முடிந்தபின்,
தாங்கள் கிரயம் செய்து கொள்ள மேலும் மூன்று மாதங்கள் வரை நீடித்துக்
கொடுக்கிறேன்.

13. A perusal of the above endorsement would suggest there was



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a suit pending regarding the agreement mentioned property and first respondent agreed to extend the time by three months to enable the appellant to complete the sale transaction after disposal of the suit. It is the submission of the learned counsel for the appellant that time was extended by three months from the date of disposal of the suit. However, the learned counsel appearing for the respondents submitted that the time was extended by three months only. From the endorsement made on 28.03.2005 we cannot come to a definite conclusion, whether the time was extended till the disposal of the suit. The endorsement only reads as if time was extended by three months to enable the appellant to complete the sale transaction. The endorsement was made on 28.03.2005 and thereafter, what transpired between the parties is not explained by appellant by letting any evidence. The first legal notice issued by him was dated 02.04.2010, wherein, he called upon the first respondent to fix the date for registering the sale deed from free encumbrances. Absolutely there is no explanation on the part of the appellant regarding the fact what happened between 03.01.2005 and 02.04.2010. After receipt of notice from appellant, first respondent issued a reply notice on 03.05.2010 denying very execution of the suit sale agreement and raising the plea of loan transaction. Even after denial of sale agreement by the first respondent, the appellant has not taken



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any steps to file the suit immediately. He waited for 13 months and then issued second notice on 03.06.2011 again calling upon the first respondent to fix a date for registration of the sale deed. In the notice, the appellant also referred to the disposal of the suit filed by the first respondent, regarding the suit sale agreement and its disposal on 06.02.2009. Though, the pendency of the suit regarding agreement mentioned property was referred to in the endorsement itself, the appellant has not taken any care to follow the suit and take steps to enforce the agreement immediately, after disposal of the suit.

14. In any event, even after reply by the first respondent on 03.05.2010, the appellant has not filed the suit immediately, but, he waited for nearly thirteen months, issued second notice and then filed the suit only on 28.07.2011. Therefore, taking into consideration the conduct of the appellant right from the date of agreement to till the date of filing of the suit. The first Appellate Court rightly came to the conclusion that the appellant failed to establish his continuous readiness and willingness to perform his part of contract from the date of inception of the agreement. The said factual finding requires no interference by this Court.



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15. The learned counsel for the appellant contended that mere delay in filing the suit cannot be put against him, since the suit has been filed within three years from the date of denial of execution. In this regard, the learned counsel relied on the judgment of the Apex Court in ***P.Daivasigamani Vs. S.Sambandan*** reported in ***AIR 2022 SC 5009***;

11. As regards, the delay in filing the suit, it is very pertinent to note that the Rule of equity that exists in England, does not apply in India, and so long as a suit for specific performance is filed within the period of limitation, delay cannot be a ground to refuse the relief of specific performance to the Plaintiff. In Mademsetty Satyanarayana v. G. Yelloji Rao MANU/SC/0310/1964 : AIR 1965 SC 1405 it has been observed as under:

7. Mr. Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems-- English and Indian--qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay -- the time lag depending upon circumstances -- may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes



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the period of limitation. If the suit is in time, delay is sanctioned by law; it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.

12 . The aforesaid ratio has also been followed recently by this Court in R. Lakshmikantham v. Devaraji MANU/SC/0969/2019 : (2019) 8 SCC 62. We, therefore, have no hesitation in holding that mere delay alone in filing the suit for specific performance, without reference to the conduct of the Plaintiff, could not be a ground for refusing the said relief, when the suit was filed within the statutory time limit by the Respondent- Plaintiff.

16. A reading of the above judgment by the Apex Court would suggest mere delay in filing the suit for specific performance without reference to conduct of the plaintiff could not be a ground for refusal of specific performance. In the case on hand, nearly after five years from the date of agreement, the appellant issued a notice on 03.06.2011, calling upon the first respondent to complete the sale transaction. The first respondent issued a reply on 03.05.2010 denying the execution of the sale transaction. When execution of the sale agreement is denied by the contesting first respondent, absolutely there is no reason for the appellant to wait for thirteen months and thereafter, file a suit for specific performance. The failure of the appellant to



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take steps for enforcement of the agreement after the same had been denied by the first respondent would certainly show the appellant was not ready and willing to perform his part of the contract. The Suit sale agreement was entered into on 03.01.2005. The endorsement was made on 28.03.2005. There is no communication between the parties thereafter. Nearly after five years first notice was issued by appellant only on 2.4.2010. There is no evidence available on record that appellant had followed the pending litigation with willingness to complete the sale transaction. When 1st respondent issued reply denying agreement, she requested appellant to furnish copy of agreement. Then there was no response from appellant for nearly thirteen months. Thereafter, he issued second notice on 03.06.2011 and filed suit on 28.07.2011. The sequence of events do not exhibit continuous readiness and willingness of appellant to perform his part of contract. When there is no evidence to exhibit continuous readiness and willingness on the part of appellant, he is not entitled to seek specific performance. Similar view was taken by this Court in ***M.Kumar V. V.Balan*** reported in 2021 (4) CTC 330.

The relevant observation of this Court in this regard is as follows:

“No doubt, the Hon'ble Supreme Court has held that mere delay in filing the suit for specific performance cannot be a ground to non-suit the plaintiff, if he is otherwise shown to be



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ready and willing to perform his part of the contract. Therefore, the judgment in Lakshmikantham's case cannot be a precedent to interpret law to the effect that the requirements of readiness and willingness were totally dispensed with. If only the plaintiff had issued notice within the time fixed under the agreement and filed the suit at the fag end of the limitation period, the decision in Lakshmikantham's case would squarely apply and the plaintiff cannot be non-suited for being not ready and willing. But in the case on hand, the plaintiff had kept quiet for nearly 3 years before issuing notice seeking specific performance. No doubt, the delay after issuance of notice cannot be a ground to reject the relief for specific performance. In my considered opinion, the delay in issuing notice would definitely show that the plaintiff was not ready and willing to perform his part of the contract. Once it was found that the plaintiff was not ready and willing to perform his part of the contract, the appellate court erred in concluding that the delay in filing the suit cannot be taken as a ground for non-suited the plaintiff. “

17. In view of the discussion made earlier this Court agrees with the conclusion reached by the First Appellate Court that the appellant failed to prove continuous readiness and willingness and consequently not entitled to decree for specific performance.



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18. The learned counsel for the appellant submitted that in case, this Court disagrees with his arguments with regard to the claim of the appellant for specific performance of the agreement, taking into consideration the totality of circumstances, a direction may be given to the respondent to pay land cost as a compensation for the appellant/plaintiff. The appellant has not even prayed for return of advance amount paid by him under the agreement. The Apex Court in *Desh Raj Vs. Rohtash Singh* reported in **2023 (1) CTC 348**, held that even a decree for return of advance shall not be granted without specific prayer by the plaintiff. In the case on hand, the appellant neither prayed for return of advance nor sought for any compensation

19. In these circumstances, I am unable to accept the said submission made by the learned counsel for the appellant regarding direction to pay compensation, when there is no specific prayer in the plaint.

20. In view of the discussions made earlier, the question of law framed at the time of admission is answered against the appellant and



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consequently, the second appeal is dismissed.

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21. In nutshell,

(a) The Second Appeal is dismissed;

(b) In the facts and circumstances of the case, there shall be no order as to costs.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1.The V Additional District and Sessions Judge, Coimbatore.

2.The Second Additional Subordinate Judge, Coimbatore.



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