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S.A.No.218 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.218 of 2017
and
C.M.P.No.5136 of 2017

A.Chinnathambi (Deceased)

1.Chinnaponnu

2.Mariyammal

3.C.Nagarajan

4.Saradha

5.Mani

6.C.Saravanan

... Appellants

(Appellants 1 to 6 brought on record as LR's of the deceased sole Appellant vide Court order dated 14.02.2017 made in C.M.P.Nos.2068 to 2073 of 2017 in S.A.Sr.No.3216 of 2006)

VS.

Kullusamy (Deceased)

1.Sevathaal



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2.Vijayaparvathi

3.Ramamoorthi

4.Srinivasan Ragavan

... Respondents

(RR 1 to 4 brought on record as LR's of the deceased sole Respondent vide Court order dated 14.02.2017 made in C.M.P.Nos.2068 to 2073 of 2017 in S.A.Sr.No.3216 of 2006)

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Decree and Judgment passed in A.S.No.49 of 2003 dated 16.08.2004 on the file of the learned Subordinate Judge's Court, Mettur reversing the Decree and the Judgment passed in O.S.No.32 of 1996 dated 19.12.2002 on the file of the learned District Munsif's Court at Mettur.

For Appellants : Mr.M.R.Jothimanian

For Respondents : Mr.P.Mani

J U D G E M E N T

The unsuccessful defendant is the appellant in this second appeal. The respondent herein filed a suit for specific performance of agreement. The Trial Court granted a decree for alternative relief of return of advance. Aggrieved by the same, the respondent filed an appeal and the First Appellate Court reversed the findings of the Trial Court and granted a decree for main relief of specific performance. Aggrieved by the same, the



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defendant, who suffered the decree for specific performance is before this Court.

2. According to the respondent/plaintiff, he entered into a sale agreement with appellant/defendant for purchase of appellant's property described in the plaint schedule for a total sale consideration of Rs.29,000/-. The agreement was entered into on 05.09.1991. On the date of agreement itself, the respondent/plaintiff paid a sum of Rs.17,500/- towards advance amount. Subsequently, on 03.12.1991, the respondent/plaintiff paid another sum of Rs.8,000/- towards sale price and got an endorsement on the backside of the agreement. As per the terms of agreement, the sale transaction has to be completed within a period of six months from the date of agreement. Though the respondent/plaintiff tendered the balance payment to the appellant on several occasions and demanded him to execute the sale deed as per the agreement, he evaded execution of sale deed under one pretext or the other. Hence, the respondent/plaintiff was constrained to file a suit for specific performance of the agreement with alternative prayer for return of advance amounts.



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3. The appellant/defendant herein filed written statement and denied the averments of the respondent/plaintiff in his plaint. It was the case of the appellant/defendant that he approached respondent/plaintiff for a financial help and the respondent/plaintiff in the pretext of arranging loan for the appellant/defendant obtained appellant's signatures in blank stamp papers and pronotes. It was further averred that by subscribing signatures in various blank papers shown by the respondent/plaintiff, the appellant/defendant received a sum of Rs.10,000/- and same was subsequently, discharged with interest at the rate of 36%. It was further averred that the respondent/plaintiff would have fabricated suit sale agreement by utilising the signed blank stamp papers given by him. The appellant/defendant also denied the readiness and willingness of the respondent/plaintiff to perform his part of the agreement and therefore, prayed for dismissal of the suit for specific performance. The appellant/defendant also pleaded that the sale consideration mentioned in the suit sale agreement for one acre of agricultural land is grossly inadequate and hence, the respondent/plaintiff was not entitled to relief as prayed for.



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4. Before the Trial Court, the respondent/plaintiff was examined as PW.1 and two attestors to the sale agreement-Ex.A1 were examined as PW.2 and PW.3. The attestors to endorsement made in the backside of the suit sale agreement marked as Ex.A2 was examined as PW.4. On behalf of the respondent/plaintiff, 4 documents were marked as Exs.A1 to A4. On behalf of the appellant/defendant, he was examined as DW.1 and son of the appellant/defendant was examined as DW.2. On behalf of the appellant/defendant, 8 documents were marked as Exs.B1 to B8.

5. The Trial Court on appreciation of oral and documentary evidences available on record, came to the conclusion that the respondent failed to prove his readiness and willingness to perform his part of the contract and accordingly, negated the prayer for specific performance. However, the Trial Court granted a decree for return of advance amount. Aggrieved by the same, the respondent preferred an appeal in A.S.No.49 of 2003 on the file of the Sub Court, Mettur. The First Appellate Court reversed the findings of the Trial Court and came to the conclusion that respondent/plaintiff had proved his readiness and willingness and consequently, allowed the appeal by granting the main relief of specific performance. Aggrieved by the same,



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the unsuccessful appellant/defendant has come up with this second appeal.

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6. The learned counsel appearing for the appellant submitted that the respondent/plaintiff miserably failed to prove his readiness and willingness from the date of agreement to the date of filing of the suit. It is his specific contention that before filing the suit for specific performance, the respondent/plaintiff failed to issue any pre-suit notice calling upon the appellant for execution of sale deed. Therefore, the evidence of available on record is not sufficient to prove the readiness and willingness of the respondent from the inception of the agreement to the date of filing of the suit and accordingly, sought for allowing of the second appeal. In support of his contention, he relied on the judgment of this Court in ***G.B.Chakravarthi vs. C.Kishanlal*** reported in **2016 (2) CTC 353**. He also relied on the judgment of the Hon'ble Apex Court in ***Jayakantham vs. Abaykumar*** reported in **(2017) 5 SCC 178**.

7. The learned counsel appearing for the respondent submitted that the First Appellate Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the respondent proved his



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readiness and willingness. The learned counsel further submitted that the agreement was entered into on 05.09.1991 and as per the terms of agreement, the time limit fixed for performance of the contract is six months and the said period expired on 04.03.1992. The respondent filed the suit on 04.03.1992 well within the time stipulated in the agreement for performance of the contract. In such circumstances, the non-issue of pre-suit notice is not fatal to the case of the respondent. In this regard, the learned counsel relied on the unreported judgment of the Division Bench of this Court in **G.Karunagaran vs. Kumar** (A.S.No.583 of 2012, dated 23.11.2016).

8. In order to prove the due execution of Ex.A1-Sale Agreement and the endorsement made thereon namely Ex.A2, the respondent/plaintiff examined four witnesses. The attestors to Ex.A1-Sale Agreement were examined as PW.2 and PW.3. The attestors to the endorsement-Ex.A2 has been examined as PW.4. Both the Courts below on appreciation of evidence of PW.2 to PW.4, came to the conclusion that the due execution of Exs.A1 and Ex.A2 have been proved.



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9. As far as the concurrent findings of the fact with regard to the genuineness of Exs.A1 and A2 are concerned, the appellant has not made out any case for interference. As far as the readiness and willingness of the respondent are concerned, as per the terms of the agreement, total sale consideration agreed was Rs.29,000/- under Exs.A1 and A2. The respondent paid substantial portion of the sale agreement namely Rs.25,500/-. The remaining balance amount to be paid by the respondent is only Rs.3,500/-, which is less than 15% of the total sale consideration. Further, the suit has been filed on 04.03.1992 well within the time limit prescribed under the agreement for performance of the contract. Therefore, there is no undue delay on the part of the respondent for filing the suit. Since 85% of the sale consideration has been already paid and suit itself has been filed within the time limit prescribed under the agreement for performance, this Court can easily come to the conclusion that the respondent has shown his readiness and willingness to perform his part of the contract. In order to support his plea with regard to the readiness and willingness, the respondent examined himself as PW.1. He also examined attestors to Exs.A1 and A2 as PW.2 to PW.4. They deposed about the payment of the substantial portion of the sale consideration by the respondent under Exs.A1 and A2. The appellant has



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not succeeded in impeaching the evidence of PW.2 to PW.4 with regard to payment of substantial portion of the sale consideration. Therefore, the finding rendered by the First Appellate Court with regard to the readiness and willingness is based on the evidence available on record and the same requires no interference by this Court.

10. As far as plea of inadequate sale consideration raised by the appellant is concerned, under the terms of sale agreement one acre of property was valued at Rs.29,000/-. Exs.A3 and A4 are title documents of the defendant. The defendant, who was examined as DW.1, during the course of his cross examination clearly admitted under Ex.A4, dated 17.11.1983, he purchased one acres of land for a value of Rs.9,120/-. Further, he also admitted that in the year 1990, he purchased 2.54 cents for a value of Rs.58,500. The suit sale agreement is of the year 1991 and the sale consideration is mentioned as Rs.29,000/-. In the light of sale consideration mentioned in Exs.A3 and A4, this Court feels the sale consideration mentioned in Ex.A1 as Rs.29,000/- per acre is not inadequate one.



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11. The learned counsel for the appellant also submitted that the respondent failed to issue pre-suit notice before instituting the suit for specific performance. Therefore, the First Appellate Court ought not to have come to the conclusion that he proved his readiness and willingness.

12. As discussed earlier, the very suit was presented by the respondent well within the time stipulated under the agreement, in such circumstances, the non- issue of pre-suit notice by the respondent cannot be put against him in the light of the other attending circumstances in this case. The Division Bench of this Court in **G.Karunakaran** case cited supra, while considering the similar question, observed as follows:-

“22. In the plaint, it has been specifically mentioned that the plaintiff has always been ready and willing to perform his part of the contract. Further, the period fixed in Ex.A.1 has been extended for 8 times. During subsistence of Ex.A.1, O.S.No.66 of 2006 has been instituted for the relief of partition, wherein the defendants 1 and 2 have taken a stand to the effect that they are not owners of the suit property. Therefore, on the basis of documents filed on either side and also on the basis of the stand taken by the defendants 1 and 2, the Court can unflinchingly come to a conclusion that the plaintiff has always shown his readiness and willingness to perform his part of the contract. It is true that prior to institution of the suit, pre-suit



notice has not been issued on the side of the plaintiff. Simply because on the side of the plaintiff, pre-suit notice has not been issued, the Court cannot reject discretionary relief of specific performance on the basis of circumstances available in the present case.”

13. The law laid down in the above mentioned case law is squarely applicable to the facts of the present case. In the case on hand also the suit has been preferred well within the time stipulated in the agreement. Therefore, I do not think the failure of the respondent to issue pre-suit notice in any way advance the case of the appellant.

14. The learned counsel appearing for the appellant relied on the judgment of this Court in ***G.B.Chakravarthi vs. C.Kishanlal*** reported in ***2016 (2) CTC 353*** for the proposition that mere averments in the plaint without any proof or evidence would not be sufficient to prove the readiness and willingness. With regard to the said proposition of law, this Court has no quarrel. However, in the case on hand, apart from the averment regarding readiness and willingness in the pleadings, the evidence of PW.3 and PW.4 coupled with Exs.A1 and A2 proved the payment of substantial portion of



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the sale consideration amount by the respondent to the appellant well within the time stipulated under the agreement. The suit itself has been filed before expiry of the time stipulated. In such circumstances, there is no difficulty in coming to the conclusion that respondent succeeded in proving his readiness and willingness from the inception of the contract to the date of filing of the suit.

15. The learned counsel appearing for the appellant also relied on the judgment of the Hon'ble Apex Court in *Jayakantham vs. Abaykumar* reported in *(2017) 5 SCC 178* for the proposition that the relief of specific performance is a discretionary one and same need not be granted merely on the ground that it is lawful to grant such a relief. In the above mentioned case law, the Hon'ble Apex Court based on the facts of the said case, came to the conclusion that the terms of contract gave unfair advantage to the plaintiff over the defendant and hence, it was highly inequitable to enforce the contract. I do not see any reason to come to the conclusion that the terms of the present agreement is giving unfair advantage to the plaintiff in the light of Exs.A3 and A4 which proves the adequacy of the sale consideration.



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16. In view of the discussion made earlier, I do not find anything in favour of the appellant to interfere with the findings of the First Appellate Court that the 1st respondent has proved his readiness and willingness to perform his part of the contract and consequently, he is entitled to relief of specific performance. I do not find any substantial question of law arising for consideration in this second appeal and consequently, the second appeal is dismissed.

In Nutshell:-

(i) The Second Appeal is dismissed.

(ii) Consequently, the connected civil miscellaneous petition is closed.

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

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Index : Yes
Speaking order : Yes
Neutral Citation : Yes
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S.SOUNTHAR, J.

dm

To

- 1.The Subordinate Court, Mettur.
- 2.The District Munsif's Court, Mettur.

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