



O.S.A.No.265 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

O.S.A.No.265 of 2017

G.Sunil Panickar

.. Appellant

Vs.

1.G.N.Gomathy

2.M.Vijaya

.. Respondents

Prayer:- Original Side Appeal filed under Order 36 Rule 9 of the Original side Rules read with Clause 15 of Letters Patent against the order of the learned Single Judge dated 19.01.2017 made in C.S.No.286 of 2013.

For Appellant : Ms.M.Vidya

For Respondents : Mrs.K.Bhuvaneshwari



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JUDGMENT

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(Judgment of the Court was made by P.B.BALAJI,J.)

This intra Court Original Side Appeal is filed against the judgment and decree of the learned Single Judge passed in C.S.No.286 of 2013.

2. The plaintiff in the said suit for specific performance of the agreement of sale dated 04.03.2010 is the appellant herein.

3. The brief facts of the case leading to the present appeal are:

(1) The plaintiff entered into an agreement of sale on 04.03.2010 with the respondents who are the owners of the suit schedule property bearing Door No.46, Sadullah street, T.Nagar, Chennai-600 017 for an extent of 1224 sq.ft together with undivided half share an extent of 195 sq.ft (out of 390 sq.ft) in the 6 feet common passage totalling in all 1419 sq.ft comprised in T.S.No.5868, Block No.131, T.Nagar Village, Mambalam-Guindy Taluk, Chennai District.

(2) The respondents herein being the owners of the suit schedule property agreed to sell the same to the appellant for a total sale



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consideration of Rs.80,00,000/-. An advance of Rs.20,00,000/- was admittedly paid by the appellant to the 1st respondent. Some relevant clauses of the said agreement of sale are extracted for ready reference.

“ Whereas the first vendor Mrs.Gomathi undertook to obtain release deed from her another son Mr.N.Raveendran and thereafter agreed to execute Settlement Deed in favour of her daughter Second Vendor Mrs.M.Vijaya

4. The first vendor shall obtain Release deed from her son Mr.N.Raveendran within one week from this date of agreement of sale.

7. The purchaser agreed to pay the balance sale consideration with two months from the date of executing development Power of Attorney to develop the property.

10. The vendors delivered today the vacant possession to develop the property for construction of building”



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4. It is the case of the appellant that he was ready and willing to perform his part of the agreement of sale and that the respondents delayed execution of the sale deed on the ground that there was a family dispute that had to be resolved before obtaining a release deed as contemplated in the subject agreement of sale. It is also stated by the appellant that Mr.Raveendran, 1st respondent's son and brother of the 2nd respondent had filed a suit in O.S.No.11137 of 2010 on the file of the City Civil Court at Chennai and that the respondents brought it to the notice of the appellant that there is an injunction order restraining them from executing a sale deed in favour of the appellant and consequently the respondents sought for extension of time stating that they would get the interim order vacated and thereafter execute the sale deed in favour of the appellant.

5. The appellant also stated that he sought to implead himself in the suit filed by Mr.Raveendran and that the application was rejected even before numbering and that subsequently the suit filed by Mr.Raveendran was also dismissed on 21.03.2013.



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6. The appellant also taking advantage of Clause No.10 of the agreement of sale claims to be in physical possession of the suit schedule property. Besides specific performance of the agreement of sale, the appellant also sought for a relief of permanent injunction to restrain the respondents from interfering with his peaceful possession and enjoyment of the suit schedule property.

7. The appellant also states that he tendered the balance sale consideration of Rs.60,00,000/- on 22.03.2013 and called upon the respondents to execute and register the sale deed in his favour in compliance with the terms of the agreement of sale. However, it is the case of the appellant that the respondents avoided execution and registration of sale deed under some pretext or the other. Stating that the appellant was always ready and willing to perform his part of the contract, he filed the suit in C.S.No.286 of 2013.

8. The 1st defendant filed a detailed written statement which was adopted by the 2nd defendant. The essence of the written statement is that the suit is barred by limitation; it was the appellant who instigated



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Mr.Raveendran to file a suit; possession was never delivered to the appellant; plaintiff was never ready and willing to pay the balance sale consideration and conclude the transaction; the appellant was fully aware of the suit filed by Mr.Raveendran even in 2010 and only in February 2013 he attempted to implead himself and finally contended that the suit schedule property is situated in prime area in T.Nagar where the market value of the property was more than two crores and that the appellant was not entitled to a decree as prayed for.

9. Before the learned Single Judge, the following issues were framed:

1. Whether the agreement dated 04.03.2010 entered into between the plaintiff and defendants is true and enforceable?
2. Whether the plaintiff was ready and willing to perform his part of the contract?
3. Whether the plaintiff is in possession of the suit property as specified under Section 53A of the Transfer of Property Act?
4. Whether the plaintiff is entitled to the



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relief of specific performance as claimed?

5. Whether the suit is barred by limitation?

6. Whether the plaintiff is entitled to the relief of permanent injunction?

7. To what other reliefs, the parties are entitled to?

10. The appellant/plaintiff examined himself as P.W.1 and marked Exs.P.1 to P.4. On the side of the respondents, the 2nd defendant/2nd respondent herein was examined as D.W.1 and no documents were marked on the side of the respondents.

11. The learned Single Judge on appreciation of oral and documentary evidence came to the conclusion that the appellant did not establish his readiness and willingness and consequently held he was not entitled to the equitable relief of specific performance and ultimately, the suit was dismissed in its entirety.



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12. Aggrieved by the said judgment and decree of the learned Single Judge, the appellant has come forward with this intra Court appeal raising the following grounds:

(1) Learned Single Judge had not properly appreciated the various Clauses of Ex.P.1 agreement of sale;

(2) The findings of the learned Single Judge were contrary to Sec.52 of the Indian Contract Act;

(3) The appellant was always ready and willing to perform his part of agreement of sale it is only the respondents who are responsible for the contract not being concluded.

13. We have heard Ms. M.Vidya, learned counsel appearing for the appellant and Mrs.K.Bhuvaneshwari, learned counsel appearing for the respondents.



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14. Keeping in mind the submissions of the respective learned counsel appearing on the either side, the pleadings, oral and documentary evidence placed on record, this Court formulates the following points to be determined in this appeal:

(1) Whether the appellant as plaintiff has established readiness and willingness in terms of Sec.16(c) of the Specific Relief Act?

2) Whether the appellant as plaintiff is entitled to the equitable relief of specific performance?

15. On a careful reading of the pleadings and also oral and documentary evidence of the parties, it is an admitted case that the appellant entered into agreement of sale with the respondents on 04.03.2010. Out of the total agreed sale consideration of Rs.80,00,000/- only a sum of Rs.20,00,000/- was paid as advance. The property is admittedly a vacant land as can be seen from the schedule appended to the agreement of sale. Clause (7) of the agreement of sale requires the appellant to pay the balance sale consideration within two months from the



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date of executing development power of attorney to develop the property.

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Clause 10 stipulates that respondents had delivered vacant possession of the property to the appellant to develop the property for construction of building. The said Clause is now taken advantage by the appellant to state that the appellant was put in physical possession of the suit schedule property. However, the respondents have categorically denied this factum in the written statement as well as oral evidence.

16. In this context, it is relevant to refer to Ex.P.3 notice dated 27.03.2013 issued by the appellant to the respondents. The said notice is issued after expiry of three years from the execution of the agreement of sale, which contemplated the appellant to pay the balance sale consideration within two months. In the said notice the only reason cited by the appellant is that the 1st respondent's son and 2nd respondent's brother, Mr.Raveendran had filed a suit before the City Civil Court and obtained an interim injunction and therefore the sale deed could not be executed. The said notice also states that appellant came to know about the suit being dismissed on 21.03.2013 and that on the very next day he had tendered the balance sale consideration of Rs.60,00,000/- and called upon the



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respondents to execute the sale deed in his favour and that the respondents evaded the appellant.

17. The appellant also reiterated his contention that he was in lawful possession of the suit schedule property and that he was ready and willing to pay the balance sale consideration and conclude the transaction.

18. Even though the said notice was not replied to by the respondents, in the written statement they have stated that the said letter was only an after thought and the inordinate delay in coming forward to pay the balance sale consideration had put the respondents to untold hardship and mental agony.

19. A careful reading of the various clauses of the agreement of sale and also the preamble to the agreement of sale clearly shows that the ownership of the suit schedule property at the hands of the 1st respondent was an admitted fact. Infact, the property was purchased by the 1st respondent under two registered deeds of sale dated 18.09.2007 in Doc.No.2082 of 2007 and 04.08.2009 in Doc.No.1463 of 2009 both on the



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file of Sub Registrar's office, T.Nagar.

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20. It is also seen from the oral and documentary evidence that the suit filed by Mr.Raveendran, son of 1st respondent and brother of the 2nd respondent was only on 24.09.2010, more than six months after the subject P.1 agreement of sale came to be executed. It is to borne in mind that it was incumbent upon the appellant to pay the balance sale consideration of Rs.60,00,000/- within a period of two months from 04.03.2010 as per clause 7 of the agreement of sale.

21. It is seen that no steps were taken by the appellant to even request the respondents for execution of Power of Attorney as contemplated under the agreement of sale, leave alone pay the balance sale consideration within the said period of two months. Only after Mr.Raveendran filed the suit before the City Civil Court towards the end of September 2010, the appellant has chosen to cite the same as an excuse for not completing the transaction as contemplated under Ex.P.1



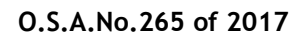
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22. The appellant had also not proved or established that he was possessed of sufficient funds to pay the balance sale consideration of Rs.60,00,000/-. In a suit for specific performance, it is now well settled that the plaintiff who comes to Court seeking the equitable relief of specific performance should plead and prove that he was always ready and willing to perform his part of obligations cast upon him, right from the date of execution of the agreement of sale till the conclusion of the contract.

23. It is also clear that despite knowing that the suit was filed by the Mr.Raveendran before City Civil Court, the appellant never took any steps to get the stay vacated and even his impleading application was made only towards the fag end of the trial of the said suit before the City Civil Court. The first notice in Ex.P.3 came to be issued only on 27.03.2013, which is after a lapse of three years from the date of agreement of sale.

24. With regard to plea of possession, the relevant clauses have been carefully considered by this Court. Admittedly, the suit schedule property is a vacant piece of land situated in a prime locality in the city of Chennai. The only intention that can be gathered from the conduct of the parties in



“6.The vendors shall execute a Development
er of Attorney Deed in favour of the purchaser or
nominee with permission to obtain planning
mission and other requirements to construct and
velop the building.”

25. Admittedly, the appellant is only an agreement holder, that too under an unregistered agreement of sale. It is not tenable on the appellant's part to contend that he was put in possession of the vacant piece of land on mere payment of Rs.20,00,000/- as advance, especially when an unpaid balance of Rs.60,00,000/- remained to be paid at his end. No prudent owner of the property would put an agreement holder in possession on receipt of only 25% of the total sale consideration. Apart from the reference to the clauses in the agreement of sale, no material evidence has been produced by the appellant to establish that the appellant was in



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peaceful possession and enjoyment of the suit schedule property.

26. It is clear that the appellant was never ready and willing to performance his part of the agreement of sale. The finding of the learned Single Judge in this regard does not warrant any interference. The relief of specific performance is admittedly an equitable relief. This Court recently had an occasion to deal with the Doctrine of Mutuality in the case of ***Mr.U.Venkatesan Vs. Susila and others***, A.S.No.19 of 2014 judgment dated 10.01.2023.

27. The essence of the “Doctrine of Mutuality” as it stands interpreted as on date is that the contract should be considered as a whole and the obligation of the plaintiff as well as the defendant have to be looked into and as far as practicable both parties should be required to perform their obligations at the same time. In the event of simultaneous performance being impracticable, then the Court should either enforce the contract upon terms which would give the defendant some assurance of future performance by the plaintiff, or refuse to enforce the contract at all whichever is more just, considering the situation of both parties.



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28. Applying the said doctrine to the facts of this case, the appellant would not have agreed to register the property citing the *interse* family disputes and in all probabilities, the suit filed by Mr.Raveendran, son of the 1st respondent and brother of the 2nd respondent. Therefore, even if the “Doctrine of Mutuality” is taken into account, the appellant is not entitled to the discretionary relief of specific performance. However, this Court has already found that the inaction on the part of the appellant is also working against the relief sought for in the suit. The appellant could have filed the suit well before September 2010 when the suit came to be filed by Mr.Raveendran. There is no explanation as to why the appellant did not take any steps during this relevant point of time. Further, the appellant has also not established before the Court as to his being possessed of sufficient funds to pay the balance sale consideration of Rs.60,00,000/-. In fact, the parties had also agreed for a two month time period for payment of the balance of sale consideration. Therefore, in this context it can be seen that time was made essence of the agreement by the conduct of the parties. The appellant not only did not come forward to pay or offer the balance sale consideration, but also did not take any steps to get a Power of Attorney executed and registered in his favour as contemplated under the agreement



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of sale.
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29. The learned Single Judge has also referred to Ex.P.4 letter dated 27.03.2013 sent by the appellant by courier and found that the said letter was despatched only on 05.04.2013 which only points to the falsity in the case set up the appellant that he tendered Rs.60,00,000/- being the balance sale consideration on 27.03.2013. No doubt the learned Single Judge has doubted the genuineness of Ex.P4 courier receipt regarding despatch of Ex.P.3 letter dated 27.03.2013 tendering balance sale consideration. It does not in anyway help the appellant even if the said finding is incorrect.

30. It is to be noted that the respondents herein have not denied the receipt of the said letter from the plaintiff. They have specifically pleaded in the written statement at para 13 that the said letter was only an after thought especially because the appellant did not insist on the unreasonable clauses stipulated and to be performed by the 1st respondent. The respondents have not chosen to reply to the said letter Ex.P.3. However, it is settled law that mere fact that reply notice was not issued would not be fatal and it is still incumbent on the appellant to establish the truth and



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contents of the said notice.

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31. The learned Single Judge also rightly disregarded notice dated 01.04.2013 in Ex.P.3 issued by the 1st respondent's son claiming a share in the suit schedule property.

32. This Court also perused Ex.P.3 letter. There is no tender of the balance sale consideration but only a mere expression of willingness to pay the balance sale consideration of Rs.60,00,000/-. However, as already found by this Court, this letter itself came to be sent after a period of three years from the date of agreement of sale Ex.P.1. Admittedly, the appellant has not taken any steps even to seek to deposit the balance of sale consideration before the Court either at the time of filing of the suit or subsequently. No doubt, it is not necessary for the plaintiff who seeks specific performance to deposit the balance consideration in terms of first explanation to Sec.16(c) of the Specific Relief Act. However, nevertheless it is one of the factors that may be considered when the facts and circumstances of the case warrants.



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33. In this case, it is the specific contention of the appellant that he was always ready and willing to pay the balance sale consideration of Rs.60,00,000/- and even in the pre-suit notice Ex.P.3 he has expressed his willingness to pay the same and complete the transaction. In the plaint also, the plaintiff pleads readiness and willingness to pay the balance sale consideration of Rs.60,00,000/- to the defendants and that despite the receipt of Ex.P.3 notice the respondents failed to perform their part of contract in terms of agreement of sale.

34. In such circumstances, as a bonafide agreement holder, the appellant ought to have atleast sought for permission from the Hon'ble Court to deposit the balance sale consideration, which admittedly has not been done in the instant case. Sec.16(c) of the Specific Relief Act deals with personal bars to relief and statutory instances where specific performance cannot be enforced. Sec. 16(c) (as it stood before the amendment Act 18 of 2018) required the plaintiff to “aver and prove” that the plaintiff has performed or has always been ready and willing to perform the essential terms of the contract to be performed by him. The only exception provided is performance of terms which have been



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prevented or waived by the defendants. Sec.20 (as it stood before the amendment Act 18 of 2018) also vests a discretion with the Court to decree specific performance and Court is not bound to grant decree for specific performance merely because it is lawful to do so and discretion should be exercised based on sound, reasonable judicial principles, capable of being corrected by a Court of appeal.

35. Learned counsel for the appellant relied on the following judgments:

- 1. Kedar Nath Agarwal(dead) and another vs. Dhanraji Devi (dead) by L.Rs and another, 2004 AIR SCW 5789***
- 2. R.Lakshmikantham v. Devaraji, AIR Online 2019 SC 2607***
- 3. Sughar Singh vs. Hari Singh (Dead) through Lrs and Ors., AIR Online 2021 SC 935***
- 4. P.Ramasubbamma vs. V.Vijayalakshmi & Ors, 2022 LiveLaw (SC) 375***
- 5. P.Panneerselvan vs. A.Baylis (deceased by L.Rs) and others, AIR 2006 Madras 242.***



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36. This Court has no quarrel with regard to the ratio laid down in the above cases. The relief of specific performances being a discretionary relief, 'the Court has to apply its mind to the facts and circumstances of each case and cannot adopt a straight jacket formula.' This Court has already found that the appellant has not established his readiness and willingness at all relevant point of time. In so far as the judgment reported in *Sughar Singh vs. Hari Singh (Dead) through Lrs and Ors*, reported in *AIR Online 2021 SC 935*, the Hon'ble Supreme Court has decided the case taking into the amended provisions of Specific Relief Act, which have been held to be only prospective in nature. Infact, even in the said judgment the Hon'ble Supreme Court has specifically stated that the amendments cannot be applied retrospectively. None of the above judgments cited by the appellant counsel come to the aid of the appellant's case.

37. In the instant case, this Court finds that the findings of learned Single Judge are based on proper appreciation of material pleadings and evidence and they do not warrant any interference.



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38. At this juncture, the learned counsel for the appellant brought to the notice of this Court that pending the appeal also amounts being advanced to the son-in-law of the 1st respondent and that a total sum of Rs.13,75,000/- has been paid over and above the sum of Rs.20,00,000/- paid as advance. This Court takes note of this fact and considering that the son-in-law who is said to have received the sum of Rs.13,75,000/- is not a party in this appeal, this Court enquired with the respondents' counsel whether the respondents would undertake to repay the said sum of Rs.13,75,000/- apart from refunding Rs.20,00,000/- advance. The counsel for the respondents informed this Court that the respondents are prepared to refund the money to the appellant. The request of the counsel for the respondents is only that since the son-in-law is not a party before this Court and he has received the payments, the said amount of Rs.13,75,000/- need not carry any interest. The said request of the counsel for the respondents is found to be just and reasonable.

39. Infact, this Court finds that there is no prayer in the suit seeking refund of advance of Rs.20,00,000/- also. Sec.22 of the Specific Relief Act dealing with power of the Court to grant refund of earnest money mandates



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that such relief cannot be granted unless specifically claimed. However, considering the fact that respondents have expressed their willingness through their counsel to refund the advance amount of Rs.20,00,000/- and also the additional amount advanced to the tune of Rs.13,75,000/-, this Court directs the respondents to not only refund the sum of Rs.20,00,000/- with interest at 12% per annum from the date of agreement but also further sum of Rs.13,75,000/- without interest within a period of two months from the date of a copy of this judgment being made ready.

40. This Court also calls upon the respondents to file an affidavit of undertaking within a period of two weeks to the effect that they would pay a sum of Rs.13,75,000/- without interest in addition to refunding a sum of Rs.20,00,000/- together with interest at 12% p.a, as aforesaid, within a period of two months from the date of order copy being made ready.

41. In the result, Original Side Appeal is partly allowed with the modification in the judgment and decree dated 19.01.2017, made in C.S.No.286 of 2013, directing the respondents to pay a sum of Rs.20,00,000/- together with interest at 12% p.a from the date of



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agreement till date and a further sum of Rs.13,75,000/- without interest within a period of two months from the date of order copy being made ready. No costs.

(S.S.S.R.J) & (P.B.B.J)
09.02.2023

Internet : Yes
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

To

1.The Sub Assistant Registrar (Original side)
High Court, Madras

2.The Section Officer
VR Section,
High Court, Madras



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S.S.SUNDAR, J.,
and
P.B.BALAJI,J

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