



S.A.No.845 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 24.11.2023

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**S.A.No.845 of 2023**  
**and**  
**C.M.P.No.26801 of 2023**

P.Kathirvel

... Appellant

Vs.

V.S.Krishnan

... Respondent

**PRAYER:** Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 23.12.2021 made in A.S.No.17 of 2020 by the learned V Additional District Judge, Coimbatore, confirming the judgment and decree dated 05.12.2017 made in O.S.No.675 of 2011 by the learned I Additional Subordinate Judge, Coimbatore.

For appellant

: Mr.K.Balasubramaniam

For respondent

: No appearance

**JUDGMENT**

The unsuccessful plaintiff before the Courts below in a suit for specific performance, is the appellant before this Court.



2. The facts of the case are briefly set out hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

**FACTS OF THE CASE:**

2.1. The plaintiff had filed a suit in O.S.No.675 of 2011 on the file the I Additional Subordinate Court, Coimbatore, seeking the relief of specific performance of an agreement dated 30.07.2009.

2.2. It is the case of the plaintiff that on the said date, he had entered into a sale agreement with the defendant in respect of the suit schedule property. The total sale consideration was fixed at a sum of Rs.2,00,000/- and on the same date of the sale agreement, a sum of Rs.1,00,000/- was paid as an advance to the defendant. As per the agreement, the parties had agreed that the balance sum of Rs.1,00,000/- will be paid within 12 months i.e., on or before 29.07.2010. Though the plaintiff was willing to perform his part of the



contract, the defendant was not willing to perform his part of the contract.

2.3. The plaintiff would further submit that considering his relationship with the defendant, he had waited for a period of one year from the period of performance under the sale agreement and thereafter, he issued a legal notice dated 03.06.2011 which was returned with an endorsement “unclaimed”. Therefore, the plaintiff has come forward with the suit in question.

2.4. The defendant had filed a written statement, *inter alia*, denying the case of the plaintiff and contending that he has never intended to enter into an agreement of sale with regard to his property and that he had only obtained a loan of a sum of Rs.1,00,000/- for which, he had executed a mortgage deed dated 30.07.2009.

2.5. The defendant owns a residential house on the north of the



suit property and a portion of the house rests on the suit property. If the defendant had intended to enter into an agreement of sale, it would only be with regard to the vacant portion which is lying to the south of the suit property. Further, it is the case of the defendant that he had no necessity for selling the property.

2.6. Thereafter, it is the case of the defendant that when he had approached the plaintiff to settle the dues, he was informed that the plaintiff had obtained an *ex parte* decree in the above suit against him. Thereafter, the defendant had rushed to the Court and it was only then that he has come to know about the alleged sale agreement.

2.7. The defendant would further submit that it is evident that the sale agreement is not a genuine one, since the sale agreement describes the property as a vacant site which is also incorporated in the plaint whereas, there is a house constructed thereon.



**TRIAL COURT:**

3. The Trial Court, based on the pleadings, had framed the following issues:

*“(1)Whether the plaintiff is entitled for the relief of specific performance of contract as prayed for?*

*(2)Whether the plaintiff is entitled for the alternative relief?*

*(3)Whether the plaintiff is entitled for the relief of vacant possession of the suit property?*

*(4)Whether the plaintiff is entitled for the relief of permanent injunction?*

*(5)To what relief?”*

4. The plaintiff had examined himself as P.W.1 and one Nandakumar as P.W.2 and marked Exs.A1 to A3. On the side of the defendants, the defendants had examined himself as D.W.1 and no documents were marked on his side.

5. The learned Judge dismissed the suit, on the ground that



the conduct of the plaintiff clearly shows that he was neither ready nor willing to proceed with the agreement.

**LOWER APPELLATE COURT:**

6. This judgment and decree was taken upon an appeal to the V Additional Principal District Court, Coimbatore, in A.S.No.17 of 2020. The learned Appellate Judge had also concurred with the judgment and decree of the Trial court and dismissed the appeal.

7. Challenging the same, the plaintiff is before this Court.

8. Heard the learned counsel appearing for the appellant.

**DISCUSSION:**

9. The plaintiff has entered into an agreement of sale on 30.07.2009 and as per the terms of this agreement, the balance sale consideration has to be paid within a period of one year i.e., on or



before 29.07.2010. Further, from the date of the agreement, there has been no overt step on the part of the plaintiff to proceed further with the sale agreement. The records would show that the notice has been issued only on 03.06.2011 and the plaintiff would also plead that he has issued the notice after a year, taking into account his relationship with the defendant and claims that this is his magnanimity.

10.However, the plaintiff's conduct clearly shows that he is neither ready nor willing to proceed further with the sale agreement. Therefore, the judgment and decree of the Courts below do not require any re-consideration and therefore, the judgment and decree of the Courts below are confirmed and hence, this second appeal is liable to be dismissed, particularly, when the appellant has not made out any questions of law much less a substantial question of law.

In the result, this Second Appeal stands dismissed confirming the judgment and decree of the lower appellate Court. Consequently, connected C.M.P. stands closed. No costs.



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Index : Yes/No  
Speaking order/non-speaking order  
ssa

To

1. The V Additional District Judge, Coimbatore.
2. The I Additional Sub Judge, Coimbatore.
3. The Section Officer,  
V.R.Section, High Court, Madras.

**P.T.ASHA, J.,**

ssa

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