



A.S.(MD).No.108 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 17.10.2023

Delivered on: 21.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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Oomman Babu

.. Appellant / Defendant

Vs.

1. Sadasivam Thambi (died) .. Respondents/ Plaintiff

2.Nirmala Bai

3.S.Praveen

4.S.N.Girish

5.S.N.Reesemi

.. Respondents 2 to 5 / LR's of R1

(R2 to R5 are brought on record as LR's of the
deceased sole respondent vide Court order,
dated 15.12.2022, made in CMP(MD)Nos.
2936 and 2937 of 2019)

Prayer:- Appeal filed under Section 96 r/w. Order 41 Rule 1& 2 of the
Code of Civil Procedure, against the judgment and decree, dated
12.07.2012, made in O.S.No.137 of 2004, on the file of the District and
Sessions Court, Kanyakumari at Nagercoil.



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For Appellant : Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

For Respondents : Mr.S.Ramesh for R2 to R4, takes notice for R5
: R1 - Died

JUDGMENT

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

The defendant, who suffered a decree for specific performance is the appellant in the present First Appeal, before us.

2. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3. Brief facts that are necessary for deciding the First Appeal are as follows:

The plaintiff claimed that he had entered into an agreement of sale with the defendant on 23.12.2000 for purchase of lands of an extent of 1 Acre and 15.5 cents in Survey No.397/10 (79.5 cents), 397/11 (36 cents) for a total sale consideration of Rs.23,00,000/- and paid an advance of Rs.3,00,000/- on the date of the agreement and further



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Rs.10,00,000/-, by way of two payments, ie. on 02.02.2001 to the tune of Rs.5,00,000/- and 12.04.2001 to the tune of another Rs.5,00,000/-. It was agreed by the parties that after payment of the balance sale consideration on or before 30.04.2001, the sale deed would be executed. It is the case of the plaintiff that the Will dated 26.10.1983 in favour of the father and mother of the defendant was to be probated and as it was not probated, the defendant had specifically agreed that the sale deed will be executed by the defendant along with his mother and siblings. It is the further case of the plaintiff that he was always ready and willing to perform his part of the contract, but the defendant evaded execution of the sale deed. The plaintiff, therefore, issued a telegraphic notice on 27.04.2001, stating that he would be present at the Sub Registrar's Office on 30.04.2004 at 10.30 a.m., for execution and registration of the sale deed, across the receipt of the balance sale consideration from the plaintiff. According to the plaintiff, he went to the Sub Registrar's office on 30.04.2001 with the balance sale consideration, but, the defendant did not turn up. Thereafter, on 13.06.2001, the plaintiff issued a notice, calling upon the defendant to fix a date for execution and registration of the sale deed. The defendant sent a reply on 25.06.2001, admitting the execution of the agreement, but, however, stating that he has only a share in the plaint schedule property



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and he was ready to perform his legally permissible part of the agreement.

The defendant in the said reply notice, denied the receipt of advance of Rs.10,00,000/- by way of two installments as claimed by the plaintiff. The plaintiff, thereafter, issued a further notice on 01.12.2003 stating that it was not necessary for the mother and sibling of the defendant to join the execution of the sale deed and the defendant alone could execute and register the sale deed in favour of the plaintiff. To this second notice, a reply notice dated 11.12.2003 was sent by the defendant, where the stand taken in the earlier reply notice dated 25.06.2001 was given a go-by and the defendant claimed that he has no right to deal with the property, during the life time of his parents and the sale agreement was not intended to be acted upon. According to the defendant, a sum of Rs.3,00,000/- was only a loan borrowed by the defendant from the plaintiff. In view of the denial of the very agreement of the sale in the second reply notice dated 11.12.2003, the plaintiff was constrained to approach the civil Court with a prayer for specific performance with an alternate prayer for refund of Rs.23,00,000/-, together with 12% p.a., interest.

4. The defendant filed a written statement taking the very same stand taken in the second reply notice, wherein the defendant had stated



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that he has no right to deal with the suit property and as long as his mother was alive, right to transfer the property bequeathed to the defendant under the Will did not arise at all and further, the agreement was only in respect of a loan of Rs.3,00,000/- availed by the defendant for which the defendant had signed in the blank stamp papers and also gave his title deed to the plaintiff, which have been made use of to create the agreement of sale.

5. Before the trial Court, the plaintiff examined himself as P.W.1 and three other witnesses were examined as P.W.2 to P.W.4 and 16 documents were marked as Ex.A1 to A16, on the side of the plaintiff. On the side of the defendant, the defendant examined himself as D.W.1 and no documents were exhibited.

6. Based upon the pleadings of the parties, the trial Court framed the following issues :

- 1. Whether the plaintiff is entitled to the relief of specific performance?*
- 2. Whether the defendant obtained 79 ½ cents under a Will as alleged by the plaintiff?*
- 3. Whether the Will is incapable of any legally ineffective and handicapped to convey the property under the Will?*



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4. Whether the defendant is in possession of 36 cents only in S.No.397/11?

5. Whether the agreement for sale was not intended to be acted upon?

6. Whether the sale agreement was written only in keeping the practice then in prevalence between money lenders and borrowers?

7. Whether the alleged document is only legal for Rs.3,00,000/- as contended by the defendant?

8. To what relief, if any, is the plaintiff entitled to?

7. The trial Court found that Ex.A1 was acted upon only as an agreement of sale and not as a loan transaction and further held that the agreement was legally enforceable by the defendant, being a legatee under the Will. The trial Court has also found that the plaintiff was ready and willing to perform his part of the contract. However, the trial Court disbelieved the two payments of Rs.5,00,000/- each alleged to have been paid by the plaintiff to the defendant and decreed the suit granting the relief of specific performance, subject to the plaintiff paying the balance sale consideration of Rs.20,00,000/- within a period of one month from the date of judgment and granted further one month time for execution of the sale



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deed in favour of the plaintiff.

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8. Aggrieved by the said judgment and decree, the defendant has challenged the same primarily on the following grounds:

The trial Court has failed to address the issue of readiness and willingness in the light of the provisions of the Specific Relief Act; the trial Court erred in interpreting the terms of Ex.A11 - Will, dated 26.10.1983; the trial Court has discussed the issue as to whether the appellant had any right to deal with the property in Survey No.397/10, during the life time of his mother, one of the executors of the Will, dated 26.10.1983; the fact that the plaintiff has not established payment of Rs.10,00,000/- as claimed in the plaint would only go to show that the plaintiff has not proved his readiness and willingness; the trial Court ought to have construed the Will as a Joint Will and held that the subsequent settlement in Ex.A16 in favour of the son of the appellant resulted in automatic revocation of Ex.A11 - Will and as such, the appellant never acquired any title to the lands in Survey No.397 /10.

9. Urging these grounds, among several other grounds, the appellant prayed for the appeal being allowed and the decree for specific performance thereby being set aside.



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10. We have heard Mr.V.Meenakshi Sundaram, for Mr.D.Nallathambi, learned counsel for the appellant and Mr. S.Ramesh, learned counsel for the respondents.

11. After hearing the counsel on either side, we determine the following points for consideration in this appeal:

(1) Whether the Will, dated 26.10.1983 is a Joint Will or a Mutual Will and what is the effect of the said Will on the right of the appellant to deal with the suit property in question, more specifically enter into an agreement of sale with the respondent?

(2) Whether the respondent has proved his readiness and willingness to perform his part of the agreement of sale and is thereby entitled to the relief of specific performance under Section 16 (c) of the Specific Relief Act?

12. At the outset, before proceeding to decide the points for determination, we would like to place it on record that the learned counsel for the appellant has not pressed the defence taken by the appellant in the



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written statement that Ex.A1 was only a loan transaction and not an agreement for sale. The entire arguments of the learned counsel for the appellant revolved only around the right of the appellant in Ex.A1 and also the lack of readiness and willingness on the part of the respondent to become entitled to the relief of specific performance.

13. The learned counsel for the respondents would fairly contend that he would not press upon the averments of the plaint regarding the case of the plaintiff before the trial Court, regarding payment of Rs.10,00,000/- viz., Rs.5,00,000/- each, subsequent to the agreement of sale and would bring it to our notice that even in the plaint, the respondent has conceded and offered to pay the said sum of Rs.10,00,000/- also and Rs.20,00,000/- in all, towards balance sale consideration.

Point No.1:

14. The Will was executed by the father and mother of the defendant and the same has been marked as Ex.A1. The said Will admittedly pertains to only one item of the suit sale agreement in Survey



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No.397/10. The other Survey No.397/11 is not subject matter of the Will and the said property in Survey No.397/11, admittedly, belongs to the defendant about which there is no dispute between the parties. It is the specific case of the learned counsel for the appellant that the said Will is a joint and mutual Will and therefore, it takes effect only after the demise of both testators and since the mother of the defendant is alive, no encumbrance or alienation over the said suit item namely 397/10 measuring 79.5 cents is possible and the appellant had no right to enter into the agreement of sale.

15. Per contra, Mr.Ramesh, learned counsel for the respondents would contend that the Will is only a joint Will and not a mutual Will and pending the suit, the mother of the defendant also died on 28.06.2009 and therefore, the Will took effect and the defendant is bound to convey the property as promised, to the plaintiff. He would also take us through the contents of the Will to show that the mother had only a right of residence the property.

16. We find that it is useful to extract the relevant clause of the Will hereunder:



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3. இப்படிப்பட்ட கீழ் கூறும்பட்டிகை

சொத்துக்களையும் கெட்டிடத்தையும் எ, பி, சி, டி என்று நான்கு பட்டிகைகளாக திரித்திருப்பதும் அதில் ஏ பட்டிகை சொத்தை உங்களில் 1-ம் கட்சி வர்க்கிற்கும் பி பட்டிகை சொத்தை 2-ம் பிலிப்போசிற்கும் சி பட்டிகை சொத்தை 3-ம் கட்சி சாமுவேலிற்கும் டி பட்டிகை சொத்தையும் கெட்டிடத்தையும் 4-ம் கட்சி பாபுவிற்குமாக திரித்து வைத்திருப்பதும் நாங்கள் இருவருடையவும் வாழ்க்கை காலத்திற்கு பிற்பாடு நீங்கள் நான்கு பேரும் பட்டிகை கிறமம் அனுசரித்து கைவசமெடுத்து வரியும் கெட்டிடத்திற்குள்ள பேரூராட்சி வரியும் ஒடுக்கி போக்குவரத்து செய்து பெயர்மாறி பட்டாவும் வாங்கி கெட்டிடத்திற்கு பஞ்சாயத்தில் நின்றும் பெயர்மாற்றியும் நிரந்தரமாக வசித்துக் கொள்ள வேண்டியதுமாகும்.

.....

5. நாங்கள் இருவரில் யார் முன்னால் முதலில் இறந்து போகிறதோ இருக்கிற கட்சிக்கு பட்டிகை முழுவன் சொத்துக்களின் அனுபவமும் கெட்டிடத்தில் வசிப்பதற்குள்ள உரிமையும் உள்ளதும் அதற்கு பிற்பாடு பட்டிகை கிறமம் அனுசரித்து எடுத்துக் கொள்ள வேண்டியதுமாகும்.

17(a). Thus, it can be seen that the parents of the defendant had decided that the bequeathed portions shall take by the respective legatives only after the life time of both testators (Clause-3).

17(b) In Clause 5 of the said Will, the testator have made it clear that in the event of any one of them passing away, the surviving spouse would



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have a right to enjoyment of lands and in respect of building, a right of residence has been given. Schedule D of the said property had been bequeathed in favour of the defendant. The said D schedule is comprised of land measuring 79.5 cents together with a building.

17(c) On a reading of the Will, especially, Clauses 3 and 5 in a conjoint manner, it is stated that the properties allotted to the respective children, shall take effect only after the life time of both the mother and father and that after the demise of one of them, the other spouse would have a right to enjoy the property including a right of residence in the building situate in the said property and only after the life time of the surviving spouse also, the bequest would take effect.

18(a). In order to appreciate the bequests, interpretation of the clauses under the said Will would be relevant. We proceed to first decide as to whether the said Will is to be construed as a joint Will or a mutual Will or a joint and mutual Will.

18(b). A joint will is a Will, which is executed by two or more persons, by executing a single testamentary instrument to further a



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common intention to deal with the properties held by them jointly and also separately and intended to take effect only after the demise of both the testators. A joint Will, however becomes operative on the death of one of the testators.

18(c). In case of a mutual Will, it is clearly distinguishable from a joint Will. Mutual Wills are separate Wills executed by two persons in a reciprocal manner, where two testators confer upon each other reciprocal benefits. Therefore, when the legatees are not the testators, then the said Will cannot be a mutual Will. Thus, in the instant case, the Will in question, namely, Ex.A11, is only a joint Will and not a Mutual Will, because, the beneficiaries are not the testators themselves, mutually conferring reciprocal benefits on each other, but, bequeathing the property to four of their children.

18(d). In respect of joint Wills, as stated earlier, it becomes operative on the death of even one of the testators and probate can be granted there upon in respect of the testator, who is no more. The Will can be probated once again, after the demise of the survivor also, in respect of the survivor's property covered under the said Will. When a mutual Will is executed as a



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single testator, it becomes a joint and mutual Will.

19. In view of the above discussion, we hold that the Will – Ex.A11 is only a joint Will and not a mutual Will. We also hold that the surviving spouse, viz., mother had only a limited right in the property and not an absolute right to deal with the property in any manner she felt or liked and therefore, the appellant cannot wriggle out of his obligations under the agreement of sale on the premise that he did not have any right in the property, citing that his mother was alive. In fact, the parties were also clearly alive to the situation and that was the reason why, in the agreement of sale it was specifically agreed that the mother as well as the siblings of the defendant would join the execution of the sale deed in favour of the plaintiff. We, accordingly, answer the point A in favour of the respondent / plaintiff.

Point No.2:

20. Coming to the readiness and willingness of the plaintiff, admittedly, the trial Court has been carried away by the mutual destructive pleas taken by the defendant in the two reply notices issued by him. In the first reply notice, the defendant admits to the execution of the sale



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agreement, however, states that he is ready to execute the sale deed in respect of the legally permissible extent alone and in the second reply notice, takes a diametrically opposite and destructive stand which is carried into and reiterated in the written statement also. The defendant also stated that the agreement was not an intended agreement of sale, but, only a loan transaction under which, the defendant borrowed a sum of Rs.3,00,000/- from the plaintiff. The trial Court has unfortunately not discussed the aspect of the readiness and willingness of the plaintiff and merely come to the conclusion that the defendant has taken a false plea that he has never signed the agreement of sale with an intention to sell the property and proceeded to hold that the plaintiff is entitled to the relief of specific performance.

21. In deciding the aspect of readiness and willingness of the plaintiff, few dates become relevant. The agreement of sale was entered into between the parties on 23.12.2000; the time agreed upon for payment of balance sale consideration was 30.04.2001; the plaintiff gave telegraphic notice on 27.04.2001 (though not marked as an exhibit), calling upon the defendant to be present at the Sub Registrar's Office for registration. Thereafter, a lawyer's notice was issued by the plaintiff on 13.06.2001,



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after a lapse of two months in Ex.A2. The defendant sent a reply notice dated 25.06.2001, which was marked as Ex.A3. In the said reply notice, the defendant admitted to the execution of the sale agreement, but contended that he was not entitled to deal with the entire property and that he would execute a deed in respect of his lawful entitlement alone. Despite the said notice, the plaintiff had chosen to remain silent until 01.12.2003, which is close to 2 ½ years, when the plaintiff chose to issue another notice, calling upon the defendant to come forward for execution and registration of the sale deed. To this notice, Ex.A4, the defendant sent a reply notice vide Ex.A5, dated 11.12.2003, where he took a different stand from the stand taken in the reply notice dated 25.06.2001, viz., Ex.A3 and denied the execution of agreement of sale, contending that it was only a loan transaction. Thereafter, the plaintiff has presented the suit on 22.12.2003 and the same was re-filed on 25.04.2004. It is also admitted that the plaintiff deposited the balance sale consideration only after the decree passed by the trial Court in his favour.

22(a). In a suit for specific performance, the plaintiff has to show both “readiness” and “willingness” to perform his part of the contract and entitlement to a specific performance. A decree for specific



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performance is equitable and discretionary relief which does not depend on the conduct of the defendant, but, primarily, rests on the conduct of the plaintiff because Section 16 is a personal bar to relief, which in effect, bars relief of specific performance of a contract to the plaintiff who fails to prove that he has performed or he is always ready and willing to perform the contract, which is to be performed by him, unless the terms of performance which have been prevented or waived by the defendant.

22(b). Testing the conduct of the plaintiff, in the light of Section 16 (c) of the Specific Relief Act, the total sale consideration of Rs.23,00,000/- and receipt of Rs.3,00,000/- on the date of agreement is not in dispute, though it is the case of the defendant that the said amount was received only as a loan and not for the sale of the property. That apart, the plaintiff claims to have paid two payments of Rs.5,00,000/- on 02.02.2001 and 12.04.2001. Despite such a claim of further advance of Rs.10,00,000/- made, the plaintiff has not been able to establish such payment and in fact, even in the plaint, in paragraph No.16, he has stated that since the defendant has denied the receipt of the additional amount of Rs. 10,00,000/-, the plaintiff is willing to pay the said amount to the defendant. The trial Court has also found that the plaintiff has not proved the payment



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of Rs.10,00,000/- as claimed in the plaint.

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23(a). That apart, even according to the plaintiff, when the defendant did not turn up for registration, despite his telegraphic notice on 27.04.2001, the plaintiff did not choose to take any steps until 13.06.2001, on which date, he sent Ex.A2- notice to the defendant.

23(b). When the plaintiff was fully aware and conscious that the agreement of sale ought to have been concluded by payment of balance sale consideration and execution and registration of sale on or before 30.04.2001 and despite the allegation of the plaintiff that the defendant did not turn up for registration, the plaintiff did not choose either to approach the Court or issue a notice until 13.06.2001 in Ex.A2. The defendant sent reply notice, vide Ex.A3, dated 25.06.2001, where, the said defendant sent a reply notice on 25.06.2001, where the defendant states that he did not have any right to sell one item of the suit property, as his mother, brother and sisters were to join the execution of the sale deed. On the contrary, in the said reply notice, the defendant has specifically stated that on 30.04.2001, the defendant was ready at the Sub Registrar's Office, but, the plaintiff had not turned up.



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23(c). The defendant has also stated in the notice that the plaintiff has not performed his part of the agreement. Despite such a stand taken by the defendant in the reply notice dated 25.06.2001, for reasons best known to the plaintiff, he remained silent until 2003, when he issued another notice dated 01.12.2003, reiterating that he was ready and willing to perform his part of the contract and the defendant could inform a convenient date for executing the sale deed in favour of the plaintiff. To this notice, dated 01.12.2003, the defendant sent a reply, vide EX.A5 dated 11.12.2003, which has already been discussed in detail, where the defendant had taken a different stand from what he had taken in the earlier reply notice, Ex.A3, dated 25.06.2001. There is absolutely no answer on the part of the plaintiff to justify as explain the huge delay in approaching the Court. It is not a case where the plaintiff and the defendant did not agree upon a specific time period for concluding the sale agreement. Thus, the plaintiff was conscious of the deadline viz., 30.04.2001, agreed upon under the agreement of sale.

23(d). Despite issuing a telegraphic notice on 27.04.2001 and lawyer's notice on 13.06.2001, the plaintiff did not choose to rush to Court to file a



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suit for specific performance. Even after the lapse of 2 ½ years, he chose to only issue another notice vide Ex.A4, dated 01.12.2003 and after the reply sent by the defendant, vide Ex.A5, dated 11.12.2003, the suit came to be filed only on 22.12.2003, which was not diligently prosecuted until after it came to be represented on 20.01.2004 and taken on file on 23.04.2004 and numbered as O.S.No.137 of 2004. Thus, the conduct of the plaintiff in not approaching the Court at the earliest point of time, clearly mitigates against his readiness and willingness.

24. The Hon'ble Supreme Court in ***Man Kaur (Dead) V. Hartar Singh Sangha*** reported in ***2010-10-SCC-512***, held that the plaintiff is bound to prove that he was always ready and willing to perform his part of the contract and that such requirement was not dependent on the stand that is taken by the defendant as a defence to the suit for specific performance. The relevant portion of the judgment is as follows:

“23. The learned counsel for the respondent contended that in terms of the agreement, the defendant had to furnish an NOC from Chandigarh Administration, as also ULC clearance and income tax clearance required for the sale and there was nothing to show that she had obtained



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them, and therefore the question of plaintiff proving his readiness and willingness to perform his obligations did not arise. This contention has no merit. There are two distinct issues. The first issue is the breach by the defendant - vendor which gives a cause of action to the plaintiff to file a suit for specific performance. The second issue relates to the personal bar to enforcement of a specific performance by persons enumerated in Section 16 of the Act. A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of plaintiff is something which need not be proved, if the plaintiff is able to establish that defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a



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consideration of Rs.10 lakhs and earnest money of Rs.1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs.15 lakhs. In such a case there is a clear breach by defendant. But in that case, if plaintiff did not have the balance Rs.9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by defendant, as he was not 'ready and willing' to perform his obligations.

25. The learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in ***Ramathal V. Maruthathal*** reported in ***2018-18-SCC-303***, where the Hon'ble Supreme Court held that the burden is always on the plaintiff to aver and prove that he was always ready and willing to perform his part of the contract throughout and that Section 16(c) of the Specific Relief Act mandates that not only there be a pleading of readiness and willingness, but it also has to be proved by acceptable evidence.

26. He would also place reliance on the judgment of the Hon'ble



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Supreme Court in ***Sukhwinder Singh V. Jagroop Singh*** reported in **2020-2-LW-796 (SC)**, where the Hon'ble Supreme Court held that “readiness and willingness” was a basic requirement for a decree of specific performance to be granted and that even in the absence of defence put forth, the plaintiff was required to prove his readiness and willingness and that the same has to be considered by the Court.

27. The learned counsel for the respondents would rely on the decision of the Division Bench of this Court reported in ***V.Udayakumar V. Navaneethammal*** reported in **2002-1-CTC-334**, where the Division Bench of this Court held that when the plea of readiness and willingness was not raised and no issue was framed, the plea cannot be raised before the High Court in Appeal and further held that when some steps were taken by the plaintiff for enforcing the agreement, it was not necessary for the plaintiff to plead readiness in unequivocal terms.

28. He would also rely on the decision of the Hon'ble Supreme Court in ***M/s.J.P.Builders V. A.Ramadas Rao*** reported in **2011-1-SCC-429**, where the Hon'ble Supreme Court held that the plaintiff has to comply with Section 16(c) even in the absence of specific plea by opposite



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party and that the plaintiff must allege and prove a continuous readiness and willingness to perform contract on his part from date of contract, as the readiness and willingness is to be determined from entirety of facts and circumstances relevant to intention and conduct of the parties concerned.

29. He would also rely on the decision of the Hon'ble Supreme Court in R.Lakshmikantham V. Devaraji reported in 2019-8-SCC-62, where the Hon'ble Supreme Court held that merely because there was a delay in filing the suit, after accrual of cause of action, it cannot be said that the plaintiff was not ready and willing to perform his part of the contract, if the suit was filed within the period of limitation. In the said judgment, the Hon'ble Supreme Court found that in view of entire of reciprocal premises being necessarily to be performed first, the High Court was incorrect to hold that the plaintiff was not ready and willing. However, the facts of the present case are on entirely different footing and the ratio laid down by the Hon'ble Supreme Court cannot be applied to the facts of the present case.

30(a). Admittedly, the plaintiff having entered into an agreement of sale has clearly failed to establish his 'readiness and willingness' to perform his part of the contract. The delay caused at every stage is totally



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unexpected of a prudent agreement holder who has parted with Rs.13,00,000/- out of Rs.23,00,000/- and remains silent for a period of 2 ½ years, after the defendant sends a reply notice stating that he is not in a position to convey good title in respect of one of the items of suit property. Further, even as seen from the telegraphic notice as well as the first lawyer's notice, though the plaintiff was ready, the defendant was evasive and did not come forward to perform the contract by executing and registering the sale deed in favour of the plaintiff. Even here, instead of approaching the Court, the plaintiff merely chose to be silent for a period of 2 months initially, after the first telegraphic notice and after the lapse of the time stipulated under the agreement of time and thereafter, for a period of 2 ½ years after the reply notice issued by the defendant in Ex.A3.

30(b). Unfortunately, the trial Court has not discussed these aspects of “readiness and willingness” at all. The trial Court has only considered at Ex.P4 and opposite stands taken by the defendant in the two reply notices and jumped to conclude that the plaintiff was entitled to the relief of specific performance.

31. For all the above reasons, we are unable to sustain the findings of



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the trial Court. Therefore, point No.2 is answered against the respondent / plaintiff.

32. In fine,

(a) For the reasons stated supra, we hold that Ex.A.11-Will dated 26.10.1983, is only a Joint Will;

(b) The mother had only limited right in the property and not an absolute right to deal with the property in any manner as she felt or liked;

(c) The plaintiff has not proved his readiness and willingness as recorded under Section 16(c) of the Specific Relief Act;

(d) Consequently, he is not entitled for the relief of specific performance of Ex.A.1-suit sale agreement and the main relief in the suit stands negatived;

(e) The plaintiff is entitled for an alternate relief of refund of the advance amount paid under the agreement for a sum of Rs.3,00,000/- with interest as stated below and as the plaintiff has deposited the balance consideration of Rs.20,00,000/- ie., lying in the Court deposit, his legal heirs are permitted to withdraw the said amount.



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33. In the result, the Appeal Suit is allowed in part to the extent indicated above and the suit in O.S.No.137 of 2004, dated 12.07.2012, on the file of the District and Sessions Court, Kanyakumari at Nagercoil, is hereby set aside and modified, wherein,

(i) The main relief of specific performance is set aside and rejected and the alternate relief of refund of the advance amount under the suit sale agreement is ordered;

(ii) Further, the legal representatives of the deceased plaintiff, namely, the respondents 2 to 5 herein are entitled for the refund of a sum of Rs.20,00,000/- deposited into Court, on taking out necessary and proper application in this regard before the trial Court;

(iii) The appellant/defendant shall pay a sum of Rs.3,00,000/- with interest at 9% per annum from the date of agreement till the date of repayment.



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34. With the above directions, the Appeal Suit stands partly allowed. There shall be no order as to costs.

(T.K.R.J.) & (P.B.B.J)
21.11.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
LS

To

1.The District and Sessions Court,
Kanyakumari at Nagercoil.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J

LS

judgment in
A.S.(MD).No.108 of 2012
and
C.M.P.(MD)No.264 of 2020

21.11.2023