



A.S.(MD)No.50 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.01.2023

WEB COPY

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

A.S.(MD)No.50 of 2012

T.Robert Chellaiah

... Appellant/Plaintiff

Vs

1.A.Antony Irudhayadhasan

2.Esther Ranjani Ammal

...Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of Code of Civil Procedure, to set aside the judgment and decree passed in O.S.No.115 of 2008 dated 28.03.2011 on the file of the learned Additional District Sessions Judge, Fast Track Court No.1, Tirunelveli.

For Appellant : Mr.K.Karthik

For Mr.M.S.Sengu Vijay

For Respondents : Mr.S.Raja Sekar

JUDGMENT

The facts germane to the determination of the points raised in the appeal are summarised as follows:



A.S.(MD)No.50 of 2012

The plaintiff and the defendants entered into a registered agreement of sale on 24.02.2006 for the sale of the suit 'A' Schedule property on an agreed consideration of Rs.10,00,000/-. On the date of the agreement a sum of Rs.2,00,000/- was paid as advance. The time stipulated under the agreement for completion of the sale transaction was 20 months. In pursuance of the agreement of sale dated 24.02.2006, the possession of the lands were hand over to the plaintiff. The plaintiff was a real estate dealer and carrying on business in the name and style of J.J Land promoters. According to the plaintiff, the object of entering into the sale agreement for purchase of the suit A Schedule property was to lay out the lands into plots and sell it to prospective buyers. The plaintiff claims to have made periodic payments to the defendants which were acknowledged by the defendants by making endorsements on the reverse of the sale agreement. It was the further case of the plaintiff that the defendants on receipt of such payments executed sale deeds in favour of buyers identified by him and totally 21 sale deeds were executed by the defendants covering 63 cents and the remaining 554 cents, the suit 2nd Schedule property which forms a part of the suit 1st Schedule property remained with the defendant. When the plaintiff approached the defendants on 10.09.2007 to complete the sale transaction, the defendants demanded higher price for the suit 1st schedule property and so the sale consideration was refixed at Rs.11,41,450/- and a further advance of Rs.



2,00,000/- was paid to the defendants and the same was endorsed on the reverse of the sale agreement on 13.09.2007. The plaintiff further pleaded that on 29.11.2007, a sum of Rs.25,000/- was paid to the son-in-law of the defendant for medical expenses, on specific instructions of the defendants and the same was endorsed on the reverse of the agreement. According to the plaintiff, he was ever ready and willing to perform his part of the contract, but the defendants were evading the same. The plaintiff therefore issued a legal notice, dated 24.07.2008 to the defendants for which the defendants replied on 06.08.2008 raising untenable pleas. As the defendants refused to execute the sale deed as per the sale agreement, the plaintiff filed the suit for specific performance and other reliefs.

2. The defendants filed an elaborate counter denying all the plaintiff averments. According to the defendants the registered sale agreement dated 24.02.2006 did not provide for plotting of the lands. The agreement was not entered into with J.J.Promoters but was one entered into with the plaintiff in his individual capacity. There was no agreement to layout the lands. As the plaintiff was trying to sell the lands as plots, the plaintiff and the defendants entered into a second unregistered sale agreement on 13.04.2007 wherein the extent of lands to be conveyed was reduced to acres 5 cents 40.5 at the rate of Rs.1850 per square foot. According to the defendants it was only in pursuance



A.S.(MD)No.50 of 2012

of the second agreement that the sale of 21 plots was made by the defendants.

It was the further case of the defendants that on 13.09.2007 a further agreement was entered into which was also endorsed on the reverse of the registered sale agreement dated 24.02.2006, whereunder the consideration for the sale of the lands was refixed at Rs.11,41,450/- @ 1850% square foot and further the extent of lands was also increased to acres 6 and 17 cents. Therefore according to the defendants the agreement dated 24.02.2006 was not a complete one. The defendants further pleaded that the plaintiff did not have the funds to complete the sale transaction and that he was never ready and willing to perform his part of the agreement. The defendants further stated that even though the price and the extent of the lands were modified by the subsequent agreements, the time fixed under the original agreement was never extended. The defendants therefore claimed that time was the essence of the contract and as the plaintiff failed to complete the sale transaction within the stipulated period of 20 months, the agreement lapsed and therefore the plaintiff was not entitled to the relief of specific performance. The defendants in their written statement further submitted that the plaintiff had approached the Court with a false case on possession and payment of Rs. 25,000/- to the defendant's son-in-law. On these and other grounds raised in the written statement the defendants prayed for the dismissal of the suit.



3. In the trial Court, the plaintiff examined himself as P.W.1 and examined two other witnesses and marked Exhibits A1 to A14. On the side of the defendants, the first defendant examined himself as D.W.1 and examined two other witnesses and marked two documents as Exhibit B1 and B2. The trial Court on the basis of the pleadings and the evidence on record, framed the following issues:

- 1.வாதிக்கு அவர் கோரும் ஏற்றது ஆற்றுக பரிகாரம் கிடைக்கத்தக்கதா?
- 2.வாதிக்கு அவர் கோருவது போல் ரூ.5,45,650/- பின்வட்டியும் கிடைக்கத்தக்கதா?
- 3.வாதிக்கு கிடைக்கக் கூடிய இதர பரிகாரம் யாது?

4. The trial Court on an appreciation of the pleadings and the entire evidence on record found that the plaintiff was not ready and willing to perform his part of contract. The trial Court further held that under the suit sale agreement time was the essence of the contract and as the plaintiff did not come forward to complete the sale transaction within the period stipulated under the contract, he was disentitled to the relief of specific performance. The trial Court therefore dismissed the suit for specific performance but granted a decree for return of advance amount of Rs.5,20,650/- along with 6% interest from the date of decree till the date of payment.



WEB COPY

5. Aggrieved by the judgment and decree of the trial Court, the unsuccessful plaintiff has filed the above appeal. The parties will be referred to as per their rank in the trial Court for convenience.

6. The learned counsel for the appellant/plaintiff submitted that the plaintiff was ever ready and willing to perform his part of the contract and various payments made by him and the endorsements made by the defendants on the reverse of the agreement were proof enough to show that the plaintiff was ever ready and willing to perform his part of the contract. The learned counsel for the plaintiff further submitted that the endorsement dated 13.09.2007 would clearly show that time was not the essence of the contract and therefore, the trial Court erred in finding both the issues against the plaintiff.

7. The learned counsel for the respondents/defendants on the other hand submitted that the plaintiff was never ready and willing to perform his part of the contract. According to the counsel, time was the essence of the contract and as the plaintiff failed to perform his obligations under the contract within the stipulated period of 20 months he was disentitled to the relief of specific performance. The learned counsel submitted that in none of the endorsements



A.S.(MD)No.50 of 2012

time was extended and hence time was the essence of the contract. The learned counsel submitted that the plaintiff had suppressed material facts and had thus approached the Court with unclean hands. The learned counsel further submitted that the plaintiff was not entitled to the equitable relief of specific performance as he had abandoned the contract which would be evident from the long delay of 8 months in sending the legal notice. The learned counsel therefore prayed for the dismissal of the appeal as meritless.

8. I have heard both the learned counsels and I have perused the materials on record.

9. The following points arise for determination in this appeal:

1. Whether the plaintiff is entitled to the equitable relief of specific performance of the suit sale agreement dated 24.02.2006?

2. To what other relief is the plaintiff entitled to?

10. As both the points are interlinked they are taken together for consideration.

11. The undisputed facts are that a registered sale agreement dated 24.02.2006 was entered into by the plaintiff and the defendants for sale of the



A.S.(MD)No.50 of 2012

suit 1st Schedule property for a sale consideration of Rs.10,00,000/- an advance of Rs.2,00,000/- was paid by the plaintiff on the day of the agreement and the balance sale consideration was agreed to be paid within 20 months of the agreement whereas the plaintiff claims that the defendants had knowledge that the plaintiff was a real estate dealer and doing business in the name and style of J.J.Promoters and that the sale agreement was entered into by the plaintiff with a view to convert the lands into plots and sell them to prospective buyers, but the defendants deny the same. The plaintiff claims that he made periodical payments which were endorsed on the reverse of the sale agreement and one such endorsement was made on 13.09.2007 whereunder the sale consideration was refixed at Rs.1,850/- per square foot and the total consideration was fixed at Rs.11,41,450/- for sale of 6 acres and 17 cents.

12. The defendants on the other hand state that the suit sale agreement was executed in favour of the plaintiff in his individual capacity and not as promoter of J.J.Promoters. The defendants stated that there were two subsequent agreements, dated 13.04.2007 and 13.09.2007 and the plaintiff suppressed the same. The defendants' specific case was that the suit sale agreement did not provide for the sale of the lands as plots. According to the defendants it was only under Exhibit B2 unregistered sale agreement dated



13.04.2007 the plaintiff was permitted to sell the lands as plots. The defendants as per the second agreement dated 13.04.2007 executed 21 sale deeds in favour of persons identified by the plaintiff. Even thereafter, the plaintiff was dragging his feet and so the third agreement vide endorsement dated 13.09.2007 was made. The very fact that the plaintiff approached the Court 8 months after denial by the defendants proves that the plaintiff was not ready and willing to perform the contract and waived his rights under the contract. The plaintiff for reasons best known to him suppressed the subsequent agreements and hence according to the defendants the plaintiff had approached the Court with unclean hands. The defendants' further case was that time was the essence of the contract and as the plaintiff had failed to complete the sale within the period of 20 months stipulated under the contract, the plaintiff was disentitled to the relief of specific performance.

13. From the pleadings and submissions of the learned counsels it is to be seen if the plaintiff is entitled to the relief of specific performance. According to the defendant's, the plaintiff is disentitled to the relief for the following reasons:

1. Plaintiff was not ready and willing to perform his part of the contract;
2. Plaintiff suppressed material facts ergo approached Court with unclean hands;



A.S.(MD)No.50 of 2012

3. Time was the essence of the contract.

4. Plaintiff has waived his right for specific performance by his lethargic conduct.

14. From a reading of the registered sale agreement, dated 24.02.2006, it is clear that the plaintiff executed the sale agreement in his individual capacity and not as a promoter of J.J.Promoters. The agreement does not state that the lands were to be sold as plots. Under the agreement Exhibit A1, the lands were to be sold enmasse, in one block. The plaintiff was given 20 months time to complete the sale. The plaintiff paid Rs.2,00,000/- at the time of the agreement and thereafter paid Rs.1.47 lakhs vide endorsement dated 28.08.2006. According to the plaintiff, 21 plots measuring 63 cents were sold to buyers identified by the plaintiff. Though the defendants did not deny the sale of the said 21 plots, according to the defendants the plots were not sold in pursuance of Exhibit A1 agreement but were sold in pursuance of Exhibit B2 agreement dated 13.04.2006. The plaintiff in his cross examination on 09.03.2011 stated as follows:

“பிராது தபசில் சொத்தை பொருத்து எனக்கும் பிரதிவாதிகளுக்கும் இடையே பி.வா.சா.ஆ.2 வா.சா.ஆ.1 படி உடன்படிக்கை ஏற்பட்டது என்றால் சரிதான். மேற்படி இரண்டு ஒப்பந்தங்கள் தவிர வேறு ஒப்பந்தங்கள் எதுவும் எங்களுக்குள் தனியாக ஏற்படவில்லை. பி.வா.சா.ஆ.2 பிளாட்டுகளாக பிரிக்கப்பட்ட



A.S.(MD)No.50 of 2012

பின்பு எங்களுக்குள் ஏற்படுத்தப்பட்ட ஒப்பந்தம் என்றால் சரிதான்.

பி.வா.சா.ஆ.2ல் 2வது பார்ட்டி என்று காட்டப்பட்டுள்ளது என்ன
தான்.□

15. It is therefore clear that even according to the plaintiff the lands were sold as plots only in pursuance of Exhibit B2. It is seen that under Exhibit B2 the extent of lands was increased from 6 acres to 6.58 acres but the plaintiff was entitled to sell the lands at the rate of Rs.1850/- per square feet and that too, to the extent of the agreed sale consideration of Rs.10,00,000/-. Thereafter, vide endorsement dated 10.09.2007, a further agreement was reached, where the extent of lands to be sold was fixed at 6.17 acres and the sale consideration was also refixed at Rs.11,41,450/- at the rate of Rs.1,850/- per square foot. It is therefore clear that the transactions between the parties were chequered and meandering. Even though the extent of the lands and the sale consideration were revised under the subsequent transactions, the time for performance was not altered. The period of 20 months was not varied in any of the subsequent transactions.

16. On the aspect of readiness and willingness it was the plaintiff's case that he was ever ready and willing to pay the balance sale consideration and get the sale deed and that whenever he paid amounts toward part performance



of the contract the defendants executed sale deeds to various persons as directed by him. It is clear from the plaintiff's own pleading that he was not ready to pay the entire balance sale consideration but was inclined to have the sale deeds registered in piece meal (ie) plot wise which is against the recitals in Exhibit A1 and the endorsement made on 13.09.2007. The plaintiff in order to establish readiness and willingness should not only plead the same but prove it also. As regards readiness it is seen that the plaintiff did not have the funds to complete the sale within the time stipulated in the agreement. The evidence of the plaintiff in this regard is as follows:

“என்னிடம் அந்த காலத்தில் போதுமான பணம் இருந்தது
என்று காட்ட இதுவரை நான் ஆதாரம் தாக்கல் செய்யவில்லை”

17. When the agreement of sale recites that the sale would be enbloc, the plaintiff cannot dictate performance contra to the agreement. The plaintiff should be ready and willing to perform the contract as agreed and not as he wishes. It is seen that by the endorsement dated 13.09.2007 it was acknowledged that the lands were converted into plots and the rate for the entire extent of 6.17 acres was refixed at Rs.11,41,450/-. The plaintiff having agreed to purchase the entire extent of 6.17 acres within the stipulated time, long thereafter approached the defendants on 20.06.2008 to register some more plots for which the defendants refused. Thus it is evident that the



plaintiff neither had the funds to complete the sale nor was he willing to buy the entire extent of 6.17 acres as a block. I am therefore of the view that the plaintiff was not ready and willing to perform his part of the contract in terms thereof.

18. The defendant's case was that the plaintiff suppressed Exhibit B2. It is seen that even in the defendant's reply notice, dated 29.07.2008 the defendants had categorically referred to Exhibit B2 unregistered agreement but the plaintiff neither sent a rejoinder disputing it nor referred to Exhibit B2 in his plaint. It is useful to recollect here the above evidence of plaintiff wherein he admitted Exhibit B2 agreement. Therefore it is clear that the plaintiff had suppressed Exhibit B2 agreement.

19. It is seen that the time for performance stipulated under Exhibit A1 was 20 months. The plaintiff does not dispute it but states that it was subsequently extended. The defendants on the other hand state that there were variations in the extent and price of the lands but time was never extended. It is seen that four endorsements were made on the reverse of Exhibit A1. The endorsements are dated 28.08.2006, 13.04.2007, 13.09.2007 and 29.11.2007. In none of the endorsements time was extended. Perhaps to overcome the same the plaintiff stated that the 1st defendant by receiving Rs.25,000/-



through his son-in-law agreed for extension of time by making the endorsement after the expiry of time stipulated in the agreement. The defendants disputed that they ever instructed or received the sum of Rs.25,000/- through the son-in-law. The trial Court has rightly pointed out that except the *ipsi dixit* of the plaintiff there is absolutely no evidence to prove that the plaintiff paid Rs.25,000/- to the defendant's son-in-law. It is therefore lucid that the time was not extended. The plaintiff is admittedly a real estate dealer and from the various developments that took place subsequent to the agreement it is clear that the value of the lands was steadily escalating. The plaintiff having agreed to complete the sale transaction within 20 months cannot be allowed to retract from his promise. The plaintiff is a man of commerce and hence while entering into the sale agreement the plaintiff was prudent enough to take a long period of 20 months to complete the sale transaction. It is relevant to refer here to a few judgments of the Hon'ble Supreme Court on time being the essence of the contract:

(a) In Chand Rani Vs Kamal Rani reported in 1993 (1) SCC 519. The Hon'ble Supreme Court held as follows:

“25. From an analysis of the above case-law it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the court may infer that it is to be performed in a reasonable time if the conditions are evident:



1. *From the express terms of the contract;*
2. *from the nature of the property; and*
3. *from the surrounding circumstances, for example : the object of making the contract”*

(b) In K.S.Vidyanandam and others Vs.Vairavan reported in (1997) 3

SCC 1. It was held as follows:

“It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the [Limitation Act](#) for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both [Sections 10 and 20](#). As held by a Constitution Bench of this court in [Chand Rani v. Kamal Rani](#), [1993] 1 S.C.C. 519, "it is clear that in the case of sale of immovable property there is no presumption as to time



being the essence of the contract. Even if it is not of the essence of the contract, the court may infer that it is to be performed in a reasonable time if the conditions are (evident)? : (1) From the express terms of the contract; (2) from the nature of the property; and(3) from the surrounding circumstances, for example, the object of making the contract". In other words, the court should look at all the relevant circumstances including the time-limits specified in the agreement and determine whether its discretion to grant specific performance should be exercised."

(c) In Saradamani Kandappan Vs Rajalakshmi and others reported in (2011) 12 SCC 18. The Hon'ble Supreme Court held as follows:

25. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and 'non-readiness'. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said



principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality.

20. The Hon'ble Supreme Court following the judgment in the case of K.S.Vidyanandam in kolli satyanaraya Vs valurippalli kesava rao chaudhary reported in 2022 livelaw (SC) 807 held that when parties prescribe time for performance, it must have some significance and it cannot be ignored altogether. In the light of the said judgments and in view of the nature of suit transaction, I am of the view that as the plaintiff did not come forward to complete the sale within the stipulated period he is not entitled to the equitable relief of specific performance.

21. One other aspect which this Court takes notice is the falsity of the claim of the plaintiff regarding payment of Rs.25,000/- to the first defendant's son-in-law. This fact coupled with the case of the plaintiff on possession clearly establishes that the plaintiff has approached the Court with unclean hands.



WEB COPY

22. The plaintiff went into a slumber after 27.10.2007. After a long hiatus of eight months the plaintiff woke up and sent the legal notice to the defendants to which the defendants replied stating that the agreement had lapsed. The question is whether the delay of eight months is fatal to the plaintiff's case. The nature of transaction has a bearing on the plea of abandonment. It is the plaintiff's own case that he was a real estate dealer and that he had agreed to purchase the lands with a view to plot out the same. Even the subsequent transactions between the plaintiff and the defendants show that there was a constant increase in price of the lands and the plaintiff had himself agreed to purchase the lands at Rs.1,850/- per square foot within a few months of the agreement. The plaintiff being a real estate promoter knew that the prices were constantly galloping and hence in the absence of any justifiable explanation for the long delay of eight months in sending the notice, the only conclusion that can be drawn is that the plaintiff had abandoned his right under the contract.

23. As far as the return of advance money is concerned, I am in agreement with the trial Court. In my view, the trial Court has rightly found that the plaintiff is entitled to Rs.5,20,650/- being the advance amount paid by him to the defendants. The trial Court is right in its finding that in the absence



A.S.(MD)No.50 of 2012

of a stipulation for payment of interest, the same cannot be awarded. I therefore find no impropriety or illegality in the trial Court's judgment on all issues.

24. In fine, the appeal is dismissed and the judgment and decree of the trial Court is confirmed. There shall be no order as to costs.

20.01.2023

Index : Yes / No
Internet : Yes / No
sn

To

1. The Additional District Sessions Judge,
Fast Track Court No.1, Tirunelveli.
2. The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



A.S.(MD)No.50 of 2012

N.MALA, J

sn

A.S.(MD)No.50 of 2012

20.01.2023