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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S(MD)No.32 of 2010
and
C.M.P(MD)Nos.5129 and 5130 of 2022

S.Periyasamy :Appellant/Plaintiff

.vs.

1.C.Rengasamy

2.P.Chinnasamy

3.Pappathi

(Respondents 2 and 3 are impleaded as per order of this Court made in C.M.P(D)No.8226 of 2019 in A.S(MD)No.32 of 2010, dated 4.12.2019) :Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code against the disallowed portion of the decree and judgment made in O.S.No.50 of 2005, dated 6.10.2009, on the file of the District Judge, Karur.

For Appellant	: Mr.S.Prabhu, for M/s.V.K.Vijayaraghavan
For Respondent-1	:Mr.S.Anand Chandrasekar for M/s.Sarvabhauman Associates
For Respondents 2 and 3	:Mr.E.K.Kumaresan



JUDGMENT

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Aggrieved over the dismissal of the suit for the relief of specific performance, the present appeal suit came to be filed by the unsuccessful appellant/Plaintiff.

2.The parties are referred to as per their ranking before the trial Court.

3.The brief facts leading to the filing of the present appeal suit is as follows:

The defendant as a power agent of his brothers and their sons on their behalf and on his behalf had entered into a sale agreement with the plaintiff for the sale of property for a total sale consideration of Rs.13,50,000/- on 21.04.2004 and received a sum of Rs.2 lakhs as advance amount. The time agreed between the parties to complete the sale within six months from the date of sale agreement. It is the further stand of the plaintiff that the time agreed between the parties is only for document sake and not the essence of the contract. The Plaintiff is always ready and willing to perform his part of contract and is demanding the defendant to receive the balance sale consideration and to execute the sale



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deed. However, the defendant was postponing the same by giving some reason or other. Hence the plaintiff issued a legal notice to the defendant on 17.10.2005 calling upon him to receive the balance sale consideration and to execute the sale deed. But no reply was sent. Hence the suit is filed by the plaintiff seeking for the relief of specific performance.

4.The defendant admitted the agreement, dated 21.4.2004 and the receipt of Rs.2 lakhs as advance amount. It is the case of the defendant that the time fixed in the sale agreement is the essence of the contract. Throughout the agreement period, the defendant is always ready and willing to perform his part of contract, however, the plaintiff has not come forward to get the sale deed executed from the defendant, despite several insistence made by the defendant. Further the plaintiff was never ready and willing to perform his part of the contract.

5.On the basis of the above pleadings, the following issues were framed for consideration:

1.Whether the time is the essence of the sale agreement?



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2. Whether the plaintiff was not ready and willing to complete the terms of the agreement as claimed by the defendant, is proved?

3. Whether the plaintiff is entitled to the relief of specific performance?

4. To what other relief, the plaintiff is entitled to?

6. Before the trial Court, on the side of the plaintiff, P.W.1 was examined and Ex.A1 to Ex.A4 were marked. On the side of the defendant, D.W.1 was examined and no document was marked.

7. The trial Court, after analyzing the evidence on record, found that the plaintiff was never ready and willing to perform his part of contract and dismissed the suit for specific performance, however, the Court below has granted the alternative relief directing the defendant to pay the plaintiff the advance amount of Rs.2 lakhs with interest at the rate of 12%p.a from the date of sale agreement till the realizing of the entire sale amount. Aggrieved over the same, the present appeal suit is filed.

8. The learned counsel for the appellant would submit that though the sale could not be completed within the agreed period,



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the property has been developed as plots, having received substantial amount as advance to the tune of Rs.2 lakhs. The defendant has taken undue advantage and according to him some plots remain unsold. Therefore the advance amount could be adjusted by handing over the unsold plots and the plaintiff is ready to purchase those unsold plots. Hence it is the contention of the plaintiff that the specific performance may be granted towards the part of the contract.

9. Whereas, the learned counsel for the respondent would submit that the plaintiff has not shown his readiness and willingness and the sale agreement itself stipulates specific time and the same cannot be ignored altogether. The time is the essence of the contract. Though legal notice was sent, it is sent after the expiry of the sale agreement period and the suit has been filed on 9.11.2005. However, during the entire trial, the plaintiff has not shown readiness and willingness to deposit the remaining sale consideration into the Court and further, no evidence whatsoever was produced to show that the plaintiff has the capacity to raise the funds towards the payment of remaining sale consideration. Hence, it is the contention of the defendant that the trial Court has rightly appreciated the evidence on record and



rejected the relief of specific performance.

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10. In the light of the above submission, now the point that arose for consideration in this appeal suit is as follows:

1. Whether the plaintiff was always ready and willing to perform his part of the contract?

2. Whether the plaintiff is entitled to enforce the contract in respect of the part of the sale agreement?

3. To what other relief, the plaintiff is entitled to?

11. It is not disputed about the sale agreement, dated 21.4.2004 by the defendant. In respect of the sale of the suit property consisting of 49,041.1/4 sq. ft of land and 25 feet road for a total sale consideration of Rs.13,50,000/-. It is not in dispute about the payment of advance amount to the tune of Rs.2 lakhs. It is specifically agreed between the parties that the remaining sale consideration shall be paid within a period of six months from the date of sale agreement. Though the time is not the essence of the contract insofar as the immovable properties are concerned. The specific time agreed between the parties in the contract cannot be ignored altogether. In fact, the same makes the time as essence of



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the contract., On a perusal of the entire evidence of P.W.1 plaintiff, no materials whatsoever was available on record to show that he has made an attempt to perform his part of the contract during the existence of the sale agreement. Further there is no materials available on record to show that he had the capacity to mobilize the fund at the relevant point of time. It is relevant to note that in a suit for specific performance, a person seeking to enforce the contract has to show his readiness and willingness from the inception of the sale agreement till the end. Readiness is the capacity to raise the fund and willingness is the mental attitude of the plaintiff. Only both go together and if the same is not established on record, then the relief of specific performance cannot be granted. On a perusal of the evidence of P.W.1 and the documents produced Ex.A1-sale agreement and Ex.A1-legal notice, no other materials whatsoever was available on record to show that the plaintiff is always ready and willing to perform his part of the contract. Legal notice Ex.A2 itself was issued only after the expiry of the time period of six months as per the sale agreement. That itself clearly indicates that the plaintiff was not interested in pursuing the contract diligently. Therefore the relief of specific performance as sought for by the plaintiff cannot be granted. That apart, no evidence whatsoever is available on record to show that



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the plaintiff has made an attempt to raise the funds to pay the remaining portion of the sale consideration within the period of agreement between the parties. Even at the time of filing the suit or after filing the suit, no attempt was made by the plaintiff to show that he has the capacity to pay the balance sale consideration and to get the sale executed. Therefore the person who come for equitable relief merely based on the sale agreement is not entitled to such relief. Without showing any act on his part to prove the readiness and willingness from the date of inception of the sale ageement till the end, the plaintiff is not entitled for the relief of specific performance as sought for in the suit.

12.In such view of the matter, this Court is of the view that the plaintiff has not proved the factum of readiness and willingness to enforce his part of the contract ExA1. Insofar as the contention of the learned counsel for the plaintiff that at least towards the advance amount, certain plots could be sold to him and the part of the contract could be enforced, this Court is of the view that to enforce the part of the contract, mandatory condition as envisaged under Section 12 of the Specific Relief Act has to be proved and that also, the payment of the entire sale consideration for the part of performance of the contract. I do not find any materials either in



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the form of pleadings or by way of affidavit before this Court to satisfy the mandatory conditions of Section 12 of the Specific Relief Act and the same reads as follows:

"12(1).....

12(2).....

12(3)(b)(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), (pays or has paid) the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant."

Accordingly, the said contention of the learned counsel for the appellant cannot be countenanced in the appeal stage. The trial Court has granted the decree in respect of the alternative relief of refund of Rs.2 lakhs with interest at 12% pa., despite the fact that the alternative relief was not claimed by the plaintiff. In fact, the trial Court has exercised the equity jurisdiction and granted such an decree taking note of the fact that the payment of advance



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amount was not disputed. Though such relief is not automatic, since the trial Court invoked the equity jurisdiction, this Court is not inclined to interfere with such finding.

13. Accordingly, the Appeal Suit is dismissed, confirming the judgment and decree of the Court below in O.S.No.50 of 2005, dated 6.10.2009. No costs. Consequently, connected Miscellaneous Petitions are closed.

05.06.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

1. The District Judge,
Karur.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
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