



S.A.(MD)No.334 of 2007

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.(MD)No.334 of 2007

1.K.S.M.Thippu Sulthan

2.Jamuna Begam

...Appellants/Respondents/Defendants

vs.

1.Chinnadurai (Died)

... Respondent/Appellant/Plaintiff

2.C.Muniyammal

3.R.Dhanalakshmi

4.S.Kalaivani

5.C.Kasimayan

6.M.Radha

... Respondents/Respondents 2 to 6

(Respondents 2 to 6 are brought on record as
LRs. of the deceased sole respondent vide Court
order passed in C.M.P.(MD).Nos.2957 to
2959 of 2023 in S.A.(MD).No.334 of 2007,
dated 27.04.2023)

Prayer: Second Appeal is filed under Section 100 of the Code of Civil
Procedure against the judgment and decree dated 21.09.2006 in A.S.No.
35 of 2006 on the file of the Principal District Judge, Madurai, reversing



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the judgment and decree dated 01.06.2006 in O.S.No.750 of 2003 on the file of the V Additional Sub-Court, Madurai.

For Appellants : Mr.N.Balakrishnan
For Respondents : Mr.A.Arumugam
for M/s.Ajmal Associates

J U D G M E N T

Being aggrieved and dissatisfied with the judgment and decree passed by the Principal District Judge, Madurai in A.S.No.35 of 2006, dated 21.09.2006, reversing the judgment and decree passed by the V Additional Sub Judge, Madurai in O.S.No.750 of 2003, dated 01.06.2006, the defendants have preferred the present appeal.

2. The appellants are the defendants and the sole respondent is the plaintiff in the suit in O.S.No.750 of 2003. After the demise of the sole respondent, his legal heirs were brought on record as respondents 2 to 6.

3. For the sake of convenience, the parties herein shall be referred to in terms of their rank before the trial Court.



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4. The facts leading to the present appeal in a nutshell are as follows:

The first defendant is the owner of the suit property. He offered to sell the suit property and the plaintiff has agreed to purchase the same. The sale price was fixed as Rs.3,00,000/- and the sale agreement was entered on 06.08.2001. As per the sale agreement, the first defendant has received a sum of Rs.2,00,000/- as advance, on the date of sale agreement and the time for completion of sale was fixed as six months. The plaintiff all along ready and willing to complete the sale, whereas the first defendant failed to complete the sale. Hence, the plaintiff has issued a legal notice on 17.06.2003, requesting to complete the sale agreement. But the notice was evaded and returned. Hence, the plaintiff has filed the suit in O.S.No.750 of 2003 before the V Additional Sub Judge, Madurai for specific performance against the defendants.

4.2. The said suit was resisted by the defendants by filing a written statement denying all the averments made in the plaint and the sale



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agreement in favour of the plaintiff. The first defendant never intended to sell the suit property and he borrowed a sum of Rs.1,00,000/- from the plaintiff. The plaintiff agreed to lend Rs.1,00,000/- with interest at the rate of 24% and as demanded by the plaintiff, the first defendant handed over the original sale deed of the suit property. The plaintiff insisted for the execution of general power of attorney in favour of one P.Sahadevan, who is one of the relatives of the plaintiff. As the first defendant was in need of money, he agreed to the terms of the plaintiff. When the first defendant went to the registration office, he came to know about the sale agreement. Initially, he refused to execute the sale agreement. However, in view of the pressure of the plaintiff, Shahadevan and Raja, the first defendant executed the sale agreement only as a security for the amount borrowed. Further, the first defendant paid a sum of Rs.10,000/- as interest for the amount borrowed till June 2001. The intention of the plaintiff is to grab the suit property and the sale agreement was executed under undue influence, coercion, force etc., which is not valid in the eye of law. Therefore, the suit is liable to be dismissed.



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4.3. Before the trial Court, on the side of the plaintiff, two witnesses were examined as P.Ws.1 and 2 and five documents were marked as Exs.A1 to A5 and on the side of the defendants, two witnesses were examined as D.Ws.1 and 2 and 31 documents were marked as Exs.B1 to B31.

4.4. After considering the oral and documentary evidence and upon hearing both the counsel, the trial Court has dismissed the suit. Aggrieved over the said judgment and decree, the plaintiff has preferred an appeal in A.S.No.35 of 2006, before the Principal District Judge, Madurai. After framing the issues for consideration, the first appellate Court has allowed the appeal by reversing the judgment and decree passed by the trial Court, holding that the suit has been filed within a period of limitation. Further, it has been observed that as per Section 16 (c) of the Specific Relief Act, 1963, notice was issued by the plaintiff within a period of three years showing his readiness and willingness to purchase the suit property.



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5. Aggrieved over the said reversal judgment and decree, the defendants have filed the present appeal before this Court. While admitting the second appeal, this Court, on 23.04.2007, framed the following substantial questions of Law:

(i) Whether the first appellate Court is right in granting the decree for specific performance when the respondent was never ready and willing to perform his part of the contract ?

(ii) Whether the first appellate Court is right in finding Ex.A1 is true, valid and binding when the same was executed under different circumstances and for different purpose ?

6. The learned counsel appearing for the appellants/defendants would submit that the sale agreement was registered on 06.08.2001, which was marked as Ex.A1. As per the sale agreement, the first defendant borrowed a sum of Rs.1,00,000/- from the plaintiff and the sale agreement is only as a security for the amount borrowed and there was no intention between the parties to sell the suit property. The first defendant has repaid the said amount as Rs.10,000/- every month and the total



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amount was repaid. In addition to that, the execution of power of attorney, which was marked as Ex.B5, came to be cancelled on 15.07.2002. The trial Court has rightly considered the material evidence produced by both the parties and came to the conclusion that the period of delay with regard to readiness and willingness has not been explained by the plaintiff and dismissed the suit. On the other hand, the first appellate Court has held that readiness and willingness of the plaintiff is sufficient and the plaintiff has filed the suit within a period of limitation of three years and allowed the appeal.

7. In support of his contentions, the learned counsel for the appellants relied on a judgment of the Hon'ble Apex Court in the case of ***Saradamani Kandappan Vs. S.Rajalakshmi & Others*** reported in **2011 (4) CTC 640**, wherein, in para No.28, it has been held as follows:

“28.Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S.Vidyanadam (Supra):

(I) Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking



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certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a Suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser."

8. By referring to the said judgment, the learned counsel for the appellants would submit that there must be a readiness and willingness



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throughout the period of contract. The real intention is that the sale agreement was entered only for the purpose of security for repayment of loan. Hence, he would submit that all these aspects have not been properly considered by the first appellate Court. The first appellate Court has committed serious error while rendering the judgment, without taking into consideration the law laid down by the Hon'ble Apex Court in this aspects. Further, he would submit that the first defendant was kidnapped in the month of May 2002, by the plaintiff, forcibly and compelling him to come and execute the sale deed and he managed to escape from the clutches of the plaintiff in the middle of the way and even after expiry of one year only, the plaintiff had issued a legal notice. It shows that the plaintiff is not ready and willing to perform the contract. Therefore, he would submit that the judgment of the first appellant Court is liable to be set aside and the judgment rendered by the trial Court has to be restored.

9. On the other hand, Mr.A.Arumugam, learned counsel appearing for the respondents/plaintiff vehemently opposed the contention of the



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learned counsel for the appellants. He would submit that the first defendant is a well educated person. He is having a car and driver. There is no dispute on the aspect of Ex.A1/sale agreement. He would submit that his client has not made any attempt to kidnap the first defendant and he was physically ready for execution of sale deed, but the first defendant in the middle of the way escaped from the plaintiff. Therefore, as stated by the defendants, there was no intention to kidnap or compel the first defendant to come forward to execute the sale deed. That apart, the trial Court has not even framed any issues with regard to readiness and willingness and in the event, if this Court accepts the contentions of the first defendant on the aspect of readiness and willingness, the judgment of the Court below has to be set aside and remand the matter back. Further, he would submit that within a period of three years, his client sent a legal notice by virtue of Ex.A3. For the said legal notice, the first defendant also responded and the same has been marked as Ex.A5. Therefore, he would submit that the plaintiff was ready and preponderance of probabilities is in favour of the plaintiff throughout the contract. Even though the plaintiff is ready and willing throughout the



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period and he had orally requested the first defendant to come and execute the sale deed, it is only the first defendant refused to come forward to execute the sale deed. Hence, without any other option, the plaintiff has sent a legal notice by virtue of Ex.A1, on 06.08.2001. The six months period was expired on 05.02.2002. The first defendant also sent a reply notice, which is also marked as Ex.A5. He would further point out that all these aspects were not considered by the trial Court. However, the first appellate Court has rightly considered all these aspects. It is well considered judgment of the appellate Court, which need not be interfered with.

10. After completing the submissions, the learned counsel for the respondents/plaintiff would submit that in the event if this Court come to the conclusion that the plaintiff is not entitled to the relief of specific performance, at least this Court may order to return the advance amount of Rs.2,00,000/- with reasonable interest. In reply, the learned counsel appearing for the defendants would submit that interest may be ordered at 12 %, as the same would be just and fair for both parties.



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11. I have given due consideration for the submissions made by the learned counsel for the appellants and the respondents. The sale agreement was entered by the first defendant in favour of the plaintiff, which is marked as Ex.A1. At the time of sale agreement, a power of attorney was also executed and registered with the Sub Registrar Office along with Ex.A1 document. The said power of attorney was marked by the first defendant as Ex.B31. However, the said power of attorney came to be cancelled by virtue of Ex.B12. But, the plaintiff had not mentioned anything about the power of attorney in the plaint. According to the defendants, these documents have been executed only as a security for repayment of loan, which was received by the first defendant from the plaintiff. However, in the sale agreement, it has been stated that the sale consideration is Rs.3,00,000/- and the advance amount is Rs.1,00,000/-. At the time of execution of contract, the balance sum of Rs.2,00,000/- has to be paid. The time limit fixed is six months. The six months time was expired on 05.02.2002. The plaintiff came to issue legal notice only on 17.06.2003, calling upon the first defendant to come forward to



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execute the sale deed. However, in the reply, which was marked as Ex.A5, the first defendant has stated that he has no intention to execute the sale deed, but the sale agreement was entered only as a security for repayment of loan of Rs.1,00,000/-.

12. The trial Court have considered the aspect of readiness and willingness and having that the plaintiff was not ready and willing through out the period of contract, the trial Court refused to grant the relief of specific performance.

13. At this juncture, it would be appropriate to extract the provision of Section 16 (c) of the Specific Relief Act, 1963 which reads as follows;

“16.

(a)

(b)....

(c) *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 terms the*



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performance of which has been prevented or waived by the defendant.

Explanation.-For the purposes of clause (c),-

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.”

14. A reading of the above Section 16 (c) would reveal that specific performance of contract cannot be enforced in favour of a person who has failed to prove that he is always ready and willing to perform the contract. In the present case, even assuming that the sale agreement was only to purchase the property and not towards security for loan amount and the plaintiff supposed to have expressed his willingness during the period of contract ie., within six months and not even iota of evidence has been produced by the plaintiff to prove that he was ready and willing to pay the balance sale consideration and for the execution of contract.



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15. In the present case, the sale agreement was entered into between the plaintiff and the first defendant on 06.08.2001 and within six months time, the sale deed has to be executed and the legal notice was issued only on 17.06.2003, which was marked as Ex.A3. For the said legal notice, the first defendant issued a reply notice on 21.06.2003, by virtue of Ex.A5. In the said reply notice, the first defendant has categorically stated that the actual amount was received only Rs. 1,00,000/-, whereas the sale agreement was executed as Rs.2,00,000/-, since because it was informed him that this is only towards the security for repayment of the loan. Once the loan amount of Rs.1,00,000/- is repaid, the sale agreement will get cancelled. That is the reason why he has agreed to execute the sale, but on the other hand, the sale agreement is for a sum of Rs.2,00,000/-. Thereafter, the first defendant also paid a sum of Rs.1,50,000/-. However, the respondent/plaintiff insisted more amount. Though six months period was completed on 05.02.2002, no steps have been taken to execute the sale deed. Even in order to prove the readiness and willingness on the part of the respondent/plaintiff, he was



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not adduced any oral and documentary evidence, during the period of six months time fixed in the notice to execute the sale deed. Even the legal notice was issued only on 17.06.2003, which is after the expiry of time limit fixed in the sale agreement. Hence, it is crystal clear that there was no intention to execute the sale deed, at the time of entering into the sale agreement.

16. In terms of Section 16 (c) of the Specific Relief Act, 1963 the aspect of readiness and willingness is important and in the event if the sale agreement was executed as a security for repayment of loan, at the time of execution of the sale agreement, definitely there will not be any intention for both the parties to execute the sale deed. In the present case, it is clearly reveal that the plaintiff has not proved his readiness and willingness in the manner known to law, either by adducing oral evidence or by the documentary evidence. However, the trial Court has considered the same in a proper perspective. On the other hand, without considering the provision of Section 16 (c) of the Specific Relief Act, 1963, the first appellate Court took a stand that the plaintiff has



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expressed his readiness and willingness before the completion of the limitation period by filing the suit. This would be the wrong approach and also against the law laid down by the Hon'ble Supreme Court in various judgments as well as the provision of Section 16 (c) of the Specific Relief Act, 1963. Therefore, this Court has no hesitation to hold that the judgment of the first appellate Court is liable to be set aside, due to the reason that the first appellate Court has committed patent illegalities. Hence, this Court is inclined to set aside the judgment and decree passed by the first appellate Court. Accordingly, the substantial question of law framed by this Court is answered and while setting aside the judgment of the first appellate Court, the judgment and decree passed by the trial Court is restored.

17. In view of the submissions made by either counsel on the aspect of returning the advance amount along with interest and in view of the findings arrived by this Court, the Second Appeal is allowed with the direction to the appellants/defendants to repay the advance amount of Rs. 2,00,000/- to the respondents/plaintiff along with 12% simple interest



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from the date of sale agreement ie., on 06.08.2001 till the date of payment within a period of four months from the date of receipt of a copy of this order. No costs.

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NCC:Yes/No

Index:Yes/No

Speaking/Non-speaking order

TM

To

- 1.The Principal District Judge,
Madurai.
- 2.The V Additional Sub Judge,
Madurai.
- 3.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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KRISHNAN RAMASAMY, J.

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