



S.A.(MD)No.468 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2023

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.(MD)No.468 of 2009 &
M.P.(MD)Nos.2 & 3 of 2009

Vijayalakshmi

...Appellant

vs.

Surulivel

... Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 21.02.2008 in A.S.No. 6 of 2007 on the file of the Additional District Court (Fast Track Court No.4), Periyakulam confirming the Judgment and Decree dated 28.02.2006 in O.S.No.418 of 2002 on the file of the Subordinate Court, Periyakulam.

For Appellant : Mr.R.Subramanian

For Respondent : Mr.Anand Chandrasekar



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JUDGMENT

The appellant is the defendant in the suit in O.S.No.418 of 2002 on the file of the Subordinate Court, Periyakulam. The respondent is the plaintiff in the above suit.

2. The suit was filed by the respondent / plaintiff seeking for equitable relief of specific performance and permanent injunction restraining the appellant / defendant from alienating or encumbering the suit properties.

3. The case of the plaintiff is that the suit properties belong to the defendant. The defendant agreed to sell the properties to the plaintiff for a sale consideration of Rs.2,25,000/- and both parties registered a Sale Agreement dated 21.05.1998. On that day itself, the defendant received a sum of Rs.2,00,000/- as advance. As per the Sale Agreement, the defendant should receive the balance amount of Rs.25,000/- within a period of two and half years i.e., on or before 21.11.2000 from the



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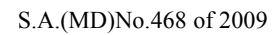
plaintiff and execute a Sale Deed in favour of the plaintiff or the persons mentioned by the plaintiff at the cost of the plaintiff. The plaintiff sent a telegraphic notice dated 11.11.2000 to the defendant stating that he would wait in the Sub Registrar Office on 21.11.2000 and the defendant should come and execute the Sale Deed as per the Agreement. However, the defendant has not responded to the same. Though the plaintiff waited at the Sub Registrar Office throughout the day on 21.11.2000, the defendant has not come forward to execute the Sale Deed. Thereafter, the defendant had come to the plaintiff and promised orally that she will execute the Sale Deed and therefore, the plaintiff waited even after the expiry of the Agreement. However, since the plaintiff came to know that the defendant is about to execute a Sale Deed in favour of a third party, he has filed this suit for specific performance on 18.11.2000. It is his case that, in the meantime, the defendant and her husband filed a suit in O.S.No.68 of 2002 on the file of the District Munsif Court, Periyakulam against the plaintiff and his father seeking permanent injunction restraining them from interfering with the peaceful possession and enjoyment of the defendant and her family.



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4. The case of the defendant is that for the past 14 years, for the purpose of Pickle Business, the defendant and her husband have received money from the plaintiff's family and they also used to execute Sale Agreement as security. In a similar way, in the year 1995, Sale Agreements were executed along with Power of Attorney and upon Settlement of money, the Sale Agreements were not acted upon and the Power of Attorney was also cancelled. Subsequently, a sum of Rs. 2,25,000/- was borrowed from the plaintiff, for which the Sale Agreement dated 21.05.1998 came to be executed nominally at the Sub Registrar Office, Bodi in favour of the plaintiff. There are two schedules in the suit properties. The first schedule belong to the defendant and she had no intention to sell the same. The second schedule is a poromboke land measuring an extent of 30 cents. The defendant has settled the total sum of Rs.2,25,000/- in the month of August 2001. Since the plaintiff forced the defendant to execute the Sale Deed, the defendant and her husband have filed a suit in O.S.No.68 of 2002 on the file of the District Munsif Court, Periyakulam against the plaintiff and his father seeking for



5. Before the Trial Court, the plaintiff has examined himself as
and marked 3 documents as Exs.A1 to A3 in order to substantiate
case. The defendants examined three witnesses DW1 to DW3
including the defendant (DW1) and marked 4 documents as Exs.B1 to B4
in order to substantiate their case. In addition to the above, Ex.C1 was
marked.



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6. After considering the oral and documentary evidence on both sides, the Trial Court came to the conclusion that there was a valid Sale Agreement dated 21.05.1998 between the plaintiff and the defendant and as per the Agreement, the defendant is liable to execute the Sale Deed. Therefore, the Trial Court granted Judgment and Decree in favour of the plaintiff.

7. Aggrieved over the said Judgment and Decree, an appeal was filed by the defendant in A.S.No.6 of 2007 before the Additional District Judge (Fast Track Court No.IV), Periyakulam. After hearing both sides, the first Appellate Court upheld the Judgment and Decree passed by the Trial Court. Aggrieved over the same, the appellant / defendant filed the present Second Appeal.

8. This Court admitted this appeal on 20.08.2009, by framing the following substantial question of law.



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"Whether the Courts below are right in holding that the plaintiff is entitled to get the equitable relief of the specific performance while exercising the power under Section 20 of the Specific Relief Act?"

9. When this matter was taken up for hearing on 17.08.2023, after hearing both the parties, this Court framed the following additional substantial question of law.

"Whether the purchaser is ready and willing to perform the contract throughout the period of contract?"

10. The learned counsel appearing for the appellant / defendant would submit that for the purpose of business, the appellant / defendant used to borrow money from the respondent / plaintiff from time to time and execute Sale Agreement as security. Similarly, in the year 1995, the appellant / defendant borrowed money, executed a Sale Agreement along with the Power of Attorney as security and upon repayment of money, the



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Agreement was not acted upon and the Power of Attorney also got cancelled. The above facts are also supported by documentary evidence. In a similar way, Sale Agreement dated 21.05.1998 was executed when the appellant / defendant borrowed a sum of Rs.2,25,000/-. The Agreement was executed nominally as a security for the handloan and the appellant / defendant had no intention to sell her property. The learned counsel would submit that the relief sought for in the suit is discretionary relief. In a suit for specific performance, the plaintiff has to prove his readiness and willingness to perform his part of Agreement from the date of the Agreement till the date of the expiry of the Agreement. At this juncture, the learned counsel would stress on the fact that the first schedule of the suit properties belong to the appellant / defendant and the second schedule is a poromboke land and it does not even belong to the appellant / defendant. The respondent / plaintiff entered into the Agreement without even verifying the title of the properties, which would go to show that he had no intention to purchase the properties from the beginning, which would eventually mean that he had no intention of executing the Agreement.



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11. To substantiate his case, the learned counsel for the appellant / defendant referred to the following Judgments.

- (a) Judgment of the Division Bench of the Hon'ble Supreme Court of India in the case of State of Rajasthan and others vs. M/s.Khandaka Jain Jewellers reported in 2008 1 L.W. 705.
- (b) Judgment of the Division Bench of the Hon'ble Supreme Court of India in the case of Atma Ram vs. Charanjit Singh reported in (2020) 3 SCC 311.
- (c) Judgment of the Division Bench of the Hon'ble Supreme Court of India in the case of Tarsem Singh vs. Sukhminder Singh reported in (1998) 3 SCC 471.
- (d) Judgment of the Principal Bench of this Court in the case of Durairaji and another vs. Nadarajan reported in 2021 (3) CTC 520.
- (e) Judgment of the Principal Bench of this Court in the case of Paramanadham vs. A.G.Kannan in S.A.No.235 of 2021 dated 12.03.2021.



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(f) Judgment of the Division Bench of this Court in the case of S.Palanivel vs. P.Natesan reported in 2018 1 MLJ 746.

(g) Judgment of the Karnataka High Court in the case of M.Rathnam and others vs. Smt.Susheelamma reported in AIR 2009 Karnataka 79.

12. The learned counsel appearing for the appellant / defendant among the above Judgments specifically relied on the Judgment of the Principal Bench of this Court in the case of *Durairaji and another vs. Nadarajan (cited supra)* and submitted that it is mandatory requirement for the respondent / plaintiff to prove his readiness and willingness to perform the contract by adducing oral and documentary evidence for granting specific performance of the contract. Therefore, the learned counsel would submit that since proving the readiness and willingness to perform the contract is a mandatory requirement, not proving the same would be fatal to the case and therefore since in the present case the respondent / plaintiff has not proved his readiness and willingness to



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perform the contract, he is not entitled for the relief of specific performance sought for by him.

13. The learned counsel would therefore submit that both the Trial Court as well as the Appellate Court without considering the above aspects have proceeded to pass a Judgment and Decree based on the Sale Agreement dated 21.05.1998 and granted the equitable relief of specific performance in favour of the respondent / plaintiff. He fairly submitted that the appellant / defendant is ready to return the sum of Rs.2,00,000/- along with the reasonable rate of interest as this Court may find deem it fit and prayed for allowing the present appeal.

14. Per contra, the learned counsel appearing for the respondent / plaintiff would submit that the Sale Agreement dated 21.05.1998 is admitted by both the parties. As per the said Sale Agreement, the sale consideration was Rs.2,25,000/- and out of the said amount Rs.2,00,000/- was paid as advance to the appellant / defendant. Since the appellant / defendant requested time for constructing a new house and shifting to the



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same, time period of two and half years was provided to her to execute the Sale Deed. The learned counsel fairly admitted that this aspect was culled out during the course of oral evidence and cross examination of PW1 and no pleading to this effect is available in the plaint or in the proof affidavit filed during the course of chief examination. The learned counsel would submit that the respondent / plaintiff sent a telegraphic notice on 11.11.2000 calling upon the appellant / defendant to execute the Sale Deed on 21.11.2000. However, the appellant / defendant has not come forward to execute the Sale Deed. Thereafter, the appellant / defendant had approached the respondent / plaintiff and promised that she will execute the Sale Deed and therefore, the plaintiff waited even after the expiry of the Agreement. The suit was filed within two years from the date of expiry of the Sale Agreement, which is well within the period of limitation. As stated above, only at the request of the appellant / defendant, time was granted to her. According to the learned counsel, the appellant / defendant had also demanded more money for execution of the Sale Deed. The learned counsel would therefore submit that the Trial Court as well as the Appellate Court after considering all the oral and



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documentary evidence and also the suit filed in O.S.No.68 of 2002 on the file of the District Munsif Court, Periyakulam seeking for permanent injunction, have passed a well reasoned Judgment and the same needs no interference by this Court.

15. In order to support his case, the learned counsel relied upon the Division Bench Judgment of the Hon'ble Supreme Court of India in the case of *Surya Narain Upadhyaya vs. Ram Roop Pandey and others reported in AIR 1994 SCC 106* and submitted that in the said case the Hon'ble Supreme Court found that the appellant was always ready and willing to pay the balance consideration and therefore, the appellant is entitled for the relief of specific performance. Therefore, he would submit that since in the present case, the respondent / plaintiff was always ready and willing to pay the balance sum of Rs.25,000/-, he is also entitled for the relief of specific performance.



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16. I have given due consideration for the submissions made by the learned counsel for the appellant / defendant as well as the learned counsel for the respondent / plaintiff and perused the materials available on record. I have also gone through the various Judgments placed before this Court.

17. The issue to be determined in the present case is whether the respondent / plaintiff is entitled for the equitable relief of specific performance and whether such a relief granted by the Courts below is in accordance with Section 20 of the Specific Relief Act, 1963.

18. The suit was filed by the respondent / plaintiff seeking for specific performance and permanent injunction. There are two schedules in the suit properties. The first schedule of the suit properties is a house and the second schedule is 30 cents of land, which is a poromboke land. The case of the respondent / plaintiff is that a Sale Agreement dated 21.05.1998 was entered for the purchase of the suit properties. However, the case of the appellant / defendant is that the Sale Agreement was



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executed as security for the loan obtained by her from the respondent / plaintiff and that she had no intention to sell the first schedule either at the time of entering into the Agreement or subsequent to that.

19. As mentioned above the Sale Agreement, Ex.A1 was entered into between the parties on 21.05.1998. Subsequently, on 11.11.2000 i.e., after a period of two years and five months, the respondent / plaintiff had sent a telegraphic notice calling upon the appellant / defendant to the Sub Registrar Office to receive the sum of Rs.25,000/- and execute the Sale Deed on 21.11.2000, as per the terms of the Sale Agreement. However, the appellant / defendant has not come forward to execute the Sale Deed on 21.11.2000. Once the appellant / defendant refused to execute the Sale Deed, the respondent / plaintiff ought to have filed a suit and proved his readiness and willingness to perform his part of the Agreement. However, the respondent / plaintiff has not done so. He has filed the present suit only on 18.11.2002, that is nearly after two years from the date of expiry of the Sale Agreement.



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20. A pleading is available in the plaint that since the appellant / defendant promised to execute the Sale deed, the respondent / plaintiff waited till 18.11.2002. However, this pleading is not supported by any of the oral or documentary evidences. Admittedly, the telegraphic notice was received by the appellant / defendant and she failed to execute the Sale Deed on 21.11.2000. In such circumstances, contention of the respondent/ plaintiff that only on the promise of the appellant / defendant, he has not filed a suit and waited for execution of Sale Deed for more than two years cannot be acceptable. Furthermore, the refusal on the part of the appellant / defendant to execute the Sale Deed on 21.11.2000 would show that she was not at all ready and willing to sell the property to the respondent / plaintiff.

21. At this juncture, it is pertinent to point out that readiness and willingness does not mean the readiness and willingness to pay or receive the money, but the intention of the parties to execute their part of the Agreement from the date of Agreement till the date of its expiry. This



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aspect was not at all considered by the Trial Court as well as the Appellate Court.

22. The appellant / defendant filed a suit in O.S.No.68 of 2002 seeking for permanent injunction restraining the respondent / plaintiff from interfering with her peaceful possession and enjoyment of the properties. From the above suit, it can be inferred that since the appellant / defendant failed to repay the sum of Rs.2,00,000/-, the respondent / plaintiff interfered with her possession and that is the reason why the suit came to be filed. Filing of the suit would again prove that the appellant / defendant had no intention to execute Sale Deed in favour of the respondent / plaintiff and the transaction between the parties is only financial. This aspect was not also considered by both the Courts below.

23. One more significant thing to be looked into is that the second schedule of the suit properties is a poromboke land. No prudent person, who has real intention to purchase the property, will pay money and enter



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into Sale Agreement without even verifying the title of the property. If at all, the respondent / plaintiff had genuine intention to purchase the suit properties he would have verified the Encumbrance Certificate of the properties. In the instant case, no such attempt was made to verify the title of the properties and the sale Agreement was executed only based on the possession of the properties during the relevant point of time. From the above facts, it is crystal clear that the respondent / plaintiff had no intention to purchase the properties at the time of entering into the Agreement.

24. Both the parties have admitted the execution of Sale Agreement dated 21.05.1998 for consideration of Rs.2,25,000/-. According to the respondent / plaintiff, he paid a sum of Rs.2,00,000/- as advance and for the payment of the balance of Rs.25,000/- and execution of Sale Deed, at the request of the appellant / defendant, two and half years time was provided. No prudent person will wait for a period of two and half years for payment of sum of Rs.25,000/- when the respondent / plaintiff paid a sum of Rs.2,00,000/- as advance at the time of entering



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into the Agreement. When the respondent / plaintiff approaches the Court seeking equitable relief of specific performance, he has to clarify as to why such long period of two and half years was granted for payment of Rs.25,000/- and for execution of Sale Deed. However, there was not even a specific pleading in the plaint with regard to the reason for grant of two and half years time except for the provisions in the Agreement for grant of two and half years time limit. Under such circumstances, this Court is of the view that the time provided in the Sale Agreement is for the repayment of the hand loan alone and not for the execution of sale deed. Such presumption is possible under Section 114 of the Indian Evidence Act, 1872, owing to the existence of the available facts in the present case.

25. Section 16 (c) of the Specific Relief Act, 1963, bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. Therefore, it is the duty of the Court to see whether at the time of entering into the Agreement and the throughout the period of



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Agreement, the parties were ready and willing to perform their part of the Agreement. However, the facts and circumstances of the case and the above discussions would go to show that the respondent / plaintiff was all along had no intention to purchase the suit properties. It is pertinent to point out that an Agreement can be entered into between the parties with no intention to execute the same but until the occurrence of certain event, however, the same has to be reflected in the Agreement itself. If that fact is not reflected in the Agreement and at the time of entering into the Agreement, the parties had no intention to execute the Agreement, however, seek for execution of the same, subsequent to occurrence of some event, then the equitable relief of specific performance is not available to the parties since at the time of entering into the Agreement and until the occurrence of particular event, the parties were not ready and willing to perform the Agreement.

26. To avail the equitable relief of specific performance, the plaintiff has to establish his readiness and willingness to pay the balance amount and to execute the Sale Deed from the date of Agreement till the



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date of its expiry. In the present case, the time limit provided in the Agreement was about two and half years, i.e, up to 21.11.2000 and the respondent / plaintiff, after a period of two years and five months, has sent a telegraphic notice to the appellant / defendant on 11.11.2000. Certainly, there is no evidence available to prove the readiness and willingness of the respondent / plaintiff from the date of Agreement till 11.11.2000. Even subsequent to the issuance of telegraphic notice, the respondent / plaintiff did not take any effective step and the suit was filed by him only in the month of November 2002, in between which, there was no correspondence between the parties. This act of the respondent / plaintiff would clearly confirm that he was not ready and willing to execute the Agreement, but waiting for the repayment of the loan amount by the appellant / defendant or for other reasons. In this suspectable circumstances, this Court is of the view that the equitable relief of specific performance sought for by the respondent / plaintiff is not available to him. As stated above, the Court can have presumption under Section 114 of the Evidence Act based on the materials available in the present case. Precisely, for a period of four and half years from the date



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of Agreement, except for the telegraphic notice, no other other evidence is available to substantiate the case of the respondent / plaintiff. The readiness and willingness does not alone mean the readiness and willingness to pay or receive the money, but the intention of the parties to execute the Agreement at the time of entering into the Agreement. If the parties had no intention to execute the Agreement at the time of entering into the Agreement and it was executed as a security for the loan or for some other purpose, in such case, unless and otherwise the real intention of the parties have been reflected in the Agreement, no equitable relief of specific performance would be granted.

27. The Judgment of the Principal Bench of this Court in the case of *Paramanadham vs. A.G.Kannan in S.A.No.235 of 2021 dated 12.03.2021* relied on by the learned counsel for the appellant / defendant will squarely apply to the facts of the present case. In addition to the above, the Judgment of the Principal Bench of this Court in the case of *Durairaji and another vs. Nadarajan (cited supra)* referred by the learned counsel with regard to the aspect of readiness and willingness



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would also apply to this case.

28. However, the Judgment relied upon by the learned counsel for the respondent / plaintiff will not be applicable to the facts of the present case since the respondent / plaintiff had no intention to purchase the properties at the time of entering the Agreement.

29. Considering the following facts such as the Sale Agreement was entered to purchase a poromboke land without even verifying the title; O.S.No.68 of 2002 was filed by the appellant / defendant seeking the relief of permanent injunction; the appellant / defendant refused to execute the Sale Deed on 21.11.2000 and requested further time to execute the same; and the respondent / plaintiff acceding to the promise of the appellant / defendant and waiting for nearly two years to file the suit, it is clear that the respondent / plaintiff was not ready and willing to purchase the properties. Certainly, equitable relief of specific performance is not available for the respondent / plaintiff.



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30. The Trial Court as well as the Appellate Court failed to consider the above aspects with proper perspective and committed grave error in the decision making progress. Therefore, this Court is of the view that the Judgment and Decree passed by the Courts below are liable to be set aside. Accordingly, the substantial questions of law framed by this Court are answered in favour of the appellant / defendant.

31. The appellant / defendant is ready to return the sum of Rs. 2,00,000/- to the respondent / plaintiff. Therefore, while allowing the appeal, this Court directs the appellant / defendant to return the sum of Rs.2,00,000/- along with interest at the rate of 12% per annum from the date of Agreement till the date of payment, to the respondent / plaintiff, within a period of six months from the date of receipt of a copy of this order.

32. In the result, the Judgment and Decree dated 21.02.2008 in A.S.No.6 of 2007 on the file of the Additional District Court (Fast Track Court No.4), Periyakulam confirming the Judgment and Decree dated



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28.02.2006 in O.S.No.418 of 2002 on the file of the Subordinate Court,
Periyakulam is set aside. The Second Appeal is allowed. No costs.
Consequently, the connected Miscellaneous Petitions are closed.

04.09.2023
(1/2)

NCC:Yes
Index:Yes
Speaking order

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To

- 1.The Additional District Judge,
Fast Track Court IV, Periyakulam
- 2.The Subordinate Judge,
Periyakulam
- 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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