



S.A.(MD).No.13 of 2017

WEB COPY

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.12.2023**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.13 of 2017
and
C.M.P.(MD)No.333 of 2017

Johnsi Rani

... Appellant

/Vs./

V.Selvaraj

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 14.12.2011, in A.S.No.22 of 2011 on the file of the Additional District and Sessions Judge / Fast Track Court, Pudukkottai, confirming the Judgment and Decree in O.S.No.18 of 2008, dated 05.07.2010, on the file of the Subordinate Judge, Pudukkottai.

For Appellant : Mr.M.S.Jeyakarthick
For Respondent : M/s.J.Anandhavalli
for Mr.R.Paranjothi



S.A.(MD).No.13 of 2017

WEB COPY

JUDGMENT

The suit is filed for specific performance. The contention of the plaintiff is that the defendant came forward to sell the property to the plaintiff for which the plaintiff has paid Rs.2,00,000/- and an agreement was executed on 05.03.2007, the balance Rs.25,000/- was payable within a period of six months. The plaintiff was ready with the balance amount but the defendant has not come forward to register the same within six months. The further contention of the plaintiff is that on 01.07.2007 he approached the defendant to register the document, but the defendant refused to register the document. Thereafter, the suit notice, dated 15.01.2007, was issued calling upon the defendant to register the document. The defendant issued reply notice denying the contents of the suit notice and stated that it is only a loan transaction for which the defendant had relied on the Exhibit B1.

2. The Trial Court has framed the issue whether the plaintiff is entitled to relief of specific performance and whether the agreement was executed between the parties. The Trial Court as well as the First



S.A.(MD).No.13 of 2017

WEB COPY

Appellate Court has dealt with Exhibit B1 and has come to the conclusion that it is not a loan transaction. But terribly failed to frame the issue whether the plaintiff has proved his readiness and willingness. Even in the judgments, there is no discussion about the readiness and willingness. For a suit of specific performance, two vital points ought to be proved by the person who is seeking the relief, whether he has means to pay the balance amount and whether he is ready and willing to perform his part of the contract. When there is no issue framed to this effect, both the Trial Court as well as the Appellate Court has failed to see whether the plaintiff is ready and willing.

3. Therefore, this Court is of the considered opinion that the Judgment and Decree ought to be set aside and accordingly both the Judgment and Decree are set aside. The matter is remitted back to the Trial Court for trial. The parties are at liberty to adduce evidence and raise all the pleas before the Trial Court. Thereafter, the Trail Court shall decide the issue.



S.A.(MD).No.13 of 2017

WEB COPY

4. It is brought to the knowledge of this Court that based on the Judgment, the plaintiff had filed E.P. and the possession was handed over to the plaintiff. Since this Court has remitted the matter back to the Trial Court, both the plaintiff as well as the defendant are restrained from using the said property. It shall be under lock and key and the keys may be handed over to the Court. After the disposal of the suit, based on the Judgment, the parties are entitled to claim right over the property.

5. With the above said observations, the second appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

19.12.2023

Index : Yes / No
NCC : Yes / No

Tmg



S.A.(MD).No.13 of 2017

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TO:

1. Additional District and Sessions Judge /
Fast Track Court,
Pudukkottai.
2. Subordinate Judge, Pudukkottai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD).No.13 of 2017

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.13 of 2017

Dated:
19.12.2023