



A.S.(MD)No.281 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 30.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.281 of 2022
and
C.M.P.(MD)No.12951 of 2022

R.Balaganesan

...Appellant/Defendant

Vs.

A.Somasundaram

...Respondent/Plaintiff

PRAYER: This Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside the decree and judgment of the trial Court in O.S.No.20 of 2019, dated 15.12.2021 on the file of the I Additional District Court, Thoothukudi.

For Appellant : Mr.S.Chandrasekaran

For Respondent : Mr.V.Meenakshisundaram

JUDGMENT

Challenge has been made to the decree and judgment of the trial Court in O.S.No.20 of 2019, dated 15.12.2021 granting specific performance in favour of the respondent herein.

1/14



A.S.(MD)No.281 of 2022

WEB COPY

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3. The brief facts, leading to the filing of this Appeal Suit, are as follows:-

(i) The defendant agreed to sell the suit property for a total sale consideration of Rs.12,75,000/- and entered into an agreement of sale on 04.08.2012 after receiving an advance amount of Rs.2,00,000/-. He agreed to execute the sale deed, after receiving the remaining sale consideration, on or before 04.10.2012. It was also agreed that the defendant himself will change patta in favour of the plaintiff. However, the defendant had not come forward either to execute the sale deed or to change the patta in the name of the plaintiff.

(ii) The plaintiff was always ready and willing to pay the remaining sale consideration and get the sale deed registered. He requested the defendant to change the patta in his name on 07.10.2012 and 09.10.2012. However, the defendant had not shown any interest with regard to the same. Hence, the plaintiff had himself verified in the Taluk Office as to whether any steps have been taken



A.S.(MD)No.281 of 2022

by the defendant with regard to the sale of the suit property. As the defendant has not taken any steps, the plaintiff had met the defendant on 10.10.2012 seeking execution of the sale deed. Since no fruitful action is taken by the defendant, the plaintiff sent a legal notice on 11.10.2012. Despite service of legal notice, the defendant has not any steps to reply the notice and execute the sale deed. Hence, the plaintiff had filed the present suit.

(iii)It is the contention of the defendant that the sale agreement has been created fraudulently. During the relevant period, the defendant was in the hospital looking after his father. He had never agreed to sell the property at any point of time. The plaintiff is doing real estate business and taking advantage of his power, the agreement has been created and hence, he opposed the suit.

6. Based on the pleadings, the trial Court had framed the following issues:

- 1. Whether the plaintiff is entitled for specific performance on the basis of the agreement dated 04.08.2012?*
- 2. Whether the agreement dated 04.08.2012 is valid and enforceable?*
- 3. To what other reliefs the plaintiff is entitled to?*



A.S.(MD)No.281 of 2022

WEB COPY

7.Before the trial Court, on the side of the plaintiff P.W.1 and P.W2 were examined and Ex.A1 to Ex.A11 were marked. On the side of the defendants D.W.1 was examined and no documentary evidence was marked.

8.Based on the evidence and materials, the trial Court had concluded that Ex.A1, agreement is executed by the defendant and granted decree in favour of the plaintiff. Challenging the same, the present appeal is filed by the unsuccessful defendant.

9.The learned counsel for the appellant/defendant contended that even assuming that the agreement has been validly proved, there was no evidence to prove the readiness and willingness of the plaintiff from the very inception of the contract. The amount has been deposited after 7 years from the date of filing of the suit. Therefore, the readiness and willingness is totally absent on the part of the plaintiff. The trial Court has not even framed an issue with regard to the same. Hence, the defendant has come forward with the present appeal challenging the decree of specific performance.



A.S.(MD)No.281 of 2022

10.The learned counsel for the respondent/plaintiff would submit that the defendant has not even raised the question of readiness and willingness in his written statement. Further, when the suit has been filed on 20.12.2012, the plaint was returned with a direction to deposit the amount. The said return order was challenged before this Court in C.R.P.(MD)No.214 of 2013, which came to be disposed on 30.01.2013 with a direction to the plaintiff to deposit the entire balance sale consideration. Thereafter, the plaint was represented on 05.10.2015. However, the same was again returned to file along with the condone delay petition. Hence, an application for condoning the delay has been filed. But, the said application was numbered only in the year 2017 and allowed in the year 2019. Only thereafter, the remaining sale consideration was deposited.

11.He contended that the delay in depositing the remaining sale consideration is only due to the pendency of the proceedings and therefore, the said fact cannot be put against the plaintiff. When the plaintiff has proved the agreement and also shown his readiness and willingness, the trial Court decreed the suit in his favour and the same does not warrant any interference.



A.S.(MD)No.281 of 2022

12.In the light of the above submission, now the points arise for consideration in this appeal are as follows:

(1)Whether the plaintiff was ready and willing to perform his part of contract from the inception of the contract till end?

(2)Whether the agreement is validly executed and enforceable in the eye of law?

(3)To what other reliefs the plaintiff is entitled?

14.Heard the learned counsel appearing on either side and perused the materials available on record.

Point No.2:

15.Admittedly, the plaintiff had proved the execution of the agreement. One of the attesting witness is none other than the father of the defendant. Though it is the contention of the defendant that the father was not well and he was taking treatment at the relevant point of time, no document whatsoever had been adduced in this regard. Whereas, P.W.2, one of the attesting witnesses, in his evidence had clearly stated about the execution of the contract and also receipt of advance



A.S.(MD)No.281 of 2022

amount. Further, no contrary evidence is available to question the very genuinity of the contract. Such being the position, once the execution of the agreement is proved, the contention of the defendant that an agreement has been created between the parties, has no legs to stand and hence, the same cannot be countenanced.

Point No.1:

16.It is the specific contention of the plaintiff that he was always ready and willing to perform his part of contract. It was specifically agreed between the parties that the sale will be completed on or before 04.10.2012. Though there is specific recitals in the agreement to the effect that the defendant shall transfer the patta in the name of the plaintiff, the defendant has not performed any transfer of patta in the name of the plaintiff and hence, the sale could not be completed before 04.10.2012.

17.It is relevant to note that the very pleading of the plaintiff in the plaint indicates that all the necessary documents, which are sufficient to convey title, were already with him. Such being the position, the contention pleaded by the plaintiff that he insisted the defendant to change patta in his favour and filed the



A.S.(MD)No.281 of 2022

WEB COPY

suit at a later point of time, cannot be countenanced. Be that as it may, even assuming that the defendant has delayed the said process, the fact remains that the legal notice was issued for the first time on 11.10.2012, only after the expiry of the contract period. Though it is well settled that as far as the immovable properties are concerned, time is not an essence of contract, limitation starts from the date, when the defendant refused to execute the contract. However, when there is a specific time agreed between the parties, though the parties never intended to make the time as an essence of the contract, the specific time agreed in the agreement cannot be ignored altogether in assessing readiness and willingness of the parties.

18. In a suit for specific performance, which is an equitable remedy, the plaintiff should exhibit his readiness and willingness from the very inception of the contract till end. Having sent the legal notice on 11.10.2012, the suit has been filed on 20.12.2012. Further, it appears from the records that the plaint has been returned on 20.12.2012 with a direction to the plaintiff to pay the balance sale consideration and lodgment schedule. For complying the said direction 30 days time is granted. Thereafter, once again, the plaint has been represented belatedly on 21.01.2013 with an endorsement stating that deposit of the balance sale



A.S.(MD)No.281 of 2022

consideration is not warranted as per Section 16(c) of the Specific Relief Act and on the same day, the plaint was returned with an endorsement “must make out the readiness and willingness as per Supreme Court latest Judgement”.

19. Thereafter, on 27.01.2013, the plaint was represented with comments as it is not stated in the judgment of the Apex Court. Again the plaint was returned on 28.01.2013, with a direction to pay the balance sale consideration. Challenging the same, the plaintiff preferred C.R.P.(MD)No.214 of 2013, which was disposed on 31.01.2013 with a direction to pay the balance sale consideration. Thereafter, the plaint was represented on 05.10.2015, but the plaint was returned on 06.10.2015 to file along with the delay condonation petition. The said petition was also ultimately numbered only on 06.01.2017. The delay condonation petition was allowed on payment of cost of Rs.5,000/- on 11.02.2019. The plaintiff had paid the cost on 22.02.2019 and time has been granted to deposit the balance sale consideration till 21.03.2019. Only thereafter, the balance sale consideration was paid on 21.03.2019.

20. It is relevant to note that though Section 16(c) of the Specific Relief Act does not make it mandatory to deposit the balance sale consideration at the



A.S.(MD)No.281 of 2022

time of filing of the suit, it makes it very clear that as long as the Court directs such deposit, such direction has to be complied. Admittedly, in this case, the plaintiff was originally presented on 20.12.2012 and the same has been returned on the same day with a direction to deposit the balance sale consideration. However, the plaintiff has not deposited the remaining sale consideration. In fact, he had challenged the said return order, not only by way of representations repeatedly, but also by way of filing Civil Revision Petition before this Court. Ultimately, the said Civil Revision Petition was disposed only in the year 2013.

21.It appears that the balance sale consideration has been deposited in the Court only in the year 2019, which is after seven years of the institution of the suit. Once the Court had directed the parties to deposit the balance sale consideration, the parties ought to have complied the same. Here, the very conduct of the plaintiff, challenging the orders of the Court without depositing the amount as directed by the Court, clearly exhibit the fact that the plaintiff was not ready and willing to perform his part of contract from the very inception of the contract.



A.S.(MD)No.281 of 2022

22.It is also relevant to note that readiness and willingness are two distinct acts. Readiness is the capacity to raise funds. Willingness is mental attitude. Unless both acts go together, readiness and willingness cannot be inferred mechanically. Further, to establish the fact that from the date of agreement till the date of filing of the suit or till the date of depositing the amount, the plaintiff had capacity to mobilise funds, no other evidence is brought on record in the form of bank accounts or business accounts etc.. Therefore, this Court is of the view that the readiness and willingness is totally in absence on the part of the plaintiff.

23.When the Court had directed the parties to pay the amount within a particular time, if such deposit has not been made within the time as directed by the Court, the decree itself can be rescinded as per Section 28 of the Specific Relief Act. In such view of the matter, at the time of filing of the suit, the plaintiff was directed to pay the remaining sale consideration, which has not been complied for many years. Hence, the plaintiff now cannot contend that he was always ready and willing to perform his part of contract.



A.S.(MD)No.281 of 2022

24.Considering these aspects, this Court is of the view that the plaintiff is certainly not entitled to equitable relief of specific performance. The trial court has not even framed any issue with regard to the readiness and willingness and simply carried forward by the agreement itself. In such view of the matter, decree and judgment of the trial Court are hereby set aside. At the most, the plaintiff is entitled to withdraw the amount, that had been already deposited in the Court with accrued interest. The defendant shall pay the remaining amount of Rs.2,00,000/- with interest at the rate of 7.5% per annum from the date of agreement till the date of realization. Till the amount is paid to the plaintiff, there shall be charge over the suit property.

25.Accordingly, all the points are answered and the Appeal Suit is allowed. No costs. Consequently, connected miscellaneous petition is closed.

30.06.2023

NCC : Yes/NO
Index : Yes/No
Internet : Yes/No
ta



WEB COPY



A.S.(MD)No.281 of 2022

To

1.The I Additional District Court, Thoothukudi

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD)No.281 of 2022

N.SATHISH KUMAR, J.

ta

Judgment made in
A.S.(MD)No.281 of 2022

30.06.2023