



A.S.(MD)No.196 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 29.11.2022

PRONOUNCED ON: 03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.196 of 2014

and

M.P.(MD)No.1 of 2014

S.A.Abbas : Appellant / 1st Defendant

Vs.

1.Kumar : 1st Respondent/Plaintiff

2.J.Mahesh : 2nd Respondent/2nd Defendant

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 23.06.2014 made in O.S.No.77 of 2013, on the file of the Principal District Judge, Tirunelveli.



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A.S.(MD)No.196 of 2014

For Appellant : Mr.S.Vinayak
for Mr.B.Jameel Arasu

For Respondents :Mr.S.Ramesh @ Ramaiah
for R.1
: Mr.M.Ashok Kumar
for R.2

JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S.No.77 of 2013, dated 23.06.2014, on the file of the Principal District Court, Tirunelveli.

2. The suit is for specific performance of the agreement dated 28.06.2013.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

4. Admittedly the suit property belongs to the first defendant, vide sale deed dated 20.09.2011. It is not in dispute that the first defendant appointed the second defendant as his power agent to sell the suit



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property and that subsequently the power of attorney deed was cancelled by the first defendant, vide document dated 23.11.2013.

5. The case of the plaintiff is that the first defendant executed a registered a power of attorney deed in favour of the second defendant with regard to the suit property, that the first defendant has received the entire sale price of Rs.15,00,000/- from the second defendant and executed a discharge receipt in favour of the second defendant on that day itself, that the first defendant, in the discharge receipt, has specifically stated that he has no right to cancel the registered power of attorney deed and the second defendant can alienate the suit property to third parties and appropriate to himself the entire sale price, that the second defendant offered to sell the suit properties to the plaintiff and the plaintiff agreed to purchase the same, that both of them entered into a sale agreement on 28.06.2013 fixing the sale price at Rs.15,00,000/- and period of performance as 11 months, that the plaintiff has paid Rs.10,00,000/- towards advance and the same was received by the second defendant, that the second defendant agreed to receive the balance sale price within 11 months and execute the sale deed, that since the plaintiff has planned to sell the suit property after plotting out the



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same, has paid the balance sale price of Rs.5,00,000/- to the second defendant on 01.08.2013, that when the plaintiff demanded the second defendant to execute the sale deed, the second defendant informed that the first defendant has been claiming to have cancelled the power of attorney deed, that the second defendant had handed over all the original title deeds relating to the suit property, receipt issued by the first defendant in acknowledging the receipt of Rs.15,00,000/- from the second defendant and the power of attorney deed, that on the basis of the complaint lodged by the second defendant, Thenkasi Police registered a case against the first defendant, that since the first defendant attempted to sell the suit property in derogation of the sale agreement, the plaintiff was constrained to issue a public notice in Dinamalar daily on 07.08.2013 seeking the public not to purchase the suit property, that the first defendant on seeing the public notice, has contacted the plaintiff over phone and informed that he would execute a sale deed, if the plaintiff pays Rs.5,00,000/- over and above Rs.15,00,000/- already received, that the sale agreement executed by the second defendant as the power agent of the first defendant while the power of attorney was in force, is binding on the first defendant, that though the plaintiff has sent a legal notice, there was no response from the defendants and that



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therefore, the plaintiff was forced to file the above suit seeking a direction to the first defendant to execute a sale deed as per the sale agreement dated 28.06.2013 executed by the second defendant as power agent of the first defendant and for permanent injunction restraining the first defendant from encumbering the suit property in any manner whatsoever till the first defendant executes the sale deed.

6. The second defendant has taken a defence reiterating the case of the plaintiff. It is the further case of the second defendant that the first defendant was the partner of the second defendant in the real estate business, that the second defendant after getting the power of attorney deed, had converted the entire 51 cents of land into 11 plots and sold one plot with an extent of 4 cents to one Boothathan in 2012, that the first defendant had executed a registered sale agreement in respect of the remaining portion of 47 cents of land on 28.06.2013 in favour of the plaintiff, that the first defendant had also purchased another land from the second defendant on 08.07.2013 and that the second defendant is agreeing to abide by any order of the trial Court.



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7. The defence of the first defendant is that the second defendant had visited the first defendant very often and informed that the suit property was worth about Rupees One Crore and so many persons were approaching him for purchasing the suit property, that the first defendant believing the words of the second defendant, had executed a registered power of attorney deed, dated 29.11.2011, that the first defendant enabling the second defendant to act as per the power of attorney deed, had handed over the original title deeds and also the possession of the property to the second defendant, that the second defendant has not paid any amount to the first defendant on 29.11.2011 or subsequently, that the first defendant has never executed any discharge receipt as alleged by the plaintiff and the second defendant, that the second defendant for selling the suit property had taken signature of the first defendant in the blank stamp and other papers, that the first defendant subsequently came to know that the discharge receipt dated 29.11.2011 was fabricated with the help of the signatures taken from the first defendant, that the plaintiff is none other than the brother of the second defendant and both of them were residing in the same place, that the plaintiff in collusion with the second defendant had created and fabricated the suit sale agreement and filed the above suit to grab the suit property, that the first defendant after



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coming to know about their evil design, cancelled the power of attorney deed on 23.07.2013, that the first defendant has also issued a public notice in a Tamil Daily intimating about the cancellation of power of attorney, that the payments allegedly made by the plaintiff to the second defendant are not binding on the second defendant, that the plaintiff has nowhere pleaded that he was always ready and willing to complete the sale and that therefore, the suit is liable to be dismissed.

8. Based upon the above pleadings, the learned trial Judge has framed the following issues:

(1) Whether the 1st defendant received Rs.15,00,000/- from the second defendant as entire sale consideration of suit property at that time of execution of general power of attorney in favour of the second defendant by the plaintiff on 29.11.2011?

(2) Whether the 2nd defendant created receipt for Rs.15,00,000/- after obtaining signatures and thumb impressions on written and unwritten stamp paper and papers?

(3) Whether the suit agreement is genuine?

(4) Whether the plaintiff is ready and willing to perform his part of contract?



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(5) Whether the plaintiff is entitled to the relief of specific performance of contract of sale?

(6) Whether the plaintiff is entitled to the relief of permanent injunction?

(7) To what relief he is entitled to?

9. During trial, the plaintiff examined himself as P.W.1 and one Thiru.M.Subramanian as P.W.2 and exhibited 9 documents as Exs.A.1 to A.9. The defendants 1 and 2 have examined themselves as D.W.1 and D.W.2 respectively and one S.Subbiah as D.W.3 and exhibited 12 documents as Exs.B.1 to B.12. One witness document has been exhibited as Ex.X.1. The learned trial Judge, upon considering the evidence, both oral and documentary and on hearing the arguments of both sides, by holding that the suit sale agreement under Ex.A.1 and the discharge receipt under Ex.A.3 are genuine documents and that the plaintiff has been ready and willing to perform his part of contract, decreed the suit granting the relief of specific performance, directing the first defendant to execute the sale deed in respect of the suit properties excluding the portion conveyed under Ex.B.4. Aggrieved by the above



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judgment and decree, the first defendant has come forward with the present Appeal Suit.

10. The appeal grounds raised by the appellant/first defendant in short are as follows:

(i) The trial Court ought to have held that the alleged sale agreement is not true and valid;

(ii) The trial Court ought to have held that the sale agreement is patently one sided, unjust, unfair and inequitable;

(iii) The trial Court ought to have seen that the first defendant has never authorized the second defendant to execute any sale deed in favour of his own brother – plaintiff that too for a sum of Rs.15,00,000/- and when the second defendant chooses to sell the property to his own brother, he should have obtained permission before executing the sale agreement;

(iv) The trial Court has failed to consider that the discharge receipt under Ex.A.3 has been created fraudulently for the purpose of the case and the very fact that the first page of the receipt is typed in a normal way and the second page has been typed closely would expose the falsity of the case of the plaintiff;



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(v) The trial Court has failed to consider that the value of the property is more than Rupees One Crore, in view of the fact that the property has got all the potentiality of being used as house site in Tenkasi, which is a major municipality in Tirunelveli District;

(vi) The trial Court has construed the power deed strictly and held that the sale agreement is not tune with the power deed;

(vii) The trial Court has failed to consider that the power deed was cancelled rightly by the first defendant and notice was also sent regarding the cancellation of power deed and the chain of events;

(viii) The trial Court has also failed to notice that there is absolutely no proof to show that they had ready cash on the relevant dates for the payment of either the advance or subsequent payment;

(ix) The trial Court ought to have seen that the story of readiness and willingness is false and unbelievable;

(x) The trial Court ought to have noticed that the receipt under Ex.A.3 cannot be true, since the attesting witness cold not be present at the time of the alleged execution of the receipt, as he was working in the Agricultural Department and he has attended office on that particular date, the same would be evident from the examination of P.W.1 and D.W.3 and Ex.X.1. Hence, the Appeal Suit is to be allowed.



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11. The points that arise for consideration are

(i) Whether the trial Court erred in relying Ex.A.3 – discharge receipt, despite showing that Ex.A.3 is inadmissible in evidence and the same was created by utilising the signature and thumb impression obtained in the blank stamp and other papers from the first defendant and that the same was not referred in Ex.A.1 – sale agreement and Ex.B.4- sale deed?

(ii) Whether the trial Court erred in granting the decree for specific performance, despite showing that the plaintiff and the second defendant being brothers had acted collusively and against the interest of the first defendant and that the plaintiff has failed to plead and prove his readiness and willingness to perform his part of the contract?

(iii) Whether the Appeal Suit is to be allowed?

Point Nos.(i) to (iii):

12. As already pointed out, the first defendant has admitted the execution of power of attorney deed in favour of the second defendant, wherein the second defendant was given power to sell the property. It is the specific case of the plaintiff as well as the second defendant that by



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offering to sell the suit property to the second defendant, has received Rs.15,00,000/- and executed a discharge receipt on 29.11.2011 itself, by handing over the possession of the suit property and the title deeds relating to the suit property. But the first defendant has specifically disputed the receipt of Rs.15,00,000/- towards sale consideration nor execution of the discharge receipt. In Ex.A.2 – power of attorney deed, as usual, there are recitals that there is no transfer and that the second defendant has to account for the transactions. But the plaintiff and the second defendant have set up a case as if the second defendant has become the owner of the suit property in view of Ex.A.2 – Power of Attorney deed and Ex.A.3 – discharge receipt. Though Ex.A.3 is titled as discharge receipt (பணப்பற்று ரசீது), it contains recitals to the effect that the first defendant has agreed to sell the suit property to the second defendant and received the entire sale consideration of Rs.15,00,000/- and executed the power of attorney deed on that day itself, that the possession of the property has been handed over to the second defendant on that day and that since the entire sale price was received by him, the first defendant has no power to cancel the power of attorney deed.

13. No doubt, when a power of attorney is coupled with interest,



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the same is irrevocable. Admittedly, Ex.A.2 – power of attorney deed is not coupled with interest and the same does not say that it is irrevocable. A cursory perusal of Ex.A.3 – receipt would disclose the presence of clauses/recitals required for the sale deed. But admittedly, the same is not stamped as required by law and is unregistered. In the absence of payment of stamp duty with penalty and for want of registration, as rightly contended by the learned Counsel for the other side, the said document can only be considered as a document inadmissible in evidence.

14. It is pertinent to note that the second defendant in his chief examination evidence would say that since the sale deed taken from the first defendant would attract more expenses, he had taken the power of attorney deed and the relevant portion is extracted hereunder:

“1ம் பிரதிவாதியிடமிருந்து கிரைய ஆவணம் எழுதி வாங்கினால் பத்திர செலவு நிறைய ஆகிவிடும் என்பதால் பவர் பத்திரம் எழுதி வாங்கினேன்.”

Such a defence, which is very much against the law and affects the fiscal status of the state, cannot be allowed to be made. Power of Attorney



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sales have played a significant role in the stamp duty evasion and avoidance and the same was used as a tool to skip stamp duty which is precluding the Government and people from the benefit of revenue. Stamp evasion is an illegal practice and can also be considered as a fiscal crime. As already pointed out, according to the first defendant, Ex.A.3-discharge receipt has been fabricated with the help of the signatures and the LTI (Left Thumb Impression) obtained in blank stamp papers and other papers, after the execution of the power of attorney deed.

15. As already pointed out, Ex.A.2 – power of attorney deed and Ex.A.3 discharge receipt were allegedly executed on the same day ie., on 29.11.2011. As rightly pointed out by the learned Counsel for the first defendant, the stamp paper (Rs.100 denomination) for the power of attorney deed was purchased from the stamp vendor S.Syed Ahmed Sha of Thenkasi on 29.11.2011. But on the other hand, the stamp paper (Rs.20 denomination) was shown to be purchased from the stamp vendor S.M.Nagoor Meera of Tenkasi on 14.11.2011. Moreover in Ex.A.2 – power deed, two persons viz., Thiru.A.E.Haja Mohideen and Thiru.K.S.Syed Mohamed had subscribed their signatures as witnesses to the said document. In Ex.A.3 – discharge receipt, one person viz.,



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M.Subramanian (P.W.2) had subscribed his signature as a witness to the said document. As rightly contended by the learned Counsel for the first defendant, when the said two documents were prepared and executed on 29.11.2011 itself, there is no explanation from the plaintiff as to why stamp papers were purchased from different persons and different persons were cited as witnesses.

16. As rightly contended by the learned Counsel for the plaintiff, the way in which LTI and signatures were taken in the stamp papers as well as concur sheet and the way in which the contents were typed in both the pages creates a doubt as to whether the LTI and signatures were taken in the typed papers or contents were typed subsequently adjusting the LTI and the signatures taken in blank papers. The plaintiff, in order to prove Ex.A.3 – receipt, has examined one Subramaniyan alleged to be the witness to the said document as P.W.2 and he would say that after registration of the power of attorney deed, at about 03.00p.m., outside the office of the Sub-Registrar, the first defendant had executed the discharge receipt in favour of the second defendant and in that document, he had subscribed the signature as a witness to the said document. Admittedly, P.W.2 was working as an Assistant Agricultural Officer in the



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Kadayanallur office at that time. P.W.2 in his evidence would say that his working time is between 08.00a.m., and 05.30p.m. The first defendant has summoned and examined the Assistant attached to the office of the Deputy Director of Horticulture, Tirunelveli and examined as D.W.3 and he would say that P.W.2 was working in Keelapavur office from 01.11.2011 to 30.11.2011, that on 23.11.2011, P.W.2 was working in Poolangulam of Tenkasi Taluk and he worked from 10.00a.m., till 05.45p.m., on that day and that P.W.2 had not taken any leave or permission on that day. No doubt, in cross-examination, D.W.3 would say that Ex.X.1 does not contain any particulars about the period of P.W.2 working in the said place on that day and that P.W.2 has to travel to his native place Kodikurichi from Kadangulam through Thenkasi. Admittedly, P.W.2 had not aken any leave or permission on 29.11.2011 and as such, as rightly contended by the learned Counsel for the plaintiff, the very presence of P.W.2 outside the Sub-Registrar office, Thenkasi at 03.00p.m., for execution of alleged Ex.A.3 appears to be doubtful.

17. It is the main case of the plaintiff that the second defendant in pursuance of the power given to him by the first defendant, has entered



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into a sale agreement with the plaintiff on 28.06.2013 under Ex.A.1. In Ex.A.1 – sale agreement, it has been specifically mentioned that the second defendant has been executing the sale agreement as power agent of the first defendant in respect of the property owned and possessed by the first defendant. As rightly contended by the learned Counsel for the plaintiff, the second defendant has nowhere whispered in Ex.A.1 – sale agreement regarding Ex.A.3 – discharge receipt and their case that the second defendant has become the owner of the suit property. Neither the plaintiff nor the second defendant has offered any explanation in this regard. It is also not in dispute that after getting the power of attorney deed, the second defendant had converted the entire 51 cents of land into 11 plots and sold one plot with an extent of 4 cents to one Boothathan on 27.06.2012 under Ex.B.4. Even in Ex.B.4 sale deed, nothing was mentioned about Ex.A.3 – receipt.

18. The learned Counsel for the plaintiff and the second defendant would contend that the first defendant himself in his written statement as well as in the evidence has specifically admitted the handing over of the possession of the suit property and the title deed relating to the suit property to the first defendant. The first defendant in his statement as



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well as in the evidence would say that the possession of the suit property and the title deeds relating to the suit property were handed over, so as to enable the second defendant to sell the suit property in pursuance of the power given to him. When the first defendant admittedly had executed the power of attorney deed to the second defendant to sell the suit property, handing over the possession of the property and title deeds relating to the property, by no stretch of imagination, would confer any right or title on the power agent.

19. It is pertinent to note that in Ex.B.4, it has been stated that the second defendant has received the sale consideration of Rs.4,50,000/- for the family expenses of his principal-first defendant. When the second defendant has already paid the entire sale consideration of Rs.15,00,000/- to the first defendant on 29.11.2011 itself, the question of receiving the sale consideration under Ex.B.2 for the family expenses of the first defendant does not arise at all.

20. The learned Counsel for the first defendant would further contend that out of 51 cents, the second defendant formed a pathway



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with 10 cents and converted the remaining 41 cents of land into 11 plots, that he sold a plot admeasuring 3.44cents of land under Ex.B.4 and that therefore, the very execution of Ex.A.1 – sale agreement with respect to 51 cents of land is invalid and fraudulent.

21. As rightly contended by the learned Counsel for the first defendant, the second defendant in his cross-examination, would admit that he had converted 51 cents of land into 11 plots under Ex.B.5 plan, that he formed 20 feet pathway using 10 cents of land and that subsequently he had converted the remaining 41 cents of land into plots and that he sold one plot of 3 ½ cents to Boothatha under Ex.B.4. Considering the above, as rightly contended by the learned Counsel for the first defendant, on the date of suit sale agreement ie., on 28.06.2013, 51 cents of land was not available on ground and 37 ½ cents alone was available and that therefore, the very execution of Ex.A.1-sale agreement in respect of 51 cents of land creates a genuine doubt about the version of the plaintiff and the second defendant. As rightly contended by the learned Counsel for the first defendant that when 3.44 cents of land was sold to Rs.4,50,000/- under Ex.B.4, the contention of the second defendant that the entire 51 cents of land was sold to the second



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defendant for Rs.15,50,000/- is very hard to believe.

22. In a suit for specific performance, which is equitable and discretionary relief, the party who seeks that relief, must come with clean hands. In the case on hand, admittedly, the plaintiff is none other than the own brother of the second defendant. But the plaintiff, in his plaint, has nowhere whispered about their relationship. Considering the transactions existed between the first defendant and the second defendant and subsequently between the second defendant and the plaintiff, the relationship between the parties assumed and played a crucial role. For the reasons best known to the plaintiff and the second defendant, they have suppressed their relationship. On considering the entire facts and circumstances and the way in which, the plaintiff and the second defendant had acted, it is clearly evident that the second defendant in collusion with his brother – plaintiff, had acted against the interest of the first defendant.

23. The learned Counsel for the first defendant would further submit that the plaintiff seeking the relief of specific performance, has to



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plead and prove his readiness and willingness to perform his part of the contract as contemplated under Section 16(c) of the Specific Relief Act.

Admittedly, the plaintiff in his plaint has nowhere whispered about his readiness and willingness to perform his part of contract. But the learned Counsel for the plaintiff would contend that since the plaintiff has already paid the entire sale consideration, the question of pleading and proving his readiness and willingness does not arise at all.

24. The learned Counsel for the plaintiff has relied on the following judgments of the Hon'ble Supreme Court in support of his contentions:

(i) ***Syed Dastagir Vs. T.R.Gopalakrishna Setty*** [(1999)6 SCC 337]:

“So whole gamut of issue raised is, how to construe a plea specially with reference to [Section 16\(c\)](#) and what are the obligations which the plaintiff has to comply with reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid Section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, Courts must keep in mind



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that a plea is not an expression of art and science but an expression through words to place fact and law of ones case for a relief. Such an expression may be pointed, precise, some times vague but still could be gathered what he wants to convey through only by reading the whole pleading, depends on the person drafting a plea. In India most of the pleas are drafted by counsels hence aforesaid difference of pleas which inevitably differ from one to other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test, whether he has performed his obligations one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. Same plea may be stated by different persons through different words then how could it be constricted to be only in any particular nomenclature or word. Unless statute specifically require for a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in [Section 16\(c\)](#) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of Readiness and willingness has to be in spirit and substance and not in letter and form. So to insist for mechanical production of the exact words of an statute is to



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insist for the form rather than essence. So absence of form cannot dissolve an essence if already pleaded.”

(ii) *Motilal Jain Vs. Ramdasi Devi (Smt) and Others* [(2000)6

***SCC 420*]:**

“That decision was relied upon by a three Judges Bench of this Court in Syed Dastagirs case (supra), wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of ones case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed,

“Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a

plea. The language in [Section 16\(c\)](#) of the Specific



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Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of readiness and willingness has to be in spirit and substance and not in letter and form.”

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is subject- matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit of specific performance of contract for sale.

25. There is no dispute about the legal position referred above, but the same cannot be applied to the facts of the present case. As already pointed out, in Ex.A.1 – sale agreement, it has been stated that out of the sale price fixed at Rs.15,00,000/-, the plaintiff has paid Rs.10,00,000/- and agreed to pay the balance sale price of Rs.5,00,000/- within 11 months. But the plaintiff in his plaint has stated that since he has



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planned to sell the suit property, after plotting out the same, he paid the balance sale price of Rs.5,00,000/- to the second defendant on 01.09.2013. The second defendant in his written statement has nowhere admitted the receipt of the balance sale price of Rs.5,00,000/-. But during trial, he would admit the receipt of the said amount. But the plaintiff has not produced any materials to prove the alleged payment. Since the first defendant has taken a stand that Ex.A.1 was created collusively, it is for the plaintiff to prove the payments. The plaintiff, in his cross-examination, would admit that the second defendant has not given any document evidencing the receipt of Rs.5,00,000/-. Except the interested testimony of the second defendant, the plaintiff has not produced any other evidence to prove the payment of the balance sale price.

26. As rightly contended by the learned Counsel for the first defendant, the plaintiff has not taken a stand in the plaint that in case, if his version of paying the balance sale price of Rs.5,00,000/- on 01.09.2013 is not accepted, he is always ready and willing to pay the balance price and to get the sale deed executed. It is pertinent to note that the readiness refers to the capacity of the plaintiff to enforce a



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contract and willingness refers to the conduct of the plaintiff warranting performance.

27. It is settled law that specific performance of a contract can only be enforced, if readiness is backed by willingness. Even assuming for arguments sake, that the plaintiff has produced materials to show that the entire sale consideration was paid, he is duty bound to plead and prove his willingness which relates to his conduct warranting performance. Considering the above aspects, this Court has no hesitation to hold that the plaintiff who has come with unclean hands and in collusion, is certainly not entitled to get the relief of specific performance. But the learned trial Judge, without considering the evidence on proper perspective, has recorded the findings mechanically. Hence, this Court concludes that the judgment and decree of the trial Court are liable to be set aside. Considering the other facts and circumstances of the case, this Court is of further view that the plaintiff should be mulcted with costs.

27. In the result, the Appeal Suit is allowed and the Judgment and Decree dated 23.06.2014 made in O.S.No.77 of 2013, on the file of the



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Principal District Judge, Tirunelveli are set aside. The suit in O.S.No.77 of 2013 is dismissed. The plaintiff is directed to pay costs to the first defendant throughout. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes : No
Internet : Yes : No
SSL

To

- 1.The Principal District Court, Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

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