



S.A(MD)No.601 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 03.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.601 of 2016

and

C.M.P(MD)No.8877 of 2016

Muniyandi

... Appellant/Appellant
/Plaintiff

Vs.

Rajendran

... Respondent/Respondent
/ Defendant

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 07.03.2016 passed in A.S.No.65 of 2014 on the file of the Subordinate Court, Sivagangai, confirming the judgment and decree, dated 27.01.2014 passed in O.S.No.54 of 2011 on the file of the District Munsif Court, Sivagangai.

For Appellant : Mr.M.Saravanan

For Respondent : Mr.D.Srinivasa Raghavan
for Mr.S.P.Maharajan



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JUDGMENT

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The plaintiff in the suit is the appellant. He filed a suit for specific performance of a sale agreement, dated 21.11.2008. The suit was dismissed by the trial Court. However, the trial Court was pleased to grant a decree for return of advance amount. The appeal filed by the appellant was also dismissed. Aggrieved by the same, the appellant is before this Court.

2. According to the appellant, he entered into a sale agreement with the respondent on 21.11.2008 for purchase of 1 acre 90 cents in S.No.241/1 in Sakkanthi Village, Pudhupatti Group, Sivagangai Taluk. The agreed sale consideration was fixed at Rs.38,500/-. As per the terms of agreement, the appellant paid an advance amount of Rs.30,000/- to the respondent on the date of agreement. The balance of Rs.8,500/- was agreed to be paid within a period of one month. It was further averred that when the appellant expressed his readiness to complete the transactions within the time stipulated by the agreement, the respondent represented that he filed a suit for declaration of title and injunction against a third party in O.S.No.95 of 2009 on the file of the District Munsif Court, Sivagangai and hence, sale transactions could be completed, after disposal of the said suit. The above said suit got disposed on



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29.10.2009. Thereafter, the respondent issued a notice on 18.03.2010, under Ex.A2, calling upon the appellant to get the sale transaction completed by paying the balance sale consideration within a week. The appellant received the said notice on 20.03.2010, however he has not chosen to issue any reply. Hence, the respondent issued another notice on 09.11.2010, under Ex.A3, calling upon the appellant to complete the sale transaction on or before 31.12.2010. In response to that notice, the appellant issued a reply calling upon the respondent to be present at Sub Registrar Office on 15.12.2010 for execution of sale deed. The said notice sent to the respondent and his Counsel was returned with an endorsement 'unclaimed'. Thereafter, the appellant issued another notice on 06.01.2011, under Ex.A7, calling upon the respondent to be present at Sub Registrar Office on 19.01.2011 for completion of sale transaction. The respondent sent a reply on 18.01.2011, under Ex.A9, cancelling the sale agreement. Hence, the appellant was constrained to file a suit for specific performance.

3. The respondent herein filed a written statement and resisted the suit on the ground that the appellant was not ready and willing to perform his part of the contract. The respondent also contended that there was an unregistered



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agreement between the parties on the very same date, on which, the suit sale agreement was entered into whereunder, the appellant agreed to pay a sale consideration of Rs.6,65,000/- to the respondent.

4. The trial Court, based on the evidence available on record, came to the conclusion that the appellant failed to prove his readiness and willingness to perform his part of the agreement and consequently, dismissed the suit. Aggrieved by the same, the appellant/plaintiff filed an appeal in A.S.No.65 of 2014 on the file of the Subordinate Court, Sivagangai and the First Appellate Court affirming with the findings of the trial Court, dismissed the said appeal. Aggrieved by the same, the appellant is before this Court.

5. At the time of admission of the Second Appeal, the following substantial questions of law were framed:

"(a) Have not the Courts below failed to see that the plaintiff has been ready and willing as seen from the fact that he had paid substantial sale consideration on the date of agreement itself and called upon the defendant to come and execute the sale deed?

(b) Have not the Courts below failed to exercise judicial discretion under Section 20 of the



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Specific Relief Act, which has resulted in perverse findings?

(c) Have not the Courts below overlooked that vide Ex.A3, the defendant had extended the time up-to 31.12.2010 and therefore the finding that the plaintiff was not ready prior to that, is wrong?

6. The learned counsel for the appellant submitted that the time stipulated in the agreement was not treated as essence of contract by the parties and the same can be gathered from the facts found in the notice issued by the respondent under Ex.A3, extending the time up to 31.12.2010. The learned counsel further submitted that in response to the notice issued by the respondent under Ex.A3, the appellant promptly issued a reply on 08.12.2010, calling upon the respondent to come to Sub Registrar Office on 15.02.2010 for completion of sale transaction. However, the said reply notice sent by the appellant to the respondent and his counsel got returned with an endorsement 'unclaimed'. Therefore, the appellant proved his readiness and willingness to complete the transaction well within the time extended by the respondent and consequently, the findings rendered by the Courts below, as if the appellant failed to prove his readiness and willingness are vitiated by non consideration



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of material evidence available on records, namely, Exs.A4, A5 and A6.

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7. The learned counsel for the respondent contended that though under the agreement, a time limit was prescribed to complete the sale consideration, due to the pending litigation, the parties were unable to complete the sale consideration within the time stipulated. However, as soon as the pending suit was disposed on 29.10.2009, the respondent issued a notice on 18.03.2010, calling upon the appellant to complete the sale transaction by paying the balance sale consideration within one week. The appellant failed to give reply for the said notice and kept quiet for 10 long months. Therefore, the appellant failed to prove his readiness and willingness from the date of agreement to the date of filing of the suit and consequently, the Courts below are justified in dismissing the suit for specific performance.

8. The appellant and respondent entered into an agreement of sale on 21.11.2008. The agreed sale consideration was Rs.38,500/-. On the date of agreement, as per the terms, the appellant paid an advance of Rs.30,000/- to the respondent. The balance sum of Rs.8,500/- was agreed to be paid within a period of one month. These all are admitted facts. Even in the plaint, it is



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also admitted by both parties, the property, agreed to be sold, was subject matter of litigation in O.S.No.95 of 2009 on the file of the District Munsif Court, Sivagangai and hence, the parties were not in a possession to follow the time limit prescribed under the agreement. Even as per the admitted case of the appellant in his plaint, the said suit was disposed of as earliest on 29.10.2009. After five months, the respondent issued a notice to the appellant under Ex.A2, calling upon him to complete the sale transactions within a period of one week. In the said notice, the respondent also said even though O.S.No.95 of 2009 was disposed of as early on 29.10.2009, the appellant was dragging on the sale transactions without paying the sale consideration. In the said notice, the respondent also said, if appellant failed to pay the balance sale consideration within a week and complete the sale consideration, the agreement was liable to be cancelled. In spite of the notice issued by the respondent calling the appellant to fulfil his obligation within a week, the appellant failed to pay the balance sale consideration. He failed to respond to the notice issued by the respondent, under Ex.A2 and simply kept quiet for nearly nine months. Subsequently, on 09.11.2010 under Ex.A3, the respondent issued another notice calling upon the appellant to complete the sale transaction on or before 31.12.2010. The fact that the respondent



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extended the time up to 31.12.2010 only denotes that the time was not treated as essence of the contract. However, as a plaintiff in a suit for specific performance, the appellant has to prove his continuous readiness and willingness from the date of inception of the contract to the date of filing of the suit. In the case on hand, though the respondent issued a notice under Ex.A2 on 18.03.2010, calling upon the appellant to complete the sale consideration within a week, the appellant failed to respond his notice till 08.12.2010. The appellant has not given any justifiable explanation for his failure to complete the sale transactions or his failure to reply to the notice under Ex.A2. Therefore, the Courts below rightly came to the conclusion that the appellant failed to prove his readiness and willingness from the date of inception of the contract to the date of suit and consequently, he was not entitled any decree for specific performance.

9. In view of the discussions made earlier, the questions of law framed at the time of admission, are answered against the appellant and the Second Appeal stands dismissed.



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10.In fine,

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a) the Second Appeal stands dismissed and the judgment and decree passed by the learned Subordinate Judge, Sivagangai, dated 07.03.2016 passed in A.S.No.65 of 2014 stands confirmed;

b) in the facts and circumstances of the case, there would be no order as to costs; and

c) consequently connected Miscellaneous Petition is closed.

03.03.2023

NCC : Yes/No

Index : Yes / No

vsd

To

1.The Subordinate Court,
Sivagangai.

2.The District Munsif Court,
Sivagangai.

3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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