



Reserved On : 26.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

S.A.(MD)No.565 of 2017

and

C.M.P.(MD)No.12112 of 2017 & 768 of 2017

Anbukarasu ... Appellant/ Respondent /1st Defendant

Vs.

1.Santhanam, ... 1st Respondent / Appellant /Plaintiff

2.Murugan, ... 2nd Respondents / Respondent /2nd Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 23.01.2017 made in A.S.No.52 of 2015 on the file of the V Additional District Court, Madurai, reversing the judgment and decree, dated 15.04.2014 made in O.S.No.430 of 2008 on the file of the I Additional Subordinate Judge, Madurai.

For Appellant : Mr.PT.S.Narendravasan

For Respondents : Mr. F.G.Shankar Ganesh for R1
: Mr.T.Pon Ramkumar for R2

JUDGMENT



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The appellant herein is the respondent / first defendant, the first respondent herein is the appellant / plaintiff and the second respondent herein is the second respondent / second defendant before the Court below.

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

3. The brief averments of the plaint are as follows:

The plaintiff submits that the first defendant has executed a general power of attorney in favour of the second defendant, vide document dated 14.03.2007 registered under Document No.114/2007, in respect of the suit property. The plaintiff has entered into a sale agreement with the second defendant, who is the power agent of the first defendant vide sale agreement dated 19.09.2007. The total sale consideration is Rs.4,90,000/-. Out of the total sale consideration, Rs.4,80,000/- has been paid as an advance and three month performance period has been fixed. In spite of repeated request, the second defendant had delayed the execution of the sale deed. Therefore, the plaintiff sent a letter to him on 15.02.2007, requesting him to receive the balance sale consideration of Rs.10,000/- and to execute the sale deed. However, the second defendant did not send any



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reply. Hence, the plaintiff has met the second defendant in person on 30.12.2007 and when enquired with him, he came to know that the first defendant has cancelled the power of attorney dated 14.03.2007, by way of cancellation deed, dated 03.12.2007. The said factum was intimated to the second defendant through a letter, dated 06.12.2007. The second defendant submitted to the plaintiff that, in view of the cancellation of the power deed, he was not in a position to execute the sale deed, and requested the plaintiff to proceed to enforce the agreement according to law. Hence, the plaintiff has come forward with the prayer seeking specific performance against the defendant.

4. Brief statement of the written statement filed by the first defendant is as follows:

The first defendant submits that the very general power of attorney deed dated 14.03.2007 is the outcome of coercion and undue influence through police. It is the further submission of the defendant that the above fact can be established by the report of the Inspector of Police, Melur Police Station, dated 28.01.2007 and a letter of the plaintiff to the Additional Superintendent of Police, dated 17.07.2007. According to the defendant, the general power of attorney deed is not a genuine one and the



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same was not executed by the first defendant voluntarily. The defendant further submits that, the plaintiff had filed a suit based upon the fraudulent promissory note, dated 28.07.2007 in O.S.No.177 of 2007. After the said suit was decreed, the plaintiff preferred an appeal before the High Court. Even the instant suit for specific performance, according to the defendant, is an abuse of process of law. The defendant disputed the sale agreement as a result of collusion between the plaintiff and the second defendant. The defendant also denies the receipt of the advance amount. It is the further submission of the defendant that the plaintiff has never shown his readiness and willingness to perform his part of the contract till the date of cancellation of power of attorney deed, on 03.02.2007. The defendant submits that the suit property is worth of Rs.17,00,000/-. However, to grab the property, the plaintiff and the second defendant entered into a fraudulent sale agreement. The defendant further submits that he has cancelled the power of attorney vide cancellation deed, dated 03.12.2007. According to the defendant, the cancellation was also informed to the second defendant. It is also the further submission of the defendant that the instant suit is hit by Order 2 Rule 2 C.P.C.

5. Brief averment of the written statement filed by the second



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defendant, is as follows:

The second defendant admits the contention of the plaintiff and he further submits that the plaintiff was all along ready and willing to perform his part of the contract, and only because of the fraudulent cancellation of the power of attorney with an ulterior motive, the agreement could not be enforced.

6. Details of Evidence and Documents:

Before the trial Court, the plaintiff himself as well as, yet another witness were examined as P.W.1 and P.W.2. On behalf of the defendants, three (3) witnesses were examined viz., first defendant, second defendant and one Ameer Basha as D.W.1 to D.W.3 respectively. On behalf of the plaintiff 20 documents were marked as Ex.A1 to Ex.A20, and on behalf of the defendants 6 documents were marked as Ex.B1 to Ex.B6.

7. Details of finding of the trial Court and the First Appellate Court :

(a). After hearing either side submissions and after taking into consideration of the material on records and oral and documentary evidence of either side, the trial Court has dismissed the suit. While dismissing the suit, the trial Court has found that the fraud and collusion have not been



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proved, as the plaintiff has submitted only the xerox copy of the document pertaining to the police complaint, as Ex.B1 and Ex.B2. It was also the finding of the trial Court that the provisions of Order 2 Rule 2 C.P.C will not be a bar to the instant suit. It is also the finding of the trial Court that there were no payments towards the sale consideration and ultimately, dismissed the suit.

(b). Aggrieved with the finding of the trial Court, the plaintiff has approached the First Appellate Court by preferring an appeal in A.S.No. 52 of 2015. Wherein the first Appellate Court reversed the finding of the trial Court and found that, since the second defendant admits the readiness and willingness of the plaintiff, hold that the plaintiff was ready and willing to perform his part of the contract. It is also the further finding of the first Appellate Court that there are no evidence to prove coercion and undue influence and ultimately, decreed the suit for specific performance.

8. Aggrieved with the order of the First Appellate Court, the first defendant has preferred this Second Appeal.

9. Substantial question of law:

After hearing the submissions of either side, on 11.04.2023, this Court has framed the following substantial questions of law:



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"i) Whether the plaintiff satisfied all the requirements necessary for seeking relief of specific performance under Section 20 of Specific Relief Act, 1963 which has to be decided by the Appellate Court independently considering the circumstances of the case and conduct of the parties, particularly when the plaintiff obtained the power deed under Ex.A1 from the first defendant in favour of the second defendant under threat and coercion in the presence of police officials and the same has been proved by the defendant marking Ex.B1 to Ex.B3?

ii) Whether the Appellate Court being the last fact finding Court, is duty bound to examine the material on record and oral evidences afresh and thereafter to render a finding and without deciding the issue independently, whether the appellate Court is right in granting the discretionary relief simply rendering a finding stating that the appellate Court is not inclined to accept the finding rendered by the trial Court?"

10. Details of argument before this Court:

(a). The learned counsel for the first defendant would submit that the very sale agreement, dated 19.09.2007 is a fabricated and concocted one, and that the sale agreement is the outcome of fraud and collusion between the plaintiff and the second defendant. The learned counsel would



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submit that the very finding of the trial Court that Ex.B1 and Ex.B2 are only the xerox copies, is a perverse finding as Ex.B1 and Ex.B2 are the certified copies of the document, which have been obtained from O.S.No. 177 of 2007 and would submit that through Ex.B1 and Ex.B2, the very coercion and undue influence and falsity over Ex.A2 – sale agreement could be established. It is the further submission of the learned counsel for the first defendant that the very suit is hit by the principle of Order 2 Rule 2 C.P.C and that the plaintiff did not prove his readiness and willingness to perform his part of the contract. Therefore, he prayed to allow the Second Appeal by confirming the order passed by the trial Court by reversing the order of the First Appellate Court.

(b). Per contra, the learned Counsel for the plaintiff would vehemently object the contention made by the defendant, and would contend that the very sale agreement will be binding upon the first defendant as the same was entered between the power agent of the first defendant and the plaintiff before the cancellation of the said power of attorney. It is also the submission of the learned counsel for the plaintiff that the instant suit will not hit by the principles of Order 2 Rule 2 C.P.C., since, the previous suit was not decided on merits. It is also the submission



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of the learned counsel for the plaintiff that he has got capacity to pay the remaining sale consideration and that he is ready and willing to perform his part of the contract, and only because of the delaying tactics of the first and the second defendant, he was not in a position to get the sale deed executed. Hence, he prayed to decree the suit, by dismissing the Second Appeal and by confirming the order of the First Appellate Court.

11. The learned counsel for the second defendant would support the arguments of the learned counsel for the plaintiff and would contend that both the Courts below have upheld the validity of the agreement. Hence, he prayed to dismiss the Second Appeal.

12. I have given my anxious consideration on either side submissions.

13. Analysis of arguments:

Before we embark into any other aspects, this Court deems it appropriate to discuss in respect of coercion and undue influence in getting power of attorney, dated 14.03.2007. The power of attorney, dated 14.03.2007, became the base document to execute the disputed sale agreement – Ex.A2 in favour of the plaintiff. In order to prove the undue influence and coercion, in the execution of power of attorney the first



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defendant is very much relying on the documents which have been filed as Ex.B1 to Ex.B3. However, the trial Court has simply ignored Ex.B1 to Ex.B3 by a casual reference that those documents are only xerox copies and that no original has been filed. However, this Court is not in a position to accept such a perverse finding. Because, if we go through Ex.B1 to Ex.B3, though it appears to be a xerox copy, the same is only the certified xerox copy of the Exhibits, which have already been exhibited and marked in O.S.No.177 of 2007, between the plaintiff and the first defendant in respect of the suit on promissory note. In the earlier suit Ex.B1 was marked as Ex.X1. Similarly, Ex.B2 and Ex.B3 have been marked before the previous suit in O.S.No.177 of 2017 as Ex.B2 and Ex.X2 respectively.

14. Let us have a look at Ex.B1 marked in this case. This document was addressed to the Judicial Magistrate by the Deputy Inspector General of Madurai Zone. The said Ex.B1 contains a complaint dated 02.07.2007 sent by the plaintiff to the D.I.G., and xerox copy of the sale deed, dated 12.03.2002, qua parental deed of the suit property, and also a letter given by the first defendant. Apart from that, there is also a letter addressed by the Superintendent of Police, to the D.I.G.

15. On perusal of Ex.B1, it manifest that as early as on



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02.07.2007, there was an issue in respect of the schedule mentioned property. In the complaint dated 02.07.2007 annexed in Ex.B1, the plaintiff has referred that the first defendant has agreed to sell the schedule mentioned property and to repay the loan to the plaintiff. Therefore, as on 02.07.2007 itself, there was a complaint and counter complaint between the plaintiff and the defendant and there were some negotiations and there are some reference that they resolve the issue before the police. To put it differently as on 02.07.2007, the plaintiff did not have any idea to buy the suit property and he appears to have interested only in getting back his loan amount, through the sale proceeds of the suit property.

16. Ex.B2 is a complaint given by the first defendant to the D.I.G of Police on 02.08.2007. Wherein, the first defendant's complaint about the receipt of some blank promissory note. And Ex.B3 is a letter addressed by the A.D.S.P. to the Superintendent of Police. Wherein, it refers that the first defendant appears to have stated that as per the Panchayat, power deed was executed in favour of Murugan and in spite of that, the plaintiff has intimidated him. However, ultimately, the said complaint was withdrawn as the issue between them was compromised themselves. Therefore, while seeing Ex.B1 to Ex.B3, there were complaint and counter complaint



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between the plaintiff and the first defendant and the relationship between the plaintiff and the first defendant was not cordial. Therefore, in the above background of, unfurling of numerous events, through Ex.B1 to Ex.B3, the defence put forth by the defendant that the power of attorney was executed under, undue influence and coercion cannot be simply brushed aside.

17. It is pertinent to mention here that, though the Ex.B1 to Ex.B3 have been submitted, the trial Court without going into the admissibility of the document, has simply swayed by the look of the same, and jumped into the conclusion that the same cannot be relied as it is only xerox copy. But, the truth is otherwise, as those documents are the certified copies of the Exhibits marked in the yet another case between this plaintiff & defendant. Therefore, the finding of the trial Court that those documents are xerox copy is perverse. Therefore, though there is a finding of fact that Ex.B1 to Ex.B3 is xerox and not admissible, since it is the erroneous and perverse finding, the same is liable to be reversed.

18. At this juncture, the learned counsel for the plaintiff would invite the attention of this Court about the letter addressed by the D.I.G to the Fast Track Court, which has been marked as Ex.A18. In that, there is a reference that there was no complaint given by the first defendant to the



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D.I.G of police. However, the plaintiff has filed a copy of the complaint as Ex.B2. Therefore, even if Ex.B2 was not exist & false, still Ex.B1 and Ex.B3 would suffice to hold that there was an animosity between the plaintiff and the first defendant, even prior to the alleged Ex.A2- sale agreement.

19. Now, let us have a look at Ex.A2- sale agreement in the backdrop of the events emerges through Ex.B1 and Ex.B3 - police complaints. Admittedly, Ex.A2-sale agreement was executed by the power agent of the first defendant qua the second defendant. Either in Ex.A5 letter dated 06.12.2007, in which, the cancellation of the power was informed, and the cancellation of power deed, dated 31.12.2007 in Ex.A6, as rightly contended by the learned counsel for the plaintiff, the reason for cancellation of the power deed is not the alleged undue influence, coercion, etc.

20. Therefore, the learned counsel for the plaintiff would submit that, when Ex.A1-power of attorney is admitted by the first defendant, he is naturally bound by the sale agreement executed by his agent, who is the second defendant herein, though it was subsequently, cancelled. Here, as observed above, though there was no cordial terms between the first



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defendant and the plaintiff, though they were close relative qua, the plaintiff being maternal uncle of the first defendant, from Ex.B1-complaint, this Court could infer that there were some specific reason for the execution of the power deed in favour of the second defendant qua to sell the schedule mentioned property, so as to discharge the alleged debt to the plaintiff.

21. Therefore, even according to the plaintiff, the execution of power of attorney is to sell the schedule mentioned property and to pay the due to the plaintiff. Therefore, as on date of 02.07.2007, what the plaintiff wanted is the sale of the schedule mentioned property to some third parties so as to get his alleged due. However, while perusing the plaint, the plaintiff has stated that he has paid a sum of Rs.4,80,000/- towards an advance for the purchase of the schedule mentioned property. According to the plaintiff, when the defendant still is liable to pay some due, the conduct of the plaintiff, paying an additional amount for the purchase of schedule mentioned property goes counter to the complaint annexed in Ex.B1 and Ex.B3. In the letter of ADSP marked as Ex.B3, the letter of the first defendant, as well as the letter written by the plaintiff is annexed. It appears that the said Ex.B3 letter was written on 19.09.2007. Wherein it is



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stated that the plaintiff as well as the first defendant has given a letter to the police that they would resolve their money dispute among themselves, and sought permission to withdraw the complaint.

22. It is pertinent to mention here that these are all the records appeared to have been summoned from the police and there is no serious dispute in respect of Ex.B1 and Ex.B3. Therefore, from 02.07.2007 till 17.09.2007, the plaintiff and the first defendant had occasion to go to the police for one reason or the other and that there was a money dispute between them. In that background, this Court would like to mention that after submitting the letter before the A.D.S.P on 17.09.2007 entering into the sale agreement with the second defendant, viz., power agent of the first defendant assumes significance. When there was a money dispute between the plaintiff and the first defendant, when the plaintiff himself states that there was promise by the first defendant to sell the schedule mentioned property to third party and to pay the due to the plaintiff, naturally in all probabilities there would not have been any occasion for both of them (plaintiff and the first defendant) to enter into the sale agreement. By applying the preponderance of probability, what would emerge is that the very sale agreement would have been emerged only to set off the alleged



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due to be paid by the defendant to the plaintiff. But, that is not the case of the plaintiff. Even for a moment, if we presume that the sale agreement exist between the plaintiff and the defendant still the plaintiff is liable to prove the readiness and willingness to get the sale deed executed.

23. In this regard, this Court deems it appropriate to mention that the plaintiff has never issued any notice to the first defendant, who is the owner of the property, expressing his readiness and willingness. But he has sent a letter only to the second defendant, who is the power agent. More pertinently, in this case, the plaintiff came to know about the cancellation of the power deed as early as on 15.12.2007, when the plaintiff has met the second defendant. Even then, he did not think fit to request the first defendant to perform his part of the contract. This would only probablise what the plaintiff wanted from the defendant is only the money and not the property, which factum is further vindicated by filing of the suit in O.S.No. 32 of 2007. The Ex.A11- plaint in O.S.No.32 of 2008 was filed on 29.01.2008 and in paragraph No.9 of the Ex.A11-plaint, the plaintiff herein has categorically mentioned that the first defendant, in order to defraud the plaintiff has cancelled the power of attorney. However, he filed a simple suit for declaration to declare the cancellation of power of attorney dated



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03.12.2007 as null and void and for a permanent injunction to restrain the first defendant from alienating the suit property.

24. Had there been a real intent to buy the suit property in pursuance of the alleged sale agreement, the natural propensity of any agreement holder would only to file a suit for specific performance and not for the ancillary relief. It only reflects the plaintiff's inhibition and reservation to pay the huge court fee for the suit for specific performance. Though the plaintiff came to know about the cancellation of the power of attorney deed, on 15.12.2007, it took almost 7 months to file a suit for specific performance.

25. In this regard, it is relevant to refer to the recitals of the sale agreement. As per the recitals of the agreement dated 19.09.2007, the plaintiff agreed to pay the remaining sale consideration of Rs.10,000/- within a period of three months and also undertook to purchase the stamp paper in the name of the plaintiff. Apart from that, the sale agreement refers that the second defendant agreed to execute the sale deed either in the name of the plaintiff or the person identified by him. But, in this case, there are no proof about the payment of remaining sale consideration of Rs.



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10,000/- within a period of three months and also there is no proof about the purchase of stamp papers. However, the learned counsel for the plaintiff would submit that within a period of three months, they have given letter to the second defendant and has expressed their readiness and willingness. Admittedly, on that date, the power of attorney was cancelled. As a matter of fact, admittedly, no notice was served to the first defendant.

26. At this juncture, this Court deem it appropriate to refer the judgment of the Hon'ble Supreme Court reported in **2010-10-SCC-512** (**Man Kaur (Dead) V. Hartar Singh Sangha**). The relevant portion of the judgment is as follows-

“23. The learned counsel for the respondent contended that in terms of the agreement, the defendant had to furnish an NOC from Chandigarh Administration, as also ULC clearance and income tax clearance required for the sale and there was nothing to show that she had obtained them, and therefore the question of plaintiff proving his readiness and willingness to perform his obligations did not arise. This contention has no merit. There are two distinct issues. The first issue is the breach by the defendant - vendor which gives a cause of action to the plaintiff to file a suit for specific performance. The second issue relates to the personal bar



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*to enforcement of a specific performance by persons enumerated in section 16 of the Act. A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. **Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of plaintiff is something which need not be proved, if the plaintiff is able to establish that defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs.10 lakhs and earnest money of Rs.1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs.15 lakhs. In such a case there is a clear breach by defendant. But in that case, if***



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plaintiff did not have the balance Rs.9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by defendant, as he was not 'ready and willing' to perform his obligations.”

(Emphasis supplied by this Court)

27. It is also further relevant to rely upon the judgment of the Hon'ble Supreme Court reported in **2022-SC-2261 (U.N.Krishnamurthy V. M.Krishnamurthy)**. The relevant portion of the judgment is as follows-

“To aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract, the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract. If the plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff



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would have to specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money.”

(Emphasis supplied by this Court)

28. In the yet another judgment of the Hon'ble Supreme Court reported in **2011-12-SCC-18 (Saradamani Kandappan V. S.Rajalakshmi)**, it is held as follow:-

*“The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. **A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and `non-readiness'.** The precedents from an era, when high inflation was unknown, holding that time is not of*



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the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for Rs.One lakh and received Rs.Ten Thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining Rs.Ninety Thousand, when the property value has risen to a crore of rupees.”

(Emphasis supplied by this Court)

29. The Hon'ble Supreme Court, in a judgment reported in **2018-9-SCC-80 (Jagjit Singh V. Amarjith Singh)**, has held that point regarding readiness and willingness is pre-condition to have specific performance. The relevant portion of the judgment is as follows-



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“4. It is settled law that a plaintiff who seeks specific performance of contract is required to plead and prove that he was always ready and willing to perform his part of the contract.

Section 16(c) of the Specific Relief Act mandates that the plaintiff should plead and prove his readiness and willingness as a condition precedent for obtaining relief of grant of specific performance. As far back as in 1967, this Court in Gomathinayagam Pillai and Ors. v. Pallaniswami Nadar² held that in a suit for specific performance the plaintiff must plead and prove that he was ready and willing to perform his part of the contract right from the date of the contract up to the date of the filing of the suit. This law continues to hold the field and has been reiterated in the case of J.P. Builders and Anr. v. A. Ramadas Rao and Anr.³ and P. Meenakshisundaram v. P. Vijayakumar & Ors.⁴. It is the duty of the plaintiff to plead and then lead evidence to show that the plaintiff from the date he 1 16. Personal bars to relief .- Specific performance of a contract cannot be enforced in favour of a person -

(a).....

(b).....

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform



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the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.”

(Emphasis supplied by this Court)

30. Though this Court has got its own apprehension about the very reliability of Ex.A2 – sale agreement, even for argument sake, if the Court presumes, that the sale agreement is valid in law, still the plaintiff must fail, in view of absence of proof towards the readiness and willingness. However, the trial Court though not granted relief for specific performance, gave a perverse finding in respect of Ex.B1 and Ex.B2. But, the First appellate Court while reversing the finding and granting the decree for specific performance, fully believed the words of D.W.2 as to the readiness and willingness, of the plaintiff without looking into the other material circumstances.

31. At this juncture, this Court deems it appropriate to refer the conduct of the plaintiff, subsequent to the cancellation of the power of attorney. The plaintiff, having known about the cancellation of the power of attorney, still has negotiation with the power agent, second defendant and addressing the letter to the second defendant for executing the sale deed. The same would in no way helpful to the plaintiff to prove his case



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of readiness and willingness. Therefore, the finding recorded by the First Appellate Court based upon the evidence of D.W.2 is also erroneous and oblivious to the surrounding circumstance subsist in this case, especially, the defence of money transaction lingering between the plaintiff and the first defendant all along which has manifested through Exs.B1 & B3 police correspondence.

32. The learned counsel for the defendant would also urge this Court to hold that the instant suit is hit by the principle of Order 2 Rule 2 C.P.C and in this regard, the learned counsel has relied upon the rulings:

(i) 2010-8-MLJ593(SC) Alka Gupta V. Narender Kumar Gupta)

(ii) 2011-5-MLJ-625 (N.Ravindran Vs. V.Ramachandran)

33. Among this Rulings, it is pertinent to discuss the judgment of this Court reported in ***2011-5-MLJ-625 (N.Ravindran Vs. V.Ramachandran)***. The relevant portion of the judgment is as follows-

“25. The object of Order II Rules 1 and 2 C.P.C. is to prevent multiplicity of suits. The Rule in Order II Rule 2 is founded on the principle that a person shall not be vexed twice for one and the same cause of action. Order II Rule 2 C.P.C. is directed in securing a exhaustion of the relief in



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respect of a cause of action. In order to make Order II Rule 2 applicable, the defendant must satisfy the of conditions:-

(i) The previous and second suit must arise out of the same cause of action;

(ii) Both the suits must be between the same parties; and

(iii) The earlier suit must have been decided on merits.

In order to attract the bar of Order II Rule 2 C.P.C, the earlier suit shall be founded on the same cause of action on which the subsequent suit is based, and if in the earlier suit, the plaintiff has omitted to sue in respect of or intentionally relinquished any portion of his claim, he will not subsequently be entitled to sue in respect of the portion of his claim so omitted or relinquished.”

(Emphasis supplied by this Court)

34. A plain reading of the above ratio, would manifest that the parties should not be vexed twice. Therefore, three conditions enunciated in paragraph No.25 has to be fulfilled by the defendant to get an order in his favour under Order 2 Rule 2 C.P.C. Among the above ground, existence of suit on same cause of action, and between the same parties exist in the case



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in hand. But, in respect of the third point, viz., the earlier suit must have been decided on merits, is absent in our case.

35. In this regard, the learned counsel for the plaintiff would invite the attention of this Court about Ex.A14, Ex.A15 and Ex.A16 qua the memo and the judgment & decree of the previous suit in OS.No.32 of 2008. While perusing the above documents, it is manifestly clear that O.S.No.32 of 2008 was subsequently withdrawn. However, the learned counsel for the defendant would urge before this Court that such withdrawal was not without any leave to file a fresh suit. They further states that, the instant suit has been filed, when the earlier suit in O.S.No.32 of 2008 was pending.

36. To counter the above argument, the learned counsel for the plaintiff has relied upon the judgments of the Hon'ble Supreme Court reported in **2014-AIR-SCW-1 (Inbasegaran V.S.Natarajan)** and another judgment held in **Civil Appeal No.9949 and 9950 of 2014 (Rathnavathi V. Kavita Ganashamdass)** and would submit that the earlier injunction suit is not a bar for the subsequent filing of the specific performance suit. But, on close reading of the above judgment, the cause of action for the earlier suit of the reported judgment is the threat of dispossession. Whereas in the case



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on hand, it was a threat of alienation. Thus, the above ruling is not applicable to the present facts of the case.

37. However, even if the instant suit has been filed during the pendency of the earlier suit, as per the ratio of the *N.Rajendran's case* (cited supra), in order to attract Order 2 Rule 2 C.P.C all the three conditions enunciated in the above ratio to be complied with. Whereas in the case in hand, the earlier suit was not disposed on merits and therefore, this Court is of the view that though the plaintiff is not entitled for specific performance, for the reasons recorded elaborately hereinabove, the suit is not hit by Order 2 Rule 2 C.P.C.

38. Therefore, this Court is of the indubitable view that the substantial questions of law are liable to be answered in favour of the appellant. As a concomitant of the instant Second Appeal is liable to be allowed by setting aside the order of the first Appellate Court and by restoring the dismissal order of the trial Court, but on different reasons.

39. In the result, the instant Second Appeal stands **allowed** by setting aside the order of the first Appellate Court, by restoring the order of dismissal of the suit by the trial Court. There shall be no order as to cost. Consequently, connected Miscellaneous Petitions are closed.



SA(MD)No.565 of 2017

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27.09.2023

NCC :Yes/No

Index :Yes / No

Internet :Yes / No

Ls

To

1.The II Additional Subordinate Judge,
Trichy.

2. The 1st Additional District Munsif,
Trichy.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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SA(MD)No.565 of 2017

C.KUMARAPPAN.,J.

Ls

Judgment made in
S.A.(MD)No.565 of 2017

27.09.2023