



A.S.No.511 of 2015

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.11.2023
Pronounced on	31.01.2024

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

Appeal Suit.No.511 of 2015

1.Manoharan

2.M.Bhagyaraj

3.M.Bharathiraj

....Appellants

Vs.

K.A.Ramachandran (Deceased Sole Plaintiff)

1. Nachayammal

2. S.Gunavathy

3. Minor Mithunkumar

4. Minor Ishwarya

...Respondents



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Prayer: First Appeal has been filed under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 30.04.2015 made in O.S.No.16 of 2011 on the file of the IV Additional District Court, Erode District at Bhavani.

For Appellants : Ms. Zeenath Begum

For Respondents : Mr.P.Dinesh Kumar
for P.T.Ramadevi for R2 to R4

J U D G M E N T

This appeal is preferred against the judgment and decree passed in O.S.No.16 of 2011 dated 30.04.2015 on the file of the IV Additional District Court, Erode District at Bhavani.

2. The suit in O.S.No.16 of 2011 was filed by the plaintiff/respondent herein for a direction to the defendants to execute a sale deed after receiving the balance sale consideration Rs.8,54,250/- in favour of the plaintiff within the time fixed by the Court, failing which, the Court to execute the sale deed on behalf of the defendants and put the plaintiff's in possession of the suit property. In alternative, to direct the defendants to pay the plaintiff a sum of



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Rs.8,12,500/- with subsequent interest at the rate of 24% to a sum of

Rs.6,25,000/- from the date of suit till the date of realization creating a charge over the suit properties for the repayment of the suit amount and for the relief of permanent injunction, restraining the defendants from encumbering the suit properties in favour of third parties.

3. The plaintiff's case is that the defednant is the owner of the the suit property, which is his self acquired property. The 2nd and the 3rd defendant are the sons of the 1st defendant. On 04.11.2008, the defendants and the plaintiff have entered into an agreement of sale for a sale consideration of Rs.14,79,250/- in respect of the suit property. On the same day, an advance of Rs.50,000/- was paid by the plaintiff and the time fixed for performance of contract is one year i.e. on or before 03.11.2009. At the time of the sale agreement, the 1st defendant assured to hand over the original title deeds in respect of the suit properties within one month, since the same was impounded by the registering authority and also assured to measure the suit properties to find out the actual extent for fixing the value of the same.



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4. As per the sale agreement, the plaintiff has received a total sum of Rs.6,25,000/- on various dates to the defendants i.e., on 17.12.2008, a sum of Rs.3,00,000/-, on 28.08.2009 a sum of Rs.75,000/- and on 17.09.2009 a sum of Rs.2,00,000/- as part of the sale consideration. Therefore, the plaintiff paid Rs.6,25,000/- to the defendants and the respective endorsements were made on the back of the sale agreement. However, the defendants failed to come forward to perform their part of contract. Though the time was the essence of the contract and the plaintiff was always ready and willing to perform his part of contract. The defendants were postponing to receive the balance sale consideration and perform their part of contract. The reason behind that was the defendants were not able to release the sale deed, which was impounded by the registering authority, due to the recent hike in prices. On 18.06.2010, the 1st defendant issued a legal notice with false allegations, by concealing the further payments of Rs.5,75,000/- on 17.12.2008, 28.08.2009 and 17.09.2009 made by the plaintiff, as part of the sale consideration. The plaintiff also issued a suitable reply on 26.06.2010. The defendants were evading and were not ready and willing to perform their part of contract as agreed by them. Moreover, the defendants were trying to



alienate the suit properties in favour of third parties by burking the existence of the suit sale agreement. The defendants have already alienated some extent in the suit properties to third parties. Therefore, the plaintiff was constrained to file the above suit for the relief of specific performance. The plaintiff also undertook to deposit the balance sale consideration, if the Court directs him to do so. The plaintiff also sought for an alternative relief to get back the return of advance amount of Rs.6,25,000/- with interest at the rate of 24% per annum.

5. On the other hand, the defendants would contend that on 04.11.2008, the defendants agreed to sell the properties to the plaintiff by receiving Rs.50,000/- as advance amount by fixing the contract of specific performance to execute the sale deed within a period of one year from the date of sale agreement. The said period expired on 03.11.2009. The time fixed is the essence of contract. After execution of the sale agreement, the suit properties were converted into house sites. After the said conversion, the plaintiff was not in possession of the suit proeprties. The defendants admitted the receipt of Rs.3,00,000/- on 17.12.2018 and Rs.75,000/- on 20.08.2009



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from the plaintiff and denied the receipt of Rs.2,00,000/- on 17.09.2009. The plaintiff did not show any interest for the execution of the sale deed and also failed to act according to the terms of the sale agreement. Hence, the suit properties were left in possession of the defendants by the plaintiff himself. As per the request of the plaintiff to the defendants on 16.09.2009, 4000 sq.ft. of land was given to one K.Boopalan through general power of attorney, through which, Rs.2,00,000/- was received by the defendants on the same date i.e. on 16.09.2009. From the suit properties, 4500 sq.ft. land was sold to one Indirani as per the directions of the plaintiff. The sale consideration of Rs.3,00,000/- was received by the plaintiff. The plaintiff has witnessed the above two documents and has signed in the capacity of witness. On 05.10.2010, an extent of Rs.2250 Sq.ft. of land in the suit property was sold by the 3rd defendant to one Mayili for Rs.75,500/- as per the advice of the plaintiff. As such, Rs.5,00,000/- was received by the plaintiff through the above sale transaction. Remaining Rs.2,00,000/- was left with the defendants on 17.09.2009 and subsequently, the plaintiff obtained endorsement in the sale agreement as such. The sale consideration of Rs.75,000/- obtained from one Mayili for the sale of 2250 Sq.ft. of land on 20.08.2008 was also received



by the plaintiff from the defendants. Hence, as per the suit sale agreement except Rs.50,000/- no amount was received by the defendants from the plaintiff. The plaintiff has admitted that the suit properties was not in possession of the plaintiff as per the Power deed and Sale deed mentioned above and also the plaintiff has admitted these facts and signed in the above document as witness. On 18.06.2010, the 1st defendant sent a detailed notice to the plaintiff stating the above facts and also the execution of the sale deeds. Moreover, at the time of execution of sale agreement, it was agreed between the plaintiff and the defendants that the plaintiff has to pay sum of Rs.1,25,000/- to receive the registered sale deed, which is pending before R.D.O. Gopi for insufficient stamp. But the plaintiff failed to do so. Hence, the plaintiff is not entitled to the relief of special performance.

6. Based on the rival contentions, the following issues were framed by the trial Court:-

1. *Whether the sale agreement dated 04.11.2008 is valid or true?*
2. *Whether the defendant delayed the execution of sale deed?*



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3. *Whether the plaintiff is ready and willing to perform his part of contract?*
4. *Whether the plaintiff is entitled to relief of specific performance in the suit?*
5. *Whether the plaintiff is entitled for alternative relief as prayed for?*
6. *To what relief if any, the plaintiff is entitled to?*

7. During trial, the plaintiff examined himself as P.W.1 and one Raja was examined as P.W.2 and one Indhirani was examined as P.W.3. Ex.A1 to Ex.A4 were marked on the side of the plaintiff. The 1st defendant examined himself as D.W.1. Ex.B1 to Ex.B3 were marked on the side of the defendants.

8. The trial Court, on consideration of the above pleadings, materials on record and the submissions made by either side, decreed the suit with costs directing the defendants to execute the sale deed in respect of the suit property, in favour of the plaintiff, after receiving the balance sale consideration from the plaintiff and the time for depositing the balance sale consideration was fixed as two months and the time for executing the sale



deed was also fixed as two months from the date of Judgment and charge was also created over the suit property till the execution of sale deed as contemplated under Section 55(6) (b) of the Transfer of Property Act.

9. Aggreived by this, the present appeal is preferred by the defendants in the above suit.

10. For the sake of convenience the parties are referred as per their ranking in the trial Court.

11. The learned counsel appearing for the appellants/defendants would contend that the trial Court ought to have dismissed the suit on the ground that Ex.A1 Sale agreement could not be enforced, since it has been cancelled under Ex.A2 notice dated 18.06.2010. The further contention is that once the agreement of sale has been cancelled without seeking declaration, such cancellation is invalid, and therefore, the consequential relief of specific performance could not be granted. It is further submitted that time is the essence of contract, as it has been indicated in the agreement.



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12. The learned counsel would further submit that the Court below failed to consider the categorical statements made by the appellants/defendants that they have admitted the payment only to the extent of Rs.3,75,000/- which had been made directly by the plaintiff. The other payments under Ex.B1 for Rs.2,00,000/- and Rs.3,00,000/- under Ex.B2 were not paid by the plaintiff in performance of the contract, but were made by third parties. It is further submitted that even if the above payments were adjusted against the payments made by the plaintiff on 07.12.2008 and 28.08.2009, no payment for Rs.2,00,000/- was made on 17.09.2009 as alleged by the plaintiff. The learned Counsel further submitted that none of the endorsements made on the reverse of Ex.A1 were marked on the side of the plaintiff. Hence, the trial Court ought not to have believed the case of the plaintiff.

13. The further submission of the learned counsel is that the third condition in Ex.A1 will arise on fulfillment of condition Nos. 1 and 2. But the trial Court erred in reading condition No. 3 of Ex.A1 in isolation by holding that Ex.B1 and Ex.B2 Power of attorneys were executed in pursuance of this



condition. He would further submit that the sale made under Ex.B3 dated 05.05.2010 is valid, which was made after lapse of the agreement dated 03.11.2009. But, the trial Court failed to consider the same. The trial Court ought not to have assumed the endorsements made on the reverse of Ex.A1 to be true, without such endorsement being marked. The sequence of events will reveal that, there has been no delay on the part of the appellants/defendants and the delay can be attributed only to the plaintiff, who has shown no evidence of his readiness and willingness to perform his part of contract from the date of agreement till the date of suit. Without any documentary evidence to prove, the trial Court erred in giving a finding that the plaintiff was always ready and willing to perform his part of contract. In fact, the plaintiff though filed a memo into the Court that he was ready to deposit the balance sale consideration, he failed to do so. Though under Ex.A2 notice dated 18.06.2010, sale agreement has been cancelled, the plaintiff filed the above suit only on 03.02.2011, which shows laches on his part.

14. The learned counsel further submitted that in a suit for specific



performance of contract, the continuous readiness and willingness on the part of the plaintiff is condition precedent to the grant relief of specific performance. Right from the date of the execution till the date of the decree, the plaintiff must prove that he is ready and has always been willing to perform his part of the Contract. This circumstance is always material and relevant and is required to be considered by the Court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff was ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. Where the plaintiff failed to prove that he has sufficient means to purchase the property and failed to pay the consideration money within the stipulated date fixed by the Court would show that the plaintiff was not ready and willing to perform his part of Contract.

15. The learned counsel also submitted that, in the present case, though the plaintiff has filed only a memo for depositing the balance sale consideration, he failed to deposit the same from the date of filing the suit till



the date of decree.

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16. The learned counsel further submitted that the plaintiff failed to establish that he was ready and willing to perform his part of contract, which is a basic condition for the grant of specific performance. The plaintiff herein is not entitled to the relief of specific performance. To support his contention, the learned counsel appearing for the appellants/defendants has relied upon the following decisions:

- 1. *N.P.Thirugnanam vs. Dr.R.Jagan Mohan Rao* [1995 (5) SCC 115]**
- 2. *His Holiness Acharya Swami Ganesh Dassji vs. Sita Ram Thapar* [(1996) 4 SCC 526]**
- 3. *B.Vijaya Bharathi vs. P.Savitri* [(2018) 11 SCC 761]**

17. On the other hand, the learned counsel appearing for the respondents/plaintiffs would submit that the original plaintiff was always ready and willing to perform his part of agreement. But, the defendants were not ready to discharge their obligations in terms of the agreement. The conduct of the defendants in taking the false plea has to be taken into account while decreeing or denying the decree for specific performance. He would



contend that the delay in filing of suit, after accrual of cause of action cannot be inferred against the plaintiff that he was not ready and willing to perform his part. He would further submit that the relief of specific performance, which is governed entirely by the principles of equity in England, must be considered in India in the light of the statutory frame work in which it has been cast.

18. To support his contention, the learned counsel has relied upon the decision of the Hon'ble Supreme Court in ***R.Lakshmikantham vs. Devaraj [(2019) 8 SCC 62]*** and ***Silvey vs. Arun Varghese [(2008) 11 SCC 45]***.

19. Heard on both sides and perused the records.

20. Based on the above submissions, the following points arise for consideration:-

1. Whether the trial Court is right in granting the specific performance of contract in favour of the plaintiff?



2. *Whether the plaintiff proved his readiness and willingness to perform his part of contract?*

3. *Whether this appeal can be allowed or not?*

21. The undisputed facts are as follows:-

a). On 04.11.2008, the defendants and the plaintiff have entered into a sale agreement in respect of the suit properties for a sale consideration of Rs.14,79,250/-

b). On the same day, the plaintiff paid a sum of Rs.50,000/- as advance.

c). The time fixed for the performance of the contract one year i.e.on or before 03.11.2009.

22. This suit is based on sale agreement dated 04.11.2008 marked as Ex.A1 entered into between the plaintiff and the defendants by receiving a sum of Rs.50,000/- as advance by the defendant. The total agreed sale price is Rs.14,79,250/-. The time for performance of contract is fixed as one year



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i.e.on or before 03.11.2009. The execution of Ex.A1 sale agreement dated 04.11.2008 is admitted by the defendants. A perusal of Ex.B1 and Ex.B2, it would reveal that the plaintiff and the defendants have agreed for the execution of above documents as per the 3rd condition mentioned in Ex.A1 sale agreement. In the above documents, the plaintiff stood as witness. The 1st defendant D.W.1, during his cross examination, also admitted the endorsment made in Ex.A1 sale agreement. D.W.1 also admitted that he had sold the property mentioned in Ex.B3 independently on his own accord. Therefore, from the evidence of D.W1, it is understood that without the knowledge of the plaintiff, the defendants have sold 2280 sq.ft. of land to one Mayili for Rs.75,500/- on 05.10.2010 under Ex.B3 Therefore, the above sale would not bind the plaintiff.

23. Moreover, as per the sale agreement, the defendants have to produce the original title deeds to the plaintiff. The defendants failed to produce the original title deeds pertaining to the suit properties, to the plaintiff, till date. Though the defendants contend that the plaintiff agreed to



pay the stamp duty after the execution of Ex.A1 for the impounded

documents, the same is not mentioned in Ex.A1 sale agreement. If really the

plaintiff has agreed to it, the same would have been incorporated in the sale

agreement. Therefore, the defendants, without producing the original title

deed and without taking any steps to release the original title deeds could not

expect the plaintiff to perform his part of contract. Though the defendants

admitted that they had received the part of sale consideration by making

endorsements in the sale agreement, failed to receive the title deeds from the

registering authority. Moreover, the 1st defendant D.W.1 himself admitted in

his cross examination that in order to extract more money, he has delayed the

execution of sale deed and in spite of the fact that the plaintiff was ready to

tender the balance amount, he was not ready to execute the sale deed.

Therefore, from the above findings, the conduct of D.W.1, who is the 1st

defendant in the suit is only to extract more money and that he was not ready

to execute the sale deed. D.W.1 has clearly deposed that he has not executed

the sale deed in favour of the plaintiff and has voluntarily not paid the balance

stamp duty to receive the original title deed, though time was fixed for the

performance of contract. The conduct of the parties effecting subsequent sale



of portion of the suit properties to the third parties, it has to be presumed that the time is not the essence of contract.

24. Therefore, the conduct of the defendants in taking false plea that the plaintiff was not never ready and willing to perform his part of contract has to be taken into account. On facts, it is seen that the since the defendants failed to produce the title deed, the plaintiff in spite of tendering part of the sale consideration, was unable to perform his part of contract. However, the materials on record would go to show that only the defendants were not ready to perform their obligations in terms of the agreement and also not ready to conclude the sale transaction within the stipulated period. Therefore, though there was a delay in filing the suit by the plaintiff after accrual of cause of action. However, the suit was filed within the period of limitation. Such said delay cannot be inferred against the plaintiff that he was not ready and willing to perform his part of contract. Therefore, the arguments put forth by the appellants/defendants that the plaintiff was never ready and willing to perform his part of contract is unsustainable.



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25. The fact that the plaintiff has not deposited the balance sale consideration cannot be construed that the plaintiff had no financial capacity to pay the consideration. The plaintiff has also filed a memo seeking direction from the Court for depositing the balance sale consideration, which is sufficient to show that the plaintiff has financial capacity to pay the balance sale consideration. Since the D.W.1 himself admitted during his cross examination that Ex.B3 sale transaction was done without the knowledge of the plaintiff, the said transaction does not bind the plaintiff. Therefore, the contention of the defendants that the suit filed without seeking cancellation of Ex.B3 sale is unsustainable. Even in the cases referred to by the parties, the conveyance of the property was known to the plaintiff therein. Therefore, the said cases are not applicable to the facts of the present case.

26. This Court does not find any infirmity or perversity in the findings of the Court below. Accordingly, the judgment and decree passed by the IV Additional District Munsif, Erode District at Bhavani in O.S.No.16 of 2011



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dated 30.04.2015 is thereby confirmed. Accordingly, this appeal suit is dismissed. No costs.

31.01.2024

mac/vsn
Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

To
The IV-Additional District Court, Erode District at Bhavani.



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K.GOVINDARAJAN THILAKAVADI, J.

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PRE- DELIVERY JUDGEMENT MADE IN

Appeal Suit.No.511 of 2015

31.01.2024