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S.A. No.1826 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.1826 of 2004

and

C.M.P.No.14386 of 2004

V.Narayanasamy Reddy (died)
2.N.Shakuntala ammal
3.N.Gandhimathi
4.N.Kumar
5.N.Giri
6.N.Balaji
7.S.Gayathri
8.Jayanthi
9.N.Anandhan
10.Sumathi

... Appellants

(Appellants 2 to 10 B/R as Lr's of the deceased sole appellant viz.V.Narayanasamy Reddy vide Court order dated 10.01.2022 made in CMP.Nos.19038, 19040 & 19041 of 2021 in S.A.No.1826 of 2004 (JNBJ).

Vs

1.K.Babu Reddy
2.V.Kannan (Died)
3.K.Latha
4.K.Prabhu

... Respondents



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(R2 died, RR3 & RR4 are brought on record as LR's of deceased Rs vide order of Court dated 03.02.2023 made in CRP.No.12584 & 12586 of 2022 in S.A.No.1826 of 2004 (RHJ).

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree passed in A.S.No.30 of 2002 on the file of Principal District Judge, Vellore dated 17.03.2003 in confirming the decree and judgment passed by the learned Sub-Judge, Ranipet in O.S.No.248 of 1991 dated 29.11.2001.

For Appellants	:	M/s.D.Malarvizhi
For R2	:	Died
For R3 & R4	:	Mr.S.Sai raman

JUDGMENT

The appellants have filed this Second Appeal against the judgment and decree of the learned Principal District Judge, Vellore, in A.S. No. 30 of 2002, dated 17.03.2003, which confirmed the decree and judgment passed by the learned Sub-Judge, Ranipet, in O.S. No. 248 of 1991, dated 29.11.2001.

2. The appellant herein is the plaintiff in O.S. No. 248 of 1991 before the learned Principal District Judge, Vellore. The plaintiff filed a suit



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against the respondents 1 & 2 (defendants 1 & 2) for specific performance, seeking a direction to the 1st defendant to execute a sale deed as per the sale agreement dated 25.11.1987, or alternatively, to repay the advance amount with 25% interest, along with other consequential reliefs.

3. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

4. Before the trial court, the defendants contested the suit, stating that the 1st defendant is the absolute owner of the suit property and a close relative of the plaintiff. The 1st defendant entered into a sale agreement with the plaintiff on 25.11.1987 for a total consideration of Rs. 53,500/- and received Rs. 25,000/- as advance. The plaintiff was required to pay the entire balance amount within 11 months, after which the 1st defendant was bound to execute the sale deed. However, within the stipulated period, the plaintiff was not inclined to pay the balance amount. Since the 1st defendant was in urgent need of money, he issued a notice to the plaintiff, calling upon him to comply with the terms of the agreement. Even prior to that, there had been communication between the parties. In the letter sent by the plaintiff

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dated 21.08.1988, the plaintiff expressed his inability to pay the entire balance amount and indicated that, if the 1st defendant intended to sell the property to a third party, he would accept the return of the advance amount with interest. Due to the 1st defendant's urgent need of money, he sold the property to the 2nd defendant for valid consideration through a sale deed dated 11.11.1988. Therefore, the plaintiff was entitled only to receive the advance amount and not the relief of specific performance, as he had not been ready to comply with the terms of the agreement.

5. Before the trial court, on the plaintiff's side, PW1 and PW2 were examined, and Ex.P.1 to Ex.P.11 were marked. On the defendants' side, D.W.1 and DW.2 were examined, and Ex.B.1 to Ex.B.4 were marked. After considering both the oral and documentary evidence, the learned trial judge framed eight issues and held that a sale agreement had been executed on 11.11.1988 between the parties. However, the plaintiff had not paid the entire balance amount within the 11-month period. There was communication between the parties, including a telegram and written letters. In one letter, Ex.B3 dated 21.08.1988, the plaintiff expressed that he was



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unable to pay the entire balance amount and could only pay Rs. 10,000/-.

The plaintiff also stated that if the 1st defendant was in need of money, he could sell the property to a third party, with the understanding that the advance amount would be refunded with interest.

6. The said letter was appreciated by the learned trial Judge, who held that the plaintiff was not ready and willing to pay the entire balance amount within the stipulated period. Since the defendant was in urgent need of money, he sold the property to the 2nd defendant even prior to the filing of the suit. Therefore, the plaintiff is only entitled to a refund of the advance amount with interest, and the issues were answered accordingly. The plaintiff then preferred A.S.No.30 of 2002 before the Principal District Judge, Vellore.

7. The First Appellate Judge analyzed the evidence on record as well as the documents relied upon by both parties and finally held that there was an exchange of notices between the parties prior to the filing of the suit. According to the letter (Ex.B3), the plaintiff had expressed his inability to pay the entire balance amount and had also expressed his willingness to



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receive the advance amount if the defendants sold the property to a third party for a higher amount. Furthermore, considering Ex.A6, a notice issued by the defendants wherein they agreed to execute the sale deed within 10 days upon receiving the balance consideration, a reply was given by the plaintiff on 27.10.1988, calling upon the plaintiff to come to the Register Office on 11.11.1988. However, even on that day, the plaintiff was not ready to pay the entire amount. Therefore, the plaintiff's readiness and willingness to perform his part of the contract were not proved. The communication of letters between the parties also established that the plaintiff was not prepared to pay the entire balance amount. Consequently, the plaintiff is entitled only to the relief of the refund of the advance amount and not specific performance. The appeal was dismissed, confirming the findings of the trial court. The present appeal has now been filed by the appellants, challenging the said findings.

8. The learned counsel for the appellants/plaintiff submitted that both the Courts below failed to take note of the fact that the plaintiff owned 40 acres of land and had sufficient means, which established that he was



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always ready and willing to perform his part of the contract. Since time is not the essence of the contract, the courts below failed to appreciate this aspect and erroneously concluded that the plaintiff did not express his willingness to comply with the terms of the agreement within the stipulated period. The lower courts overlooked the exchange of notices issued by the plaintiff at the earliest point and wrongfully declined to grant the relief of specific performance as prayed for. Therefore, the counsel prayed to set aside the findings of the lower courts as erroneous.

9. Furthermore, the counsel submitted that the plaintiff had gone to the Register Office on 11.11.1988, but the defendant failed to appear, and this was not properly appreciated by the courts. Additionally, DW2 (the 2nd defendant) is not a *bona fide* purchaser, as there was already a sale agreement in existence between D1 and the plaintiff. However, the Courts below failed to appreciate this aspect. Therefore, the counsel prayed to allow the second appeal.

10. The Second Appeal was admitted on the following Substantial Questions of Law.

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"(a) Whether the time is essence of the contract?

(b) Whether Ex.A3 to A.10 and B.1 to B.4 had not established the readiness and the willingness on the part of the plaintiff to perform his part of contract?

© Whether the plaintiff is not entitled to the benefit of section 16(c) Explanation I of the Specific Relief Act, to deposit the balance amount whenever Court calls upon him to deposit ? and

(d) Whether D2 is bona fide purchaser for value, and whether he is entitled to that benefit when he admits that he had knowledge about the existence of the agreement - Ex.A1.?"

11. The learned counsel appearing for the respondents submitted that the plaintiff was not ready and willing to perform his part of the contract by paying the entire balance of the sale consideration, and he expressed this through the letter (Ex.B3) dated 21.08.1988. Thus, the Courts below rightly held that the plaintiff was not ready and willing to perform his part of the contract, therefore, he is not entitled to the relief of specific performance, and the judgment requires no interference by this Court. Admission is the



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best evidence, and the counsel prays to dismiss the appeal as having no merit.

12. Considering the submissions of both sides, it is an undisputed fact that there was a sale agreement between the plaintiff and the 1st defendant on 25.11.1987. It is also admitted that both parties were close relatives. As per the terms of the agreement, the plaintiff paid an advance amount of Rs. 25,000/-, and the balance amount of Rs. 28,500/- was to be paid within 11 months from the date of the agreement. Time was not treated as the essence of the contract, as inferred from the conduct of the parties. The 1st defendant, being in need of money, requested the plaintiff, who is his uncle, to complete the sale deed by paying the balance amount, as evidenced by notice Ex.A5. Even prior to that letter dated 12.10.1988, there was a letter written by the plaintiff, marked as Ex.B1 to Ex.B4, on the side of the defendants/respondents.

13. As per the terms of the contract, both parties were bound to comply with the terms, and the stipulated period of 11 months ended on



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25.10.1988. Before this stipulated period, the plaintiff wrote letters to the defendants, marked as Ex.B1 to Ex.B3, dated between April and October 1988. Ex.B3, a letter dated 21.08.1988, reveals that the plaintiff mentioned a family dispute between himself and the mother of the 1st defendant (his sister). The plaintiff expressed that he was inclined to pay only Rs.10,000/- of the balance amount and proposed to execute a bond for the remaining amount. He further stated that if the 1st defendant was unwilling to accept this, he had no objection to the property being sold to a third party for a higher value, and he requested the return of his advance payment of Rs.25,000/- from the proceeds of the sale.

14. Within the stipulated period of 11 months, the plaintiff was unable to pay the balance amount and had no objection to the sale of the property to a third party, while expressing willingness to receive his advance amount back. Thus, the contents of Ex.B3 clearly reveal that the plaintiff was not in a position to pay the full balance amount and was prepared to allow the sale to a third party. Following these communications, the 1st defendant, who was in need of funds to purchase property in Bangalore, sold the property to



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the 2nd defendant, which led to the filing of the present suit.

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15. The plaintiff's intention, as clearly expressed in his letter (Ex.B3) to the 1st defendant, proves that he was not ready and willing to perform his part of the contract within the stipulated period. The facts and circumstances demonstrate that the 1st defendant was in need of money, making time the essence of the contract, which the plaintiff failed to comply with. The Courts below rightly observed this, and no interference is needed by this Court. Accordingly, the question of law 1 is answered.

16. As per Ex.B3, the plaintiff expressed that he was unable to mobilize the full balance amount and could, at most, pay Rs.10,000/-, agreeing to execute a bond for the remaining amount due to insufficient funds. This clearly shows that the plaintiff was not always ready and willing to perform his part of the contract. Therefore, the other documents, particularly the letters written by the plaintiff, further prove his lack of readiness and willingness, and the Courts below rightly appreciated this, answering question of law 2 accordingly. The plaintiff is not entitled to the benefit of Section 16(c) as Ex.B3 admits his willingness to allow the sale of



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the property to a third party for a higher value. Accordingly, the 2nd defendant purchased the property from the 1st defendant as a *bona fide* purchaser.

17. The appellant and the legal heirs of the 2nd defendant appeared before this Court. During the pendency of the proceedings, the 2nd defendant passed away, and his legal heirs contested the case. The plaintiff demanded a portion of the property instead of a refund of the advance, but the legal heirs of the 2nd defendant were not inclined to agree to this. Since they had long purchased the property, and the plaintiff, being a landlord owning about 48 acres of land, does not need a portion of the property, the claim for a portion of the land is not agreeable.

18. The Courts below rightly granted the relief of a refund of the advance amount of Rs.25,000/- with interest. However, considering the entire facts and circumstances, the appellant approached this Court seeking relief of specific performance by filing the suit in 1991. Having stood before this Court for all these years, this Court is inclined to award 18% interest on



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the advance amount of Rs.25,000/-, along with other court expenses. The respondents are directed to pay a total sum of Rs.2 lakhs (Rupees Two Lakhs only) to the appellant within a week from the date of receipt of a copy of this order.

19. Today when the matter taken up for hearing under the caption “for pronouncing Judgement” the learned counsel for the respondent submitted a Demand Draft (DD) for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) and to that effect the copy of the Demand draft is also enclosed. Accordingly, the findings of the Courts below are confirmed, and the Second appeal is dismissed as devoid of merits. Consequently, connected miscellaneous petition is closed. No costs.

19.10.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order
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To
1. The Principal District Judge, Vellore
2. The Sub-Judge, Ranipet

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

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T.V.THAMILSELVI, J.

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