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S.A. No.184 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2024

CORAM:

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

S.A. No.184 of 2010

and

M.P.No. 1 of 2012

Mohan

... Appellant

Vs.

Ayyanarappan @ Ranganathan (died)

2. Saraswathy Muthaiyan

3. Vanidamany

4. Anandavally

5. Poonkuzhali

6. Anandarajan

(Respondents 3 to 6 are brought on record as Legal Representatives of deceased 1st respondent viz., Ayyanarappan @ Ranganathan vide Court order dated 10.03.2022 made in C.M.P.Nos.15679 15681, 15687 and 15682 of 2021 in S.A.No.184/2010)

.. Respondents



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PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 22.04.2009 passed in A.S.No.45 of 2007 on the file of III Addl. Distict Judge, Pondicherry confirming the judgment and decree dated 23.03.2005 passed in O.S.No.6 of 1999 on the file of Addl. Sub-Judge, Pondicherry.

For Appellants : Mr.R.Subramanian

For Respondents : Mr. S.Kaithamalai Kumaran
for R2

Mr.E.Anbarasan for R4

R1 -died

R3, R5 and R6 – batta due

JUDGMENT

The appellant, who is unsuccessful plaintiff, who filed the suit for the relief of specific performance against the respondents/defendants before the trial court in O.S. No. 6 of 1999 on the file of Addl. Sub-Judge, Pondicherry and the same was dismissed as he has not proved his claim. Against which, he preferred an appeal in A.S.No.45 of 2007 on the file of



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III Addl. District Judge, Pondicherry and the same was also dismissed confirming the findings of the trial court. Now, challenging the concurrent findings of courts below, the plaintiff preferred this Second Appeal.

2. Brief facts of the case is that the plaintiff entered into a sale agreement with the 1st defendant on 08.06.1995 for sale of 40 kuzhies of wetland in R.S.No.32/4B and 39/14 for due consideration at the rate of Rs.25,000/- per kuzhi and the defendant received a sum of Rs.1,00,000/- as advance. As per the terms of agreement, within three months, the 1st defendant has to produce title deeds and nil encumbrance certificate and the plaintiff has to perform his part by paying balance amount. On such compliance of the terms, the 1st defendant has to execute the sale deed in his favour. However, immediately after the said agreement, the plaintiff came to know that the 1st defendant is having only half share in the property and the remaining half share belong to his brother Govindasamy. Since he died, his legal heirs inherited his half share, to whom, he entered into a similar agreement dated 03.07.1995 for a sale of remaining half share. Thereafter, the plaintiff was all along ready to perform his part by paying balance



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consideration. But, the 1st defendant failed to convey his half share. Hence, he issued a notice on 09.05.1998 calling upon him to execute the sale deed, but he gave a reply with false allegations. Hence, the suit was filed.

3. The 1st defendant would submit that the plaintiff has no right to modify the sale agreement unilaterally and asked for specific performance over half of the property based on the sale agreement, besides, he has no sufficient means to pay the said sale consideration. Therefore, he has not taken any steps to get the sale deed within a stipulated period. In fact, on 08.06.1995, nearly after 3 years from the date of agreement and at the fag end of limitation period, he sent a notice as if he is ready to pay the sale amount, however, since number of years lapsed, the value of property is increased to Rs.75,000/- per kuzhi. Moreover, three months period was stipulated in the contract, but nearly after 3 years and two months later, the plaintiff approached the court for the relief as such is highly belated one and he is not entitled for any relief. The 2nd defendant, who is purchaser of the property submitted that on 04.06.1998, he purchased half of suit property from the 1st defendant for a valid consideration and he was not aware of



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alleged sale agreement and he is claiming himself as a bonafide purchaser.

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4. Before the trial court, three issues were framed. The foremost issue is whether the suit agreement is not enforceable under law and secondly whether the plaintiff was not ready and willing to perform his part of contract though the defendant was ready and willing to complete the sale transaction.

5. Considering the oral and documentary evidence on record, the trial judge held that the plaintiff is not entitled for the relief of specific performance for the reason that the suit has been filed three years after the agreement and the inaction on the part of the plaintiff is not entitled him for the said relief. Furthermore, both the courts below also held that if undivided half share is permitted to be part of the suit property, it will lead to complications and it is also inequitable to enforce such a specific performance in view of the fact that price value became higher as on date. Therefore, the plaintiff is not entitled for the said relief. Moreover, he has also not proved that he is ready and willing to perform his part of agreement.



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Accordingly, the suit was dismissed. Against which, the appeal was preferred by the plaintiff, which was also dismissed, thereby the findings of the trial court was confirmed.

6. The learned counsel for appellant argues that both the courts below failed to appreciate the fact that though the suit was filed with the delay, it was filed within three years of limitation, but it was not properly appreciated by the courts below. Both the courts below also failed to consider the fact that the suit property was sold by the 1st defendant to the 2nd defendant after issuance of lawyer's notice by the plaintiff. Further, the courts below failed to take note of the fact that the plaintiff claiming relief only in respect of half share of 1st defendant, who entered into sale agreement with him and the same was also admitted by the 1st defendant. In such circumstances, the courts below erred in dismissing the claim of plaintiff, which needs interference of this court. Hence, he prayed to set aside the findings of courts below and allow this Second Appeal. In support of his contentions, he relied the ratio laid down by the Apex Court in the case of ***R.Lakshmikantham vs. Devaraji*** reported in ***2019 (8) SCC 62***, wherein in para 11, it has been



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held as follows :-

*“11. The High Court order is not correct in stating that readiness and willingness cannot be inferred because the letters dated 18.12.2002 and 19.12.2002 had not been sent to the defendant. The High Court also erred in holding that despite having the necessary funds, the plaintiff could not be said to be ready and willing. In the aforesaid circumstances, the High Court was also incorrect in putting a short delay in filing the Suit against the plaintiff to state that he was not ready and willing. In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff – See **Mademsetty Satyanarayana v. G. Yelloji Rao and others AIR 1965 Supreme Court 1405 (paragraph 7)** which reads as under:*

“(7) Mr. Lakshmaiah cited a long catena of English decisions to define the scope of a Court’s discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems-English and Indian-qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of



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limitation for instituting a suit for the said relief and, therefore, mere delay – the time lag depending upon circumstances – may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.”

By relying the aforesaid proposition, learned counsel would argue that mere filing of the suit at the end of period of limitation itself is not a ground to decline the relief of specific performance, but the courts below erroneously appreciated the said fact when the time was not essence of contract.

7. By way of reply, the learned counsel for 4th respondent would submit that the time to perform the agreement was fixed as three months from the date of sale agreement, but within the said stipulated period, the plaintiff has not expressed his readiness and willingness and at the fag end of three years period, he issued a notice, which itself shows that he was not ready and willing to perform his part of agreement. Furthermore, there is no short delay on his side as argued on the side of appellant and also contended



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that the courts below rightly declined the relief in favour of plaintiff. To support their contentions, they relied the ratio laid down in the authority by the Apex Court in the case of ***U.N.Krishnamurthy (since deceased) their LRs. vs. A.M.Krishnamurthy*** reported in ***2022 Live Law (SC) 588***, wherein in para 47, it has been held as follows :-

“47. In this case, the Respondent Plaintiff has failed to discharge his duty to prove his readiness as well as willingness to perform his part of the contract, by adducing cogent evidence. Acceptable evidence has not been placed on record to prove his readiness and willingness. Further, it is clear from the Respondent Plaintiff’s balance sheet that he did not have sufficient funds to discharge his part of contract in March 2003. Making subsequent deposit of balance consideration after lapse of seven years would not establish the Respondent Plaintiff’s readiness to discharge his part of contract. Reliance may be placed on Umabai v. Nilkanth Dhondiba Chavan (supra) where this Court speaking through Justice SB Sinha held that deposit of amount in court is not enough to arrive at conclusion that Plaintiff was ready and willing to perform his part of contract. Deposit in court would not establish Plaintiff’s readiness and willingness within meaning of section 16(c) of Specific Relief Act. The relevant



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part of the judgment is reproduced below: -

“45. ...Deposit of any amount in the court at the appellate stage by the plaintiffs by itself would not establish their readiness and willingness to perform their part of the contract within the meaning of Section 16(c) of the Specific Relief Act...”

8. Considering both side submissions, the fact reveals that sale agreement between the parties is undisputed one and the period to perform the agreement was fixed as three months, but there is no record on the side of plaintiff to establish that he was ready and willing to perform his part of agreement within a stipulated period of three months. Admittedly, he issued a notice only at the fag end of lapse of three years and the suit was also filed, but there is no explanation offered on his side for inordinate delay. He further contended that half share of property was sold, but for the remaining half share, he has to take steps to get the sale deed from the 1st defendant. But, no steps were taken nor there is no evidence to show his readiness and willingness to perform his part according to the said agreement. Even after filing of the suit, it was allowed for dismissal for three months and



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thereafter, the suit was restored. When the time is stipulated in the contract itself, it has to be given certain importance and other surrounding circumstances are also to be taken into consideration. For that, learned counsel for defendants relied on the ratio laid down in the authority reported in **1993 (1) SCC 519**, wherein the Apex Court held in para 25 as follows :-

“It is clear that in the case of sale of immovable property, there is no presumption as to time being the essence of the contract. Even if it is not the essence of the contract, the court may infer that it is to be performed in a reasonable time. If the conditions are (evident?): (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract.”

9. On considering the fact that the value of property is now became high and the plaintiff ought to have expressed his readiness within a period of three months, but he failed. Therefore, the ratio laid down by the Apex Court in the case of **R.Lakshmikantham vs. Devaraji** reported in **2019 (8) SCC 62** is not squarely applicable to the facts of the case and the courts



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below also rightly appreciated the same, which needs no interference. On the contrary, the learned counsel for appellant/plaintiff would submit that the 1st defendant having half share in the suit property, for that he has not submitted the encumbrance clearance certificate within a period of three months, so, the plaintiff has not issued any notice expressing his readiness to perform his contract. When he approached the court for claiming the relief of specific performance, he has to prove his readiness and willingness, but he has not called upon the 1st defendant to perform his part of contract.

10. On seeing all these facts, it reveals that there is no proof to prove the fact that the plaintiff was ready to perform his part of contract within a stipulated period of three months and also the records reveals that he issued a notice three years later expressing his readiness and willingness, thereby there was an inordinate delay in filing the suit. Hence, the inaction on the side of plaintiff disentitles him for the relief of specific performance.



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11. Admittedly, the relief of specific performance is a discretionary one and the courts below is not bound to grant such relief merely because it is lawful to do so. So also, the discretion must not be arbitrary, but sound reasonable guided by judiciary principles. Therefore, the courts below rightly appreciated the facts and declined the relief in favour of plaintiff, which needs no interference. Accordingly, the question of law (1) is answered.

12. When the plaintiff failed to establish the he is always ready and willing to perform his part of agreement, he is disentitled for the said relief. Thereafter, he has no right to raise objections in respect of purchase made by the 2nd defendant from the 1st defendant as a bonafide purchaser. The said fact was also rightly appreciated by the courts below. Accordingly, the question of law (2) is answered.

13. When the plaintiff fails to perform his part of obligation as well as failed to prove his readiness, he shall not call upon any reason from the



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defendants, thereby the findings given by the courts below is sustainable one.

Accordingly, the question of law (3) is answered.

14. With the aforesaid observations, this Second Appeal is dismissed as no merit and confirmed the findings of courts below. The agreement is unregistered one, however, a sum of Rs.1 lakh was paid as an advance. Therefore, both the defendants are jointly and severally liable to refund the advance amount of Rs.1,00,000/- together with 6% interest from the date of agreement till realisation to the plaintiff. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To
The III Addl. District Judge, Pondicherry.



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T.V.THAMILSELVI, J.

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Pre-delivery judgment in
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