



A.S.No.271 of 2018

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2024

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR JUSTICE C.KUMARAPPAN

A.S.No.271 of 2018
and
C.M.P.Nos.5790 of 2018 & 19395 of 2022

R.Hemanathan

...Appellant

Vs.

1.P.Padmanabhan (Died)

2.Maniyammal

3.E.Parimala

4.Ammu Elencheliam

5.Parthiben

[R1 died, R2 to R5 are brought on record as LR's of
the deceased 1st respondent vide order dated
27.10.2022 made in C.M.P.Nos.16397, 16399 and
16401 of 2022]

...Respondents



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Prayer: Appeal filed under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure, 1908, praying to set aside the judgment and decree dated 21.09.2017 passed in O.S.No.388 of 2006 on the file of the Additional District Judge, Chengalpattu.

For Appellant : Mr.V.Srikanth
For Respondents : Mr.R.Prabhu

J U D G M E N T

*(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)*

For the sake of convenience, the parties are referred to as per their rank in the suit.

2. The plaintiff, in O.S.No.388 of 2006 on the file of the Additional District Court, Chengalpattu, is on appeal aggrieved by the dismissal of his suit for specific performance.

The case of the plaintiff sans frills is as follows:-

3. The plaintiff entered into an agreement of sale with the defendant on 04.11.2004 as power agent of his sister Sujatha agreeing to purchase the



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suit property for a total consideration of Rs.25,50,000/-. An advance of Rs.5,00,000/- was paid on the date of agreement and it was agreed that the sale should be executed within a period of three months. Since the sale could not be completed within the said period the parties entered into a second agreement on 10.02.2005 on the same terms and conditions. The advance paid under the first agreement was treated as the advance paid under the second agreement also. There was a third agreement on 01.05.2005. This time it was between the plaintiff and the defendant. But, the advance paid under the earlier two agreements was retained and the sale consideration was also the same.

4. The third agreement which is dated 01.05.2005 provided that the sale shall be completed within a period of 90 days viz., on or before 31.07.2005. The plaintiff laid the suit on 09.10.2006 contending that the plaintiff prepared a draft sale deed and went to the Sub-Registrar's Office in the first week of August 2005, he was informed that there was an endorsement made with reference to an order of injunction, which has been obtained by one Amirtham and Mohana, wife and daughter of



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Radhakrishnan in O.S.No.30 of 2003 against the vendor of the defendant.

Therefore, he could not take steps to have the sale deed in his favour. He would also plead that the defendant took steps to implead himself in the appeal, that was pending by that time in A.S.No.39 of 2005 and after impleading, the appeal was allowed and decree was set aside and the matter was remitted to the trial Court. The plaintiff would also plead that the suit had nothing to do with the plaintiff or the defendant. He would further plead that the defendant issued a notice on 12.06.2006 cancelling the agreement and forfeiting the advance that was paid. After receipt of the said notice, the plaintiff sent a reply on 30.08.2006 and followed it with a suit on 09.10.2006.

5. The defendant resisted the suit mainly contending that the plaintiff was never ready and willing to perform his part of the contract. The plaintiff never came forward to pay the balance of sale consideration and take the sale deed. The defendant would plead that time is the essence of the contract and since the plaintiff was not ready and willing to pay the balance of sale consideration on 31.07.2005, which is the last date for performance,



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he is not entitled to specific performance. The defendant would also contend that the cloud caused by the third parties cannot be a ground for the plaintiff to delay performance. It was also contended that the plaintiff cannot take advantage of the pending suit inasmuch as neither the plaintiff nor the defendant were parties to the said suit on 31.07.2005.

6. On the above pleadings, the learned trial Judge framed the following issues:-

1)Whether the plaintiff is entitled to specific performance as claimed?

2.Whether the plaintiff was ready and willing to perform his part of the contract?

3)Whether the time is essence of the contract?

4)To what other relief the plaintiff is entitled to?

7. At trial, on the side of the plaintiff, the plaintiff examined himself as PW1, one more witness was examined as PW2 and Exs.A1 to A12 were marked. On the side of the defendant, the defendant was examined as DW1 and Exs.B1 to B6 were marked.



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8. The trial Court on a consideration of the evidence on record concluded that the plaintiff has not proved his readiness and willingness. On the said finding, the learned trial Judge dismissed the suit for the relief of specific performance and granted the alternate relief of refund of advance. [It is also stated that the advance money with interest had been deposited to the credit of the suit soon after the decree.]

9. We have heard Mr.V.Srikanth, learned counsel appearing for the appellant and Mr.R.Prabhu, learned counsel appearing for the respondents.

10. Mr.V.Srikanth, learned counsel appearing for the appellant would vehemently contend that the trial Court was not right in dismissing the suit on the ground that the plaintiff was not ready and willing to perform his part of the contract. He would also rely upon the recent pronouncement of the Hon'ble Supreme Court in *Siddamsetty Infra Projects Pvt. Ltd. Vs. Katta*



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Sujatha Reddy and others reported in **2024 SCC OnLine SC 3214**, where the Hon'ble Supreme Court while allowing the review petition concluded that Section 10 of the Specific Relief Act as amended is retrospective and would apply to the pending proceedings also.

11. An application has been taken out by the plaintiff/ appellant in CMP.No.19395 of 2022 under Order 41 Rule 27 of the Code of Civil Procedure, seeking leave to produce certain documents. The documents sought to be produced are Bank Passbook of the plaintiff's sister's Savings Bank account with State Bank of India and information obtained from the Sub-Registrar's Office under the Right to Information Act.

12. In the affidavit filed in support of the said application, the plaintiff would contend that these documents would go to show the readiness and willingness on the part of the plaintiff and the inability of the defendant / respondents to execute the sale deed in view of the order of injunction granted by the Court in O.S.No.30 of 2003.



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13. Resisting the said application, Mr.R.Prabhu, learned counsel appearing for the respondent would submit that there is no explanation for non-production of these documents before the trial Court. He would point out that even if these documents are received in evidence the contents of the documents may not change the position, since these documents would not be sufficient to show the readiness and willingness of the plaintiff. According to the learned counsel, the Bank Passbook would at best show that the plaintiff had the money, but, that by itself is wholly insufficient to conclude that he was ready and willing to perform his part of the contract.

14. We have considered the rival submissions.

15. On the submissions made by the learned counsel on either side, the following points arise for determination:

1) Whether the plaintiff could be said to have proved his readiness and willingness to have the sale deed executed within the period agreed to under the agreement?

2) Whether the documents that are sought to be produced could be received in evidence?



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3) Whether those documents by themselves would be sufficient to prove the readiness and willingness on the part of the plaintiff?

Point No.2:-

16. The documents that are sought to be produced are Bank Passbook for the relevant period and the information obtained from the Sub-Registrar's Office under the Right to Information Act. No doubt, the Bank Passbook would show that the plaintiff's sister had a sum of Rs.22,64,657/- in her Bank account at the relevant point of time. But, that by itself, as we have already observed, would not be sufficient to show that the plaintiff was ready and willing to perform his part of the contract.

17. The plaintiff in a suit for specific performance is required to prove that he has been always ready and willing to perform his part of the contract as per Section 16(c) of the Specific Relief Act. Mere possession of funds would not amount to proof of willingness though it may prove readiness. The readiness and willingness is a state of mind, which will have to be



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proved by circumstantial evidence. The plaintiff must be able to demonstrate that he was ready to part with the money and take the sale deed within the time stipulated under the agreement. In the absence of such evidence, mere production of documents to show that the plaintiff was having money, cannot be held to be sufficient to prove that the plaintiff was willing to perform his part of the contract.

18. The second document that is sought to be produced is the information obtained under the Right to Information Act in they year 2022, which shows that there was some endorsement relating to a Court order made in O.S.No.30 of 2003. It is the admitted case of the parties that neither the plaintiff nor the defendant were originally parties to the said suit. Subsequently, the defendant got impleaded in the appeal against the decree. Therefore, the said document, by no means can be considered as an embargo on the patries to perform their part of the contract.

19. We therefore find that these documents cannot be of any help to us in deciding the appeal. Hence, we do not find any reason to entertain



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these documents. Therefore, the application under Order 41 Rule 27 of the Code of Civil Procedure stands dismissed.

Point Nos.1 and 3:-

20. Section 16(c) of the Specific Relief Act imposes a personal obligation on the plaintiff to prove readiness and willingness to perform his part of the contract. The judgment of the Hon'ble Supreme Court relied upon by the learned counsel may not have any impact in the case on hand. Whether Section 10 is prospective or retrospective, the requirement under Section 16(c) still subsists. On amendment of Section 10, the discretion that was available to the Court to refuse performance on the ground that the defendant may be put to more hardship alone has been taken away. Other than that the requirement that the plaintiff should be ready and willing still subsists.

21. If we are to examine the evidence on record, we find that the plaintiff has not established his readiness and willingness. As per his own showing, the plaintiff came to know about the fact that there has been



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endorsement regarding registration of sale deeds in respect of the property in first week of August 2005. Thereafter, he kept quite. It was the defendant who issued the notice on 12.06.2006 complaining that the plaintiff has not been ready and willing to perform his part of the contract and therefore he is liable for failure of the contract. He had also stated that the plaintiff has forfeited the advance amount. Even after the receipt of this notice, the plaintiff kept quite for nearly 1 ½ month and issued a reply only on 30.08.2006. After issuing reply on 30.08.2006, the plaintiff filed a suit again after a considerable delay on 09.10.2006. No doubt, the suit has been filed within a period of 3 years, but that by itself would not relieve the plaintiff to prove the obligation of readiness and willingness. The only explanation that the plaintiff could offer for his silence for almost 1 year i.e., from 31.07.2005 to 30.08.2006 is that there was an endorsement made in the Registrar's Office prohibiting registration of documents. The plaintiff admits that he came to know about the prohibition in the first week of August 2005, but, till the defendant issued Ex.A7 notice on 12.06.2006, the plaintiff did not move his little finger. He chose to respond to the notice only after 1 ½ months on 30.08.2006. This by itself, in our considered



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opinion, would show that the plaintiff was not ready and willing to perform his part of the contract.

22. Though the plaintiff would claim that he was put in possession and he has effected improvement, in his proof affidavit, in his cross examination he has admitted that the defendant has been in possession of the property. The trial Court has considered the evidence in its entirety and has come to a conclusion that the plaintiff has not established his readiness and willingness and his silence between 31.07.2005 and 30.08.2006 would itself show that he was not ready and willing to perform his part of the contract. Despite his best efforts Mr.V.Srikanth, learned counsel appearing for the appellant is unable to persuade us to reach a different conclusion.

23. We therefore affirm the findings of the trial Court. The appeal and C.M.P.No.19395 of 2022 therefore fail and are accordingly **dismissed**. There shall be no order as to costs. Consequently, the other connected miscellaneous petition is closed.



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(R.S.M., J.) (C.K., J.)

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Index : No

Neutral Citation : No

Speaking order

To

The Additional District Judge,
Chengalpattu.



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C.KUMARAPPAN, J.

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