



S.A.No.442 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.442 of 2021
and
C.M.P.No.8571 of 2021

1. B.Grace Mani
2. A.D.Rajendira Babu

...Appellants

Vs

V.Rajendran

...Respondent

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 14.0.2019 made in A.S.No.10 of 2019 on the file of the Additional District Judge, Thiruvallur IV at Ponneri confirming the judgment and decree passed in O.S.No.93 of 2010 dated 30.11.2018 on the file of the Subordinate Judge, Ponneri.

For Appellants : Ms.P.Srividhya

For Respondent : Mr.E.Prabhu



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JUDGMENT

The defendants are before this Court challenging the concurrent judgment and decree that has been passed against them by the Courts below in a suit for specific performance.

2.The facts are briefly set out herein below and the parties are referred to in the same litigative status as before the trial Court.

PLAINTIFF'S CASE:

3. The plaintiff had originally filed the suit O.S.No.31 of 2009 on the file of the District Court, Thiruvallur, which was later transferred to the file of the Subordinate, Ponneri and re-numbered as O.S.No.93 of 2010 seeking specific performance of an agreement of sale entered into between him and the first defendant. It is his case that the suit schedule



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property is a house and site bearing Door No.13 Plot (4) in S.No.118/2, Ernavoor Village, Ambattur Taluk, Thiruvallur District measuring an extent of 1325 sq.ft within specified boundaries. The first defendant had entered into an agreement of sale on 13.03.2006 with the plaintiff agreeing to sell the suit property for a total sale consideration of Rs.5,50,000/-. On the date of the agreement of sale, she had received an advance of Rs.50,000/- . However, the agreement was signed on 17.03.2006. The plaintiff would submit that he was always ready and willing to perform his part of the contract. It is his further case that the time was never the essence of the contract. In the month of September 2006, the first defendant had received a further sum of Rs.1,00,000/-. The second defendant, who is the Power of Attorney of the first defendant under a deed dated 31.10.2006, had received a sum of Rs.4,00,000/- on behalf of the first defendant. Therefore, the plaintiff would contend that the entire sale consideration had been paid by him and the first defendant was put in possession of the property in the



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month of November 2006.

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4.The plaintiff would submit that he had developed the suit property by raising its level, as the site would often get water logged. Thereafter, he had put up new doors for the bathrooms, toilet and entrance room. He had also dug a bore well and fixed the motor and pump set. In addition to the above, he had also repaired the kitchen floor. For all these, he had spent considerable amounts. The plaintiff would further submit that he has paid the property tax in respect of the suit property on 17.02.2007 and 12.11.2007. The current bills were being paid by him as he was living in the suit property. In addition, the plaintiff was asked to pay the maintenance to the Brindavan Welfare Association.

5.The plaintiff would submit that as the market value of properties in the locality had increased, the defendant was not coming forward to execute the sale deed under one pretext or the other.



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Therefore, the plaintiff sent a legal notice dated 31.01.2009 demanding the execution of the sale deed. On 15.01.2009, the defendants had sent a reply admitting the execution of the sale agreement dated 13.03.2006 for Rs.5,50,000/-, but set up a second sale agreement for Rs.7,10,000/-. The plaintiff denied the alleged revised agreement. Further, the first defendant had stated that the plaintiff was a tenant in respect of the property which was denied by him. The first defendant had further stated that she had terminated the sale agreement vide her letter dated 10.04.2008. The plaintiff would submit that he was not aware of such a letter and de hors the same, the plaintiff would submit that the defendants cannot cancel the deed unilaterally, especially when the entire sale consideration had been paid by him and received by the first defendant. Further, huge amounts have been spent for the development of the property. The plaintiff would further submit that he is ready and willing to pay any reasonable amount to the defendants. The defendants had not come forward to execute the sale deed. Hence, the



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suit.

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WRITTEN STATEMENT OF THE DEFENDANTS

6.The defendants had filed a written statement *inter-alia*, denying the allegations made in the plaint except those that were admitted by them. The defendants would submit that initially, the first defendant had agreed to sell the suit property to the plaintiff for a sum of Rs.5,50,000/- as she was in urgent need of money and accordingly, an unregistered sale agreement was entered into between the two of them on 13.03.2006. This agreement was for a sum of Rs.5,50,000/- and a sum of Rs.50,000/- was paid as an advance on the very same day at the time of executing the sale agreement. Original documents were prepared. One document was retained by the plaintiff and the other was kept by the defendant.

7. Thereafter, on account of the escalation in the price of land, there was a renegotiation between the plaintiff and the first defendant.



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The plaintiff had agreed to purchase the suit property for a sum of Rs.7,10,000/- and another deed on the very same date i.e., 13.03.2006, was executed between the plaintiff and the defendant, but the deed was signed by the first defendant on 20.03.2006, after receiving a sum of Rs.50,000/- towards the advance amount instead of Rs.1,00,000/- as mentioned in the sale agreement. The balance sale consideration of Rs.6,10,000/- was to be paid and the sale registered within six months from the date of execution of the agreement. The two agreements are hereinafter referred to as 'the first agreement' and 'the second agreement'. At the time of execution of the second sale agreement for Rs.7,10,000/- , the plaintiff agreed to destroy the first sale agreement for Rs.5,50,000/-. The first defendant has also undertaken to destroy the same. Though he destroyed the first sale agreement, the plaintiff has retained the same and used it for filing the present suit and deliberately not making any mention about the second sale agreement in the suit. The defendants would further deny that, though in the



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second sale agreement, it has been stated that the first defendant had received an advance amount of Rs.1,00,000/-, only a sum of Rs.50,000/- was paid and the remaining sum of Rs.50,000/- was to be paid within three days from the date of agreement. However, this amount has not been paid to him. The first defendant would further submit that, except for a sum of Rs.50,000/-, no other amounts have been received by him. The defendants would contend that though he has been approaching the plaintiff with the request to conclude the sale deed, the plaintiff has been postponing the same and had stated that he would pay the balance sale consideration on obtaining the loan from the Bank.

8. Meanwhile on 31.10.2006, the first defendant had executed a registered general power of attorney in favour of the second defendant and had also empowered the second defendant to sell the suit property if the sale does not go through with the plaintiff. The plaintiff has



signed as a witness in this deed.

9. The first defendant would submit that after the execution of the sale agreement, the plaintiff had requested the second defendant to lease out the property for his residential purpose and had also assured the second defendant that he would comply with his part of the contract as soon as he obtained the loan from the bank. Since the plaintiff had already paid a sum of Rs.50,000/- as an advance, the second defendant had leased out the property to the plaintiff on a monthly rental of Rs.2,500/-. Even after the oral lease agreement, the plaintiff did not come forward to pay the sale consideration and execute the sale agreement. The plaintiff was also not paying the monthly rent for which the first defendant, through her general power attorney, has filed a R.C.O.P.No.26 of 2008 on the file of the District Munsif Court, Thiruvotriyur, for eviction on the ground of willful default. As on that date, a sum of Rs.82,000/- was due towards the arrears of rent.



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10. On 10.04.2008, the first defendant sent a letter to the plaintiff enclosing the demand draft of Rs.50,000/- and informed the plaintiff about the cancellation of the sale agreement dated 13.03.2006 for a sum of Rs.7,10,000/-. On 16.04.2008, the plaintiff had sent a letter alleging that he never executed a sale agreement for Rs.7,10,000/- on 13.06.2006, but had only executed a sale agreement for Rs.5,50,000/- on 13.03.2006 and agreed to pay the advance of Rs.50,000/- and stating that he had already paid Rs.1,00,000/- in the month of September 2006 to the first defendant and the remaining sale consideration to the second defendant. The plaintiff would submit that the second defendant was evading to execute the sale deed in spite of receiving the full sale consideration.

11. The first defendant would deny that the allegations that the



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plaintiff had paid the municipal taxes as well as the subscription to the welfare association. The plaintiff was making these allegations only to evade payment of the balance sale consideration of Rs.6,60,000/-. That apart, as per the oral lease agreement, he has to pay the electricity bills which he consumed and the service connection stands in the name of the first defendant. The plaintiff had also sent in his reply stated that he had not received the demand draft for Rs.50,000/- as mentioned in the letter sent by the first defendant. Immediately, the second defendant had given a letter to the bank and obtained a duplicate copy of demand draft cancelled on 17.10.2008. The defendant would submit that the plaintiff has never paid Rs.1,00,000/- in the month of September 2006 and the further sum of Rs.4,00,000/- to the second defendant his Power Agent. The plaintiff would submit that had the plaintiff paid the above amounts, he would have obtained the endorsement in the sale agreement itself. Therefore, the allegation that he had paid the balance sale consideration is totally false and there is



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no cause of action for filing the suit.

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12. Even in the counter to R.C.O.P.No.26 of 2008, the plaintiff had only contended that he had paid an advance of Rs.50,000/- and that he was ready and willing to perform his part of the contract. There was no reference to the payment of the sums of Rs.1,00,000/- and Rs.4,00,000/-as stated now. The defendants would further submit that the plaintiff had made an endorsement in the second agreement of sale extending the time for performing the contract by a further period of one month on 12.09.2008. This would clearly indicate that it was only the second agreement dated 13.03.2006 for the sum of Rs.7,10,000/- that had been the concluded contract between the plaintiff and first defendant. The defendants would submit that the plaintiff has come to Court with unclean hands by suppressing the true details.



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TRIAL COURT

13.The trial Court, namely, Subordinate Judge, Ponneri had framed the following issues:

- 1. Whether the plaintiff is entitled to the relief of specific performance as prayed for?*
- 2. To what relief if any the plaintiff is entitled?*

14.On 28.11.2018, the following additional issues were framed by the trial Court:

(i) Whether it is true that the plaintiff paid the balance sale consideration of Rs.5,00,000/- as pleaded in by him.?

(ii) Whether it is true that there is second agreement dated 13.03.2006 between the plaintiff and the first defendant?



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(iii) Whether the second defendant is entitled to represent and depose on behalf of the first defendant in the capacity as Power Agent. ?

15.The plaintiff had examined himself as P.W1 and one Sandhiya as P.W2 and marked Exs.A1 to A7. The second defendant had examined himself as D.W1 and one Bose as D.W2 and Exs.B1 to B5 were marked. The learned Subordinate Judge, on considering the evidence, had held that the second sale agreement had not been proved by the defendants since the defendants had not marked the second sale agreement even in the rent control proceedings. Reference has been made only to the first agreement for Rs.5,50,000/- As regards the issue as to whether the plaintiff had paid the entire sale consideration, the learned trial Judge held that there is no proof to show that the plaintiff has paid the balance sale consideration as pleaded by him. The learned



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Judge had observed that the second defendant is not authorized to represent and depose on behalf of the first defendant as his Power Agent and the first defendant, who actually knows the case, has not chosen to enter the box. The learned Judge, despite coming to the conclusion that the plaintiff had not proved the balance amount of Rs.5,00,000/-, however, proceeded to decree the suit only on the ground that the defense was full of infirmities and discrepancies, which cannot be accepted. Therefore, the learned Judge proceeded to hold that the interest of justice would be defeated if the discretionary and equitable relief of specific performance is refused to the plaintiff.

LOWER APPELLATE COURT

16. Challenging the said judgment and decree of the trial Court, the defendants had preferred A.S.No.10 of 2019 on the file of the IV Additional District Judge Ponneri. The lower appellate Court, without



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applying its mind and without passing a speaking order on the grounds in appeal, proceeded to dismiss the appeal and confirmed the judgment of the trial Court. However, the appellate Court had also confirmed the fact the balance sale consideration was due by the plaintiff. Challenging the same, the second appeal has been filed.

17.Heard the learned counsels on either side and perused the materials available on record.

DISCUSSIONS:

18.Both the Courts below have totally disregarded the repeated judgments of the Hon'ble Supreme Court as well this Court stating that in the absence of proof of readiness and willingness adumbrated under Section 16(c) of the Specific Relief Act, a Plaintiff coming to Court seeking specific performance of an agreement of sale is not entitled to the same. The plaintiff has come to Court with the categorical case that



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on the date of the agreement of sale, a sum of Rs.50,000/- was paid as advance and a further sum of Rs.1,00,000/- was paid in the month of September 2006 to the first defendant and the balance sum of Rs.4,00,000/- was paid to the second defendant. In the pleadings, there are no details as to the date on which the alleged sum of Rs.4,00,000/- was paid to the second defendant. Even details as to date of which the sum of Rs.1,00,000/- was paid to the first defendant has not been stated. However, in the oral evidence, the plaintiff has come forward to state that the sum of Rs.4,00,000/- was paid on 31.10.2006 to the second defendant. The plaintiff has filed the suit for specific performance stating that the entire consideration has been paid by him, however, the following statement, in his cross examination on 15.10.2014, will totally expose the falsity of the plaintiff's case.

“செப்டம்பர் 2006ல் முதல் பிரதிவாதியிடம் ரூபாய் 1

லட்சம் கொடுத்தேன். 31.10.2006ல் இரண்டாம் பிரதிவாதியிடம்

ரூபாய் 4 லட்சம் செலுத்தினேன். மேற்படி இரண்டு



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தவணைகளில் பணம் செலுத்தப்பட்டதற்கு ஆவணம் ஏதும்
தாக்கல் செய்யவில்லை என்றால் சரிதான். கிரைய
ஒப்பந்தத்திற்கு பின்னர் முதல் தவணையாக ரூபாய் 1
லட்சமும், அடுத்ததாக ரூபாய் 4 லட்சமும் கொடுத்தாக
பொய்யாக சொன்னேன் என்றால் சரிதான்,”

In his cross examination, the plaintiff has clearly proved that what he has stated in his pleadings and in his chief examination about the payment of the sums of Rs.1,00,000/- and Rs.4,00,000/- is absolutely false. Therefore, the balance sale consideration of Rs.5,00,000/- has not been paid.

19. Section 16(c) of the Specific Relief Act would read as follows:-

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

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perform 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.

It has been repeatedly held that even in the absence of a defense regarding readiness and willingness, the Courts have to first consider, frame and consider the issue as to the readiness and willingness of a person approaching the Court before granting the relief of specific performance. Section 16(c) mandates that not only should the plaintiff plead readiness and willingness, but he should also prove the same. In the instant case in the pleadings, the plaintiff has averred that he has paid the entire balance sale consideration, however, during his cross examination, he has clearly admitted that except for sum of Rs.50,000/- no further amounts have been paid by him. Therefore, the plaintiff has come to Court not only with an absolutely false case but has also proved that he was not ready and willing to perform the terms of the

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20. Section 20 of the Specific Relief Act provides as follows:

20. Discretion as to decreeing specific performance. —

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve



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some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

21. Therefore, the Court has to consider the facts and circumstances of each case for granting a decree before specific performance. Here is the case where the plaintiff pleads that he has paid the entire sale consideration, but however during his oral evidence would admit that the averment in the plaint and his chief examination are absolutely false one. Therefore, in view of the above, the Courts below have totally misdirected themselves and thrown to the winds the provision of Section 16(c) and Section 20 of the Specific Relief Act. Therefore, the substantial questions of law are answered in favour of



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the defendants. Accordingly, the second appeal is allowed setting aside the concurrent judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

24.01.2024

Index: Yes/No
Speaking order/non-speaking order
srn

To

1. The Additional District Judge, Thiruvallur IV, Ponneri
2. The Subordinate Judge, Ponneri.
3. The Section Officer, V.R.Section, High Court, Madras.

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P.T.ASHA, J.,

srn

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