



Second Appeal No.1040 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 23.01.2024

PRONOUNCING ORDERS ON : 16.02.2024

Coram:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

Second Appeal No.1040 of 2019
and C.M.P.No.22540 of 2019

1.Mahaveer Hemanth Bhandhari and Sons
HUF rep.y its Kartha Mahaveer Bhandhari
No.16, Venkatrayan Lane, Park Town
Chennai 600 003.

2.Mahaveer Nithish Bhandhari and Sons
HUF rep.by its Kartha Mahaveer Bhandhari
No.16, Venkatrayan Lane, Park Town
Chennai 600 003.

... Appellants

..Vs..

1.P.Srinivasalu
2.S.Suresh Kumar

... Respondents

Prayer : Second Appeal under Section 100 of Civil Procedure Code against the judgment and decree of the Additional District and Sessions Court, Chengalpattu dated 31.01.2019 in A.S.No.14 of 2011 confirming the judgment and decree of the Principal Subordinate Court at Chengalpattu dated 30.09.2010 in O.S.No.141 of 2007.

For Appellants : Mr.P.Valliappan, Senior Counsel
for Mr.N.Loganathan
For Respondents : Mr.K.Elango - for R1
R2 - No such person, not ready in notice



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J U D G M E N T

The defendants 2 and 3 in a suit for specific performance of an agreement of sale dated 19.12.2006 are the appellants in the present Second Appeal.

2. The parties are described as per their litigative status before the trial Court. The case of the plaintiff is that on 19.12.2006, he entered into an unregistered sale agreement with the defendants 1 to 3. The sale consideration mutually fixed was Rs.4,00,000/- and on the date of the execution of the sale agreement, a sum of Rs.1,00,000/- was paid as advance. According to the plaintiff, the sale agreement permitted the plaintiff to take possession of the property, fence the same and also form a layout for marketing the plots. The parties have agreed for 90 days period for concluding the sale transaction. According to the plaintiff, he was also ready and willing to pay the balance sale consideration and get the sale deed executed in his favour. However, the first defendant was evading the plaintiff by citing some reason or the other and in the mean time, the plaintiff came to know that the first defendant was carrying out some development activity in the property and on enquiry, the plaintiff came to know that the first defendant had dropped the very proposal viz., the sale of the suit property to the plaintiff. The plaintiff's attempts to contact the first defendant were unsuccessful and therefore he lodged a police complaint in C.S.R.No.51 of 2007. The plaintiff also issued a lawyer's notice on 10.04.2007, to which the first defendant sent a reply on 19.04.2007



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informing the plaintiff that he had already sold the suit property to defendants 2 and 3.

According to the plaintiff, the sale deed in favour of the defendants 2 and 3 was a sham and nominal document and also reflecting a lesser sale consideration of Rs.2,50,000/- than what was agreed under the agreement of sale with the plaintiff viz., Rs.4,00,000/-.

According to the plaintiff, the defendants 2 and 3 were not bonafide purchasers for value.

The plaintiff therefore instituted the suit seeking specific performance.

3. The first defendant filed a written statement admitting the execution of the agreement of sale for Rs.4,00,000/-. However, the first defendant denied the plaintiff's claim that the plaintiff was put in possession of the suit property in part performance and that he was allowed to plot out the same. Though the first defendant would contend that the sale agreement did contain a covenant that the plaintiff was permitted to enter the property for the purpose of forming the road, laying fence etc., the said covenant was not given effect to. According to the first defendant, though 90 days time was fixed, the plaintiff was never ready and willing to complete the transaction as promised. The first defendant also admitted to have sold the suit property in favour of defendants 2 and 3 and denied the allegations that the said sale deed was a sham and nominal document.

4. The defendants 2 and 3, who were purchasers of the suit property filed an additional written statement after adopting the written statement of the first defendant. In the said additional written statement filed by the defendants 2 and 3, they have stated



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that their purchase was bonafide and in pursuance of the sale deed in their favour, they have been put in possession of the suit property. They have also taken steps by giving a police complaint and also causing publications in English and Tamil Dailies on 26.10.2006 regarding loss of the original title documents, before embarking on the purchase.

5. The plaintiff filed a reply statement to the additional written statement filed by the defendants 2 and 3 reiterating that the sale deed executed by the first defendant in favour of the defendants 2 and 3 was clearly manipulative in nature and also sham and nominal. According to the plaintiff, the defendants were colluding amongst themselves. The plaintiff also has stated that, having adopted the written statement of the first defendant, the defendants 2 and 3 cannot set up a totally different version with regard to the pre-suit notice dated 10.04.2007. According to the plaintiff, the defendants 2 and 3 had notice of the earlier agreement between the plaintiff and the first defendant and therefore, they cannot be treated as bonafide purchasers for valuable sale consideration.

6. Before the trial Court, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A4. On the side of the defendants, the first defendant examined himself as D.W.1, One Selvam was examined as D.W.2 and the Kartha of the defendants 2 and 3 Mr.Mahaveer Bhandhari was examined as D.W.3. On the side of the defendants Exs.B1 and B2 were marked.



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7. The trial Court, finding that the plaintiff was always ready and willing to perform his part of the contract and having approached the Court with clean hands, held that he was entitled to the relief of specific performance. The trial Court also found that the defendants 2 and 3 were not bonafide purchasers. The trial Court decreed the suit and directed execution of the sale deed in favour of the plaintiff on receiving the balance sale consideration of Rs.3,00,000/-.

8. The defendants 2 and 3 alone challenged the decree for specific performance by preferring a first appeal in A.S.No.14 of 2011. The first appellate Court, on an independent assessment of the pleadings as well as the oral and documentary evidence, confirmed the findings rendered by the trial Court and dismissed the appeal. It is aggrieved by the said concurrent findings of the Courts below that the present Second Appeal has been preferred by the defendants 2 and 3.

9. On 23.10.2019, the above Second Appeal was admitted on the following substantial questions of law.

" i. Whether the Courts below were right in granting a decree for specific performance when, admittedly there was no demand for performance by the plaintiff within the time prescribed under Ex.A1 (Contract) ie., on or before 19.03.2007?



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ii. Whether the Courts below were right in concluding that the plaintiff was always ready and willing to perform his part of the contract?

iii. Whether the Courts below were right in concluding that the defendants, appellants are not bonafide purchasers for value without copies of the contract?

10. I have heard the learned Senior Counsel Mr.P.Valliappan for Mr.N.Loganathan, learned counsel for the appellant and Mr.K.Elango, learned counsel for the first respondent / plaintiff.

11. The learned Senior Counsel appearing for the appellant would state that the plaintiff cannot be said to be ready and willing to perform his part of the agreement of sale viz., payment of sale consideration within the period of 90 days. Even though according to the first defendant the plaintiff had promised to complete the transaction within 30 days, even otherwise the notice in Ex.A4 itself came to be issued only on 10.04.2007, after a lapse of 90 days and in the meantime, the property had already been sold to the appellants in and by a sale deed dated 30.03.2007.

12. The learned Senior Counsel would also state that the first defendant had issued the reply notice in Ex.A5 on 19.04.2007 and when time was the essence of the agreement of sale, the inaction on the part of the plaintiff / first respondent within the



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agreed time span of 90 days would be fatal to his suit for specific performance. Learned Senior Counsel would also state that merely possessing sufficient funds to meet the balance sale consideration would not be sufficient for a plaintiff to succeed in a suit for specific performance and the plaintiff has to not only plead but also prove and establish that the plaintiff was ready and willing to perform his part of the agreement of sale at all relevant points of time.

13. He would also contend that even though the first defendant did not choose to prefer any appeal, as purchasers the appellants were entitled to step into the shoes of their vendor viz., the first defendant and canvass all grounds available to the first defendant, who was the vendor under the agreement of sale between the plaintiff and the first defendant. The learned Senior Counsel would also attack the findings of the Courts below that the appellants were not bonafide purchasers for value and without notice of the earlier agreement of sale with the plaintiff.

14. Learned Senior Counsel also places reliance on the following decisions in support of his submissions.

- *Jayalakshmi Ammal and Others -vs- Chinnasamy Gounder and another - 2007 (1) CTC 449.*
- *I.S.Sikandar (D) by LRs -vs- K.Subramani and Others - 2014 (1) LW 47.*
- *Citadel Fine Pharmaceuticals -vs- Ramaniyam Real Estates Pvt.Ltd., and another - 2011 (6) CTC 112.*



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- *Arumugam -vs- Natarajan and another - 2012 (6) CTC 612*
- *Sak Apparels -vs- Madras Management Association and Others - 2018(2) CTC 407.*
- *Besto Brite Steels Pvt Ltd., -vs- V.Muthu Krishnan - 2018 (3) CTC 595.*
- *P.Meenakshisundaram -vs- P.Vijayakumar and another - 2018 (3) CTC 428*
- *S.Sarojini and another -vs- P.Mariappan and another - 2018 (4) CTC 13.*

- *T.R.Murugesan -vs- S.Balakrishnan and Others - 2018 (6) CTC 56*
- *Thirugnanasambandam -vs- Kannan and Others - 2018(6) CTC 198.*
- *Mahalingam -vs- Gurusamy - 2020 (1) MWN (Civil) 318 (MAD)*
- *V.Suresh Kumar -vs- A.Ramasamy and another - 2020 (4) CTC 798.*
- *Kadupugotla Varalakshmi -vs- Vudagiri Venkata Rao and Others - 2021 (2) CTC 596.*
- *S.Chellamuthu (Died) -vs- P.Subramani and Others - 2023 (6) CTC 393.*

15. Per contra, learned counsel appearing for the first respondent / plaintiff would state that, if really the contention of the first defendant that the plaintiff has promised to complete the transaction within 30 days, the first defendant would not have remained silent after the lapse of 30 days and he would have either called off the agreement or at least issued a notice to the plaintiff, requiring the completion of the sale transaction. Learned counsel for the first respondent would also take me to through the covenants in the agreement of sale in order to contend that the parties never intended to make time as the essence of the contract. He would also bring to my notice that the balance sale consideration of Rs.3,00,000/- was also deposited pending trial of the suit and before the



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judgment being delivered by the trial Court. He would also state that, even before filing of the Second Appeal, the decree for specific performance has been put in execution and the Court has executed a sale deed in favour of the plaintiff as early as on 20.09.2018. He would therefore pray for dismissal of the Second Appeal.

16. I have paid my anxious and careful consideration to the arguments advance by the learned Senior Counsel appearing for the appellant and also the learned counsel appearing for the first respondent / plaintiff.

17. The parties are admitting the execution of the agreement of sale. The only contention is that the first defendant wanted completion of sale transaction within 30 days, to which the plaintiff also agreed. However, the plaintiff did not come forward to even issue a pre-suit notice before the expiry of 90 days, the period contemplated in the agreement of sale. On a perusal of Ex.A4, I am able to see that on 10.04.2007 the plaintiff has issued the notice stating that he was consistently persuading the first defendant to receive the balance sale consideration and for execution and registration of the sale deed.

18. To the above said notice, the first defendant had issued a reply notice on 19.04.2007. In the said reply notice, the first defendant has stated that the plaintiff evinced interest to conclude the transaction within 30 days, but however the plaintiff was



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evading completion of the sale transaction and after waiting patiently, in view of the loss being caused to the first defendant because of the breach committed by the plaintiff, the first defendant had, after the lapse of 90 days sold the property in the first week of April 2007. In the said reply notice, the first defendant has also stated that the advance amount of Rs.1,00,000/- paid by the plaintiff stood forfeited.

19. It is thus seen from the above that both the plaintiff and the first defendant have claimed to have contacted the other part for completion of the sale transaction, but the other party has always been evasive and dodging the completion of the sale transaction. In this regard, the evidence of P.W.1 as well as D.W.1 is scrutinized. It is seen that P.W.1 has stated that the agreement was prepared only by the first defendant and he only orally requested the first defendant to come forward to execute the sale agreement on receiving the balance sale consideration. The plaintiff has also admitted to the fact that the sale transaction ought to have been completed within a period of 90 days and that he has not issued any notice or taken any steps to conclude the transaction within the said period of 90 days. The trial Court has found that the first defendant did not take any steps to cancel the agreement of sale under Ex.A1 after the expiry of 90 days and that there was also no clause in Ex.A1 that after the expiry of 90 days, the agreement would stand cancelled automatically. The trial Court also came to the conclusion that time was not the essence of the contract. On the issue of possession, the trial Court found that possession of the suit property was not given to the plaintiff as



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claimed by him in the plaint. Regarding readiness and willingness, the trial Court on perusing Ex.A2 police complaint, where the plaintiff has expressed his readiness to pay the balance sale consideration of Rs.3,00,000/- and taking note of the fact that the same was not disputed by the first defendant in cross examination and also the further follow up steps taken by the plaintiff by issuing lawyer's notice on 10.04.2007, would amply establish that the plaintiff was always ready and willing to perform his part of the contract and also found that through Ex.A8 the plaintiff had also established availability of balance sale consideration with him and therefore proceeded to decree the suit for specific performance. The trial Court further found that the defendants 2 and 3 had purchased the property for a lesser consideration than what was reflected in Ex.A1 sale agreement and therefore they were not bonafide purchasers.

20. The first appellate Court, concurring with the findings of the trial Court held that time was not the essence of the agreement of sale and therefore the plaintiff was entitled to relief of specific performance. The first appellate Court also found that the first defendant and defendants 2 and 3 were known to each other for more than ten years and doubted the sale deed in favour of the defendants 2 and 3 and proceeded to dismiss the appeal.

21. In a suit for specific performance, Section 16 raises a personal bar on the plaintiff to be entitled to the relief of specific performance and unless and otherwise the



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plaintiff is able to satisfy the mandate of Section 16(c) of the Specific Relief Act, which requires pleading as well as proof of both readiness and willingness to complete the transaction. The law is now well settled with regard to 'readiness and willingness'. The Courts have consistently held that readiness is different from willingness and the plaintiff / agreement holder may have sufficient funds, but that would not alone be sufficient to entitle him to a decree of specific performance. The plaintiff also has to plead and prove that he has taken earnest steps to perform his obligations under the agreement of sale and if he is able to satisfy the Court that he was always, not only ready with the money, but also willing to complete his obligations under the agreement of sale, then alone the plaintiff would be entitled for a decree for specific performance.

22. Testing the facts of the above case in line with the ratio laid down by the Hon'ble Supreme Court and also this Court in several judgments, most of which have been relied on by the learned Senior Counsel appearing for the appellants Mr.P.Valliappan, the following principles emerge.

- (a) The plaintiff has to necessarily plead and prove readiness and willingness to perform the unfulfilled obligations cast upon him under the agreement of sale.
- (b) In a suit for specific performance relating to immovable property, time is not the essence of the contract.



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- (c) The covenants in the agreement of sale and also the conduct of the parties would have to be relied on to test whether the parties have intended to make time as the essence of the contract.
- (d) The relief of specific performance is a discretionary remedy and the party approaching the Court should come with clean hands and disclose all material facts.
- (e) The subsequent purchaser is entitled to challenge a decree for specific performance, especially when the owner of the property does not prefer an appeal or contest the suit.
- (f) The relief of specific performance being equitable in nature, the conduct of the party assumes significance. The conduct of the parties should be tested in the light of Section 20(2) of the Specific Relief Act and accordingly the discretion has to be exercised.
- (g) A purchaser is also entitled to attack the readiness and willingness of the plaintiff as he steps into the shoes of the original owner.
- (h) A subsequent purchaser can challenge a decree for specific performance without even making the original vendor as a party to the appeal and raise all defences open to his vendor in the suit for specific performance.



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23. Assessing the pleadings and evidence of the parties in the light of the above principles, it is clear that the plaintiff has not approached the Court with clean hands. Firstly, he claims to have been put in possession of the suit property and that he has been in possession of the property in part performance of the agreement of sale dated 19.12.2006. Even though one of the clauses in the agreement of sale specifically states that the vendor would be willing to allow the purchaser to lay fence, form road and form a layout, numbering the same, board advertising over the said property at any reasonable time, the said clause does not amount to putting the plaintiff in possession of the suit property in part performance of the agreement. In fact, it is the plaintiff's admitted case that the plaintiff found some third party developing the suit property and thereupon he has chosen to lodge police complaint and issue a lawyer's notice. This clearly demonstrates the fact that the plaintiff was never put in possession of the suit property. Thus, this is one major circumstance to show that the plaintiff has not approached the Court with clean hands, especially when he seeks the discretionary relief of specific performance.

24. It is one thing to say that time was or was not the essence of the agreement of sale and totally a different thing altogether to say the plaintiff was ready and willing to complete his part of the contract. Merely because, the Court holds that the parties did not intend that time would be the essence of the contract, it does not in any way absolve the plaintiff from establishing his readiness and willingness as contemplated under



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Section 16(c) of the Specific Relief Act. If the argument of the learned counsel for the respondents is to be accepted that when the Court comes to the conclusion that time is not the essence of the contract, the suit for specific performance cannot be rejected or dismissed on the ground of lack of ready and willingness, it would dilute the mandate of Section 16(c) itself. Even in cases where time is not made the essence of the contract, still, the plaintiff would have to necessarily plead and prove readiness and willingness on his part.

25. Here, on the facts of the present case, the parties have specifically agreed upon a 90 days period to complete the sale transaction, the plaintiff has not exhibited his readiness and willingness at any point of time during the said period of 90 days. On the other hand, only after a lapse of 90 days, in and by Ex.A4 notice dated 10.04.2007, more than close to a month after the lapse of 90 days, the plaintiff has expressed for the first time that he was ready and willing to complete the transaction. Further, it appears from a reading of Ex.A4 notice that the cause of action for the notice was not the fact that the plaintiff was ready and willing to complete the transaction, but only because there was some development activity being carried on in the suit property. Incidentally, the plaintiff states in the said notice that he has been ready and willing. The first defendant sent a reply refuting the claim of the plaintiff. The law is too well settled that in a suit for specific performance, the relief being discretionary and equitable, the plaintiff has to not only come with clean hands, but is also required to establish that he was not only ready,



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but also willing to perform all the unfulfilled obligations cast upon him in the agreement of sale. Though time may not be the essence of the agreement of sale, the parties having fixed a period of 90 days, the Courts can only impute that there was some specific reason for the purpose of fixing such a time period. It being incumbent on the plaintiff to show that he was ready and willing at all points of time, the burden lies on the plaintiff to establish that he was always ready and willing to perform his obligations, especially within the agreed 90 days period.

26. However, here admittedly no steps have been taken by the plaintiff in that regard. Mere possessing funds to meet the balance sale consideration would not amount to 'readiness and willingness' on the part of the plaintiff. The conduct of the plaintiff is required to support the availability of the balance sale consideration with him to pay the same to the vendor and also have the sale deed executed and registered as contemplated under the agreement of sale. Here admittedly, the plaintiff has not taken any steps whatsoever within a period of 90 days and mere deposit of the balance sale consideration pending trial of the suit, especially after having full knowledge of the fact that the suit property had already been sold to defendants 2 and 3 would not in any way improve the case of the plaintiff. Equally, the executing Court having executed the sale deed in favour of the plaintiff before the Second appeal was admitted, cannot also be taken advantage of by the plaintiff, especially when the sale deed in favour of the appellants has already been registered before the concerned Sub Registrar's Office and



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entry would reflect in the relevant Encumbrance Certificate preceding the sale deed executed by the executing Court in favour of the plaintiff.

27. The Courts below have proceeded on a totally wrong footing that it was necessary for the first defendant to terminate the sale agreement and that, without such termination he was not entitled to deal with the property. Law does not require that the agreement of sale has to be rescinded. As already stated and for the sake of reiteration, in a suit for specific performance, the burden is only on the plaintiff to plead and prove 'readiness and willingness' and also to show that his conduct has been such that he is entitled to the discretionary and equitable relief of specific performance. Unfortunately in the instant case, the plaintiff has not been able to demonstrate that he was ready and willing to conclude the transaction within the stipulated 90 days period and he cannot take advantage of the fact that the defendants did not issue a notice or chose to terminate the agreement of sale. The Courts below have erroneously proceeded to grant the equitable relief of specific performance when the plaintiff has not been able to satisfy the requirements of Section 16(c) of the Specific Relief Act read with Section 20 of the Specific Relief Act.

28. Insofar as the question of the defendants / appellants being bonafide purchasers for value, in view of the above discussion and findings that the plaintiff was not ready and willing to perform his part of the contract, especially in the absence of any



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demand for performance within the time prescribed under Ex.A1 agreement ie., on or before 19.03.2007, the question of the appellants being bonafide purchasers or not pales into insignificance.

29. In fine, the substantial questions 1 and 2 are answered in favour of the appellants / defendants 2 ad 3. The judgment and decree of the Additional District and Sessions Court, Chengalpattu dated 31.01.2019 in A.S.No.14 of 2011 confirming the judgment and decree of the Principal Subordinate Court at Chengalpattu dated 30.09.2010 in O.S.No.141 of 2007 is set aside. The Second Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.02.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No

KST

To

1.Additional District and Sessions Court,
Chengalpattu.

2.Principal Subordinate Court,
Chengalpattu.



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P.B.BALAJI, J.
KST

Pre-Delivery Judgment in
S.A.No.1040 of 2019

16.02.2024