



A.S.No.760 of 2014

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2024

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR JUSTICE R.SAKTHIVEL

A.S.No.760 of 2014
and
M.P.No.1 of 2014

S.Kothandan

...Appellant

Vs.

1.S.Krishnamoorthy (Died)

2.S.Arul

3.Suguna

4.K.Anbu

5.K.Ilango @ Ilangovan

6.Malathi

7.Mukilan

8.Suba

[R1 died and R2 to R8 are brought on record as the LRs of the deceased R1 vide order dated 08.12.2022 made in C.M.P.Nos.12040 to 12042 of 2018 in A.S.No.760 of 2014.]

...Respondents



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Prayer: Appeal filed under Section 96 of the Code of Civil Procedure read with Order 41 Rule 1 of the Code of Civil Procedure, to set aside the judgment and decree dated 19.09.2014 made in O.S.No.9 of 2013 on the file of the II Additional District and Sessions Court, Vellore at Ranipet and dismiss the suit with costs.

For Appellant : Mr.K.V.Ananthakrushnan,
For Respondents : Mr.V.Raghavachari, Senior Counsel
for M/s.V.Srimathi for R2 to R8

R1 – died (Steps taken)

J U D G M E N T

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

The defendant who suffered a decree for specific performance of an agreement of sale dated 12.07.2010 in O.S.No.9 of 2013 on the file of the II Additional District and Session Judge, Vellore at Ranipet is on appeal.

2. The parties will be referred to as per their rank in the suit, for the purpose of convenience.



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3. The plaintiff sued for specific performance of the agreement dated 12.07.2010 contending that the defendant agreed to sell an extent of 9577 Sq.ft. of land (suit property) for a consideration of Rs.295/- per Sq.ft. and received an advance of Rs.3,00,000/- on the date of the agreement. Three months was fixed for performance.

4. On 20.11.2010, the plaintiff issued a legal notice seeking performance. The notice that was sent by registered post was returned with an endorsement refused. The same notice was also sent by certificate of posting to the defendant at his address at No.72/B, R.R.Road, Ranipet. Upon receipt of notice sent by certificate of posting, the defendant sent a reply contending that the transaction between the parties was actually a loan transaction. While lending a sum of Rs.3,00,000/- to the defendant, the plaintiff who is a money lender by profession, took his signatures in Rs.20/- stamp paper and other blank papers along with the photo copy of the sale deed under which he had purchased the suit property.



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5. Enraged by the default in payment of interest, the plaintiff had created a sale agreement using the signed stamp paper and the blank papers, as if the defendant had agreed to part with his property at a price of Rs.295/- per Sq.ft. He also claimed that the property is very valuable and it would fetch at least Rs.750/- per Sq.ft. even on the date of the alleged agreement.

6. Upon receipt of the reply the plaintiff came up with the instant suit on 16.07.2012. The plaintiff apart from alleging that there was a valid sale agreement, also claimed that he had always been ready and willing to perform his part of the contract. He would also claim that it was the defendant who was delaying the execution of the sale deed despite his offer to pay the balance of sale consideration and take the sale deed.

7. This claim was resisted by the defendant reiterating whatever was stated in the reply notice and contending that the agreement, though contains his signatures, is a created document and therefore cannot be enforced specifically.



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8. On the above pleadings the learned trial Judge framed the following issues and additional issues:-

1. Whether the plaintiff is entitled to the relief of specific performance of suit agreement dated 12.07.2010 as prayed for?

2. Whether it is true that the suit sale agreement was fabricated by the plaintiff by misusing the stamp papers signed by the defendant when he borrowed Rs.3,00,000/- from the plaintiff?

3. To what other relief?

Additional issue:-

Whether the plaintiff is entitled for permanent injunction as prayed in the plaint?

9. At trial, the plaintiff apart from examining himself examined one Chidambaram, the attesting witness to the suit agreement as PW2. Exs.A1 to A9 were marked on the side of the plaintiff. The defendant examined himself as DW1 and Exs.B1 to B8 were marked on the side of the defendant.



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10. The learned trial Judge on a consideration of the evidence on record concluded that the defendant having admitted the signatures in the agreement cannot wriggle out of the effect of the agreement. The learned trial Judge also found that the mistake in the address found in Ex.A1 agreement was because of the fact that the sale deed Ex.A9 under which the defendant purchased the suit property reflected the said address. The learned trial Judge refused to believe the theory of the defendant that the agreement was created or prepared using the pre-signed blank papers that were entrusted with the plaintiff at the time of borrowing a sum of Rs.3,00,000/- as projected by the defendant. On the above conclusion, the learned trial Judge decreed the suit for specific performance. Aggrieved the defendant is on appeal.

11. We have heard Mr.K.V.Ananthakrushnan, learned counsel appearing for the appellant and Mr.V.Raghavachari, learned Senior Counsel appearing for the respondents 2 to 8.



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12. Mr.K.V.Ananthakrushnan, learned counsel appearing for the appellant would vehemently contend that several circumstances, that have been brought about in the evidence, would lend credence to the claim of the defendant that the suit agreement has been prepared on pre-signed blank papers. He would also point out that a cursory glance of the agreement, particularly, page No.2 where more than half of the sheet is left blank would demonstrate that the agreement has been prepared on a pre-signed blank papers.

13. The learned counsel appearing for the appellant would also submit that all the witnesses who were examined have deposed that the agreement was prepared at the residence of the defendant at No.72/B, R.R.Road, Ranipet, however, the agreement states the address of the defendant as Door No.3, L.F.Road, Ranipet. The learned counsel would submit that this discrepancy by itself would show that the agreement has been prepared subsequently utilising the address found in the copy of Ex.A9, sale deed which was furnished to the plaintiff at the time of loan transaction.



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14. The learned counsel appearing for the appellant would also draw our attention to Ex.B1 family card, Ex.B2 consumer card issued by the gas agency and Ex.B3 voters Identity card issued to the defendant, all of which bear the address as No.72/B, R.R.Road to demonstrate that the defendant was always a resident of Door No.72/B, R.R.Road, Ranipet and not No.3, L.F.Road, Ranipet. He would also draw our attention to Exs.B5, B6, B7 and B8 to demonstrate that the property at Door No.3, L.F. Road belonged to one Janarthanan. Exs.B5, 6, 7 and 8 are encumbrance certificate and revenue records relating to No.3, L.F.Road, Ranipet.

15. The learned counsel appearing for the appellant would also draw our attention to the oral evidence of PW1, wherein, he had admitted that the document Ex.A1 does not contain the details of the scribe of the document. He would also point out that the notices have been sent to Door No.72/B, R.R. Road and in Ex.A1 agreement his address has been given as No.3, L.F. Road, Ranipet.



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16. The learned counsel appearing for the appellant would also draw our attention to the evidence of PW1 in cross-examination where he had claimed that the agreement was written at the house of the defendant situate at R.R. Road and the stamp paper was purchased on 12.07.2010 by his son. The learned counsel would also draw our attention to the contradiction in the evidence of PW1 and PW2. While PW1 would state that the agreement was typed and it was executed at the residence of the defendant at R.R Road, PW2 would claim in his proof affidavit that the defendant wrote a draft in his hand and it was typed in a shop near by. He would also draw our attention to the cross-examination of PW2 where he has admitted that the defendant did not write the contents of Ex.A1 before it was typed. He would also point out that PW2 has accepted that he knows the residence of the defendant at R.R Road very well. He would point out the contradictions in the evidence of PW1 and PW2 on the date of purchase of the stamp paper. While PW1 claims that the stamp paper was purchased on 12.07.2010 by his son, PW2 would claim that the stamp paper was purchased on 10.07.2010 and the agreement was written on 12.07.2010. Drawing



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support from the above contradictions in the evidence of the plaintiff's witnesses, the learned counsel would submit that the claim of the defendant that the agreement has been created is fortified by the above contradictions.

17. He would also impress upon us that the bottom half of the second page of Ex.A1 is left blank. Though the signature is obtained immediately after the typed matter, the fact that there is a space available in Page No.2 would persuade us to accept his contention that Ex.A1 has been prepared on pre-signed blank papers.

18. Contending contra Mr.V.Raghavachari, learned Senior Counsel appearing for the respondent/ plaintiff would submit that while it is open to the defendant in a suit for specific performance to raise a plea that the agreement was not intended to be acted upon and it was executed as security for the loan transaction, there should be sufficient proof available to show at least the borrowing. The learned Senior Counsel would urge that the defendant is taking advantage of the different address that has been given in Ex.A1. The defendant should not be allowed to take advantage of different



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address that has been given in Ex.A1, since he has not demanded even copy of the agreement before replying to the suit notice.

19. The learned Senior Counsel would also point out that though the defendant would admit that he had borrowed monies from the plaintiff earlier, not even a scrap of paper had been produced to show such borrowing. On the physical features of Ex.A1, the learned Senior Counsel would submit that it was always probable that the schedule of property was pushed to next page, since the space available was found to be insufficient to accommodate the entire schedule.

20. The learned Senior Counsel would also point out that there was no cross-examination of PW1 on his claim that he has not lent money to the defendant. The learned Senior Counsel would further argue that though the suit notice contains the address as No.3, L.F. Road and it is sent to No.72/B R.R.Road, no objection is taken by the defendant in the reply notice that the address given is wrong.



21. The learned Senior Counsel would submit that in Ex.A9 the defendant has in his own hand written his address as No.3 L.F. Road in the year 2006, therefore we must presume the he owns the house at L.F. Road also and he continue to stay in L.F. Road even at the time of entering into agreement. He would also point out that the suit summons had been served on the wife of the defendant at L.F. Road and the same has been admitted by the defendant in his cross-examination.

22. We have considered the rival submissions.

23. The only question that arises in this appeal is as to *whether the plaintiff has established that the sale agreement is true in order to enable him to obtain the discretionary relief of specific performance and that he was always ready and willing to perform his part of the contract.*

24. The following contradictions are pointed out by the learned counsel for the appellant in support of his claim that the agreement has been prepared in pre-signed blank papers:



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1. More than half of the page in the second sheet of Ex.A1 is left blank. Of course, the signature is affixed immediately after the typed matter.

2. PW2 has admitted that substantial space is left vacant in Pg.No.2 of Ex.A1.

3. The address of the defendant is given as No.3, L.F. Road, Ranipet, while both PW1 and PW2 would admit that the agreement was entered into at No.72/B, R.R. Road, Ranipet.

4. In the stamp paper the date of purchase of the stamp paper is shown as 10.07.2010. PW1 would specifically depose that the stamp paper was purchased on 12.07.2010 by his son.

5. PW2 would claim that the stamp paper was purchased on 10.07.2010 and the agreement was entered into on 12.07.2010.

6. PW1 in his cross-examination would admit that the details of the persons who scribed Ex.A1 and the place where it was written are not reflected in Ex.A1.

7. PW2 even in his proof affidavit would attempt to explain the admission made by PW1 in his cross-examination. PW1's evidence



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in this regard is as follows:-

வாதி சா.ஆ.1ல் யார் எழுதியது என்ற விவரம் இல்லை எங்கு தயாரிக்கப்பட்டது என்ற விவரமும் இல்லை. அது பிரதிவாதி வீட்டில் தான் எழுதப்பட்டது.

8.PW2 would attempt to explain the above event in his proof affidavit stating

மேற்படி ஒப்பந்தத்தை இப்பிரதிவாதி தன் கைப்பட தனக்கு சொந்தமான மற்றொரு வீட்டின் விளாசத்தை, No.3 எல்.எப் ரோடு என்று எழுதி கொடுத்ததை, அருகில் உள்ள கடையில் டைப் செய்யப்பட்டு, அதை இப்பிரதிவாதியும், வாதியும் படித்துப்பார்த்து சரி என்று ஒப்புக்கொண்டு, மேற்படி கிரைய ஒப்பந்த பத்திரத்தில் இப்பிரதிவாதி 3 கையெழுத்துக்கள் ஆங்கிலத்தில் செய்தார்.

9.However in cross-examination PW2 would admit that the contents of Ex.A1 were not written by anybody before it was typed. He would also admit that he does not know where it was typed. The evidence in vernacular reads as follows:-

பிரதிவாதி டைப் செய்து கொடுத்தார். வாதி சா.1 எங்கு டைப் செய்த விவரம் எனக்கு தெரியாது. அக்ரிமெண்ட் வாதி சா.1 டைப் செய்யப்பட்டுள்ளது. அதில் யார் டைப் செய்தார்கள் என்ற விவரம் இல்லை. அந்த வாதி சா.1. டைப் செய்யப்படுவதற்கு முன்பாக வாதி சான்றாவணத்தில் உள்ள சரத்துக்களை கையில்



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எழுதவில்லை.

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25. PW2 appears to be more loyal than a King when he deposes that he knows very well that the agreement was written at R.R.Road, Ranipet. His evidence relating to purchase of stamp paper is also contradictory to what PW1 has said. He would also admit that half of the second sheet of Ex.A1 is blank. Despite his best efforts Mr.V.Raghavachari, learned Senior Counsel appearing for the respondent is unable to convince us to brush aside these contradictions and conclude that the agreement is true and genuine.

26. The learned trial Judge has not adverted to these contradictions. But has merely gone by the fact that Ex.A9 sale deed contains the address of the defendant at No.3, L.F. Road and while registering the instrument in the year 2006. the defendant has given his address at No.3, L.F. Road in his own hand before the Sub-Registrar. The defendant had by valid documentary evidence established that he was a resident of No.72/B, R.R, Road, Ranipet. Ex.B1, B2, B3 and B4 are vital documents issued by the competent authorities, demonstrate that the defendant was a resident of R.R.



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Road on the date of entering into the agreement and only to cover up the mistake in the address, PW2's proof affidavit included the sentence which has been extracted supra. The attesting witness to the document is expected to speak about its execution and not about the other facts. Realising the fact that PW1 had made certain admissions, which may not go down well with the Court, this particular sentence extracted above has been inserted in PW2's proof affidavit only to give credence to the theory that the L.F. Road address was incorporated by the defendant himself.

27. We are unable to buy that argument or to believe that evidence of PW2, which has been contradicted by himself in cross-examination. No doubt, an argument is raised by Mr.V.Raghavachari, learned Senior Counsel that the suit summons were served at L.F. Road. We do not think that that will affect our conclusion. The document that is said to have been prepared at a particular place, which admittedly is owned by the defendant, contains a different address and the evidence of PW1 and PW2 does not inspire our confidence, because, they contradict each other apart from being self contradictory. We are therefore unable to subscribe to the conclusion of the



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trial Court that the plaintiff has established that there was a true and valid agreement of sale executed by the defendant agreeing to part with the property.

28. We should also point out that the agreement fixes a time limit of three months from 12.07.2010. The three months period ended in October 2010. The legal notice was issued on 20.11.2010, after the expiry of the three months period. The suit was eventually filed on 16.07.2012, almost a year and 7 months after the reply notice. There is no explanation for this delay. No doubt, mere delay in filing the suit will not be a cause for rejecting the plaint on the ground of laches or absence of readiness and willingness, if the plaintiff shows readiness and willingness within the time fixed under the agreement. Peculiarly, the plaintiff even in his plaint would aver that the time is not the essence of the contract.

29. In a recent decision of the Hon'ble Supreme Court in ***Rajesh Kumar Vs. Anand Kumat and others*** reported in ***2024 SCC Online SC 981***, the Hon'ble Supreme Court has after referring to ***K.S.Vidyanadam Vs.***



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Vairavan reported in (1997) 3 SCC 1, *Saradamani Kandappan Vs.*

S.Rajalakshmi reported in (2011) 12 SCC 18 and *Atma Ram Vs. Charanjit*

Singh reported in 2020 3 SCC 311 has held that the fact that the suit having been preferred after a long delay would also in certain circumstances dis-entitle the plaintiff from obtaining the relief of specific performance. In fact the Hon'ble Supreme Court relied upon the observations in the above judgment to conclude that the delay in filing the suit would also in certain circumstances dis-entitle the plaintiff for obtaining the relief of specific performance.

30. Readiness and willingness is the matter of evidence and it has to be tested on the facts of each and every case. There cannot be a straight jacket formula for testing the readiness and willingness of the plaintiff in a suit for specific performance. As we have pointed out that the suit notice itself was issued after the expiry of original time fixed in the agreement and there was a further delay of more than a year and a half in filing the suit after the reply notice, where the defendant chose to claim that the agreement was not entered into and as an agreement of sale he signed in a blank



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papers. In these circumstances we are of the considered opinion that the delay in filing the suit would also be fatal.

31. In view of the foregoing discussions, we are unable to uphold the judgment of the trial Court. The appeal stands **allowed**. The judgment and decree of the trial Court is set aside. The suit in O.S.No.9 of 2013 will stand dismissed. The plaintiff would be entitled to take back whatever money that has been deposited by the defendant consequent upon the decree passed by the trial Court along with accrued interest. However, in the circumstances we do not impose costs. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.)

(R.SAKTHIVEL, J.)

dsa

05.06.2024

Index : No

Internet : Yes

Neutral Citation : No

Speaking order

To

The II Additional District and Sessions Judge,
Vellore, Ranipet.

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