



S.A.No.1306 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.1306 of 2014

1.A.Dakshinamoorthy (died)

2.Kanagavalli

3.D.Arivuoli

4.D.Poongodi

5.D.Pugazenth

6.D.Balachander

7.Balasubramanyam

8.D.Maheshwari

9.SivanesanDakshinamoorthy

10.Tamizselvi Baskar

...

Appellants

(A1 died, A2 to A10 brought on record
as LR's of the deceased A1 vide
Court order dt.03.01.2023 made in
CMP.No.22958/2022 in S.A.No.1306/2014)

Vs.

1.M.Kuppuswamy (died)

2.G.Sarasa

3.K.Sambathkumar

4.Barathi

5.K.Sathyamoorthy

6.N.Kavitha

7.S.Vijaya

8.K.Srinivasan

...

Respondents

(R1 died, RR2 to 8 brought on record as
LR's of the deceased R1 vide court order
dt.07.12.2022 made in CMP.Nos.16305,
16307 & 16308 of 2022 in S.A.No.1306/2014)

PRAYER :- Second Appeal has been filed under Section 100 of CPC against



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the Judgement and Decree dated 03.01.2014 passed in A.S.No.40 of 2012 on the file of the Subordinate Court, Tambaram, confirming the judgment and decree dated 06.03.2012 passed in O.S.No.356 of 2004 on the file of the Additional District Munsif Court, Alandur, allow the appeal and grant the decree of specific performance of the sale agreement dated 09.06.1991 in favour of the plaintiff instead of refund of the advance amount.

For Appellants : Mr.A.Babu

For Respondents : Mr.E.Prabu

JUDGMENT

This second appeal arises out of judgment and decree of the Court of the Subordinate Judge at Tambaram in A.S.No.40 of 2012 dated 03.01.2014 in confirming the judgment and decree of the Court of the Additional District Munsif, Alandur in O.S.No.356 of 2004 dated 06.03.2012.

2.O.S.No.356 of 2004 was originally filed before the Subordinate Judge at Poonamallee as O.S.No.312 of 1994. Due to enhancement of pecuniary jurisdiction, the suit stood transferred from the file of the learned Subordinate Judge at Poonamallee to the learned Additional District Munsif at Alandur. The suit is one for specific performance of an agreement of sale dated 09.06.1991.

3.For the sake of convenience, the parties shall be referred to as per their rankings in the suit.



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4.The case of the plaintiff is that the original plaintiff, namely A.Dhakshinamoorthy, who is no more and today represented by his legal representatives is that he and the sole defendant are relatives and castemen. He expressed his desire to purchase the suit schedule mentioned property for a sum of Rs.70,000/-. Accordingly, an agreement was entered into between them on 09.06.1991 for the sale of the property. Shorn of details, the essential terms of the agreement are that the agreed money for the sale was Rs.70,000/-, of which, Rs.20,000/- was paid on the date of the sale agreement. The time period fixed under the agreement was four months. In case, the plaintiff defaulted, he would have to forfeit a sum of Rs.20,000/- given as advance.

5.According to the plaintiff, he made an attempt to extend the time period under the agreement. As the defendant took a stand that he is going to enter into a fresh agreement for the same property, he did not proceed further with the proposed extension. The plaintiff pleaded that the time was not essence of the contract. He alleged that it was with the money that was given by the plaintiff to the defendant, the sole defendant started constructing a ground floor in the suit schedule property, which during the time of the agreement, was a vacant land.



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6. Finding that the defendant was not executing the sale deed. The plaintiff issued a notice on 13.07.1993 calling upon the defendant to execute a sale deed in terms of agreement dated 09.06.1991. The defendant issued a reply on 20.07.1993 stating that he is not willing to execute the sale deed in his favour as the plaintiff is the defaulter. Even thereafter, the plaintiff did not rush to the Court, he waited further period of one year and 11 months to file the suit before the Subordinate Judge at Poonamallee.

7. On being served with the summons, the defendant filed a written statement admitting the execution of the sale agreement as well as handing over the original title deed to the plaintiff. As the plaintiff was not willing to complete the sale transaction within the stipulated time, the defendant was not willing to execute the sale deed. He further stated that the plaintiff was not ready and willing to complete the sale transaction within the time stipulated under the agreement. Apart from that, he would state that the plaintiff's wife Kanagavalli and her son had approached the defendant's wife for refund of the amount paid as advance. Pursuant to the said request made by plaintiff's wife Kanagavalli, on 06.04.1993 a sum of Rs.1,000/- was also paid by the defendant's wife to the plaintiff's wife. The purpose for raising this plea is to



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state that the parties had been repudiating from the transaction and had decided to restore the monetary benefit that had been obtained under the transaction back to the plaintiff.

8.On the basis of these pleadings, the learned trial Judge framed the following issues:

“1.Whether the plaintiff is entitled for a relief of specific performance of contract or in the alternative for a recovery of a sum of Rs.20,000/- towards refund the advance and also damages with interest at the rate of 9% p.a. From the date of plaint till the date of realization as prayed for.

2.Whether the suit is hit by latches as alleged by the defendant in his written statement?

3.To what relief?”

9.On the side of the plaintiff, he examined himself as PW1 and the plaintiff's son and wife were examined as PW2 & PW3 and marked Exs.A1 to A12. On the side of the defendant, the defendant examined himself as DW1 and marked Ex.B2 alone. During the cross examination of PW1, Ex.B1 was



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10.On the basis of the oral and documentary evidence let in before the learned trial judge, she came to a conclusion that the plaintiff was not ready and willing to perform the contract and therefore, denied the relief of specific performance. However, taking into consideration that the agreement had been admitted, she had granted a decree for refund of advance amount of Rs.19,000/- (deducting Rs.1,000/- which had been alleged to have been paid to the plaintiff's wife Kanagavalli by the defendant's wife) together with interest at 9% per annum.

11.Aggrieved by the same, the plaintiff preferred an appeal before the learned Subordinate Judge at Tambaram. The appeal was taken on file as A.S.No.40 of 2012. The learned appellate Judge concurred with the finding of the learned trial judge held that the plaintiff was not ready and willing to get the sale agreement converted into a sale deed and therefore, confirmed the finding of the learned trial Judge.

12.Aggrieved by the concurrent findings, the present second appeal came before this Court and on 16.02.2015 the second appeal was admitted on the



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following substantial questions of law:

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“(i).Whether in the instant case, time is the essence of contract?

(ii).Whether the Courts below were right in holding that the plaintiff had failed to perform his part of the contract on time?

(iii).Whether the Courts below were right in holding that the plaintiff was not ready and willing to perform his part of the contract all through?”

13.Today, the matter is listed before me for final hearing. I heard Mr.A Babu for the appellants and Mr.E.Prabu for the respondents.

14.Mr.A.Babu would submit the factum that the plaintiff's financial condition had not denied by the defendant. He would state that a false plea had been raised by the defendant that the plaintiff has expended the money in his hands towards purchase of a two wheeler and for sending his first son abroad. He would point out from the evidence filed before the Court in form of Exs.A7



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to A12, his son had gone to the International Center for Theoretical Physics on being sponsored by Anna University and he did not expend the funds that was available with him towards that expense. He would also show from the pleadings in the plaint as well as his evidence that during the relevant time, he did not purchase any two wheeler and therefore, the funds, that he had obtained on his retirement as Head Master in an institution, was always available with him. He would state that being close friends and same castemen, the plaintiff did not want drag the defendant to the Court by way of this litigation and hence, there has been some delay in approaching the Court. Pointing out the circumstances under which the agreement had been entered into, he would plea that the delay is not fatal into the suit. On these grounds, he would plead that the judgment and decree of the Courts below should be set aside and decree for specific performance should be granted to his client.

15.Mr.E.Prabhu would submit that in terms of Section 16 (c) of the Specific Relief Act, the plaintiff must not only aver but must also prove that he was ready and willing to get the sale agreement converted into a sale deed. He would state that there are two parts in the concept of readiness and willingness, one is question of funds being available with the plaintiff and the more crucial aspect of the provision is the willingness or the urgency that shown by a party



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to convert the sale agreement into a sale deed. From the list of dates, namely, he would point out that the agreement was entered into on 09.06.1991, the suit notice was issued on 13.07.1993 and the suit itself was filed only on 06.06.1994. On this basis, he would plead that the Courts below have properly appreciated the issues that had been framed by them and being concurrent findings, this Court must not interfere with the same.

16.I have carefully considered the arguments of the learned counsel on either side and I have gone through the records.

17.The questions of law being inextricably linked with one another, they are being clubbed together and answered by way of this judgment.

18.It is a fundamental position of law under the unamended Specific Relief Act that it is the duty of the plaintiff to “aver and prove” his readiness and willingness. In case, the plaintiff does not prove the same then he incurs the wrath of the personal bar under Section 16, in particular Section 16 (c) of the Specific Relief Act. The records said to have been filed by the plaintiff nowhere has shown his capability or availability of funds in order to convert the sale agreement into a sale deed. It is settled position of law that to be



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successful, a plaintiff need not jingle his coins or deposit the amount to the credit of the Court unless and otherwise directed by the Court. However, he must show his ability to generate the funds for the purpose of converting the sale agreement into a sale deed. Apart from Exs.A3 and A4, which speak about lawyer's notice and reply, pleading about the readiness of the plaintiff, there is absolutely nothing on record to show that the plaintiff in fact has the funds in his hands or was capable of generating funds for the purpose of converting the sale agreement into a sale deed.

19. Even if I were to ignore and go by the statement of Mr. Babu that the retirement funds of the plaintiff was available with him and therefore, he had money and the other crucial aspect on the delay remains unanswered. In a suit for specific performance, any delay on the part of the plaintiff is fatal to the suit. The admitted dates are on 09.06.1991 the sale agreement had been entered into granting four months' time for completion of the agreement. The suit notice itself was issued much later on 13.07.1993. Though the plaint had been made ready sometime in August 1993, it came to be presented only on 06.06.1994. The reason Mr. Babu gives that they were very close friends and therefore, they did not present the plaint immediately so as to avoid the litigation between them. That can be a good explanation, if not, for Section 16



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(c) which speaks about a personal bar. The bar operating would brook no exceptions, for the mere fact that the parties are friends, belonging to the same caste. The extract of the dates set forth above shows that the plaintiff was not willing to get the sale deed and he had approached the Court with considerable delay.

20.The judgment that is relied upon by Mr.Babu in *Motilal Jain Vs. Ramdasi Devi (smt) and others (2000) 6 Supreme Court Cases 420* does not improve his case at all. The position of law laid down by that judgment was that readiness and willingness must be culled out from realistic reading of the plaint and the Court must not apply strait jacket formula with respect to finding out the readiness and willingness of the party. I am not denying the right of the plaintiff on the ground of lack of pleadings but on the aspect on lack of proof. The pleadings exist, that by itself, is not sufficient to decree the suit for specific performance. As pointed out above, not only must the plaintiff “aver” but he must also prove in order to get out of teeth of Section 16 (c) of the Act. The plaintiff has crossed half of hurdle by pleading the necessary averments but he necessarily has to fall since he has not given any proof in order to convince me that he had been willing to convert the sale agreement into a sale deed. Therefore, I do not find any reason to differ from the views taken by the



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learned Additional District Munsif at Alandur and by the learned Subordinate Judge at Tambaram with respect to the relief of specific performance.

21.The plaintiff has pleaded for return of the advance amount of Rs.20,000/- that had been paid by him on 09.06.1991 to the defendant. The defendant had pleaded that he had returned Rs.1000/- through his wife to the plaintiff's wife Kanagavalli when demanded upon. There has been no proof that has been put forward by the defendant for the payment of Rs.1,000/-. Apart from, *ipse dixit* of the defendant, there has been no evidence, it has been put forth before the Court. Unfortunately, the learned trial judge proceeded only on the basis of the statement of the defendant and came to the conclusion that Rs.1000/- had been paid and on that ground, she had directed the defendant to return of Rs.19,000/- along with interest. Without noticing this aspect, the learned appellate Judge has confirmed the decree. Therefore, in so far as the refund of advance amount is concerned, I am constrained to interfere with the judgment of the Courts below. Therefore, there shall be a decree for refund of Rs.20,000/- at the rate of 9% per annum from 09.06.1991 till the date of repayment.

22.Mr.E.Prabu would submit that immediately after the disposal of the



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suit before the trial Court, on 14.06.2012, the defendant had deposited a sum of Rs.49,353/- to the credit of the suit in O.S.No.356 of 2004. The plaintiff will be entitled to withdraw this amount together with interest, if any, for which, Mr.E.Prabu has no objection. Since the amount of Rs.19,000/- with interest has already been deposited that leaves out of Rs.1,000/- which will bear an interest of 9% per annum from 09.06.1991 till the date of repayment.

23.In fine, the second appeal is partly allowed. The denial of decree for specific performance stands confirmed. There shall be a decree for refund of advance amount of Rs.20,000/- together with interest from 09.06.1991 till the date of repayment.

24.On the defendant complying with the money decree, he shall be entitled to take the original title deeds marked as Ex.A1 in O.S.No.356 of 2004 on the file of the Additional District Munsif at Alandur. Prior to taking the return of document, the defendant shall file an appropriate application enclosing the copy of the judgment of this Court before the learned Additional District Munsif, Alandur. On filing of such application, notice shall be issued to



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the plaintiff and after hearing him, appropriate orders will be passed in terms of

the aforesaid order. No costs. Consequently, the connected miscellaneous

petition is closed, if any.

Index : Yes/No

Internet : Yes/No

27.03.2024

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Note: Issue order copy on 02.04.2024

To

- 1.The Subordinate Court, Tambaram.
- 2.The Additional District Munsif Court, Alandur.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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