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C.S.No.16 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.07.2024

Delivered on : 16.08.2024

CORAM:

**THE HON'BLE MR.JUSTICE P.B.BALAJI**

**C.S.No.16 of 2014**

R.Balachandar

.. Plaintiff

..Vs..

1.D.Bala

2.D.Suriyakumar

3.D.Yuga Selvi

... Defendants

**Prayer:** Civil Suit Complaint filed under Order VII Rule 1 C.P.C. r/w Order IV Rule 1 of O.S.Rules, with a prayer to pass a judgment and decree - (a) Directing the defendants to execute and register the sale deed in respect of the suit property, after receiving the balance of sale consideration of Rs.2,57,00,000/- at the expense of the plaintiff; (b) On default of defendant to execute the sale deed this Hon'ble court to execute and register the sale deed on behalf of the defendants; (c) Declaring the settlement deed No.430/2012 dated 28.02.2012 registered on the file of the Sub Registrar, as null and void; (d) permanent injunction restraining the defendants or their men or agent or any one claiming under them from in anyway encumbering or in any way dealing with the properties; (e) To



C.S.No.16 of 2014

pay the costs of the suit.

For Plaintiff : Mr.A.Thiyagarajan  
Senior Counsel  
for Mr.S.Rameshkumar

For Defendants : Mr.R.Vigneswaran  
for Mr.M.Karthikeyan

### **J U D G M E N T**

The suit has been filed for Specific Performance of an Agreement of Sale dated 28.05.2011. The case of the plaintiff in brief is as follows:

2. The plaintiff states that the suit property originally belonged to one Dr.M.Chandrasekara Reddy, who had sold the same on 22.11.1995 in favour of one Dilli, the husband of the first defendant and father of the defendants 2 and
3. The plaintiff approached the said Dilli to purchase the suit property and after deliberation, sale consideration was fixed as Rs.2,70,00,000/-(Two Crores Seventy Lakhs only) and an agreement of sale dated 28.05.2011 was drawn up.

On the date of agreement, the plaintiff paid a sum of Rs.13,00,000/- as an



C.S.No.16 of 2014

advance and the receipt of the same was acknowledged by the said Dilli in the agreement of sale. A time limit of three months was fixed for completion of the sale transaction and it was agreed that the balance sale consideration was payable across vacant possession of suit property being handed over to the plaintiff.

3. According to the plaintiff, on 28.07.2011, a further payment of Rs.10,00,000/- was made, which was also duly acknowledged by Dilli by way of an endorsement in the agreement of sale. However, the said Dilli died on 01.10.2011 and the plaintiff came to know about the death of Dilli only in the month of February 2012. The plaintiff further stated that the third defendant, daughter of Dilli had re-transferred a sum of Rs.10,00,000/-(Rupees ten lakhs only) to the plaintiff on 30.03.2012, being the further advance paid by the plaintiff to Dilli on 28.07.2011, stating that she would receive the entire sale consideration on the date of execution of the sale deed. The plaintiff further stated that in the month of September 2012, the defendants colluded among themselves and the defendants 1 and 2 had executed a settlement deed in favour of the 3<sup>rd</sup> defendant on 28.02.2012. According to the plaintiff, the settlement



C.S.No.16 of 2014

deed was sham and nominal and also to nullify the plaintiff's rights.

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4. The plaintiff caused a lawyer's notice on 25.10.2013 calling upon the defendants to come forward to execute the sale deed in his favour. The plaintiff also sent a photocopy of a demand draft for the balance sale consideration of Rs.2,57,00,000/-. Despite receipt of the said notice on 28.10.2013, the defendants did not come forward to execute the the sale deed and also did not send any reply to the said notice. Pleading readiness and willingness, the plaintiff has filed the present suit for Specific Performance.

5. The written statement filed by the defendants in brief is as follows:

The defendants have submitted that the plaintiff is not entitled to the discretionary relief of Specific Performance since he has not filed the suit within the agreed time of 90 days, when late Dilli was very much alive. Though the defendants admit the agreement of sale dated 28.05.2011, they have stated that time being the essence of the agreement, the plaintiff has lost his right to claim specific performance. The defendants have further stated that the plaintiff called



C.S.No.16 of 2014

upon the defendants to repay the advance amount of Rs.23,00,000/- which was received as advance by the said Dilli and in part settlement of the said claim alone the third defendant had paid a sum of Rs.10,00,000/- which was also admittedly received by the plaintiff. However, citing financial crisis, the defendants have sought for further time to pay the balance Rs.13,00,000/-. The settlement deed executed by the defendants 1 and 2 in favour of the third defendant was in furtherance of the mutual family arrangement and the same was not sham and nominal as alleged by the plaintiff. No rights accrued to the plaintiff under the agreement of sale which has lost its legal sanctity with passage of time . The defendants have further stated that they are under no pious obligation to discharge the commitment of the deceased Dilli, especially with respect to an expired contract. The defendants have further expressed that they would be put to great hardship if the suit property is sold, since it is the only asset, especially to secure the future of the third defendant in whose favour, the settlement deed has been executed.

6. On 17.07.2018, this Court framed the following issues:-



WEB COPY



C.S.No.16 of 2014

- i) Whether the plaintiff is entitled for a specific performance of the Contract as per the agreement dated 28.05.2011?
- ii) Whether time is essence of the contract in view of a specific class in the agreement?
- iii) Whether plaintiff was ready and willing to perform the contract from the date of the agreement?
- iv) Whether the defendants are as legal heir bound to execute the sale in favour of the plaintiff?
- v) Whether the plaintiff is entitled the relief sought for in the suit after receipt of part of the sale consideration paid as advance?
- vi) Whether the plaintiff is entitled for any other reliefs?



C.S.No.16 of 2014

WEB COPY

7. The plaintiff examined himself as P.W.1 and Exs.P.1 to P.6 were marked. One Sammykannu was examined as P.W.2 and the third defendant examined herself as D.W.1 and one L.Sivaraj was examined as D.W.2 and Exs.D.1, D.3 to D.12 are marked and Ex.D.2 was marked during the cross examination of P.W.1.

Issue Nos.1 to 5 are taken up together.

8. Heard Mr.A.Thiyagarajan, learned Senior Counsel for the plaintiff and Mr.R.Vigneswaran, representing Mr.M.Karthikeyan, learned counsel for the defendants.

9. Learned Senior Counsel appearing for the plaintiff would submit that the suit property admittedly belonged to the deceased R.Dilli and `the suit sale agreement is not denied by the defendants and therefore, he submitted that the legal representatives of the deceased Dilli are bound to honour the terms and



C.S.No.16 of 2014

conditions of the sale agreement Ex.P.2. Learned Senior Counsel would further submit that time is not the essence of the contract and the plaintiff has shown readiness and willingness by issuing Ex.P.5 letter, enclosing the entire balance sale consideration by way of demand draft and therefore, readiness and willingness on the part of the plaintiff stand proved and nothing remains to be performed on the side of the plaintiff and he therefore prays for the suit being decreed.

10. On the contrary, learned counsel for the defendants would submit that the plaintiff had categorically admitted that the agreed time limit for completion of the sale transaction under Ex.P.2 was 90 days and that the plaintiff did not send any letter or written communication expressing his readiness and willingness to pay the balance sale consideration within the period of 90 days as agreed. The learned counsel for the defendants also submitted that the plaintiff attended the funeral function of the said Dilli and therefore, he is fully aware of the demise of Dilli. The learned counsel for the defendants further stated that if really the plaintiff was willing to complete the transaction, he would not have received a sum of Rs.10,00,000/- from the third defendant. The conduct of the



C.S.No.16 of 2014

plaintiff therefore clearly evidences that the plaintiff was not willing to go ahead with the sale transaction. Learned counsel for the defendants further submitted that subsequently the plaintiff purchased the adjacent property from the third defendant herself on 30.03.2012 and that only out of the said sale proceeds, the third defendant had paid a sum of Rs.10,00,000/- to the plaintiff. Learned counsel further submitted that the plaintiff, as P.W.1 has also admitted that he had verified the Encumbrance Certificate while purchasing the adjacent property and the suit property also being one of the survey numbers, any transfer pertaining to the suit property would also get reflected in the Encumbrance Certificate.

11. Learned counsel for the defendants therefore submits that even atleast at that point of time, the plaintiff would have been aware of the settlement deed executed by the defendants 1 and 2 in favour of the third defendant and despite the same, the plaintiff chose to remain silent which only confirms the defence pleaded by the defendants that the plaintiff wanted the advance sum of Rs.23,00,000/- to be returned and he was not interested to proceed with the sale transaction.

9/24



C.S.No.16 of 2014

WEB COPY

12. I have considered the submissions advanced by the learned Senior Counsel for the plaintiff and the learned counsel for the defendants and have gone through the oral and documentary evidence available on record and also the decisions on which reliance is placed by the learned counsel for the defendants in the case of *T.K.T.G.Srinivasan vs A.Murthy and Others* reported in *2024 (2) L.W 253* and my decision in *S.A.No.1040 of 2019 dated 16.02.2024* in the case of *Mahaveer Hemanth Bhandhari & Sons HUF and Others* reported in *(2024) (2) CTC 204*.

13. Admittedly, the suit property was originally owned by Dilli, who died soon after the execution of the agreement of sale. Execution of the agreement for a total consideration of Rs.2,70,00,000/- is admitted by the defendants themselves, who are the legal representatives of the deceased Dilli. However, it is their categorical case that the plaintiff was never ready and willing to fulfil his obligations under the said agreement of sale and after the demise of Dilli, the plaintiff also received a sum of Rs.10,00,000/- in part satisfaction of the advance amount of Rs.23,00,000/- paid by the plaintiff. Therefore, according to the

10/24



C.S.No.16 of 2014

defendants, the plaintiff is not entitled to the discretionary relief of Specific Performance.

14. The plaintiff, who examined himself as P.W.1 has categorically admitted the receipt of Rs.10,00,000/- from the third defendant. He has also further stated that he has not filed any documents to show that he was ready and willing to pay the balance sale consideration and get the sale deed executed within the 90 days period agreed under Ex.P.2. Further, P.W.1 claims to have become aware of the death of Dilli only after four months after his death i.e., some time around February 2012. Strangely. Ex.P.5 is the letter dated 25.10.2013, enclosing a Demand Draft, favouring the third defendant alone representing the entire balance sale consideration of Rs.2,57,00,000/-. This clearly implies that the plaintiff was fully aware of the settlement deed executed by the defendants 1 and 2 in favour of the third defendant, though he claims to have no knowledge of the same until much later when he proceeded to institute a suit for Specific Performance.

15. The plaintiff has not adduced any satisfactory evidence as to why he



C.S.No.16 of 2014

received a sum of Rs.10,00,000/- from the third defendant. The said payment of Rs.10,00,000/- is also established through evidence that it was only after the plaintiff purchased the property from the third defendant and out of the sale consideration for the adjacent property, a sum of Rs.10,00,000/- was paid by the third defendant to the plaintiff. If really the plaintiff was ready and willing to go ahead with the transaction, he would not have received a portion of the advance amount of Rs.10,00,000/-, out of the total advance of Rs.23,00,000/-. This conduct of the plaintiff probablises the defence set up by the defendants by way of written statement that the plaintiff wanted return of the advance amount of Rs.23,00,000/- and in part satisfaction, he received a sum of Rs.10,00,000/-. Even otherwise the dates assume a lot of significance in a suit for specific performance. The agreement of sale was entered into on 28.05.2011. The parties have agreed to complete the transaction by 27.08.2011 i.e., within a period of 90 days. Admittedly, the plaintiff has not taken any steps whatsoever to show his readiness and willingness during this period by issuing any notice of demand or showing sufficiency of funds to pay the balance consideration. Thereafter on 01.10.2011 the owner of the property, Dilli passed away and the plaintiff claims that he came to know about his death in February 2012. Despite



C.S.No.16 of 2014

the same, the plaintiff has chosen to remain silent until 25.10.2013 when he issued a letter to the defendants, enclosing a demand draft for Rs.2,57,00,000-.

This was much after the third defendant returned a sum of Rs.10,00,000/- to the plaintiff on 30.03.2012. In fact, the settlement deed executed by the defendants 1 and 2 in favour of the third defendant vide Ex.P.3 was on 28.02.2012. Only thereafter, the third defendant has paid the sum of Rs.10,00,000/- by way of partial return of the advance sale consideration to the plaintiff. Therefore, the plaintiff cannot feign ignorance of the factum of the defendants 1 and 2 having settled the suit property in favour of the third defendant. However, in order to project a case of readiness and willingness, the plaintiff has pleaded in the plaint as if he came to know about the Settlement Deed only in September 2012. The same is also falsified by the admissions of P.W.1 that he had purchased the adjacent property from the third defendant on the same day when he received Rs.10,00,000/- from the 3<sup>rd</sup> defendant i.e., 30.03.2012. The said sale deed is also marked as Ex.D.1. Even thereafter, the plaintiff has chosen to issue the letter expressing readiness and willingness only after almost 2 ½ years, on 25.10.2013. Though there was no reply to the said notice, the suit came to be filed only in January 2014.



C.S.No.16 of 2014

WEB COPY

16. All these cumulatively show that the plaintiff was never ready and willing to perform his obligations under Ex.P.2 agreement of sale. Merely because he had shown the entire balance sale consideration being ready with him in October 2013, would not automatically clothe him with a right to the discretionary relief of specific performance.

17. One L.Sivaraj has been examined as D.W.2 and in his chief examination, he has stated that he knew about the agreement of sale between Dilli and the plaintiff as he was working with R.Dilli from 2005 till his life time and he also happened to be the adjacent property owner to the suit property. D.W.2 has stated that the plaintiff attended the death ceremony of the said Dilli in October 2011 and that Dilli being the Ex-councillor of Corporation of Chennai, posters were pasted in the entire locality. He further stated that the plaintiff received a sum of Rs.10,00,000/-(Rupees Ten lakhs only) and cancelled the agreement of sale and proceeded to purchase the adjacent property from the third defendant on the same day i.e., on 30.03.2012. He has further stated that he was physically present at the relevant point of time when the plaintiff made an



C.S.No.16 of 2014

endorsement acknowledging receipt of Rs.10,00,000/- from the third defendant.

In his cross examination, he has stated that he is not the neighbour of Dilli and that he has never seen the plaintiff. Therefore, the evidence of D.W.2 does not in any way further the defence pleaded by the defendants.

18. However, in a suit for Specific Performance, the bar is on the plaintiff.

Section 16 of the Specific Relief Act runs as follows:

***“Specific performance of independent part of contract”***

***16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.”***

19. Therefore, the statute creates a personal bar for the plaintiff to obtain the discretionary relief of specific performance. Admittedly even from the own admissions of P.W.1, it is clear that during the agreed 90 days period when the original owner of the property, Dilli was very much alive, the plaintiff never made any attempts to pay the balance sale consideration and get the sale deed



C.S.No.16 of 2014

executed in his favour. He claims to have known about the death of Dilli only in February 2012. Even thereafter, he has received a sum of Rs.10,00,000/- from the third defendant on the same day on which he purchased another property from the third defendant. If really the plaintiff was keen to go ahead with the sale transaction, he would have opted to purchase the suit property and conclude the sale transaction even at that point of time. The specific case set up in defence by the defendants that the said sum of Rs.10,00,000/- was received only in part satisfaction of return of the entire advance amount of Rs.23,00,000/- is also probablised by these turn of events. The reason given by the plaintiff that the third defendant returned the sum of Rs.10,00,000/- that she would receive it back from the plaintiff at the time of execution of sale deed appears to be improbable and also unbelievable. No purchaser, who is really desirous of purchasing a property, would take back a substantial portion of the advance paid by him and still contend that he is ready and willing to perform his part of the obligations.

20. Further if really the version of the plaintiff is to be believed then the plaintiff, being a prudent purchaser would have certainly ensured that the



C.S.No.16 of 2014

endorsement made on the reverse of the agreement of sale, acknowledging receipt of the sum of Rs.10,00,000/- would have clearly indicated that it was only on the insistence of the third defendant and that the said amount would be paid along with balance sale consideration across execution of the sale deed.

21. Further even though Ex.B.5 letter is said to have been sent to all the defendants, the postal receipt shows that the letter has been sent only to the first defendant. Strangely the demand draft enclosed along with such letter addressed to the first defendant is in the name of the third defendant and no proof has been filed by the plaintiff to establish that the said letter was received even by the first defendant to whom alone, admittedly the communication was sent. Also when the plaintiff, even according to his version, came to know about the settlement deed in September 2012, chose only to sleep over the matter until October of next year i.e., 2013 when for the first time he thought it fit to send a letter, enclosing a demand draft. In any event, as discussed above, the plaintiff has not even established that the said letter was duly served on the first defendant.

22. The evidence of P.W.2 Sammykannu, one of the brokers, also does



C.S.No.16 of 2014

not help the plaintiff's cause. In his cross examination, he has stated that he has signed as a witness in the sale agreement, but, he does not know as to what transpired between the plaintiff and the defendants after the agreement of sale. Therefore, his evidence is in noway helpful to the case of the plaintiff.

23. In the case of *T.K.T.G.Srinivasan vs A.Murthy and Others* reported in **2024(2) L.W 253** this Court has held that in a suit for Specific Performance, the plaintiff has to necessarily prove readiness and willingness to perform his part of the contract from the date of inception to the date of filing of the suit.

24. Here, admittedly, the plaintiff has not shown any readiness and willingness for the entire period of 90 days by offering to pay the entire balance sale consideration and get the sale deed executed in his favour. The first communication sent by him was 2 ½ years after the agreement of sale and even according to him, much after he came to know of the settlement deed executed by the defendants 1 and 2 in favour of third defendant.

25. All is not well with the said letter issued only to the first defendant



C.S.No.16 of 2014

also. As already discussed, the said letter was sent only to the first defendant, but, however, the demand draft is favouring the third defendant and the acknowledgement card for the first defendant having received the letter has not been produced on the side of the plaintiff, even though the defendants have not specifically denied the allegations in the plaint that Ex.P.5 letter was received by the defendants.

26. In the case of ***Mahaveer Hemanth Bhandhari & Sons HUF and Others*** reported in ***(2024) (2) CTC 204***, I had an occasion to hold that when the purchaser admitted the sale transaction ought to have been completed within 90 days and when there is no evidence to show that the purchaser had approached the vendor during that period and in view of Section 16 of the Specific Relief Act, raising a personal bar on the plaintiff, by way of pleading as well as proof of both readiness and willingness to complete the transaction, the purchaser has to necessarily discharge the heavy burden on him to satisfy the Court that he was always not only ready with the money but also willing to complete the obligations caused on him under the agreement of sale.



C.S.No.16 of 2014

27. In the present case also, the plaintiff has not shown his readiness and willingness at all relevant points of time and has remained silent even after coming to know of the settlement deed executed by the defendants 1 and 2 in favour of third defendant. The suit came to be filed after lapse of 32 months after the date of the execution of the sale agreement. His conduct in receiving a sum of Rs.10,00,000/- from the third defendant and his explanation stands uncorroborated and not proved.

28. As already discussed, if he was really interested to proceed with the sale transaction, the plaintiff, as a prudent purchaser, would not have taken back the substantial sum of Rs.10,00,000/- from the third defendant. Thus the conduct of the plaintiff clearly dis-entitles him from the discretionary relief of specific performance.

29. For all the above reasons, all the issues are answered against the plaintiff.

30. In the result, the suit is dismissed. No costs.



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C.S.No.16 of 2014

**16.8 .2024**

**1/2**

Index : Yes/No  
Speaking/Non-speaking order  
sr

To

The Section Officer,  
Original Side (Records),  
High Court, Chennai.



C.S.No.16 of 2014

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**Witnesses examined on the side of the plaintiff:**

P.W.1. - R.Balachander

P.W.2 - Sammykannu

**Exhibits produced on the side of the plaintiff:**

| S.No. | Exhibits | Date       | Description                                                        |
|-------|----------|------------|--------------------------------------------------------------------|
| 1.    | P-1      | 22.11.1995 | Copy of the sale deed in favour of R.Dilli.                        |
| 2.    | P-2      | 28.05.2011 | Copy of the sale agreement.                                        |
| 3.    | P-3      | 28.02.2012 | Copy of the Settlement Deed in favour of 3 <sup>rd</sup> defendant |
| 4.    | P-4      | 17.09.2013 | Copy of the Encumbrance Certificate                                |
| 5.    | P-5      | 25.10.2013 | Copy of the letter sent by the plaintiff                           |
| 6.    | P-6      | 16.09.2013 | Copy of the demand draft                                           |

**Witnesses examined on the side of the defendants**

D.W.1. - Mrs.D.Yuga Selvi

D.W.2 - L.Sivaraj



C.S.No.16 of 2014

***Exhibits produced on the side of the defendants:-***

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| S.No. | Exhibits | Date                          | Description                                                           |
|-------|----------|-------------------------------|-----------------------------------------------------------------------|
| 1.    | D-1      | 30.03.2012                    | Sale Deed in respect of the adjacent property                         |
| 2.    | D-2      | -                             | Endorsement made in Ex.P.2 on the back side of 1 <sup>st</sup> sheet  |
| 3.    | D-3      | 22.11.1995                    | Certified copy of the sale deed                                       |
| 4.    | D-4      | 22.11.2011                    | Attested true copy of the legal heir certificate of R.Dilli           |
| 5.    | D-5      | 28.02.2012                    | Online certified copy of the settlement deed.                         |
| 6.    | D-6      | 15.12.2022<br>&<br>06.12.2022 | Property tax receipts.                                                |
| 7.    | D-7      | 31.01.2023                    | Original water tax and charges receipt.                               |
| 8.    | D-8      | 04.01.2012                    | Certified copy of the settlement deed bearing Doc.No.12/2012          |
| 9.    | D-9      | 04.01.2012                    | Online certified copy of the settlement deed bearing Doc.No.13/2012.  |
| 10.   | D-10     | 09.01.2012                    | Certified copy of the settlement deed bearing Doc.No.38/2012          |
| 11.   | D-11     | 18.09.2013                    | Online certified copy of the settlement deed bearing Doc.No.6494/2013 |
| 12    | D-12     | 01.11.2011                    | Copy of the Death Certificate of R.Dilli                              |



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C.S.No.16 of 2014

**P.B.BALAJI,J.,**

sr

**PRE-DELIVERY JUDGMENT IN**  
**C.S.No.16 of 2014**

**16.8.2024**