



S.A.No.26 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 26 of 2024

&

C.M.P. No. 680 of 2024

G.P. Raghavaiah (Died)

1.Saradha Raghavaiah

2.Aruna Daniel

3.Anitha Devadasan

4.James Arul Raghavaiah

...Appellants

Vs.

1.B.Rani

2.B.Babu

...Respondents

(Cause title accepted vide Court order dated 17.10.2023 made in
C.M.P.Nos.23709 & 23712 of 2023 in S.A.Sr. No.80015 of 2022).



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Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed by the learned Principal District Judge, Kancheepuram District at Chengalpattu in A.S.No.16 of 2017 dated 01.10.2021 confirming the Judgement and Decree passed by the learned Principal Subordinate Judge, Kancheepuram District at Chengalpattu in O.S.No.259 of 2010 dated 31.01.2017.

For Appellants : Mr. T.Saravanan.

JUDGMENT

The plaintiff in the suit O.S.No.259 of 2010 on the file of the Principal Sub Court, Chengalpattu is the appellant herein. The facts which has culminated in the filing of the above Second Appeal is herein below set out and the parties are referred to in the same rank as before the Trial Court.



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2. The plaintiff had filed O.S.No.259 of 2010 for specific performance of agreement of sale dated 17.11.2004 and to direct the defendants to receive balance sale consideration of Rs.35,000/- and execute the sale deed and deliver possession of the property.

3. It is the case of the plaintiff that the defendants 1 and 2 who are mother and son respectively had executed an agreement of sale dated 17.11.2004 agreeing to sell the suit property to the plaintiff at the rate of Rs.2,49,000/- per cent. The total sale consideration worked out to a sum of Rs.8,15,000/- and on the date of the execution of the sale agreement, a sum of Rs.6,00,000/- was paid as an advance.

4. On the date of the execution of the agreement, the defendants had handed over xerox copies of the power of attorney and the sale deed to the plaintiff. Thereafter, on 25.07.2005, a further sum of Rs.1,80,000/- was received by defendants and an endorsement was



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made by the 1st defendant duly attested by her husband Balakrishnan.

Totally a sum of Rs.7,80,000/- was paid by the plaintiff leaving a balance of a sum of Rs.35,000/-. Under the agreement of sale, the time limit for concluding the sale agreement was 3 months, ending on 16.02.2005. It is the contention of the plaintiff that the time was never the essence of the contract.

5. Though the plaintiff was ready and willing all along and had been calling upon the defendants to execute the sale deed, they had not come forward to execute the same. The plaintiff would further submit that on the endorsement been made on 12.11.2007, the plaintiff had got an extension of 3 months. The plaintiff had issued a legal notice to the defendants on 11.02.2008 calling upon them to receive the balance amount of Rs.35,000/- and execute the sale deed. However, the defendants neither complied with the request nor responded to the notice. Therefore, the plaintiff has come forward with this suit for specific performance.



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6. The defendants had filed a written statement inter alia contending that they had never agreed to sell the property to the plaintiff and that there was a gentlemen agreement between the plaintiff and the defendants, whereby, the plaintiff was required to give 5 cents of property to defendants and the defendants was to give suit property for running social club and remaining 3 cents was to be retained by the plaintiff and would be given to the defendants for constructing their dwelling house. However, the land belonging to the defendants was under dispute and rent control proceedings were pending. Therefore, the defendants could not perform their part of the contract.

7. The defendants would submit that the plaintiff thereafter expressed his unwillingness to exchange their property and therefore the defendants started to construct superstructure adjacent to the northern side of the suit property leaving the suit land vacant. This construction was not objected to by the plaintiff and the value of the

property had thereafter gone up considerably. Thereafter, the plaintiff has now come forward with the suit. The defendants would submit that the mutual understanding between the parties could not be acted upon now. Therefore, the suit has to be dismissed.

8. The Trial Court has framed the following issues:

(i) Whether the plaintiff is entitled to get specific performance of contract relief under a sale agreement dated 17.11.2004?

(ii) Whether there is mutual understanding and gentleman agreement between the plaintiff and the defendant?

(iii) Whether the suit is barred by limitation?

(iv) To what other relief?

9. The plaintiff examined himself as P.W.1 and one Padmarajan as P.W.2. Ex.A.1 to Ex.A.14 were marked on the side of the plaintiff. On the side of the defendants, the 2nd defendant was examined as



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D.W.1 and marked Ex.B.1.

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10. The Trial Court on considering the evidence on record held that the plaintiff was non suited on the ground of his failure to prove his readiness and willingness since the plaintiff has come to the Court nearly 4 years after the execution of the sale agreement. However, taking note of the fact that the defendants have admitted the receipt of a sum of Rs.6,00,000/-, the Trial Court without there being relief of refund sought for, directed the defendants to pay a sum of Rs.6,00,000/- which was received as an advance along with the compensation amount of Rs.1,00,000/- (Totally Rs.7,00,000/-) together with interest at 9% p.a., from the date of agreement till payment to the plaintiff.

11. Challenging the same, the plaintiff has filed A.S.No.16 of 2017 on the file of the Principal District Judge, Kancheepuram at Chengalpattu. The learned Appellate Judge had confirmed the findings of the Judgement and Decree of the Trial Court that the plaintiff was



not entitled to the suit for specific performance, however, modified the amount payable by the defendants to a sum of Rs.8,80,000/- with interest at 6% p.a., taking note of the fact that the defendants had received a further sum of Rs.1,80,000/- which was evidenced by Ex.A.5. Therefore, the decree was modified to the extent of directing the defendants to pay a sum of Rs.8,80,000/- with interest at 6% p.a., from the date of the plaint till realisation.

12. Challenging the same, the plaintiff is before this Court.

13. The learned counsel for the appellant would submit that the plaintiff has paid a considerable sum of Rs.7,80,000/- and what remained was a sum of Rs.35,000/-. The plaintiff has come to the Court within the year of the extension granted under Ex.A.5 and therefore the finding of the Courts below that the plaintiff has not proved his readiness and willingness has to be necessarily set aside.

14. The learned counsel would submit that the defendants had



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made an endorsement knowing fully well that the time was not an essence of the contract, particularly when the husband of the 1st defendant was legal practitioner himself.

15. Heard the learned counsel and perused the records.

16. The plaintiff in a suit for specific performance has to necessarily prove his readiness and willingness to go ahead with the execution of the document and this readiness and willingness has to be proved even in the absence of a demurrer being raised by the defendants.

17. In the instant case, admittedly the agreement of sale was dated 17.11.2004 and the time stipulated under the agreement was 3 months. On the date of execution of the agreement of sale, a sum of Rs.6,00,000/- has been paid and thereafter there is nothing to suggest that the plaintiff has taken steps to proceed for the execution of the sale deed. There is no impediment that has been put forth by the plaintiff



for going ahead with the sale deed except for stating that the defendants were evading execution of the same.

18. Even according to the plaintiff, the defendants had received a further sum, even then the plaintiff had not paid the amount in entirety but had paid only a sum of Rs.1,80,000/- and the defendants had made an endorsement for extending an agreement by a further period of 3 months i.e., to complete the execution on or before February 2005. Even then the plaintiff has not paid the entire sale consideration and taken steps to have the sale deed executed. The legal notice has been issued on 08.02.2008. The above conduct of the plaintiff clearly indicates that the plaintiff was not willing to proceed to conclude the contract.

19. Therefore, both the Courts below have taken note of this conduct and denied the relief of specific performance which is a discretionary relief. Though the plaintiff has not sought for refund of the advance amount, the Courts below have granted the same and the



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defendants have not challenged the same.

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20. Therefore, the Judgement and Decree of the Courts below does not require any re-consideration and accordingly, the Second Appeal stands dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

12.01.2024

Index : Yes/No
Internet : Yes/No
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To

1.The Principal District Judge,
Kancheepuram District at Chengalpattu

2.The Principal Subordinate Judge,
Kancheepuram District at Chengalpattu.



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P.T. ASHA, J,

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