



A.S.No.691 of 2017

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2024

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR JUSTICE R.SAKTHIVEL

A.S.No.691 of 2017

T.Janagan

...Appellant

Vs.

S.Kamalakannan

...Respondent

Prayer: Appeal filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 20.09.2017 in O.S.No.21 of 2016 on the file of the II Additional District and Sessions Court, Vellore at Ranipet and thereby decree the said suit.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.V.Raghavachari, Senior Counsel
for M/s.V.Srimathi



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J U D G M E N T

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

The unsuccessful plaintiff in the suit for specific performance in O.S.No.21 of 2016 is on appeal.

2. According to the plaintiff, the defendant agreed to sell an extent of 9272 Sq.ft. of land at Rs.1,100/- per Sq.ft. and an agreement of sale was entered into on 02.06.2009. On the date of the said agreement the plaintiff paid an advance of Rs.10,00,000/- and a years time was fixed for completion of the sale. It is the claim of the plaintiff that though the period is fixed for performance under the agreement, it was not the intention of the parties to make time the essence of the contract. It is also claimed that the plaintiff has been paying the sale price in parts and in all, he has paid a total sum of Rs.26,83,600/- between 13.07.2009 and 25.06.2010. In proof of the said payments, the plaintiff would rely upon his own accounts book marked as Ex.A2. Claiming that there is a balance of Rs.65,15,600/-, the plaintiff issued a notice seeking execution of the sale deed on 15.05.2012. The defendant issued a reply on 20.05.2012 claiming that the agreement is



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unrealistic and the plaintiff was not ready and willing to perform his part of the contract. The receipt of the sum of Rs.26,83,600/- was specifically denied. On receipt of the reply, the plaintiff launched a suit on 03.06.2013 seeking specific performance.

3. The defendant resisted the suit contending that the plaintiff was a lessee in the suit property under the lease agreement dated 13.11.1997. It is also claimed that the plaintiff has defaulted in payment of rents and a proceeding under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act was initiated seeking deposit of rents. A suit has also been filed in O.S.No.69 of 2010 for an injunction restraining the defendant from evicting the plaintiff except under due process of law. It was claimed that because of the aforesaid litigation, the agreement became unrealistic and unenforceable. It was also contended that the plaintiff was never ready and willing to perform his part of the contract.

4. On the above pleadings the learned trial Judge framed the following issues:-



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- 1. Whether the plaintiff is entitled to a decree of Specific Performance of contract as against the defendant?*
- 2. Whether the suit agreement is an abandoned unrealistic agreement?*
- 3. Whether the suit is barred by Limitation?*
- 4. To what other relief the plaintiff is entitled?*

5. At trial the plaintiff was examined as PW1 and two other witnesses were examined as PW2 and PW3. The defendant was examined as DW1. While Exs.A1 to A13 were marked on the side of the plaintiff, Exs.B1 to B7 were marked on the side of the defendant.

6. On a consideration of the evidence on record, the learned trial Judge concluded on issue No.2 that the agreement is true and valid. The learned trial Judge however concluded that the plaintiff has not proved payment of the sum of Rs.26,83,600/- as alleged by him. Ex.A2 statement of accounts was disbelieved by the trial Court. The learned trial Judge found that the plaintiff has not come to Court with clean hands and therefore he is not entitled to the discretionary relief of specific performance. The learned



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Judge also found that the plaintiff was not ready and willing to perform his part of the contract. Since the notice was issued almost after two years from the date fixed for performance and the suit was filed a year thereafter. On the above findings, the learned trial Judge dismissed the suit.

7. We have heard Mr.N.Manokaran, learned counsel appearing for the appellant and Mr.V.Raghavacahri, learned Senior Counsel appearing for the respondent.

8. Mr.N.Manokaran, learned counsel appearing for the appellant would vehemently contend that some of the payments made under Ex.A2 have been admitted by the defendant as DW1. The learned counsel would draw our attention to the evidence of DW1 in cross-examination to contend that the payments have been admitted. The learned counsel would also contend that there was an attempt of panchayat and hence there was a delay in sending the notice. He would point out that notice demanding performance having been sent within 3 years and suit filed within 2 years, the plaintiff cannot be non-suited on the ground of laches or absence of



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readiness and willingness. The learned counsel would also fault the trial Court for having disbelieved Ex.A2.

9. Contending contra, Mr.V.Raghavachari, learned Senior Counsel appearing for the respondent would submit that the evidence in cross-examination cannot be read as suggested by the learned counsel for the appellant. He would submit that a reading of the evidence would show that the suggestion as a whole has been denied and there is no admission of the receipt of money by DW1. It is also pointed out that there is a huge delay in issuance of notice. The agreement fixes 1 year time for performance. The learned Senior Counsel would point out that the 1 year time expired on 02.06.2010 and notice demanding performance was issued only on 15.05.2012, that too, with a false claim that a sum of Rs.36,83,600/- had already been paid.

10. The learned Senior Counsel would also submit that the specific performance being a discretionary relief cannot be granted if it is found that the plaintiff has approached the Court with unclean hands or a false case on



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material aspect viz., the consideration, which would affect the relief of specific performance. The learned Senior Counsel would also point out that the notice itself was issued after the suit for injunction in O.S.No.69 of 2010 was filed. According to the learned Senior Counsel, this fact would also indicate that the plaintiff was not ready and willing to perform his part of the contract.

11. We have considered the rival submissions.

12. On the rival contentions, the only question that is to be addressed is, as to, whether the plaintiff has demonstrated readiness and willingness to perform his part of the contract as required under Section 16(c) of the Specific Relief Act.

13. As regards the first contention of the learned counsel for the appellant on the oral evidence of DW1, we are unable to agree with the contention of the learned counsel. Though a cursory reading of the evidence appears that his contention is plausible, the statements made soon after the



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suggestions would nullify the effect of the so called admission. The evidence that is relied upon by the learned counsel reads as follows:-

13.07.09 என் தந்தைக்காக வாதியிடம் ரூ.5 லட்சம் பெற்றுகொண்டேன் ஆனால் அந்த பணத்தை என் தந்தையிடம் கொடுக்கவில்லையென்றால் சரியல்ல. 15.7.09ல் மீண்டும் வாதியிடம் ரூ.5 லட்சம் பெற்றுக்கொண்டு அதை என் தாயாருக்கு கொடுப்பதாக சொல்லி வாதியிடம் வாங்கினேன் அதை என் தாயாருக்கு கொடுக்கவில்லை என்றால் சரியல்ல. நான் வாங்கவும் இல்லை கொடுக்கவும் இல்லை. 20.7.09 வாதியிடம் ரூ.5 லட்சம் பெற்று கொண்டு என் தம்பிக்காக வாங்கி அதை வாங்கவும் இல்லை கொடுக்கவும் இல்லையென்றால் சரியல்ல. அதே மாதிரி பல தேதிகளில் மொத்தமாக ரூ.26,83,600 வாதியிடம் பெற்று கொண்டேன் என்றால் சரியல்ல.

14. A conjoint reading of the entire evidence extracted above would show that DW1 has denied the receipt of the money as well as the person for whom it was received. Therefore, we are unable to agree with the learned counsel for the appellant that there is an admission of the receipt of the money as evidenced by Ex.A2. Ex.A2 is a sheet of paper written by the plaintiff and signed by him. There is no acknowledgement by the defendant and in the absence of any other supporting evidence to demonstrate that the monies were paid as evidenced by Ex.A2, we are unable to accept Ex.A2 as



proof of payment.

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15. On the question of readiness and willingness Mr.N.Manokaran, learned counsel would seek to rely upon the judgment of the Hon'ble Supreme Court in *Ferrodous Estate (Pvt.) Ltd., Vs. P.Gopirathnam (Dead) and others* reported in (2020) 13 SCR 673, wherein the Hon'ble Supreme Court after considering the earlier judgments in *K.S.Vidyanadam Vs. Vairavan* reported in (1997) 3 SCC 1, *Saradamani Kandappan Vs. S.Rajalakshmi* reported in (2011) 12 SCC 18 and *Smt. Chand Rani (dead) by L.Rs. v. Smt. Kamal Rani (dead) by L.Rs.* Reported in (1993) 1 SCC 519 and extracting the principles laid down in *K.S.Vidyanadam Vs. Vairavan* reported in (1997) 3 SCC 1, which reads as follows:-

(i) *The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/ period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/ period prescribed cannot be ignored.*

(ii) *The courts will apply greater scrutiny and strictness when considering whether the purchaser was*



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“ready and willing” to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time limits stipulated in the agreement. The courts will also “frown” upon suits which are not filed immediately after the breach/ refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in specific cases, paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser.

observed as follows:-

31. The resultant position in law is that a suit for specific performance filed within limitation cannot be dismissed on the sole ground of delay or laches. However, an exception to this Rule is where immovable property is to be sold within a certain period, time being of the essence, and it is found that owing to some default on the part of the plaintiff, the sale could not take place within the stipulated time. Once a suit for specific performance has been filed, any delay as a result of the court process cannot be put against the plaintiff as a matter of law in



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decreeing specific performance. However, it is within the discretion of the Court, regard being had to the facts of each case, as to whether some additional amount ought or ought not to be paid by the plaintiff once a decree of specific performance is passed in its favour, even at the appellate stage.

16. Applying the said judgment, we find that the plaintiff in the case on hand, on the evidence that is available on record, has miserably failed to prove the readiness and willingness. It is the admitted case of the parties that the agreement fixes a period of 1 year. The balance of consideration payable is nearly Rs.91,99,200/-. The plaintiff has not established that he had made any attempt prior to 15.05.2012 to seek performance. Though the time fixed under the agreement expired on 02-06-2010 the plaintiff issued notice seeking performance only on 15.05.2012 and the suit has been filed almost a year after the reply notice was sent by the defendant. No doubt, the very delay in filing the suit will not amount to laches on the part of the plaintiff, if it is filed within the 3 years period, but, the delay in demanding performance would definitely demonstrate the absence of the readiness and willingness.



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WEB COPY 17. In the case on hand, the period fixed expired on 02.06.2010.

Notice demanding performance was issued on 15.05.2012, almost a year and 11 months thereafter. Therefore, even if we are to consider the claim of the plaintiff very liberally, we are unable to persuade ourself to conclude that the plaintiff was ready and willing to perform his part of the contract. We are unable to overturn the conclusion of the trial Court that the plaintiff has not come with clean hands, when he has claimed that he has paid a sum of Rs.26,88,600/- between the date of the agreement and 25.06.2010. The payment of Rs.10,00,000/- on the date of the agreement is evidenced by a written contract and though the defendant would make a feeble attempt to deny receipt of the said advance, he is precluded from letting in evidence as against the recitals in the written contract. Therefore, while rejecting the claim of the defendant that no advance is paid we uphold the conclusion of the trial Court regarding the payment of Rs.26,83,600/- between 13.07.2009 and 25.06.2010 under various heads.



18. Specific performance being a discretionary relief a person seeking the said relief is expected to come to Court with clean hands. The trial Court has specifically found that the plaintiff has not come to Court with clean hands and has made a false claim in respect of very material aspect viz., consideration. Therefore, he is dis-entitled to get the relief of specific performance. We confirm the said finding of the trial Court. In fine, we conclude that the plaintiff is not entitled to specific performance.

19. Pending appeal the plaintiff had filed an application seeking amendment of the plaint and has been successful in getting the relief of refund of advance included. Though Mr.V.Raghavacahari, learned Senior Counsel appearing for the respondent would contend that the advance was not at all paid, we have already concluded that he is dis-entitled to let in evidence or make a plea contrary to the recitals in the written instrument viz., Ex.A1 agreement and therefore we cannot accept the said contention or evidence which attempts to establish that no consideration was paid contrary to the recitals in the written agreement, more so, when the execution of the written agreement is admitted. Therefore, we are convinced that the



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plaintiff would be entitled to a decree for return of a sum of Rs.10,00,000/- paid as advance on the date of the agreement with interest at 9% from the date of the suit till today and at 6% from today till payment. No doubt, the relief of refund of advance was added only pending appeal, however the defendant has had the advantage of money, hence he is liable to pay interest from the date of suit.

20. Mr.V.Raghavachari, learned Senior counsel has pointed out that the defendant had already instituted a suit for arrears of rent in O.S.No.2 of 2021 seeking recovery of a sum of Rs.4,38,500/- as damages for non-payment of rents at Rs.10,500/- per month and Rs.50,000/- for damages to the goods and the plaintiff is in arrears of rent from October 2020 which would amount to more than Rs.8,00,000/- and he is entitled to set off the amount paid as advance towards the said rent.

21. We do not think we can pronounce upon the controversy relating to payment or non-payment of rent, since it is the subject matter of different proceeding. All that we can observe is that if the defendant succeeds in the



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suit for recovery of arrears of rent, he will be entitled to set off against the decree for repayment of advance granted by us in this appeal. It is also found from the records that the plaintiff has deposited a sum of Rs.65,15,600/- to the credit of the suit on 16.09.2016. Since, now we have refused the relief of specific performance, it will be open to him to withdraw the monies from the Court.

22. Accordingly, the appeal is allowed in part. There will be a decree for refund of the advance of Rs.10,00,000/- with interest at 9% per annum from the date of the suit till today and at 6% per annum from today till date of payment. No costs.

(R.SUBRAMANIAN, J.)

(R.SAKTHIVEL, J.)

04.06.2024

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Index : No

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Neutral Citation : No

Speaking order

To

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



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