



S.A.No.720 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 21.02.2024	Judgment Pronounced on 22.03.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.720 of 2017

S.Ramachandrudu

..Appellant

Vs.

J.Kamatchi

..Respondent

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 06.03.2017 made in A.S.No.46 of 2014 on the file of the Principal District Judge, Cuddalore District, Cuddalore, reversing the judgment and decree dated 30.07.2013 passed in O.S.No.103 of 2010 on the file of the II Additional Sub Judge, Cuddalore.

For Appellant : Mr.R.Muralidharan

For Respondent : Mr.R.Gururaj

JUDGMENT



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WEB COPY This Second Appeal has been filed against the judgment and decree dated 06.03.2017 made in A.S.No.46 of 2014 on the file of the Principal District Judge, Cuddalore District, Cuddalore, reversing the judgment and decree dated 30.07.2013 passed in O.S.No.103 of 2010 on the file of the II Additional Sub Judge, Cuddalore.

2.The plaintiff, in a suit for specific performance having succeeded before the Trial Court and suffered reversal finding before the First Appellate Court, is the appellant before me.

3.The parties are described as per their litigating status before the Trial Court.

4.The brief facts of the case for the purpose of adjudicating the above Second Appeal are as follows:

The plaintiff and the defendant entered into an agreement of sale with respect to the suit property for a valuable sale consideration of Rs.8,80,650/-. On the date of the sale agreement, an advance amount of Rs.2,25,000/- was paid by the plaintiff and three months time was fixed for completion of the



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transaction. Expressing readiness and willingness, the plaintiff issued a pre-suit notice on 23.08.2008, to which the defendant sent a reply on 08.09.2008 and in view of the defendant not coming forward to execute the Sale Deed, the suit came to be filed on 29.12.2008.

5.The defendant filed a written statement admitting the execution of the sale agreement and also receipt of advance. However, the defendant contended that she was an illiterate lady and she did not even know the address of the plaintiff, could not cancel the agreement of sale and seek forfeiture of the advance amount paid and that the plaintiff was not ready and willing to perform his part of the contract.

6.The defendant also filed an additional written statement stating that the defendant had entered into an agreement of sale with one T.Kalyanasundaram to sell the property for a sum of Rs.11,71,000/- and claimed that the said T.Kalyanasundaram was a proper and necessary party to the suit. The Trial Court found that the plaintiff was ready and willing to perform his obligations and decreed the suit.

7.However, the First Appellate Court reversed the findings of the Trial Court and held that the suit agreement comprised of Government property



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and therefore, the plaintiff cannot become entitled to the relief of specific performance. The First Appellate Court also found that the plaintiff has failed to prove 'readiness and willingness' on his part and directed the advance amount to be repaid with interest thereon at 12% p.a., from the date of sale agreement till the date of decree and thereafter at the rate of 6% p.a.

8. Aggrieved by the reversal findings, the plaintiff has preferred the above Second Appeal, challenging the findings of the First Appellate Court regarding 'readiness and willingness' and thereby seeking to restore the decree of the Trial Court granting relief of specific performance.

9. The above Second Appeal was admitted by this Court on 24.11.2017, on the following substantial question of law:

"(1) Whether the findings rendered by the first appellate Court holding that the plaintiff was not ready and willing to perform his part of contract in view of the clear evidence forthcoming both plaintiff and defendant?"

10. I have heard Mr.R.Muralidharan, learned counsel for the appellant and Mr.R.Gururaj, learned counsel for the respondent and also I have gone



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through the oral and documentary evidence adduced by the parties.

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11.The parties have admitted the suit sale agreement, which was marked as Ex.A1, and also payment of advance of Rs.2,25,000/- even on the date of agreement of sale. The plaintiff has issued a notice in Ex.A2, stating that the plaintiff has always been ready and willing to complete the sale transaction and also stating that on 29.08.2008, he would be present with the balance sale consideration, before the Sub Registrar Office, Tiruppapuliur, for registering the document. On receipt of the said notice, the defendant has sent a reply on 08.09.2008 in Ex.A4, where the defendant has specifically alleged that the plaintiff never called upon the defendant to come forward to execute the sale agreement and that the plaintiff was never ready and willing to complete the transaction and also claimed that the defendant, being illiterate, did not have the copy of the agreement of the sale and therefore, could not send a notice of revocation of the agreement and claim forfeiture of the advance amount paid. The plaintiff has marked Ex.A5 to Ex.A9 to establish that he was possessed of sufficient funds to pay the balance sale consideration and complete the sale transaction.

12.The learned counsel for the appellant would state that the plaintiff



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has established his readiness and willingness at all material points of time and also exhibited documents to show the availability of funds and the Trial Court had rightly discussed all these aspects and granted a decree of specific performance. However, the First Appellate Court has erroneously reversed the findings of the Trial Court and proceeded to grant the alternate relief of advance amount. He would therefore pray that the Second Appeal being allowed.

13.Per contra, Mr.R.Gururaj, learned counsel for the respondent would submit that the plaintiff admitted in his cross-examination that he did not even furnish a copy of the agreement of sale to the defendant. Further, he would contend that all the documents exhibited to show the funds were pertaining to the Clinic and not the personal income of the plaintiff. Further, the learned counsel for the respondent would also invite my attention to the E.P.No.84 of 2017 filed by the appellant to withdraw the advance amount deposited by the defendant and would contend that the conduct of the appellant would therefore clearly go to show that the appellant has accepted the relief granting the alternate prayer for refund of advance amount and therefore, the appellant could not pursue the relief of specific performance.



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14.The learned counsel for the appellant would place reliance on the decision of the Hon'ble Supreme Court in ***Kasturi Vs. Iyyamperumal*** reported in **2005 (2) CTC 676** and in ***Krishnan Vs. P.Palanisamy*** reported in **2010 (3) LW 67** in support of his contentions.

15.Per contra, on the side of the respondent, the learned counsel for the respondent would place reliance on the proposition that Hon'ble Supreme Court in ***Chand Rani (dead) by LRs., Vs. Kamal Rani (dead) by LRs.***, reported in **AIR 1993 SC 1742** where the Hon'ble Supreme Court held that there is a presumption against time being the essence of contract but the Court can infer reasonable time, depending on the nature of the property and also circumstances, such as object of making any contract.

16.He would also place reliance on the decision of the Hon'ble Supreme Court in ***I.S.Sikandar (D) by Lrs Vs. K.Subramani and Others*** reported in **2014 (1) LW 47**, where the Hon'ble Supreme Court held that the suit for specific performance was not maintainable when there was a breach of terms and conditions of agreement by the plaintiff.



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17.He would place reliance on the decision of the Hon'ble Supreme Court in *N.P.Thirugnanam (D) by Lrs Vs Dr.R.Jagan Mohan Rao & Others* reported in *1995 (5) SCC 115*, where the Hon'ble Supreme Court held that the Court is not bound to grant a decree of specific performance merely because there was a valid agreement of sale and the plaintiff has to prove that he was ready and willing to perform the his part of the contract and his conduct before and after filing of the suit along with other attending circumstances would be relevant.

18.The learned counsel for the appellant has also filed a memo, meeting the objection of the learned counsel for the respondent regarding the filing of E.P.No.84 of 2017. According to the learned counsel for the appellant, his client is not waiving his right to specific performance and that the Second Appeal being pending from 2017, the appellant is not willing to receive the amount deposited by the respondent.

19.In a suit for specific performance there is a personal bar for the plaintiff to be entitled to a decree for specific performance. Section 16(c) of the Specific Relief Act requires the plaintiff to aver and prove that he was always ready and willing to comply with the unfulfilled obligations on his



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part, before becoming entitled to a decree for specific performance. It is now settled law that 'readiness' and 'willingness' are two independent components and the plaintiff, in a suit for specific performance, will have to establish both 'readiness' as well as 'willingness', in order to entitle himself to a decree of specific performance.

20. In so far as the 'readiness' is concerned, it relates to the plaintiff possessing necessary funds to pay the balance sale consideration. Here, admittedly the plaintiff has exhibited the documents in Ex.A5 to Ex.A9 to show that he had accounts in Indian Overseas Bank as well as ING Vysya Bank and also in State Bank of India and that he had necessary funds to meet the balance sale consideration. However, satisfaction of 'readiness' alone would not be sufficient to become entitled to decree for specific performance. The plaintiff additionally has to establish his 'willingness' to have the contract concluded. 'Willingness' pertains to the conduct of the plaintiff and the steps he has taken to ensure that the agreement is performed as originally contemplated under the agreed terms and conditions between the parties.

21. In the instant case, the agreement is dated 05.12.2007, where the parties agreed upon three months to complete the transaction. The advance



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amount paid by the plaintiff was only Rs.2,25,000/- which was approximately about 25% of the total sale consideration. The plaintiff has not shown to be willing to complete the transaction within the said period of three months. The first pre suit notice came to be issued only on 23.08.2008, after lapse of five months from the last date fixed for performance of the agreement terms. Even after issuance of a reply, contending that the plaintiff was ready and willing, the suit was not filed immediately, but only four months thereafter. Thus, the plaintiff has clearly not established 'willingness' on his part and consequent upon such failure, the plaintiff is not entitled to the discretionary and equitable relief of specific performance. The First Appellate Court has rightly granted the alternate relief of refund of advance and it is also seen that the plaintiff himself has filed E.P.No.84 of 2017, against the respondent to deposit the said amount before the Executing Court.

22.In this regard, the learned counsel for the respondent would place reliance on the decision of this Court in ***Kamalam & Another Vs. M.A.Abdul Rahman*** reported in ***2024-1-L.W.-242***, where this Court held that where there is a demand for refund of advance amount it manifestly proves intention to abandon the right to purchase the property under the agreement. In the said case, the demand was prior to even filing of the suit and therefore, the said



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ratio may not be straight away and strictly applied to the facts of the present case. However, the conduct of the plaintiff assumes significance in a suit for specific performance. I have already found that before the three month period contemplated for completing the transaction, the plaintiff did not take a single step towards or in furtherance of conclusion of the contract, by even offering to pay the balance sale consideration.

23. Even in issuing the pre-suit notice, there has been considerable delay and even after noticing refusal on the part of the defendant, the suit was not filed immediately. This conduct, coupled with the fact that the plaintiff has himself filed an Execution Petition to seek recovery of the advance amount as directed by the First Appellate Court, only evidences his conduct that he was satisfied with the decree granted by the First Appellate Court. It is not open to the appellant to contend that the Execution Petition was filed only to secure the advance amount and he never wanted to forgo his right of specific performance.

24. In any event, having found that the plaintiff has not been willing to comply with the sale transaction, I do not find any material irregularity, infirmity or perversity in the findings arrived at by the First Appellate Court.



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Consequently, the substantial question of law is decided against the appellant herein.

25.In the result, the Second Appeal is dismissed. There shall be no order as to costs.

22.03.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

- 1.The Principal District Judge, Cuddalore District, Cuddalore.
- 2.The II Additional Sub Judge, Cuddalore.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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P.B.BALAJI, J.

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Pre-delivery judgment made in
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