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AS No.929 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 05.06.2024	Delivered on 27.06.2024
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CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

A.S.No.929 of 2018

M/s. Jubilee Plot & Housing Pvtl Ltd.,
Rep. by its Managing Director
Mr.R.P.Darmalingam,
No.15C, Vallalar Kuriruppu,
Plot No.1379C, 6th Street, I-Block,
Golden Villa, Anna Nagar West,
Chennai 600 040.

... Appellant/Plaintiff

Vs

Mr.A.Rajan
Defendant

... Respondent /

This appeal is filed under Section 96 of the Code of Civil Procedure, to set aside the decree and judgment dated 31.07.2017 passed in O.S.No.34 of 2013 on the file of the learned Principal District Judge, Kancheepuram District @ Chengalpet.

For Appellant : Mr.M.Vivekanandan

For Respondent : Mr.A.Maheshwath



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for M/s. R.N.Amarnath

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J U D G E M E N T

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

The plaintiff in OS No.34 of 2013 on the file of the Principal District Judge, Kancheepuram District at Chengalpattu is the appellant.

2. For convenience, the parties will be referred to as per the rank in the Suit.

3. The suit was laid seeking specific performance of an agreement of sale dated 01.09.2011. According to the plaintiff, the defendant, who is the owner of the suit property, agreed to sell the suit property measuring about 2 acres and 37 cents for a consideration of Rs.1,00,000/- per cent. An advance of Rs.5,00,000/- was paid on the date of the agreement and a period of 18 months was fixed for performance of the contract. It was also claimed that possession of the land was handed over to the plaintiff on the date of the agreement. Subsequently a sum of Rs.25,00,000/- was paid on 22.09.2011 and a further sum of Rs.20,00,000/- was paid on 01.10.2011. Both the above payments were made by cheques and the cheques were encashed by the defendant.



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4. Thereafter on 26.07.2012 seven postdated cheques bearing dates between 31.07.2012 and 30.08.2012 were issued and the defendant had agreed not to deposit those cheques for payment without producing the original documents. The defendant did not produce the original documents. He claimed that he has raised loan on the security of the property and he could get back the original documents only on repayment of the loan. Believing the defendant, the plaintiff had transferred a sum of Rs.10,00,000/- to the account of the defendant by RTGS on 02.08.2012 and took return of the first cheque dated 31.07.2012. The defendant encashed the cheque dated 06.08.2012 and did not produce the original documents. The plaintiff therefore, issued stop payment and informed the defendant that it has issued instructions for stop payment to its Bank.

5. The plaintiff issued a legal notice on 29.08.2012 demanding performance of the contract and the same was replied to by the defendant on 10.09.2012. Contending that the allegations in the reply notice are not true, the plaintiff sued for specific performance of the agreement of sale alleging that he has always been ready and willing to perform his part of



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the plaintiff's readiness.

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6. The defendant resisted the suit contending that the agreement is not true, he would claim that he was a Real Estate Broker and the plaintiff being a person engaged in Real Estate business had forced the defendant to execute a Sale Agreement in respect of the suit property. The defendant would further claim that he did not offer the suit property for sale at any point of time.

7. It is the further contention of the defendant that the cheques were given for the commission due to him in other Real Estate transactions under which the plaintiff purchased lands through him and other Real Estate Brokers in the area. It was also contended that the plaintiff was not ready and willing to perform his part of the contract and the cheques issued by the plaintiff were dishonoured. It was also the case of the defendant that the plaintiff had no means to pay such huge consideration of Rs.2,37,00,000/-.

8. On the above pleadings, the learned Trial Judge framed the following issues:



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1. Whether the plaintiff is entitled for the relief of specific performance;

2. Whether the plaintiff is entitled for the relief of refund of the advance amount of Rs.65,00,000/- and the amount spent for lay out approval ie Rs.10,00,000/- as an alternative relief;

3. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for;

4. To what relief the plaintiff is entitled to.

9. At trial, an employee of the plaintiff was examined as P.W.1 and its Managing Director was examined as P.W.2 and Exhibits A1 to A27 were marked. The defendant was examined as D.W.1 and Exhibits B1 to B32 were marked.

10. The learned Trial Judge on a consideration of the evidence on record concluded that the plaintiff was not ready and willing to perform his part of the contract. The learned Trial Judge also took into account the fact that the agreement provides for sale of the property in portions, upon payment of part consideration. Though, the plaintiff claims to have



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paid monies to the defendant in part had not taken sale deeds for even one square feet of land. The Trial Court also took into account the fact that in Ex.A10 reply notice, the defendant had expressed his willingness to execute the sale deed within 10 days on 10.09.2012, despite the same the plaintiff has not come forward to pay the balance of sale consideration and take the Sale Deed. The fact that five of the seven postdated cheques issued between 31.07.2012 and 30.08.2012 were dishonoured also weighed by the Trial Court.

11. On the above findings, the learned Trial Judge also concluded that the plaintiff has never being ready and willing to perform his part of the contract. The learned Trial Judge also concluded that the claim that defendant had not produced the original documents itself as invented to cover up the default on the part of the defendant. The learned Trial Judge, however, answered issue No.2 partly in favour of the plaintiff and granted a decree for refund of the advance and the further payments made by the plaintiff to the tune of Rs.62,50,000/- after deducting 50% of the advance of Rs.5,00,000/- paid at the time of the agreement as per the Clause in the agreement. The learned Trial Judge also granted 6% interest on the advance amount from the date of suit till date of



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layout for the land approved. Pointing out to the plea of the defendant that the agreement itself was created on pre-signed blank papers, the learned counsel would submit that the defendant has projected a false case before the Court and the said fact was completely overlooked by the Trial Court.

15. It is the further contention of the learned counsel that the defendant had admitted his signatures in the agreement as well as the endorsements dated 22.09.2011, 01.10.2011 and 26.07.2012. He would however, claim that they were obtained in blank and were filed up. The learned counsel would also point out that the plaintiff had time till 28.02.2013 to seek specific performance and he had in fact demanded performance under the legal notice dated 29.08.2012 even within the time stipulated under the agreement. Therefore, the learned counsel would submit that the judgment of the Trial Court has to be interfered with.

16. Contending contra Mr.A.Maheshwath, learned counsel appearing for the respondent would submit that the total consideration, even according to the plaintiff, is Rs.2,37,00,000/-. The plaintiff paid a meager advance of Rs.5,00,000/- on the date of the agreement and the



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other payments made, according to the defendant, were not towards the balance of sale consideration but were towards the commission payable to the defendant on other transactions. The learned counsel would also submit that out of the six postdated cheques that were issued between 06.08.2012 and 30.08.2012, five were presented for payment and four were dishonoured on the ground of insufficiency of funds. Only the fifth cheque was returned on 04.09.2012 with an endorsement payment stopped by the drawer.

17. Drawing strength from the above facts, the learned counsel would submit that the plaintiff was not ready and willing to perform his part of the contract. Drawing our attention to the reply notice dated 10.09.2012 marked as Ex.A10, the learned counsel would submit that the defendant had offered to execute the Sale Deed provided the plaintiff pays the balance of sale consideration within 10 days from the date of receipt of the reply notice. The plaintiff having not done so has chosen to launch the suit nearly five months thereafter on 27.02.2013. All these factors put together would demonstrate that the plaintiff was not ready and willing to perform his part of the contract. The learned counsel would also draw our attention to the recent judgment of the Hon'ble Supreme Court in



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Online SC 981, wherein the Hon'ble Supreme Court has reiterated the principles of law laid down in ***K.S.Vidyanadam vs. Vairavan***, reported in ***(1997) 3 SCC 1 and SaradamaniKandappan v. S. Rajalakshmi***, reported in ***(2011) 12 SCC 18 and Atma Ram vs. Charanjit Singh***, reported in ***(2020)3 SCC 311***.

18. The sum and substance of the submissions of the learned counsel for the respondent is that even though the plaintiff has filed the suit within the time allowed under law, if it is found that he was not ready and willing to perform his part of the contract, he has to fail in his claim for specific performance. On the rival contentions, the only point that would arise for determination is:-

Whether the Trial Court was right in concluding that the plaintiff was not ready and willing to perform his part of the contract.

ON THE POINT:

19. Though the defendant has raised several pleas including denial of execution of the agreement, at trial, he had given up those pleas and has stuck to the only defence that the plaintiff was not ready and willing

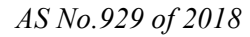


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to perform his part of the contract. The Sale agreement was entered into on 01.09.2011, the price fixed for the entire extent of land was Rs.2,37,00,000/- and an advance of Rs.5,00,000/- was paid on the date of the agreement. Subsequent payments were made on 22.09.2011, 01.10.2011 and 02.08.2012. The total amount that was paid by the plaintiff is Rs.65,00,000/-. The agreement provides for registration of Sale Deed/s for lesser extent of land in favour of the plaintiff or third persons, but the plaintiff has not obtained any such Sale Deed. Moreover, the plaintiff had issued seven postdated cheques, while two of them were honoured, four of them were returned for insufficiency of funds and the last of the cheques dated 30.08.2012 was returned as payment stopped by the drawer.

19.1. Though it is claimed by the plaintiff that the stop payment instructions were issued since the defendant did not hand over the original Title Deeds as agreed to, the letter dated 28.08.2012 marked as Ex.B6 which is the copy of the stop payment instructions issued by the plaintiff to its bankers with the copy marked by the defendant does not cite non production of original title deeds as a reason. It only states that the legal issues have not been resolved. It is not the case of the plaintiff

<https://www.mhc.tn.gov.in/judicial> that there were some legal issues with reference to the property and they



19.2. The question of production of original Title Deeds was raised in the legal notice dated 29.08.2012 issued a day after issuance of stop payment instructions. We should also point out at this juncture by the time the stop payment instructions were issued on 28.08.2012 Ex.B6, atleast five cheques were dishonoured by the plaintiff's bankers. The cheques along with return memos have been marked as 1 to B5, it is seen there from that four out of the five cheques have been returned with the endorsements "insufficient funds".

<https://www.mhc.tn.gov.in/judis>



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plaintiff.

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19.4. Yet another factor which will weigh in favour of the defendant is the offer of the defendant, made in the reply notice dated 10.09.2012. In the said notice, the defendant had made it very clear that he is ready to execute the Sale Deed if the plaintiff comes forward to pay the balance of sale consideration within the period of 10 days from the date of receipt of the said notice. The receipt of the reply is not denied. However, the plaintiff has chosen to issue a rejoinder on 18.01.2013 nearly three months thereafter. These facts would also demonstrate absence of readiness and willingness on the part of the plaintiff.

19.5. As regards readiness and willingness of the plaintiff in a suit for specific performance, the Hon'ble Supreme Court in its recent pronouncement in *Rajesh Kumar v. Anand Kumar and others*, reported in *2024 SCC Online SC 981*, has reiterated the principles of law enunciated in *K.S.Vidyanadam vs. Vairavan*, reported in *(1997) 3 SCC 1* and *Saradamani Kandappan v. S. Rajalakshmi*, reported in *(2011) 12 SCC 18* and *Atma Ram vs. Charanjit Singh*, reported in *(2020) 3 SCC 311*. After referring to the above decisions, the Hon'ble Supreme Court



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had observed as follows:

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“18. In the case in hand, the plaintiff entered into an agreement with only one of the co-owners and thereafter sought extensions for execution of the sale deed but did not prefer any suit though he was aware of the sale deed dated 14.05.1997 executed in favour of defendant nos. 12 to 14 and sent a legal notice on 30.05.1997 and even objected to the subsequent purchasers’ application for mutation of their names in the revenue records on 20.08.1997 and refers to a meeting of the Gram Panchayat dated 06.12.1997, yet the suit was preferred, on 09.05.2000 on the last date of limitation. Thus, on the strength of observations made by this Court in K.S.Vidyanadam(supra),AzharSultana(supra) Saradamani Kandappan (supra) & Atma Ram (supra), the suit having been preferred after a long delay, the plaintiff is not entitled for specific



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performance on this ground also.”

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The Hon’ble Supreme Court and this Court have repeatedly pointed out that in weighing the readiness and willingness of the plaintiff in a suit for specific performance, there cannot be a straight jacket formula and the Courts will have to go by the evidence on record in each case.

19.6. It is settled legal position that if the plaintiff is shown to be not ready and willing to perform his part of the contract, even for a part of the period, he would not be entitled to the discretionary relief of specific performance. In the case on hand we find that the plaintiff was not ready and willing at least from August 2012 till the date of filing of the suit. This absence of readiness and willingness would definitely disentitle to the plaintiff to the relief of specific performance. The learned Trial Judge has rightly granted a decree for refund of advance, which has not been appealed against. We therefore do not see any reason to interfere with the conclusions of the Trial Court.

20. In fine the Appeal stands **dismissed**. However in the

<https://www.mhc.tn.gov.in/judis> circumstances we do not impose any costs.



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(R.SUBRAMANIAN, J .) (R.SAKTHIVEL, J.)
27.06.2024

jv

Index : No

Internet : Yes

Speaking order

Neutral Citation: No



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To

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1. The Principal District Judge,
Kancheepuram District @ Chengalpet.
2. The Section Officer,
V.R. Section,
Madras High Court, Chennai 104.



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