



Second Appeal No.152 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.152 of 2019
and C.M.P.Nos.2836 & 2839 of 2019

Radha Kounder

.... Appellant

-Vs-

- 1.Bakthavatsalam (Died)
- 2.Soundararajan
- 3.Senthilvelrajan
- 4.B.Mohana Muralidharan
- 5.Ravi Madana Ratnavel Raja

(R1 Died, RR 2 and 3 are already on record.
R4 and R5 recorded as legal representatives
of the deceased R1 vide court order dated
30.07.2024 and memo dated 29.07.2024
(27536) made in SA.No.152/2019 by VLNJ)

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.12 of 2014 dated 06.07.2018 on the file of the Additional District Judge (Fast Track Court), Villupuram, reversing the judgment and decree of the trial Court made in O.S.No.115 of 2009 dated 30.09.2013 on the file of the Principal Subordinate Court, Tindivanam.

For Appellant : Mr.R.Thiagarajan

For Respondents : Ms.Nilofer
for Ms.R.Meenal



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J U D G M E N T

The present Second Appeal arises against the judgment and decree of the learned Additional District Judge, Fast Track Court, Villupuram in A.S.No.12 of 2014 in reversing the judgment and decree of the learned Principal Subordinate Court at Tindivanam in O.S.No.115 of 2009 dated 30.09.2013.

For the sake of convenience, the parties will be referred to as per their ranking in the suit.

2. O.S.No.115 of 2009 is a suit for specific performance of an agreement of sale dated 21.10.2006. The purchaser is the plaintiff. As per the agreement, the suit schedule mentioned property was agreed to be sold for a sum of Rs.2,65,000/-. On the date of sale agreement itself, a sum of Rs.2,40,000/- had been paid by the plaintiff to the defendants. That left out a sum of Rs.25,000/- to be paid by the plaintiff and the time period granted for such payment was one month. Since the defendants were evading the execution of the sale deed after receipt of the balance sale consideration, the plaintiff issued a notice on 22.07.2008 calling upon the defendants to come forward and execute the sale deed.



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3. A reply was issued on 29.07.2008 by the first defendant denying that no payment was made subsequent to 21.10.2006 and a specific plea was raised stating that the plaintiff is only trying to keep the pot boiling by issuing the notice. The first defendant would also plead that he had four sons and that the other two sons who are not parties to the agreement have a right over the suit property and would take a plea that a sale agreement without the consent of the other two sons is invalid. The clear and categorical stand in the reply notice was that when the suit agreement had contemplated its completion within a period of one month, time being the essence of the contract, the plaintiff is not entitled to any legal remedy for he had issued notice only after one year. He would also plead that the plaintiff was not ready to perform his part of the contract and that the value of the property had escalated and therefore he would be put to undue hardship if the sale agreement is converted to a sale deed through the decree.

4. After the reply was received on 29.07.2008, the suit was not presented immediately. Another notice was issued on 30.09.2009, which was returned as refused. Finally, the plaintiff came forward with the suit for specific performance on 29.10.2009.

5. On being served with summons, the first defendant entered appearance and filed a detailed written statement. The written statement was in



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line with his reply issued on 29.07.2008. He admitted the agreement, but denied that further payment of Rs.25,000/- had been paid by the plaintiff. The same plea regarding the property being an ancestral property and the other two sons having a right was parroted in the statement. On these pleas, the first defendant sought for dismissal of the suit.

6. On the basis of the above pleadings, the trial Judge framed the following issues:

1. வாதி கோரும் ஏற்றதை ஆற்றுதல் பரிகாரம் பெற அருகமானவரா?
- 2.மாற்று பரிகாரமாக கிரைய தொகை ரூ.2,65,000 ஐ பின்வட்டியுடன் பிரதிவாதிகள் வாதிக்கு செலுத்தக் கோரும் பரிகாரம் பெற அருகமானவர்களா?
- 3.தாவா சொத்துக்கள் பொது குடும்ப சொத்துக்கள் என்ற கூற்று சரியா ?
- 4.உரிய காலத்தில் வாதி கிரைய பத்திரம் எழுத நடவடிக்கை எடுக்கவில்லை என்ற கூற்று சரியா ?
- 5.வாதிக்கு கிடைக்கக்கூடிய வேறு பரிகாரம் என்ன ?

7. On the side of the plaintiff, he examined himself as P.W.1 and two other witnesses as P.Ws.2 and 3. He marked Exs.A1 to A8 on his side. On the side of the defendants, only one witness was examined as D.W.1 and he marked Exs.B1



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to B3.

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8. On a consideration of the entire evidence let in before the Court, the learned trial Judge came to the conclusion that the plaintiff is entitled to a decree of specific performance and therefore decreed the suit.

9. Aggrieved by the same, a regular appeal was preferred before the learned Additional District Court (Fast Track Court), Villupuram. The learned Additional District Judge received the appeal as A.S.No.12 of 2014. After hearing both sides, she allowed the appeal on 06.07.2018.

10. Against the said judgment and decree, the present Second Appeal has come up before this Court. The appeal had not been admitted by this Court and notice regarding admission had been ordered on 06.02.2019.

11. On service of summons, Tmt.R.Meenal entered appearance for the respondents. The matter is listed before me today for admission and for orders thereof.



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12. Heard Mr.R.Thiagarajan for the appellant and Ms.Nilofer for Ms.R.Meenal for the respondents.

13. Mr.R.Thyagarajan would lead me through the agreement as well as through the first suit notice issued by the plaintiff on 22.07.2008, and also the reply issued by the first defendant on 29.07.2008. He would urge, as early as in 2006 his client has performed all that he had to do and that the plaintiff has paid substantial amount under the agreement even in October 2006 and what remained to be paid was a paltry sum of Rs.25,000/-. He would then draw my attention to the evidence of P.W.3 to state that P.W.3 had clearly deposed that the balance sum of Rs.25,000/- was paid within 15 days from the date of agreement. He would state that his client had great belief and trust in the defendants and therefore did not take a receipt from them for payment of the balance amount. He would state that time is not the essence of the contract and as there is no denial on the side of the first defendant as regards the plaintiff's ability to garner funds, the lower appellate Court ought not to have interfered with the judgment of the trial Court.

14. In addition, he would draw my attention to Section 20 of the Specific Relief Act and would state that though it was the discretion exercised by the lower appellate Court, such course should be taken only when the decree had



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been granted by the trial Court in capricious and arbitrary manner and not when the judgment is well reasoned. Thereafter, he would point out that by virtue of the amendment made to the Specific Relief Act by Act 18 of 2018, Section 16(c) has been amended by removing the words "aver and prove" and is now substituted by the words "fails to prove". Therefore, he would state that I should take notice of the amendment and should admit the appeal and reverse the judgment of the lower appellate Court.

15. He would state that the conduct of the first defendant should have to be looked into. The first defendant had taken varying stands at different points of time. He would point out a line in the cross examination of the defendant that the defendant took a plea as if the sale agreement was executed in the course of a loan transaction and had it been one, the defendant would have made some payment towards interest in order to prove such a transaction. He would also invite my attention to the judgments of the Supreme Court to state that the delay in filing a suit, even if it is around 2 years, unless and until such delay is disadvantageous to the defendant, the Court should not make much light of the same.

16. Mr.R.Thyagarajan suggested the following questions of law:



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- (a) *Whether the appellate court right in reversing the well considered judgment and decree rendered by the Trial Court in A.S.No.12 of 2014 whimsically, arbitrarily and capriciously?*
- (b) *Whether the appellate Court has failed to exercise the judicial discretionary powers, power and jurisdiction conferred on it under Section 20 of the Specific Performance Act in letter and spirit?*
- (c) *Whether the appellate Court exercised its discretion judiciously on sound reasoning and sound principles guided by Section 20 of the Specific Performance Act?*
- (d) *Whether the appellate Court is right in directing the refund of the sum of Rs.2,40,000/- with interest at the rate of 9% from the date of agreement for sale and interest at the rate of 6% from the date of decree till date of realization?*
- (e) *Whether the learned appellate Judge considered the dictum laid down in 2008(7) SCC 46 - Hardeo Rai Vs.Sakunthala Devi, viz., the defense taken that the property in question was a joint family property and that, the agreement for sale was a result of forcible execution - No evidence shown that the parties were in joint possession of the property - presumption of partition could be drawn - Trial Court's order not interfered with.*
- (f) *When the respondents/defendants having refused to receive the legal notice dated 30.09.2009, Exhibit 2, are they justified in resisting the claim of the plaintiff for specific performance, whether the respondents / defendants have*



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approached the Court with a pair of dirty hands or not?

(g) It is well settled principles of law that the power of Court to grant a decree for specific performance is discretionary, equitable, such a decree has to be exercised on sound judicial principles, capable of correction by court of appeal a contemplated under Section 20 of the Specific Performance Act, such a discretion can be interfered with by the appellate Court, provided the judgment suffers from illegality or infirmity and the conclusion reached by the trial Court is so improbable that no prudent person would have reached such a conclusion. In the absence of such materials before the Court, whether the Court of Appeal is right in declining the relief of specific performance?

17. Ms.Nilofer would invite my attention to the judgment of the trial Court and would state that as the learned trial Judge had not given a finding on 'readiness and willingness' of the plaintiff, interference by the lower appellate Court is justified. She would thereafter invite my attention to Ex.B3 reply notice and argue that it was the specific case under Ex.B3 that the defendants wanted to put an end to the agreement. Despite the same, the plaintiff did not approach the Court immediately, but attempted to issue another notice on 30.09.2009 and only thereafter presented the suit. She would submit that no question of law, much less substantial question of law, arises for consideration in the appeal and she would plead for confirmation of the decree of the lower



appellate Court.

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18. I have carefully considered the arguments of both sides and have gone through the records.

19. The suit is one for specific performance of an agreement of sale. I am drawn to Section 20 of the Specific Relief Act. It is the duty of the plaintiff to satisfy the requirements under Section 16 and once the Court is satisfied Section 16 has been complied with, its attention will turn to Section 20. This is because Section 16 places a personal bar for grant of any relief of specific performance. The plaintiff approaches the Court since the defendant has refused to execute the sale deed. Therefore, a high bar is placed on the plaintiff to prove that he had done everything that he had to do under the agreement and the reason that the sale agreement could not be converted into a sale deed was because the defendant was recalcitrant. It is pertinent to note that while Section 16 speaks about the bar on the plaintiff, there is no such provision under the Specific Relief Act with respect to the defendant. This is because, a person who approaches the Court must prove his case. Even if the defendant were to remain *exparte*, it does not mean a decree for specific performance automatically follows. If the plaintiff incurs the wrath of Section 16(a) to 16(c), then even if the defendant has not put up any defence, the Court will still be entitled to reject the claim.



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Section 16(c) is so fundamental that unless and until the plaintiff pleads and proves that he has been 'ready and willing' to perform the essential terms of the contract and he had performed the same, he would not be entitled for a decree for specific performance. To put it in other words, the foundation for a decree for specific performance, the Court's satisfaction that the plaintiff has been ready and willing to perform that which is necessary as per the terms of the agreement. If it is absent, the Court need not look any further.

20. Let us take the case on hand. The agreement was admittedly entered into on 21.10.2006. Though the defendant had put up a plea regarding the agreement being consequence of a loan transaction in cross examination, a mere glance at Ex.B3 and the written statement convinces me that the defendant has not denied the agreement. One of the essential terms of the agreement is payment of Rs.25,000/- by the plaintiff to the defendant, which is the balance of sale consideration. On this aspect, the plaintiff has miserably failed to prove the same. The case of the plaintiff is that he has made the payment, but on account of the great trust he had in the defendants he did not take their signatures as a receipt / proof of the said payment.

21. I find this plea very interesting for the reason, if the plaintiff had such



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great faith in the defendants, there was no necessity for him in the first place to enter into an agreement at all. Faith and belief require no proof. But, having come before the Court, it is the burden of the plaintiff to prove that he had made the payment of Rs.25,000/-. In order to substantiate this, he would examine P.W.3. The evidence of P.W.3, as pointed out to Mr.R.Thiagarajan, is a situation where he seems to be very loyal than the King himself. The plaintiff as the author of the plaint did not plead anywhere either in his notice dated 22.07.2008 or in the plaint, that he had made the payment within 15 days from the date of the agreement. P.W.3, who enters the witness box on the invitation of the plaintiff would state that the payment had been made by November 2006.

22. If this situation were to be true, then this fact would have been captured in the advocate's notice or at least be pleaded in the plaint. Mr.R.Thiagarajan submits that the plaint being a mofussil plaint, the same should be construed liberally. It is true that the Privy Council has taken a view that the mofussil plaint should be given a leeway in its construction. However, situations have progressed much from the time of the Privy Council period. Today, the mofussil plaints are better drafted than those even filed in the Presidency towns. Apart from this observation, I have to state that being an essential term of the contract, the plaintiff should have specifically included in his plaint that he had paid Rs.25,000/- by November 2006. Having failed to do so, he cannot rely upon



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the evidence of P.W.3. Where the fulfillment of an essential term has not been properly pleaded and proved, the plaintiff would have to suffer the consequences of Section 16(c).

23. Insofar as the submission on the amendment to the Specific Relief Act 18 of 2018 is concerned, it has not been given retrospective operation. In fact, being a substantive provision, the Parliament decided not to give the legislation retrospective operation. The Act obviously has to be read prospectively. Even if I were to assume that it is retrospective in operation, the Section as it reads today, demands that the plaintiff should prove that he has performed and always been 'ready and willing' to perform the terms of the contract. It is too well settled position of law that there cannot be a proof without a pleading. Therefore, the essential requirement of pleading and proof continues to remain on the Statute Book even after the said amendment. It will not help if the plaintiff has not pleaded about complying with essential terms of the agreement. A reading of Para III of the plaint makes it very clear that there is pleading as to the payment of Rs.25,000/- within 15 days of the agreement in this case. Therefore, even If I were to agree with Mr.R.Thiagarajan that I should apply Act 18 of 2018, I would still have to hold that the plaintiff will have to fail.

24. This takes me to the next contention of Mr.R.Thiagarajan that the



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Court has to look at the conduct of the defendants also before deciding the case for specific performance. This submission is absolutely right. Being a plea in equity, the Court should not only look at the case of the plaintiff, but also at the defendants. But, in order for the Court to turn its face from the case of the plaintiff to that of the defendant, it should be satisfied that the plaintiff's case satisfies the requirements of the Specific Relief Act. When no nod is given to the case of the plaintiff, there is absolutely no requirement to look at the defendants or the fact that the defendants have projected a case of loan transaction while admitting to the sale agreement. I would turn to the defendants only If I am satisfied that the plaintiff had done all that he had to do. Since I am satisfied that the plaintiff did not do so in the present case, I am not in a position to hold that the default in the conduct of the defendants grants a right to the plaintiff. If I were to agree to Mr.R.Thiagarajan's submission it will be literally re-writing Section 16(c), which I am not entitled to do.

25. Turning to the aspect of reversal by the lower appellate Court, the operation of Section 20 would come only when the plaintiff has satisfied Section 16. The plaintiff had not done so in the present case and therefore the question of finding out whether the discretion has been exercised according to sound and reasonable principles need not be looked into in the present case. Nonetheless, since this point has been urged, I went through the judgment of the lower



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appellate Court. The learned Additional District Judge took cognizance of Ex.B3 whereby the defendant wanted to put an end to the contractual relationship between himself and the plaintiff. Having done so, the plaintiff should have rushed to the Court immediately in order to prove his 'readiness and willingness'. However, the plaintiff took his own sweet will and time by waiting for a further period of one year and two months by issuing another notice, when the defendant had already denied the right of the plaintiff as early as on 29.07.2008. I am able to see that the second notice dated 30.09.2009 was only issued so as to create an illusion that the plaintiff has been ready and willing. This aspect had been correctly appreciated by the learned Additional District Judge in Para 8 of the judgment.

26. Mr.R.Thiagarajan, relying upon **Dr.Jiwan Lal and Ors -vs- Brij Mohan Mehra and Anr 1972(2) SCC 757**, would argue that the lapse of a period of two years does not make a difference to the case, as had been held by the three Judges Bench of the Supreme Court. He would state, I should apply that verdict to the present case and reverse the decree of the lower appellate Court. It is pertinent to point out that the said judgment arose under different circumstances. A perusal of the judgment shows that the Supreme Court had taken into cognizance that the value of the land had dwindled on account of the Chinese aggression over India. It was on record in that case that the institution



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of the suit after two years did not cause any disadvantage to the defendant.

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27. However, even as per the evidence of P.W.3 in the present case it is found that on account of the appreciation of the prices in the area where the suit property is situated, several real estate developers had surveyed the suit scheduled mentioned property so as to enter into an agreement with the defendants. It is not as if the rise in prices pending the suit is a ground to reject the relief of specific performance. But, rise in prices between the date of the agreement till the date of institution of the suit would certainly be a ground to deny the relief as the defendants would be put to hardship. As pointed out above, the agreement was entered into in October 2006 and the suit came to be filed in October 2009, on the last date of limitation. By that time, the prices of the property has gone up, unlike the case before the Supreme Court, where the price has nose dived due to the Chinese aggression. Therefore, the judgment in **Dr.Jiwan Lal and Ors -vs- Brij Mohan Mehra and Anr 1972(2) SCC 757** , was on the circumstances which existed due to War and cannot be applied during peace time.

28. The next judgment relied upon by Mr.R.Thiagarajan is **Swarnam Ramachandran and Another -vs- Aravacode Chakungal Jayapalan (2004) 8 SCC 689**. As argued by Mr.R.Thiagarajan, the Court had held that



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the time limit fixed under the agreement is subordinate to the main intention of the parties. But, in the very same judgment the Court had held that where there is substantial rise in prices, such factor may be relevant for the Court while granting a decree of specific performance at the first instance. This approach that has been mandated by the Supreme Court had unfortunately not been followed by the trial Judge and it was in those circumstances that the appellate Court was constrained to interfere.

29. The other judgments that were relied upon by Mr.R.Thiagarajan viz., **Devalsab (deceased) vs. Ibrahimsab F.Karajagi (2005) 3 SCC 342**, **P.S.Ramakrishna Reddy vs. M.K.Bhagyalakshmi (2007) 10 SCC 231** and **G.Jayashree vs. Bhagwandas S.Patel (2009) 3 SCC 141**, dealt with the power of the Court while dealing with an appeal under Section 20 and the manner in which the discretion has to be exercised. The discussion supra would show that the plaintiff had not satisfied Section 16(c) before the Court travels to Section 20. When the case of the plaintiff sinks at the port itself, the question of looking into the manner in which the journey takes place mid-sea does not arise. Therefore, none of the questions of law suggested by Mr.R.Thiagarajan arise for consideration in this case.

30. The decree of the lower appellate Court in granting refund of the



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advance amount of Rs.2,40,000/- with interest at the rate of 9% p.a. from the date of sale agreement till the date of the decree and at 6% p.a. thereafter shall stand confirmed. As a measure of security for the said re-payment, there shall be a charge over the property. The time limit for repayment is three months from the date of receipt of a copy of this judgment. In all other terms, the decree of the Additional District Judge, Villupuram in A.S.No.12 of 2014 shall stand confirmed.

31. In fine, the Second Appeal is dismissed. As I am non-suiting the plaintiff on the ground of 'readiness and willingness', I am not inclined to impose costs on him. Consequently, connected miscellaneous petition is closed.

30.07.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST

To

- 1.Additional District Judge (Fast Track Court),
Villupuram.
- 2.The Principal Subordinate Judge
Tindivanam.



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V.LAKSHMINARAYANAN, J.

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