



A.S.(MD)No.132 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : **17.07.2023**

DELIVERED ON : **24.01.2024**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

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and

M.P.(MD)No.1 of 2013

P.K.C.Prabhu

...Appellant

/Vs./

V.C.S.Asaikani

...Respondent

PRAYER:- Appeal Suit filed under Section 96 of Code of Civil Procedure, to set aside the judgment and decree dated 21.12.2012 passed in O.S.No.23 of 2011 by the V Additional District Court, Madurai.

For Appellant : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

For Respondent : Mr.E.J.Ayyappan



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JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

The appellant is the plaintiff in the suit. The suit had been filed praying for specific performance of contract directing the defendant/respondent in this appeal to execute a sale deed in favour of the appellant after receiving balance sale consideration and to hand over possession of the property at Resurvey No.29/1, 2nd Part Plot No.51, Anna Nagar, Sathamangalam, Madurai North Taluk, Tallakulam Sub District, Madurai North Registration District, Madurai District admeasuring 7200 sq.ft., with a house and all fitting including electricity service connection (hereinafter referred to as 'suit property').

2. The submissions advanced on behalf of the appellant by Mr.S.Anand Chandrasekar, for M/s.Sarvabhauman Associates, are as follows:

(i)The respondent is the absolute owner of the suit property and had agreed to sell the same to the appellant some time in end of



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January 2011, both parties entering into an oral agreement on 04.02.2011 fixing the sale consideration at Rs.98,00,000/-. They also decided that the transaction should be completed within two weeks.

(ii)On 11.02.2011, the respondent received Rs.10,000/- from the appellant as advance along with house tax receipts, electricity card, electricity receipts, all in original, copy of building plan and original sale deed dated 19.07.1979. With this, the oral agreement was confirmed. Since the tenure of the arrangement between the parties fell within a short duration, they did not find it necessary to reduce the agreement into writing.

(iii)The parties agreed that the balance sale consideration would be paid by appellant on 14.02.2011 and the respondent agreed to execute the sale deed on the same date.

(iv)In line with the agreement, the appellant had taken a demand draft for Rs.98,100/- towards registration charges and purchased stamp papers for Rs.7,84,000/- on 11.02.2011 and 12.02.2011 respectively. He also approached a document writer and had a sale deed



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drafted on 12.02.2011.

(v) While so, the respondent went back on his agreement informing both the appellant and his father P.K.Central Mani, that he was unable to persuade his family, specifically his wife, to agree to the transaction. The respondent has also filed a police complaint on 14.02.2011 alleging force on the part of the appellant to proceed with the agreement. That police complaint was closed advising the parties to approach the civil courts. The appellant states that he had been ready and willing at all times to proceed with the agreement and that it was the respondent, who had gone back on his assurances.

(vi) On the part of the plaintiff, his father P.K.Central Mani, M.C.N.Manickam, who is stated to have been witness to the agreement between the parties and the document writer, R.Kannan, were examined as PW-1, PW-2 and PW-3 respectively. The appellant had not chosen to enter the box to confirm the contents of the plaint.

(vii) He had filed a list of 13 exhibits being, Original Property Tax receipt dated 23.11.2010 (Ex.A1), Original E.B. card (Ex.A2),



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Building plan (Ex.A3), Encumbrance Certificate dated 03.02.2011, (Ex.A4), E.B. receipt dated 02.12.2010 (Ex.A5), Xerox copy of sale deed dated 19.11.1979 (Ex.A6), Demand draft dated 10.01.2011 (Ex.A7), Original Stamp papers for a sum of Rs.7,84,000/- dated 10.02.2011 (Ex.A8), Xerox copy of complaint given by the defendant dated 14.02.2011 (Ex.A9), Xerox copy of document writer license (Ex.A10), Copy of draft sale deed (Ex.A11), Certified copy of Bank deposits (approx. Rs.3 crores) (Ex.A12) and Copy of Income Tax Return 2011-12 and 2012-13 (Ex.A13).

3. The prayer in the suit was for specific performance of the contract directing the defendant to execute sale deed for a sum of Rs.98 lakhs in favour of the appellant and for handing over possession of the suit property to the appellant within a fixed time frame. Alternatively and in default of compliance by the respondent, the appellant sought intervention of the Court that the sale deed be executed and registered in favour of the appellant at the cost of the defendant.

4. The submissions of the respondent/defendant in suit by



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Mr.E.J.Ayyappan, learned counsel appearing on his behalf, are in denial of all the plaint averments. The respondent has totally denied not just the transaction, but even avers that he does not know who P.K.C.Prabhu is, though he would admit that he had been in touch with his father P.K.Central Mani.

5. He denies that he had received any amount towards consideration or otherwise from the appellant or executed any sale agreement, oral or otherwise. He would allege that M.C.N.Manickam, who is a Document Writer was a person of influence and the appellant has merely dragged him into the present litigation unnecessarily.

6. He denies receipt of advance of any amount let around Rs.10,000/- for the purchase of suit property. He would submit that it was the father of the appellant, who had been repeatedly prevailing on him to sell the suit property even exerting pressure when the respondent had stated categorically that he was not interested. In fact, this had forced the defendant to file a police complaint before the Inspector of Police, Anna Nagar Police Station.



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7. In the complaint, the respondent has conceded to have granted oral consent to sell the property to P.K.Central Mani and states that he had so consented without consulting his family. Upon consulting his family and hearing their objections to the transaction, he had immediately informed the appellant's father that he has unwilling to sell the property. This was as early as on 14.02.2011. Thus, even assuming that there was any oral agreement initially, it was only an expression of invitation to sale and it was not an oral sale agreement itself.

8. The respondent alleges that one Rajavel, an agent of P.K.Central Mani had been repeatedly sent by the latter to exert pressure on the respondent to part with the property which he has also mentioned in the police complaint. Quite apart from denying the transaction itself, the respondent would specifically deny the quantification of the avowed sale consideration at Rs.98 lakhs.

9. There was no agreement or fixing of sale consideration. The mere fact that stamp papers had been purchased is of no consequence as stamp papers may have been required and thus procured for any



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transaction involving a similar value.

10. In fact, as far as the demand draft for a sum of Rs.98,100/- drawn on 10.02.2011 is concerned, the respondent alleges that it was a demand draft that the appellant was already in possession of. It is based on this demand draft that the appellant has arrived at a concocted and fictitious sale consideration of Rs.98 lakhs to make the entire transaction appear numerically credible. The value of the suit property is far in excess of Rs.98 lakhs, to the knowledge of the appellant.

11. No legal notice was issued and instead the suit was filed on 07.03.2011. The delay between 14.02.2011 and 07.03.2011 is fatal as, had the appellant being serious about the allegation, he should have issued a legal notice on 14.02.2011 itself. He also points out that the appellant has never indicated readiness and willingness to pay the amount of alleged sale consideration, which ought to have been done in a timely fashion at the time of filing of the suit itself.

12. Though some financial particulars have been produced at the time of filing of this appeal to indicate sources of Rs.3 crores, the



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readiness and willingness of the appellant at the relevant point in time is what is important, that is, in 2011 and not today, after the lapse of twelve years. The respondent had entered the box and been examined as DW1. No exhibits had been filed by him.

13. On the basis of the pleadings, the following five issues had been framed:

- (i) Whether the plaintiff and defendant intended to sell the plaintiff mentioned properties?;
- (ii) Whether any amount has given to the defendant by the plaintiff for agreement for sale consideration?
- (iii) Whether there is a requisite for specific relief found in the suit
- (iv) Whether the plaintiff is entitled for specific relief, and
- (v) To what further relief, the plaintiff is entitled

14. The learned V Additional District Court, Madurai on consideration of the depositions and exhibits, answered all issues against the appellant, concluding that the appellant had not established any of the ingredients required to make out a case for specific performance.



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15. The learned Judge held that there was no documentary evidence produced and neither does the deposition of the witnesses produced by the appellant establish that there had been any agreement between the parties on 14.02.2011. Nothing was produced to establish the fixation of sale consideration or the advance at a sum of Rs.98,00,000/- or Rs.10,000/- respectively or, for that matter, at any sum whatsoever.

16. The evidence of PW2 Manickam had been discredited, perhaps also for the reason that he had been arrested in July 2009 by the District Crime Branch, Madurai in a land grabbing case. The version of the appellant had not been substantiated and there was no credibility whatsoever in the depositions of the witnesses.

17. We have heard learned counsel and perused the materials available on record. In the grounds of appeal filed the unsuccessful plaintiff/appellant has re-visited the matter attempting to state that there is no merit in the order of the trial Court. We find otherwise as what is conspicuous to us is the absence of any kind of evidence to establish the



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sequence of events as urged by the appellant.

18. While it is an admitted position that P.K. Central Mani had indeed approached the respondent for sale of the property, there has been no move thereafter by the respondent to act on his tentative initial inclination or to cement the same. This position would equally apply in respect of the sale consideration and the advance.

19. One additional point is that in the draft sale deed stated to have been executed at the first instance, there is no mention of any advance having been paid. This would also support our conclusion that the reference to advance is nothing but an afterthought, merely to make out a case.

20. In the chief examination of PW2 Manickam, he states that he had volunteered to help the appellant to complete the sale transaction at his request. There is a variation in the cross examination where he says that he assisted the parties only at the request of the respondent and not the appellant or his father.

21. There are also contradictions between the statements of



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PW1, P.K.Central Mani and PW2 in regard to the alleged draft sale deed.

In the chief examination of PW2, he states that the respondent had not shown any interest in the sale and had even refused to see the draft sale deed on the ground that his wife is not interested in the sale.

22. However, in the deposition of PW1, he states that after drafting of the sale deed on 14.02.2011, the appellant had stated that he would convince his wife and register the sale deed. The chief examination and cross examination also contain a variation in regard to the arrest of Manickam. In the chief examination, Manickam has admitted his arrest in connection with a land grabbing matter, but states in the cross examination that he was not aware of the grounds of arrest.

23. The credibility of PW2 is thus under a cloud and we are in agreement with the conclusion of the Trial Court that PW2 is an interested witness and not a neutral party. That apart, the suit has been filed by the son of P.K.Central Mani, i.e. P.K.C.Prabhu. However, the appellant has not chosen to enter the box and confirm the averments in the plaint and in our considered view, this is fatal to the case of the



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appellant as there is nothing on record to connect him to the transaction, disputed as it is. Even in the version of events per P.K.Central Mani has there been any involvement of the son at any stage.

24. That apart, the police complaint filed by the respondent also names only P.K.Central Mani and the conversation between him and the respondent in regard to the suit property. This sequence of events leads to the indubitable conclusion that the appellant has no locus standi to file the suit in the first place.

25. The cause of action, if any, would arise only qua P.K.Central Mani and not the present appellant. This is not to say that this Court finds any credibility whatsoever in the events themselves, but only to add additionally that the appeal/suit are found wanting even on this aspect. In all, we find nothing to persuade us to accept the version of the appellant in regard to the transaction in question or any part thereof.

26. On the issue of readiness and willingness, the provisions of the Specific Relief Act, 1963 (in short 'Act') stipulate that in order to be entitled to such relief, the appellant must be in a position to establish that



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he was ready and willing to proceed with his part of the bargain. In the present case, the trial Court has recorded a clear finding that there was no material presented by the appellant before it to indicate his willingness and readiness.

27. Stamp papers had been produced in respect of the sale consideration of Rs.98 lakhs. Apart from the same, there is nothing even to indicate that the appellant had any resources to pay the sale consideration. No material by way of fixed deposits or bank statements have been produced before the lower Court.

28. Before us, in appeal, the appellant has made an attempt to produce financial statements, which we reject in limine seeing as the readiness and willingness of the party must be ascertained at the time of filing of the civil suit, proximate to the transaction itself and not a decade thereafter.

29. In *J.B.Builders & another v. A.Ramadas Rao & another*¹, the settled position in regard to readiness and willingness has been reiterated, the Court pointing out the distinction between the two words.

¹ 2010(6) CTC 901



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While 'ready' implies financial readiness and the capacity to meet the financial obligations under the contract, the word 'willing' would connote the conduct of the party in order to perform his part of the bargain. Readiness and willingness are two sides of the same coin and must be seen together.

30 In *Rajiah Nadar v. Manonmani Ammal*², the readiness and willingness of the appellant was held to be unsubstantiated by the fact that the plaintiff had not been examined personally. The Court cautions that while failure to examine the appellant would not be fatal to a case of specific performance, the Court refers to the judgment in *S.K.M.Mohammed Amanullah v. T.C.S.Ramasangu Pandian and Ors*³ to the effect that it was open to the parties to adduce proper reasons for non-examination of the appellant in a particular case.

31. Thus, while normally the appellant is expected to offer himself for examination, particularly in the context of Section 16(c) of the Act relating to readiness and willingness, such a requirement may be dispensed with at the discretion of the Court if proper justification is

² 1999 (1) CTC 245

³ (1993) 2 MLJ 464



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provided for why he was not so examined.

32. In the present case, we have noted that all the events relating to the transaction in question including specifically the initial conversation relating to the suit property, took place admittedly between the respondent and the appellant's father. In such an instance, it becomes all the more necessary for the petitioner to have averred from the box that he has been ready and willing to proceed with the transaction and there is no explanation set forth as to the reason for such avoidance.

33. We had specifically raised this point in the course of the hearing and there was no justification offered as to why the appellant had not chosen to prove the pleadings in the plaint. In our considered view, this would be fatal to the suit prayer.

34. In *H.G.Krishna Reddy and Co. v. M.M.Thimmiah and another*⁴ this Court has held that being ready and willing was a mandatory requirement of a public statute and evidence must be produced by the party seeking discretionary relief of specific performance to prove his readiness and willingness.

⁴ 96 L.W.88



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35. At paragraph 26, the Bench states *'it is certainly the duty of the first respondent to have gone into the box and given formal evidence that he was ready and willing to perform his part of the contract and subjected himself to cross-examination. In the absence of the first respondent stating from the witness box, we are unable to find that the first respondent/plaintiff has discharged the duty enjoined on him under Section 16(c) of the Specific Relief Act, 1963, entitling him to a decree for specific performance.'*

36. They go on to say, at paragraph 26, as follows:

'S. 16(c) of the Specific Relief Act, 1963 is prohibitory and a duty is cast on courts by a public statute that specific performance of a contract cannot be granted in favour of a person unless he avers and proves his readiness and willingness to perform his part of the contract. That being the nature of the statute, it would be the duty of the court to see whether the person who seeks to enforce the contract satisfies the mandatory provisions of S. 16 of the Specific Relief Act, 1963. The Privy Council and the Supreme Court have interpreted the section to mean that if the conditions are not satisfied, the court is bound to dismiss the suit.'

37. This appeal stands dismissed in light of the detailed discussion above. No costs. Consequently, connected MP is closed.



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[A.S.M.J.] & [R.V.J.]
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NCC :Yes/No
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cmr/vs

To

The V Additional District Judge, Madurai.



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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

cmr/vs

Pre-delivery Judgment in
A.S.(MD)No.132 of 2013

24.01.2024