



A.S.(MD)No.79 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 21.09.2023

PRONOUNCED ON:12.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.79 of 2007

R.Rajmohan : Appellants/Plaintiff

Vs.

1.R.Kamalam
2.R.Manonmani
3.R.Vennila : Respondents / Defendants

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree, made in O.S.No.105 of 2004, on the file of the Additional District cum Sessions Judge (Fast Track Court), Dindigul, dated 13.03.2007.

For Appellant : Mr.M.C.Swamy

For Respondents :Mr.H.Lakshmi Shankar



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JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S.No.105 of 2007, on the file of the Additional District Court/ Fast Track Court, Dindigul.

2. The suit is for specific performance of the sale agreement dated 29.09.2003.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

4. The case of the plaintiff is that the first defendant is the mother of the defendants 2 and 3, that the suit properties have been purchased in the name of the first defendant and the same are owned and possessed by the defendants 1 to 3, that the defendants have agreed to sell the suit properties to the plaintiff for Rs.2,79,800/-, that they have received an advance amount of Rs.1,000/- from the plaintiff on 29.09.2003 and agreed to execute the sale deed in respect of the suit properties free of encumbrances within a period of three months, that both parties have



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entered into a sale agreement on 29.09.2003, that the plaintiff has always been ready and willing to perform his part of the contract, that the plaintiff has approached the defendants personally and through mediators, directing them to receive the balance sale price and to execute the sale deed, but the defendants have been postponing the same on some pretext or the other, that the plaintiff has then sent a legal notice to the defendants on 25.03.2004, demanding them to perform their part of contract, that though the first respondent received the notice on 29.03.2004, the other defendants evaded to receive the same, that the defendants have then sent a reply notice dated 05.04.2004 with false allegations and that since the defendants have not come forward to perform their part of the contract, the plaintiff was constrained to file the above suit claiming the relief of specific performance of the agreement dated 29.09.2003.

5. The defence of the first defendant is that the suit properties are her self-acquired properties, that the defendants 2 and 3 have no interest or connection with the suit properties, that the first defendant has never entered into any sale agreement with the plaintiff nor received any sale advance of Rs.1,000/- as alleged by the plaintiff, that the plaintiff and his



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brother are the sons of the deceased K.V.Ramasamy through his first wife, that after the death of the first wife, the said K.V.Ramasamy had married the first defendant and the defendants 2 and 3 were born to them, that the said Ramasamy, who suffered from lung cancer, had died on 19.09.2003, that on 17.09.2003 when the defendants came to see the said Ramasamy and the plaintiff and his men had threatened the defendants to sign in the blank stamp papers and other papers and when the same was refused by the first defendant, they pulled her and attacked and as a result of which, the first defendant suffered bone injury, that she lodged a police complaint and on that basis, F.I.R., came to be registered against the plaintiff in Cr.No.325 of 2003, on the file of the Vadamadurai Police Station, that the plaintiff had obtained signatures from the defendants by coercion, while they were under fear and confused state, that since the deceased Ramasamy was owning ancestral properties, the defendants have issued a legal notice demanding partition of the said properties and since the demand was not complied with, they were forced to file a partition suit in O.S.No.605 of 2003 and the same was pending on the file of the Subordinate Court, Dindigul, that the plaintiff, after filing of the partition suit by the defendants, has filed the present suit, that there was no cordial relationship between the plaintiff and the defendants even



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during the lifetime of the deceased Ramasamy and as such, the question of executing the sale agreement, immediately after the death of the said Ramasamy does not arise at all, that the plaintiff has filed the above suit with sole intention to grab the properties and that since he has no cause of action to file the suit, the same is liable to be dismissed.

6. The learned trial Judge, upon considering the pleadings, has framed the following issues:

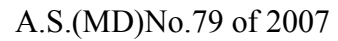
(1) Whether the plaintiff is entitled to get the relief of specific performance?

(2) Whether the suit properties are the self-acquired properties of the first defendant?

(3) Whether the suit sale agreement is genuine?

(4) To what other reliefs the plaintiff is entitled to?

7. During trial, the plaintiff has examined himself as P.W.1 and two other witnesses viz., Thiru.Thangaraj and Thiru.Gopal as P.W.2 and P.W.3 respectively and exhibited 7 documents Exs.A.1 to A.7. The first defendant has examined herself as D.W.1 and adduced no documentary



9. The learned Counsel would further submit that the first defendant in her evidence would admit that she did not whisper anything private complaint filed by her on 27.01.2005, that the plaintiff had obtained signatures in the blank stamp papers and blank papers and executed the suit sale agreement, that the first defendant would also admit that she has not preferred any complaint on 29.09.2003 and consequently and that therefore, the burden is on the first defendant to establish that herself and her daughters did not sign in Ex.A.1 and the signatures obtained in blank stamp papers and papers were utilised for executing the suit sale agreement. He would further submit that the plaintiff through the evidence of attesting witness P.W.2 and the scribe – has proved the due execution of Ex.A.1 – agreement and that although the first defendant has alleged that they were not having good relationship with another attesting witness – Muthusamy, her sister's husband, she has not chosen to produce any evidence in support of her contention.

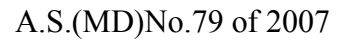


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10. The learned Counsel would further submit that the first defendant, except examining herself, has not chosen to examine any other witness, that she has not even chosen to examine her daughters – defendants 2 and 3 and that they have not produced any iota of documentary evidence to prove their case. The learned Counsel would further submit that since it is a genuine transaction, the real advance amount of Rs.1,000/- has been mentioned in the document and if it is filled up document, the plaintiff could have mentioned any amount and even could have stated Rs.2,50,000/- paid as advance and that there is no dispute that the plaintiff is a man of means and working as Engineer in the Public Works Department, Government of Tamil Nadu. He would further submit that the trial Judge blown up the minor discrepancies found in Ex.A.1 regarding the alignment of lines and other small errors as a serious infirmities rendered it as a fabricated document and that since the trial Court has approached the case with total perversity, the same has to be reversed.

11. The learned Counsel for the respondents would submit that when the parties were at logger heads atleast from 17.09.2003 suffering



fracture due to assault by the plaintiff, lodging police complaint leading to enquiry of the plaintiff and thereafter the death of the plaintiff's father on 19.09.2003, the alleged sale agreement on 29.09.2003 within such a short span of time is highly improbable, that though the learned Counsel for the appellant has argued that there was reconciliation between the parties, there is no pleadings or evidence, that immediately on the death of the father of the plaintiff and the husband of the first defendant, any negotiation for sale of property would be the last thing in the minds of the parties, who are grieving the loss of the dearest one, that though the plaintiff during the trial has admitted that the first defendant is the only owner of the suit properties, he has not offered any acceptable reason or explanation for getting the alleged sale agreement also from the other defendants and that the same would probablise the defence of the first defendant that the agreement was created in the blank papers, that the writings in the last four lines of the second and third pages of Ex.A.1 agreement are admittedly cramped, so as to put it above the signatures, that the sale consideration of Rs.2,79,800/- alleged by the plaintiff, has not been established to be having any basis or relation with the property, that the plaintiff has also not explained as to why a meagre sum of Rs. 1,000/- being 0.35% of the sale consideration was paid as advance, when



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even according to P.W.1, he had Rs.1.5Lakhs on that day with him and according to P.W.2, P.W.1 had 2 to 3 Lakhs rupees at that time, that the plaintiff has also not explained about the pressing necessity to enter into the sale agreement within 10 days from the death of his father, that P.W.2 would say that he has no direct knowledge about the incident occurred on 17.09.2003 and he would say that the agreement appears to have been executed by the defendants 2 and 3 also and as such, he has failed to prove that he actually attested the agreement, that P.W.3 – scribe would say that he was taken to that place by the plaintiff and the son-in-law of the first defendant – Ramesh, but the said Ramesh was not at all examined and that the non-examination of Ex.MLA Muthusamy, who is said to be instrumental in this matter, is fatal to the case of the plaintiff.

12. The learned Counsel would further submit that mere affixation of the signature to the document does not amount to execution, that there is no plea in the plaint about when, how and in what circumstance, the sale agreement was negotiated, that the first defendant in her evidence would depose about the compelling circumstances under which the defendants were there at that time, that the first defendant who was residing at Vadamadurai in the same house, has to leave it and go to



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Vedasanthur is evident from the address given in the legal notice and the plaintiff and her evidence in this regard as to why she left the house was not at all disputed during her cross-examination, that the evidence available on record would show that there was no conducive atmosphere for a sale negotiation and as such, the absence of such a conducive atmosphere, is a proof of coercion and threat.

13. The learned Counsel would further submit that even assuming that Ex.A.1 agreement is a genuine one, since the plaintiff has approached the Court with unclean hands, by suppressing the material facts, such as the relationship between the parties, issuance of legal notice and filing of the suit for partition, he is not entitled to get the equitable relief of specific performance, that the plaintiff has neither pleaded the specific particulars nor proved his continuous readiness and willingness to perform his part of the contract and that therefore, the trial Court has rightly dismissed the suit and as such, there is nothing to interfere with the reasoned judgment of the trial Court.



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14. The points that arise for consideration are:

(1) Whether the trial Court erred in giving a finding that the plaintiff has failed to prove that the sale agreement Ex.A.1 is genuine, despite showing the fact that the first defendant has specifically admitted her signatures as well as the signatures of her daughters, that the plaintiff has proved the execution of Ex.A.1 sale agreement through the evidence of P.W.2 and P.W.3 and that though the first defendant has pleaded that the signatures were obtained from them by coercion, the same was not proved?

(2) Whether the judgment and decree passed in O.S.No.105 of 2004, dated 13.03.2007 is liable to be interfered with?

(3) To what other reliefs, the parties are entitled?

15. The facts not in dispute are that the plaintiff is the son of one K.V.Ramasamy, that the said Ramasamy after the death of his first wife, had married the first defendant and that through the first defendant, he had two daughters – defendants 2 and 3. It is not in dispute that the said K.V.Ramasamy was suffering from lung cancer and died on 19.09.2003. The plaintiff has taken a stand in the plaint that though the sale deed in respect of the suit properties was taken in the name of the first defendant,



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the said properties are owned by the defendants 1 to 3, but during trial, the plaintiff as well as his witness P.W.2 would admit specifically that the suit properties are owned and possessed by the first defendant.

16. The case of the plaintiff is that the defendants have agreed to sell the suit properties and the plaintiff has agreed to purchase the same, that both parties have entered into a sale agreement on 29.09.2003 and whereunder they have fixed the sale price at Rs.2,79,800/- and the period of performance as three months, that the plaintiff has paid Rs.1,000/- as advance and the same was received by the defendants and that the defendants have agreed to receive the balance sale price and to execute the sale deed free of any encumbrances.

17. It is the further case of the plaintiff that the plaintiff has always been ready and willing to pay the balance sale price and get the sale deed executed, that the plaintiff has all along been demanding personally and through mediators to perform their part of contract, but they have been postponing the same on some pretext or the other, that the plaintiff has then sent a legal notice on 25.03.2004, demanding the defendants to perform their part of contract, that they have sent a reply notice with false



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19. It is not in dispute that on the basis of the complaint lodged by the first defendant on 17.09.2003, F.I.R., came to be registered in Cr.No.325 of 2003, on the file of the Vadamadurai Police Station against the plaintiff and three others. As rightly contended by the learned Counsel for the defendants, the plaintiff in his cross-examination would admit the registration of the F.I.R., and would say that he was enquired by the police in the said police station on the evening of 17.09.2003 and in the morning of 18.09.2003. No doubt, as rightly pointed out by the learned Counsel for the plaintiff, F.I.R., after investigation, was referred as mistake of fact, as evident from Ex.A.7 – slip proceedings issued by the District Munsif cum Judicial Magistrate, Vedasanthur. But the plaintiff in his cross-examination would admit that the first defendant has filed a private complaint before the Judicial Magistrate Court of Vedasanthur and the same was pending. At the time of arguments before this Court, the learned Counsel for the defendants would submit that the Court of Judicial Magistrate, Vedasanthur, has passed a judgment of conviction against the plaintiff. But the above contention of the learned Counsel for the defendants is not disputed by the plaintiff's side.



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20. As already pointed out, the deceased Ramasamy who was suffering from lung cancer, had died on 19.09.2003. According to the plaintiff, the alleged sale agreement was entered into between the parties on 29.09.2003, just 10 days after the death of said Ramasamy. Admittedly, the first defendant was working in the Electricity Department. The plaintiff in his evidence would admit that the first defendant was not having any debts at the time. The plaintiff as well as P.W.2 would admit that the defendants 2 and 3 – daughters of the first defendant, were already got married and are well settled. Moreover, it is the specific case of the first defendant that they were not in cordial relationship with the plaintiff even during the life time of the said Ramasamy. Taking note of the above facts and circumstances, as rightly contended by the learned Counsel for the first defendant, it is highly improbable for the first defendant to enter into such a sale agreement with the plaintiff at that time.

21. The learned Counsel for the plaintiff would submit that after the death of Ramasamy on 19.09.2003, there were some negotiations / mediations regarding the management of the family properties by the



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well wishers / close relatives, that Ex.A.1 sale agreement is an outcome of such negotiations and settlement and that that is why Ex.A.1 was attested by the first defendant's own brother-in-law and another person who is the well wisher of their family. But as rightly contended by the learned Counsel for the defendants, such a plea was nowhere raised in the pleadings as well as in the evidence.

22. As rightly pointed out by the learned Counsel for the defendants, in Ex.A.1 sale agreement in the first two pages, signature of the plaintiff is found below the signatures of the defendants, but in the third page, the plaintiff's signature is found on the right side of the defendants' signature and that the last few lines in page No.2 as well as in page No.3, were written so closely, when compared to the other contents of the said document and moreover, as rightly pointed out by the learned Counsel for the first defendant, the witness particulars and the signatures of the witnesses and the particulars of the scribe were also written in such a way, so as to fit or adjust with the signatures of the defendants. It is pertinent to note that even the name of the scribe and the signature does not find place and only his licence number was noted and that too, at the very bottom of that page. As rightly argued by the learned Counsel for



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the first defendant, the way in which Ex.A.1 was written, as referred above, creates a serious doubt about the execution.

23. Admittedly, P.W.2 is relative to the plaintiff as he had married the plaintiff's paternal aunt's daughter. But P.W.2 in cross-examination would say that the deceased Ramasamy was in good health till his last time, but would add that he was not well three months prior to his death. He would admit that the sale agreement was executed within 10 days of the death of Ramasamy. According to the plaintiff, P.W.2 and the first defendant's sister's husband Ex. MLA Muthusamy had subscribed their signatures as attesting witnesses to the sale agreement, but the first defendant has taken a specific stand that there was no cordial relationship between her family and her sister's family. Moreover, she has also taken a stand that the said Ex.MLA Muthusamy was instrumental in creation of Ex.A.1 sale agreement. Despite the above stand, the plaintiff has not chosen to examine the said witness Muthusamy and the plaintiff has not offered any reason or explanation for non-examining him. P.W.3, in his cross-examination would say that he was taken by the plaintiff and the first defendant's son-in-law – Ramesh for preparing the sale agreement and the said Ramesh was present at the time of execution of Ex.A.1 sale



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agreement. But admittedly he would admit that the said Ramesh was not shown as a witness to the sale agreement.

24. As rightly pointed out by the learned Counsel for the defendants, neither the plaintiff nor P.W.2 would depose about the active participation of the said Ramesh in the execution of Ex.A.1., sale agreement. P.W.3 would say that the said Ramesh is the husband of the first defendant's daughter Vennila. During his cross-examination, it was suggested that he has not mentioned the husband name of the defendants 2 and 3, but he would deny the same and would say that he has mentioned. As rightly pointed out by the learned Counsel for the defendants, in Ex.A.1 sale agreement, the defendants 2 and 3 were referred as the daughters of the first defendant. According to the first defendant, when the plaintiff has specifically admitted that the defendants 2 and 3 were already married and settled at different places, the recitals about the defendants 2 and 3 in the agreement can only be considered as unnatural. During the cross-examination of the first defendant, it was suggested by the plaintiff's side that since after her husband's death, she could not manage or supervise the properties, she decided to sell the suit properties. But as rightly pointed out by the



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learned Counsel for the defendants, such a recital is not found in Ex.A.1 and there was no such pleadings or evidence on the side of the plaintiff.

25. The learned Counsel for the plaintiff would mainly contend that since the first defendant has admitted her signature as well as the signature of her daughters, it has to be inferred that the execution of Ex.A.1 agreement is proved. To counter this argument, the learned Counsel for the defendants has relied on the judgment of the Hon'ble Supreme Court in ***Veena Singh (dead) though L.R., Vs. the District Registrar / Additional Collector and others*** reported in ***(2022)7 SCC 1*** wherein the Hon'ble Apex Court, after considering the various judgments, concluded that affixing the signature in blank document, which is filled up document, does not amount to execution and the relevant passage is extracted hereunder:

“57.The execution of a document does not stand admitted merely because a person admits to having signed the document. Such an interpretation accounts for circumstances where an individual signs a blank paper and it is later converted into a different document, or when an individual is made to sign a document without fully



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understanding its contents. Adopting a contrary interpretation would unfairly put the burden upon the person denying execution to challenge the registration before a civil court or a writ court, since registration will have to be allowed once the signature has been admitted.”

26. The learned Counsel for the plaintiff would also contend that since the first defendant has pleaded the grounds of coercion and fraud in execution of Ex.A.1 sale agreement, the burden is on the first defendant to plead with necessary particulars and to prove the same. The learned Counsel would further submit that the first defendant has not examined any other witness, except herself to prove her defence. As rightly contended by the learned Counsel for the defendants, it is the specific case of the first defendant that the plaintiff had threatened and pressurised the defendants to sign in the blank documents. According to the first defendant, after the death of her husband Ramasamy, she sent a legal notice dated 14.10.2003 to the plaintiff seeking partition of the properties left by the deceased Ramasamy and also directing the plaintiff to return the blank papers containing their signatures, for which the plaintiff has sent a reply dated 29.10.2003.



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27. The plaintiff, in his cross-examination, would say that he filed caveat petitions before the District Munsif Court, Vedasanthur and the Subordinate Court, Dindigul and that subsequent to the alleged caveat petitions, the defendants have sent a legal notice on 14.10.2003 for which he sent a reply notice dated 29.10.2003. Though the plaintiff has admitted the exchange of notices even in 2003, he has not chosen to produce the same.

28. It is the specific case of the first defendant that due to the attack made by the plaintiff and his men, she suffered fracture on her left hand and that she was in hospital for two days ie., on 17.09.2003 and 18.09.2003. P.W.1 in his cross-examination would admit that the first defendant has preferred a complaint alleging that she was attacked and that he came to know that the first defendant was in hospital for three days from 17th onwards. When a suggestion was made to P.W.1 as to when the first defendant had refused to sign in the papers as claimed by him, she was attacked and caused bone injury, he would reply that it was a false complaint.



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29. As rightly contended by the learned Counsel for the defendants, the plaintiff has nowhere specifically disputed the factum that the first defendant had sustained fracture on her left hand and was taking treatment for two days in the hospital. It is pertinent to note that the plaintiff himself would admit that he was having resentment with the first defendant's family, which is as follows:

“தகப்பனார் ஹேந்த மின்புஇ எனக்கும் சிறிய தாயார் குடும்பத்திற்கும்
மன வருத்தம் நேந்தது.””

30. Taking note of the kinship between the plaintiff and the first defendant's family and also the fact that the F.I.R., was lodged against the plaintiff at the instance of the first defendant and that the first defendant had taken treatment for the bone injury suffered at the hands of the plaintiff and his men and also the facts that Ramasamy had died on 19.09.2003 and also the admission of the plaintiff that there was no cordial relationship between them at that point of time, as rightly contended by the learned Counsel for the defendants, it is only for the plaintiff to prove that the defendants have executed the sale agreement.



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31. The learned Counsel for the plaintiff would submit that the stamp papers for Ex.A.1 sale agreement was purchased only on 29.09.2003 and the sale agreement was executed on that day itself and as such, the complaint of the first defendant that she was forced to sign in the blank papers on 17.09.2003 and the same was utilised for creating the sale agreement cannot be believed. But as rightly pointed out by the learned Counsel for the defendants, D.W.1 in her cross-examination would say

“29.09.2003ம் உததியன்று நானும் என் பெண் மக்களும் தனியாக 8 மணிக்கு வீட்டிலிருந்துபாது வெற்றுப்பப்பரில் வாதி சான்றாவணம் 1ல் கண்ட கையெழுத்து உபாடப்பட்டது. அன்றைய ரேவ உயிர் தப்பித்தால்தான்பாதும் என்று உவடசந்துார் வந்து விட்டாம். தேன்பிற்பாடு உவடசந்துாரில்தான் ரேக்கின்றுறாம்.”

32. Even according to the plaintiff, when his father was in Dindigul, he was residing in the ground floor of the same building, where his father along with the first defendant were residing in the upstairs and that taking note of the health condition of the father, he was taken to the Vadamadurai house and in that house, the defendants were in the upstairs and the plaintiff along with his father were in the downstaris.



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33. The learned Counsel for the defendants would submit that the first defendant who was residing at Vadamadurai in the same house where the plaintiff and the said Ramasamy were residing, had to leave that house and go to Vedasanthur and the same is evident from the address given in the legal notices and the complaint. As rightly contended by the learned Counsel for the defendants, the above evidence of D.W.1 was not at all challenged or disputed during her cross-examination. On considering the entire facts and circumstances, this Court has no hesitation to hold that the plaintiff has miserably failed to prove the execution of Ex.A.1 sale agreement and the finding of the trial Court in this regard cannot be found fault with.

34. Even assuming for arguments sake, that the plaintiff has proved the execution of Ex.A.1 sale agreement, whether he is entitled to get the relief of specific performance is to be considered. Generally, any person who approaches the Court with unclean hands is not entitled to get the equitable or discretionary reliefs. In the case on hand, the plaintiff has suppressed the very relationship between himself and the defendants and also the death of his father, just 10 days prior to the



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alleged execution of the sale agreement. Moreover, the plaintiff has nowhere whispered about the legal notice sent by the defendants and the reply sent by him in the year 2003 and more importantly, the filing of the suit for partition in O.S.No.605 of 2003 and the pendency of the same. It is pertinent to note that the defendants have filed the suit in O.S.No.605 of 2003 claiming partition in respect of the three items of the properties owned by the deceased Ramasamy and claimed permanent injunction in respect of the fourth item of the suit properties therein, which are the present suit properties.

35. As rightly contended by the learned Counsel for the defendants, the plaintiff, for the reasons best known to him, has suppressed the above material facts. It is settled law that a party claiming the relief of specific performance is duty bound to plead and prove that he has always been ready and willing to perform his part of the contract as contemplated under Section 16(c) of the Specific Relief Act. No doubt, in the plaint, the plaintiff has specifically alleged that he is all along ready and willing to perform his part of the contract from the beginning to pay the balance sale price to the defendants and to get the sale deed from the defendants. According to the plaintiff, the period of



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performance was fixed as three months. P.W.1 would admit that he has not sent any legal notice directing the defendants to perform their part of contract within three months period stipulated in Ex.A.1, but he would say that he had approached the defendants through other persons. Though the plaintiff has alleged in his cross-examination that he had lodged caveat petitions, he has not chosen to produce the copy of the caveat petitions or the other particulars with regard to the caveats.

36. Admittedly, the plaintiff has sent a legal notice on 25.03.2004 under Ex.A.2 demanding specific performance, for which the first defendant has sent a reply under Ex.A.6, dated 05.04.2004 and whereunder they have stated that they have already sent notice denying the alleged agreement for sale. As rightly contended by the learned Counsel for the defendants, the plaintiff has not produced any evidence to show that he was ready and willing to pay the balance sale price and to get the sale deed executed during the period of three months and that he tendered the balance sale price to the defendants and requested them to perform their part of contract. As already pointed out, though the plaintiff was possessing more than 1.5 Lakhs of rupees, on the date of sale agreement, he has allegedly advanced a sum of Rs.1,000/- and the



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plaintiff has not offered any reason or explanation as to why he has paid only Rs.1,000/- and not for taking the sale deed itself at that time by paying the entire sale price. The learned Counsel for the plaintiff would submit that though the plaintiff has raised necessary pleadings so as to comply the mandatory requirement under Section 16(c) of the Specific Relief Act, the first defendant has not specifically disputed the above plaint averments and hence, the first defendant cannot raise that plea.

37. The Hon'ble Supreme Court in ***Mehboob-Ur-Rehman (dead) through legal representatives Vs. Ahsanul Ghani*** reported in ***(2019)19 SCC 415***, has specifically observed that even in the absence of any objections raised by the defendant, the plaintiff has to establish that he has performed his part of contract or has always been ready and willing to perform his part of contract and the relevant passages are extracted hereunder:

“16. Such a requirement, of necessary averment in the plaint, that he has already performed or has always been ready and willing to perform the essential terms of the



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contract which are to be performed by him being on the plaintiff, mere want of objection by the defendant in the written statement is hardly of any effect or consequence. The essential question to be addressed to by the Court in such a matter has always been as to whether, by taking the pleading and the evidence on record as a whole, the plaintiff has established that he has performed his part of the contract or has always been ready and willing to do so. In this regard, suffice it would be to refer to the principles enunciated by this Court in the case of Umabai (supra) as under:-

"30. It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the plaintiff-respondents were all along and still are ready and willing to perform their part of contract as is mandatorily required under [Section 16 \(c\) of the Specific Relief Act](#) must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in- chief would not suffice. The conduct of the plaintiff- respondents must be judged having regard to the entirety of the pleadings as also the evidences brought on records.

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45. *It was for the plaintiff to prove his readiness and willingness to pay the stipulated amount and it was not for the appellants to raise such question..."*

38. As rightly contended by the learned Counsel for the defendants, though the plaintiff has raised the necessary averments, he has not produced any evidence to show that he has performed his part of contract or that he has always been ready and willing to perform his part of contract. This Court in ***Munusamy Vs. Nava Pillai*** reported in ***2008-3-LW-252***, has observed that the relief under specific performance is a discretionary relief and even if a doubt arises about the agreement of sale between the parties, the relief could be refused to be granted and that the relief of specific performance could be granted only if it is a clear case of agreement of sale between the parties, which is pleaded and established by some acceptable evidence.

39. Viewing from any angle, this Court has to necessarily conclude that the plaintiff is not entitled to get the relief of specific performance and as such, the decision of the trial Court dismissing the suit cannot be found fault with. Hence, this Court concludes that the Appeal Suit is



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devoid of merits and the same is liable to be dismissed and the above points are answered accordingly. Considering the other facts and circumstances and also the relationship between the parties, this Court further decides that the parties are to be directed to bear their own costs.

40. In the result, the Appeal Suit is dismissed. The parties are directed to bear their own costs.

12.01.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

SSL

To

1. The Additional District cum Sessions Court (Fast Track Court),
Dindigul,
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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A.S.(MD)No.79 of 2007

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

A.S.(MD)No.79 of 2007

12.01.2024