



S.A.(MD)No.338 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.338 of 2011

M.P.(MD)No.1 of 2011

R.Kandasamy

... Appellant

Vs

S.Janaki

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed in A.S.No.41 of 2009, dated 14.12.2010 on the file of the District Court, Karur reversing the judgment and decree dated 02.09.2009 passed in O.S.No.92 of 2005 on the file of the Additional Subordinate Court, Karur.

For Appellant : Mr.V.Meenakshisundaram
for Mr.N.Nallathambi

For Respondent : Mr.K.Govindarajan

JUDGMENT

The defendant in a suit for specific performance is the appellant.

The suit was dismissed by the trial Court and on an appeal filed by the



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respondent / plaintiff, the appeal was allowed and the suit was decreed.

Aggrieved by the same, the defendant has come by way of this second appeal.

2. According to the respondent / plaintiff, she entered into a sale agreement with the appellant on 01.09.2003, agreed to purchase the agreement mentioned property for a sale consideration at the rate of Rs.51.00 per sq.ft. The extent of the agreement mentioned property is 3,000 sq.ft. Therefore, the agreed consideration was Rs.1,53,000/- (Rupees One Lakh and Fifty Three Thousand only). As per the terms of the agreement, on the very date, an advance of Rs.50,000/- (Rupees Fifty Thousand only) was paid by the respondent. The time limit for completion of the sale transaction was fixed as 30.09.2003. Thereafter, the same was extended by making an endorsement in the agreement on 29.09.2003, by paying another sum of Rs.50,000/- to the appellant. As per the endorsement, time for completion of sale transaction was extended upto 28.11.2003. it was claimed by the respondent that in spite of repeated request, the appellant failed to complete his part of obligation under the agreement and hence, a pre-suit notice was issued on 23.03.2005, calling upon the appellant to complete the sale transaction by producing all the relevant documents. The appellant came up with a



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reply containing false averments. Therefore, the respondent was constrained to file a suit for specific performance.

3. The appellant filed a written statement denying the allegations in the plaint regarding readiness and willingness of the respondent to complete the sale transaction as per the terms of the agreement. It was also averred by the appellant that the respondent had verified all the records produced by the appellant and only after satisfaction of appellant's rights over the suit property, the agreement was entered into. The appellant also claimed that on 19.12.2003 itself, he obtained No Objection Certificate from local authority and thereafter, on several occasions, he requested the respondent to complete the sale transaction. However, the respondent failed to complete the sale transaction by performing her part of the contract. It was also claimed by the appellant that all the original title deeds, patta and other revenue documents were handed over to the respondent, even on the date of execution of sale agreement itself. On these pleadings, the appellant sought for dismissal of the suit.

4. Before the trial Court, the respondent was examined as P.W.1 and 4 documents were marked on her side as Ex.A1 to Ex.A4. The



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appellant was examined as D.W.1 and the Junior Assistant of local authority was examined as D.W.2. Three documents were marked on the side of the appellant as Ex.B1 to Ex.B3. Further, four documents were marked through D.W.2 as Ex.X1 to X4.

5. The trial Court, on consideration of evidence available on record came to the conclusion that the respondent is not entitled to the specific performance of the agreement and dismissed the suit. Aggrieved by the same, the respondent preferred an appeal in A.S.No.41 of 2009 on the file of District Court, Karur. The First Appellate Court reversed the findings of the trial Court and decreed the suit. Aggrieved by the said reversal finding, the defendant has come by way of this second appeal.

6. At the time of admission, this Court has formulated the following substantial questions of law, by an order dated 05.04.2024:

“(a)Whether the first Appellate Court is correct in decreeing the suit for specific performance by exercising the its discretionary power without considering the fact that the plaintiff shall perform his part of contract in a reasonable time having regard to the terms of the contract prescribing a time limit for completion of the contract even though time is not the essence of



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the contract of sale of immovable property and the suit is filed within the period of limitation of three years?

(b)Whether the finding of the lower appellate Court that the respondent/plaintiff proved his readiness and willingness to perform his part of the contract is vitiated by non-consideration of material evidence available on record?”

7. Elaborating the substantial questions of law, the learned counsel appearing for the appellant submitted that as per the endorsement in the suit sale agreement, the time for performance expired on 28.11.2003 and the appellant also made ready the No Objection Certificate from the local authority as early as on 19.12.2003. However, the respondent issued the first pre-suit notice only on 23.03.2005. The learned counsel submitted that absolutely there is no explanation on the part of the respondent to explain the long delay of nearly 16 months in issuing pre-suit notice. Therefore, the learned counsel submitted that the respondent failed to prove his readiness and willingness to perform her part of the contract and the finding reached by the first appellate Court as if the respondent proved her readiness and willingness is vitiated by non consideration of evidence available on record. In support of his contention, the learned counsel relied on the judgment of this Court in ***Prabakaran Vs. Geetha*** reported in ***2022 (3) CTC 650***.



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8. Per contra, the learned counsel appearing for the respondent submitted that even as per the averment found in the reply notice of the appellant, he has to produce the No Objection Certificate from the local authority for registration of agreement mentioned property as a house site. The appellant failed to produce the No Objection Certificate from the concerned local authority within the time allowed by the agreement. Therefore, there is some delay in getting the sale transaction completed. The delay is attributable to the omission of the appellant and therefore, the same cannot be put against the respondent. The learned counsel submitted that out of sale consideration of Rs.1,53,000/- (Rupees One Lakh and Fifty Three Thousand only) the respondent paid substantial amount of Rs.1,00,000/- (Rupees One Lakh only) and therefore, the readiness and willingness of respondent cannot be doubted. In support of his contention, the learned counsel relied on the following judgments:

1.*S.Brahmanand and others Vs. K.R.Muthugopal and others* reported in *AIR 2006 SCC 40*; and

2.*P.Daivasigamani Vs. S.Sambandan* reported in *(2022) 14 SCC 793*.



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Answer to substantial questions of law “a and b”:

9. As per the terms of the agreement, the total sale consideration was fixed as Rs.1,53,000/- (Rupees One Lakh and Fifty Three Thousand only) and on the date of the agreement, an advance of Rs.50,000/- (Rupees Fifty Thousand only) was paid by the respondent. Thereafter, on 29.09.2003, the respondent paid a further sum of Rs.50,000/- (Rupees Fifty Thousand only) and got the time extended till 28.11.2003. Therefore, the time limit fixed, as per the endorsement in the suit sale agreement, expired as early as on 28.11.2003. However, the pre-suit notice was issued by the respondent only on 23.03.2005, after a delay of nearly 16 months. In order to explain the delay in issuing pre-suit notice, the learned counsel for the respondent submitted that the appellant agreed to produce No Objection Certificate from the local authority for the purpose of registering the agreement mentioned property as a house site. The learned counsel by taking this Court to Ex.B2 submitted that the said No Objection Certificate was made ready by the appellant only on 19.12.2003. Even if there is a failure on the part of the appellant in producing the No Objection Certificate, as a prudent person, who paid



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nearly 2/3rd of the sale consideration, the respondent should have issued pre-suit notice immediately after expiry of time fixed, calling upon the appellant to produce No Objection Certificate. However, she waited for nearly 16 months and then issued pre-suit notice expressing her willingness to complete the sale transaction. Further, as per Ex.B2, the appellant obtained No Objection Certificate from the local authority as early as on 19.12.2003. Therefore, it is clear that absolutely there is no reason for the respondent to wait beyond the date of Ex.B2. Though the learned counsel for the respondent submitted that the appellant failed to intimate the fact of obtaining No Objection Certificate from the local authority, in the absence of any notice issued by the respondent calling upon the appellant to produce No Objection Certificate, the failure of the appellant to intimate the respondent in writing, regarding the fact of obtaining No Objection Certificate from the local authority, cannot be put against the appellant.

10. In *P.Daivasigamani Vs. S.Sambandan* reported in (2022) 14 SCC 793, relied on by the learned counsel for the respondent, it was held by the Hon'ble Apex Court that delay in issuing notice is only a factor in exercising discretion under Section 20 of Specific Relief Act. In that



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case, the pre-suit notice was issued by the plaintiff well within the period stipulated under the agreement. However, in the case on hand, the pre-suit notice calling upon the defendant to perform his part of the agreement was issued by the plaintiff nearly after 16 months from the date of expiry of the extended time under the agreement. Therefore, the facts of the present case is entirely different from the facts of the case in ***Daivasigamani's*** case. Therefore, the said case law is not applicable to the present case.

11. The learned counsel for the respondent by relying on the judgment of the Hon'ble Apex Court in ***S.Brahmanand and others Vs. K.R.Muthugopal and others*** reported in ***AIR 2006 SCC 40*** submitted that an agreement to extend time need not be necessarily reduced into writing in all the cases and it could be inferred from the conduct of the parties. As far as the present case is concerned, originally as per the terms of the agreement, time was fixed as 1 month and the said period expired on 30.09.2003. Even before the expiry of that period, on 29.09.2003, the respondent paid another sum of Rs.50,000/- (Rupees Fifty Thousand only) and got time extended by another two months and the said period expired on 28.11.2003. The fact that time was extended



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by parties even before the expiry of the original time would indicate that the parties treated the time as essence of the contract. That is the reason why, even before the expiry of the original time, the respondent/plaintiff paid a further sum of Rs.50,000/- (Rupees Fifty Thousand only) and got the time extended by two more months. In such circumstances, within a reasonable time, after expiry of the extended time, the plaintiff should have issued pre-suit notice calling upon the defendant to perform his part of the contract if any. However, for the reasons best known to her, the respondent / plaintiff waited for nearly 16 months and leisurely issued pre-suit notice only on 23.03.2005. Therefore, the findings rendered by the first appellate Court as if the respondent proved his readiness and willingness to perform his part of the part of the contract is not acceptable to this Court. The said finding reached by the first appellate Court is vitiated by non consideration of evidence available on record.

12. Therefore, the substantial questions of law “a” and “b” are answered in favour of the appellant and as a necessary consequence, the second appeal is allowed. The judgment and decree passed by the first appellate Court is set aside and the decree passed by the trial Court gets restored. There shall be no order as to costs. Consequently, connected



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miscellaneous petition is closed.

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NCC : Yes
Index : Yes
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To

- 1.The District Court, Karur.
- 2.The Additional Subordinate Court, Karur.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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