



S.A.(MD)No.157 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 22.07.2024

PRONOUNCED ON: 28.10.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.157 of 2020

and

C.M.P.(MD)No.2303 of 2020

V.Mayakkal : Appellant/Respondent/Defendant

Vs.

P.Kandasamy(died) : Respondent/Appellant/Plaintiff

2.Devi

3.Muthulakshmi

(Respondents 2 and 3 are brought
on record as LRs of the deceased
sole respondent vide order dated
27.09.2022 made in C.M.P.(MD)No.

8298 to 8300 of 2022) : Respondents

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 13.03.2019, passed in the appeal in A.S.No.21 of 2016 on the file of VI Additional District Court, Madurai, reversing the judgment and decree dated 29.04.2016,



S.A.(MD)No.157 of 2020

passed in the suit in O.S.No.1123 of 2010, on the file of II Additional Subordinate Court, Madurai.

For Appellant : Mr.J.Barathan

For Respondents :Mr.Sricharan Rangarajan
Senior Counsel
for Mr.C.Jeganathan
for R.2 and R.3

: R.1-died – steps taken

JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.21 of 2016, dated 13.03.2019, on the file of VI Additional District Court, Madurai, reversing the judgment and decree made in O.S.No.1123 of 2010, dated 29.04.2016, on the file of II Additional Subordinate Court, Madurai.

2. The appellant is the defendant and the respondent/plaintiff has filed the above suit claiming specific performance of the sale agreement dated 31.10.2007.



S.A.(MD)No.157 of 2020

WEB COPY

property with one Thalakaruppan, but refused to furnish the particulars of the dispute, that though the plaintiff had been visiting the house of the defendant once in a fortnight, the defendant had not chosen to come forward to execute the sale deed, that the plaintiff has always been ready and willing to perform his part of the contract, that the plaintiff after coming to know that the defendant has been attempting to dispose of the suit property to some other third parties, sent a legal notice dated 12.12.2008 to the defendant directing her to receive the balance sale price and execute the sale deed, that the defendant having received the legal notice, has neither sent any reply notice nor complied with the notice demand and that therefore, the plaintiff was constrained to file the above suit claiming the relief of specific performance.

5. The defence of the defendant is that the defendant has never offered to sell the suit property to the plaintiff, that the defendant has never executed any sale agreement nor received any amount from the plaintiff, that the sale agreement produced by the plaintiff is a fraudulent document, that the value of the suit properties would be more than Rs.60,00,000/-, that the plaintiff's contention that he had made repeated demands for execution of sale deed are all false and untenable, that the



S.A.(MD)No.157 of 2020

cause of action alleged by the plaintiff is imaginary, that the plaintiff is not entitled to get the relief of specific performance and that therefore, the suit is liable to be dismissed with exemplary costs.

6. The defendant has filed additional written statement raising an additional defence that one Thalakaruppan has filed two suits in O.S.Nos. 561 of 2007 and 679 of 2010, on the file of the District Munsif Court, Thirumangalam alleging that the suit property is not belonging to the defendant and that since the plaintiff has not impleaded the said Thalakaruppan, the suit is bad non-joinder of necessary party.

7. The learned trial Judge, upon perusing the pleadings, has framed the following issues:

“(1) Whether the plaintiff is entitled to get the relief of specific performance in pursuance of the sale agreement dated 31.10.2007?

(2) Whether the plaintiff has always been ready and willing to perform his part of the sale agreement?

(3) Whether the sale agreement dated 31.10.2007 is fabricated?

(4) Whether the defendant has received Rs.3,00,000/- as advance on 31.10.2007?



S.A.(MD)No.157 of 2020

WEB COPY

(5) To what other relief, the plaintiff is entitled to?

8. During trial, the plaintiff has examined himself as P.W.1 and one Muthu Chidambaram as P.W.2 and exhibited 3 documents as Exs.A.1 to A.3. The defendant has examined herself as D.W.1 and her husband Vaira Thevar as D.W.2 and exhibited 10 documents as Exs.B.1 to B.10. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, has passed the judgment and decree dated 29.04.2016 rejecting the relief of specific performance and granted the relief of refund of advance amount of Rs.3,00,000/- with interest at 12%p.a., from the date of sale agreement till the date of payment and also permanent injunction restraining the defendant not to alienate or encumber the suit property till the payment. Aggrieved by the said judgment and decree, the plaintiff has preferred an appeal in A.S.No.21 of 2016 challenging the rejection of relief of specific performance. The plaintiff has also filed an application in I.A.No.491 of 2018 for reception of additional evidence under Order 41 Rule 27 C.P.C., and the learned Additional District Judge, upon considering the materials available on record and on hearing the arguments of both sides in the appeal as well as in the application for



S.A.(MD)No.157 of 2020

reception of additional evidence, has passed an order allowing the petition in I.A.No.491 of 2018 and allowed the appeal and thereby setting aside the judgment and decree passed by the trial Court and granted the relief of specific performance as sought for by the plaintiff and confirmed the relief of permanent injunction. Challenging the decree and judgment granting the relief of specific performance, the defendant has preferred the present Second Appeal.

10. Pending the Second Appeal, the respondent/plaintiff had died and his wife and daughter were impleaded as respondents 2 and 3.

11. At the time of admitting the Second Appeal, the following Substantial Questions of Law came to be formulated:

“1. Whether the lower Appellate Court was right in granting a decree for specific performance of the sale agreement against the entire property when admittedly the other sharer namely the husband of the defendant was only attesting witness to the sale agreement and he was not a party to the same?

2. Whether the lower Appellate Court was right in reversing the conclusions of the trial Court on the readiness and willingness on the part



S.A.(MD)No.157 of 2020

WEB COPY

of the plaintiff when there is a delay of more than one year in demanding specific performance?”

12. The learned Counsel for the appellant/defendant would submit that the plaintiff has specifically admitted in his cross-examination that the plaintiff ought to have completed the same within one month from the date of sale agreement and that he did not prepare any sale deed within the said period, that the plaintiff did not produce any oral or documentary evidence to show that he had sufficient funds to perform the contract from 31.10.2007 to 23.12.2008, that though the plaintiff has pleaded in his plaint that he along with one S.K.Bose approached the appellant with the balance consideration and requested the defendant to execute the sale deed, he has not chosen to examine the said S.K.Bose to prove the same and that the said factum was also not disclosed in the pre-suit notice dated 12.12.2008, that in the sale agreement as well as in the plaint, common boundaries were given for the suit properties situated in S.Nos.372/1 and 372/3 and that the survey sketch (Ex.B.2) related to S.No.372 would clearly show that the land in S.No.372/2 is situated in between the above said lands and as such, the common boundaries could not be given for both properties.



S.A.(MD)No.157 of 2020

WEB COPY

13. The learned Counsel for the appellant would further contend that admittedly, the property in S.No.372/1 belongs to the defendant and her husband vide sale deed dated 22.01.1972 (Ex.B.3), that the husband of the defendant is not a party to the suit sale agreement, that though the plaintiff claimed that the husband of the defendant had attested the sale agreement, the same would not bind him, that when the husband of the defendant is not a party to the sale agreement and the suit, no decree can be passed compelling him to execute the sale deed in respect of his undivided 1/2 share in S.No.372/1 and that P.W.2 – document writer in his evidence would say that he verified the parent documents and patta relating to the suit properties and the said evidence of P.W.2 would go to show that the plaintiff was fully aware that the defendant is owning 1/2 share and her husband is owning the other 1/2 share in S.No.372/1.

14. The learned Counsel would further submit that in a suit for specific performance, the onus is on the plaintiff to prove his continuous readiness and willingness under Section 16(c) of the Specific Relief Act, that the plaintiff has admittedly sent a legal notice after the lapse of one year since the execution of sale agreement and that he has miserably



S.A.(MD)No.157 of 2020

failed to prove his readiness and willingness to perform his part of the contract for the period between 31.10.2007 and 23.12.2008.

15. The learned Counsel appearing for the respondent / plaintiff would submit that though the trial Court has rightly held that the suit sale agreement under Ex.A.1 is genuine, has thereafter come to an erroneous decision that the plaintiff is not entitled to get a specific relief of performance, that the appellate Court has rightly held that the plaintiff has claimed the relief of specific performance only with respect to two S.Nos.372/1 and 372/3 and not claimed any relief with regard to S.No. 372/2, that the defendant has nowhere raised any pleadings, with regard to the present contention of the defendant that there existed another survey number in between S.No.372/1 and 372/3 and there could not be any common boundaries for both the properties, in their written statement, that since the plaintiff has claimed the relief with regard to the specific extent in both survey numbers ie., 372/1 and 372/3 and there is no dispute with regard to the identification of the properties, the learned appellate Judge has rightly held that that will not be a ground to refuse the relief of specific performance.



S.A.(MD)No.157 of 2020

WEB COPY

16. The learned Counsel would further submit that though the trial Court has accepted the stand of the defendant that the plaintiff has sent the legal notice one year after the sale agreement and the suit was filed belatedly, the appellate Court has rightly held that there was no delay on the part of the plaintiff in performing his part of contract in accordance with the sale agreement dated 31.10.2007, that the defendant as D.W.1 would admit that the plaintiff approached her on so many occasions before the issuance of notice and requested her to receive the balance sale price and to execute the sale deed, that though the defendant has alleged that she has sent a reply notice in response to the plaintiff's pre-suit notice, she has produced neither the copy of the reply notice nor any proof for sending of the same, that the appellate Court considering the evidence available on record, has rightly come to the conclusion that the plaintiff has always been ready and willing to perform his part of the contract and that therefore, the judgment and decree passed by the appellate Court is liable to be confirmed.

17. It is pertinent to note that the trial Court has given a finding that the suit sale agreement Ex.A.1 is genuine and that the defendant has received the advance amount of Rs.3,00,000/- from the plaintiff.



S.A.(MD)No.157 of 2020

Admittedly, the defendant has not challenged the above finding of the trial Court and as such, the above finding has attained finality.

18. Now turning to the readiness and willingness, the learned trial Judge has held that even if the plaintiff was ready and willing, issuance of legal notice after a period of one year indicates that the plaintiff has acted with the delay, despite having knowledge about the suit pending between the defendant and Thalakaruppan. Section 16(c) of the Specific Relief Act contemplates that the plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him.

19. The learned Counsel for the appellant/defendant would rely on the judgment of the Hon'ble Supreme Court in the case of ***U.N.Krishnamurthy (since deceased) through legal representatives Vs. A.M.Krishnamurthy*** reported in ***(2023)11 SCC 775*** and the relevant portions are extracted hereunder:

“31. In K.S. Vidyanadam v. Vairavan, Justice B.P. Jeevan Reddy said that grant of the relief of specific performance is discretionary and the Court is not bound to grant it. This



WEB COPY



S.A.(MD)No.157 of 2020

Court further held that though time is not of essence to a contract relating to transfer of property, such contracts need to be completed within a reasonable time period. Thus the time element cannot be completely ignored.

32. In a suit for Specific Performance of a contract, the Court is required to pose unto itself the following questions, namely:-

(i) Whether there is a valid agreement of sale binding on both the vendor and the vendee and

(ii) Whether the Plaintiff has all along been and still is ready and willing to perform his part of the contract as envisaged under [Section 16\(c\)](#) of the Specific Relief Act, 1963.

33. There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of Specific Performance. In [His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar](#) cited by Mr. Venugopal, this Court said that there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the Plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the Plaintiff. The same view was taken by this Court in [Kalawati v. Rakesh Kumar](#).

34. Even in a first appeal, the first Appellate Court is duty bound to examine whether there was continuous readiness



WEB COPY



S.A.(MD)No.157 of 2020

and willingness on the part of the Plaintiff to perform the contract. This proposition finds support from [Balraj Taneja v. Sunil Madan](#), and [H.P. Pyarejan v. Dasappa](#) where this Court approved the views taken by the Privy Council in [Ardeshir Mama v. Flora Sassoon](#)”

20. Considering the above, the position of law is well settled that the readiness and willingness on the part of the plaintiff is condition precedent while granting the relief of specific performance. In the present case, the plaintiff in his plaint has specifically averred that he was / is ready and willing to perform his part of the contract. As rightly contended by the learned Counsel for the plaintiff, the defendant, as already pointed out, has disputed the very execution of the sale agreement itself. In the written statement, the defendant has only alleged that the contentions of the plaintiff with regard to the readiness and willingness are all false and incorrect and as rightly contended by the plaintiff's Counsel, it is only a general denial. The defendant in the written statement has nowhere disputed the plaintiff's readiness and willingness to perform his part of the contract specifically. No doubt, even in the absence of any plea by the defendant, the plaintiff is duty bound to prove his continuous readiness and willingness.



S.A.(MD)No.157 of 2020

WEB COPY

21. As rightly contended by the defendant's Counsel, the plaintiff has issued the legal notice on 12.12.2008, after a lapse of more than one year since the date of agreement, despite the fact that the period of performance was fixed as one month from the date of the agreement. But the plaintiff in his plaint has specifically stated that before the expiry of one month period, he approached the defendant along with S.K.Bose with the balance sale consideration and also the amount for purchase of stamp papers and registration expenses and the defendant promised that she would receive the balance sale price and execute the sale deed after a week, that the plaintiff had gone again to the house of the defendant after a week and requested for execution of the sale deed, but the defendant had given evasive reply that there existed some dispute with respect to the suit property with one Thalakaruppan and though the defendant had again visited once in fortnight, the defendant has not chosen to comply with the terms of the agreement.

22. The defendant in his evidence as D.W.1, would admit that the plaintiff had demanded to execute the sale deed by receiving the balance consideration and the relevant portion is extracted hereunder for better appreciation:



S.A.(MD)No.157 of 2020

WEB COPY

“..... எனக்கு வா.சா.2 அறிவிப்பு அனுப்புவதற்கு முன்னால் பலதடவை பாக்கி கிரைய தொகையை வைத்துக்கொண்டு கிரையம் எழுதிக்கொடுக்கும்படி எட்கஸிடம் வந்தார். (தான் தன் மக்களிடம் ஁கட்டு சொல்வதாக சொல்லி அனுப்பிவிட்டார் என்று சாட்சி விளக்கம் அளிக்கிறார்.) வாதி ஁ர ஁ரு முறை தான் பாக்கி கிரையதொகையை கொண்டு வந்து என்னிடம் கிரையம் கொடுக்கும்படி ஁கட்டார். 4 இ 5 முறை வரவில்லை.”

23. Considering the above, even according to the defendant, the plaintiff had demanded to execute the sale deed by receiving the balance sale price, but she had replied that she would inform after getting opinion from her children. It is not the case of the defendant that she has refused to execute the sale deed. It is not in dispute that since the defendant has not sent any reply, the plaintiff has filed the suit on 05.12.2009 itself. Considering the above, the question of delay does not arise at all. But as already pointed out, the trial Judge has commented that since the plaintiff has issued the legal notice one year after the sale agreement, he has approached the defendant with delay and that was taken against the plaintiff for refusing the relief.



S.A.(MD)No.157 of 2020

WEB COPY

24. The learned Counsel for the plaintiff would rely on the judgment of the Hon'ble Supreme Court in the case of ***R.Lakshmikantham Vs. Devaraji*** reported in (2019)8 SCC 62, wherein the Hon'ble Apex Court has specifically held that merely because the suit was filed with the delay after the accrual of cause of action, it cannot be put against the plaintiff that he was not ready and willing to perform his part of the contract, if the suit was filed within a period of limitation. In that decision, the sale agreement was dated 22.09.2002 and the legal notice was sent on 07.07.2003 and suit was in February 2005 and in that scenerio, the Hon'ble Supreme Court has held that since the suit was filed within the period of limitation, the delay cannot be taken against the plaintiff as if he was not ready and willing to perform his part of the contract.

25. The Hon'ble Supreme Court in ***P.Daivasigamani Vs. S.Sambandan***, in Civil Appeal No.9006 of 2011, dated 12.10.2022, has reiterated the legal position that so long as a suit for specific performance is filed within the period of limitation, the delay cannot be a ground to refuse the relief of specific performance and observed as follows:

“The aforesaid ratio has also been followed recently by this Court in



S.A.(MD)No.157 of 2020

WEB COPY

R.Lakshmikantham V. Devaraji_(2019) 8 SCC 62. We, therefore, have no hesitation in holding that mere delay alone in filing the suit for specific performance, without reference to the conduct of the plaintiff, *could not be a ground for refusing the said relief, when the suit was filed within the statutory time limit by the respondent- plaintiff.*”

26. In the case on hand, as already pointed out, the plaintiff has filed the suit within 14 months since the date of agreement and within one month from the date of issuance of legal notice. Considering the pleadings and evidence available on record and taking note of the legal position above referred, this Court has no hesitation to hold that the plaintiff has proved his continuous readiness and willingness to perform his part of the contract.

27. The plaintiff has filed the suit claiming specific performacne in respect of two properties situated in S.No.372/1 to the extent of 81 ½ cents and in S.No.372/3 to the extent of 2 Acres and 5 ½ cents totaling 2.87 Acres at Karadikal Village, Chekkanurani, Madurai District. During trial, the plaintiff has admitted that the property in S.No.372/1 measuring 81 ½ cents came to be purchased by the defendant and her husband Vaira



S.A.(MD)No.157 of 2020

WEB COPY

Thevar jointly vide Ex.B.3 – sale deed. It is not in dispute that the second item of the property in S.No.372/3 measuring 2 Acres 5 ½ cents came to be purchased by the defendant herself vide Ex.B.4 sale deed. During cross-examination of P.W.1, it was suggested that since there were some other cases pending with respect to the suit properties and the first item of the property was also in the name of the defendant's husband, whether the plaintiff was consenting to get back the advance amount, he would reply that he was not ready for the same. P.W.2, who has written the sale agreement, in his cross-examination would admit that before writing the sale agreement, he had seen the title deeds with regard to the suit property and he had also visited the suit property. He would admit that the defendant was not the only owner of the first item of the property.

28. Considering the above, it is clear that the plaintiff's side was fully aware that the first item of the property was owned not only by the defendant, but also by the defendant's husband. Admittedly, the defendant's husband Vaira Thevar is not a party to the suit sale agreement under Ex.A.1. It is not the specific case of the plaintiff that he came to know that the first item of the property was also owned by the



S.A.(MD)No.157 of 2020

WEB COPY

defendant's husband during trial. The plaintiff has not offered any reason or explanation for not taking sale agreement also from the defendant's husband as he was owning 1/2 share in the first item of the suit property.

29. The learned Counsel for the plaintiff would submit that the defendant's husband accepting the sale agreement transaction, has subscribed his signature as attesting witnesses to the suit sale agreement. As rightly pointed out by the learned Counsel for the defendant, the plaintiff in the memorandum of appeal filed before this Court, has taken a ground that the trial Court has failed to see that though the husband of the defendant has not signed as vendor in respect of the first item of the suit property, the plaintiff is entitled to get the sale deed executed in his favour in respect of the share of the defendant and the entire second item of the property since the defendant is the absolute owner of the same. But the learned appellate Judge has granted the relief of specific performance in respect of the entire first item of the suit property along with the second item of the suit property.

30. The learned Counsel for the defendant, by referring to the judgment of the appellate Court, would submit that the appellate Court



S.A.(MD)No.157 of 2020

has given contradictory findings and in paragraph No.16 of the judgment, it has been observed as follows:

“ எனுவ பி.சா.2 வைரவன் கிரைய ஒப்பந்ததரப்பினர் அல்ல என்றாலும் அவருக்கு வா.சா.ஆ.1 பற்றி நன்கு தெரிந்து தனது பட்டையும் ஸ்திரீ பரிதிவாதி கிரையம் செய்ய ஒப்பந்தத்தில் குடுபடுவதை அறிந்த சாட்சியாக கையொப்பமிட்டுள்ளார். மலும் பரிதிவாதிக்கு 1ம் லேக்க சொத்தில் 1/21 / 2 பட்டரிமை மட்டும் உள்ளதெனில் அவருக்குரிய பட்டை மட்டும் அவர் கிரையம் கொடுக்க கடமைப்பட்டவராவார். “

31. In paragraph No.17, it has been observed

“ சொத்துரிமை மாற்று சட்டம் பரிவு 7ன்படி ஒருவர் தனக்குள்ள உரிமையை மட்டும் மாற்றம் செய்ய யேலும். எனுவ சொத்து விபரம் தவறானதென்றாலும் பரிதிவாதிக்கு சொந்தமான உரிமையை மட்டும் மாற்றி பெற வாதிக்கு உரிமையுள்ளது.”

32. But as already pointed out, the appellate Judge has directed the defendant to receive the balance sale price and to execute the sale deed in respect of the suti properties. No doubt, it is evident from the records produced by the defendant that the land in S.No.372/2 is situated in



S.A.(MD)No.157 of 2020

WEB COPY

between S.No.371/1 and 372/3. Admittedly, the land in S.No.372/2 is not the subject matter of the agreement as well as the suit. But as rightly contended by the learned Counsel for the defendant, the plaintiff has given common boundaries for both S.Nos.372/1 and 372/3. As rightly contended by the learned Counsel for the defendant, since the land in S.No.372/2 is situated in between the other two survey numbers, there will not be common boundaries for both the survey number properties which are the subject matter of the present suit. But admittedly, there is no dispute with regard to the identification of the properties. Hence, giving common boundaries by itself cannot be taken as fatal to the plaintiff's case.

33. The learned Counsel for the defendant would contend that a transfer of right in immovable property can be effected only by a registered instrument under Section 17 of the Registration Act and Section 54 of the Transfer of Property Act also states that such transfer can be effected only by a registered instrument and that Section 8 of the Transfer of Property Act states that a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, that since the defendant's husband is not a party



S.A.(MD)No.157 of 2020

WEB COPY

to the sale agreement, his right in the suit property cannot be passed on to the plaintiff and that since the defendant's husband is not a party to the suit, no decree can be passed compelling him to execute the sale deed in respect of his undivided 1/2 share in S.No.372/1. No doubt, the defendant's husband Vaira Thevar had attested the sale agreement, but it cannot be stated that by attestation he has agreed to transfer his right in the suit property in favour of the proposed purchaser.

34. As rightly contended by the learned Counsel for the defendant, the defendant's husband cannot be estopped from claiming his undivided 1/2 share as the principle of estoppel will not operate against the statute. Moreover, whether the attestation made in the sale agreement would bind the defendant's husband's right in the first item of the suit property and whether the defendant's husband is estopped from claiming his undivided share in the first item of the suit property, cannot be gone into in the present proceedings, as the defendant's husband Vaira Thevar is not at all a party to the suit sale agreement and to the present proceedings. It is settled law that attestation alone does not create estoppel. Attestation is a way to prove that a document is authentic and was executed by the person's free will. It is pertinent to note that attestation does not transfer



S.A.(MD)No.157 of 2020

WEB COPY

the right or title to the purchaser even under the sale deed.

35. The learned Counsel for the defendant would rely on the judgment of the Hon'ble Supreme Court in ***Shenbagam and others Vs. K.K.Rathinavel*** reported in ***2022 SCC Online SC 71*** and argued that the remedy of specific performance is an equitable remedy and Section 20 of the Specific Relief Act confers discretion on the Court and the relevant passages are extracted hereunder:

“36 Even assuming that the respondent was willing to perform his obligations under the contract, we must decide whether it would be appropriate to direct the specific performance of the contract in this case. In [Zarina Siddiqui v. A. Ramalingam](#), a two-judge Bench of this Court while dealing with a suit for specific performance of a contract regarding the sale of immovable property observed that the remedy for specific performance is an equitable remedy and [Section 20](#) of the Specific Relief Act confers a discretion on the Court. The Court held:

“24. It is well settled that remedy for specific performance is an equitable remedy. The court while granting decree of specific performance exercises its discretionary jurisdiction. [Section 20](#) of the Specific Relief Act specifically provides that the Court's discretion to grant decree of



WEB COPY



S.A.(MD)No.157 of 2020

specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with sound and reasonable judicial principles.”

37 In the context of the discretion under [Section 20](#) of the Specific Relief Act, several decisions of this Court have considered whether it is appropriate to direct specific performance of a contract relating to the transfer of immovable property especially given the efflux of time and the escalation of prices of property.”

36. The learned Counsel for the plaintiff would also rely on the judgment of the Hon'ble Supreme Court in ***Zarina Siddiqui Vs. A.Ramalingam Alias R.Amarnathan*** reported in ***(2015)1 SCC 705*** and the relevant passages are extracted hereunder:

“33. The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misled the Court then such discretion should not be exercised by refusing to grant specific performance.



S.A.(MD)No.157 of 2020

WEB COPY

34. *In the instant case, as noticed above, although defendant no.2 held a registered power of attorney on behalf of defendant no.1 to sell and dispose of the property, but the defendants not only made a false statement on affidavit that the power of attorney had authorized the second defendant only to look after and manage the property but also withheld the said power of attorney from the Court in order to misguide the Court from truth of the facts. Further, by registered agreement the defendants agreed to sell the suit premises after receiving advance consideration but they denied the existence of the agreement in their pleading. Such conduct of the defendants in our opinion, disentitle them to ask the Court for exercising discretion in their favour by refusing to grant a decree for specific performance. Further, if a party to a lis does not disclose all material facts truly and fairly but states them in distorted manner and mislead the Court, the Court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse of the process of law.”*

37. Very recently, the Hon'ble Supreme Court in ***Janardan Das and others Vs. Durga Prasad Agrawalla and others*** in Civil Appeal No. 613 of 2017, dated 26.09.2024, has reiterated the settled position that the relief of specific performance is discretionary in nature and the court is



S.A.(MD)No.157 of 2020

not bound to grant such relief merely because it is lawful to do so and that the discretion of the court has to be on sound and reasonable principles.

38. In the above decision case, the plaintiffs have allegedly entered into an agreement of sale with the first defendant and another, that the agreement stipulated that the sisters who are the defendants 6 to 8 would come to Baripada within three months to execute the sale deed, as they were unable to do so at the time of the agreement, that the plaintiff despite being aware of the necessity of obtaining consent from the defendants 6 to 8, filed a suit for specific performance, that the trial Court after full trial, has dismissed the suit of the plaintiff, that the High Court of Orissa in the appeal preferred by holding that the sale agreement was valid and enforceable against all the defendants including the sisters and that the plaintiff has always been ready and willing to perform his part of the contract, has granted the relief of specific performance and that when the same was challenged, the Hon'ble Supreme Court has held that granting specific performance in this case would be neither just nor equitable and that the plaintiffs' failure to fulfil essential contractual terms, coupled with the lack of authority to bind all co-owners, renders



S.A.(MD)No.157 of 2020

the grant of specific performance inappropriate, allowed the appeal and the relevant portions are extracted hereunder:

“19. The relief of specific performance under the [Specific Relief Act, 1963](#), is discretionary in nature. [Section 20](#) of the Act (applicable to this case as it predates the 2018 amendment) explicitly stated that the court is not bound to grant such relief merely because it is lawful to do so. The discretion must be exercised judiciously and based on sound principles, ensuring that granting specific performance is just and equitable in the circumstances of the case.

20. In the present case, several factors weigh against granting specific performance. The agreement to sell was incomplete and unenforceable against Defendant Nos. 6 to 8, who held a majority share in the property; enforcing such an agreement would be inequitable. The plaintiffs failed to demonstrate readiness and willingness to perform their obligations and did not take necessary steps to secure the consent of all co- owners. Granting specific performance would unfairly prejudice the defendants, especially Defendant Nos. 6 to 8, who never consented to the sale to the plaintiffs. Furthermore, the plaintiffs can be adequately compensated by a refund of the earnest money with interest; there is no evidence to suggest that monetary compensation would not suffice.



S.A.(MD)No.157 of 2020

21. *Section 20 of the Specific Relief Act, 1963 prior to amendment by Act No. 18 of 2018 which was brought into effect w.e.f. 1.10.2018 categorically provided that the relief of specific performance is discretionary in nature and the court is not bound to grant such relief merely because it is lawful to do so. But the discretion of the court has to be on sound and reasonable principles.*

23. *In conclusion, considering the discretionary nature of the relief and the principles governing its exercise, we find that granting specific performance in this case would be neither just nor equitable. The plaintiffs' failure to fulfil essential contractual terms, coupled with the lack of authority to bind all co-owners, renders the grant of specific performance inappropriate. The equitable remedy sought by the plaintiffs cannot be granted in light of their conduct and the circumstances of the case.*

24. *In view of the foregoing analysis, we conclude that the plaintiffs failed to demonstrate their continuous readiness and willingness to perform their contractual obligations, and that Defendant No. 1 lacked the authority to bind Defendant Nos. 6 to 8 in the agreement dated 06.06.1993. Given the incomplete and unenforceable nature of the agreement, we find it neither just nor equitable to grant the relief sought by the plaintiffs”*



S.A.(MD)No.157 of 2020

WEB COPY

39. The above decision is squarely applicable to the case on hand.

In the present case also, admittedly the plaintiff has not taken any sale agreement from the defendant's husband and the defendant's husband has never consented for the sale to the plaintiff. Considering the above, as rightly observed by the Hon'ble Apex Court, the suit sale agreement is to be considered as incomplete and unenforceable and consequently, enforcing such an agreement would only be inequitable. It is pertinent to note that the plaintiff has not chosen to add the defendant's husband in the suit nor taken any steps to implead him during the pendency of the suit.

40. Even assuming for arguments sake that the defendant's husband had consented to transfer his share in the property, since he is not a party to the proceedings, no decree can be passed directing him to execute the sale deed in respect of his undivided share. Moreover, the plaintiff has not restricted his prayer with regard to the defendant's 1/2 share in the first item of the property and the second item of the property.

41. Viewing from any angle, this Court has no hesitation to hold that this is not a fit case to exercise its discretion in favour of the plaintiff



S.A.(MD)No.157 of 2020

WEB COPY

for granting the specific relief. The first appellate Court, without considering the above aspect in proper perspective, has granted the relief and as such, the same is liable to be set aside. Hence, the second Substantial Question of Law is answered in favour of the plaintiff and the first Substantial Question of Law is answered in favour of defendant and against the plaintiff. Consequently, this Court concludes that the Second Appeal is liable to be allowed and the judgment and decree passed by the first appellate Court is liable to be set aside and that the judgment and decree of the trial Court granting the alternative relief of refund of advance amount with interest are to be restored. Considering the other facts and circumstances, this Court is of the view that both parties are to be directed to bear their own costs.

42. In the result, the Second Appeal is allowed and the judgment and decree, passed in A.S.No.21 of 2016, dated 13.03.2019, on the file of VI Additional District Court, Madurai is set aside and the judgment and decree of the trial Court passed in O.S.No.1123 of 2010, dated 29.04.2016, on the file of II Additional Subordinate Court, Madurai, granting alternative relief of refund of advance amount of Rs.3,00,000/- with interest at 12% p.a., from the date of sale agreement till the payment



S.A.(MD)No.157 of 2020

WEB COPY

and permanent injunction restraining the defendant from alienating or encumbering the property till the payment to the plaintiff stand restored.

Consequently, the connected Miscellaneous Petition is closed. The parties are directed to bear their own costs.

28.10.2024

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

SSL

To

1. VI Additional District Court, Madurai.
2. II Additional Subordinate Court, Madurai.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)No.157 of 2020

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

S.A.(MD)No.157 of 2020

28.10.2024