



A.S(MD)No.104 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	31.07.2024
PRONOUNCED ON	23.09.2024

CORAM

JUSTICE N.SESHASAYEE
and
JUSTICE P.VADAMALAI

A.S(MD)No.104 of 2016
and C.M.P(MD)No.6660 of 2016

1.M.K.Srinivasan
2.M.S.Jeevarekha
3.M.S.Giridharan
4.M.S.Sakthinivasan

...Appellants/Plaintiffs

Vs

1.R.Ramasamy
2.N.Palanisamy
3.P.Vijaya Baskar
4.P.devi
5.K.Rengasamy
6.Pappathi
7.K.Subbulakshmi
8.R.Chellammal
9.V.Ramasamy
10.R.Karunanithi
11.R.Ramesh
12.Senthilkumar
13.Prakash
14.R.Suresh



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15.C.Parvathy

16.M.Chandrasekar

.... Respondents

(Respondents 15 and 16 are impleaded as per the common order of this Court dated 30.11.2023 made in C.M.P(MD)Nos.12047 and 12048 of 2023 in AS(MD)No.104 of 2016 respectively)

PRAYER: Appeal filed under Section 96 of the Civil Procedure Code r/w Order 41 Rules 1 and 2 of C.P.C., against the judgment and decree dated 19.01.2016 in O.S.No.6 of 2011 on the file of the Principal District Judge, Karur.

For Appellants 1,3 & 4 :Mr.M.S.Krishnan, Senior Counsel
for Mr.R.Samel Gunasingh

For 2nd Appellant :Mr.J.Bharathan

For 1st Respondents :Ms.J.Anandhavalli

For 12-14 Respondents :Mr.T.Mohan, Senior Counsel
for Mr.S.Thirunavukkarasu

For RR15 & 16 : Mr.MA.Gouthaman
for Mr.R.Karthikeyan

JUDGMENT

(Judgment was delivered by N.SESHASAYEE. J)

Challenging a decree dismissing their suit for specific performance in O.S.No.6 of 2011 on the file of the Principal District Court, Karur, the plaintiffs therein have preferred the present appeal. Instead of granting a decree for specific performance, the learned District Judge has directed the first defendant to pay the plaintiffs the advance amount of Rs.50.0 lakhs



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which the plaintiffs had paid, with interest at 6% p.a. There is neither any cross objection, nor any cross appeal by the first defendant. For narrative convenience, parties would be referred to by their rank before the trial court.

2. A brief statement on the case of the plaintiffs may now be stated:

- a) The suit property is described as a block of land measuring 48.26 acres (19.53.0 h) and is comprised in Sy.Nos.1241, 1243, 1244, 1274 to 1276, 1277/1 and 1277/2 and 1279/1 of Pavithram Village, Aravakurichi Taluk. This property belonged to defendants 2 to 11.
- b) On 06.07.2009, *vide* Ext.A.1, defendants 2 to 11 had executed a General Power of Attorney authorising the first defendant to deal with the property. On the strength of this Power of Attorney, on 23.01.2010, under Ext.A.2, the first defendant had received Rs.1.0 lakh from the first plaintiff and had executed a receipt for the said sum. Ext.A2 evidences that the sale consideration for the purchase of 48.18 acres was fixed at Rs.3,02,500/- per acre.
- c) Subsequently on 24.02.2010, the first plaintiff had executed Ext.A3 document where in he had stated that on 03.03.2010, he undertook to pay



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Rs.49.0lakhs as additional advance, upon which a formal sale agreement should be executed on that very day, and that the sale deed itself should be executed on 05.04.2010. Ext.A3 also reflects two additional facts: (i) that the first defendant had demanded an additional sum of Rs.7,00,000/- over and above the sale price, something the first plaintiff had agreed to pay; and (ii) that other than the documents which the first defendant had in his possession, first plaintiff would obtain the rest at his expenses.

d) On 02.03.2010, the first plaintiff paid another sum of Rs.49.0 lakhs (in all Rs.50.0 lakhs including Rs.1.0 lakh paid under Ext.A.2). This brought into existence Ext.A.4 sale agreement dated 03.03.2010 as was contemplated in Ext.A3.

e) Ext.A4 sale agreement (on which the cause of action would be found later), *inter alia* provided:

(i) that the first defendant had to survey and measure the suit properties to ascertain the actual extent available based upon which the total sale consideration payable might have to be ascertained;

(ii) that the plaintiffs should pay the balance sale consideration on 05.04.2010 and upon receiving the same, the first defendant would



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execute the sale deed, and if the plaintiffs default in performing their part of the contractual obligations, then they are liable to forfeit the entire advance amount;

(iii) that the first defendant should deliver the notarised copies of the documents available with him to the first plaintiff which would include a notarised copy of the receipt for payment of sale consideration to the owners of the property, the defendants 2 to 11; and

(iv) that the first defendant would execute the sale deed free of encumbrance and would also deliver the original title deeds of the property then.

f) On 28.03.2010, the first defendant made arrangements to survey the property in the presence of the first plaintiff. However, when survey commenced, a third party objected to measure the property and claimed some share in the property, as a result of which the the survey operation aborted. It is in this backdrop, the plaintiffs issued Ext.A.5-paper publication, informing the public about Ext.A.4 sale agreement to the effect that if anyone has objections to the transaction must contact his counsel within seven days. None however, responded. The defendants, thereafter



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never took any steps to measure the property despite repeated requests of the plaintiffs.

- g) The plaintiffs have been ready and willing to perform their part of the contract, but the first defendant has been delaying it with *mala fide* intention. Indeed, the first defendant insisted for a payment of an additional sum of Rs.7,00,000/- to him. The first plaintiff required the first defendant to hand over the title deeds to enable him to satisfy about the marketable title of defendants 2 to 11. It is in this backdrop, on 09.04.2010, the first defendant handed over a set of notarised photocopies of the title deeds of the property. In terms of Ext.A3, as regards the other documents the first plaintiff is required to obtain them at his expenses, but for obtaining the same the first plaintiff had to run from pillar to post and was driven from one office to another.
- h) Even as the first defendant handed over copies of the title deeds as stated above, he caused issuance of Ext.A.36 notice dated 09.04.2010, terminating Ext.A.4 contract on the ground that the time stipulated for performance of the contract (05.04.2010) had expired and that the plaintiffs have failed to perform their contractual obligation on the date stipulated for



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their performance. To this notice, the plaintiffs issued Ext.A.37 reply notice dated 15.04.2010, wherein they had alleged that the suit property was never measured, and also alleged that the photocopies of the title deeds of the property were made available only on 09.04.2010, the very date on which the first defendant had issued Ext.A.36 notice.

- i) So far as the other documents which the plaintiffs were required to obtain such as the death certificate and legal heir certificate of some of the original owners of the property from whom defendants 2 to 11 have derived title, it took some time. This apart, the first defendant did not offer the original title deeds for perusal on the ground that these documents had been pledged with certain financial institution. Indeed, it is the first defendant who created circumstances for the plaintiffs not to perform their part of the contract on the date stipulated in Ext.A4 agreement, even though they were ready to perform the contract otherwise.
- j) Be that as it may, the first plaintiff obtained an information that the first defendant was about to deal with the property and hence, he caused a public notice *vide* Ext.A.38 in a vernacular daily dated 17.04.2010. However, the first defendant has executed Ext.A.39, Ext.A.40 and Ext.A.41



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sale deeds respectively in favour of defendants 12 to 14. These purchasers (defendants 12 to 14) were close relatives of the first defendant.

It is in this setting, the plaintiffs have laid the suit for specific performance.

3.1 Defendants 2 to 11 remained ex-parte. Admitting Exts.A2 to A4, the first defendant filed his written statement raising his counter-allegations. It reads:

- a) The allegations that the first defendant agreed to provide notarised copies of the title documents and that the first plaintiff himself had to obtain the other documents at his expenses are all denied. While the execution of Ext.A.3 and Ext.A.4 are admitted, yet the allegation in the plaint that the original sale deed and the original receipts obtained by the first defendant must be made available at the time of execution of the sale deed are false and denied. Indeed, these allegations are levelled by the plaintiffs to side track the issue to cover up their inability to perform their part of the contract on 05.04.2010 in terms thereof. Indeed, the date for performance was fixed not provisionally or tentatively, but specifically.
- b) So far as handing over the title deeds are concerned, immediately on the



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execution of Ext.A.2 and receiving a token advance of Rs.1,00,000/-, the plaintiffs were provided with the photostat copies of the title deeds and other revenue documents that are in the possession of defendants 2 to 11. Therefore, there is hardly any need or reason for the first defendant to hand over the documents on 09.04.2010.

- c) As regards the allegation of measuring the properties is concerned, on 28.03.2010, the property was measured and the area was ascertained. The story that a third party raised objection to the measuring of the property is false. The plaintiffs with no reason have issued Ext.A5 paper publication on 30.03.2010.
- d) The time stipulated for performance (05.04.2010) is of the essence of the contract and indeed, the first defendant approached the first plaintiff on 01.04.2010 to remind him of the same. The first defendant had also issued a telegram and notice to the plaintiffs to come to the Registrar's Office on 05.04.2010 and this defendant waited at the Sub Registry on 05.04.2010 for the plaintiffs, but they did not turn up. Hence, the first defendant vide Ext.A36, dated 09.04.2010 had terminated the contract.
- e) The allegation of the plaintiffs that only on 09.04.2010, the first defendant



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f) Since the termination of the contract, the suit properties were sold to defendants 12 to 14 and they are now in the possession of the property.

3.2 The written statement of the first defendant was adopted by defendants 12 to 14. It may be stated right at the outset, that by so doing the defendants 12 to 14 had lost an opportunity to plead that they were bonafide purchaser for value without notice of Ext.A4 within the meaning of Sec.19 of the Specific Relief Act, which, if proved, could have saved Exts.A39 to A41 sale deeds dehors the merit of the dispute which the plaintiffs have raised in the suit.

4.1 On the above pleadings, the trial Court framed as many as eight issues, which includes three additional issues. The critical issues to the outcome of the suit however, are the additional issues 1 to 3, and Issue No.1 and they are:

“Additional Issues:

1. *Whether the time is the essence of the contract?*
2. *Whether the plaintiffs are ready and willing to perform their part of the contract?*



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3. Whether the plaintiffs were in possession of adequate means to purchase the suit properties? And

Issue No.1:

1. Whether the first defendant has duly cancelled the sale agreement entered between the plaintiffs and the first defendant by issuing a notice on 9.4.2010 and whether the cancellation is valid and sustainable in law?"

4.2 The dispute went to trial, and for the plaintiffs, the first plaintiff examined himself as P.W.1 and produced Exts.A1 to A48 (of which some of the documents have already been introduced). Besides, he examined P.W.2, an attestor to Ext.A. 4, and also P.W.3, the Notary Public who attested Ext.A.6 to Ext.A.35 documents, and also P.W.4 and P.W.5. For the defendants, the first defendant alone examined himself as D.W.1 and he had produced Ext.B.1 to Ext.B.3. Besides, the plaintiffs have marked Ext.X.1 and Ext.X.2, which documents they had summoned from the Treasury.

Finding of the Trial Court

5. On appreciating the evidence before it, the trial Court chose to dismiss the suit and its findings are:



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- a) that the time stipulated in the contract for performance (05.04.2010) is not an essential term of the contract, since there is a precondition that the suit property must be measured and hence the time for performance would not arise till the property is measured;
- b) that the plaintiff has not been ready and willing to perform his part of the contract. Firstly, his position whether the property was measured before 05.04.2010 was ambivalent, that he has admitted that through a certain Sudhakar, one of the attesting witnesses to Ext.A4, that the first defendant was ready and willing to perform his part of the contract, but has not seen to have made any preparation to performing his part of the contract. Secondly, eventhough P.W.1 states that he was in the SRO on 05.04.2010 for performing his part of the contract, he still did not establish that he was in possession of the balance sale consideration necessary for him to perform his part of the contract; and
- c) Respondents 12 to 14 were not the bonafide purchasers of the property without notice of Ext.A4 agreement, since one of the purchasers was the first defendant's son and others are his close relatives. However, on the additional issue as to whether termination of Ext.A4 contract was valid and



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First Appeal

6.1 The aforesaid decree of the learned District Judge was challenged in this appeal and it came to be allowed *vide* a judgment of a Division Bench of this Court dated 31.03.2021. Respondents 1 and 12 to 14 did not appear on the date of hearing to place their arguments. They therefore, approached this Court with a petition in C.M.P.(MD) No.7511 of 2021 to hear them again and it was dismissed by another Bench *vide* its order dated 16.02.2023. And respondents 1 and 12 to 14 took the matter to the Hon'ble Supreme Court in Civil Appeal No.4519 of 2023. The Hon'ble Supreme Court, *vide* its order dated 18.07.2023, directed this Court to hear Respondents 1 and 12 to 14. It is how, this matter is listed again for a re-hearing.

6.2 Be that as it may, in October, 2021, defendants 12 to 14 have sold the suit property to respondents 15 and 16, and they moved petitions before this Court in C.M.P.(MD) Nos.12047 and 12048 of 2023 for impleading themselves. These petitions came to be allowed. The appellants herein challenged it before the



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Supreme Court, but later they withdrew it.

7. Points for consideration:

1. *Whether the plaintiffs were ready and willing to perform their part of the contract?*
2. *Whether the plaintiffs qualify for a discretionary and equitable relief of specific performance?*

Arguments

8.1. Let the stage be reset before arranging the arguments advanced on either side. The admitted fact is that first defendant and the first appellant had entered into Ext.A4, and to understand this contract it has to be read along with Ext. A3. And, the undisputed terms thereof are: (a) that the property should be measured to ascertain the actual extent available for ascertaining the total sale consideration, since the price was not fixed for the entire property but was fixed per acre; (b) that the defendant is required to deliver one notarised set of documents; (c) that the plaintiffs had paid Rs.50.0 lakhs as advance, approximately one-third of the approximate sale consideration; (d) that the sale deed must be executed on 05.04.2010; (e) that the sale deed was not executed on the appointed date; (f) that



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on 09.04.2010, vide Ext.A36, the first defendant had terminated Ext.A4 contract; (g) that on 13.10.2010, first defendant sold the suit properties to defendants 12 to 14, and (f) on 28.01.2011 the plaintiffs have laid the suit.

8.2 The disputed facts are: (a) whether the property was measured on 28.03.2010? (b) If the first defendant had delivered Exts.A6 to A35, copies of documents notarised by P.W.3, by the first defendant to the first plaintiff on 09.04.2010, the very date on which first defendant's advocate had issued the notice of termination of contract? (c) Whether the date stipulated for performance of contract is an essential and an inviolable term of Ext.A4 contract? (d) Were the plaintiffs ready and willing to perform their part of the contract?

8.3 The substantial part of the disputed facts are required to be addressed essentially to ascertain whether the conduct of the plaintiffs is beyond blames to entail them to a decree for specific performance.

(a) Arguments for the Appellants

9. Shri M.S.Krishnan, the learned Senior counsel for plaintiffs 1 and 3, and aided



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by Thiru. J. Bharathan, the counsel for the 2nd plaintiff made their opening submissions:

- a) It is an assailable term of contract that the suit property should be measured adequately before 05.04.2010, in order the balance sale consideration payable could be ascertained. Going by the pleadings on either side, both sides had went to the property to measure it with the aid of a surveyor. Where the parties differ is that while according to the plaintiffs that the operation was aborted since a third party obstructed, according to the first defendant the measuring of the suit property was completed that day. The first defendant however, did not specify the extent that was found after measuring the suit properties. And, he did not examine the surveyor to speak to the said fact. To establish his bonafide, the plaintiffs indeed caused publication of a public notice vide Ext.A38 newspaper. If the ordinary course of human conduct is the basis then why should the plaintiffs at all make a publication unless there was an obstruction while measuring the suit property on 28.03.2010?
- b) Indeed, the first defendant has been mischievous when on 09.04.2010 he had handed over the notarised copies of earlier title documents (Exts.A6 to



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Ext.A35) even as he had made secret arrangements to issue a legal notice terminating the contract on the very date. When notarised copies of documents were delivered in terms of Ext.A4 only on 09.04.2010, it is a tacit admission on the part of the first defendant that 05.04.2010, the date stipulated in Ext.A4 for performance of contract, is not an essential term of the contract.

- c) It is evident that as on 05.04.2010, the suit property still remained unmeasured. And, when measuring the property and ascertaining the extent is a condition precedent for the performance of the mutual contractual obligations, the time for performance is left open, and hence it is unnecessary for the plaintiffs to prove their readiness and willingness to perform their part of the contract.
- d) When the time for performance has not arrived, then the termination of contract by the first defendant would only constitute anticipatory breach and the plaintiffs are entitled to ignore it Reference was made to ***M. Chinnaiyan Vs Kasthuri Radhakrishnan and Others*** [2020 (4) CTC 241].
- e) That the plaintiffs were ready to perform their part of the contract could be



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gathered from the fact that they had applied for lodgement along with the suit for the deposit of the balance sale consideration, but it was ordered much later, and only thereafter the plaintiffs have deposited the entire balance sale consideration of Rs. 95,98,650/-, on 24.02.2012. The plaintiffs indeed have established that they possessed the requisite amounts. In this context, their capacity to mobilise the funds was neither tested nor disputed seriously. Indeed, when on 31.03.2021 this appeal was earlier allowed by another Bench, it directed the appellants to deposit an additional consideration of Rs.30.0 lakhs and the plaintiffs/appellants have deposited the same too. If the conduct of the first defendant is considered, even he had conceded that when he sold the suit property to defendants 12 to 14, he had received substantial part of the sale consideration only as unaccounted money.

10. Ms.J.Anandhavalli, learned counsel for the first respondent focused more on the failure of the plaintiffs to establish their readiness and willingness to perform their part of the contract. Her submissions are:

(a) That the date (05.04.2010) stipulated in Ext.A.4 sale agreement for



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performance of mutual contractual obligation has been admitted as an essential term of the contract by the plaintiffs themselves. It is evidenced by: (a) Ext.A.3 dated, 24.02.2010, and Ext.A37 reply notice, where the first plaintiff, acting for himself and the other plaintiffs had admitted that the time for performance is an essential term of the contract; (b) In his cross examination, P.W.1 admits he knew that defendants 2 to 11 intended to sell the property, since they were in financial difficulties, which implied that the time for performance as stipulated in Ext.A4 was understood by the parties as an essential term of the contract.

(b) Thus when the plaintiffs admit that the time for performance as has been agreed upon as an essential term of the contract, then it is obligatory on their part to demonstrate that they were ready and willing to perform their part of the contract. Here, the plaintiffs have invented a story that in terms of Ext.A4, measuring the property is a precondition for the plaintiffs to perform their part of the contract and that on 28.03.2010, when there was an attempt to measure the property, it was interfered with and interrupted by a third party. This is not established. But on the contrary, in paragraph 11 of their plaint, it was admitted that the property indeed was measured on



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28.03.2010, and P.W.1 too makes a statement in his cross examination. If the property had been measured on 28.03.2010, then performing the contract on 05.04.2010 would not be a difficulty, if only the plaintiffs were ready and willing to perform their part of the contract.

(c) If only the property was not measured on 28.03.2010, as has been contended by the plaintiffs, then the plaintiffs should have only made arrangement for a survey of the property, since the first defendant was cooperative at that point of time. And if measuring the property was a pre-condition for quantifying the total sale consideration payable, then the very allegation of the plaintiffs, more specifically that the first plaintiff had arrived at the SRO with the intent to take the sale itself would indicate that the measurement of the suit property had been completed even on 28.03.2010, that the condition as stipulated had been complied with. Alternatively if only the measurement had not taken place on 28.03.2010, then the balance consideration itself would remain undecided and therefore, the contention of the plaintiff that they were ready and willing to perform their part of the contract would become unbelievable defence for camouflaging their failure to establish their readiness and willingness to



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(d) The plaintiffs admit that they have paid about 1/3rd of the total consideration as has been their customary practice in Karur, where the purchaser of an immovable property would ordinarily pay 1/3rd of the sale consideration as advance. This would imply, the plaintiffs might have to pay a little more than a crore of rupees towards the balance sale consideration. The plaintiffs are under a statutory obligation to demonstrate before the Court that they had the wherewithal to perform their part of the contract on 05.04.2010 and on everyday till 28.01.2011, when the plaintiffs laid the suit. However, the first plaintiff would make a statement in his cross examination that he kept the money in his second account, which implied that it was his black money, which he was intended to use, something no judicial fora can countenance.

(e) Having known that 05.04.2010 is the day for performing their part of the contract and having admitted the same in Ext.A.37, it is incongruent to human behaviour that the first defendant would have parted with photocopies of the title deeds on 09.04.2010, the very date on which he issued Ext.A.36 notice, terminating the very contract. In this context, the



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testimony of P.W.3 is not reliable, since no Notary can attest without the original. Very obviously, the xerox copies were handed over long prior to Ext.A.4 and the Notary might have merely signed the document without any intend to adduce the same as true copies of the original.

(f) To prove their readiness, the plaintiffs claim that they had purchased the stamp paper, but they indeed had purchased only a stamp paper of the value Rs.5,000/-. Mere purchase of a stamp paper of a meagre value does not take the case of the plaintiffs forward. If the total sale consideration is about Rs.1.46 Crores, then they must at least possess another Rs.15.0 lakhs towards stamp duty and other registration charges. They have not even demonstrated that they possessed that.

(g) When the plaintiffs knew that the time for performance of Ext.A.4 contract was of the essence of the contract, and when once that contract was terminated *vide* Ext.A.36, then notwithstanding the period of limitation available for instituting a suit for specific performance, the plaintiffs ought to have acted strictly, if only they were ready to perform their part of the contract, for the plaintiffs ought to have sensed a possibility that the first defendant would now be at liberty to alienate the property to third parties.



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Therefore, failure to institute the suit promptly again goes to indicate that the claim of the plaintiffs that they were ready to perform their part of the contract is suspicious. Indeed, the balance sale consideration was not paid contemporaneously along with the suit, but about a year later, some time in 2012 (i.e., 24.02.2012) and after the filing of the written statement.

11. The learned counsel for the respondents 15 and 16 makes the following submissions:

- a) Prior to Ext.A.4, there were at least two agreements and they are marked as Exts.A2 and A3. The first is Ext.A2, dated 23.01.2010 under which the token advance of Rs.1 lakh was paid by the first plaintiff to the first defendant and the other terms of the contract were not incorporated. This is followed by Ext.A3, dated 03.03.2010, where the first defendant is stated to have indicated an addition of Rs.7,00,000/-. This is now followed by Ext.A4. Therefore, in the context of the allegation in Paragraph No.10, Rs. 7 lakhs which the first plaintiff now claims as an addition, had already been discussed and negotiated before the parties lent their signature to Ext.A4 sale agreement.



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b) The next ground where the first plaintiff is seen dragging his feet vis-a-vis his obligation is placed reliance on his allegation that the suit property was not fully surveyed. But, in paragraph 11 of the plaint, he makes an admission that the suit property indeed was surveyed and this has been categorically admitted by the first plaintiff when he was cross-examined as P.W.1.

12. Replying the said argument, the learned counsel for the appellants made the following submissions:

a) So far as measuring the suit properties in terms of Ext.A4 is concerned, the first defendant comes forward with a contradictory statement. In Ex.A36, dated 09.04.2010, under which the first defendant had terminated Ex.A4 – sale agreement, he would state that the property was surveyed on the very date of the agreement implying thereby it was measured on 03.03.2010. In the written statement, he would say that it was measured on 28.03.2010 and in his cross-examination, he would say that it was measured fifteen days prior to the date of the agreement. Very obviously, the first defendant wants to evade the obligation imposed on him. Where the first defendant



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- b) The other issue relates to handing over the documents. Combined reading of Exts.A3 and A4 would indicate that not all the documents have been handed over but only part of the documents were handed over and the attested copies of the documents (Exts.A6 to A35) by P.W.3. It might be seen that in the cross-examination of P.W.3, it was not even suggested to him that Exts.A6 to A35 were not attested at the instance of the first plaintiff. And D.W.1 in his cross-examination would testify that he did not remember when he handed over Exts.A6 to A35. Reading testimony of D.Ws.1 to 3, it becomes far to evident that Exts.A6 to 35 indeed had been handed over and notarized copies have been handed over by the first defendant to the first plaintiff upon obtaining an attestation for the same from P.W.3 on 09.04.2010.
- c) Turning to first plaintiff's readiness and willingness to perform his part of the contractual obligation, he did make a statement that he had necessary money in his No.2 account. It might be that this amount may be black money. But, what is significant in the context of the case is that availability



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of funds with first the plaintiff and not the first plaintiff's conduct. In a suit for specific performance, the Court ought to weigh the plaintiff's conduct and the Court ought to evaluate the plaintiff's conduct against the defendant and not against the Government. At the best, the plaintiff might have to face tax liability or other criminal liability and it does not *ipso facto* implies that the money he possessed should necessarily be ignored. Here his position matches with the testimony of D.W.1 who admits that he had received more than what the sale deeds that he had executed in favour of defendants 12 to 14, which in turn implies that both deal with black money, and hence it is imperative the Court ought to weigh only possession of money and not whether that money is not accounted for. It is something for the income tax Department to address and not the defendant. Indeed, along with the plaint that he had lodged on 28.01.2011, he had also laid lodgment schedule, but since the trial Court had passed an order belatedly, he could deposited the balance sale consideration of Rs. 95,98,650/- only on 22.04.2012. Indeed, when the appeal came to be allowed by this Court in the first instance before it was recalled, the plaintiff had deposited Rs.34,10,000/- in March, 2022.



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Discussion & Decision

13. In the context of the points raised, it is not so much about whether time is the essence of the contract but whether the plaintiff was ready and willing to perform his part of the contract. The next part is that even if the plaintiffs are found to be ready and willing to perform his part of the contract, should this Court exercise its discretion in their favour and grant them a relief in equity. Turning to the first part, according to the plaintiffs they possessed the requisite amount to demonstrate their readiness and willingness to perform their part of the contract. It may be that the balance sale consideration might have to be ascertained depending on the extent available. However, in the suit, the plaintiffs have indicated the schedule of property as 48.26 acres, the very extent which is stated in Ext.A4 sale agreement dated 03.03.2010. Even if it is considered that the plaintiffs had accepted this extent provisionally, yet, inasmuch as they seek specific enforcement of the contract for the sale of 48.26 acres and not so much of property as is actually available on measurement, then he ought to possess the balance sale consideration payable at the rate of Rs.3,02,500/- per acre. Here, the first plaintiff as P.W.1 stuns this Court with his statement that he possessed the



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entire balance sale consideration in black money. And desperate to save the plaintiffs, their counsel argued that even if balance sale consideration is possessed in the form of unaccounted (black) money, then it is for the Income Tax Department to worry about and not for a civil court to concern itself with. What is overlooked is that a remedy for specific performance is a relief in equity and where the Court will weigh every step which the plaintiffs place in reaching their goal. If this Court were to accept this argument, then it has to tacitly lend its approval for certain illegality which the plaintiffs had willingly engaged, but that would be inequitable to the very scheme of equitable remedy. When the Court expects the plaintiffs to be ready and willing, it means that the plaintiffs possess legal money ready for legal tender/agreement. If the contentions of the plaintiffs were to be stretched further, then in a given case where proceeds of crime were to be diverted for providing sale consideration, then such purchase can even be defended under the provisions of Prevention of Money Laundering Act. That would lead to dangerous consequences. A court of law is, and at all times must be purity personified, and it will be plainly incongruent to its character to spot it in the company of illegality – big, small or moderate. While this Court understands the desperation of the plaintiffs to discharge their burden under Sec.16(c) of the



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Specific Relief Act, yet it is unable to appreciate the argument that black money is good money in the specific relief jurisprudence. But plaintiffs, in their desperation to wriggle out of a certain situation, now seemingly find them entrapped in an abyss of fallen hopes. Now, these aspects apart, did the plaintiffs at least possess the balance sale consideration, even if were black money? Here there is no evidence.

14.1 Even as the plaintiffs start scripting the outcome of their own destiny in this case, this court still has a job to do: To ascertain if time is of the essence of the contract. While the general rule is that in the case of immovable properties time is not generally considered as an essential term of the contract, yet it can be considered otherwise, depending on the facts of the case. See: ***Saradamani Kandappan Vs S. Rajalakshmi and Others*** [(2011) 12 SCC 18]. The law leaves the choice to the parties and the duty to the court to decide whether time for performance as stipulated in the contract must be considered as a non-negotiable and uncompromisable term of contract. Turning to the facts of this case in Ext.A3 which the first plaintiff has executed, he had stipulated 05.04.2010 as the date for completing the sale. He knew it. The suit properties belonged to



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defendants 2 to 11, and P.W.1 admits in his cross-examination that the owners of the land were in desperate need of money. Therefore, given the fact that P.W.1 knew well that the titleholders of the suit property were in need of money, and agreed on a cut off date for performance, it is only plausible to infer that the parties had chosen 05.04.2010 specifically for the performance of mutual contractual obligations. If the sale by defendants 2 to 11 is a kind of distress sale as they were anxious to negotiate their financial crisis, what respect will their difficulties receive if only the time as fixed for performance was not considered as an essential term of the contract? This is backed up by the fact that in Ext.A37 reply notice, the plaintiffs themselves acknowledge that the time as stipulated in Ext.A4 for performance was an essential term of the contract. And, inasmuch as the plaintiffs knew the reason for sale, it cannot be an accidental slip in Ext.A37 reply notice.

14.2 Having found thus, this Court may have to add that measuring the suit property before hand is a pre-condition for performance. Therefore, if the property is not measured before 05.04.2010, then it can imply that the time for performance has not arrived irrespective of whether time for performance is



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intended to be an essential term of the contract by the parties. But that inference is allowable only if the first defendant has defaulted in fulfilling the condition precedent necessary for completing the mutual contractual obligations. But, was the suit property measured prior to 05.04.2010? Here, the plaintiffs assume an ambivalent stand. While in Ext.A37, reply notice and in the plaint, P.W.1 states that the survey could not be completed due to obstruction by third parties, in his cross-examination, he admits that despite some obstructions, they could complete the measurement of the suit property on 28.03.2010. This implies that the contention of the plaintiffs that as on 05.04.2010, the property remained unmeasured cannot be true. The plaintiffs thus manage to concede one more point to the defendants without letting them to earn it.

15. The last aspect which baffles this Court was the contention of the plaintiffs that on 09.04.2010, four days after the date on which the contract ought to have been performed, the first defendant had handed over the notarised copy of Ext.A6 to Ext.A35. It emerges from the evidence that the relationship between the parties appears to be cordial till 28.03.2010, the date on which suit property was measured. While as to why they began suspecting each other is not adequately



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known, yet the fact remains that it has become sour by 05.04.2010. Both the first plaintiff and the first defendant indeed had gone to the same Sub Registrar's Office, and marked their presence by attesting some documents of conveyances of third parties, but at different points of time, ensuring all the time that neither was present at the time when the other was in the Sub Registry. They played a typical Tom and Jerry game in live. When mutual trust which parties shared was replaced by suspicion, it would be nigh difficult to believe that the first appellant would have delivered notarised copies of title documents (Ext.A6 to Ext.A36) on 09.04.2010. Here, the testimony of P.W.3, the notary public who had attested these documents, was of zero assistance to the plaintiffs.

16. It hardly requires a statement to be made that relief for specific performance is a remedy in equity and he who seeks equity should be beyond blames and suspicions. If the conduct of the plaintiffs is tested on this plane, it fails to inspire this Court to conclude that they deserve a relief in equity.

17. To conclude, this Court does not find merit in the appeal and the same is dismissed. The judgment and decree of the trial Court dated 19.01.2016 in



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O.S.No.6 of 2011 on the file of the Principal District Judge, Karur, is hereby confirmed. No costs.

(N.S.S., J.) (P.V.M., J.)
23.09.2024

Index : Yes / No
Neutral Citation : Yes / No
PM/ABR/CM

To

- 1.The Principal District Judge,
Karur.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.
and
P.VADAMALAI, J.

CM

Predelivery Judgment made in
A.S(MD)No.104 of 2016

23.09.2024