



A.S(MD)No.158 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 31.01.2024

Pronounced on: 27.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

A.S(MD)No.158 of 2023

R.Sivasubramanian

.. Appellant/Defendant

.Vs.

M.Rabik Kadhar Mohaideen

.. Respondent/Plaintiff

Prayer : This Appeal Suit has been filed under Section 96 r/w. Order 41 Rule of C.P.C., against the judgment and decree dated 16.06.2022 passed by the learned Additional District Judge, FTC, Tenkasi in O.S. No.152 of 2019

For Appellants : Mr.M.S.Suresh Kumar

For Respondent : Mr.S.M.P.Amalan

J U D G M E N T

This Appeal Suit has been filed as against the judgment and decree passed in O.S. No.152 of 2019 on the file of the learned Additional District Judge, FTC, Tenkasi, Wherein respondents herein has filed a suit as against the appellant for the relief of specific performance of contract and the suit was decreed.



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2. As against the decree and judgment the defendant has preferred this present appeal.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Trial Court.

4. The gist of the plaint averments are as follows:

The plaint schedule property belongs to the defendants through sale deed dated 19.03.2014. The plaintiff and the defendants entered into agreement for sale of property on 04.04.2017. As per agreement sale price was fixed as Rs.20,00,000/- and on the date of agreement itself the plaintiff paid a sum of Rs.5,00,000/- to the defendants as advance of sale price. The remaining amount to be paid within three months and the plaintiff has to get the sale deed from the defendants after repayment of balance sale consideration. Thereafter on 20.06.2017 the plaintiff paid a sum of Rs.1,00,000/- and also the issued a cheque for a sum of Rs.1,00,000/- drawn on Indian Overseas Bank but the defendants failed to present the cheque for collection and then the same was returned to the plaintiff . Again on 29.07.2017 the plaintiff paid a sum of Rs.2,00,000/- to the defendants and again on



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04.04.2018 as instructed by the defendants the plaintiff paid a sum of Rs.1,30,000/- to one Antony who was oothidhar(mortgagor) in the suit property. Thereafter the plaintiff demanded for execution of sale deed but the defendant evaded from execution of sale deed, thereby the plaintiff had given a complaint as against the defendant and the First Information Report has been registered as against the defendant on 10.10.2018 for the offences under Sections 420 and 506(i) of IPC. The plaintiff was always ready and willing to perform his part of contract by paying the balance sale consideration of Rs.10,70,000/- but the defendant only evading from performing his part of contract. Hence filed the suit.

5. The brief averments of the written statement filed by the defendant are as follows:

The suit is not maintainable either in law or on facts and the same is liable to be dismissed in *limine*. It is admitted that the suit properties belongs to the defendants and they entered into agreement date 04.04.2017 but the averment that he received a sum of Rs.5,00,000/- as advance is false. Infact on the date the defendants received only Rs.3,50,000/- as advance of sale price. Again on 20.06.2017 the defendants received a sum of Rs.1,00,000/- and also issued a cheque for a sum of Rs.1,00,000/- dated



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28.06.2017. When the cheque was presented for collection on 29.06.2017 the same was returned as insufficient funds. When the same was intimated to the plaintiff he stated that at present he had no money and since three months time was lapsed he will sell the property to some other person and will pay the amount. Thereafter he took the defendant to one Arafa gold shop on 29.07.2017 and paid a sum of Rs.1,25,000/-. The above said facts are suppressed by the plaintiff. Further averment that the defendant mortgaged the property to one Antony for a sum of Rs.1,75,000/- and the plaintiff settled a sum of Rs.1,30,000/- to the same Antony are all denied. Infact the Antony was a oothidhar(mortgagor) and he entered into oothi (mortgage) deed on 17.11.2010 for three years and paid a sum of Rs.1,75,000/-. Thereafter in the year 2013 there was an agreement between them. As per the agreement the said Antony was permitted to reside in the property for a sum of Rs. 3000/- per month as rent and the oothi(mortgage) amount was deducted for the rent for remaining period. There was a dispute between the defendant and the said Antony, thereby he gave complaint before the Courtallam Police Station and there was a compromise between them and the Antony admitted that there was arrears of rent for 52 months and he damaged property worth about Rs.20,000/- thereby the said oothi amount of Rs.17,500/- was adjusted for the rent



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amount and the damages caused to the property. Since the defendant was residing in Chennai key was handed over to the plaintiff by the police. After receipt of key the plaintiff is in unlawful possession. It is false to state that the plaintiff spent a sum of Rs. 7,00,000/- towards renovation. The plaintiff was not ready and willing to perform his part of contract within a period of three months. Even thereafter the plaintiff was not ready and willing to perform his part of contract. The plaintiff has given a false complaint and also registered First Information Report and thereafter the said First Information Report was also quashed by this Court. Therefore the plaintiff is not entitled to any relief and the suit is liable to be dismissed.

6. Based on the above said pleadings and hearing both sides, the trial Court has framed the following issues:

- 1) Whether the plaintiff is entitled to the relief of specific performance of contract as prayed for in the plaint?
- 2) Whether the plaintiff is entitled for the alternative prayer of recovery of sum as prayed for?
- 3) Whether the plaintiff is ready and willing to perform the contract?
- 4) To what other relief?



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7. Before the trial Court on the side of plaintiff, P.W.1 was examined and documents Ex.A1 to A2 were marked. On the side of the defendant D.W.1 was examined and one document was marked as Ex.B.1.

8. After considering the evidences adduced on both sides the trial Court decreed the suit in favour of the plaintiff and granted specific performance. As against the decree and judgment the defendant has preferred this appeal on the following grounds

Grounds of Appeal

1) The decree and judgment of the Court below is contrary to law, weight of evidence and probabilities of the case.

2) In a suit for specific performance, the Court below failed to see that the plaintiff/purchaser of the suit property was never willing and was not at all ready to pay the balance sale consideration of Rs. 14,25,000/-

4) The plaintiff initiated the suit without any legal notice in a suit for specific performance



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5) The sale agreement is dated 04.04.2017(unregistered) and the suit filed after two years and three months i.e.,25.06.2019 and therefore the Court ought to have seen the conduct of the plaintiff in filing the suit after delay.

6) The learned Judge came to wrong conclusion on a suggestion putforth to PW.1 for receipt of Rs.2,00,000/- on 29.07.2017 paid by the plaintiff to the defendant when there is specific denial by D.W.1 that he has received only Rs.1,25,000/- on 29.07.2017 and had made an endorsement in Ex.A.1.

7) The lower Court failed to see that only the defendant had given complaint to the police to evict the lessee Anthony from the suit schedule property after compromise this defendant was directed to receive the keys from the police but the plaintiff using his influence by fraudulent means took the keys from the police and illeglaly trespassed and locked the suit property on 04.04.2018

8) The learned Judge wrongly concluded by directed the palintiff to pay a sum of Rs.12,00,000/- when the actual payment as per the records is Rs.14,25,000/-

9. The learned counsel appearing for the appellant would contend that the appellant and the respondent entered into agreement of sale of property. The sale price was fixed as



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Rs.20,00,000/- and on the date of agreement the appellant received only Rs.3,50,000/- and remaining Rs.1,50,000/- was not paid on the date of agreement. Thereafter he received a sum of Rs.1,00,000/- by cash and Rs.1,00,000/- by way of cheque and the cheque was dishonoured and thereafter again he received a sum of Rs.1,25,000/- but in the deed mentioned as Rs.2,00,000/-, therefore he only received a sum of Rs.5,75,000/-. The respondent/plaintiff was not ready and willing to perform his part of contract. Though the time was fixed for three months, the plaintiff was never ready to get the sale deed in his favour by paying the balance sale consideration. The plaintiff never issued any notice to the defendant by expressing his readniess and willingness to perform his part of contract, instead he only gave compaint and registered First Information Report as against the appellant/plaintiff and the First Information Report was also quashed by this Court. Therefore the plaintiff failed to prove the payment of advance amount and he was not always ready and willing to perform his part of contract but the trial Court failed to consider the above aspect and erroneously decreed the suit, therefore the judgement and decree passed by the trial Court are liable to be set aside.



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10. The learned counsel appearing for the respondent would contend that the plaintiff and the defendant entered into agreement and the agreement was admitted by the appellant/plaintiff and on the date of agreement Rs.5,00,000/- was paid as advance of sale price and in the agreement itself it was clearly mentioned and thereafter the plaintiff paid a sum of Rs.1,00,000/- in cash and Rs. 1,00,000/- through cheque . The cheque was not presented in time and thereby the cheque was returned by the appellant/defendant . Thereafter again he paid a sum of Rs.2,00,000/- as sale consideration and the same was also endorsed in the back side of the agreement. Therefore the plaintiff paid a sum of Rs.8,00,000/- towards sale price and apart from that the plaintiff paid a sum of Rs. 1,30,000/- to the mortgagor who is in possession of the property namely Antony as per the instruction of the appellant/defendant. Therefore the plaintiff totally paid a sum of Rs.9,30,000/-. When the respondent/plaintiff demanded the appellant/defendant to execute sale deed, on receipt of sale consideration the appellant/defendant evaded from exeuction of sale deed. Therefore the respondent/plaintiff thereby lodged complaint before the concerned jurisdiction police and the First Information Report was also registered against the appellant/defendant. Therefore from the



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above it is clear that the plaintiff was always ready and willing to perform his part of contract part but the defendant was evading from executing sale deed. Therefore he filed suit and before the trial Court the plaintiff has categorically deposed about the payment made by him and the defendant also admitted the execution of agreement and the endorsement made in the agreement. Therefore the plaintiff proved the payment and execution of agreement. Therefore the defendant has to prove his case but the defendant failed to prove his defence through sufficient evidence, thereby the trial Court has correctly decreed the suit by directing the defendant to execute the sale deed on receipt of balance sale consideration, therefore the appeal is liable to be dismissed.

11. This Court heard both sides and upon hearing both sides and perusing the records and the judgment of the trial Court, the points for determination in this appeal is

- 1) Whether the respondent/plaintiff was always ready and willing to perform his part of contract?
- 2) Whether the respondent/plaintiff is entitled to the relief of specific performance contract?
- 3) Whether the respondent/plaintiff is entitled to alternative relief of return of advance amount as prayed for in the plaint ?



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4) Whether the judgment and decree passed by the trial court are sustainable in law and facts?

5) Whether the appeal has to be allowed or not?

6) To what relief the appellants are entitled to?

Point No.1

12. This suit has been filed by the respondent/plaintiff for the relief of specific performance of contract. The appellant and the respondent entered into agreement for sale on 04.04.2017. The sale price was fixed as Rs.20,00,000/-. According to the plaintiff on the date of agreement itself Rs.5,00,000/- was paid towards advance and thereafter the plaintiff has paid a sum of Rs. 1 lakh in cash and Rs. 1 lakh through cheque and thereafter on 29.07.2017 the plaintiff again paid a sum of 2 lakhs to the defendant and the defendant also made endorsement in the agreement. The appellant/defendant also admitted the execution of sale deed and the sale price was fixed by them as per the agreement but the defendant denied the receipt of advance of Rs. 5 lakhs on the date of agreement and Rs. 2 lakhs on 29.07.2017. According to the defendant a cheque for a sum of Rs.1,00,000/- was presented for collection and the same was returned as insufficient funds. According to the respondent/plaintiff, the appellant/defendant failed to present the said cheque for collection, however he admitted that the cheque was not honoured,



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thereby total amount of Rs. 8 lakhs was paid as advance of sale consideration. Apart from that the plaintiff has paid a sum of Rs. 1,30,000/- to one Antony who was oothidar in the suit property and the same was denied by the appellant/defendant. According to the defendant he only received a sum of Rs.5,75,000/-. Therefore the plaintiff has to prove the same. Payment of advance amount would be decided in the next point. This point is in respect of readiness and willingness.

13. There is no dispute in respect of execution of agreement on 04.04.2017. According to the plaintiff from the date of agreement itself till the filing of suit he was ready and willing to perform his part of contract. It is admitted fact that the time stipulated for completion of contract is three months and the date of agreement is 04.04.2017 and three months time lapsed on 04.07.2017. According to the respondent/plaintiff he was always ready and willing to perform his part of contract but he has not issued any notice to the appellant/defendant by expressing his readiness and willingness to perform his part of contract. Per contra he lodged complaint before the police station and the First Information Report was also registered and the date of registration of First Information Report is 10.10.2018. The plaintiff has not issued any notice after completion



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of contractual period ie.three months. Till filing of suit the plaintiff has not issued any notice by expressing his readiness and willingness. Mere registering of criminal case is not sufficient to prove the readniess and willingness. The trial Court has mainly relied on the Ex.A.2/First Information Report and in the said First Information Report there is no specific averment that he was always ready and willing to perform his part of contract. Per contra there is a line mentioned in the complaint that when he asked to execute sale deed the defendant failed to do so. Therefore the plaintiff has failed to prove that he was always ready and willing to perform his part of contract. The plaintiff not even examined any witnesses to prove his readiness and willingness but merely in the plaint stated that he was ready and willing to perform his part of contract but no any sufficient evidence adduced to show his readiness and willingness. Therefoe the plaintiff failed to prove his readiness and willingness . Thus the point is answered.

Point No.2

14. The respondent/plaintiff has filed suit for specific performance by stating that he was always ready and willing to perform his part of contract but the defendant only evaded from executing the sale deed. This Court in the previous point elaborately discussed and decided that the plaintiff failed to prove his



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readiness and willingness to perform his part of contract. The main requirement for ordering specific performance is that plaintiff has to plead and proved his readiness and willingness. In this case the plaintiff was not ready and willing to perform his part of contract, therefore he is not entitled to the relief of specific performance of contract. Thus the point is answered.

Point No.3

15. The plaintiff also sought for alternative relief of return of advance amount paid by him. According to the plaintiff he paid a sum of Rs.9.30 lakhs but the defendant denied the receipt of said amount. According to the plaintiff on the date of agreement itself he paid a sum of Rs. 5Lakhs but the defendant denied the receipt of Rs. 5 lakhs and he only admitted Rs.3.5 lakhs . Once the defendant admitted the recipe of advance amount and executed agreement it is for him to prove that he has not received the entire amount of Rs. 5 lakhs and only received Rs.3.5lakhs. In order to prove the said fact, the defendant failed to adduce any acceptable evidence to show that he received only Rs.3.50 lakhs and not Rs.5lakhs. Therefore the defendant failed to prove that he only received Rs.3.5 lakhs. The agreement shows that he received a sum of Rs.5 lakhs on the date of agreement. According to the respondent/plaintiff he paid a sum of Rs. 1 lakh through cash on 20.06.2017 and Rs. 1,00,000/- through



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cheque. The defendant also admitted the receipt of amount of that date Rs.1,00,000/- through cash and Rs.1,00,000/- through cheque but according to the appellant/ defendant the cheque was presented for collection but it was returned as insufficient funds.

16. In order to prove that the cheque was returned as insufficient funds he has not produced any bank records . However the plaintiff himself admitted that the cheque was not presented for collection, thereby he admitted that the above said Rs. 1 lakh paid through the cheque was not encashed by the appellant/ defendant According to the respondent/ plaintiff apart from the said amount again on 20.06.2017 the respondent/plaintiff paid a sum of Rs. 2,00,000/- and the same was also endorsed in the agreement. The agreement shows that there is an endorsement in the agreement for the receipt of Rs. 2,00,000/- but the defendant denied the receipt of entire amount but according to him he received only a sum of Rs. 1,25,000/- and he admitted the signature found in the endorsement made in the agreement. Therefore it is for the appellant /defendant to prove that he has received a sum of Rs. 1,25,000/- and not Rs. 2,00,000/-. In order to prove the same he has not examined any witnesses and once he admitted the signature found in the Ex.A3/agreement for receipt of Rs. 2,00,000/- he has to prove the



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contrary but there is no evidence adduced by him. Therefore the plaintiff proved that the defendant received money of Rs. 2,00,000/- through endorsement. Therefore the plaintiff has proved that he paid a sum of Rs. 8 lakhs towards sale consideration.

17. The respondent /plaintiff has pleaded in the plaint and deposed in the affidavit that apart from the above said Rs. 8,00,000/- he has paid a sum of Rs.1,30,000/-to one Antony who was oothidar(Mortgagor) The said receipt of amount was denied by the defendant. According to the appellant/ defendant the said Antony was inducted as oothidar(mortgagor) on payment of Rs.1.75 lakhs and initially the period was fixed for three years. Since the defendant is not in a position to settle the amount both of them agreed to extend the period of possession and the mortgage advance amount has to be adjusted for the rent. Accordingly the said Antony was inducted as tenant for a sum of Rs. 3000/- per month. Further he damaged the properties worth about Rs.20,000/- thereby the said amount was adjusted for the rent as well as the damages caused by the tenant. To that effect the defendant has lodged complaint as against Antony and the said Antony also compromised and handed over the key to the respondent/plaintiff since the appellant/ defendant was residing in Chennai. Therefore the respondent/



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plaintiff has to prove the said payment of Rs.1,30,000/-to Antony. In order to prove the same there is no evidence and there is no receipt produced by the plaintiff. According to the appellant/defendant he received a sum advance amount of Rs.75,000/- from Antony and the respondent /plaintiff also not disputed the amount, while so how the respondent / plaintiff paid a sum of Rs.1,30,000/- has to be explained but the respondent /plaintiff has not properly explained. Therefore the respondent/ plaintiff failed to prove the payment of Rs.1,30,000/- to Antony on the instructions of the defendant. Therefore the plaintiff has proved that he has paid Rs.8 lakhs to the defendants.

18.This Court already decided in the previous point that the plaintiff was not always ready and willing to perform his part of contract and the defendant also admitted some portion of the amount and this Court also in the previous para decided that the defendant have borrowed a sum of Rs. 8 lakhs through Ex.A3, thereby the defendant is liable to pay the said amount.

19. The learned counsel appearing for the appellant raised a query in respect of marking of document Ex.A.1/agreement on the ground that it was not registered. As per Section 49 of Indian Stamp



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Act, there is an exemption for suit for specific performance and the trial Court also referred the judgment of this Court in the case of ***Kasthuri vs. R.Hemalatha*** reported in **2022(2)CTC 246** and this Court in the said case held that as per the proviso of Section 49 of Indian Stamp act, even though the sale agreement is unregistered it can be received as evidence in a suit for specific performance. Therefore the marking of documents/Ex.A.1 is in accordance with law.

20. Therefore as discussed supra, the respondent /plaintiff is entitled for a sum of Rs. 8,00,000/-towards advance of sale consideration. Thus the point is answered.

Point No.4

21. The plaintiff has filed a suit for specific performance of contract as against the defendant and the trial Court decreed the suit. The trial Court also discussed about the objection raised for marking of documents i.e., unregistered agreement referring the judgment in ***Kasthuri vs. R.Hemalatha*** reported in **2022(2)CTC 246** and thereafter discussed about the receipt of advance money by the defendants and also correctly held that the respondent/ plaintiff failed to prove the payment of Rs.1.3 lakhs to one Antony. However



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the trial Court failed to consider that the plaintiff was not always ready and willing to perform his part of contract and the respondent / plaintiff not even issued any notice to the appellant /defendant immediately after the lapse of period of agreement by expressing his willingness. The plaintiff has only lodged a complaint before the police station and the trial Court has relied on the said First Information Report and erroneously held that the plaintiff was always ready and willing to perform his part of contract, therefore the trial Court has decreed the suit based on the above said First Information Report registered as against the defendant. Since the suit for specific performance was granted the trial Court has not considered the alternative relief to return the advance amount . This Court in the previous point decided that the trial Court failed to consider the readiness and willingness by the plaintiff, thereby the judgment and decree passed by the trial Court are unsustainable and are liable to be set aside by allowing this appeal. Thus the point is answered.

Point No.5

22. This Court in the previous points decided that the plaintiff is not entitled to the relief of specific performance and the plaintiff is entitled to return of advance amount of Rs.8,00,000/- and thereby



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the appellant/defendant is liable to pay the advance amount of Rs.8,00,000/- to the plaintiff. Thus the point is answered.

23. In the result, this appeal suit is allowed and the judgement an decree passed in O.S. No.152 of 2019 on the file of the learned Additional District Judge, FTC, Tenkasi are set aside and the suit in O.S. No. 152 of 2019 stands dismissed in respect of specific performance of contract and the suit is decreed in respect of alternate prayer to return the advance amount and the defendant is directed to return the advance amount of Rs.8,00,000/- with interest @ 9% per annum from the date of agreement till realization of the amount. Time for payment is two months. No costs.

27.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Additional District Judge, FTC, Tenkasi
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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