



S.A(MD)No.585 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2024

Pronounced on : 13.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.585 of 2019

and

C.M.P(MD)No.11911 of 2019

Ramasamy

... Appellant/Respondent/
Plaintiff

Vs.

Santhaanam

... Respondent/Appellant/
Defendant

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed in A.S.No.17 of 2016 on the file of the Additional District and Sessions Court (Fast Track Court), Tenkasi, dated 05.08.2019, reversing the judgment and decree in O.S.No.130 of 2010 on the file of the Principal Sub Court, Tenkasi, dated 25.03.2015.

For Appellant : Mr.R.T.Arivukumar
for Mr.N.GA.Natraj

For Respondent : Mr.V.Meenakshi Sundaram



S.A(MD)No.585 of 2019

JUDGMENT

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This Second Appeal is preferred against the judgment and decree, dated 05.08.2019 passed in A.S.No.17 of 2016 on the file of the Additional District and Sessions Court (Fast Track Court), Tenkasi, reversing the judgment and decree, dated 25.03.2015 passed in O.S.No.130 of 2010 on the file of the Principal Sub Court, Tenkasi.

2. The appellant is the plaintiff and the respondent is the defendant in O.S.No.130 of 2010 on the file of the Principal Sub Court, Tenkasi. The appellant/plaintiff filed the suit for specific performance directing the defendant to execute a sale deed in respect of the suit property after receiving the balance sale consideration on the basis of sale agreement, dated 15.05.2006 entered into between them.

3. For the sake of convenience, the parties are referred as plaintiff and defendant as arrayed in O.S.No.130 of 2010 on the file of the Principal Sub Court, Tenkasi.



S.A(MD)No.585 of 2019

4. Case of the plaintiff:

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The suit property belonged to the defendant and he is in exclusive possession and enjoyment of the same. The extent of the suit property is 7.81 cents in S.No.162/4 of Krishnapuram Village. The plaintiff learnt that the defendant offered to sell the suit property. The plaintiff approached the defendant for purchase of the suit property and both entered into a sale agreement, dated 15.05.2006 agreeing to sell the suit property at Rs.1,25,000/- per cent. The plaintiff paid Rs.1,00,000/- to the defendant towards advance on the same day. The plaintiff was always ready and willing to perform his part of contract, but the defendant was evading execution of the sale deed. So, the plaintiff sent a legal notice, dated 07.04.2007 to the defendant for completing the sale. In that legal notice, it was mentioned that the defendant paid advance instead of the plaintiff paid. So, another legal notice was sent on 09.04.2007. The defendant sent a reply notice on 01.09.2007 admitting the sale agreement, dated 15.05.2006 but replied that the sale agreement was never acted upon and also the plaintiff had not taken steps for measuring the property and was not ready and willing to perform his part of the contract. Hence, the suit.



S.A(MD)No.585 of 2019

5. Case of the Defendant as per Written Statement and Additional

Written Statement:

The plaintiff intended to purchase a portion of the defendant's land for access to his property. But the defendant was reluctant to sell his property. Upon the plaintiff's pestering, the defendant agreed to sell on condition that the plaintiff should not demand more property than the measurements given in the agreement. The plaintiff also agreed. But the plaintiff did not turn up as agreed and was not willing. The plaintiff stated that the measurements have to be checked for his convenience. The 2nd item of the property does not connect to his property. The plaintiff refused to get a sale deed for the agreed measurement. Time is the essence of this contract and time was fixed as three months. But the plaintiff failed to get the sale deed within three months. The suit is barred by time and also the contract came to an end. The plaintiff refused to get the advance amount and hence, the defendant deposited the same. The suit property is the portion of the defendant's property and if the same is sold he would face inconvenience. The plaintiff has no sufficient means to purchase the suit property. Hence, the suit is liable to be dismissed.



S.A(MD)No.585 of 2019

WEB COPY

6. Before the trial Court the following issues were framed:

(1) Whether the plaintiff is entitled to the reliefs sought for?

(2) Whether the plaintiff was ready and willing to perform his contract?

(3) Whether the sale agreement is an executable agreement?

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

7. During trial, on the plaintiff's side, P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.4 were marked. On the defendant's side D.W.1 was examined and Ex.B.1 to Ex.B.8 were marked.

8. After hearing both and considering evidences of both sides, the learned Principal Sub Judge, Tenkasi, concluded that the plaintiff has proved the sale agreement and his case and hence, decreed the suit for specific performance in favour of the plaintiff. Accordingly, the trial Court granted the relief of specific performance to the plaintiff by passing judgment and decree, dated 25.03.2015.



S.A(MD)No.585 of 2019

WEB COPY

9. Aggrieved by the judgment and decree in O.S.No.130 of 2010, the defendant preferred the Civil Appeal in A.S.No.17 of 2016 on the file of the Additional District and Sessions Court (Fast Track Court), Tenkasi. The First Appellate Court after hearing both sides passed judgment, dated 05.08.2019 allowing the appeal in A.S.No.17 of 2016 and reversed the judgment and decree passed in O.S.No.130 of 2010 and dismissed the suit of the plaintiff.

10. Challenging the judgment and decree of the First Appellate Court, the plaintiff preferred this Second Appeal and the same has been admitted on 09.12.2019 by framing the following substantial question of law:-

"Whether the lower Appellate Court is right in non-suiting the plaintiff for a absence of a readiness and willingness without considering the nature of the contract, which contains reciprocal promises?"

At the time of hearing on 07.03.2022, the following substantial question of law was framed.

"Whether the first Appellate Court is correct in coming to the conclusion that the appellant is not ready and willing to conclude the contract in light of



WEB COPY



S.A(MD)No.585 of 2019

Exhibit A.2 notice, when the appellant/plaintiff had issued the same at first within 11 months from the date of the sale agreement and that too in case where time is not the essence of contract as per Exhibit A.1?

11. The learned counsel for the appellant/plaintiff submitted that the plaintiff and the defendant entered into Ex.A.1 - Sale Agreement for the suit properties for the sale consideration of Rs.1,25,000/- per cent. The suit 1st item is 2001 sq.ft and the 2nd item is 1403 sq.ft., totalling 3404 sq.ft., which is 7.81 cents. The plaintiff paid Rs.1,00,000/- towards advance to the defendant. The sale agreement has to be concluded within three months i.e., by 14.08.2006. The defendant clearly admitted the above facts in his written statement. It is also agreed that before execution of the sale deed, the suit property has to be measured. The 1st part has to be complied with by the defendant. But, the defendant has not measured the suit property as agreed and has evaded to do so. Hence, the plaintiff has issued Ex.A.2 and Ex.A.3 legal notices. The defendant sent Ex.A.4 - reply notice after five months i.e., on 01.09.2007. The trial Court has correctly come to the conclusion that the plaintiff proved the Ex.A.1 - Sale agreement and decreed the suit. The first Appellate Court also came to the conclusion that the trial Court had



S.A(MD)No.585 of 2019

correctly concluded that the sale agreement was proved. But, the first Appellate Court discussed the case and held that the plaintiff was not ready and willing to perform his part of the contract as per Section 16(c) of the Specific Relief Act. The plaintiff was financially sound and he is always ready and willing to purchase the suit property. The plaintiff approached the defendant several times for execution of sale deed. The defendant has not come forward to execute the sale deed. So, the plaintiff firstly issued Ex.A.2 - Legal Notice on 07.04.2007. The legal issue mainly involved is the contract arising out of reciprocal promises which have to be implemented by the respective parties to the contract. The defendant, who has not complied with his duty to measure the property, cannot accuse the plaintiff that the plaintiff is not ready and willing to conclude the contract. The trial Court has correctly considered all these facts and decreed the suit. But, the first Appellate Court misconstrued the facts and reversed the findings of the trial Court. Therefore, the Second Appeal may be allowed. In support of his argument, the learned counsel for the appellant/plaintiff has relied on the following citations:

"(i) (2000) 6 Supreme Court Cases 420 (Motilal Jain /v/ Ramdasi Devi and Ors.)



S.A(MD)No.585 of 2019

WEB COPY

(ii) 2019 (6) CTC 26 (K.C.Rajabathar /v/ B.Purushothaman)

(iii) (2019) 8 MLJ 16 (SC) (Madhukar Nivrutti Jagtap and Ors. /v/ Pramilabai Chandulal Parandekar and Ors.)

(iv) (2022) 1 MLJ 363 (K.M.Krishnan /v/ R.Pattur)

(v) 2023 SAR(Civil)(SC)1 (P.Daivasigamani /v/ S.Sambandan)"

12. Per contra, the learned counsel for the respondent/defendant contended that it is the specific condition in the Ex.A.1 - Sale Agreement, dated 15.05.2006 that the time for conclusion of the contract has been fixed at three months and within three months the property has to be measured and demarcated. The time came to an end on 14.08.2006. The plaintiff did not come forward to perform his contract. Even as per evidence of P.W.2, on 20.08.2006 the plaintiff insisted the defendant to perform the contract, which is barred by time, as the time was fixed on or before 14.08.2006. Further, the plaintiff issued the legal notice after the lapse of 10 months and 23 days from the date of the sale agreement. The plaintiff has not stated in his legal notice that he was ready and willing to perform his obligation. So, the first Appellate Court has correctly held that the plaintiff has not



S.A(MD)No.585 of 2019

satisfied the provision of Section 16(1)(c) of the Specific Relief Act.

The plaintiff has not produced acceptable evidence that he has insisted the defendant to perform his contract. Even after the issuance of Ex.A.1 - Legal Notice on 07.04.2007, the plaintiff filed the suit only on 10.08.2009, which itself proved that the plaintiff was not ready and willing to perform his part of the contract. Admittedly, there is no evidence that the plaintiff took steps to measure the property and demarcate the property as per agreement. Further, after payment of Rs.1,00,000/- there is no further payment towards sale consideration of Rs.9,76,250/-. The first Appellate Court has correctly dismissed the suit reversing the finding of the trial Court. The question of law could not be decided in favour of the appellant/plaintiff. Therefore, this Second Appeal may be dismissed. In support of his argument, the learned counsel for the defendant has relied on the citation reported in **(2019) 8 Supreme Court Cases 575 (Surinder Kaur (Dead) through Legal Representative /v/ Bhadur Singh (Dead) through Legal Representatives).**

13. Heard the arguments of both sides and perused the material records in this Second Appeal. It is admitted by both the plaintiff and the defendant that originally, the suit properties belonged to the defendant and that they



S.A(MD)No.585 of 2019

entered into Ex.A.1 - Sale Agreement on 15.05.2006. It was agreed by both sides that the sale consideration was fixed at Rs.1,25,000/- per cent for the properties measuring 7.81 cents. So, the total sale consideration as per the agreement comes to Rs.9,76,250/-, out of which, an advance of Rs.1,00,000/- was paid. On perusal of Ex.A.1, it is clear that three months time for execution of sale is fixed. It is also the condition that the property has to be measured and only after measurement, the sale deed would be executed.

14. It is the case of the plaintiff that the plaintiff proved Ex.A.1 - Sale Agreement and payment of advance, hence, he is entitled to the relief of specific performance, accordingly, the trial Court correctly appreciated the evidences and decreed the suit, but the First Appellate Court has misconstrued the evidences and reversed the suit on the ground that the plaintiff was not ready and willing to perform his part of the contract. Per contra, the learned counsel for the defendant contended that the plaintiff was not ready and willing to pay sale consideration and has not approached for demarcation of property. It is further contended that after lapse of nearly 11 months, the plaintiff issued Exs.A2 and A3 - Legal Notices and thereafter, filed the suit on 10.08.2009 at fag end of the limitation period. It is the



S.A(MD)No.585 of 2019

specific condition in the sale agreement that the property should be measured and demarcated before execution of the sale. On perusal of evidence of P.W.1, it is clear that there is no evidence as to whether the defendant came forward to measure land or whether the plaintiff insisted the defendant for measurement and demarcation of property. As rightly observed by the first Appellate Court, if the defendant refused to measure and demarcate the property, the plaintiff should have issued written notice within the specified time of three months or at least within a minimum grace period. But, the plaintiff has not let in any evidence in this aspect.

15. It is the clear case of the defendant that the plaintiff was not ready and willing to perform his part of the contract. It is admitted by both parties that the performance should be completed within three months i.e., 14.08.2006 from the date of Ex.A.1 - Sale Agreement on 15.05.2006. On perusal of the evidence of P.W.2, who categorically deposed that on 20.08.2006 the plaintiff insisted the defendant to perform his part of the contract, which itself beyond the fixed time. Three months time is the essence of the contract as per Ex.A.1 - Sale Agreement. There is no material or evidence placed to show what prevented the plaintiff to insist the



S.A(MD)No.585 of 2019

WEB COPY

defendant to perform his contract within the three months. There is no further payment towards sale consideration when the sale price is Rs.9,76,250/-.

The defendant contended in his written statement and additional written statement that the plaintiff did not have sufficient means to pay the sale consideration. In such circumstances, the plaintiff has to show or produce evidence that he possessed with sufficient means to complete the sale.

As agreed, the appellant/plaintiff is required to pay the balance amount of Rs.8,76,250/- on or before 14.08.2006 upon measurement of the property.

Ex.A.2 - Legal Notice was issued by the appellant/plaintiff on 07.04.2007, that too with a mistake that the defendant paid Rs.1,00,000/- as advance.

The plaintiff has not stated anything about his readiness or willingness to perform their part of the contract subject to condition. After the suit notice, the suit was laid on 10.08.2009, at the verge of limitation period of three years. It has been repeatedly held by the Hon'ble Supreme Court in several judgments that the plaintiff in a suit for specific performance, should be always ready and willing to perform his part of the contract in terms of the contract. Section 16[c] of the Specific Relief Act bars the relief of specific performance of a contract in favour of a person who fails to aver and prove his/her readiness and willingness to perform his/her part of the contract.



S.A(MD)No.585 of 2019

It may not be necessary or essential to the plaintiff to actually tender money to the defendant or to deposit money in Court unless it is directed by the Court, to prove readiness and willingness, in view of the Explanation [i] to Clause [c] of Section 16 of the Specific Relief Act. Nevertheless, he must prove his readiness to perform his part of the contract [to pay the balance] by acceptable evidence. In the case of **Man Kaur Vs. Arthar Singh Sangha** reported in **2010 [6] CTC 652**, the Hon'ble Supreme Court has held as follows:-

“23.A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs.10 lakhs and earnest money of Rs.1 lakh was paid and the vendor wrongly refuses



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S.A(MD)No.585 of 2019

to execute the sale deed unless the purchaser is ready to pay Rs.15 lakhs. In such a case there is a clear breach by the defendant. But in that case, if the plaintiff did not have the balance Rs.9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by the defendant, as he was not “ready and willing” to perform his obligations.”

From the illustration given by the Hon’ble Supreme Court, it can be held that the proof of continuous readiness and willingness from the date of contract, and time of hearing is mandatory before a person seeks the relief of specific performance. **In Umabai and Anr. Vs. Nilkanth Dhondiba Chavan (Dead) by Lrs. & Anr.)** reported in **2005 [6] SCC 243**, the Hon’ble Supreme Court further held that there must be finding by the Court regarding the continuous readiness and willingness of the plaintiff to perform his part of the contract before granting specific performance.

16. It is settled law that for relief of specific performance, the plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the plaintiff to prove his readiness and willingness by adducing evidence.



S.A(MD)No.585 of 2019

WEB COPY

This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in the plaint about readiness and willingness, would not suffice. And also, from several judgments of the Hon'ble Supreme Court, this Court has no difficulty to hold that Section 16[c] of the Specific Relief Act is a personal bar and that the mandatory requirement of readiness and willingness cannot be dispensed with merely because the defendants have repudiated the contract or they were not in a position to perform their part of the contract. Section 51 of the Contract Act does not dispense with the proof of readiness of the plaintiff to perform his part of the contract. In the instance case, the appellant has not let in any evidence to show that he was ready with the money to complete the transaction within the time stipulated in the Agreement [Ex.A1]. The defendant has specifically pleaded that the plaintiff was not ready with the balance of sale consideration. The Hon'ble Supreme Court in Civil Appeal No.5822 of 2022 observed that the purchaser ought to have been vigilant in the case of specific performance to enforce his right and could not have been lackadaisical in his approach by relying on the case of **K.S.Vidyanadam Vs.Vairavan** reported in (1997) 3 SCC 1 [1] CTC 628 [SC], in the following terms.



WEB COPY



S.A(MD)No.585 of 2019

"(i) The Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore, time/period prescribed cannot be ignored.

(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time limits stipulated in the agreement. The courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchaser in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser."

17. In this case, the sale agreement is dated 15.05.2006 and three months time was fixed for completion of the contract. The plaintiff has not taken steps and issued written notice to the defendant to make measurements and demarcate the property as per Ex.A.1 - Sale Agreement. He simply issued Ex.A.2 - Notice only after 11 months and thereafter, after laps of one year, he has laid the suit seeking the relief of specific performance. Relying



S.A(MD)No.585 of 2019

on the above decision, the first Appellate Court has correctly appreciated the evidences and correctly held that the plaintiff has not proved his readiness and willingness. Even as per P.W.2's evidence, after expiry of three months time only that is on 20.08.2006, the plaintiff asked the defendant to complete the sale. The first Appellate Court correctly came to the conclusion that the plaintiff has not proved his willingness and readiness as contemplated in Section 16 (c) of the Specific Relief Act. Even in Ex.A.2 - Legal Notice, the appellant/plaintiff has not expressed his readiness. Having regard to the personal bar under Section 16 [c] of the Specific Relief Act and the facts and circumstances as discussed above, this Court has no hesitation to uphold the finding of the first Appellate Court that the appellant/plaintiff was not ready and willing to perform his part of the contract in terms of the suit agreement under Ex.A1. The citation relied on by the respondent/defendant reported in **(2019) 8 Supreme Court Cases 575** (supra) is squarely applicable to the facts and circumstances of the case and the citations relied on by the appellant/plaintiff are not applicable to the facts of the case.

18. From the above facts and circumstances conjoined with evidences oral and documentary adduced in this case, the first Appellate Court correctly



S.A(MD)No.585 of 2019

found that the plaintiff is not entitled to the relief of specific performance and also correctly directed the defendant to repay the advance of Rs.1,00,000/- with subsequent interest at 6% p.a. The said findings did not warrant interference from this Court by way of the Second Appeal. Hence, the questions of law framed in this Second Appeal are answered against the appellant/plaintiff. Thus, this Second Appeal fails.

19. In the result, this Second Appeal is dismissed. The judgment and decree, dated 05.08.2019 passed in A.S.No.17 of 2016 on the file of the Additional District and Sessions Court (Fast Track Court), Tenkasi, reversing the judgment and decree, dated 25.03.2015 passed in O.S.No.130 of 2010 on the file of the Principal Sub Court, Tenkasi is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.09.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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S.A(MD)No.585 of 2019

To

- 1.The Additional District and Sessions Court
(Fast Track Court), Tenkasi.
- 2.The Principal Sub Court,
Tenkasi.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.A(MD)No.585 of 2019

P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
S.A(MD)No.585 of 2019**

13.09.2024