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A.S.No.149 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 23.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.149 of 2024 &

CMP.No.5378 of 2024

T.J.Salman Sheriff

... Appellant

Versus

R.Mohana [Since deceased] by legal representatives

1. R.Sundar

2. R.Saravanan

3. R.Jothi

4. R.Shanthi

5. R.Hemamalini

... Respondents

PRAYER : Appeal Suit filed under section 96 of Code of Civil Procedure to set aside the decree and judgment passed in O.S.No.9254 of 2010 in C.S.No.512 of 2007 on the file of the XVIII Additional City Civil Court at Chennai.

For Appellant : Mr.N.A.Nissar Ahmed, Senior Counsel
for Mr.M.A.Abdul



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For respondents : MrT.Thiageswaran
for Waron and Sairams

JUDGMENT

Challenging the decree and judgment of the trial Court dismissing the suit filed for specific performance of the agreement dated 31.03.2006, the unsuccessful plaintiff has filed the present appeal. The trial Court while dismissing the suit for specific performance has granted the alternative relief of return of the advance amount of Rs.6,65,000/- along with interest at the rate of 9% per annum.

2. The parties are arrayed as per their own ranking before the trial Court.

3. Brief facts of the plaintiff's case is as follows :

The first defendant, the mother of the other defendants executed a sale agreement dated 31.03.2006 for sale of the suit property for a total sale consideration of Rs.13 lakhs. Later the said document was registered on



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12.04.2006. According to the plaintiff, in both occasions, a sum of Rs.6,65,000/- had been paid as an advance. It is agreed between the parties that the sale shall be completed within a period of 3 months. According to the plaintiffs, the defendants had requested the plaintiff to discharge a loan of Rs.3,25,000/- availed by them in Union Bank of India. Accordingly, the said amount had also been paid by the plaintiff. The plaintiff is always ready and willing to perform his part of the contract. However, the defendants have failed to perform their part of the contract. Hence, a legal notice had been issued on 02.01.2007. The defendants evaded service of notice. Therefore, the suit has been filed.

4. Denying the sale agreement, the defendant took a stand in the written statement that she was a house wife and her husband has availed a loan in Union Bank of India. Since her husband died, she was directed to pay a sum of Rs.3,25,000/- in order to discharge the loan. Hence, she had approached the plaintiff. At that time, she was made to execute a sale agreement as a collateral security. According, to her, the document is not intended for sale of the property and a sum of Rs.3,25,000/- alone has been paid to the bank. Further,

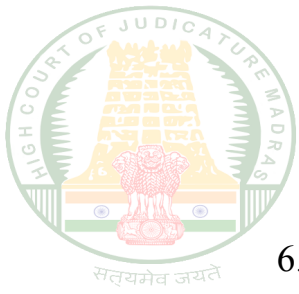


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as alleged by the plaintiff, a sum of Rs.3,40,000/- has never been paid to the defendant. Hence, disputed the very agreement itself. That apart, the readiness and willingness as pleaded in the plaint has also been denied in the entire written statement. When she approached the plaintiff for returning the amount of Rs.3,25,000/-, the plaintiff demanded exorbitant interest at the rate of 36% per annum. In fact, she had stated in the written statement that she is ready to return the sum of Rs.3,25,000/- with a reasonable interest. Hence, disputed the amount.

5. Based on the above pleadings, the following issues have been framed :

1. Whether the plaintiff is entitled specific performance of the suit property?
2. Whether the defendant has borrowed a sum of Rs.3,40,000/- loan from the plaintiff and she has not agreed to sell the property?
3. To what relief the plaintiff is entitled?



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6. On the side of the plaintiff, he examined himself as P.W.1 and Ex.A.1 to Ex.A.6 have been marked and during cross examination Ex.B.1 has been marked. On the side of the defendants, D.W.1 has been examined and during cross examination Ex.A.6 has been marked.

7. The trial Court considering entire evidence, both oral and documentary evidence, dismissed the suit for specific performance on the ground that readiness and willingness has not been established and the balance sale consideration has been deposited only on 04.08.2016, after 10 years of the suit and has granted alternative relief for return of the advance amount. Challenging the same, the present appeal has been filed.

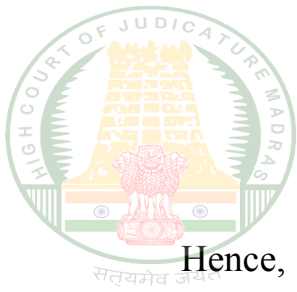
8. The learned counsel appearing for the appellants would contend that the trial Court has not properly appreciated the evidence and infact, the execution has been clearly established. It is his further contention that on the date of the agreement a sum of Rs.3,40,000/- has been paid and the agreement has also been registered on 12.04.2007. On that day a sum of Rs.3,25,000/- has been paid. The receipt of the sum of Rs.3,25,000/- has not been disputed.



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Infact, the above amount has been paid to the Union Bank of India to discharge the loan availed by the father of the defendants. These facts clearly indicate that the agreement came into existence only for the purpose of the sale of property. The plaintiff has paid a sum of Rs.6,65,000/- and this itself indicate that the plaintiff was always ready and willing to perform his part of the contract.

9. It is his further contention that though three months time is stipulated for completion of the contract, time was never essence of the contract. In fact the defendant, who agreed to vacate the tenants within three months, had not taken any steps in this regard. Therefore, it cannot be construed that the time is the essence of the contract as the tenants had not been vacated. Therefore, the plaintiff has issued a Ex.A.3 legal notice on 02.01.2007. It is his further contention that the suit was filed only in the year 2007 before this Court. Thereafter, the legal heirs have also filed various litigations, due to which the balance sale consideration has not been deposited. However, the balance sale consideration has been deposited only on 04.08.2016. At any event, deposit of remaining sale consideration is not sine qua non and the statute does not mandate deposit of the entire sale consideration at the time of filing of the suit.



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Hence, the trial Court erroneously considered entire evidence against the plaintiff and negated the relief of specific performance. Therefore, submitted that the plaintiff has exhibited readiness and willingness from the very inception of the contract and he is certainly entitled for the relief of specific performance.

In support of his contentions, he relied on the following judgments :

Silvey V. Arun Varghese reported in **2008 [11] SCC 45**

Selvaraj Vs. Pappathi reported in **2025 [2] CTC 79**

K.Jayakumar Vs. Robert and others in **S.A.No.1454 of 1989 of the Madras High Court.**

10. Whereas, the learned counsel appearing for the respondents vehemently contended that the plaintiff is not ready and willing to perform his part of the contract from the very inception. Though the respondents pleaded that the agreement is a result of a loan transaction, even assuming that such defence is not believable, the same will not absolve the plaintiff from proving readiness and willingness from the very inception. Three months time has been specifically agreed to complete the transaction. In fact, the parties have agreed for forfeiture of the amount and agreed to pay penalty. These clauses makes



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time as an essence of contract. It is their further contention that the legal notice has been issued for the first time on 31.01.2007, after 6 months period. The plaintiff had never elected to perform his part of the contract, despite the clause in the agreement. According to them, readiness and willingness has not been established. The trial Court has appreciated entire evidence and rightly negated the claim of specific performance. However, they had deposited a sum of Rs.17,44,525.51 including interest. Hence, opposed the appeal. In support of his contentions, he relied on the following judgments :

U.N.Krishnamurthy [Since deceased] Thr. Lrs. Vs. A.M.Krishnamurthy reported in [2023] 11 SCC 775

Kalawati [D] through LR's and Ors Vs. Rakesh Kumar and others reported in [2018] 3 SCC 658

Jayilani Vs. Padmavathy reported in 2023 MWN 772

11. In the light of the above submissions, now that points that arise for consideration are :



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1. Whether the agreement Ex.A.1 is not intended for sale
of the suit property?

2. If Ex.A.1 is a sale agreement, whether the appellant has
shown readiness and willingness from the very inception of the
contract?

3. To what other reliefs, parties are entitled to?

12. Point Nos.1 to 3 :

The suit has been laid on the basis of Ex.A.1 dated 31.03.2006. Originally Ex.A.1 was an unregistered agreement. The same clearly indicate that the parties have agreed to sell the property for a total sale consideration of Rs.13 lakhs. It is contended that a sum of Rs. 3,40,000/- has been paid as an advance. Though it is the contention of the defendants the said sum of Rs.3,40,000/- has not been received and only a sum of Rs.3,25,000/- alone has been paid towards the loan at later point of time, i.e., on 12.04.2006, having admitted execution of the agreement now a different stand cannot be taken by the respondents. When a person consciously signed a document, which was later registered, they cannot take a contrary stand than the terms agreed between



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the parties. Of course, the parties to the document can establish that the document executed by them was not executed for the purpose it was executed and it is for a different purpose. To establish the said stand there must be some evidence or probabilities brought on record. Therefore, mere pleadings of the parties taking a stand contrary to the terms of the contract, as a matter of right, cannot succeed in disputing the entire agreement. Though proviso to Section 92 of the Indian Evidence Act allows the parties to prove that the document was never intended for the purpose it was executed, in the absence of any evidence in this regard, the contention of the defendants that Ex.A.1 is not intended for sale cannot be countenanced.

13. A perusal of Ex.A.1 makes it clear that the parties have agreed to complete the sale within a period of three months. Further clauses in the agreement to impose penalty in the event of default on either side makes it clear that the parties had intended to make time as an essence of the contract. It is well settled that as far as immovable properties are concerned, though time is not an essence of the contract, when the parties stipulate time to complete the transaction or perform their obligations, time agreed between the parties cannot



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be ignored altogether to assess readiness and willingness on both sides. The very terms agreed between the parties makes it clear that clause 10 in the agreement, clearly stipulates that penalty is leviable on both sides in the event there is any default. The above clause makes it clear that the parties intended to make time as an essence of the contract.

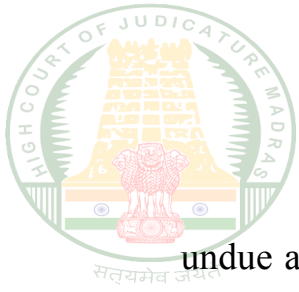
14. It is also to be noted that as the remaining sale consideration ought to have been paid within three months from the date of the agreement. Though it is stated by the plaintiff that three months time commence from 12.04.2006, when the document was registered, the fact remains that even after three months of the registration of the agreement, the remaining sale consideration has not been paid. Even the legal notice has not been issued within such period. Whereas, the legal notice has been issued only on 02.01.2007, which is marked as Ex.A.3. Ex.A.1 further makes it clear that infact, the defendant had agreed to vacate the tenants within three months. The relevant clause in the agreement makes it clear that in the event tenants have not been vacated, the vendor shall attorn the tenancy to the purchasers. Though such a clause available in the agreement, legal notice was issued on 02.01.2007, after the expiry of three



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months period of the agreement. The plaintiff has never disclosed or whispered his intent to purchase the property with the existing tenancy nor expressed his intention to get attorned the tenants in his favour. Even assuming that these factors are insignificant to assess the readiness and willingness, now it has to be seen whether the plaintiff has shown his readiness and willingness from the very inception of the contract.

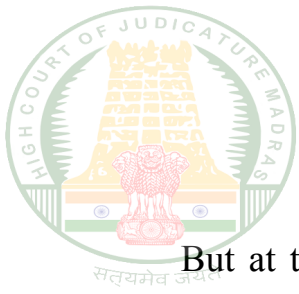
15. The very contract Ex.A.1 came into existence, particularly, when the plaintiff was a widow, was in financial crises, in other words she was in financial duress, she was facing action from the bank, since her husband had mortgaged the property at the relevant point of time. Therefore, when the defendant, being a widow, was in stringent financial crises, in other words, she was in adversity, facing action from the bank, she entered into a contract stipulating the time. Having paid paltry amount to the bank, the vendor cannot take advantage to delay the matter further. Therefore, having agreed to complete the sale within a period of three months, the vendor ought to have completed the sale within the stipulated time. Undue advantage cannot be taken by the vendor. It is well settled that the adversity of a person cannot be taken



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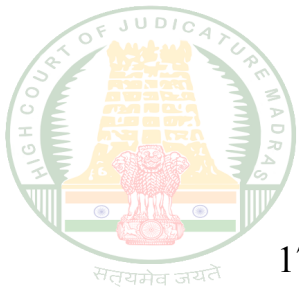
undue advantage merely because the contract is in their favour. The Court has to assess the time of the contract. Contract itself came into existence when the party is in adversity, in other words, in economic duress. Therefore, when a contract has been executed, he has to complete the contract and perform his part of the obligation within the time stipulated in the agreement between them. Though three months time has been fixed, remaining sale consideration has not been paid within three months. The legal notice has been issued only on 02.01.2007 after expiry of three months on 31.06.2006. Even if the limitation is reckoned from 12.04.2001, it expires on 12.07.2006, within such period no action whatsoever has been taken by the plaintiff to prove his readiness and willingness. Whereas, the legal notice has been issued on 12.01.2007 with a delay. Thereafter, the suit has been filed.

16. It is further to be noted that to show that the plaintiff was ready and willing to purchase the property through out and that he had remaining sale consideration in his hands, no document, whatsoever, has been filed in this regard. Of course, deposit of the remaining sale consideration in Court is not required, since it is not mandatory as per Section 16 of the Specific Relief Act.



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But at the same time, keeping silent without making any deposit or prove his capacity to pay the remaining sale consideration from the date of agreement till the date of filing the suit, which disentitle the plaintiff for the relief of specific performance. As the readiness and willingness has not been established as required under law, merely because the agreement has been denied and the defense has been taken as if it is a loan transaction, that will not absolve the plaintiff from proving the mandatory requirement of readiness and willingness to get the relief of specific performance. Even after Amendment by an Act 18 of 2019 under Section 16 of the Specific Relief Act, the proof of readiness and willingness has not been dispensed with. In fact, the plaintiff has to prove readiness and willingness, even after the amendment. What was dispensed is only the mandatory pleadings and not the proof of readiness and willingness. Further, no steps whatsoever has been taken by the plaintiff atleast to verify who are all the tenants and what is the nature of rents being paid, all these factors are relevant to assess readiness and willingness of the party who intend to purchase the property.

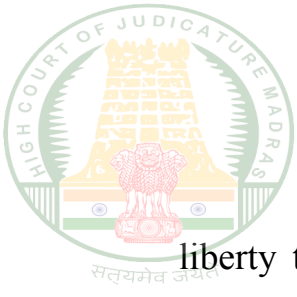


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17. In the judgments relied on the appellant in **Silvey V. Arun Varghese** reported in **2008 [11] SCC 45**, **Selvaraj Vs. Pappathi** reported in **2025 [2] CTC 79**, **K.Jayakumar Vs. Robert and others** in **S.A.No.1454 of 1989** of the **Madras High Court** relied on by the learned counsel appearing for the appellants, it has been categorically held the readiness and willingness has to be established from the very inception of the contract as mandated under law for getting equitable relief of specific performance. Whereas, in the present case, even the legal notice has been issued only on 12.01.2007, after expiry of three months time stipulated in the contract. Hence, in the absence of any proof of readiness and willingness on the part of the appellant, I do not find any merits in the appeal. The points are answered according.

18. In the result, this Appeal Suit is dismissed and the judgment and decree of the trial Court in O.S.No.9254 of 2010 dated 25.09.2024 is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

20. Admittedly as per the direction of this Court, a sum of Rs.17,44,526/- has already been deposited before the trial Court. Hence, the appellant is at



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liberty to file an appropriate application for withdrawing the amount and on such application being filed, the trial Court shall immediately release the amount to the appellant. The respondents are directed to pay an additional sum of Rs.2,55,474/- [Rupees two lakhs fifty five thousand four hundred and seventy four only], so that the entire amount payable will be Rs.20,00,000/- [Rupees twenty lakhs only]. The additional sum Ordered shall be paid by the respondents by way a Demand Draft directly to the appellant. On payment of the said amount, the appellant shall return the original documents to the respondents.

23.04.2025

Index : Yes / No
Internet: Yes
Speaking/non speaking order

vrc

To,

1. The XVIII Additional City Civil Court, Chennai.
2. V.R.Section, High Court, Madras.

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N. SATHISH KUMAR, J.

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