



A.S.No.461 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated : 02-06-2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No. 461 of 2007

1.G. Srinivasan
2.Andal

.. Appellants

Versus

M. Nirmala

.. Respondent

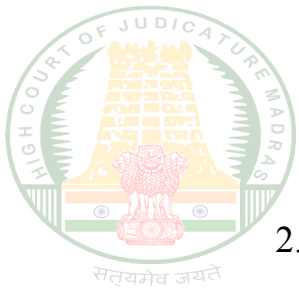
Appeal Suit is filed under Section 96 of CPC., against the judgment and decree dated 22.12.2006 made in O.S. No. 139 of 2001 on the file of the learned Additional District and Sessions Judge and Fast Track Court No.2, Coimbatore.

For Appellants : Mr. B. Nedunchezhiyan

For Respondent : Mr. P.R. Raman, Senior Advocate
for M/s. Raman and Associates

JUDGMENT

The Plaintiffs, who could not succeed in getting a decree in the suit filed by them in O.S. No. 139 of 2001 (O.S. No. 558 of 1996 on the file of Sub Court, Coimbatore), before the learned Additional District and Sessions Judge and Fast Track Court No.2, Coimbatore, have filed this appeal.



A.S.No.461 of 2007

2. The brief facts, which are necessary for the disposal of this

WEB COPY Appeal Suit, are as follows:-

2.1. The first Plaintiff is the husband of the second Plaintiff. The suit in O.S. No. 139 of 2001 (O.S. No. 558 of 1996 on the file of Sub Court, Coimbatore) was filed by the Plaintiffs by contending that the Defendant represented that she is the owner of the plaint schedule property having obtained it by way of a partition deed registered as Document No. 1245 of 1972 among their family members. It was also represented that the Plaintiffs are in possession of the plaint schedule property measuring a total extent of 2809 square feet or 6 cents and 193 square feet. The Defendant also expressed her intention to sell this property for a total sale consideration of Rs.8,20,000/- to the Plaintiffs. After discussion, an agreement of sale dated 14.11.1994 came to be executed between the Plaintiffs and Defendant. On the date of execution of the said agreement, the Plaintiffs paid Rs.1,50,000/- as advance and it was mutually agreed that upon payment of the balance sale consideration within six months, a sale deed can be executed in favour of the Plaintiffs. Subsequently, the Defendant sought for payment of Rs.55,000/- and it was also paid by the Plaintiffs on 25.12.1994. According to the Plaintiffs, they were always ready and willing to perform their part of the contract, but it was the Defendant who sought further time on 14.05.1995 to deliver



A.S.No.461 of 2007

WEB.COM

possession of the property and to register the sale deed. Accordingly, the period for performance of the contract was extended by one month till 14.06.1995. However, the Plaintiffs got the contract extended from 14.06.1995 to 14.08.1995, 14.08.1995 to 14.10.1995 and again from 14.10.1995 to 14.01.1996 to deliver actual physical possession of the property. Further, by citing the Pongal festival, the Defendant again got time for execution of the contract until 18.01.1996. Even though the Plaintiffs were ready and willing to get the sale deed executed, the Defendant has been evading and avoiding to execute it. When enquired, the Defendant has come up with a new story that there are tenants in the plaint schedule property and sought time to vacate and handover the vacant possession. As the intention of the Defendant appears to be to prolong the execution of the sale deed, the Plaintiffs sent a notice dated 09.01.1996 calling upon her to execute the sale deed. Immediately, on 10.01.1996, the Defendant sent a reply notice and on 19.01.1996, the Plaintiffs have sent a rejoinder to the Defendant. Thereafter, the instant suit was filed by the Plaintiffs for specific performance of the agreement dated 14.11.1994.

2.2. On notice, the Defendant had filed a written statement repudiating the plaint averments. It is the specific contention of the Defendant that she is



A.S.No.461 of 2007

WEB COPY

not the absolute owner of the plaint schedule property and that her brother Varadharaj is also having a share over it. It was further stated that there are two tenants in the plaint schedule property namely R.G. Rajan and Deivasigamani but they refused to budge and hence, she had filed RCOP No. 22 of 1997 and RCOP No. 225 of 1997 against them. It was also stated that the Plaintiffs cannot claim more than the right, title and interest the Defendant has in the suit property on the basis of agreement of sale. Further, it was stated that it was the Plaintiffs who failed to perform their part of the contract. The Plaintiffs having entered into an agreement with the Defendant agreed to negotiate with her brother Varadharaj and undertook to amicably resolve the dispute between her and her brother. However, the Plaintiffs have not taken any steps to meet her brother. Further, the plaint schedule property is worth more than Rs.30 lakhs and the Plaintiffs cannot expect this Defendant to part with the property for Rs.8,20,000/-. The Plaintiffs lost their right to seek for enforcement of their right based on the agreement dated 14.11.1994 by lapse of time. The agreement dated 14.11.1994 is unenforceable and invalid. In view of the non-compliance of the terms contained in the agreement dated 14.11.1994, the Plaintiffs have no right to seek for enforcement of the same. Even in the reply notice dated 10.01.1996, the Defendant has clearly stated that if the sale deed is not obtained on 12.01.1996 or 18.01.1996, the Plaintiffs



A.S.No.461 of 2007

will lose their right to seek for enforcement of the agreement dated 14.11.1994. In spite of the same, the Plaintiffs have filed the present suit for specific performance of the agreement and it is not maintainable. Accordingly, the Defendant prayed for dismissal of the suit filed by the Plaintiffs for specific performance of the agreement dated 14.11.1994.

2.3. The Defendant also filed an additional written statement stating that the endorsement for extension of period from 14.05.1995 to 14.06.1995 was made since the tenants did not deliver possession. The Plaintiffs also insisted that they are not ready to purchase the property unless the tenants are vacated therefrom. However, now the Plaintiffs insist for the tenants to handover the vacant possession knowing fully well that it is an impossible task to evict the tenants within a given time. By seeking to handover vacant possession of the property, the Plaintiffs have breached the terms and conditions of the agreement dated 14.11.1994. When the Rent Control Original Petition in RCOP No. 225 of 1997 was pending, the demand made by the Plaintiffs is not feasible of compliance. Such an impossible condition was imposed by the Plaintiffs only to gain time and to seek for extension of time. Further, after the agreement dated 14.11.1994 was executed, the Plaintiffs entered into an agreement on 22.01.1995 with one Chinnasamy, Son of

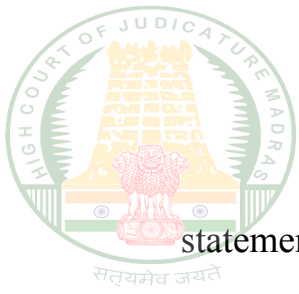


A.S.No.461 of 2007

WEB CONTENT

Kuttianna Gounder. In view of contractual dispute with the said Chinnasamy, the Plaintiffs have filed a suit in O.S. No. 944 of 1995 and it was dismissed. It is the habit of the Plaintiffs to enter into an agreement, create litigation and to gain unlawfully. The Plaintiffs were in finance business in the name and style of Sri Sapthagiri Finance and they have collected huge deposits from the public but unable to return the deposited amount. Several deposit holders have also filed complaints and Criminal cases in C.C. No. 864 of 2001 and it is pending on the file of learned Judicial Magistrate No.II, Coimbatore for dishonour of Cheque for Rs.6,61,640/-. Further, the Plaintiffs are unable to discharge their liability arising out of the debt incurred by them. While so, the allegation that the Plaintiffs are having the wherewithal and are resourceful enough to pay the balance sale consideration will not arise. The Plaintiffs have no means to purchase the property within the original period allowed under the agreement dated 14.11.1994 or the extended period upto 14.01.1996. The Plaintiffs are residing in the opposite portion of the suit properties and they are aware of the fact that tenants are in occupation of the property. The suit filed for specific performance is devoid of any merits and it is liable to be dismissed.

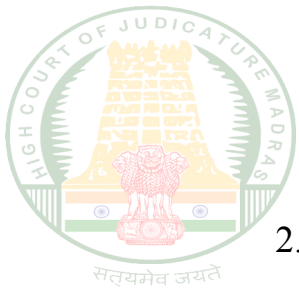
2.4. The Plaintiffs have filed a rejoinder to the additional written



A.S.No.461 of 2007

WEB COPY

statement by contending that the time for enforcement of the agreement was granted only because the Defendant was unable to evict her tenants and to give actual possession of the property. There is a clear recital in the agreement of sale that the Defendant has to execute the sale deed and to put the Plaintiffs in possession. The Plaintiffs were ready and willing to perform their part of the agreement and they are in possession of requisite funds. The suit in O.S. No. 944 of 1995 was filed by the second Plaintiff and her mother Janaki and the said suit has got nothing to do with the present claim for specific performance. As against the dismissal of the suit in O.S. No. 944 of 1995, A.S. No. 56 of 2002 was filed before this Court. As far as Criminal Case No. 864 of 2001 is concerned, the first Plaintiff is contesting the same legally. The various documents filed along with the plaint will amply prove the financial capacity of the Plaintiffs. The Defendant is unnecessarily referring to the claim of her brother Varadharaj with a view to deny the Plaintiffs their right to get the sale deed executed. The RCOP Nos. 22 and 225 of 1997 filed against the Tenants have been disposed of long ago and those tenants are no longer in occupation of the property in question. The Plaintiffs are having the required funds to honour their commitment and therefore, the Plaintiffs prayed for decreeing the suit as prayed for.

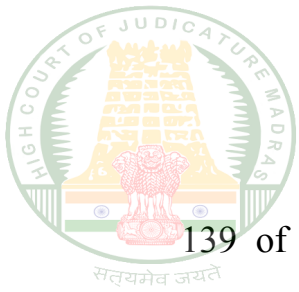


A.S.No.461 of 2007

2.5. During trial in the suit, the first Plaintiff examined himself as P.W-1 and Ex. A-1 to Ex.A-145 were marked. On the other hand, the Defendant examined herself as D.W-1 and marked Ex.B-1 to Ex.B-23. The trial Court, on considering the notices exchanged among the Plaintiffs and Defendant, particularly Ex.A-10, rejoinder dated 19.01.1996, concluded that though the Defendant was ready to execute the sale deed, the Plaintiffs, thereafter, did not take any steps to perform their part of the contract. The Trial Court also pointed out that without even depositing the balance sale consideration, the Plaintiffs merely aver that they were ready to get the sale deed executed even on 19.01.1996. Under those circumstances, the Trial Court while dismissing the suit on 22.12.2006, directed the Defendant to pay the sum of Rs.1,50,000/- to the Plaintiffs with interest at the rate of 12% and for the sum of Rs.55,000/- interest shall be paid from the date of receipt of the amount.

2.6. Aggrieved by the Judgment and Decree dated 22.12.2006 made in O.S. No. 139 of 2001, the Plaintiffs are before this Court with this appeal.

2.7. This Court, by Judgment dated 22.06.2022 allowed the Appeal Suit and set aside the Judgment and Decree dated 22.12.2006 made in O.S. No.



A.S.No.461 of 2007

139 of 2001 with a direction to the Plaintiffs to deposit the balance sale consideration before the trial Court and on such deposit, the Defendant shall execute the sale deed within 30 days from the date of receipt of a copy of the order.

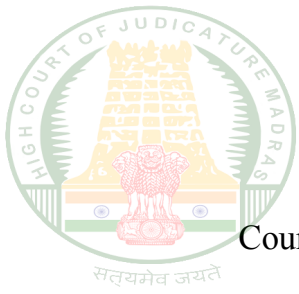
2.8. Aggrieved by the Judgment and Decree dated 22.06.2022, the Defendant has filed Civil Appeal No. 6790 of 2022 (arising out of SLP (C) No. 14961 of 2022) before the Honourable Supreme court. The Honourable Supreme Court, by the Order dated 19.09.2022 set aside the Judgment dated 22.06.2022 passed in this appeal with the following directions:-

“7. The High Court has not framed points for determination. Order 41 Rule 31 requires the High Court to furnish reasons for the decision. Though the High Court has purported to furnish reasons, those reasons are laconic and do not reflect a full consideration of the rival cases or the evidence which was adduced before it. After advertent to the depositions of PW1 in paragraph 13 and of DW1 in paragraph 14, the High Court has made a reference to an extension which was granted for the execution of the sale deed in paragraphs 15 to 18. In paragraph 20 there is a brief discussion on readiness and willingness to perform the agreement.

8. The view of this Court on the subject has been crystallized in several decisions which have been adverted to in a two-Judge bench decision in *Malluru Mallappa (dead) through legal representatives s Kuruvathappa and others* (2020) 4 SCC 313.

9. Apart from the fact that no points for determination were framed, including on the issue of readiness and willingness, it is ex-facie apparent that the High Court has failed to consider the matter in its full perspective as it should have while dealing with the first appeal under Section 96 of the Code of Civil Procedure.

10. For the above reasons and without this Court expressing any view on the merits of the rival cases, we allow the appeal and set aside the impugned judgment and order of the High Court dated 22 June 2022 in AS No. 461 of 2007. A.S. No. 461 of 2007 is restored to the file of the High



A.S.No.461 of 2007

Court for being considered afresh.

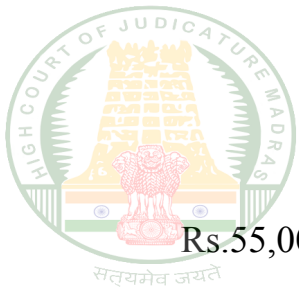
11. Pending applications, if any, stand disposed of.”

WEB COPY

2.9. Pursuant to the order dated 19.09.2022 passed by the Honourable Supreme Court, this Appeal is posted for hearing before this Court.

3. The learned Counsel for the Plaintiffs/Appellants, Mr.B.Nedunchezhiyan, submitted that the Plaintiffs entered into an agreement of sale with the Defendant on 14.11.1994 for purchase of the property situated in Town S.No.9/26, Cross-cut Road Coimbatore Town and District. The total sale consideration was fixed at Rs.8,20,000/-. On the date of the sale agreement on 14.11.1994, Rs.1,50,000/- was paid as advance. The time fixed for execution of the sale deed was six months from the date of the sale agreement by which time the Defendant shall vacate the tenants from the property and also to seek permission from the other owners or sharers if any, for sale of the property. Further, the Defendant also should furnish original title deeds to the Counsel for the Plaintiffs for verification of the title.

4. The learned Counsel for the Plaintiffs further submitted that the Defendant requested for extension of time and made endorsements in the sale agreement on 25.12.1994, on which date, the Plaintiffs paid further sum of



A.S.No.461 of 2007

Rs.55,000/- which was also acknowledged by the Defendant. Thus, totally the

WEB C

Defendant received Rs.2,05,000/- as advance and the balance sale consideration payable was Rs.6,15,000/-. Subsequently, another extension was sought by the Defendant till 14.08.1995. Similarly, further extension was sought on various dates until 14.01.1996. On 09.01.1996, the Plaintiffs issued legal notice setting out the details of the extension of time requested by the Defendant and inspite of the same, the Defendant failed to execute the sale deed in favour of the Plaintiffs. On the other hand, the Defendant sent reply notice on 10.01.1996 containing false and untenable averments. Therefore, on 13.01.1996 the Plaintiffs sent another notice stating that original title deeds, income tax certificate and income tax clearance certificate, have not been handed over to the Plaintiffs by the Defendant and called upon the Defendant to be present before the Sub-Registrar Office with all those documents on 18.01.1996. However, on 19.01.1996 the Defendant sent a reply notice agreeing to execute the sale deed if the Plaintiffs are ready with the balance of sale consideration. However, the Defendant did not come forward to execute the sale deed. Therefore, the Plaintiffs had approached the Court by filing the suit for specific performance of contract.

5. The learned Counsel for the Plaintiffs invited the attention of this



Court to the paragraph Nos.VII, VIII, XV, XVI and XVII of the plaint:-

WEB COPY

VII. The Plaintiffs further submit that it was mutually agreed upon by and between them and the Defendant that the Plaintiffs should pay the balance sale consideration at the time of completion of sale and the registration of deed of conveyance and also possession of the properties. The time agreed for completion and registration of sale deed was six months from the date of agreement of sale.

VIII. The Plaintiffs further submit that as per the terms and conditions of sale agreement dated 14.11.1994 the Defendant must entrust the original title deeds, the above mentioned partition deed, property tax payment receipts, Urban Land Tax receipts income tax clearance certificate, encumbrance certificate along with legal opinion and other documents within one month to the Plaintiff. The Defendant also must deliver actual physical possession of properties on the date of registration of sale deed. A copy of the sale agreement was also handed over to Defendant on the date of agreement of sale.

XV. The Plaintiffs humbly submit that the Defendant through her Counsel sent a reply notice dated 10.01.1996 in and by which she admitted the execution of agreement of sale and receipt of Rs.2,05,000/- from the Plaintiff. She also admitted that the original title deeds, income tax clearance certificate, encumbrance certificate within one month from the date of agreement. But the Defendant took up a new plea that at the time of entering into the agreement there were tenants in the property and the Plaintiffs agreed to take possession of properties from the said tenant after taking the sale deed in their names. The Plaintiffs specifically and emphatically deny all these allegations made in the reply notice by the Defendant which is only an after thought.

XVI. The Plaintiffs submit that at the time of sale agreement the Defendant does not whisper anything about the tenants to the Plaintiffs and the Defendant has not mentioned anything in the sale agreement. The Defendant undertakes to remove a cement sheet which was put up by her neighbour landowner, at her own cost. This has been specifically mentioned in the sale agreement. Hence the allegations in the reply notice that the Plaintiffs agreed to take possession of the properties after taking the sale deed is nothing but myth and false allegations so as to wriggle out of her contractual obligation by the Defendant.

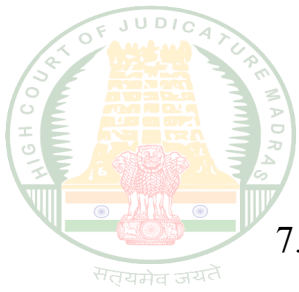
XVII. The Plaintiffs further submit that the Defendant has also made further allegations that the period was extended periodically at the request of the Plaintiffs. These allegations also specifically and emphatically denied by the Plaintiffs. All the endorsements have been as requested by the Defendant which was also attested by her husband and the Defendant is estopped from denying the same. A birds view of the agreement of sale will



A.S.No.461 of 2007

clearly reveal that the allegations made in the reply notice are untrue and do not deserve any legal scrutiny. The Defendant in order to escape from the contractual obligations has made these allegations for obvious reasons with ulterior motives.”

6. By placing reliance on the averments in the plaint, the learned Senior Counsel submitted that the Plaintiffs undertook to deposit the balance amount into Court and expressed their readiness and willingness. The fact remains that the Plaintiffs did not deposit the amount as the Trial Court did not pass any order directing them to deposit the amount into Court. The learned Counsel for the Plaintiffs further contended that the Defendant had stated that the property originally belonged to her mother and in the partition took place in the family, her mother was allotted the property. It was further represented that her mother settled the property in favour of the Defendant and her brother. Therefore, the Defendant undertook to execute the sale deed after getting permission from her brother to sell the property. It is in this context, repeatedly, time was extended for which the Defendant has made endorsements in the sale agreement deed. While so, it cannot be said that the Plaintiffs have delayed the execution of the sale deed in any manner. In spite of repeated extension of time, the Defendant failed to abide the conditions set out in the sale agreement deed which forced the Plaintiffs to approach the Court by filing the suit for specific performance of contract for sale of the property.



7. The learned Counsel for the Plaintiffs invited the attention of this

WEB COURT to para 3 to 7 of the written statement which reads as follows:-

“3. There is no valid family arrangement as alleged in para 3 of the plaint. The properties are in possession and enjoyment of the two tenants and they are R.G.Rajan and Deivasigamani. This Defendant also in possession of portion of the suit property. In view of a portion of the property is in occupation of the tenants this Defendant had already taken steps under Rent Control Act for eviction and the same is pending before the Rent Controller, Coimbatore in RCOP 22/97 and RCOP 225/97. The Plaintiffs are aware that there is no valid document conferring absolute title in favour of this Defendant and she is one of the legal heir of deceased mother and her brother Varadharaj is having another half share over it. It is the absolute property of the Defendant's mother and the Plaintiffs cannot claim more right than what she possessed in the suit property on the basis of agreement of sale.

4. The Defendant respectfully submit that it is the Plaintiffs who are not ready and willing to purchase the suit properties on the basis of the alleged agreement of sale. The Plaintiffs having entered into an agreement with this Defendant agreed to negotiate with her brother Varadharaj and undertook to amicably resolve the disputes between her and brother. But contrary to the understanding on which the alleged agreement of sale was concluded the Plaintiffs are trying to enrich unlawfully to their advantage. Even as on the date of agreement the suit properties are worth for more than Rs.20 lakhs and the Plaintiffs cannot expect that this Defendant will part with the property for a paltry sum of Rs.8,20,000/-. It is the Plaintiffs who obtained the sale agreement as if she is absolute owner to coerce her brother. Neither the Plaintiffs as agreed had resolved the disputes of the Defendant with her brother nor willing to pay the real value of the suit properties. As on this date the suit properties are worth for more than Rs.30 lakhs and the Plaintiffs in collusion with her brother Varadharaj who is enimically disposed off with this Defendant trying to enrich unlawfully by making use of the unenforceable agreement.

5. The Plaintiffs had lost their right to enforce the alleged agreement dated 14.11.94. The said agreement is unenforceable and invalid. This Defendant had sent a notice dated 04.06.96 and an earlier letter dated 19.01.06 may be read as part and parcel of this statement. In view of the non-compliance of the terms and conditions of the agreement dated 14.11.94 the Plaintiffs had lost their right under the agreement. This Defendant definitely made it known in a written communication that the enforceable right will be lost to Plaintiffs in case of default of obtaining the sale deed. Under the correspondence and notice the Plaintiffs were made it definitely known that



WEB COPY

the agreement will be cancelled in case of nonperformance on a specified date. The Plaintiffs insisted the Defendant to perform several of the obligations which are impossible to be performed by any one. It is the Plaintiffs who have agreed to settle all disputes with the Defendant's brother chosen to insist this Defendant to obtain signature of her brother which is an impossible one. It is equally impossible to deliver actual possession of the suit properties since there are two tenants who refused to vacate the premises to the knowledge of Plaintiffs. The Defendant's brother was claiming equal share in the suit properties and the Plaintiffs are aware of the disputes. There is no encroachment in the suit properties and in any event the Plaintiffs cannot expect this Defendant to obtain the signature of the abetting owner to convey Plaintiffs title. The Plaintiffs are unable to arrange funds and chosen to lay several terms and conditions to register the sale with a view to pretend that they are ready for obtaining the sale deed. The Plaintiffs are not ready and willing to obtain the sale deed. It is further submitted that there is impossibility of performance by the Defendant. The Plaintiffs had lost their right in view of laying conditions to register the sale deed which are knowingly impossible to complied.

6.The Defendant had made it clear time is essence of the agreement by a specific communication and the Plaintiffs are not willing to obtain the sale deed. The Defendant was through out willing to perform her part of the obligations and she was always willing to execute the sale deed. The correspondence and exchange of notices would show that the Plaintiffs are not willing to obtain the sale deed in case of not delivering possession of the property. In the notice dated 10.01.96 this Defendant had stipulated that in case of not obtaining sale deed on 12.01.96 or 18.01.96 they will loose the right to enforce the agreement. Having made it clear to the Defendant that unless the conditions laid down by them are complied and possession is delivered they are not willing to obtain the sale deed. Even now it is impossible for this Defendant to deliver possession of the suit properties. The notices issued by this Defendant and suitably replied and a separate notice was issued on 04.06.96 informing the revocation of the agreement due to non performance. The Plaintiffs are not entitled to enforce the agreement.

7.The various allegations in paras 4 to 7 of the plaint are false and incorrect. This Defendant had not offered the property for sale as claimed and the Plaintiffs are aware that she is not absolute owner and there is no exclusive title deed in her name. The Plaintiffs are unable to arrange funds and they are not ready and willing to purchase the suit properties. The Plaintiffs cannot plead that time is not essence of the agreement. The Plaintiffs are aware and made it known definitely that time is essence of the agreement. There is no original title deed to the property and the document is only in the name of Defendant's mother. As stated in para 8 of the plaint the actual possession cannot be delivered. It is false to state that the



Plaintiffs are ready to execute the sale deed. It is for the Plaintiffs to prove that the endorsement dated 25.12.94 is valid and in any event which will not confer any right to the Plaintiffs”.

8. It is on the basis of the averments in the plaint and written statement filed by the Defendant, issues were framed as follows:-

- i. Whether the Plaintiff is entitled to enforce the contract of agreement for sale dated 14.11.1994?*
- ii. Whether the suit property was not exclusive property of the Defendant?*
- iii. Whether the agreement of sale dated 14.11.1994 is an unenforceable contract?*
- iv. Whether the Plaintiff had not performed their part of the contract as per the sale agreement?*
- v. Whether the Plaintiff was not ready and willing to perform their part of the contract?*
- vi. To what relief the parties to the suit are entitled?*

9. During the pendency of the suit, additional issues were framed, which are as follows:

- i. Whether the Defendant had made fraudulent alterations in the sale agreement deed dated 14.11.1994?*
- ii. Whether the Defendant had fraudulently altered the sketch annexed to the sale agreement deed?*
- iii. Whether the Plaintiff does not have resources to execute the sale deed; whether the Plaintiff is indigent?*
- iv. To what relief the Plaintiffs are entitled?*

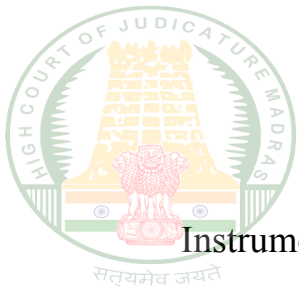
10. The learned Counsel for the Plaintiffs/Appellants submitted that the Trial Judge had taken up Issue No.2 for discussion and decided it in favour of the Plaintiffs stating that the suit property exclusively belongs to the Defendant. The learned Counsel for the Plaintiffs invited the attention of this Court to the discussion in Issue No.2 wherein it was recorded that the Defendant in her evidence had stated that the property was allotted to the



A.S.No.461 of 2007

mother of the Defendant Srikantham and subsequently, mother of the Defendant had executed a Will in her favour. Even though, the Will was executed in favour of the Defendant, the Will was not proved in the evidence. In the exchange of notices between the Plaintiffs and Defendant, the Defendant had stated that it belonged to her only but she had not stated anything about the right in favour of the brother. In the light of the evidence produced before the Court, the learned Trial Judge had answered the Issue No.2 in favour of the Plaintiffs stating that the suit property was the exclusive property of the Defendant.

11. The learned Counsel for the Plaintiffs invited the attention of this Court to paragraph 10 of the judgment, wherein the learned Trial Judge had discussed Issues 3 to 5. The learned Trial Judge discussed about Ex.A-1 to Ex.A-145, wherein the Bank deposits in the name of Plaintiffs in various Banks and passbooks furnished by them had been discussed. Ex.A-1 to Ex.A-145 shows that the Plaintiffs had enough resources to pay the balance of sale consideration in one installment. Therefore, the Plaintiffs were able to prove that they had enough resources to pay the balance of sale consideration of Rs.6,15,000/-. In the course of the discussion, the learned Senior Counsel had also referred to the criminal cases pending under 138 of the Negotiable



A.S.No.461 of 2007

WEB COPY

Instruments Act, against the Plaintiffs for dishonour of the cheque and the fact that the Plaintiffs have been carrying on a Chit Company. A criminal complaint was lodged by one of the depositors and the Plaintiffs were lodged in prison. He also referred to C.C. No.864 of 2001 filed under Section 138 of the Negotiable Instruments Act, 1881 wherein he was awarded one year imprisonment. Further, a suit in O.S. No. 944 of 1995 was also filed. Also, on the basis of evidence, the learned Senior Counsel referred to attachment order passed in the execution proceedings against the Plaintiffs and documents under Ex.B-4, Ex.B-8, Ex.B-9, Ex.B-12 and Ex.B-13. According to the learned Senior Counsel, the Plaintiffs were running a finance Company by name Sapthagiri Finance but due to unforeseen circumstances, the Plaintiffs were unable to pay back the depositors. Therefore, on the basis of the complaint of the depositors, he faced conviction under Section 138 of the Negotiable Instruments Act, 1881 and was awarded imprisonment for one year. However, it was contended that the criminal proceeding has no bearing for getting a decree for specific performance in this suit.

12. The contention of the Defendant is that the Plaintiffs wantonly insisted conditions in the sale agreement deed to be fulfilled, which are unenforceable and therefore, they have been blaming the Defendant for failure

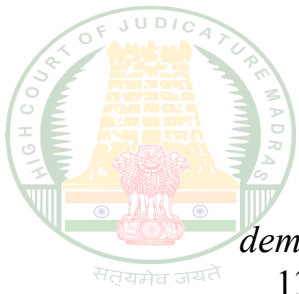


to execute the sale deed. However, the fact remains that it was the Plaintiffs have resources to get the sale deed executed by paying the entire balance sale consideration. However, the learned Trial Judge arrived at the conclusion under Issues Nos. 3 to 5 that the Plaintiffs does not have enough resources to pay the balance of entire sale consideration in one installment. If he had such resources, he should have voluntarily deposited the amount into Court. Before the trial, he had not done so. Therefore, he is not entitled to enforce the sale agreement deed dated 14.11.1994 and the learned Judge dismissed the suit and had granted the alternate relief of refund of the sale advance amount with an interest of 12% by the Defendant.

13. In support of his contention, the learned Counsel for the Plaintiffs invited the attention of this Court to the rulings that he had placed before the learned Trial Judge:

13.1. In the case of ***Sh.Rajkumar Sharma Vs. Smt.Pushpa Jaggi & Ors.*** reported in ***A.I.R. 2006 DELHI 156 the Delhi High Court*** has held as follows:

“Plaintiff claiming the relief of specific performance is not required to exhibit the currency notes to show his ready and willingness. He should be capable and should have the capacity to pay on demand the sale consideration whether from his account or after arranging the same from reliable, sources. The law does not impose on obligation on a party requiring it to exhibit its mean by physical



A.S.No.461 of 2007

demonstration.”

WEB COPY

13.2. In the case of ***M/s.Hindustan Construction Co., Ltd., & Anr. Vs. Ms. Satluj Jal Vidyut Nigam Ltd.***, reported in ***A.I.R. 2006 DELHI 169 (O.M.P.No.213 of 2005 and I.A.No.5872 of 2005 dated 24.11.2005)*** it has been held as follows:-

“.. be able to show before the Court that he either possesses or can arrange the requisite funds for payment of the balance sale consideration within the stipulated period. Obviously the fruits of this act fall in favour of the party only on completion of the act in accordance with the directions of the Court founded on the agreement between the parties.”

13.3. In the case of ***N. Saraswathi Ammal – Vs- Jayraman Rao and others*** reported in ***1999– 1 – L W 683 (dated 25th August 1998 in Second Appeal No.1758 of 1985)*** this Court had held as follows:

“Specific Performance Limitation Act - Time for performance held was not the essence of the agreement on the criteria set out for interpreting the agreement in question – Decree for specific performance granted.”

13.4. The reported decision in ***2006 CLT 80 (SC)*** the Hon'ble Supreme Court had held as follows:-

“Specific Performance of Contract – Delay and Latches – Preliminary issues – Question of limitation to be decided only on basis of Art. 54 of Limitation could be dealt with only after evidence is taken and not as preliminary issue unless it is admitted in plaint that Plaintiffs had notice that performance was refused by Defendants and Plaintiffs approached Court beyond three years of date of notice – Suit filed three years after agreement for sale or date for performance fixed in agreement for sale, not barred by limitation – It is not suit for possession as such – Applicability of Section 27, Limitation Act may not arise – Question to be decided on pleadings and evidence to be adduced by parties on aspect of second limb of Article 54 of Limitation Act – Limitation Act 1963 – Sections 3, 27, Art- 54 Specific



Relief Act 1963 – Section 20.”

WEB COPY

13.5. The decision of Division Bench of this Court in the case of

V.Ramanujam and Jagadeesan vs. Rajamani and others reported in **2004 (2)**

M.L.J. 399 wherein it has been held as follows:-

“The Principle that the equitable relief of specific performance cannot be granted to a person who has put forward a false case is based on the doctrine that one who seeks equity must do equity”

13.6. In the decision of this Court reported in ***M.L.J. 1997 (iii) Page 576*** it has been held as under:-

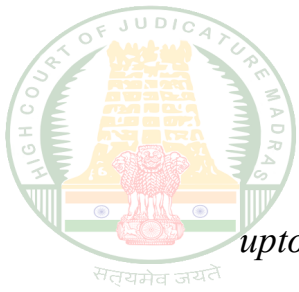
“Readiness and willingness must be there continuously from the date of agreement upto the date of hearing it is also held that. Even if for a single day, Plaintiff – agreement holder is not ready to take the sale deed, equitable remedy should not be granted.”

13.7. In the case of ***Ranganatha Gounder v. Sahadeva Gounder and others*** reported in **2004 (4) M.L.J. 112** it has been held as under:

“Readiness and willingness to perform includes ability to perform, it is incumbent upon the buyer to satisfy the Court that he was ready and willing the money or had the capacity to pay for the property and that he had at all events made proper and reasonable preparations and arrangements for securing the purchase money.”

13.8. In the case of ***S. Maruthai And Another vs Gokuldoss Dharam Doss And Four Others*** reported in **1999 (3) CTC 724** this Court had held as follows:-

“Buyer has to prove readiness and willingness to perform his obligation under contract continuously from the date of agreement



A.S.No.461 of 2007

upto date hearing.

“Buyer is not entitled to equitable remedy even if he is not ready to take sale deed for single day”.

WEB COPY

13.9. In the case of **Mani vs Batcha Sahib And 2 Others** reported in **2000 (4) CTC 329** this Court had observed as under:

“There is no material to prove that the Plaintiff was since perform his part of the contract. As mentioned above he admitted that he had no sufficient funds to get the stamps for registration. In such a situation, it cannot be said that he has established the aspect of continuous readiness and willingness from the date of the agreement to the date of the hearing to perform his part of the contract.”

14. According to the learned Counsel for the Appellants, in the course of the discussion to Issues 3 to 5, the learned Trial Judge misdirected himself and discussed those facts, which are not directly relevant to the dispute. The learned Judge discussed about the proceedings under Section 138 of the Negotiable Instruments Act, 1881, as though he is dealing with the appeal under Section 138 of the Negotiable Instruments Act, 1881. After such discussion, the learned Trial Judge jumped to the conclusion that the 1st Plaintiff does not have resources to pay the entire sale consideration within the time stipulated by the Plaintiffs but failed to discuss the other issues and additional issues framed which are relevant for consideration of the case. Therefore, the judgment of the learned Additional District Judge, Fast Track Court-II, Coimbatore, is perverse and is to be set aside.



A.S.No.461 of 2007

WEB COPY15. The learned Counsel for the Plaintiffs/Appellants further contended that only if the Court insist the Plaintiffs to deposit the balance sale consideration into Court, the Plaintiffs can make such deposit. The learned Counsel for the Plaintiffs invited the attention of this Court to the contents of sale agreement deed, Ex.A-1 and extension sought by the Defendant repeatedly under Ex.A-2 to Ex.A-6 and Ex.A-7 to Ex.A-10, the exchange of notices between the Plaintiffs and Defendant. Ex.A-11 is the partition deed registered as Doc No.1245 of 1972 in which it is shown that the property was allotted to the mother of the Defendant. Ex.A-12 is the Will executed by the mother of the Defendant in her favour. Ex.A-13 is the registered sale deed bearing Document No.2075 of 1974 in favour of the Plaintiffs executed by one Rangasamy Naidu, S/o.Gundupilla Boni Naiyudu. By pointing out these documentary evidence, it was submitted that the Plaintiffs had blown hot and cold. On the one hand, she contends that she is the exclusive owner of the property on the basis of the Will under Ex.A-12 but on the other hand, she complains that the Plaintiffs assured to meet her brother to sort out the dispute between the Defendant and her brother amicably. Thus, the inconsistent plea of the Defendant requires to be taken note of by this Court to hold that the Defendant has not come forward with clean hands and her intention is to



evade execution of the sale deed in favour of the Plaintiffs.

WEB COPY

16. The learned Counsel for the Plaintiffs also invited the attention of this Court to Section 16 (c) of the Specific Relief Act.

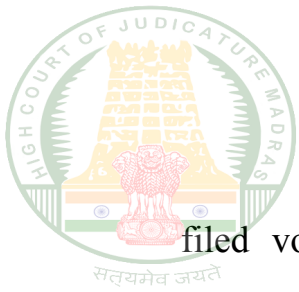
“Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—

(c)³[who fails to 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 terms of the performance of which has been prevented or waived by the Defendant.

Explanation.—For the purposes of clause (c),—

- i. where a contract involves the payment of money, it is not essential for the Plaintiff to actually tender to the Defendant or to deposit in court any money except when so directed by the court;*
- ii. the Plaintiff 4 [must prove] performance of, or readiness and willingness to perform, the contract according to its true construction”.*

17. That apart, the learned Counsel for the Plaintiffs invited the attention of this Court to the judgment of this Court delivered in ***A.S. No. 863 of 2009*** in the case ***M. Kaja Nijamuddin Vs. A.Rajamani*** and ***A.S.No.228 of 2011*** in ***Mohanasundaram Vs. Kishanlal*** which are suits for specific performance in which the appeal has been disposed by holding that the Plaintiff need not deposit the balance of sale consideration into Court. It is enough if the Plaintiff furnish evidence that he had resource to pay the balance sale amount. In this case, the Plaintiff's daughter was employed in U.S.A where her actual income was 75,000 US dollars. That apart, the Plaintiffs have



A.S.No.461 of 2007

filed voluminous documents to prove their wherewithal. Therefore, the Plaintiffs may not have any difficulty in depositing or paying the balance sale consideration. In such view of the matter, the findings of the learned Trial Judge that the Plaintiffs does not have enough resources to execute the sale deed is perverse. Therefore, this Appeal is to be allowed and the suit has to be decreed as prayed for.

18. The learned Counsel for the Plaintiffs also submitted that at the time when the appeal was admitted, C.M.P was filed seeking stay in which the Defendant appeared through her Counsel. The learned Senior Counsel for the Defendant undertook in the Miscellaneous Petition that the Defendant will not alienate the property till the appeal is disposed of. However, in violation of such undertaking, the Defendant executed a sale deed in favour of a third party purchaser. The third party purchaser is now proceeding with construction in the said property. Therefore, the Plaintiffs reserves their right to initiate contempt against the Defendant.

19. Per contra, Mr. Raman, learned Senior Counsel appearing for the Defendant/Respondent submitted that it is the case where the Plaintiffs were not at all willing to perform their part of the contract. They did not have



A.S.No.461 of 2007

WEB COPY

resources to pay the balance of sale consideration. The learned Senior Counsel for the Defendant/Respondent invited the attention of this Court to the exchange of notices between the Plaintiffs and the Defendant prior to institution of the suit. The Plaintiff had issued notice dated 09.01.1996, under Ex.A-7 as though Defendant failed to execute her part of the contract. On receipt of the notice dated 09.01.1996, under Ex.A-7, immediately on the next day the Defendant issued a reply notice dated 10.01.1996 under Ex.A-8, stating that the Defendant is ready to perform her part of the contract, provided the Plaintiffs are ready to pay the entire balance of sale consideration before the Sub Registrar Office on the day mentioned in their notice viz., on 12.01.1996 and 18.01.1996. In spite of such reply notice, the Plaintiffs did not come to the Sub-Registrar Office on 12.01.1996. Again the Plaintiffs issued notice on 13.01.1996 in which it was complained that the Defendant failed to hand over original title deeds to enable their Counsel to verify the title and only after obtaining legal opinion about the property, they will be in a position to pay the balance sale consideration. Thus, on the one hand, the Plaintiffs say that they are ready and willing to pay the balance sale consideration and asked the Defendant to appear before the office of the Sub-Registrar, but on the other hand, they want legal opinion to be obtained from their Counsel with respect to the title of the property. This would only show that the Plaintiffs



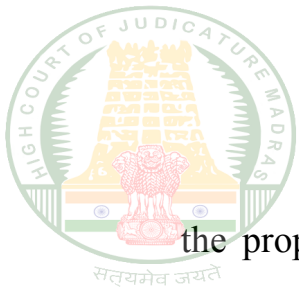
A.S.No.461 of 2007

WEB COPY

have blown hot and cold and they are not ready to pay the balance of sale consideration. For the notice dated 13.01.1996 also, the Defendant issued a reply notice on 19.01.1996 under Ex.A-10.

20. The learned Senior Counsel for the Defendant/Respondent contended that when the Defendant repeatedly insisted the Plaintiffs to come to the Sub Registrar Office on 18.01.1996, it is not known as to why they did not turn up. However, immediately, the Plaintiffs have rushed to this Court with the present suit for specific performance of contract. The sale agreement was dated 14.11.1994 in which the Plaintiffs insisted the tenants in the property to be vacated by the Defendant as a condition for fulfilling the contract and also to furnish documents of title for the Plaintiffs to verify the title. Even though the documents of title have been furnished, after sending the notice under Ex.A-7, under Ex.A-9, rejoinder notice, the Plaintiffs sought time to verify the title to the property with their lawyer. Thus, the delay in getting the sale deed is wholly attributable on the part of the Plaintiffs and not on the Defendant.

21. The learned Senior Counsel for the Defendant/Respondent submitted that it is a clear case of the Defendant that her mother was allotted



A.S.No.461 of 2007

WEB COPY

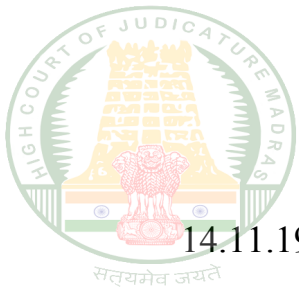
the property in a family partition and subsequently, she executed a Will in favour of the Defendant. If the Plaintiffs intend to verify the title to the property, they can do so at the earliest point of time. The agreement of sale was entered into on 14.11.1994. However, when the reply notice dated 10.01.1996 was issued by the Defendant calling upon them to be present in the office of the Sub-Registrar, they have sent the rejoinder informing that they are yet to get the opinion from the lawyer with respect to the title of the property. In any event, the Plaintiffs are residing just opposite to the suit property. They knew fully well about the occupation of the property by tenants. While so, after entering into the agreement on 14.11.1994, it is not proper for the Plaintiffs to call upon the Defendant to evict the tenants and handover the vacant possession of the property as a condition precedent to pay the balance sale consideration. The Plaintiffs were also aware that the Defendant has filed Rent Control Original Petitions against the tenants. Thus, the Plaintiffs want the Defendant to perform the impossible task with an intention to gain time. Merely by entering into sale agreement deed the Plaintiffs impose a condition to evict the tenants with reference to the fact that the Defendant has already filed Rent Control Original Petitions to evict the tenant and they were pending. However, the Defendant was always ready and only called upon the Plaintiffs to come to the office of the Sub Registrar to get



A.S.No.461 of 2007

the sale deed executed. However, without complying such demands made by the Defendant, the present suit has been filed by the Plaintiffs as though the Defendant is not willing to perform her part of the contract. If the Defendant refused to execute the sale deed then the Plaintiffs has a reason to approach the Court. But in this case, the Defendant had clearly spelt out her readiness and willingness to execute the sale deed by paying the balance sale consideration of Rs.6,15,000/-, but the Plaintiffs were unwilling to do so. Therefore, in the absence of any refusal on the part of the Defendant, there is no cause of action for instituting the suit and the suit filed by the Plaintiffs itself is not maintainable.

22. The learned Senior Counsel for the Defendant invited the attention of this Court to the discussion regarding documents under Ex.A-7 to Ex.A-10 exchange of notices and documents under Ex.A-14 to Ex.A-145. These are all documents furnished to show that the Plaintiffs were ready and willing to perform their part of the contract and they have enough resources. But it will be clear that those documents are subsequent to the institution of the suit and therefore, they are unreliable and inadmissible. Therefore, the learned Trial Judge arrived at the conclusion that the Plaintiffs were never ready or willing to perform their obligations under the agreement dated



A.S.No.461 of 2007

14.11.1994. The learned Trial Judge also has taken note of the fact that the

Plaintiffs are facing criminal trial for dishonour of cheque for want of fund.

After trial, the Plaintiffs were convicted and sentenced to imprisonment.

Further, in the civil proceedings initiated against the Plaintiffs, order of attachment was passed attaching the immovable property belong to the Plaintiffs. Therefore, the learned Trial Judge arrived at a just conclusion that the Plaintiffs have only intended to get the time extended and nothing more.

When the Defendant is ready to execute the sale deed, the Plaintiff had filed the suit only to gain time.

23. The learned Senior Counsel for the Defendant submitted that the Plaintiffs, to show their *bona fide* ought to have voluntarily deposited the amount. The argument of the learned Counsel for the Plaintiffs that the Court had not insisted them to deposit the amount may not be proper. The Plaintiffs themselves can volunteer and file appropriate application as necessary to deposit the amount, in which event, the Court will not refuse it. In this context, the learned Senior Counsel for the Defendant placed reliance on the very same ruling relied on by the learned Counsel for the Plaintiffs in the judgment pronounced by **Justice R. Subramanian** in *A.S. No. 863 of 2009* in *M. Kaja Nijamudden Vs. A. Rajamani*, wherein it is observed as follows:-



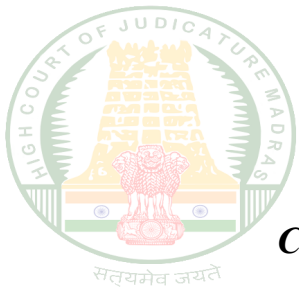
WEB COPY

“12. The next limb of the argument of the learned Counsel for the appellant is that the Plaintiff has not established that he was always ready and willing to perform his part of the contract. The learned Counsel would submit that even according to the Bank statements produced by the Plaintiff he did not have the entire balance sale consideration of Rs.6 lakhs in his Bank account during the relevant period. Therefore, the learned Counsel would contend that the Plaintiff has not established his readiness and willingness. Section 16 (c) of the Specific Relief Act does not require the Plaintiff to jingle the coins before the court. What is required is that the Plaintiff should prove that he has the 7 enough means to raise the funds. In the case on hand, in my considered opinion, the Plaintiff has by producing the Bank statements established that he had enough and more means to perform his part of the contract.

14. The agreement is of the year 2006. Nearly a decade has passed by. Out of the total consideration of Rs.6,35,000/-, the Plaintiff had paid only a sum of Rs. 35,000/- as advance. It is also a matter common knowledge that price of properties has increased considerably during the past 10 years. Normally inadequacy of consideration or raise in prices during the pendency of the litigation cannot be taken into account for either granting or refusing the relief of specific performance. The Plaintiff is also a pensioner. While exercising the 8 discretion in favour of the Plaintiff, I am constrained to consider the equities also. Keeping in mind the fact that the advance paid is not a major portion of the sale consideration, I feel that it will be in the interests of justice to direct the Plaintiff to pay an additional consideration over and above the amount agreed to. Considering the fact that the property is situated in Mettupalayam town and taking into account the increase in price of real estate in the past 10 years, I am of the considered opinion that ends of justice would be met by directing the Plaintiff to pay an additional consideration of Rs.4 lakhs apart from Rs. 6,35,000/- which has already been paid/deposited by the Plaintiff.”

24. In support of his contention, the learned Senior Counsel for the Defendant also relied upon the following rulings:-

(1) In the case of **Madhukar Nivrutti Jagtap and Others Vs. Pramila Bai**



A.S.No.461 of 2007

Chandulal Parandekar and Others, reported in ***(2020) 15 SCC 731***.

WEB COPY (2) In the case of ***U.N.Krishnamurthy Vs. A.M.Krishnamurthy***, reported in ***(2022) SCC OnLine SC 840***.

(3) In the case of ***Saradamani Kandappan Vs. S.Rajalakshmi and Others***, reported in ***(2011) 12 SCC 18***.

(4) In the case of ***Mehboob-UR-Rehman Vs. Ahsanul Ghani***, reported in ***(2019) 19 SCC 415***.

Points for determination:

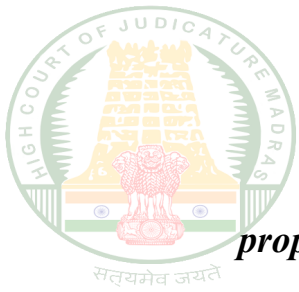
(i) ***Whether the trial Court failed to appreciate that the Plaintiffs had resources to execute their part of contract?***

(ii) ***Whether the sale agreement had recitals that after execution of sale deed, the Plaintiffs on their own has to evict the tenant from the Suit property?***

(iii) ***Whether the trial Court erred in law in ignoring the settled position of law regarding grant of decree for specific performance of contract to the Plaintiffs?***

(iv) ***Whether the Plaintiffs are entitled to the relief of specific performance for sale of the property?***

(v) ***Whether the learned Judge had discussed the evidence***



A.S.No.461 of 2007

properly and answered the issues?

WEB COPY

25. Heard the learned Counsel for the Appellants and the learned Senior Counsel for the Respondent. Perused the judgment and decree dated 22.12.2006 passed in O.S. No. 139 of 2001 by the learned Additional District and Sessions Judge, Fast Track Court No.2, Coimbatore and also the materials available on record.

26. On consideration of the rival submissions and on perusal of the judgment of the learned Trial Judge, it is found that the learned Trial Judge, had not answered each of every issue framed by him. It is considered that the learned Trial Judge, had arrived at a just conclusion based on appreciation of evidence of the Plaintiff as P.W-1 and evidence of the Defendant as D.W-1. The Plaintiffs have filed documents to show that they had enough resources. In the cross examination, the P.W-1 was confronted by the learned Senior Counsel for the Defendant stating that only a short period of time, in each of the Bank accounts, amounts are made available and that too not more than one lakh and subsequently whatever amount is available was withdrawn after a short period. In other words, it was stated that at no particular point of time, there was more than Rs.6 lakhs available in the Bank account. Though the



A.S.No.461 of 2007

WEB COPY

Plaintiffs contend that they are capable and/or ready and willing to pay the balance sale consideration of Rs.6 lakhs, it was not forthcoming in the form of acceptable evidence. On the other hand, it was contended that the trial court did not seek them to deposit the amount and therefore, they did not deposit it. This submission of the Plaintiffs cannot be countenanced. To prove the *bona fides*, the Plaintiffs can voluntarily deposit the amount into the Court. There is no permission is required for the Plaintiffs to do so. It is their fundamental duty to show that they have got the required amount to pay to the Defendant for execution of the sale deed in their favour. In the Judgment passed by this Court in A.S. No. 863 of 2009, mentioned supra, this Court has held that nearly a decade has passed and the purchaser has shown only a paltry sum as advance. It was further held that in the interregnum, the price of the property would be sky-rocketed and the Plaintiffs cannot be expected to purchase the property at the price which was fixed ten years before. The observations made by this Court will apply to the facts of this case in full force. In the present case, the agreement was dated 14.11.1994. The suit was filed in the year 1996 before the Subordinate Judge, Coimbatore and it was subsequently transferred and re-numbered as O.S. No. 139 of 2001. The Judgment, which is impugned in this appeal, was passed on 22.12.2006. Now, we are in the year 2025 and almost three decades have gone by from the date of entering into the



A.S.No.461 of 2007

agreement of sale dated 14.11.1994. While so, this Court is not inclined to invoke the discretionary relief to grant a decree for specific relief. It is also to be noted that due to pendency of the litigation, the period had lapsed. In all cases, by virtue of the delay in adjudicating the case, a decree for specific performance may not be refused. But in this case, the decree for specific performance is not only refused on the ground of efflux of time, but the attitude of the Plaintiffs in not depositing the balance sale consideration atleast during the trial in the suit. The argument that the trial court did not insist the Plaintiffs to deposit the balance sale consideration does not augur well and it only goes against the interest of the Plaintiffs to seek for equitable relief.

27. The documents under Ex.A-13 to Ex.A-145 were filed by the Plaintiffs to prove that they have sufficient means. On assessment of those documents, the learned Trial Judge concluded that in those Bank statements there was amount of one lakh and two lakhs etc. for a few days and those amounts were withdrawn subsequently. In other words, for the sake of proving the financial capability, the Plaintiffs deposited some amount and produce the document to the trial Court. This will not truly and adequately reflect the financial capability of the Plaintiffs. This is more so that the documents mentioned above have emanated after the institution of the suit. As mentioned



A.S.No.461 of 2007

WEB COPY

above, the financial capability or capacity of the Plaintiffs has to be traced on the date of or soon after the execution of the agreement of sale dated 14.11.1994 in this case. If it is considered, the Plaintiffs fail to demonstrate that they are financially capable to pay the balance sale consideration to the Defendant. As rightly pointed out by the learned Senior Counsel for the Defendant, several documents filed by the Plaintiffs to demonstrate that they were always ready and willing to perform their obligation to pay the balance sale consideration are not admissible in evidence. It was noticed that most of the documents emanated after institution of the suit and it need not be gone into. The financial capacity or capability of the Plaintiffs after institution of the suit is immaterial. It must be shown that within the time granted under the sale agreement dated 14.11.1994, the Plaintiffs had wherewithal to perform their part of the argument. Therefore, the documents, which emanate after institution of the suit cannot be considered for grant of a decree for specific performance. As observed in the judgment by Justice R. Subramanian in A.S.No.863 of 2009 the value of the property increases every year. Therefore, if the Plaintiffs are *bona fide*, they should have voluntarily deposited the amount so as to retain their right and interest to purchase the property. They need not expect the Court to insist for depositing the balance sale consideration. Also, as rightly pointed out the learned Senior Counsel for the



A.S.No.461 of 2007

WEB COPY

Defendant, under Ex.A-7 and Ex.A-9, the Plaintiffs sent two notices which were immediately responded to by the Defendant on the very next day under Ex.A-8 and within three or four days under Ex.A-10. In those notices, the Defendant clearly stated that she is ready and willing to perform her part of the contract provided that the Plaintiffs part with the balance of sale consideration Rs.6,15,000/-. The Plaintiffs cannot get a better opportunity to be capitalised, than the one given to them by the Defendant, to pay the balance sale consideration in the office of the Sub-Registrar on a date mentioned by her. When the Defendant had expressed her desire to execute sale deed, there is no reason why the Plaintiffs have to approach the Court with a suit for specific performance. The *gay abandon* with which the Plaintiffs approached the trial court with the suit for specific performance cannot be appreciated. Therefore, there is enough force in the argument of the learned Senior Counsel for the Defendant that there is no cause of action at all for institution of the suit.

28. Yet another aspect for consideration is that the Plaintiffs were heavily indebted. The Plaintiffs faced criminal proceedings for dishonour of cheque and ultimately got convicted for having committed the offence under Section 138 of The Negotiable Instruments Act, 1881 and sentenced to undergo imprisonment. That apart, there were also civil proceedings initiated



A.S.No.461 of 2007

WEB COPY

against the Plaintiffs and a portion of the immovable property owned by them got attached. Furthermore, the Plaintiffs themselves admit that the brother of the Defendant has also got a right over the property in question. If it is so, a normal prudent purchaser would not venture to purchase the property. It is very much available on record that the Plaintiffs and Defendant are residing in the house located opposite to each other. Therefore, the Plaintiffs would have better knowledge about the right, title and interest of the Plaintiff. Furthermore, the Defendant has also initiated Rent Control proceedings to evict the tenant. It is stated by the Plaintiffs themselves that those Rent Control Original Proceedings initiated by the Defendant have been disposed of long back and the tenants have been vacated. At the same breadth, the Plaintiffs admit that now some other tenants are in occupation of the property. It is not known as to why the Plaintiffs are exhibiting enormous interest to purchase a property which is full of litigation, lack of title etc., Going by the above facts, this Court is of the view that the Trial Court, in a circumstance of this nature, is wholly justified in dismissing the suit and directing the Defendant to repay the advance amount.

29. It is to be mentioned that in cases of this nature, Plaintiffs are reluctant to pay the balance of sale consideration after making initial advance



A.S.No.461 of 2007

WEB COPY

amount. It is their intention or expectation that as they have paid a miniscule portion of the sale price, they can get the sale deed executed at any time or they can assert ownership over such property without performing their duties embodied under the contract. By the time the suit is decreed, one of the parties file an appeal the adjudication of the appeal takes time. In the meantime, the value of the property increases manifold in geometric progression. It is in this context, the purchaser is expected to deposit or pay the full sale consideration amount. If the Plaintiffs deposit the balance sale consideration either after obtaining the decree in the suit for specific performance or after disposal of the appeal thereagainst, it will cause acute prejudice and loss to the owner of the property. It is for this reason, Section 16 (c) of The Specific Relief Act, confers a discretion to the Courts to award a decree for specific performance, not for the sake of the Plaintiff asking for it, but on the touchstone of equity by weighing the various considerations that are precedent for grant of such decree.

30. Under those circumstances, the Trial Court ought to have dismissed the suit in entirety but instead the Trial Court was magnanimous enough to grant the alternative relief of refund of advance amount under the principles of equity. Such an exercise of discretion by the Trial Court, in the



A.S.No.461 of 2007

WEB COPY

facts and circumstances of this case, is justified and it is proper. Accordingly, all the points raised for determination are answered against the Plaintiffs and in favour of the Defendant.

31. The learned Counsel for the Plaintiffs contended that the Defendant having given an undertaking before this Court that she will not alienate or encumber the property, had violated it. This Court is of the view that the Defendant ought not to have violated the undertaking given before this Court. Such a violation calls for severe action to be initiated by this Court to maintain the majesty of this Court. However, taking note of the period during which the litigation has spanned and other factors involved in this case, this Court takes a lenient view and not to proceed further with this issue. The Defendant is, however, warned not to take it very lightly that she can give any sort of undertaking before the Court and to breach it later.

32. In the light of the above discussion, the Points for consideration are answered in favour of the Respondent/Defendant and against the Appellants/Plaintiffs. The judgment and decree dated 22.12.2006 made in O.S. No. 139 of 2001 on the file of the learned Additional District and Sessions Judge and Fast Track Court No.2, Coimbatore is found proper which



A.S.No.461 of 2007

does not warrant any interference by this Court and the same is to be confirmed.

In the result, *this Appeal Suit is dismissed.* The judgment and decree dated 22.12.2006 made in O.S. No. 139 of 2001 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.2, Coimbatore is confirmed. No costs.

02.06.2025

cda

Index : Yes/No

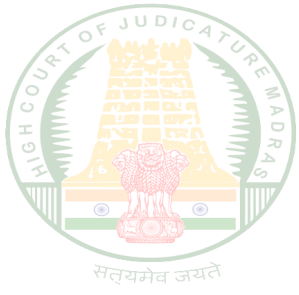
Speaking/Non-speaking order

Neutral Citation : Yes/No

To

1. The Additional District and Sessions Judge,
Fast Track Court No.2, Coimbatore.
2. The Section Officer,
V.R. Section,
High Court Madras.

SATHI KUMAR SUKUMARA KURUP, J



WEB COPY



A.S.No.461 of 2007

cda

Judgment in
A.S. No. 461 of 2007

02.06.2025