



A.S.No.77 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : 03.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.77 of 2022 & CMP.No.2980 of 2022

1.S.Sakthivel

2. S.Kolanjiappan

... Appellants

Versus

Dhananchejhian

... Respondent

PRAYER : This Appeal Suit has been filed under section 96 of Code of Civil Procedure to set aside the decree and judgment dated 30.11.2021 in O.S.No.115 of 2013 on the file of the Principal District Court, Puducherry.

For Appellants : Mr.R.Rajarajan

For Respondent : Mr.A.P.Sathyamurthy



A.S..No.77 of 2022

JUDGMENT

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Challenging the decree and judgment of the trial Court decreeing the suit for specific performance, the present appeal has been filed by the unsuccessful defendants.

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

3. The case of the plaintiff is that the defendants had executed an agreement for sale of the property and the agreement has also been registered for a total sale consideration of Rs. 15 lakhs on 19.11.2011 and received a sum of Rs.4 lakhs as an advance on the same day. It is agreed between the parties that the sale shall be completed within a period of 24 months. The plaintiff is always ready and willing to purchase property and approached the defendants repeatedly to produce original title deeds. However, the defendants have not produced the original documents. Therefore, the plaintiff issued a legal notice on 21.08.2023 which has been replied by the defendants contending that it is



A.S.No.77 of 2022

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only a loan transaction. Hence, the suit.

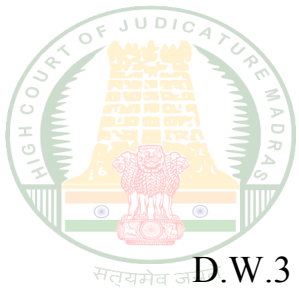
4. It is the contention of the defendants that one Elumalai has borrowed a sum of Rs.4 lakhs under a promissory note dated 03.10.2011 from the plaintiff agreeing to return the said amount within a period of 24 months. The first defendant is the co-brother of the said Elumalai and as a collateral security, the documents have been handed over to the plaintiff. According to the defendants, the sale agreement was never intended for sale of the property. The allegation that the plaintiff is always ready and willing to perform his part of the contract is also denied. Hence, prayed for dismissal of the suit.

5. On the basis of the above pleadings, the following issues have been framed by the trial Court :

1. Whether the plaintiff is entitled for the relief of specific performance of contract?

2. To what other relief the plaintiff is entitled?

6. On the side of the plaintiff, P.W.1 to P.W3 have been examined and Ex.A.1 to Ex.A.4 have been marked. On the side of the defendants, D.W.1 to



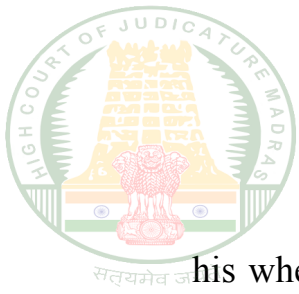
A.S.No.77 of 2022

D.W.3 have been examined and Ex.B.1 has been marked. Apart from that Ex.X.1 and Ex.C.1 have been marked.

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7. The trial Court considering entire evidence decreed the suit in favour of the plaintiff. Challenging the same, the present Appeal Suit came to be filed.

8. The learned counsel appearing for the appellants would contend that Ex.A.1 never intended for sale of the property, but came to be executed in a loan transaction. The amount has been borrowed by one Elumalai. The first defendant, being the co-brother of this said Elumalai, was directed to execute the sale agreement. According to him, the sale agreement is not intended for sale. Further, even assuming that there is a sale agreement, the plaintiff has not established readiness and willingness from the inception of the agreement. The legal notice has been issued just two month prior to the expiry of the agreement period. Thereafter, the suit has been filed on 18.11.2021. Hence, it is his contention that absolutely, there is no readiness and willingness on the part of the plaintiff to perform his part of the contract. He has not established



A.S.No.77 of 2022

his wherewithal to purchase the property. It is his further contention that the plaintiff himself has filed an application in I.A.No.1474 of 2023 seeking permission for depositing the remaining sale consideration and the said application has been allowed by the trial Court by an Order dated 21.08.2014 and permitted the plaintiff to deposit the amount. However, till the disposal of the suit after 7 years of the above Order, the balance sale consideration has not been deposited. The same clearly indicate that readiness and willingness has not been established on the part of the plaintiff.

9. Whereas, it is the contention of the learned counsel appearing for the respondent that the agreement has been registered and the plaintiff has established readiness and willingness to perform his part of the contract. The legal notice has also been sent to the defendants on 21.08.2013 calling upon the defendants to execute the sale deed. Once, the document has been executed and proved in the manner known to law, the defendants cannot take a contrary view. Hence, prayed for dismissal of the appeal.

10. In the light of the above submissions, the points that arise for



A.S..No.77 of 2022

WEB COPY

consideration are as follows :

1. Whether Ex.A.1 agreement dated 19.10.2011 is not intended for sale of the property?
2. Whether the plaintiff was always ready and willing to perform his part of the contract?
3. To what relief the parties are entitled?

11. Point No. 1 :

Execution of Ex.A.1 agreement is not disputed. The only contention raised by the defendants is that Ex.A.1 came to be executed as a collateral security for the amount borrowed by one Elumalai. In support of the case of the plaintiff, P.W.1 to P.W.3 have been examined. Ex.A.1 is the registered agreement for sale and a sum of Rs.4 lakhs has been paid while registration of the above sale agreement, particularly before the Sub Registrar. Therefore, once a registered document has been admitted, the defendants cannot take a contrary stand other than the contract. No other probabilities have been brought on record to show that Ex.A.1 is not intended for sale of the property.



A.S..No.77 of 2022

Hence, the contention of the appellants that the sale agreement is not intended for sale of the property cannot be countenanced. The point is answered accordingly.

12. Point Nos.2 and 3 :

With regard to readiness and willingness, the agreement came to be executed on 19.10.2011. It is relevant to note that 24 months time has been fixed in the agreement for completion of the sale. But the fact remains that till the legal notice sent on 21.08.2013, just prior to two months of expiry of the time stipulated in the agreement, absolutely, there is no evidence to show that the plaintiff is always ready and willing to perform his part of the contract. There is no materials whatsoever placed on record to show that the plaintiff

was always ready and willing to perform his part of the contract. Therefore, it is incumbent on the plaintiff to establish and prove readiness and willingness to seek the relief of specific performance.

13. It is relevant to note that the very agreement itself indicate that the

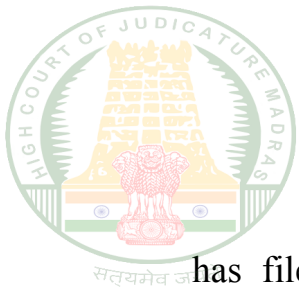


A.S..No.77 of 2022

WEB COPY

parties agreed to measure and survey the property. Having entered into an agreement, no steps have been taken by the plaintiff atleast to make an attempt to survey the property as agreed between the parties in the agreement. The plaintiff ought to have taken some action to complete the transaction. Having entered into a contract, normal tendency of a person, who is intended to purchase the property, would be to verify the documents and to make an attempt to measure the property as agreed in the agreement, which has not been done so.

14. Further, a perusal of entire evidence, absolutely, there is no materials available on record to show that the plaintiff had wherewithal to mobilize remaining sale consideration of Rs.11 lakhs after entering into a contract. Further, to show that the plaintiff had sufficient money to pay the remaining sale consideration, no proof, whatsoever, has been filed. No bank accounts have been filed. It is also relevant to note that though the petitioner

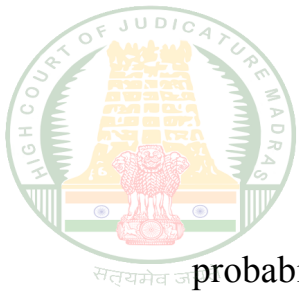


A.S..No.77 of 2022

WEB COPY

has filed an application seeking permission to deposit the remaining sale consideration and he was permitted to deposit the remaining sale consideration by an Order dated 21.08.2014 itself, the balance sale consideration has not been deposited for more than 7 years. The suit has been disposed on 31.11.2021. Till such time, the plaintiff has not taken any steps to deposit the balance sale consideration, despite permission granted by the Court.

15. Of course, in a suit for specific performance, it is not mandatory to deposit entire sale consideration. But when a party seeks permission of the court to deposit the balance sale consideration and obtained Orders from the Court and non complying the Order of the Court for nearly 7 years, such an exhibit that he is not ready and willing to perform his part of the contract. Therefore, this Court is of the view that unless the twin conditions of readiness and willingness are established, the plaintiff cannot seek the relief of specific performance as a matter of right. Readiness is the capacity of a person to mobilize funds and willingness is the mental attitude to complete the transaction. Unless both readiness and willingness is established by



A.S.No.77 of 2022

probabilities or in evidence, merely on the basis of the agreement, one is not entitled to specific performance. Hence, this Court is of the view that the trial Court granting a decree of specific performance is not sustainable in the eye of law.

16. In the result, this appeal suit is partly allowed and the judgment and decree of the trial Court in O.S.No.115 of 2013 dated 30.11.2021 is set aside. In the alternative, the suit is decreed for return of advance amount of Rs.4,00,000/- with interest at the rate of 12% from the date of agreement till the date of realization. Consequently, connected miscellaneous petition is closed. There shall be no Order as to costs.

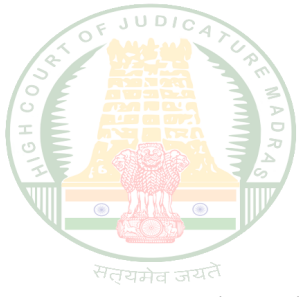
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Page 10 / 12



A.S..No.77 of 2022

WEB COPY
The Principal District Judge,
Puducherry.



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A.S.No.77 of 2022

N. SATHISH KUMAR, J.

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A.S.No.77 of 2022

03.03.2025