



A.S.No.140 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 21.04.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.140 of 2023

R.Mani

... Appellant/Defendant

-VS-

S.Manickam

... Respondent/Plaintiff

Prayer: Appeal Suit is filed under Section 96 r/w Order XLI Rule 1 of CPC to set aside the judgment and decree dated 01.11.2022 passed in O.S.No.5 of 2010 on the file of the III Additional District Judge, Kallakurichi and allow the above appeal.

For Appellant : Mr.R.Bharath Kumar

For Respondent : Mr.N.L.Rajah
Senior Counsel
For Mr.K.R.Arun Shabari

J U D G M E N T

Challenging the judgment and decree of the Trial Court, decreeing the suit for specific performance, the unsuccessful defendant has filed the present appeal before this Court.

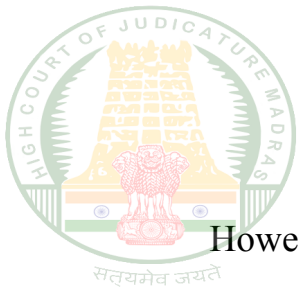


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2. The parties are arrayed as per their own ranking before the Trial Court.

3. The case of the plaintiff is that the defendant agreed to sell the property for a total sale consideration of Rs.24,60,000/- and received an advance amount of Rs.2,50,000/- on 10.01.2008 and executed an agreement in favour of the plaintiff. It was agreed between the parties that the remaining sale consideration would be paid within a period of 90 days. The plaintiff was ready and willing to perform his part of contract. Pursuant to the agreement, further sum of Rs.10,00,000/- has also been paid towards balance sale consideration on 28.03.2008 and therefore, the plaintiff had to pay only Rs.12,00,000/-, for which, he was always ready and willing.

4. It is further case of the plaintiff that the defendant has delayed the execution of the sale even after receipt of the balance sale consideration and therefore, the plaintiff issued a legal notice on 24.04.2009. The defendant has also sent a reply, expressing his readiness to complete the sale. The plaintiff also sent a rejoinder on 05.05.2009.



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However, the defendant has not come forward to execute the sale deed, which forced the plaintiff to file a suit.

5. In the written statement, the defendant, except making an evasive denial, stated that he never intended to sell the property. The property is worth about Rs.90,00,000/- and therefore, there was no necessity for him to execute an agreement for sale of the property for a meagre sum of Rs.24,60,000/-. According to the defendant, he had executed the agreement as a security for the loan of Rs.2,50,000/- borrowed by him and he also denied that he received Rs.10,00,000/- from the plaintiff subsequently. In the additional written statement, it was stated that while availing the loan of Rs.2,50,000/-, the plaintiff has obtained signatures on the blank papers in order to grab the property. The legal notice has been sent only on 17.04.2009 and hence, the defendant opposed the suit.

6. The Trial Court, based on the above pleadings framed the following issues:



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i) Whether it is true that the defendant has executed the sale agreement only in a loan transaction for borrowal of Rs.2,50,000/-?

ii) Whether it is true that the defendant has borrowed Rs.2,50,000/- and executed the sale agreement for sale?

iii) Whether it is true that the defendant has not received Rs.10,00,000/- on 28.03.2008?

iv) Whether the plaintiff was ready and willing to perform his part of contract?

v) Whether the defendant is liable to execute a sale deed after receipt of sale consideration of Rs.12,10,000/-?

vi) In the event of failure on the part of the defendant to execute the sale deed, whether the plaintiff is entitled to get the sale deed executed through Court of Law?

vii) To what other relief the plaintiff is entitled to?

7. On the side of the plaintiff, P.W.1 was examined and Ex.A1 to Ex.A12 were marked. On the side of the defendant, D.W.1 and D.W.2 were examined and Ex.B1 & Ex.B2 were marked.

8. The Trial Court, after appreciation of the material documents and evidence, disbelieved the evidence of the defendant and decreed the suit in favour of the plaintiff. Challenging the judgment and decree of the Trial Court, the present appeal has been filed.



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9. Learned counsel for the appellant would mainly submit that

as per Ex.A1, 90 days' time has been agreed between the parties and the said 90 days expired on 09.04.2008 itself. Though the defendant is said to have paid another Rs.10,00,000/- on 28.03.2008, the remaining sale consideration has not been paid. Legal Notice has been issued only on 17.04.2009 and the suit has been filed on 28.08.2009. Learned counsel for the appellant would further submit that the plaintiff has not proved his readiness and willingness at the inception. When the agreement stipulates a specified a time period for completion of the sale, non payment of balance sale consideration immediately indicates that the plaintiff was not at all ready to perform his part of contract. He further stated that during pendency of the suit, the plaintiff has assigned his right to a third party by way of an Assignment Deed dated 22.08.2013 and an application in I.A.No.48 of 2019 has been filed to bring the assignee on record. The said application has been dismissed by the Trial Court, against which, C.R.P.No.3819 of 2019 has also been preferred and the same has been dismissed. Learned counsel for the appellant would also submit that the alleged payment of Rs.10,00,000/- has not been established, which is in fact denied by the appellant. It was the



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plaintiff, who had not come forward to complete the sale transaction within the time stipulated in the agreement, which itself shows that the plaintiff has not shown any readiness and willingness at the inception. In support of his submission, learned counsel for the appellant has relied upon the following judgments:

- i) Seeni Ammal vs. Veerayee Ammal, reported in 1997 (I) CTC 360;
- ii) Vasantha and others vs. M.Senguttuvan, reported in 1998 (I) CTC 186; and
- iii) G.Ramalingam vs. T.Vijayarangam, reported in 2007 (I) CTC 243.

10. Per contra, learned Senior Counsel for the respondent would contend that the plaintiff has not only proved the readiness and willingness from the very inception, but also proved that he was always ready to complete the sale consideration. The conduct of the parties assumes significance in this case. In the reply notice, the defendant has clearly admitted not only the execution of the agreement, but also the receipt of further payment and he has also expressed his intention to complete the sale.



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Having taken such a stand in the reply notice, the factum of agreement has been denied evasively in the written statement and there is no specific denial in the entire written statement. Learned Senior Counsel would further contend that from the reply notice coupled with the written statement filed by the defendant, it could be seen that the entire pleadings of the plaintiff has been clearly established. In fact, there was a delay, since all the family members have not been brought for signing in the sale deed. In the reply notice, the defendant has clearly admitted that he alone is ready to execute the document, as his wife has no right in the property. Not stopping with that, the defendant has also set up his mother to claim partition in the property by filing a suit in O.S.No.445 of 2012 and therefore, the conduct of the defendant cannot be ignored altogether. It is further contended, that the plaintiff has deposited the remaining sale consideration within a period of one month after the suit. According to the learned Senior Counsel for the respondent, the appellant has been enjoying the property, despite the fact that the entire sale consideration has been paid and therefore, the Trial Court has rightly decreed the suit, warranting no interference by this Court.



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11. Learned Senior Counsel for the respondent cited a judgment of the Apex Court in the case of **Dhurandhar Prasad Singh vs. Jai Prakash University and others**, reported in **AIR 2001 SC 2552** to substantiate his argument that during pendency of a suit, if a transfer is made to a party, that would not affect the result, when no application had been made to be brought on the record in the original Court during the pendency of the suit.

12. In the light of the above, the points for consideration in this appeal are as follows:

- i) Whether the plaintiff has proved his readiness and willingness to seek the relief of specific performance?
- ii) Whether the sale agreement dated 10.01.2008 is not intended for sale of the property?
- iii) To what other relief the plaintiff is entitled to?

POINTS:

13. On a careful perusal of Ex.A1, it is seen that an agreement has been entered into between the parties for sale of suit property for a total sale consideration of Rs.24,60,000/-. The agreement for sale came to be



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executed on 10.01.2008 and on the date of agreement, Rs.2,50,000/- has been paid to the defendant as advance. The execution of the agreement has never been disputed. In the reply notice (Ex.A4) sent by the defendant, the execution of agreement, terms of the contract, etc., have not been denied, whereas in the written statement, a stand has been taken as if he had signed the reply notice (Ex.A4) without understanding the contents mentioned therein. It is relevant to note that Ex.A4 is the reply notice given by the defendant in response to the legal notice issued by the plaintiff and the same has been issued by the Lawyer only on the basis of the instructions given by the defendant and therefore, the contention that he could not understand the contents of Ex.A4 is highly improbable and cannot be believed.

14. Be that as it may, in both the written and additional written statements, except making evasive denial, there is no specific denial with regard to the execution of agreement for sale of the property. In the absence of any such specific denial made in the written statement, law presumes that all the facts averred in the plaint shall be deemed to be admitted as per Order VIII Rule 5 of the CPC. Further, the very stand of the defendant, that



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he had signed the agreement only in a loan transaction is also highly improbable. When a person, who has consciously signed the document, cannot take a different stand contrary to the terms of the contract. Of course, a person is entitled to bring probabilities on record to show that the document is not intended for the purpose for which it is executed. Moreover, mere pleadings will not entitle the defendant to contend that the document was never intended for that purpose.

15. It is pertinent to state here that when the defendant himself admitted in the reply notice as to the execution of agreement, in the absence of any evidence to probabalize the defence, it is to be held that Ex.A1 came into existence only for sale of the property. Further, if the entire evidence of D.W.1 is carefully seen, having accepted signing of papers, no contrary stand could be taken as if he never signed the document later. Having accepted his signature, taking contrary stand thereafter, namely, one in the evidence and another in the reply notice and written statement, is nothing, but a blatant lie. The above conduct clearly shows that the defendant has adopted tactics in one way or the other to deny the execution of the agreement.



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16. The plaintiff has clearly stated in his evidence and pleadings that he was always ready and willing to perform his part of contract. Though 90 days' time has been fixed in the agreement, it is stated by the plaintiff that he insisted the legal heirs of the defendant to sign the document, which has not been disputed by the defendant in the reply notice (Ex.A4). Merely because the parties have not completed the sale within 90 days, it cannot be said that the plaintiff was never willing to perform the contract. The readiness and willingness has to be ascertained from the conduct of the parties from the very inception. The very fact that within 90 days' time, a sum of Rs.10,00,000/- has been paid on 28.03.2008 vouchsafe the fact that the plaintiff was intended to complete the transaction as early as possible. Not stopping with that, he also requested the defendant on many occasions and issued a legal notice, wherein a stand has been taken in the reply notice by the defendant to the effect that he alone has right to execute the document and his wife is not necessary to sign the document. Thereafter, once again, the plaintiff has expressed his willingness for completion of sale provided the document is signed by the defendant in the rejoinder. Even thereafter, the defendant did not come forward to execute the sale deed and



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therefore, the suit came to be filed immediately and the remaining sale consideration has also been deposited by the plaintiff before the Trial Court on 17.09.2009 itself. These facts clearly prove that the plaintiff has proved his readiness and willingness from the very inception.

17. Yet another submission has been made by the learned counsel for the appellant that as the plaintiff has executed an Assignment Deed dated 22.08.2013 in favour of one Amirthalingam, S/o.Mayilvaganan during pendency of the suit, he is not entitled to the relief of specific performance. The very recital in the Assignment Deed (Ex.A10) clearly shows that as the plaintiff has become sick, in order to continue the agreement, he has assigned the rights to Amirthalingam, S/o.Mayilvaganan. Further, it is relevant to note that the plaintiff has taken steps to implead the assignee as a party by filing I.A.No. 48 of 2019. However, the said application has been dismissed by the Trial Court. The Civil Revision Petition filed in C.R.P.No.3819 of 2019 against the dismissal order was also dismissed. Though the plaintiff has taken steps to implead the assignee, the Court did not allow the application and therefore, the plaintiff himself



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continued, since there is no other go. This Court is of the view that merely because the plaintiff has assigned the right in the agreement, it cannot be said that his right to enforce the agreement is totally wiped out. If the assignee was allowed to bring on record, he would have proceeded further. The Assignment Agreement is a matter between the Assignee and Assignor. Insofar as the defendant is concerned, he is bound by the terms in the agreement. In Ex.A1, it was agreed by the defendant that sale could be executed directly in favour of the plaintiff or any of his representative or assignee or any other person nominated by the plaintiff. In such view of the matter, merely on execution of an assignment deed during pendency of the suit, the rights of the plaintiff to seek specific performance will not be wiped out.

18. Though there is no quarrel with regard to the proposition laid down by this Court in the judgments referred to by the learned counsel for the appellant in respect of readiness and willingness, the conduct of the parties assumes significance. When the defendant himself has not disputed the execution of agreement and receipt of the balance sale consideration, as



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stated supra, taking a different stand thereafter cannot be accepted. Therefore, the judgments relied upon by the learned counsel for the appellant are not applicable to the case on hand. Accordingly, the points are answered.

19. In the result, finding no merits in the appeal, the instant Appeal Suits is dismissed. The judgment and decree of the Trial Court is hereby confirmed. No costs.

21.04.2025

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Internet: Yes / No
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To:

1. The III Additional District Judge,
Kallakurichi
2. The Section Officer,
V.R.Section,
High Court,
Madras.

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