



WEB COPY



S.A.No.1066 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2025

CORAM

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

S.A.No.1066 of 2012

M.Thanikachalam .. Appellant

...Versus...

S.M.Chendamaraikannan .. Respondent

PRAYER: This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 27.06.2012 made in A.S.No.24 of 2010 by the Sub-Court, Ranipet, reversing the judgment and decree dated 16.02.2010 of the District Munsif Court, Sholinghur made in O.S.No.161 of 2004.

For Appellant :: Mr.G.Jeremiah
For Respondent :: Mr.B.Harish,
for M/s.K.M.Vijayan Associates

J U D G M E N T

Being aggrieved by the judgment and decree dated 27.06.2012 passed in A.S.No.24 of 2010 by the Sub-Court, Ranipet, the defendant herein has preferred this Second Appeal.



S.A.No.1066 of 2012

WEB COPY

2. Parties are referred to as per their litigative status and ranking before the trial Court.

3. Case of the plaintiff is that plaintiff and the defendant entered into an indenture of sale on 15.05.2001, wherein the defendant agreed to sell the suit property for a sum of Rs.56,100/-. The plaintiff paid an amount of Rs.17,000/- as an advance, and the defendant agreed to execute the sale deed after receiving the balance sale consideration of Rs.39,100/- within three months from the date of the agreement for sale. The plaintiff was put in possession of the schedule-mentioned property on the date of the agreement for sale itself. It was agreed that time is not the essence of the contract. The plaintiff has always been ready and willing to pay the balance sale consideration of Rs.39,100/-. The plaintiff issued a legal notice twice to the defendant, calling upon him to execute the sale deed in his favour. However, upon receiving the notices, the defendant neither issued a reply nor complied with the demand made in the notice by the plaintiff. Hence, the suit.

4. Contesting the claim, the sole defendant contended that the plaintiff was seldom ready and willing to have the sale deed executed in his



favour. The plaintiff was not prepared to perform his part of the contract.

Possession of the suit property was not at all handed over to the plaintiff.

5. The defendant admitted the issuance of legal notices twice by the plaintiff. However, the defendant contended that he approached the plaintiff to pay the balance sale consideration, but it was the plaintiff who evaded making the payment.

6. After filing of the suit, the defendant sent a legal notice to the plaintiff expressing his readiness and willingness to perform his part of the contract. The plaintiff, upon receiving the notice, did not choose to reply. The plaintiff lacked the capacity to perform his part of the contract. The price of the suit property has now reached its zenith, and hence, he sought for dismissal of the suit.

7. Based on the aforestated pleadings, the trial Court framed the following issues for the disposal of the suit:

(i) Whether time is the essence of the contract in the suit sale agreement?

(ii) Whether the plaintiff was not ready and willing to perform his part of the contract?

(iii) Whether the plaintiff is entitled to the



S.A.No.1066 of 2012

relief of specific performance of the contract?

(iv) What other relief is the plaintiff entitled to?

WEB COPY

8. At trial, to substantiate the plaint averments, on the plaintiff's side, one witness was examined, and three documents were marked. On the defendant's side, three witnesses were examined, and four documents were marked.

9. Ex.A1 is the sale agreement dated 15.05.2001 executed by the defendant in favor of the plaintiff. Ex.A2 is the office copy of the legal notice dated 01.03.2002 issued on behalf of the plaintiff to the defendant.

10. The first legal notice issued by the plaintiff to the defendant dated 18.08.2001 is Ex.B3. The office copy of the legal notice issued by the defendant to the plaintiff dated 04.06.2002 is Ex.B2.

11. Upon consideration of the evidence let in by both sides and after hearing the arguments of both sides, concluded that the plaintiff did not have the economic capacity to pay the remaining sale consideration and was not ready to perform his part of the contract. Consequently, the relief of specific performance was denied by the trial Court. However, as the defendant did not deny the execution of the sale agreement and the receipt of Rs.17,000/- as part of the sale consideration, the said amount was



S.A.No.1066 of 2012

ordered to be refunded to the plaintiff with 12% interest.

WEB COPY

12. Aggrieved by this judgment, the plaintiff preferred an appeal before the Sub-Court, Ranipet, in A.S.No.24 of 2010.

13. Upon perusal of entire case records and after hearing both sides, the First Appellate Court concluded that the plaintiff was entitled to the relief of specific performance, fixing the time limit to execute the sale deed as two months, thereby allowing the appeal. Aggrieved by the same, the defendant has preferred this Second Appeal.

14. The learned counsel for the appellant/defendant vehemently argued that the First Appellate Court was greatly influenced by the fact that the plaintiff had deposited the balance sale consideration into the Court, failing to note that the balance sale consideration had been deposited only after nearly a decade and only after the defendant had been cross-examined on that aspect. It was erroneously presumed that the plaintiff was ready and willing to pay the balance sale consideration. The plaintiff was not ready and willing to conclude the transaction in accordance with the terms of the sale agreement.



S.A.No.1066 of 2012

15. To strengthen the appellant's arguments, the following judgments were referred to:

(i) Mahaveer Hemanth Bhandhari & Sons HUF and others Vs. P. Srinivasalur and S. Suresh Kumar, 2024 (2) CTC 204.

(ii) A.L. Deivanathan and K. Dhanapal Vs. R. Saravanan and others, 2024 (4) CTC 434.

16. Per contra, the learned counsel for the respondent/plaintiff strenuously contended that the plaintiff had pleaded and proved that he was ready and willing to perform his part of the contract. To further establish his capacity to pay the sale consideration, he deposited the remaining sale consideration into the Court during pendency of the trial.

17. The execution of the sale agreement and the receipt of part of the sale consideration are not in dispute. Appreciating the plaintiff's readiness and willingness to perform his part of the contract, the First Appellate Court reversed the findings of the trial Court and granted a decree for specific performance.

18. The following substantial questions of law arise for consideration:-

1. Whether the judgment and decree of the lower Appellate Court are correct in law in reversing the well-considered findings of the trial Court without a



WEB COPY



S.A.No.1066 of 2012

discussion or an issue being framed to negate the findings of the trial Court?

2. Whether the judgment and decree of the lower Appellate Court are legally sustainable in the absence of any point for determination formulated by the lower Appellate Court, as reported in the decisions rendered in 2010 (5) CTC and 2011 (12) SCC Page 174?
3. Whether the finding of the lower Appellate Court that the purchaser was ready and willing to conclude the sale transaction under Ex.A1 is legally sustainable, considering the admitted fact that the balance sale consideration was deposited into the Court only after the purchaser/respondent was cross-examined on this aspect?

19. In a suit for specific performance, it is imperative for the plaintiff seeking the relief of specific performance to aver in the plaint that he has performed his part of the contract and has always been ready and willing to do so. In the absence of such pleading, the plaintiff does not have any cause of action to file the suit or to prove the same during the trial.

20. In a suit for specific performance, the basic principle of law is that the plaintiff who is the vendee must aver and prove that he has been continuously ready and willing to perform his part of the contract throughout. Therefore, the burden lies on the plaintiff to prove the fact. It is also interesting to note that it is really the evidence that has to be appreciated and it may be oral, documentary or circumstantial in nature.



S.A.No.1066 of 2012

WEB COPY

21. It is relevant to refer to the observations made in **Nirmala Anand**

Vs. Advent Corpn. (P) Ltd. reported in (2002) 8 SCC 146, a Three Judge

Bench of the Apex Court held as under:-

“It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree or specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the consideration besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her along, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the consideration to be kept in view is as to who is the defaulting party. It is also to be borne in



WEB COPY



S.A.No.1066 of 2012

mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing the specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.”

22. In *K. Prakash Vs. B.R. Sampath Kumar*, reported in (2015) 1

SCC 597, the Apex Court observed as under:-

“The principles which can be enunciated is that where the Plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the Plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated u/s 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely



WEB COPY



S.A.No.1066 of 2012

because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance.”

23. If the readiness and willingness are not specifically pleaded, if it is inherently present throughout the pleadings of the plaint, the plaintiff is deemed to have complied with Section 16C, at least in part. Regarding economic capacity, the law is well settled by the Apex Court in *Nathulal vs. Phoolchand*. He need not to jingle the coins to demonstrate his economic capacity. The execution of the sale agreement by the defendant in favour of the plaintiff is not in dispute. The defendant has also stated that the said agreement was entered into between the plaintiff and the defendant for the sale of the schedule property for the amount mentioned in the agreement. The sale agreement is dated 15.05.2001 (Ex.A1), and the time fixed for performance of the agreement was three months. The defendant has admitted to have received an advance payment of Rs. 17,000/- at the time of execution of Ex.A1 sale agreement.

24. From a careful perusal of both oral and documentary evidence, it is evident that the plaintiff issued a legal notice on 18.08.2001 (Ex.B3) and



S.A.No.1066 of 2012

subsequently on 01.03.2002 (Ex.A2). Ex.B3 is the first notice, as mentioned earlier, calling upon the defendant to receive the balance sale consideration of Rs. 39,100/- and to execute a registered sale deed in favour of the plaintiff herein. It has been stated in Ex.B3 that the plaintiff was willing to pay the balance amount and ready execute the sale deed concerning the suit schedule property. Through Ex.A2, a notice of a similar nature was issued by the plaintiff to the defendant on 01.03.2002, reiterating that the plaintiff was ready and willing to perform his part of the contract, whereas the defendant was evading to perform his obligations. It was also mention in legal notice (Ex.B3) that the date, time, and place for the execution of the sale shall be fixed by the defendant

25. The defendant did not reply to the first notice. However, for the second notice (Ex.A2), the defendant issued a reply notice dated 04.06.2002, almost three months later. It appears that the plaintiff deposited the remaining sale consideration of Rs. 39,100/- into the Court on 01.12.2002.

26. From a careful perusal of the evidence of P.W.1 and D.W.1, both have mutually stated that they are willing to perform their part of the



S.A.No.1066 of 2012

contract. However, the defendant claimed that the plaintiff was not ready to perform his obligations. The issuance of Ex.B3 legal notice by the plaintiff to the defendant on 18.08.2001 itself explicates that the plaintiff has been ready and willing to perform his part of the contract.

27. The fact that the plaintiff deposited the remaining sale consideration on 01.12.2002 further strengthens his case regarding readiness and willingness. For the second time, the plaintiff issued a legal notice to the defendant on 01.03.2002, calling upon him to execute the sale deed by receiving the remaining sale consideration. The defendant issued a reply notice (Ex.P2) on 04.06.2002, almost three months later. However, even after three months, the defendant did not come forward to execute the sale deed. Consequently, the plaintiff filed the suit on 30.08.2002.

28. In these circumstances, the plaintiff has complied with the stipulations given under Section 16C of the Specific Relief Act and has proved his case positively. Within three months, the plaintiff issued the first legal notice on 18.08.2001, followed by another notice on 01.03.2002, in compliance with Section 16C of the Specific Relief Act, which demonstrates his readiness and willingness to perform his part of the contract. Additionally, the remaining amount of Rs. 39,100/- was deposited



S.A.No.1066 of 2012

by the plaintiff on 01.12.2002. The plaintiff has established his case in accordance with law and is, therefore, entitled to the relief of specific performance of the contract. The Substantial questions of law are answered in favour of the plaintiff.

29. This Court does not find any good reason to upset the findings of the First Appellate Court. This Court does not find any perversity or illegality in the findings of the First Appellate Court.

30. Based on the aforesaid discussions and observations, the Second Appeal stands dismissed. The judgment and decree granted by the First Appellate Court in A.S.No.24 of 2010, dated 27.06.2012, stands confirmed. The defendant is granted two months from the date of receipt of copy of this judgment to execute the sale deed. Failing which, the sale deed shall be executed by the Trial Court. There is no order as to costs. Connected miscellaneous petitions, if any, are closed.

27.03.2025

nvi

Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

13/16



WEB COPY



S.A.No.1066 of 2012

To

1. The Subordinate Judge, Ranipet
2. The District Munsif, Sholinghur
3. The V.R.Section, High Court, Madras.

14/16



WEB COPY



S.A.No.1066 of 2012

R.KALAIMATHI, J.,

nvi

S.A.No.1066 of 2012



WEB COPY



S.A.No.1066 of 2012

27.03.2025