



S.A.No.62 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

S.A.No.62 of 2012
in M.P.No.1 of 2012

BALAJI

...Appellant/Appellant/ Defendant

Vs.

DUR AISAMY

S/o Kali Rep. By Power Agent
Shanthi

...Respondent/Respondent/ Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.57 of 2009 dated 29.04.2010 passed by the Principal Subordinate Judge, Tindivanam, confirming the Judgment and Decree passed in O.S.No.128 of 2007 dated 16.09.2009 passed by the Additional District Munsif Court, Tindivanam.

For Appellant : Mr.D.Sai Kumaran

For Respondent : Mr.M.Jagadheesan



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JUDGMENT

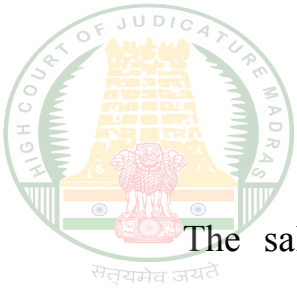
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Against the order of dismissal dated 29.04.2010 passed in A.S.No.57 of 2009 by the Principal Subordinate Judge, Tindivanam, the sole appellant/defendant has preferred this Second Appeal.

2. Parties are indicated herein as per their litigative status and ranking before the trial Court.

3. Heard the arguments advanced by the learned counsel for the appellant/defendant and the learned counsel for the respondent/plaintiff.

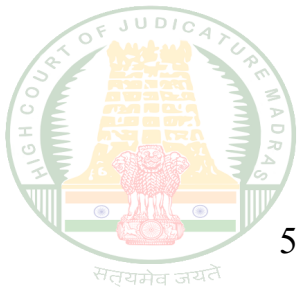
4. According to the plaintiff, the suit property belongs to the defendant. Suit was conducted by the power agent of the respondent/plaintiff, namely Shanthi, who is the cousin sister of defendant's mother. It is the defendant who made arrangements to sell the suit property in the presence of the said Shanthi and the plaintiff agreed to purchase the suit property and the defendant executed a sale agreement in favour of the plaintiff on 08.11.2006 in the presence of plaintiff's power agent Shanthi.



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The sale consideration was fixed at Rs.20,000/- and on the date of execution of sale agreement, in the presence of the power agent of the plaintiff, the plaintiff paid a sum of Rs.13,000/- to the defendant. Three months' time was fixed for execution of sale deed by the defendant. It was also agreed between the plaintiff and the defendant that the defendant would execute sale deed either in favour of the plaintiff or any other person at the instance of the plaintiff. It was also agreed upon if necessary, the signatures of the defendant's legal heirs to be obtained. The plaintiff has been ready and willing to perform his part of contract. As the defendant was protracting to execute the sale deed and he was trying to dispose of the properties to the third parties for enhanced sale consideration, a public notice in Dhina Thandhi daily newspaper was given on 17.12.2006, informing the public that the defendant has executed an agreement for sale and after the issuance of public notice, if anybody purchases the suit property, the sale is not valid. Plaintiff issued a legal notice on 04.01.2007, enclosing copy of the public notice to the defendant. As the defendant did not come forward to execute the sale deed, a suit for specific performance was laid by the plaintiff herein.



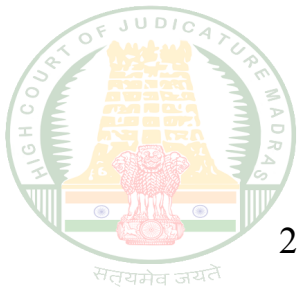
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5. Contending Contra, it is stated by the defendant that the defendant's father died in the year 1990. The defendant's father namely Padmanaban had a brother, namely, Muthu Krishnan. Muthu Krishnan's wife is Shanthi who is none other than his mother's cousin sister. His senior paternal uncle Muthu Krishnan with an intention to grab the property and created a sale agreement. Muthu Krishnan told him that he is in need of money and he has to believe Muthu Krishnan's statement to the effect that the suit property can be sold for a sum of Rs.45,00,000/- and, without filling up the advance amount sale consideration and the name of the purchaser, he signed in the sale agreement on the compulsion of the said Muthu Krishnan. He did not have the intention to execute the sale deed. He did not give consent to effect sale. The value of the suit property was Rs.75,000/- at the time of execution of sale agreement.

6. Based on the rival pleadings, the following issues were framed by the trial Court.

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



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2. Whether the plaintiff is entitled for the refund of advance money

of Rs.13,000/- at 12% interest?

3. Whether the contention of the defendant to the effect that without consent he executed the sale agreement is correct or not?

4. To what other relief the plaintiff is entitled to?

7. At trial, to substantiate the plaint details on the plaintiff's side three witnesses have been examined and seven documents were marked. On the side of the defendant, one witness is examined.

8. The trial Court, upon consideration of oral and documentary evidence and after hearing both sides, concluded that the plaintiff has proved that he has been ready and willing to perform his part of contract and the relief of specific performance was granted in favour of the plaintiff by granting three months time to execute the sale deed.

9. Aggrieved by the judgment and decree dated 16.09.2009 passed in O.S.No.128/2007 by the Additional District Munsif Court, Tindivanam, the sole defendant herein preferred an appeal before the Principal Subordinate



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Judge, Tindivanam, in A.S.No.57 of 2009 dated 29.04.2010. Upon

consideration of the entire records and after hearing the arguments, the First

Appellate Court also came to the conclusion that the plaintiff has been ready and willing to perform his part of contract and dismissed the appeal by confirming the judgment and decree passed by the Additional District Munsif Court, Tindivanam.

10. The learned counsel for the appellant would vehemently argue that the sale agreement dated 08.11.2006 is not a valid document for the reason that the date, sale consideration and advance amount details were filled up at a later point of time in the absence of the defendant and therefore the sale agreement can never be considered as a valid agreement in the eye of law and the plaintiff is not entitled for any relief. He would further contend that as the plaintiff did not get into the box, his pleadings can never be considered. On the plaintiff side, P.W.1 Shanthi Muthu Krishnan and Muthu Krishnan junior paternal uncle of the defendant were examined as P.W.1 and P.W.2.

11. Per contra, the learned counsel for the respondent/plaintiff would



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strenuously contend that the defendant executed the sale agreement on 08.11.2006 fixing the sale consideration at Rs.20,000/- and received a sum of Rs.13,000/- as an advance. Time fixed for the performance is three months. The plaintiff has been always ready and willing to perform his part of the contract. As the defendant did not come forward to execute the sale deed by receiving the remaining sale consideration, as he was protracting to execute the sale deed, he laid the suit for the relief of specific performance. In the alternate for the return of advance amount at 12% interest.

12. 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.

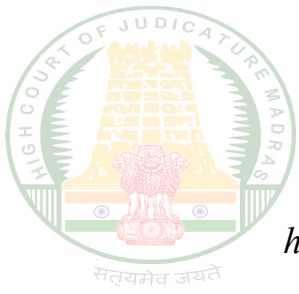
13. It is relevant to refer to the observations made by the Apex Court in *Nirmala Anand v. Advent Corporation (P) Ltd.*, reported in (2002) 8 SCC 146, a three judge bench of the Apex Court held as under:



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"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 of 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 considerations 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 alone, 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 considerations to be kept in view is as to who is the defaulting party. It is also to be borne in 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 specific performance. There may be other circumstances on which parties may not



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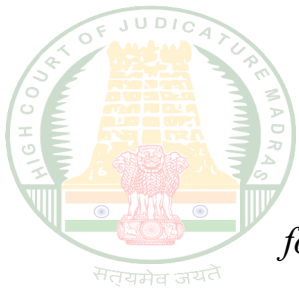
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have any control. The totality of the circumstances is required to be seen.”

14. In ***K.Prakash v. B.R.Sampath Kumar*** reported in (2015) 1 SCC

597, the Apex Court observed as under:

"16.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 under [Section 20](#) of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements



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for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance”.

15. The signature of the defendant found in the sale agreement is not in dispute. The main contention of the defendant is that he did not execute the sale agreement to effect sale. It is relevant to note that P.W.1 Shanthi who is the power agent of the plaintiff would depose that in the presence of the defendant and his mother with the help of her husband, the sale consideration was fixed as Rs.1,000/- per cent. P.W.1 herself would state that the details of name, sale consideration, advance amount were duly filled up in the presence of the defendant. Thereafter only, the defendant signed in the suit sale agreement. In fact the plaintiff tendered the amount to her husband and her husband/P.W.2 gave the advance amount to the defendant in her presence. The said details have been spoken out in detail by her husband P.W.2.

16. It is pertinent to refer to the evidence of D.W.1, the sole defendant herein. In fact he has sold other properties and arrangements to sell those properties were made by Muthu Krishnan and yet another person



who belongs to his native. It is also relevant to cull out the evidence of

WEB CD.W.1 which is given hereunder:

“...எனது தந்தையார் இறந்துவிட்ட
காரணத்தினால் பின்னர் அந்த கிராமத்தில்
சொத்துக்கள் எங்களுக்கு தேவையில்லை என்ற
காரணத்தினால் அதனை கொஞ்சம்
கொஞ்சமாக விற்பனை செய்கிறோம் என்றால்
எனக்கு பணம் தேவைப்பட்ட காரணத்தினால்
அதை நாங்கள் விற்பனை செய்தோம்”

17. It is the specific evidence of D.W.1 that he went through all the ten sale agreements. When D.W.1 has deposed that for necessity he sold the property. On the other hand, he has deposed that he did not have any interest to sell the property are contrary to each other and it explicates that he has not spoken the truth. Sale agreement has been attested by three witnesses.

18. As per Section 101 of Evidence Act, one who pleads has to prove. When the defendant having admitted his signature found in the sale agreement has contended that the sale agreement is a forged document, but,



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the defendant has not taken any steps to discharge the burden placed on him. The suit sale agreement is dated 08.11.2006 and public notice in Dhina Thandhi, daily newspaper was given by the plaintiff on 17.12.2006, within six weeks from the date of Ex.A3 sale agreement. Further more, within two months from the date of Exhibit A3-sale agreement, the plaintiff sent a legal notice to the defendant calling upon him to execute the sale deed after receiving the remaining sale consideration. The defendant had sent two reply notices dated 22.01.2007 and 07.03.2007 respectively. The defendant has examined himself as D.W.1 and no other witness was examined on his side.

19. In consideration of the evidence of power agent of the plaintiff P.W.1 and her husband P.W.2 and the evidence of D.W.1 (defendant) and after appreciating the entire documents exhibited by both sides, the 1st Appellate Court came to the conclusion that the plaintiff has proved his case as per Section 16(c) of Specific Relief Act 1963 to the effect that the plaintiff has been ready and willing to perform his part of contract and decreed the suit in favour of the plaintiff. This Court does not find any perversity or infirmity in the findings of 1st Appellate Court. No substantial



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question of law arise for consideration.

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20. Based on the aforestated discussions and observations, this Second Appeal stands dismissed. There is no order as to costs. Sequel to this judgment and decree passed in A.S.No.57 of 2009 dated 29.04.2010 passed by the Principal Sub-Court, Tindivanam stands confirmed. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Speaking / Non-speaking order
gbi

To:

1. The Principal Subordinate Judge,
Tindivanam.
2. The Additional District Munsif Court,
Tindivanam.
3. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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