



S.A.No.164 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.05.2025

CORAM:

THE HONOURABLE MRS. JUSTICE **R.KALAIMATHI**

S.A.No.164 of 2013

1.M.Sree Ramulu
2.Dhyana Lakshmi

... Appellants/Defendants

Vs.

1.Krishnan(died)
2.K.Ganambal
3.K.Magendran
4.K.Uma
5.K.Dhandapani
6.K.Sivakumar
7.K.Kalaivani
(Sole respondent died, R2 to R7 are brought
on record as LR's of deceased sole respondent
vide order of this Court in CMP.Nos.2918, 2920,
& 2921 of 2024 dated 18.03.2024)

... Respondents/Plaintiffs

This Second Appeal is filed under Section 100 of C.P.C. to set aside the Judgment and decree dated 15.09.2012 passed in A.S.No.38 of 2011 on the file of the Principal District Court, Krishnagiri, confirming the Judgment and decree dated 26.11.2010 passed in O.S.No.21 of 2009 by the Principal Subordinate Court, Krishnagiri.

For Appellants : Mr.D.Vijendran

For R2 to R6 : Mr.R.Rajaramani



S.A.No.164 of 2013

JUDGMENT

WEB COPY

This second appeal has been preferred by the defendants against the Judgment and Decree dated 15.09.2012 passed in A.S.No.38 of 2011 by the Principal District Court, Krishnagiri.

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

3. According to the plaintiff, the suit property originally belongs to the first defendant, by way of purchase, under a registered Sale Deed in the year 1999. The first defendant entered into an agreement of sale with the plaintiff on 24.12.2008, agreeing to sell the suit schedule mentioned property for a sale consideration of Rs.1,08,050/- at the rate of Rs.21,600/- per cent. On the date of the said sale agreement, the first defendant received a sum of Rs.48,050/- as an advance. The first defendant agreed to receive the remaining part of sale consideration of Rs.60,000/- within a period of three months and thereafter to execute the sale deed in favour of the plaintiff.

3.1. Though time is not the essence of contract in an agreement for sale, the plaintiff from the very beginning has always been ready and willing to perform his part of contract and approached the first defendant on several



S.A.No.164 of 2013

occasions with the balance sale consideration amount and expressed his readiness and willingness to perform his part of contract. But the first defendant was postponing to perform his part of contract.

3.2. He issued a legal notice on 09.02.2009 to the defenddnt expressing his readiness and willingness to perform his part of the contract. The first defendant sent a reply notice on 13.02.2009 with untenable pleas. The scribe who prepared the agreement for sale has taken the signature of the second defendant, even though she has no title or interest in the suit property, she is also added as a party for the final adjudication. No relief is sought for as against the second defendant herein.

4. Per contra, on behalf of the 1st defendant, it has been averred that execution of the sale agreement is not in dispute. In fact, the first defendant had been ready and willing to perform his part of contract, and only the plaintiff was not ready and willing to perform his part of contract within a period of three months.

5. Based on the divergent pleadings, the Trial Court framed the relevant issues. At trial, to substantiate the plaint details, on the plaintiff's side, three witnesses were examined and four documents were marked. Ex.A1 is the Sale Agreement dated 24.12.2008 executed by the first and second defendant



S.A.No.164 of 2013

in favour of the plaintiff in respect of the suit property. Ex.A4 is the copy of sale deed dated 28.12.1999 in the name of first defendant in respect of the suit property. On the defendants' side, four witnesses were examined and four documents have been marked.

6. Upon consideration of oral and documentary evidence of both sides and after hearing the arguments advanced by the learned counsels on either side, the trial Court held that the plaintiff having proved his readiness and willingness to perform his part of contract is entitled for the relief of specific performance and decreed the suit in entirety, granting two months time for the defendants to execute the sale deed in favour of the plaintiff.

7. Aggrieved, the defendants preferred appeal before the Principal District Judge, Krishnagiri in A.S.No.38 of 2011. In consideration of the entire case records and the arguments advanced by the learned counsels for both sides, the First Appellate Court held that the plaintiff has issued legal notice after the defendants refused to execute the sale deed. But the defendants having received the said legal notice, sent a reply notice stating that stipulated time is over with untenable pleas and concluded that the plaintiff is entitled for the relief of specific performance and other relieves and confirmed the Judgment and Decree of the Trial Court.



S.A.No.164 of 2013

8. Against the said findings of the First Appellate Court given in favour of the plaintiff, the defendants have preferred this second appeal.

WEB COPY

9. 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, since the date of agreement till the trial. Therefore, the burden lies on the plaintiff to prove the said 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.

10. As regards the suit for specific performance, it is relevant to refer to the observations made by the Apex Court 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 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



WEB COPY



S.A.No.164 of 2013

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

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



S.A.No.164 of 2013

WEB COPY

12. The first and foremost point is that the execution of agreement of sale by the first and second defendant is not in dispute. The suit property to an extent of 0.05 cents of land situated at Veeramalai Village of Pochampalli Taluk, Krishnagiri District in S.No.407/2A and 2B belongs to the first defendant, by way of purchase under sale deed dated 28.12.1999 (Ex.A4). The second defendant is the wife of the first defendant herein. Though the suit property was purchased by the first defendant and as the second defendant has signed in the agreement for sale (Ex.A1), the plaintiff would state that in order to have a proper adjudication, the second defendant has been made as a party to the suit.

13. The plaintiff has examined himself as P.W.1. He has filed his proof affidavit in line with the plaint details. P.W.2 – Siva, is the scribe of Ex.A1, P.W.3 – K.Krishnan S/o.Kuppusamy has been examined as attesor to Ex.A1 Agreement for sale.

14. The remedies sought for by the plaintiff is an equitable remedy. Therefore, the pivotal issue is that whether the plaintiff has approached this Court with clean hands or not? More so, the conduct of the parties have to be examined with reference to the grant of relief of specific performance.



S.A.No.164 of 2013

WEB COPY

15. The suit property, no doubt is owned by the first defendant. But the sale agreement was executed by the owner of the suit property namely, the first defendant and the second defendant, his wife. However, the plaintiff has taken pains to examine the scribe and one of the attestors to Ex.A1 – Sale Agreement. Sale Agreement has been executed on 24.12.2008. It is well settled that in a suit for specific performance as per Section 16(c) of the Specific Relief Act, 1963, the plaintiff shall plead and prove that he has been ready and willing to perform his part of the contract.

16. P.W.1 would state that he approached the first defendant on several occasions with the balance amount of Rs.60,000/- sale consideration. But as the first defendant was postponing to perform his part of the contract, he was constrained to issue legal notice to the defendants on 09.02.2009. He issued a notice within 1 1/2 months from the date of Ex.A1- Sale Agreement. P.W.1 also would state that he has deposited the remaining sale consideration of Rs.60,000/- into the Court as the first defendant refused to receive the same.

17. He has issued legal notice to the defendants calling upon them to receive the remaining part of sale consideration and to execute and register the Sale Deed in his favour as per the terms of Ex.A1 - Agreement for sale. The plaintiff who is a vendee as per the Ex.A1 – Sale Agreement, has duly



S.A.No.164 of 2013

proved his readiness and willingness to perform his part of contract in clear terms. As the defendants sent a reply notice with untenable pleas, P.W1/plaintiff would state that he laid the suit for specific performance and deposited the remaining sale consideration into the Trial Court.

18. In the given circumstances, as the execution of the sale Agreement was also not in dispute and in consideration of the above said details, the First Appellate Court has rightly dismissed the appeal preferred by the defendants.

19. The plaintiff has made out a strong case:-

i) By issuance of legal notice to the defendants herein within two months from the date of sale agreement, expressing his readiness to perform his part of the contract.

ii) That apart, the plaintiff has deposited the remaining part of the sale consideration of Rs.60,000/- into the Court indicating his willingness to perform his part of the contract.

20. This Court is of the considered view that the Judgment and Decree of the First Appellate Court does not suffer from any perversity or infirmity and this Court also does not find any good reason to upset the findings of the First Appellate Court. No substantial questions of law arise for consideration.



WEB COPY



S.A.No.164 of 2013

R.KALAIMATHI,J.

kkd

21. Based on the aforesaid observations and discussions, this Second Appeal stands dismissed. Sequel to this, the Judgment and decree granted by the Principal District Court, Krishnagiri in A.S.No.38 of 2011 dated 15.09.2012 stands confirmed. There is no order as to costs. Connected miscellaneous petition if any, stands closed.

22.05.2025

kkd

Internet:Yes

Index:Yes/No

Speaking/Non speaking order

To

1. The Principal District Court, Krishnagiri,
2. The Principal Subordinate Court, Krishnagiri.

S.A.No.164 of 2013