



S.A.No.534 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

JUDGMENT RESERVED ON : 23 / 10 / 2024

JUDGMENT PRONOUNCED ON : 04 / 06 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.534 OF 2021
AND
CMP NO.11147 OF 2021

K.Perumal

... Appellant / Appellant /

1st Defendant

Vs.

1.Sudha

... 1st Respondent/1st Respondent

Plaintiff

2.The Sub Registrar

Sub Registrar Office

Chetpet,

Thiruvannamalai District.

... 2nd Respondent / 2nd Respondent /

2nd Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated January 29, 2021 made in A.S.No.57 of 2017 on the file of the Additional District Court (FTC), Arani, confirming the Judgment and Decree dated December 5, 2013 made in O.S.No.89 of 2007 on the file of the Sub Court, Arani.

Page No.1 of 18



WEB COPY



S.A.No.534 of 2021

For Appellant : Mr.Thilageswaran
for Mr.N.Elumalai

For Respondent-1 : Mr.Ralph V. Manohar

For Respondent-2 : Mrs.R.Anitha

Special Government Pleader

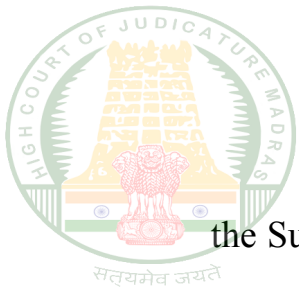
J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated January 29, 2021 passed in A.S.No.57 of 2017 by the 'Additional District Court (FTC), Arani' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated December 5, 2013 passed in O.S.No.89 of 2007 by the 'Sub Court, Arani ' ['Trial Court' for brevity] was confirmed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. Originally, the Suit Property belonged to the first defendant. The first defendant entered into an Agreement for the sale of



WEB COPY

the Suit Property to the plaintiff on January 6, 2007, for Rs.1,20,000/-. As per the Sale Agreement, the Sale Deed was to be executed by the first defendant before March 2007. Accordingly, an advance amount of Rs. 15,000/- was paid by the plaintiff to the first defendant. According to the plaintiff, she was always ready and willing to perform her part of the contract, but the first defendant refused to receive the balance amount of the consideration and evaded executing the Sale Deed. Therefore, the plaintiff sent a legal notice dated November 16, 2007, to the first defendant. The first defendant failed to respond and did not come forward to execute the Sale Deed. Since the first defendant failed to perform his part of the contract, the plaintiff filed a Suit for specific performance and for a permanent injunction restraining the first defendant from alienating the Suit Property to third parties and injunction restraining the Sub Registrar, Chetpet (second defendant) from registering any document pertaining to the Suit Property, if any alienation is effected by the first defendant in favour of third parties.

FIRST DEFENDANT'S CASE

4. The first defendant filed a written statement denying the allegations made by the plaintiff. It is specifically averred that the



WEB COPY

Agreement for the sale of the Suit Property was entered into on January 6, 2007, and the Sale Deed was to be executed before the end of March 2007, as the first defendant was in dire need of money to discharge family debts and purchase cattle. Hence, time is the essence of the Sale Agreement. But, the plaintiff was not ready and willing to purchase the Suit Property within the stipulated time. Consequently, the first defendant has incurred loss and could not repay his debts. Hence, the plaintiff is not entitled to the discretionary relief of specific performance of the contract. Thus, the first defendant sought to dismiss the Suit.

SECOND DEFENDANT'S CASE

5. The second defendant was called absent and remained *ex-parte* before the Trial Court.

TRIAL COURT

6. At trial, plaintiff was examined as P.W.1 and one Pichaiappan, father of the plaintiff, was examined as P.W.2 and Ex-A.1 to Ex-A.13 were marked on the side of the plaintiff. The 1st defendant was examined as D.W.1 and one Selvaraj was examined as D.W.2 and no document was marked on the side of the defendants.



S.A.No.534 of 2021

7. After full-fledged trial, the Trial Court concluded that time

was not the essence of the contract and that the plaintiff was ready and willing to perform her part of contract. Accordingly, it partly-decreed the Suit granting the relief of specific performance and dismissing the Suit *qua* injunction.

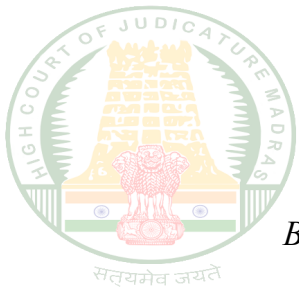
FIRST APPELLATE COURT

8. Feeling aggrieved, the 1st defendant preferred an appeal before the First Appellate Court, which, after hearing both sides, concurred with the findings of the Trial Court and dismissed the appeal as devoid of merits confirming the Judgment and Decree of the Trial Court.

SECOND APPEAL

9. Feeling aggrieved, the 1st defendant has preferred the present Second Appeal under Section 100 of the Code of Civil Procedure, 1908 and it was admitted on August 6, 2021 on the following substantial questions of law:

"A. Whether the Courts below were correct in law in failing to consider the fact that time was the essence of the contract particularly taking into account the recitals of Ex.A.1?



WEB COPY



S.A.No.534 of 2021

- B. *Whether the Courts below were correct in law in coming to the conclusion that the plaintiff was ready and willing to perform her part of the contract particularly when the plaintiff has entered into other agreement of sale and her bank balance does not show the necessary balance particularly in respect of Ex.A.7 and Ex.A.8?*
- C. *Whether the Courts below were correct in ignoring the conduct of the plaintiff especially when the suit is one for specific performance?"*

ARGUMENTS:

10. Mr.Thilageswaran, learned Counsel for the appellant / 1st defendant would argue that the Trial Court as well as the First Appellate Court miserably failed to consider that time is the essence of the contract and that the plaintiff was not ready and willing to perform her part of contract within the stipulated period. Further, the Trial Court as well as the First Appellate Court failed to consider the fact that the plaintiff issued notice only on November 16, 2007 and filed the Suit on December 12, 2007. The Trial Court as well as the First Appellate court, erred in holding that the plaintiff was ready and willing to perform his part of the contract and decreeing the Suit. Accordingly, he prayed to allow the Second Appeal, and set aside the Judgment and Decree passed by the



First Appellate Court as well as the Trial Court.

WEB COPY

10.1. He would rely on the following decisions:

- (i) Judgment of Hon'ble Supreme Court in ***Chand Rani Vs. Kamal Rani***, reported in ***(1993) 1 SCC 519***;
- (ii) Judgment of Hon'ble Supreme Court in ***Katta Sujatha Reddy Vs. Siddamsetty Infra Projects***, reported in ***(2023) 1 SCC 355***.

11. Per contra, learned Counsel for the 1st respondent / plaintiff would contend that the Trial Court as well as the First Appellate Court rightly concluded that time is not the essence of contract viz., Ex-A.1 – Sale Agreement. Further, the plaintiff was always ready and willing to perform her part of contract. Further, the 1st defendant did not deny the buying capacity of the plaintiff. The plaintiff purchased some other properties under Ex-A.9 to Ex-A.12 during the relevant time and the said fact would establish that the plaintiff was having sufficient income and wherewithal to purchase the Suit property within the stipulated period. The Trial Court as well as the First Appellate Court after considering the evidence and documents has rightly arrived at a decision. There is no warrant to interfere in the said decisions. There is no question of law



much less substantial question of law involved in this appeal.

WEB COPY Accordingly, he prayed to dismiss the Second Appeal.

11.1. He would rely on the following decisions:

- (i) Judgment of Hon'ble Supreme Court in ***Chand Rani Vs. Kamal Rani***, reported in ***CDJ 1979 SC 248***;
- (ii) Judgment of Hon'ble Supreme Court in ***A.Kanthamani Vs. Naseer Ahmed***, reported in ***(2023) 1 SCC 355***.

DECISION

12. This Court has considered the submissions made on either side and perused the evidence available on record.

13. Ex-A.1 is the Sale Agreement entered between the plaintiff and the first defendant whereby the first defendant agreed to sell the Suit property to the plaintiff. Sale price was fixed as Rs.1,000/- per Cent. The total extent of Suit Property is approximately 1 Acre 20 Cents [0.48 Hectares]. On the date of Sale Agreement, the first defendant received a sum of Rs.15,000/- as advance. The balance sale price is Rs.1,05,000/-. Three months' time was agreed by the parties for



performance. There is no dispute with regard to the aforesaid facts.

WEB COPY

Time as essence of the contract

14. The first question is whether time is the essence of the contract viz., Ex-A.1. It is settled law that in a Suit for specific performance, in general, time is not essence of contract in respect of immovable property, unless and until it is specifically agreed between the parties. The intention of the parties is to be taken into account while deciding whether time is essence of contract or not.

15. In this case, in Ex-A.1 it has been stated that the first defendant intended to sell the Suit property to meet his urgent family expenses. In his evidence as D.W.1, he has stated that he was in need of money for the purpose of meeting out the marriage expenses of his daughter. Relevant portion of Ex-A.1 – Sale Agreement reads thus:

' . . . விக்கிரைய ஒப்பந்தம் யாதெனில் என்
அவசர நிமித்தம் குடும்ப சிலவிற்காக கீழ்க்கண்ட
நிலத்தை சென்ட் 1க்கு ரூபாய் 1000-00
எழுத்தால் ரூபாய் ஒரு ஆயிரம் வீதம்
விக்கிரையம் பேசி முன்பணமாக ரூபாய் 15000-
00 எழுத்தால் ரூபாய் பதினைந்தாயிரம் மட்டும்
பெற்றுக்கொண்டேன். மீதி ரூபாய் மார்ச்சு



WEB COPY



S.A.No.534 of 2021

மாதம் முடிய பத்திரபதிவு செய்து கொள்ள வேண்டியது தவிர இந்த தேதி நிர்ணயத்திற்குள் பணம் கட்டி பத்திரபதிவு செய்ய தவறினால் நீர் கட்டிய தொகை இழக்க நேரிடும். மேலும் நான் பத்திர பதிவு செய்ய தவறினால் நான் வாங்கிய தொகைக்கு இருமடங்கு கட்டி விடுகிறேன். மேலும் நாம் வாய்மொழி கிரையம் செய்துள்ளோம்.'

15.1. The above recitals would show that the plaintiff was in urgent need of money towards family expenses and only for that purpose, he intended to sell the Suit property. Further, as stated *supra*, in his evidence, he has deposed that he intended to sell the Suit property for the marriage expenses of his daughter. Urgent family expenses includes one's son's / daughter's marriage expenses. These would clearly show that the parties intended time to be the essence of the contract. Thus, the Trial Court was not right in its findings that the first defendant introduced a new plea *viz.*, daughter's marriage during his evidence and that time is not the essence of contract. The First Appellate Court also failed to consider the said aspects.

16. In *Chand Rani's Case* relied on by either side, Hon'ble Supreme Court held that, in general, there is no presumption as to time

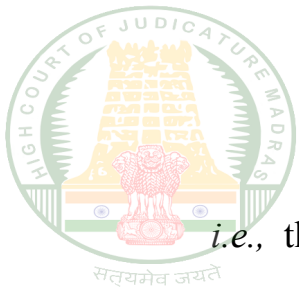
Page No.10 of 18



WEB COPY

being an essence of a contract for sale of immovable property. Further, it was held that even if time is not an essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are so evident and that such conditions include the express terms of the contract, nature of property and the attending circumstances. In the case on hand, there is an express mention that the sale is to meet out urgent family expenses. Further, D.W.1 / first defendant has also deposed that the sale was to meet out his daughter's marriage expenses. Notice was issued by plaintiff only in November 2007 *i.e.*, after a delay of 8 months. The delay is not reasonable considering the fact that the purpose of the sale was to meet the urgent monetary requirement of first defendant daughter's marriage. The plaintiff, who contends that she was ready and willing to perform his part of Ex-A.1 during the stipulated time period and it was the first defendant who was evasive, ought to have been proactive and issued a Notice as soon as the time period prescribed in the contract came to an end, but she failed to do.

17. Originally the case of the plaintiff is that the plaintiff was ready and willing to perform her part of contract as per the terms of the agreement and tendered the balance sale price within the stipulated period



S.A.No.534 of 2021

i.e., three months from the date of execution of Ex-A.1, but the first defendant refused to execute the Sale Deed. But during cross examination, P.W.1 / plaintiff has introduced a new plea that the first defendant agreed to sell some other 40 Cents which is being enjoyed by him along with the Suit Property. The said fact was not stated in the pleadings as well as in Ex-A.2 - Notice. Moreover, the Suit Property has been sub-divided as 70/23, and measures 1.18 Acres (0.48 Hectare). There is no evidence available on record to show that the first defendant was enjoying an extent of 1 Acre 60 Cents *i.e.*, the Suit Property along with the said 40 Cents. Further, there is no evidence available on record to show that the first defendant delayed the execution of Sale Deed by stating that he would purchase 40 Cents from Subramani and thereafter, transfer the same to the plaintiff along with the Suit Property. Moreover, the plaintiff had purchased the said 40 Cents from the said Subramanian on February 5, 2009 by paying consideration, vide Ex-A.11 – Sale Deed and it is seen that the property covered in Ex-A.11 *i.e.*, said 40 Cents, is in a separate Survey Number *viz.*, Survey No.70/29. It is settled law that without pleadings, any amount of oral evidence is of no use. Hence, the Trial Court rightly arrived at a finding that the new plea raised by the



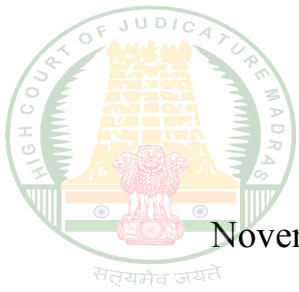
plaintiff is untenable in law.

WEB COPY

18. The new plea is untenable in law, and there is no other reason assigned by the plaintiff for having waited till November 2007 for issuing Ex-A.2 – Notice. As stated *supra*, she ought to have proactively issued Notice soon after the completion of the prescribed time period, when according to her the first defendant was not ready. Hence, ***Chand Rani's Case*** does not come to the aid of the plaintiff. Therefore, this Court concludes that the parties to Ex-A.1 had agreed / intended that time is the essence of contract for Ex-A.1 - Sale Agreement. Accordingly, substantial question of law (A) is answered in favour of the appellant / first defendant and against the respondent / plaintiff.

Readiness and Willingness

19. As already stated, date of Ex-A.1 Sale Agreement is January 6, 2007. The period for performance of contract is end of March, 2007. Notice was issued on November 16, 2007. There is no acceptable evidence available on record to show that on or before March 30, 2007, the plaintiff approached the first defendant and tendered the balance sale consideration calling upon to execute Sale Deed. Notice was issued on



November 16, 2007 *i.e.*, after the stipulated period in the Sale Agreement.

WEB COPY

The burden is upon the plaintiff to prove that she approached the first defendant along with the sale price and called upon to execute the Sale Deed. In this connection, the plaintiff failed to examine any person connected with the Sale Agreement. The plaintiff's side examined P.W.2 who is none other than the plaintiff's father. He deposed that he received some compensation amount from Award of Motor Accidents Claims Tribunal and gave the same to his only daughter / plaintiff. He has further deposed that at the time Ex-A.2 – Legal Notice to first defendant, plaintiff's bank balance was Rs.2686/- only.

20. This Court has perused Ex-A.7 - Bank Passbook of P.W.2 / plaintiff's father as well as Ex-A.8 – Bank Passbook of plaintiff. Ex-A.8 - Passbook of the plaintiff would show that a sum of Rs.2,50,000/- was deposited on November 27, 2006 by way of a cheque and the same was withdrawn by her on the same day. Again a sum of Rs.2,52,359/- was credited into plaintiff's account on January 29, 2007 and the same was withdrawn on the same day by the plaintiff. It is an admitted fact that the plaintiff purchased some other properties vide Ex-A.9 to Ex-A.12 between February 1, 2007 and September 9, 2012. At the end of day on



S.A.No.534 of 2021

January 29, 2007, Rs.27,156/- was lying on the plaintiff account, and on

February 3, 2007, Rs.25,000/- was withdrawn and thus, the lying balance

went down to Rs.2,156/- which remained the same until the deposit of

Rs.500/- on June 25, 2007.

21.Ex-A.7 – plaintiff's father Passbook, a sum of Rs.44,161/- was only lying on his bank account as on November 2006. To be noted, the plaintiff had advanced only Rs.15,000/- and the remaining sale consideration to be paid is Rs.1,05,000/-. From the above, it is clear that there was no sufficient balance in the bank accounts of the plaintiff and her father to perform their part of the contract. There is no evidence available on record to show that the plaintiff was ready and willing to perform her part of contract within the stipulated period. Further, the first defendant has deposed that the plaintiff issued notice on November 16, 2011 and immediately, filed the Suit leaving no time for him to send a reply notice. To be noted, the Suit was filed on December 12, 2007.

22. In *A.Kanthamani's Case*, Hon'ble Supreme Court held that the purchaser may not have money ready with him always to prove his readiness and willingness which could also be gathered from the



WEB COPY

attending circumstances. In this case, as stated *supra*, there is no evidence available on record to show that the plaintiff was ready and willing to perform her part of the agreement. She failed to send Notice within or shortly after the stipulated period and the reason assigned for the same is not plausible as discussed above. P.W.2, who is none other than the plaintiff's father, is not an independent witness and his evidence about the plaintiff's readiness and willingness does not inspire the confidence of this Court. In these circumstances, wherewithal of the plaintiff gains significance. Hence, this Court is of the view that ***A.Kanthamani's Case*** is not applicable to the facts and circumstances of this case.

23. Considering the cumulative facts and circumstances of the case, this Court is of the view that the plaintiff was not ready and willing to perform her part of contract within the agreed time period as per Ex-A.1. The substantial questions of law (B) and (C) are answered in favour of the first defendant and against the plaintiff.

24. Further, it appears that the plaintiff had deposited the balance sale consideration before the Court. If so, the plaintiff is entitled to claim the same along with any accrued interest thereon.



S.A.No.534 of 2021

RESULT

WEB COPY

25. In the result, the Second Appeal is allowed. Decree and

Judgment passed by the First Appellate Court as well as the Trial Court are set aside. The Suit is dismissed. Considering the facts and circumstances of the case, the parties shall bear their own costs.

Connected Civil Miscellaneous Petition is closed.

04 / 06 / 2025

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

TK

To

1.The Additional District Court (FTC)

Arni.

2.The Sub Court

Arni.

3.The V.R. Section

Madras High Court, Madras.



WEB COPY



S.A.No.534 of 2021

R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.534 OF 2021

04 / 06 / 2025

Page No.18 of 18