IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No. 17 of 2014

K. Annadurai .. Appellant

Versus

N. Suresh .. Respondent

Appeal Suit is filed under Section 96 of Civil Procedure Code against the judgment and decree dated 30.08.2013 made in O.S. No. 212 of 2011 on the file of the II Additional District Court, Erode.

For Appellant	:	Mr. N. Manokaran
For Respondent	:	Mr. V. Raghavachari, Senior Advocate for Ms. V. Srimathi

JUDGMENT

This Appeal Suit has been filed to set aside the Judgment and Decree dated 30.08.2013 passed in O.S. No. 212 of 2011 on the file of the learned Second Additional District Judge, Erode.

2. The brief fact, which are necessary for the disposal of this Appeal Suit, are as follows:-

2.1. As per the plaint averments, the Defendant was the owner of the plaint schedule property having acquired it by means of a registered settlement deed dated 13.07.2009 registered as document No. 3398 of 2009. Two years later, during March 2011, through a real estate broker, the Defendant offered to sell the suit property to a prospective purchaser. The Plaintiff evinced his interest to purchase the same and in the course of deliberation it was disclosed that the property is subjected to mortgage with one Krishnan of Rajajipuram, Erode for a sum of Rs.5,00,000/-. Therefore, it was stated by the Defendant that the debt has to be cleared and then conveyance of the property would be completed. Under such circumstances, the Plaintiff and the Defendant entered into an agreement of sale on 15.03.2011 whereby the Defendant agreed to sell the plaint schedule property for a total sale consideration of Rs.21,53,250/-. On the same date, a sum of Rs.2,00,000/- was paid as advance to the Defendant. The time for completion of the sale was stated as 15.09.2011. The Defendant's brother Ravi and broker Kaliappan signed as witnesses in the sale agreement. On 30.04.2011, the Plaintiff paid Rs.20,000/- to the Defendant and an endorsement was made on the sale agreement deed. The Plaintiff was always ready and willing to purchase the suit property as per the sale agreement deed. The Defendant however sought time to vacate the tenants in the suit property and deliver vacant possession. The Plaintiff Therefore, agreed for taking possession of the property free of any encumbrance. Inspite of the Plaintiff being ready and willing, the Defendant has not shown any sign of evicting the tenants from the suit property and to handover the vacant possession. In the meanwhile, the Defendant and his wife started to spread mis-information as though the suit properties are still available for sale. The Plaintiff on coming to know about the same through real estate broker tried to contact the Defendant through phone during the second week of August 2011 but the Defendant avoided it. The Plaintiff understood that the Defendant is not honoring the commitment and terms of the sale agreement deed entered into with the Plaintiff. Therefore, the Plaintiff had filed the suit for specific performance of contract. The Plaintiff has enough resources and wherewithal for meeting the fiscal commitment under the sale agreement. Therefore, the suit had been filed seeking specific performance of contract for sale of the property.

2.2. On notice, the Defendant entered appearance and filed written statement. The Defendant denied that the suit property was offered for sale to the Defendant through real estate broker during March 2011. The claim of the Plaintiff that there was deliberation between Plaintiff and Defendant for sale of the property was also denied by the Defendant. The Plaintiff is a financier who lends money only to persons who own immovable property. While lending money, he takes all types of precautions to collect the money by getting several signatures and thumb impressions on blank Rs.20 stamp papers, blank promissory note and concur sheets. The Defendant stated that he had mortgaged suit property for Rs.5,00,000/- with one Krishnan and he is paying interest at the rate of 2 ½ % per Rs.100/-. The Defendant with a view to minimise the interest rate approached the Plaintiff and enquired about the rate of interest for mortgage debt. After verifying the details of the property to be mortgaged, the Plaintiff assured him of a mortgage loan of Rs.5,00,000/- at the rate of Rs.2/- per Rs.100/- but he demanded that the Defendant should, apart from execution of registered mortgage deed, should execute a promissory note in Rs.20/- stamp paper, blank promissory note and blank green sheets (concur sheets) with his signature and thumb impression as security for proper repayment of loan. He also assured that the signed papers would not be misused at any point of time if the mortgage debt is cleared by the Defendant. Believing the words of Plaintiff, the Defendant executed mortgage deed mortgaging the suit property for Rs.5,00,000/- with an interest of Rs.2/- per Rs.100/- per month on 15.03.2011 registered as Document No.1767 of 2011 on the file of the Joint Sub-Registrar Office, in the name of business partner of the Plaintiff, S. Mani. On the same day the prior mortgage with Mr. A.

Krishnan was discharged. A receipt to that effect was registered as document No.1766 of 2011 in the office of the joint Sub-Registrar Erode.

2.3. According to the Defendant he was unable to pay interest of Rs.10,000/- for subsequent three months. While so, the Plaintiff and his partner Mani, one Kalliappan and Maruthamuthu came to the house of the Defendant during the absence of the Defendant and demanded the Defendant's wife Kasthuri and his daughters (1) Venilla, aged 15 years and Ragavi aged 14 years to vacate the suit property. The wife of the Defendant, sensing the foul play, approached the District Collector in the Public grievance day dated 20.06.2011 with a petition praying for protection of their personal property from the Plaintiff and his associates. The Police conducted an enquiry and the Plaintiff afraid of being booked under land grabbing case rushed to file this vexatious suit on the basis of sham and nominal fabricated agreement of sale as though the Defendant voluntarily executed it. According to the Defendant, no sale agreement was executed within an intention to sell the suit property. Neither it was intended to be purchased by the Plaintiff. The signed stamped papers, concur sheets and blank promissory notes were received by the Plaintiff only as a security for the mortgage loan. There is only mortgage debtor and creditor relationship between the Plaintiff and Defendant. The mortgagee S. Mani who is named in the mortgage deed dated 15.03.2011 and the Plaintiff are partners. Hence the said Mani is also a necessary party to the suit for proper adjudication. Except Rs.5,00,000/- received on 15.03.2011, the Defendant had not received any amount as alleged as advance from the Plaintiff. The market value of the suit property is about Rs.45,00,000/- whereas the alleged agreement of sale fixed sale price at a through away rock bottom price for which no sane and prudent man would agree to sell. The suit property is situated in the heart of Erode Corporation limit. There is no necessity for the Defendant to sell the suit property as it would amount to throwing away his grown up minor daughters and wife onto the streets which is unimaginable to the Defendant. Therefore, the Defendant seeks to dismiss the suit.

2.4. Based on the above pleadings, the following issues were framed by the learned II Additional District Judge, Erode.

> (i) Whether the Plaintiff is entitled to specific performance of contract for sale of the property after paying Rs.19,33,250/- to the Defendant.
>
> (ii) Whether the Plaintiff is entitled to the alternate relief of refund of advance amount of Rs.2,32,186/- towards interest for Rs.2,20,000/- paid as advance @ 12% interest.
>
> (iii) Whether the Plaintiff was ready and willing to perform his part of the contract.
>
> (iv) Whether the sale agreement deed is a Sham and

nominal?

(v) What other reliefs the Plaintiff is entitled to?

2.5. During the course of trial, the Plaintiff examined himself as P.W-1 and marked documents Ex.A-1 to Ex.A-3. Ex.A-1 is the registered sale agreement deed dated 15.03.2011. Ex.A-2 is the Encumbrance certificate dated 15.03.2011. Ex.A-3 is the endorsement made on the sale agreement deed dated 15.03.2011. Apart from PW1, Kaliappan, real estate broker was examined as P.W-2 who had introduced the Plaintiff to the Defendant. The Defendant examined himself as D.W-1, his wife Kasthuri was examined as D.W-2 and Ravi, brother of the Defendant and one of the witness to the sale agreement was examined as D.W-3.

2.6. On appreciation of the oral and documentary evidence, the learned II Additional District Judge, Erode by judgment dated 30.08.2013 made in O.S.No.20 of 2011 decreed the suit for specific performance and directed the Plaintiff to deposit Rs.19,33,250/- within 15 days from the date of judgment in the Court deposit and on such deposit, the Defendant was directed to execute the sale deed in terms of the sale agreement deed marked as Ex.A-1, failing which the Court, on its own, will execute the sale deed and hand over the possession of the suit property to the Plaintiff. Aggrieved by the same, the Defendant had filed this Appeal Suit.

3. Mr. N. Manokaran, learned Counsel for the Appellant submitted that the Plaintiff had filed the suit for specific performance of the agreement of sale under Ex.A-1. The suit property comprised of two tenements. The Defendant is in occupation of one such tenement and had leased out the another portion to a tenant. The learned Counsel for the Defendant-Appellant further submitted that the Defendant admits his signature in the sale agreement Ex.A-1 and the endorsement in Ex.A-3. However, he had executed Ex.A-1 purported to be a mortgage deed. The Defendant was made to believe that he is executing only a mortgage deed, but what was actually executed was the agreement of sale. There was no intention to sell the suit property and the intention was only to redeem the mortgage made with one Krishnan. Apart from Ex.A-1, the Plaintiff also obtained the signature in blank stamp papers towards security and created Ex.A-1. Such an admission made by the Defendant, admitting his signature in the agreement, Ex.A-1 can be made by him as contemplated under Sections 91 and 92 of the Indian Evidence Act.

4. According to the learned Counsel, the Defendant has signed Ex.A-1 without any intention to sell his only house property whereas the Plaintiff had obtained his signatures in blank stamp papers towards security

and created Ex.A-1. Such a plea is open to the Defendant in a suit for specific performance. It is not barred under Section 91 and 92 of the Indian evidence Act. Thus, the Defendant has not admitted Ex. A-1 and simultaneously sought to vary and contradictory the terms on which it was written.

5. With reference to readiness and willingness, the learned Counsel submitted that it cannot be presumed or assumed. There must be strong evidence to infer that the Plaintiff was always ready and willing to perform his part of the contract. In this case, in the entire evidence of P.W-1 he remained silent about his readiness and willingness. There is no piece of evidence available even to infer readiness and willingness on his part. The readiness and/or willingness of the Plaintiff must be established from the very inception of the contract under Ex.A-1 and it is a continuous process. Further, the financial resourcefulness of the Plaintiff for paying the balance sale consideration is also absent in his evidence. His capacity to mobilise the funds also has not been established. Whereas the pleadings of the Defendant would show that inspite of existence of Ex.A-1, the parties had different transaction and Ex.A-1 was no where intended to be acted upon. In support of his submission, the learned Counsel for the Appellant relied on the reported decision in ***2007 (3) LW 580 (DB)*** paragraphs 14 to 17, ***2018 (5) LW 84***

paragraphs 15, 16 and 19 and ***2017 (1) MWN 187*** paragraphs Nos.13 and 17.

6. Referring to the requirement of the expression 'readiness and willingness', the learned Counsel elaborated that readiness refers to financial capacity while willingness refers to conduct of the Plaintiff to perform his obligation. Section 16(c) of the Specific Relief Act mandates that the Plaintiff must *'plead and prove'* that he had performed or has always been ready and willing to perform the terms of the contract in express terms. The continuous readiness and willingness on the part of the Plaintiff is a condition precedent to grant the relief of specific performance. In this case, from the date of execution of Ex.A-1 till the date of decree and even thereafter, the Plaintiff has not asserted his continuous readiness and willingness. Even in the absence of any specific plea in the written statement, it is mandate that the Plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is no proof of compliance of his statutory mandate, the suit has to be dismissed. Thus, absolutely there is no oral or documentary evidences to prove the financial capacity of the Plaintiff to pay the balance amount of Rs.19,53,250/-. The Plaintiff has neither produced his bank statement nor any document to show that he has sufficient wherewithal or financially capable to raise the balance money in time. For exhibition of readiness and willingness, mere

averments in the plaint is not enough. There must be some legal evidence to show the financial capacity of the Plaintiff to mobilise the balance money. In this case, not even a Iota of evidence had been produced. In support of his submission, the learned Counsel for the Appellant relied on the reported decision in ***2011 (1) SCC 429*** paragraph 22 to 27, ***2018 (1) CTC 701*** paragraph 13 and ***2018 (5) LW 84*** (paragraph 20 and 22).

7. The learned Counsel proceeded to contend that the suit property was under mortgage with one Mr. Krishnan. The mortgage was a registered mortgage dated 25.02.2010, registered as document No.1381/2010 for Rs.5,00,000/-. It was cancelled on 15.03.2011 vide document No.1766/2011 under Ex.B-1. Immediately on the very same date and time, another mortgage deed dated 15.03.2011 document No.1767/2011 under Ex.B-2 was created in the name of S. Mani who is a partner of the Plaintiff. That apart, the Plaintiff had also obtained signatures of the Defendants in the blank non judicial stamp paper and other green sheets which were later exploited to create Ex.A-1 sale agreement deed dated 15.03.2011. P.W-2 Kaliappan is a witness to Ex.B-1 and also Ex.A-1 and Ex.A-3. Similarly D.W-3 K. Ravi signed as witness in Ex.B-2 and Ex.A-1. DW3 has categorically deposed that Ex.A-1 was not intended to sell the property, whereas it was for a loan transaction. The execution of Ex.B1

and Ex.B-2 and creation of Ex.A-1 on 15.03.2011 would cumulatively prove that they are the brainchild of the Plaintiff. From the tenor of Ex.B-1, Ex.B-2 and Ex.A-1 it can be inferred that the Defendant wanted to raise money to get rid of his high rate of interest. This situation of the Defendant was taken advantage of by the Plaintiff in a deceitful manner. The subject matter of the house is the only property for the Defendant to accommodate his family consist of himself, wife and two daughters measuring 2610 sq.ft. While so, there may not be any intention to sell the one and only property and there was no necessity for the Defendant from doing so. On the other hand, the intention of the Defendant was to get rid of a huge rate of interest with which the suit property was mortgaged for Rs.5,00,000/- with one Krishnan. This can also be inferred from the fact that on the same date of execution of Ex.A-1, the Defendant also redeemed the mortgage with Mr. Krishnan. In support of his submission, the learned Counsel for the Appellant relied on the reported decision in the case of ***2001 (6) SCC 600*** paragraph No 7 to 14, ***2018 (5) LW 84*** paragraph 19 and ***2012 (4) CTC 100*** paragraphs 20, 26 and 35.

8. The learned Counsel further stated that the Defendant has categorically denied the due execution and genuineness of Ex.A-1 and Ex.A-3. When the execution of unregistered document putforth by the Plaintiff was

denied by the Defendant, it is for the Plaintiff to prove the due execution and there is no obligation on the part of the Defendant to prove the negative. The trial Court is Therefore, not correct in holding that the Defendant has failed to prove that Ex.A-1 was not intended for sale. In support of his submission, the learned Counsel for the Appellant relied on the reported decision in the case of ***2008 (4) SCC 530*** paragraph 19.

9. It is further pointed out that there is no *consensus ad idem* for the Defendant to sell his property by executing a deed for Rs.5,00,000/-. The mere admission of signature of the Defendant in Ex.A-1 is not sufficient to prove the genuineness of Ex.A-1 agreement. The Plaintiff has to establish that there was a consensus ad-idem between the parties for transfer of property for a valuable sale consideration and only then, Ex.A-1 can be termed as valuable contract, capable of enforcing it before the Court. When two elements namely, the free consent and lawful consideration is absent in the document, such document cannot be treated as an agreement for lawful consideration in the eyes of law. The evidence of P.W-2 would show that he is a real estate broker and a tenant of the Plaintiff. Merely because P.W-1 and P.W-2 have stated about the execution of Ex.A-1, one cannot come to a conclusion that the transaction under Ex.A-1 was genuine. The evidence of P.W-1 and P.W-2 does

not satisfy the requirement of law to believe the genuineness of the transaction projected under Ex.A-1. In this context, reference was made by the learned Counsel for the Appellant to the reported decision in the case of ***2018 (1) CTC 701*** paragraphs 12 and 13.

10. Referring to Section 16 and 20 of The Specific Relief Act the learned Counsel contended that the Court is not bound to grant relief of specific performance merely because it is lawful to do so. Section 20(1) indicates that the jurisdiction to decree the specific performance is discretionary. Section 20 (2) has been couched in a way not to decree specific performance when (i) the Plaintiff takes unfair advantage over the Defendants (ii) the performance would involve some hardship on the Defendant which he did not foresee and (iii) the circumstances make it inequitable to enforce specific performance. Merely because the Plaintiff had proved his case, the Court need not grant decree of specific performance. The Plaintiff has to touch the conscience of the Court to invoke the discretion in his favour. The discretion should be based on sound, reasonable and guided by judicial principles. In this connection, the learned Counsel for the Appellant relied on the reported decision in the case of ***2017 (5) SCC 178*** paragraphs 7 to 12, ***1987 (supp) SCC 340*** paragraph 14 and ***2018 (1) CTC 701 (DB)*** Para

Nos. 12 and 13.

11. Thus, it is the assertive submission of the learned Counsel for the Defendant/Appellant that the Judgment and Decree of the trial court is perverse. The Appeal is to be allowed and the judgment and decree granting specific performance of contract for sale of the property by the learned II Additional District Judge, Erode in O.S.No.212 of 2011 dated 30.08.2011 is to be set aside.

12. Opposing the submissions made by the learned Counsel for the Defendant/Appellant, Mr. V. Raghavachari, learned Counsel for the Plaintiff-Respondent would vehemently contend that the execution of Ex.A-1 agreement had been proved by the Plaintiff by examining himself as P.W-1 and the attestor as P.W-2 and thereby satisfied the requirements under law. On the other hand, though DW1 and DW2 were examined, there are material contradictions between their in respect of the complaint given on 20.06.2011 under Ex.B-4. Therefore, their testimony has to be rejected as unreliable. In fact, after executing the sale agreement, the Defendant and his wife joined together solely with a view to avoid execution of the sale deed and to cause loss to the Plaintiff. The Defendant, having executed Ex.A-1 turned against

his obligation in view of the pressure given by his family members. The Defendant also voluntarily signed and has even admitted the execution of signing blank papers, while so, he is estopped from complaining that Ex.A-1 was created by utilising the signatures made by him in blank. The fact remains that after Plaintiff as well as the Defendant, along with their respective witnesses have signed Ex.A-1 only after taking a print out from the computer. Even otherwise, there is no illegality in using stamp papers purchased on 26.11.2010 for preparing Ex.A-1 agreement dated 15.03.2011 and Therefore, it cannot be said that Ex.A-1, agreement of sale is ingenuine.

13. The learned Counsel for the Respondent further submitted that the sale agreement dated is 15.02.2011. In the same sale agreement deed, it is stated that by 30.04.2011, the tenant has to vacate and hand over possession. Further it was stated that only Rs.19,00,000/- is to be paid towards the balance sale consideration. In this context, the learned Counsel for the Respondent invited the attention of this Court to the endorsement made on the backside of the sale agreement by the Defendant agreeing to vacate and hand over possession by 30.04.2011 after receipt of Rs.20,000/- and handover possession by 05.05.2011 in which the brother of the Defendant signed as a witness.

14. The learned Counsel for the Respondent also invited the attention of this Court to the recitals in the sale agreement deed. As per the clause in the sale agreement, the Defendant agreed to execute the sale deed on or before 15.09.2011. If the Plaintiff is not ready and willing to perform his part of the contract within such date, he shall forfeit the advance amount paid already. On the other hand, if the Plaintiff was willing and ready to perform his part of the contract and the Defendant having not come forward to execute the sale deed, the Plaintiff can enforce the contract of sale through Court and the Defendant is bound by the legal action that may be initiated by the Plaintiff, both before the civil and criminal Forum. When such statements have been clearly made in the agreement of sale, it cannot be gainsaid that the Plaintiff, by misusing one of the signed stamp papers, written the agreement under Ex.A-1, without the knowledge or consent of the Defendant. The Defendant, having signed Ex.A-1 is precluded from questioning it's genuineness on specious reasons. Therefore, the submission of the learned Counsel for the Appellant has to be rejected in the light of the specific recitals in the sale agreement deed.

15. The learned Counsel also submitted that on perusal of Ex.A-1, it will be clear that it was not a document subsequently created. After preparing the deed, the parties have signed it. Subsequent to the sale agreement, the

Defendant made endorsement agreeing to vacate the tenant and handover the vacant possession on 05.05.2011. When the Plaintiff approached the Defendant for enforcing the specific performance of contract, the defendnat lodged a criminal complaint against the Plaintiff through his wife, which was marked as Ex.B-3. Ex.Ex.B3, it was alleged that the Plaintiff and his henchmen attempted to dispossess the Defendant, his wife and daughters. It was further complained that the agreement under Ex.A-1 was made to be executed by utilising the liquor addiction of the Defendant. The complaint under Ex.B-4 was forwarded to the Superintendent of Police by the District Collector, Erode under Ex.B-5 based on which an enquiry was conduced by the Police officials. During such enquiry, it unfolded that the Defendant had executed a valid sale agreement but after receipt of advance money of Rs.2,00,000/-, agreeing to execute a sale deed for a total sale consideration of Rs.21,53,250/- the complaint was given. The complaint was given to the District Collector on 20.06.2011. In such circumstance, the Plaintiff, in order to assert his right as an agreement holder, filed the suit without any pre-suit notice directing the Defendant to comply the condition in the sale agreement. The sale agreement expires on 15.09.2011. The suit was instituted on 06.09.2011 before the expiry of the sale agreement. After full trial, the suit was decreed on 30.08.2018.

16. The learned Counsel for the Respondent invited the attention of this Court to the cross examination of D.W-1 wherein he admitted that he knew the Plaintiff who is having motor work shop and electrical shop. Thus, the Defendant deposed that the Plaintiff is having a commercial shop and indirectly admitted that the Plaintiff is a resourceful person to purchase the property. It was further deposed that the Defendant approached P.W-2 Kalliappan, a real estate broker for sale of the property. However, it is contended that before the trial court as well as this Court that the Defendant approached P.W-2 only for mortgage of the property. DW1 also denied having made the endorsement on 30.04.2011. But, he agreed his signature in Ex.A-1. He also admitted the signature under Ex.A-3, signature on the revenue stamp and thumb impression. He further deposed that he had not informed it to his wife. He denied the suggestion put to him in cross examination regarding the execution of the endorsement undertaking to vacate and hand over vacant possession of the property. He also denied the suggestion that he along with his brother Ravi instigated his wife to give complaint to the District Collector against the Plaintiff. He admitted that he had executed mortgage deed in favour of Mani, after cancellation of the earlier mortgage executed in favour of Krishnan for Rs.5,00,000/-. He had denied the suggestion that he had made false averments knowing that he had executed bonafide and genuine sale

agreement deed with an intention to sell the property to the Plaintiff.

17. Further, the learned Counsel for the Respondent invited the attention of this Court to the deposition of the wife of the Defendant as D.W-2. She, in her cross examination, admitted that in the Police Station, the Inspector of Police, asked her to peruse the sale agreement under Ex.A-1 and only then she came to knew about it. She admitted in cross examination that her husband accompanied her to the office of the District Collector. She admitted that there was no dispute with her husband and both of them are residing in the same house. She admitted that her Husband is a worldly wise man and he is involved in business. Also she admitted that her husband had not given any complaint to the Police directly or before the Court against the Plaintiff. After enquiry in the Police Station, the Police directed both parties to approach the Civil Court. She had in her cross examination further stated that all the details of the transaction is known to her husband only and she does not know the details of the properties or the transaction. She denied the suggestion that she had deposed false evidence at the instigation of her husband.

18. The learned Counsel for the Respondent referred to the evidence of the Plaintiff as P.W-1, the real estate broker as P.W-2 and the cross

examination of the D.W-1 and D.W-2 and submitted that it can be concluded that the sale agreement deed under Ex.A-1 was genuine and bonafide. The learned Trial Judge on perusal of Ex.A-1 had clearly arrived at a conclusion that what was stated by the Defendant in the written statement that at the time of availing loan, the Plaintiff obtained signature of the Defendant on stamp paper and on concur paper and green sheets which was subsequently exploited to create Ex.A-1 was not true and rejected the said contention of the Defendant.

19. The learned Counsel for the Respondent also submitted that pending this appeal, C.M.P. No. 24050 of 2019 was filed by the Defendant-Appellant seeking to produce additional documents. According to the learned Counsel, the said application has to be dismissed as the Defendant is attempting to mark documents which were not furnished during trial. If those documents are permitted to be marked in this appeal, the Respondent will be deprived of a chance to cross-examine the witness on the basis of the additional documents. Furthermore, there was no reason assigned by the Defendant as to why those documents have not been marked during trial. Even otherwise, the Defendant is attempting to mark some documents that came into existence after the trial which cannot be accepted.

20. The learned Counsel for the Respondent relied on the following reported decisions:

(1) ***Sahu Madho Das and Others v. Pandit Mukand Ram*** and another reported in ***1955 AIR 481;***

(2) ***N.L.Devender Singh & Others v. Syed Khaja*** reported in ***1973 AIR 2457;***

(3) ***Prakash Chandra v. Angadlal and Others*** reported in ***AIR 1979 SC 1241;***

(4) ***Nanjammal and Others v. Palaniammal*** reported in ***MANU/TN/0467/1993***;

(5) ***Aniglase Yohannan v. Ramlatha and Others*** reported in ***MANU/SC/0653/2005***;

(6) ***P.S.Ranakrishna Reddy v. M.K.Bhagyalakshmi and Others*** reported in ***MANU/SC/7148/2007***

(7) ***Silvey and Others v. Arun Varghese and Others*** reported in ***MANU/SC/7223/2008***;

(8) ***T.G.Pongiannan v. K.M.Natarajan and Others*** reported in ***MANU/TN/4124/2009***;

(9) ***D.Ananda Moorthy v. P.Chandrakala*** reported in ***MANU/TN/0304/2010***;

(10) ***A.Natarajan v. Chitra Mills*** reported in ***MANU/TN/4469/2010***;

(11) ***Laxman Tatyaba kankate and Others v. Taramati Harishchandra Dhatrak*** reported in ***MANU/SC/0477/2010;***

(12) ***J.Baskaran v. T.Pappa*** reported in ***2012 (2) MWN (Civil) 342***;

(13) ***P.Vaidyanathan v. K.Sundaram*** in ***A.S.No.34 of 2010***.

(14) ***Sughar Singh v. Hari Singh (Dead) through L.Rs*** reported in ***MANU/SC/0985/2021***;

(15) ***N. Parimala v. S. Lalitha*** reported in ***MANU/TN/9078/2021***;

(16) ***Ramathal v. Maruthathal and Others*** reported in ***(2018) 18 Supreme Court Cases 303***;

21. Among the several decisions cited by the learned Counsel for the Respondent, in the ruling reported in the case of **Sahu Madho Das and Others Vs. Pandit Mukund Ram and another** reported in **1955 AIR 481**, **t**he relevant portion reads as follows:

> " the Plaintiff cannot be punished where refusing the relief of specific performance. Despite the fact that the execution of agreement to sale in his favour has been established and proved and that he is found to be always ready and willing to perform his part of contract". Not to grant the decree of specific performance, despite the execution of the agreement to sale is proved and part sale consideration is proved and the Plaintiff is always ready and willing to perform his part of contract would engage dishonesty in such a suggestion the balance is dilt in favour of the Plaintiff rather than in favour of the Defendant.

22. By inviting the attention of this Court to the above referred

decisions, the learned Counsel for the Respondent submitted that in the light of the reported decisions, the judgment of the learned II Additional District Judge, Erode rejecting the contention of the Defendant before the trial Court and granting the relief of specific performance has to be affirmed as well reasoned. It is further submitted that there is no infirmity in the judgment of the trial court and it does not warrant any interference by this Court. The Appeal lacks merit and it is to be dismissed with costs for the Plaintiff, throughout.

Point for determination:

Whether the learned Second Additional District Judge, Erode by Judgment in O.S.No.212 of 2011 dated 30.08.2013 ignoring the Provisions of Specific Relief Act had decreed the Suit for specific performance when the Plaintiff had not proved the contention of the Plaintiff?

23. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondent. Perused the deposition of P.W-1 and P.W-2 and the documents marked on the side of Plaintiff as Ex.A-1 to Ex.A-3 and the deposition of D.W-1 and D.W-3 and the documents marked on the side of Defendant as Ex.B-1 to Ex.B-5 and also the judgment dated 30.08.2013 passed in O.S.No.212 of 2011 by the learned Second Additional District Judge, Erode.

24. It is the contention of the learned Counsel for the Defendant/Appellant that he had already borrowed a sum of Rs.5 lakhs from one Krishnan and executed a mortgage deed in his favour. As the rate of interest that is being paid to the said Krishnan was on the higher side, the Defendant thought of redeeming it and to execute another mortgage deed for a lesser rate of interest. It is in this context, the Defendant, through a land broker, the Defendant got introduced to the Plaintiff. The Defendant expressed his intention to mortgage the property in favour of the Plaintiff after redeeming the mortgage in favour of the said Krishnan. Thus, the intention of the Defendant is to re-mortgage the land in favour of the Plaintiff so that he can be relieved of the burden of paying more amount towards interest.

25. It is evident that on the date when Ex.A-1 was executed in favour of the Plaintiff, the Defendant, by utilising the sum of Rs.5 lakhs received from the Plaintiff, redeemed the mortgage with the said Krishnan and the property is free from any subsisting encumbrance.

26. It is seen from Ex.A-1, agreement of sale dated 15.03.2011 that it was not registered. It is further seen that Ex.A-1 was executed between the

Plaintiff and Defendant. Further, on the same day namely 15.03.2011, the mortgage subsisting with Mr. Krishnan was redeemed and it was marked as Ex.B1. On the same day namely 15.03.2011, yet another agreement came to be executed between the Defendant and Mr. Mani, friend of the Plaintiff. While Ex.A-1 agreement of sale was prepared in a stamp paper having a value of Rs.20/-, the agreement between the Defendant and Mr. Mani, friend of the Plaintiff, was registered as document No. 1767 of 2011. Further, the document entered under Ex.A-1 was titled as "Agreement for sale" between the Plaintiff and Defendant and it was not registered but the other document entered into between the Plaintiff and Mr. Mani, friend of the Plaintiff was registered as document No. 1767 of 2011 was titled as "Mortgage Deed for Rs.5,00,000/-". Thus, in connection with the same property, on the same day namely 15.06.2011, two agreements came to be executed, one styled as agreement of sale between Plaintiff and Defendant and another document registered with the nomenclature 'mortgage deed for Rs.5,00,000/-. It is not known as to whether the document titled as 'mortgage deed for Rs.5,00,000/-' executed in favour of Mr. Mani was enforced by Mr. Mani, friend of Plaintiff. Even in the plaint or in the other documents, there is no reference made as to whether the so called registered mortgage deed for Rs.5,00,000/- was enforced, whether the Defendant paid the mortgage amount of Rs.5,00,000/- or any part thereof to

Mr. Mani, whether any demand was made by Mr. Mani against the Defendant for payment of mortgage money. The mortgage deed for Rs.5,00,000/- was registered and there is no document to show that it was enforced. On the other hand, the other document which emanated on the same day namely 'agreement of sale' and which is an unregistered document, is sought to be enforced through the instant suit by the Plaintiff.

27. On going through the two documents which came to be executed on the same day on 15.03.2011, it is glaringly evident that fraud has been played by the Plaintiff in collusion with his friend Mr. Mani. It appears that the mortgage deed executed by the Defendant in favour of Mr. Mani and which was registered has not been enforced or sought to be enforced. However, the agreement of sale entered into with the Plaintiff alone is sought to be enforced. Therefore, this Court is of the view that the defence of the Defendant that his signature was obtained in blank stamp papers and it was utilised, rather abused and misused, to create the document under Ex.A-1 is absolutely legal and valid and consequently, Ex.A-1, agreement of sale has to be declared as sham, nominal and ingenuine.

28. In the agreement under Ex.A-1, there are recitals to the effect that

if the Plaintiff pays the balance money within time, a sale deed will be executed by the Defendant to the Plaintiff. In the event of failure to pay the amount, the Plaintiff has to forfeit the amount. This negative covenant in the agreement of sale, Ex.A-1 was brought to the notice of this Court to project as if the Plaintiff, being the purchaser of the property, has even agreed for such a clause to be incorporated. This Court is not inclined to go into these contentions inasmuch as it is glaringly clear that Ex.A-1, agreement of sale is an act of deceit and it was fabricated to alienate the property of the Defendant.

29. On the date of the alleged sale agreement deed dated 15.03.2011 the amount fixed as sale consideration was Rs.21,53,250/- and it was made as if advance amount of Rs.2,00,000/- was paid. In the agreement of sale dated 15.03.2011, the time for completion of the contract was till 15.09.2011. It is further contended that in the reverse of Ex.A-1, an endorsement was allegedly made by the Defendant to the effect that he will vacate the tenants in the property on or before 05.05.2011. While saying so, it is alleged that while making such endorsement on 30.04.2011, the Defendant received further sum of Rs.20,000/-. Curiously, in the agreement of sale dated 15.03.2011, the Defendant has signed his name in Tamil as 'N. சரோஜ்' but in the so-called endorsement, the thumb impression of the Defendant is obtained. This raised

suspicion that the endorsement said to have been made by the Defendant is forged. When the Defendant could sign in the agreement of sale, there is no reason as to why his thumb impression alone has been made in the so-called endorsement.

30. It is the contention of the Defendant that by utilising the signatures made in the blank sheets the above suit was instituted. Further, before filing the suit, no pre-suit notice has been issued but straight away the suit was instituted. This defence of the Defendant deserves consideration. Normally, in a suit for specific performance, the purchaser will issue a notice to the owner expressing his readiness and willingness to honour the terms and conditions contained in the agreement of sale. If such a notice is issued in this case by the Plaintiff, the Defendant would have immediately sent a reply repudiating the same. As the agreement of sale, Ex.A-1 itself is not genuine, rather it is fabricated, it is no surprise that the Plaintiff has straightaway filed the present suit without any pre-suit notice to the Defendant.

31. It is seen from Ex.B5, a notice for enquiry issued by the office of the District Superintendent of Police, Erode that an enquiry was conducted pursuant to the complaint dated 20.06.2011 submitted by the wife of the

Defendant. The complaint was given by stating that the Plaintiff, along with his men, have threatened her with dire consequences if they did not vacate and handover the vacant possession of the house in which they reside. It is to be noted that even assuming that the agreement of sale under Ex.A-1 dated 15.03.2011 is valid and absolutely genuine, if the Defendant did not honour the terms and conditions thereof and refused to execute the sale deed, the Plaintiff ought to have issued a notice calling upon the Defendant to comply with the agreement of sale. However, the Plaintiff along with his men, within three months of the execution of the so-called notice dated 15.03.2011, trespassed into the house of the Defendant and threatened the inmates, who are women viz., wife and two daughters of the Defendant. It is in those circumstances, the complaint was given. It is also needs to be mentioned that even as per the fabricated agreement of sale dated 15.03.2011, two months time was given for execution of the sale deed. Further, on 30.04.2011, the Plaintiff alleged to have paid Rs.20,000/- to the Defendant on his assurance that he will vacate the tenants on or before 05.05.2011. Assuming that such an undertaking given by the Defendant has not been complied with, the Plaintiff ought to have taken recourse to law by issuing a notice or filed the suit for specific performance. However, within a month thereafter, the Plaintiff descended on the house of the Defendant and threatened the inmates. Thus, even assuming that Ex.A-1 is genuine, it is evidently clear that there is no enormous delay on the part of the Defendant in complying with the same. However, within two or three months the Plaintiff and his men barged into the house of the Defendant and threatened the inmates to vacate. The *gay abandon* with which the Plaintiff acted upon or intended to enforce the fabricated and ingenuine agreement of sale under Ex.A-1 is to be deprecated. The wife of the Defendant, scared of such threat and ultimatum given by the Plaintiff and his henchmen, given the complaint to the District Collector during the public grievance day which was forwarded to the Superintendent of Police. The Superintendent of Police forwarded it to the Inspector of Police who conducted an enquiry. Soon after the enquiry, the Plaintiff had instituted the present suit for specific performance.

32. It is contended that the Plaintiff has not deposited the balance sale consideration to show his bona fides that he is ready and willing to perform his part of contract. This Court is not inclined to go into this aspect inasmuch as Ex.A-1 itself is fraudulent and fabricated. Further, a purchaser who entered into an agreement of sale will only express his readiness and willingness by way of a statutory notice and calls upon the owner to perform his part of the obligations under the agreement of sale. In this case, readiness and

willingness was not expressed by the Plaintiff in a manner known to law. However, the Plaintiff and his henchmen trespassed into the house of the Defendant and threatened the inmates. Therefore, the question of readiness and willingness need not be adjudicated upon by this Court in this appeal. If the intention of the Plaintiff was bona fide, he could have issued a lawyer's notice directing the Defendant to execute the sale deed and honour the agreement of sale, Ex.A-1. If any such notice would have been issued, there may not be any occasion for the Defendant's wife to approach the Police authorities. Instead, a reply would have been issued repudiating the execution of an agreement of sale. Therefore, in the absence of any pre-suit notice in this case, the Plaintiff is not entitled to the equitable relief of specific performance.

33. It is stated that the property covered under Ex.A-1, agreement of sale is worth more than Rs.45,00,000/- and it is the only property owned by the Defendant. According to the Defendant, if the same is sold, he Defendant and his family consisting of wife and daughters have to remain without a shelter. The circumstances under which the Defendant borrowed money from the Plaintiff by cancelling mortgage deed executed by him in favour of one Krishnan for Rs.5,00,000/- was exploited and taken advantage to by the Plaintiff with the aid of his friend Mr. Mani. The learned II Additional District

Judge, Erode without appreciating the above facts, has mechanically granted a decree for specific performance which is nothing but a perverse and perfunctory Judgment, which should not be allowed to continue.

34. The learned Counsel for the Appellant invited the attention of this Court to the cross-examination of P.W-1/Plaintiff and also PW2, the broker who is alleged to have informed the Plaintiff of the availability of the property for sale and they have merely denied the suggestion put on behalf of the Defendant. When D.W-1 and his wife/D.W-2 were examined they stoutly denied the suggestion put by the learned Counsel for the Plaintiff. The Defendant also, during the course of argument, contended that the Plaintiff had instituted the Suit without depositing the balance sale consideration on the date of institution of Suit or during the pendency of trial. However, this was ignored by the learned Second Additional District Judge while granting a decree for specific performance *inter alia* directing the Plaintiff to deposit the balance sale consideration. This approach of the Trial Court cannot be appreciated and it has to be interfered with.

35. The submission of the learned Counsel for the Appellant that the Suit property fetch about Rs.45,00,000/- even as on the date of Ex.A-1 and it is

sought to be grabbed by the Plaintiff also cannot be brushed aside. The attempt of the Plaintiff to grab a valuable property is explicit from the fact that with the documents signed by the Defendant in the office of the Sub-Registrar, a Mortgage Deed was registered. But on the same day, Ex.A-1 was created and fabricated by the Plaintiff with the help of the signatures obtained from the Defendant. In such view of the matter, the Plaintiff is not entitled to any relief in the vexatious suit filed by him. The Plaintiff has not approached the Court with clean hands. The intention of the Plaintiff in filing the suit is to save himself from being proceeded with a criminal investigation *inter alia to* compel, coerce and force the Defendant to execute the sale deed by adopting all deceitful tactics.

36. In the light of the above discussion, the point for determination is answered in favour of the Appellant and against the Respondent. The Judgment and decree dated 30.08.2013 made in O.S. No. 212 of 2011 by the learned II Additional District Judge, Erode, is found perverse and the same is liable to be set aside. At the same time, having regard to the fact that the Defendant admitted having received the amount from the Plaintiff, purporting it to be a mortgage money, he has to repay the same to the Plaintiff with interest. Accordingly, the decree and judgment of the trial Court has to be set

aside with a direction to the Defendant to repay the so-called advance amount with interest at the rate of 9% per annum. Accordingly, the Appeal is allowed with a direction to refund the advance amount.

37. Pending appeal, the Defendant-Appellant has filed CMP No. 24050 of 2019 seeking to produce additional documents. In view of the fact that the defence raised by the Defendant/Appellant is accepted by this Court by setting aside the Judgment and Decree of the Trial Court, no further order is necessary to be passed in C.M.P. No. 24050 of 2019.

In the result, **this Appeal Suit is allowed**. The Judgment and Decree dated 30.08.2013 passed in O.S. No. 212 of 2011 by the learned II Additional District Judge, Erode, is set aside, however, the Defendant/Appellant is directed to refund the advance amount to the Plaintiff within a period of three months from the date of receipt of a copy of this Order with interest at the rate of 9% per annum. No costs. Consequently, connected C.M.P. No. 24050 of 2019 stands closed.

02.06.2025

shl
Index : Yes/No
Internet : Yes/NO
Speaking/Non-speaking order

SATHI KUMAR SUKUMARA KURUP, J

shl

To
1.The II Additional District Court,
Erode.

2.The Section Officer,
V.R. Section,
High Court Madras.

Judgment in
A.S.No.17 of 2014

02.06.2025