



A.S.No.313 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : 17.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.313 of 2022

1. Shenbagaraman Pillai
2. Vijaya Raja Sinthiya

... Appellants

Versus

1. Rajendran
2. Selvarani
3. Kiruthika

... Respondents

PRAYER : This Appeal Suit has been filed under section 96 of Code of Civil Procedure to set aside the judgment and decree dated 27.04.2022 in O.S.No.127 of 2009 on the file of the III Additional District and Sessions Judge, Cuddalore at Virdhachalam.

For Appellant : Mr.D.Shivakumaran
for Mr.S.Mayilnathan

For Respondents : Mr.S.Parthasarathy, Senior Counsel
for Mr.P.Dineshkumar – R1 & R2

No appearance – R3

JUDGMENT



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Challenge has been made against the decree and judgment made by the trial Court granting the relief of specific performance in the present appeal by the unsuccessful defendants.

2. Brief facts of the case is as follows :

It is the case of the plaintiffs that the first defendant has agreed to sell the suit property for a total sale consideration of Rs.12 lakhs and received a sum of Rs.10 lakhs as an advance and executed a registered sale agreement on 16.03.2007 itself. As the first defendant has failed to execute the sale deed, legal notice has been issued by the plaintiffs on 15.03.2009 calling upon the first defendant to be present in the Sub Registrar's Office on 25.03.2009 and receive balance sale consideration and execute the document. However, the first defendant has not executed the document and gave a reply with false allegations on 01.08.2009. The plaintiffs are always ready and willing to perform their part of the contract. Hence, the suit.

3. It is the contention of the defendants that the counsel who had appeared for the plaintiffs had already appeared for the defendant in the suit in



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O.S.No.231 of 1998. It is their contention that the plaintiffs were tenant under the defendant and running a wine shop. In that transaction, the plaintiffs have to pay an advance amount of Rs.7 lakhs to the plaintiff. That part they had also received a sum of Rs.3 lakhs. Only for that purpose, the lawyers prepared the sale agreement and the agreement came into existence. Hence, it is his contention that the document never intended for sale of the property. The other defendants also took a similar defence.

4. Based on the above pleadings, the following issues have been framed for consideration in the suit :

1. Whether this suit is barred by law of limitation?
2. Whether the plaintiffs are ready and willing to perform as per their Sale Agreement dated 16.03.2007?
3. Whether the defendant is liable to execute the sale deed in favour of the plaintiffs?
4. Whether the plaintiffs are entitled for the reliefs as prayed for?
5. To what other reliefs the plaintiffs are entitled?



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5. On the side of the plaintiffs, P.W.1 and P.W.2 have been examined and Ex.A.1 to Ex.A.4 have been marked. On the side of the defendants, D.W.1 has been examined and Ex.B.1 to Ex.B.25 have been marked.

6. The trial Court appreciating the evidence, both oral and documentary, decreed the suit for specific performance. Challenging the same, the present appeal has been filed.

7. It is to be noted that the defendant died and the legal heirs of the defendant had filed the appeal. The main contention of the learned counsel appearing for the appellants is that the sale agreement has been executed on 16.03.2007 and an advance of Rs.10 lakhs has been received on the same day. However, for paying remaining sale consideration of Rs.2 lakhs, two years time has been fixed. The same indicate that the agreement is not intended for sale of the property. Further, the legal notice was issued on 15.03.2009 after expiry of the period. It is also stated in the legal notice that the first defendant was called upon to come to the Sub Registrar's office on 25.03.2009 and



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execute the document after receiving the remaining sale consideration. The said aspect has not been proved. Whether any draft sale deed has been prepared, no materials, whatsoever, have been placed before this Court. The second plaintiff is a tenant under the defendant and the advocate, who appeared for the defendant in an earlier suit has appeared for the plaintiffs. The same indicate that the document is not intended for sale of the property. At any event, readiness and willingness have not been established on the part of the plaintiffs. The plaintiffs have issued notice only on 15.03.2009.

8. Whereas, the learned counsel appearing for the respondents would contend that the agreement is a registered agreement. The financial capacity of the plaintiffs has not been disputed. In reply notice, a contradictory stand has been taken by the appellants. Therefore, when there are contradictions in the documents, the registered agreement has to be given preference. Many reasons have been invented in the written statement. Whereas, P.W.2 has been examined to prove passing of consideration on the date of the agreement. Once, the sale agreement has been established and the defence appears to be vague, the plaintiffs are certainly entitled to specific performance.



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9. In the light of the above submissions, now the points arise for consideration in this appeal is as follows :

1. Whether Ex.A.1 dated 16.03.2007 is not intended for sale of the property?

2. Whether the plaintiff is not ready and willing to perform his part of the contract?

10. Points 1 and 2 :

Though the agreement Ex.A.1 is a registered document, it is agreed between the parties in the document for sale of the property for a total sale consideration of Rs.12 lakhs and an advance of Rs.10 lakhs is said to have been paid on the same day and for payment of remaining amount of Rs.2 lakhs two years time has been fixed. It is not the case of the plaintiffs that they have no means whatsoever. According to them, they are running a wine shop in the premises. Therefore, fixing of two years for paying remaining sale consideration of Rs.2 lakhs, in fact creates serious doubt about the very document itself. As far as the registered document is concerned, the parties



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cannot go beyond the terms of the contract. But the parties can bring about probabilities to show that the document is not intended for the purpose for which it has been executed.

11. The evidence of P.W.1, particularly his cross examination, show that there were already series of agreements entered between the parties. It is further to be noted that it is the specific case of the defendants that in the lease transaction, the first defendant has received a sum of Rs.7 lakhs and that apart a sum of Rs.3 lakhs has also been received by him and only to safeguard that amount, the agreement has been executed. The lawyer, who had appeared for the defendants originally in an another suit in O.S. No.231 of 1998 is now appearing for the plaintiffs and only at their instance, the agreement came to be executed. The nature of earlier transaction, particularly, the lease deed, which has been admitted by the plaintiffs coupled with the fact that the plaintiffs are said to be having sufficient means and entering into an agreement and taking time for another two years to pay the paltry sum of Rs.2 lakhs, in fact, probabilize the case of the defendants that the document is not intended for sale of the property. Further, even assuming that the plaintiffs have entered



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into an agreement for purchase of the property, his normal conduct would be to take some steps immediately to get the sale deed executed in his favour.

Whereas, the legal notice has been issued for the first time on 15.03.2009. In the above notice, the first defendant is specifically requested to come to the Sub Registrar's office on 25.03.2009 to get the remaining sale consideration and execute the document. This is the only circumstance pleaded by the plaintiffs to show that they are always ready and willing to perform their part of the contract.

12. When the plaintiffs are ready and willing to perform their part of the contract, except the legal notice sent on 15.03.2009, no other document has been filed to show that they are always ready and willing to perform their part of the contract and they had taken reasonable steps to complete the transaction. Having sent a legal notice, there are no materials on record to show that the plaintiffs came to Sub Registrar's Office as fixed by them and purchased any stamp paper or prepared draft sale deed to show that they are always ready and willing to perform their part of the contract. Merely on the basis of the legal

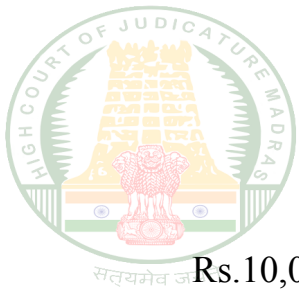


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notice sent, readiness and willingness cannot be inferred. Readiness and willingness has to be proved from the inception. It is a continuous process. A person, who seeks equitable relief, has to prove readiness and willingness.

13. Further, considering the nature of earlier transaction and the plaintiffs were tenants under the first defendant and that there were several transactions coupled with the fact that the counsel who originally appeared for the defendants is now appearing for the plaintiffs, the defendant's case is more probable. Therefore, once, there is a doubt as to readiness and willingness, the plaintiffs are certainly not entitled to the relief of specific performance.

14. The plaintiffs have not sought for alternative relief in the plaint. It is relevant to point out that a Division Bench of this Court in ***N.Sekaran and another vs. C.Rajendran*** reported in ***AIR 2018 Mad 67*** has granted alternate relief for return of advance sale amount, even though the plaintiff has not asked for alternate relief in order to meet ends of justice. Hence, considering the nature of advance and the receipt of the amount is also not disputed, the plaintiffs are entitled for the alternative relief of refund of the amount of



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Rs.10,00,000/- with interest. The points are answered accordingly.

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15. Accordingly, this Appeal Suit is partly allowed and judgment and decree of the trial Court in O.S.No.127 of 2009 dated 27.04.2022 is set aside and the defendants are directed to pay a sum of Rs.10,00,000/- [Rupees ten lakhs only] to the plaintiffs with interest at the rate of 10% per annum from the date of agreement, viz., 16.03.2007 till the date of the decree. Thereafter, at the rate of 6% till the date of realization. It is made clear that as far as the amount payable by the defendants, there shall be a charge over the property. No costs.

17.03.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

1. The III Additional District and Sessions Judge,
Cuddalore at Virudhachalam.
2. V.R. Section, High Court, Madras.

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