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Second Appeal No.1299 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

Second Appeal No.1299 of 2014

AND

M.P.No.1 of 2014

V.Padmavathi

.. Appellant

Vs

D.Chinnasamy

.. Respondent

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 25.06.2014 passed in A.S.No.7 of 2013 on the file of the II Additional District and Sessions Court, Tirupur, reversing the judgment and decree dated 28.10.2010 passed in O.S.No.123 of 2007 on the file of the Principal Sub Court, Tirupur.

For Appellant : Ms.K.Megala
for Mr.N.Manokaran

For Respondent : Mr.S.Kaithamalai Kumaran
for Mr.N.Palanikumar

J U D G M E N T

This Second Appeal has been filed to set aside the judgment and decree dated 25.06.2014 passed in A.S.No.7 of 2013 on the file of the II Additional District and Sessions Court, Tirupur, partly allowing the judgment and decree



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dated 28.10.2010 passed in O.S.No.123 of 2007 on the file of the Principal Sub
Court, Tirupur.

2. Heard both sides and perused the materials available on record.

3. For the sake of convenience, the parties are referred to as per their rank in the suit as plaintiff and defendant.

4. The appellant, who is the plaintiff, has filed the suit for specific performance and the trial Court had granted the relief of specific performance and the first appeal preferred by the defendant was partly allowed, by modifying the judgment and decree of the trial Court to the extent of granting refund of Rs.4,00,000/- with interest at the rate of 9% p.a. from the date of suit till the date of decree and thereafter, 6% interest, till realisation. The plaintiff has filed the second appeal by challenging the judgment of the first appellate Court, seeking the relief of specific performance.

5. The short facts pleaded by the plaintiff in the plaint are as under :

The suit property is the self-acquired property of the defendant and he agreed to sell the suit property in favour of the plaintiff for a sum of Rs.4,75,000/- and entered into a sale agreement dated 10.08.2004 and on the



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same date of sale agreement itself, the defendant has received a sum of Rs.4,00,000/- as advance and a time period is agreed for the payment of balance sale consideration of Rs.75,000/-. As the defendant had handed over the original documents to some other persons, he had sought time to get those documents and hand it over to the plaintiff at the time of registering the sale deed. The plaintiff has sent a legal notice on 13.03.2007, calling upon the defendant to execute the sale deed and on receipt of the same, the defendant sent a reply notice on 19.03.2007. In the reply notice, it is alleged that the defendant had obtained loan of Rs.1,00,000/- from the plaintiff and the sale agreement has been executed only as a security. Hence, the plaintiff has filed the suit for specific performance.

6. The defendant resisted the suit by filing the written statement which is given in brief as under :

The plaintiff has concocted the sale agreement by making use of the signatures of the defendant obtained in the empty papers. The defendant had obtained a loan of Rs.1,00,000/- from the plaintiff during the year 2003 and for which, he has been paying interest till January 2004. Since the defendant was not able to pay the interest, the sale agreement was obtained as security.



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7. On the basis of the above pleadings, the trial Court has framed the

following issues :

1. 10.07.2004ன் படி விற்பனை ஆவணத்தை
செயல்படுத்த கடமைப்பட்டவரா ?

2. பிரதிவாதிகளின் தலையீட்டிற்கு எதிராக
நிரந்தர உறுத்துக் கட்டளை பெற உரிமை உடையவரா ?

3. வேறு என்ன பரிகாரங்கள் மற்றும் செலவுத்
தொகைப் பற்றிய உத்தரவு என்ன ?

7. During the course of the trial, on the side of the plaintiff, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P4 were marked and on the side of the defendants, D.W.1 was examined and no document was marked.

8. At the conclusion of the trial and on considering the evidence available on record, the trial Court decreed the suit in respect of the relief of specific performance.

9. The second appeal preferred by the plaintiff was admitted on the following substantial question of law :

- i. Whether the lower appellate Court was right in holding that the time is essence of contract in this case ?



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Additional substantial question of law :

- ii. Whether the first appellate Court is right in denying the relief to the plaintiff on the finding that the plaintiff was not ready and willing to perform her part of contract ?

10. The learned counsel for the appellant/plaintiff submitted that the time is not the essence of the contract, but the first appellate Court has mislead itself and that was the basis for setting aside the judgment of the trial Court. It is further submitted that the plaintiff has been all along ready and willing to perform her part of contract and she also proved the same and hence, the plaintiff ought to have granted the relief of specific performance, in stead of granting the relief of refund of advance amount.

11. The learned counsel for the respondent/defendant submitted that time is the essence of contract and the first appellate Court has rightly recorded the above finding. It is further submitted that the plaintiff has not proved her readiness and willingness and hence, the first appellate Court is right in allowing the first appeal.



12. So far as the intention of genuineness of the sale agreement (Ex.A1) is concerned, both the trial Court and the first appellate Court has recorded a categorical finding that the sale agreement is genuine and that the defendant had affixed his signature only by understanding that it is a sale agreement. With regard to the ingredient of time is the essence of contract, the first appellate Court has not recorded any categorical finding, but in the discussion, the first appellate Court revolved around the lack of readiness and willingness on the part of the plaintiff. Even if the element of essence of contract has not been expressly mentioned in the sale agreement, the same can be inferred from the nature of the contract and the other surrounding circumstances.

13. In the instant case, the time for completing the sale transaction has been agreed as one year. Even though the plaintiff has paid the substantial sale consideration of Rs.4,00,000/-, one year time has been agreed for paying a paltry reminder of Rs.75,000/-. However, it is stated by the plaintiff that the defendant had given the original parent title deeds to someone else and that he had sought time to get the same. Though it might be true that the defendant would have got some inconvenience in getting the original parent document and agreed a long time for completing the sale transaction, it is for the plaintiff



to prove that she has been all along ready and willing to perform her part of contract.

14. After the expiry of one year, the plaintiff did not proceed to issue any notice, immediately after the expiry of one year time or within the one year time, by revealing her readiness and willingness to the defendant. Neither the defendant proceeded to give any notice to the plaintiff stating that the sale agreement got cancelled at the expiry of one year time. The conduct of both the parties shows that time is not the essence of the contract.

15. However, it is obligatory on the part of the plaintiff to prove that she is always ready and willing to execute her part of contract. For the reasons best known to the plaintiff, she had kept quiet for two long years and sent a legal notice in the year 2007, though the sale agreement was of the year 2004. Even in case, when the time is not the essence of contract, the time agreed to perform the contract cannot be brushed aside. At the same time, mere expression in the sale agreement that time is the essence of contract, that will not mean that the plaintiff can take time according to her whims and claim the relief at her own will at any point of time.



16. Even though the maximum time limit to file a suit for specific performance is three years, that limitation is only for filing the suit and not for presuming the readiness and willingness on the part of the plaintiff until he filed the suit. When the plaintiff was ready and willing to perform her part of contract, she should have rushed to the Court immediately, after the expiry of the time limit or when the defendant had refused to perform his part of contract. The plaintiff has chosen to send legal notice itself only after two years and that would show the lack of willingness in getting the sale deed executed within the time limit.

17. The plaintiff could not have got any difficulty in receiving balance sale consideration of Rs.75,000/-, because, she was already paid with the substantial part of sale consideration even on the date of execution of sale agreement. As far as the willingness is concerned, the conduct of the plaintiff does not show that she was all along willing and was taking all possible steps to make the defendant to execute the sale deed by receiving the balance sale consideration. Unless the plaintiff proves her readiness and willingness, the relief of specific performance cannot be granted.

18. Even though the trial Court was too liberal in presuming the readiness and willingness on the part of the plaintiff, the first appellate Court



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has rightly appreciated the materials and had recorded a right finding that the plaintiff did not prove her readiness and willingness in performing her part of contract. In the context of the above discussion, the substantial question of law No.1 loses significance and the substantial question of law No.2 is answered against the appellant.

In the result, the second appeal is dismissed and the judgment and decree dated 25.06.2014 passed by the first appellate Court in A.S.No.7 of 2013, is confirmed. Time granted for refund by the defendant to the plaintiff is one month from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

gya

To

1.II Additional District and Sessions Court
Tirupur

2.Principal Sub Court
Tirupur



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