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S.A. No. 576 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2025

**CORAM
THE HONOURABLE Ms. JUSTICE R.N.MANJULA**

S.A. No. 576 of 2014

and

M.P. No. 1 of 2014

V.Vetrivel

...Appellant

Vs.

1.Ramasamy (deceased)

[R2 to R4 recorded as Lrs of the deceased
R1 vide order of the Court dated
23.04.2014 made in M.P. Nos. 1 & 1 of
2013 in S.A. SR Nos. 88422 and 88424 of
2011. Memo filed on 19.09.2013]

2.R.Gowri

3.R.Prema

4.R.Sathiyakala

5.M.Saraswathi

[R5 is impleaded vide Court order dated
20.12.2024 made in C.M.P. No. 28464 of
2024 in S.A. No. 576 of 2014.]

... Respondents

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 18.04.2011 made in A.S. No. 32 of 2008 on the file of the Additional Sub-Court, Tiruppur,



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reversing the judgment and decree dated 11.04.2008 made in O.S. No. 57 of 2005 on the file of the District Munsif, Palladam.

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For Appellant : Mr.P.Santhosh for Mr.K.Govi Ganesan

For Respondents : Mr.R.Bharathkumar (R2 to R4)
R1-died
Mr.P.Jagadeesan (R5)

JUDGMENT

The appellant is the plaintiff, who has filed the suit for specific performance against the defendants and got his suit decreed by the trial Court. The first appeal preferred by the defendants got allowed and the judgment and decree of the trial Court also got set aside. Hence, the plaintiff has filed the second appeal.

2.The short facts reveal from the plaintiff's case:-

The first defendant is the father of the defendants 2 to 4 and the suit property belonging to the defendants. On 23.08.2004 the defendants executed a sale agreement with the plaintiff for selling the suit property for a sum of Rs.73,700/-. On the date of the sale agreement itself, the plaintiff has paid Rs.10,000/- as advance and the time for completing the contract has been agreed as three months. Time was not considered as the essence of the



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contract. The plaintiff has been all along ready and willing to pay the balance sale consideration and get the sale deed executed. Despite the plaintiff approached the defendants on several occasions and asked the first defendant to receive the balance sale consideration, he evaded and did not come forward to complete the sale transaction. The plaintiff has sent a legal notice on 10.01.2005 and demanded the defendants to get the sale consideration and execute the sale deed. The defendants 1 to 3 received the notice and the fourth defendant refused to receive the notice. On 13.01.2005, the first defendant sent a reply notice with false allegations. In the reply sent by the first defendant, he has stated that the time limit for the contract has expired and that the plaintiff was not ready and willing and the sale agreement got cancelled. But the plaintiff was all along ready and hence, he has filed the suit for specific performance.

3.The defendants resisted the suits by filing the written statement which is given as brief as under:-

It is true that the sale agreement has been executed on 23.08.2024 in respect of the house site measuring 3 cents 222 square feet belonging to the defendants for a sum of Rs.73,700/- and that the plaintiff has paid an advance amount of Rs.10,000/- on the same day. The period for completing the



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contract is three months, but the plaintiff failed to pay the balance sale consideration within the time limit of 3 months. It is false to state that the time was not the essence of the contract. It is also not true that the plaintiff was not ready and willing to perform his part of contract. The plaintiff did not approach the defendant to tender the balance sale consideration and get the sale deed registered. After the time got expired the plaintiff has sent a legal notice with false allegations for which the defendants have sent a suitable reply. The first defendant has been keeping good health and in fact, he had been to the VAO office on 17.11.2004 and got Patta in his name. So, it is false to state that the defendants has disagreed by citing the health reason. The plaintiff is not entitled to the above relief.

4. On the basis of the above statement during the course of the trial, on the side of the plaintiffs, two witnesses were examined as PW1 and PW2, and Exs.A1 to A19 were marked. On the side of the defendants one witness was examined as DW1 and Ex.B1 was marked.

5. At the conclusion of the trial and on considering the materials available on record, the trial Court has decreed the suit and the first appeal preferred by the defendants got allowed by reversing the judgment of the trial Court. Thus, the plaintiff has preferred this second appeal and the same was



admitted on the following substantial questions of law:-

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- “(1) When the appellate Court has come to the conclusion that time is not the essence of the Court negating the plea of the defendants, is it just and correct on the part of the appellate Court to non-suit the plaintiff?*
- (2) Whether it is mandatory to deposit the balance sale consideration in the Court or unless and until directed by the Courts?*
- (3) When the plaintiff has proved the Execution of Agreement of Sale and readiness and willingness, by oral and documentary evidence is the appellate Court correct in the reversing the well considered judgment of the Trial Court?”*

6.The sale agreement Ex.A1 is not in dispute. Despite the Trial Court had decreed the suit by granting the relief of specific performance, the first appellate Court has set aside the same and allowed the first appeal in favour of the defendants. The first appellate Court has observed that the time is the essence of the contract and that the plaintiff was not ready and willing to perform his part of contract. On the above observations, the relief of specific performance granted by the trial court was set aside. Insofar as the appellant/plaintiff is concerned, he claims that the time is not the essence of



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the contract, despite that there is a time limit prescribed in the sale agreement dated 23.08.2004. The sale agreement is marked as Ex.A1. As per the sale agreement, the sale consideration was agreed at Rs.73,700/- and on the date of the sale agreement itself, a sum of Rs.10,000/- has been paid as earnest money deposit. The time to complete the transaction was agreed as three months.

7.The learned counsel for the appellant submitted that as per the sale agreement, the defendants need to get no objection certificate by paying the development charges and that was not complied by them and that caused the delay in tendering the remaining the sale consideration.

8.*Per contra*, it is submitted by the respondents that the no objection certificate needs to be obtained only if it is necessary and that will not prevent the plaintiff from coming forward and get the sale deed executed. The three months time agreed in the sale agreement would get expired during November 2004.

9.For the sake of convenient discussion, the parties are referred to as per their rank and capacity in the suit.

10.The plaintiff has submitted that he has been calling upon the defendant to come forward to get the balance sale consideration and execute the sale deed. As he did not take any steps, he had sent a legal notice on



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10.01.2005. Admittedly, the defendants did not choose to send any legal notice to state that the sale agreement got revoked in view of any delay caused by the plaintiff. The first legal notice was initiated from the side of the plaintiff and he called upon the defendants to receive the balance sale consideration and get the sale deed executed. In the reply notice sent by the defendants on 13.01.2005, it has been stated that the stipulated time of three months got expired and hence, the sale agreement has become invalid and will not bind the parties.

11. On the basis of the above reply notice, it is claimed by the defendants that the plaintiff ought not to have allowed to have maintained a suit on the agreement which has become invalid and revoked and that he ought to have filed a suit to declare that the cancellation of the sale deed is null and void and thereafter only, he could have claimed the relief of specific performance. Reliance was placed on the judgment of the Supreme Court held in *I.S.Sikandar -vs- K.Subramani* reported in (2013) 15 SCC 27.

12. The facts of the case in hand is distinguishable from the facts involved in the *Sikandar* case and that cannot be overlooked. In the *Sikandar* case, the plaintiff has sought further extension of time and that was agreed by the defendants. As the plaintiff did not come forward to perform his part of

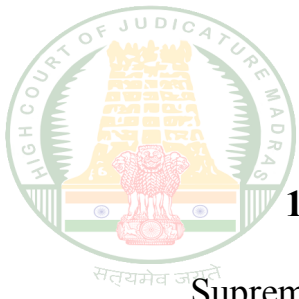


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contract even before the expiry of the extended time limit, the defendants have chosen to send a legal notice stating that the sale agreement got cancelled. In fact, even before cancelling the sale agreement, it was warned by the defendants that if he failed to pay the balance sale consideration within the extended time the sale deed would get cancelled.

13.As the plaintiff in that case had ignored in the warning notice and made delay, the sale deed got cancelled by itself. But in the instant case, the defendants did not choose to send any legal notice immediately after the expiry of the three months stating that the time is the essence of the contract for the sale agreement (Ex.A1) dated 23.08.2004 and the expiry of the 3 months would get the sale agreement cancelled.

14.Though it is claimed by the defendants that the time is the essence of the contract, the same was not stipulated in Ex.A1. In order to make the time is the essence of the contract, the same should have been expressly mentioned in the sale agreement. Neither it has been stated in the sale agreement that the proposal of sale is for a particular purpose, like, marriage or educational expenses of any of the dependents of the defendants and the delay has frustrated the very purpose and hence, the time was the essence for the contract.



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15. In this regard, it is appropriate to refer the decision of the Hon'ble Supreme Court held in *Smt.Chand Rani -vs- Smt.Kamal Rani* reported in *AIR 1993 SC 1742*. In the said case, the Hon'ble Supreme Court has held that in the case of sale of the immovable property, there is no automatic presumption that the time is the essence of the contract. Even in the absence of any clause in the agreement as to the said condition, it can be interfered by the Court to treat the time as the essence as per the expressed terms of the contract, nature of the property, the surrounding circumstances, especially, the object for which the contract is entered into. In the instant case there is no express terms to consider that the time is the essence and there is no special nature attached to the property subjected to the sale agreement.

16. Even in the absence of any express mention that the time is the essence of the contract in the sale agreement, the plaintiff should prove that the plaintiff was all along ready and willing to perform his part of contract. In this regard, it is also appropriate to refer the judgment of the Supreme Court held in *V.Sankaralinga Nadar -vs- P.T.S.Ratnaswami Nadar* reported in *AIR 1952 Mad 389*, wherein the Supreme Court has observed that even when the time is not the essence of the contract, the plaintiff has to perform his part of contract within a reasonable time and the reasonable time should be



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defined by looking at all the surrounding circumstances including the express terms of the contract and not the nature of the property. No doubt the time specified in the contract Ex.A1 has got a significance though it cannot be construed as the essence of the contract. **Hence the substantial question no.1 is answered in favour of the appellant.**

17.However in the terms of the contract, it is also agreed by the defendants that they would co-operate to get the no objection certificate from the panchayat by paying the development charges. Apparently the above condition is to enable the plaintiff to use the suit site for the purpose of building a house. If no objection certificate is not obtained by paying the development charges and other dues, that would become a burden for the plaintiff. Hence, it appears that the same has been included in the terms of the contract itself.

18.The defendants tried to take excuse from the said terms by taking advantage of the word 'if necessary'. Having agreed to get no objection certificate for the purpose of completing the sale transaction, the defendants cannot simply say that it is not necessary unless it is proved before the Court that the no objection certificate is necessary. The nature of the condition and the purpose for which it is agreed between the parties, would only show that



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this is a compelling condition and not an optional one. Had the records proved that the defendants did not have any dues payable to the panchayat, then there can be some weight given to the argument of the defendants that it is not necessary due to any other circumstances of the case. Hence, credit has to be given to the plaintiff's situation for having waited for getting the no objection certificate by the defendants, though that alone cannot be the reason for not being ready and willing to perform the contract.

19.As it has been stated already, the defendants did not prefer to send any notice before receiving the first legal notice sent by the plaintiff to call-off the contract by declaring that it is cancelled. Even in the reply notice sent by the defendants, they did not opt to state that the stipulation to obtain no objection certificate has not become necessary in view of any specific circumstances. Only in the reply notice, without stating anything on the above condition the defendants had simply stated that the agreement got revoked as three months time has lapsed.

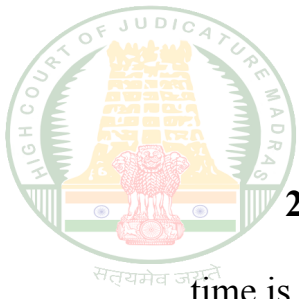
20.The cause of action for the plaint would arise as and when the defendants refused to come forward to execute the sale deed and failed to get no objection certificate as required by the plaintiff. From the day one the plaintiff gets the cause of action and subsequently he sent the legal notice and



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then filed a suit. Hence, the cause of action continued to be alive. Only after the plaintiff has sent the legal notice, the defendants sent the reply notice stating that the sale agreement got cancelled. That will not take away the cause of action which has originated even prior to the legal notice sent to the plaintiff at the first instance. Thus, the facts of this case is distinguishable from the facts that has arisen in the *Sikandar's* case dealt with by the Hon'ble Supreme Court of India. Therefore, it cannot be said that the suit filed by the plaintiff is not maintainable and the plaintiff did not have any cause of action for claiming the relief of specific performance.

21. As the time is not the essence of the contract and the sale agreement was very much alive at the time when the plaintiff had chosen to send the legal notice, the suit filed by the plaintiff is very much maintainable and the Court had got the jurisdiction to deal with the same as a suit for the specific performance, even without a relief for declaration in respect of the sale agreement. Hence, the judgment of the Hon'ble Supreme Court in the case in *R.Kandasamy -vs- T.R.K.Sarawathy* reported in *2024 SCC Online SC 3377* cited by the learned counsel for the respondents in *R.CR.Saraswathi* is not applicable to the facts of the case.



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22.The learned counsel for the respondents submitted that even if the time is not essence of the contract it is obligatory on the part of the plaintiff to prove that the plaintiff was all along ready and willing to perform his part of contract.

23.As stated already, the plaintiff was not ready to complete the contract in view of the failure on the part of the defendants to get no objection certificate within time. Without much delay the plaintiff had chosen to send a legal notice also on 10.01.2005. After the reply notice was sent by the defendants on 13.01.2005, the plaintiff had rushed to the Court to file the suit. There is inordinate delay on the part of the plaintiff and he did not wait till the expiry of the three years limitation to file the suit.

24.Curiously, the trial Court has not framed any issue as to whether the plaintiff was ready and willing to perform his part of contract even though the said aspect has been dealt in the discussion part of the judgment. The defendants claimed that the plaintiff was not ready and he did not have enough money at the time when the sale agreement was executed. Had the plaintiff got the entire sale consideration on the day when the sale agreement was entered, there is no necessity for him to bargain any time period. Even according to the evidence of the defendants, the plaintiff had asked the



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defendants within 10 days after the expiry of the three months to get the balance sale consideration and get the sale deed executed. The defendants did not state that they have been always ready with the no objection certificate in order to proceed further. The defendants have stated that on 04.12.2004, the plaintiff has deposited a sum of Rs.64,802/- in his bank account though he did not have any amount in his account prior to that. Just because the plaintiff has got the money in his hands and he could deposit it on 04.12.2004 in the bank, it cannot be presumed that he is not financially sound. By keeping the money in hand without depositing the same into the bank cannot lead to the presumption that the plaintiff did not have the capability to complete the sale transaction.

25.It is the further contention of the defendants that the plaintiff did not deposit the balance sale consideration at the time when the suit was filed. Time and again, it is held that to prove the readiness and willingness the plaintiff need not jingle the coins before the Court and it is sufficient to prove that he has the financial capability to pay the balance sale consideration. Even according to the evidence of the defendants, the plaintiff had deposited a sum of Rs.64,802/- in the month of December in the account of the plaintiff and hence, it would not be a big deal for the plaintiff to meet out the balance and



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complete the sale transaction. The Court did not order to deposit the balance sale consideration in the Court and hence, the readiness of the plaintiff need not be doubted. Insofar as the willingness is concerned, it is plaintiff, who had issued the first legal notice and rushed to the Court immediately after receiving the reply notice without waiting for the full limitation period of three years to expire. So, all the judgments cited by the learned counsel for the respondents with regard to the readiness and willingness are not applicable to the circumstances that has been proved before the Court, where the plaintiff had proved his capability to pay the balance sale consideration. **Hence, the substantial question Nos. 2 and 3 are also answered in favour of the appellant.**

26.No doubt, the relief of specific performance is an equitable relief, and the same cannot be granted just for asking the relief. The plaintiff, who did not care to complete the transaction within the prescribed time limit and causing all delay tactics cannot be encouraged by granting a relief of specific performance to the loss of the defendants. At the same time, the defendants who did not care to comply the condition and come forward even when the plaintiff was ready cannot be encouraged by denying the relief of specific performance to the plaintiff. In the instant case, the plaintiff did not cause any



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delay. He has rushed to the Court seeking the relief of specific performance.

Even before that he has sent a legal notice and made several attempts and called upon the plaintiff to execute the sale deed by getting the no objection certificate. At the time when the plaintiff filed the suit, there could not have been escalation of price that would cause loss in terms of the value appreciation of the property agreed to be sold. Even though the trial Court has rightly dealt with the materials and circumstances placed by arriving at a conclusion that the time is not the essence of the contract and that the plaintiff was all along ready and willing to perform his part of contract, the appellate Court has got misguided and wrongly arrived at a finding that the time is the essence of the contract. In view of the above stated reasons, the second appeal filed by the plaintiff deserves to be allowed.

27. In the result, the second appeal is **allowed** and the judgment of the first appellate Court is set aside and the judgment and decree of the trial Court is restored. Time is one month. Consequently, connected Miscellaneous Petition is closed. No costs.

23.01.2025

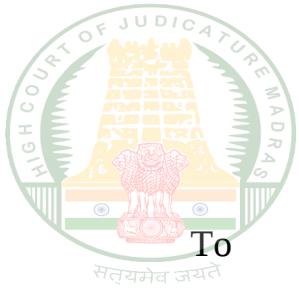
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Index : Yes/No

Speaking order : Yes/No

NCC : Yes/No

Maya/jrs



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To

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1. The Judge
The Additional Sub-Court
Tiruppur.
2. The District Munsif, Palladam.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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R.N.MANJULA, J.

Maya

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