



S.A.No.7



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2025

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

S.A.No.799 of 2019
and
C.M.P.No.16035 of 2019

Ramachandran

... Appellant/Plaintiff

Vs.

1.Murugesu Counder
2.Krishnamurthy
3.Ramamurthy
4.Ramesh

... Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and the decree dated 11.03.2019 made in A.S.No.17 of 2017 on the file of the II Additional District Court, Puducherry, confirming the Judgment and decree dated 02.06.2017 made in O.S.No.74 of 2007 on the file of the Additional Sub Court, Puducherry.

For Appellant : M/s.V.Srimathi
For Respondents : Mr.V.Moorthi

JUDGMENT

This Second Appeal has been filed by the plaintiff in O.S.No.74 of 2007, on the file of the Additional Sub Court, Puducherry, challenging the partly dismissal of the suit for specific performance and permanent injunction in



A.S.No.17 of 2017, on the file of the II Additional District Court, Puducherry.

2. For the sake of convenience, the parties are referred to hereunder as per their litigative status and ranking before the Trial Court.

3. According to the plaintiff, he entered into an agreement of sale originally with the first defendant and subsequently with all the defendants, as per the agreement dated 09.03.2000. At that time, the sale consideration was fixed as Rs.3,50,000/-. On the same day, the plaintiff paid Rs.5,000/- as part of the sale consideration. Subsequently, a panchayat was held between the parties, and the defendants agreed to sell the suit property for Rs.4,25,000/-. The plaintiff paid Rs.1,00,000/- on 25.01.2006, with the balance sale consideration to be paid in two installments, i.e., Rs.2,10,000/- on 25.04.2006 and Rs.2,15,000/- on 25.08.2006. Though the plaintiff was ready and willing to pay the amounts, the defendants failed to receive the same. Hence, the plaintiff issued a legal notice on 19.02.2007, calling upon the defendants to execute the sale deed. Since the defendants did not come forward to execute the sale deed, the plaintiff filed a suit for Specific Performance.

4. The suit was resisted by the defendants on the ground that originally



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the first defendant was having a land in R.S.No.152/16 to the extent of 52 kuzhies and 8 veesams, as per the Sale deed dated 21.04.1982, and by including the above lands, the plaintiff has formed layout, without consent of first defendant. Further, the plaintiff has also sold the lands to third parties. The plaintiff has demanded the defendants to sell their land subsequently. They did not come forward to sell the suit property. However, due to some disputes, the first defendant arranged a panchayat. In the panchayat, the panchayatdars made a decision, and the defendants shall subscribe their signatures in some documents to resolve the issue. They had not executed any agreement for sale to sell their lands.

5. By making the above statements, the defendants have completely denied the execution of agreement of sale as stated by the defendants. The defendants also stated that they never received any money from the plaintiff; that the plaintiff never claimed to be ready and willing to pay any money to them; and that the entire claim is an imagination.

6. The Trial Court framed the following issues:

“(i) Whether the plaintiff is ready and willing to perform the contract dated 25.01.2006 as alleged by the plaintiff?

(ii) Whether the plaintiff is entitled for decree of specific



performance?

(iii) Whether the plaintiff is entitled for alternative relief to direct the respondent to refund to the plaintiff a sum of Rs.1,05,000/- with interest at 18% per annum i.e., 09.03.2000 till realization?

(iv) Whether the entitled for permanent injunction?

(v) What are the other reliefs the plaintiff is entitled for?”

7. The trial Court has held that the plaintiff has established the execution of the agreement of sale, but failed to establish the fact that he was ready and willing to perform his part of the contract. Accordingly, the Trial Court denied the grant of specific performance.

8. Aggrieved by the denial of specific performance, the plaintiff filed the appeal before the First Appellate Court. After hearing the parties, the appeal was dismissed by the Appellate Court holding that the plaintiff has not proved his readiness and willingness and dismissed the suit. Challenging the concurrent findings, the plaintiff has once again, approached this Court seeking to set aside the judgment and decree, and to grant decree for specific performance.

9. The learned counsel for the appellant relied on the evidence of D.W.1, to the effect that there was the execution of the agreement for sale dated



09.03.2000. Subsequently, a panchayat were taken place on 25.01.2006, and the defendants received Rs.1,05,000/- as advance sale consideration. D.W.1 also accepted that the balance sale consideration of Rs.3,20,000/- would be paid in two installments. After recording the evidence, the Trial Court has erred in not granting the decree as prayed for. There is also evidence that the plaintiff attempted to tender the balance sale consideration, but these aspects was not considered by both Courts. The learned counsel further argued that the Appellate Court failed to properly appreciate these facts and prays to set aside the same.

10. The learned counsel for the defendants also appeared and submitted that both Courts have considered the plaintiff's readiness and willingness and held against the plaintiff and prays to confirm the same.

11. I have considered the submissions made by both sides and perused the records available.

12. This Court at the time of admission of Second Appeal framed the following substantial question of laws:

(i) Whether the Courts below are right in dismissing the suit for specific performance failing to appreciate that the owner of the properties have not chosen to deny their readiness and willingness exhibited by the plaintiff/appellant?



(ii) That the Courts below ought not to have appreciated that D.W.1 has no legal competence to challenge the agreement, since even according to him he had dealt with the property in favour of the defendants 2 to 4?

(iii) Whether the Courts below have not failed in law to appreciate the conduct of the defendants which ex-facie reveals their intention not to perform their part of contract?

(iv) Whether the Courts below ought to have taken into consideration the relationship between the parties while granting or refusing to grant the relief for specific performance?”

13. Admittedly, though the agreement for sale was originally entered into between the parties as early as 09.03.2000, with the contract period fixed for one year from that date, there was no further improvement or any steps taken by the plaintiff to enforce the agreement. Only in the year 2006, he had convened a panchayat. In the panchayat, a new decision was taken, and a fresh agreement for sale dated 25.01.2006 was entered into and Rs.1 lakh was paid as advance sale consideration on that day. This itself shows that, after execution of agreement for sale in the year 2000, the plaintiff has not taken any effective steps to enforce the contract in his favour. This was taken note by both Courts. Apart from that, the plaintiff claims that he came forward to pay the instalments due on 25.04.2006 and 25.08.2006, there is no evidence to prove that he was



ready and willing to pay the money and complete the contract.

14. Both Courts have recorded the finding that, as per the subsequent agreement reached at the panchayat, no money was paid or plaintiff has not shown his readiness to pay the money. As per Section 16(c) of the Specific Relief Act, the burden is on the plaintiff to prove his readiness and willingness that he has capacity to pay the balance consideration and also his intention to complete the contract of sale.

15. The facts also shows that the plaintiff issued the legal notice only on 19.02.2007, after defaulting the payment as agreed. I am of the view that both Courts rightly considered the readiness and willingness on the part of the plaintiff elaborately and decided the plaintiff has not come forward within a reasonable time to perform his part of the contract or to file the suit for specific performance. In exercising discretion, both the Courts rightly denied the relief. Therefore, I am not inclined to take a different view than the view taken by both the Courts below.

16. In the written statement of defendant No.1, there is specific pleading that the plaintiff failed to pay the money even after expiry of 8 months to get the



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sale deed. When there is a specific denial, regarding non payment of money as agreed and since Section 16(c) of Specific Relief Act, mandates the plaintiff to satisfy his readiness and willingness, eventhough the defendants have not raised such defence, on merits it has to be decided that whether the plaintiff is ready and willing to perform his part of contract and to satisfy Section 16(c) of Specific Relief Act. Hence, the trial Court was right in considering the issue that, whether plaintiff was ready and willing to perform his part of contract is valid. Accordingly, the substantial question of law No.1 is answered.

17. The substantial question of law No.2 is concerned, on behalf of all the defendants, D.W.1 was examined and all the defendants also filed written statement, though not separately, defendants 2 to 4 have adopted the written statement of defendant No.1, since they are also having right over the suit property. It is also well settled law that, denying subsistence of any agreement of sale by the party to agreement is permissible even the party to the agreement transferred his interest. Further, if any decree is passed in the suit for specific performance, it shall bind the subsequent purchasers also i.e., in this case defendants 2 to 4 also. Hence, the defendant No.1-party to the agreement is entitled to challenge the agreement for sale even if he has transferred his interest in the property. Hence, the substantial question of law No.2 is answered to the



effect that, the owner of property even after transfer of his interest in the property during subsistence of agreement for sale is, entitled to challenge the relief for specific performance.

18. As far as substantial question of law 3 and 4 is concerned, since the both Courts have held that the plaintiff failed to satisfy his readiness and willingness, the Courts have no other option to deny the relief of specific performance of contract of sale. While appreciating other facts, conduct of defendants also discussed but, their conduct has not prevented the plaintiff from exhibiting his readiness and willingness. In view of this, this Court finds that both Courts rightly appreciated the evidence of both sides and rendered the finding and rightly rejected the relief of specific performance. Accordingly, substantial question of law 3 and 4 answered.

19. In the result, the Second Appeal is dismissed. The Judgment and Decree dated 11.03.2019 made in A.S.No.17 of 2017, on the file of the II Additional District Court, Puducherry, confirming the Judgment and decree dated 02.06.2017 made in O.S.No.74 of 2007, on the file of the Additional Sub Court, Puducherry, is hereby confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.



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Index : Yes / No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To:

- 1.The II Additional District Judge,
Puducherry.
- 2.The Additional Sub Judge,
Puducherry.
- 3.The Section Officer,
V.R.Section,
High Court of Madras.

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K.RAJASEKAR.J,

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