



A.S.No.507 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.03.2025

PRONOUNCED ON : 02.04.2025

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

A.S.No.507 of 2019

1.Ramachandiran

2.Dhanakoti

3.V.K.Palani

...

Appellants

/vs/

E.Ganesh

Represented by his power of

Attorney Arumugam.

...

Respondent

PRAYER : First Appeal has been filed under Section 96 r/w Order XLIII Rule 1 of Civil Procedure Code against the Judgement and Decree dated 04.10.2017 made in O.S.No.32 of 2012 by the Principal District Judge, Vellore.

For Appellants

... Mr.C.Prabakaran

For Respondent

... Mr.R.Lakshminarayanan

JUDGMENT

Aggrieved over the Judgement and Decree dated 04.10.2017 made in O.S.No.32 of 2012 by the Principal District Judge, Vellore, the defendants have preferred the appeal suit.



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WEB COPY 2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for specific performance of contract, Permanent injunction and alternative relief of return of advance amount.

4. The defendants in O.S.No.32 of 2012 on the file of the Principal District Court, Vellore, are the appellants herein.

5. The plaintiff's case is as follows:

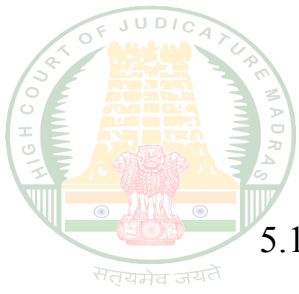
The Plaintiff filed the suit for specific performance to be enforced against the defendants as per the terms of a sale agreement released to an immovable property. Since the plaintiff is a businessman which entails frequent trips to other places, he had appointed an attorney by name Arumugam S/o. P.K. Nagappan, through a deed of special power of attorney to enable the attorney to prosecute the train in this case since he is conversant with all facts of this case. The Plaintiff entered into an agreement with the defendants on 02.07.2008 to purchase their immovable property for a total sale consideration of Rs.15,62,000/-. This sale agreement was reduced to



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writing on stamped paper on the same day (i.e.) 02.07.2008 and tendered

Rs.2,00,000/- as part of sale consideration agreeing to accomplish the execution of sale deed on or before 01.09.2008. Though a fixed time for performance was in the sale agreement neither of the parties intended to strictly act upon as stipulated. This is evident from the fact that the defendants had accepted deferred payments even after 01.09.2008 to a sum of Rs.4,50,000/- (Rupees Four Lakhs only) on 20.08.2008 Rs.2,00,000/- on 26.03.2009 and a further sum of Rs.50,000/-on 08.07.2010. All these receipts of part sale consideration were duly endorsed in the sale agreement by 1st defendant on behalf of himself and other defendants. Some portion of sale consideration was spent to meet out the 1st and 3rd defendants. The 1st defendant and other defendants being descendants of a single family. The 1st defendant exercised power of control on other defendants as the eldest member in the family. Hence, the various payments of part sale consideration were remitted to the 1st defendant who made the endorsements on behalf of other defendants also hence they are bound by the entries. Further it is more often viewed that "Time is not the essence" of this type of contract. The defendants have received a total sum of Rs.9,00,000/- as part sale consideration and balance of Rs.6,62,000/-remains to be paid.



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5.1.The defendants, after receiving the major portion from the total sale consideration and after satisfying their immediate and pressing needs and necessities, started behaving in a different manner. The plaintiff has been always willing and ready to perform his contract, whereas the defendants atleast thwarted their performance. The plaintiff visited the defendants atleast 50 times to persuade them to do their part of the contract. The 1st defendant met with an accident and sought some more time to execute the sale deed. In another occasion, he cited the March 2011, general election to the Tamil Nadu Assembly and pleaded to postpone the sale deed execution after the election is over. The defendants delayed the sale deed execution as per his whims and fancy. Hence the plaintiff caused to issue a legal notice on 16.05.2011 calling the defendants to perform their part of contract after receiving the balance sale consideration. But the defendants approached the plaintiff through one Mr.Narasimhan who was president of Vanjur Panchayat and requested to defer the sale deed execution due to some personal Inconvenience. As requested by the defendants, the plaintiff waited for some more time, having the required money, in his hand to conclude this contract of sale deed. Therefore, the plaintiff sent a second legal notice on 31.01.2012 calling upon the defendants to come forward to perform their part. To this notice, the defendants have jointly responded by sending a reply notice dated

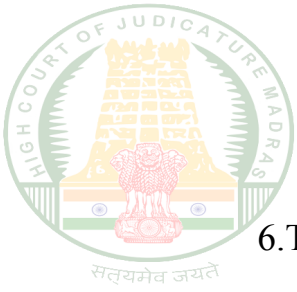


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13.02.2012 in which the defendants have accepted the execution of sale

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agreement, receipt of Rs.9,00,000/- as part sale consideration but refused to execute the sale deed citing untenable reasons such as lapse or the contract and period of limitation etc., These are all contrary to law and frivolous reasons, so as to escape from executing the sale deed. The defendants surrendered the possession of the scheduled property and permitted the plaintiff to carry out leveling or the land. In such activity, the plaintiff had incurred expenses around Rs.5,00,000/- (Rupees Five Laksh only) and made the surface of land even by filing a well and pits which enhanced the aesthetic and thereupon the market value of the land had gone up. Now the defendants are demanding a further sum of Rs.5,00,000/- as enhanced price and refusing to execute sale deed. The defendants are demanding more money to honour their commitments after flouting their conscience and ethics. The defendants are bound to perform their part of contract and execute the sale deed in favour of the plaintiff after accepting the balance sale consideration of Rs.6,62,000/- from the plaintiff at his cost of registration. But the defendants are unyielding and adamant and they are particular in extorting more money. Hence the plaintiff is obliged to resort to legal action to force the defendants to perform their part as agreed in the sale agreement through the Court and thus plead to allow the suit.



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6.The defendants contested the suit and filed a written statement and

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denied the allegations contained in the plaint and contended that the suit filed through power of attorney agent is not valid and admissible in law. The defendants admit the execution of the sale agreement dated 02.07.2008 agreeing to sell the suit property for total consideration of Rs.15,62,000/-. As per the agreement of sale dated 02.07.2008, two months time was fixed for payment of the balance of sale consideration. Accordingly the plaintiff ought to have paid Rs.13,62,000/-being the balance of sale consideration on or before 01.09.2008. The receiving of balance sale consideration on various dates cannot enlarge the time limit stipulated in the agreement of sale. In spite of his repeated requests, the plaintiff was unable to pay the balance of sale consideration and get the sale deed executed. The plaintiff did not have sufficient funds to pay the balance of sale consideration and that is the reason for not performing his part of the contract. Therefore the sale agreement dated 02.07.2008 has lapsed on account of the plaintiff's failure to perform his part of contract within the time stipulated in the agreement. Since the plaintiff committed breach of the contract, the defendants are not liable to execute the sale deed at this point of time. The defendants are in possession of the suit property. They did not permit the plaintiff enter the suit property at any point of time. The very fact that the suit has been filed belatedly would reveal that

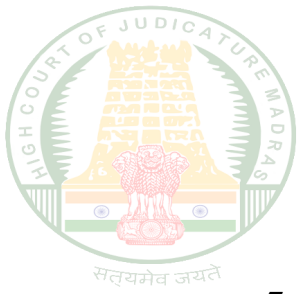


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the plaintiff has no funds or inclination to abide by the sale agreement and the suit is barred by limitation and thus, pleaded to dismiss the suit.

7.The trial Court, upon the above pleadings, framed the following issues for consideration:

- 1. Whether the suit filed through Power of Attorney Agent is valid or not?***
- 2. Whether the first defendant made endorsements for himself on behalf of other defendants for same portion of sale consideration are all false and baseless is true?***
- 3. Whether the defendants surrendered the possession of the suit property and permitted the plaintiff to level and make improvements is true?***
- 4. Whether the plaintiff did not have sufficient funds to pay fee balance sale consideration to perform his part of the contract is true?***
- 5. Whether the suit is barred by limitation is true?***
- 6. Whether the plaintiff is entitled for the relief of specific performance as prayed for?***



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7. Whether the plaintiff is entitled for the relief of permanent injunction?

8. To what other relief?

8. On the side of the plaintiff, three witnesses were examined as PW1 to PW3 and Ex.A1 to Ex.A18 were marked. On the side of the Defendants, two witnesses were examined as DW1 & DW2 and no documents were marked.

9. The trial Court, upon considering the oral and documentary evidence on record, decreed the suit with costs. Aggrieved by this, the defendants filed this appeal suit.

10. The learned counsel appearing for the appellants/defendants submitted that the judgment and decree of the trial Court is contrary to law, against the weight of evidence and probabilities of the case and contended that the trial Court overlooked the fact that the suit is barred by limitation as it was filed beyond the period of three years. In the agreement, the time limit is fixed by executing the sale deed. Two month period is essential for completion of the agreement and the plaintiff had not proved the ready and



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williness in performing the contract on his part. There is no materials or documentary evidence to show that the plaintiff is ready and willing to execute the sale deed by paying the entire balance sale consideration. The defendants received money on installments basis does not amount to prove the ready and willingness of the plaintiff. On the ground itself, the suit is liable to be dismissed. Further, contended that the trial Court failed to note that time is the essence of contract as it has been specifically stated that the parties ought to have completed the contract on or before 01.09.2008. Therefore, the finding of the trial Court that the time is not the essence of the contract is unsustainable in law and the same is liable to be set aside and thus pleaded to set aside the judgement and decree of the trial Court and to allow the appeal suit.

11.To support his argument, the learned counsel for the appellants/defendants relied upon the following judgments:

- 1. (2009) 14 Supreme Court Cases 663 (Inderchand Jain (Dead) Through Lrs. Vs. Motilal (Dead) Through Lrs.)**
- 2. (1997) 3 SCC 1 (K.S.Vidyanadam and others Vs. Vairavan)**



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WEB COPY 12. The learned counsel appearing for the respondent/plaintiff supported the judgment and decree of the trial Court and contended that both the parties entered into an Agreement for Sale of the suit property on 2.7.2008 (Ex.A2) Execution of Sale Deed is to be completed before 1.9.2008. The plaintiff paid the part payments on 20.08.2008 and 08.07.2010 and the same was received by the defendants without any objection. Therefore, the time as mentioned in the agreement has become obsolete. The plaintiff issued a notice on 16.05.2011 calling upon the defendant to perform their part of contract. Further, the plaintiff sent the second notice dated 31.01.2012. The defendants though admitted the receipt of Rs.9 Lakhs, they refused to come forward to execute the sale deed. The plaintiff is in possession of the suit property and he was taking steps to level the ground. The defendants demanded further payment of Rs.5 lakhs. The plaintiff filed the suit for specific performance.

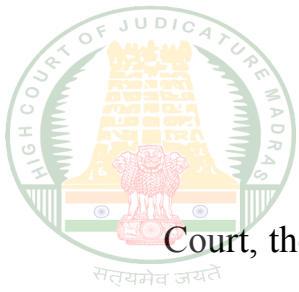
12.1. Further, the learned counsel for the respondent/plaintiff contended that the last date of receipt of part of the sale consideration by the Defendants was on 8.7.2010 that the time runs from the said date. The suit was filed on 6.6.2012 and that therefore the suit is in time. The Trial Court found that as



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the defendants accepted the payment after 1.9.2008, the deadline fixed in the agreement for sale, the Defendants have waived the time. Hence, time becomes not the essence of this contract. According to the Judgment of the Hon'ble Supreme Court in **2021 SCC Online SC 1053 (Welspun Speciality Solution Ltd. Vs. O N G C)**, it was held that the collective reading of the entire contract and the surrounding circumstances is imperative to come to such a conclusion. This judicial dictum applies to this case, Hence time is not the essence of the contract. In the cross examination DW1, the 1st defendant admitted the execution of the agreement for sale and the receipt of the part payments made by the plaintiff. DW1 further admitted in the cross examination that as both parties have not taken the time as prime factor, he received the amounts after the due date. Hence, time is not the essence of the contract and the Trial Court had rightly held in the judgment. According to the amendments made to the Registration Act 1908, by the Tamil Nadu Act 29/2012 (with effect from 01.12.2012 the Sale Agreement is compulsorily registrable. As on the date of the suit i.e. on 6.6.2012, there was no such embargo. Hence Ex.A2 is enforceable. The Trial Court has rightly decided the limitation point and the time factor and decreed the suit as prayed for. The Grounds raised in the Appeal revolves around the limitation and time factor. Since these two points are rightly answered in the judgment by the Trial



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Court, there may not be any necessity for the interference and thus pleaded to

WEB @ dismiss the appeal suit.

13.The points for consideration before this Court are,

i. Whether the plaintiff is entitled for the relief of specific performance as prayed for?

ii. Whether time is the essence of the contract and whether the suit is barred by limitation?

iii. Whether the plaintiff is entitled for the relief of permanent injunction?

iv. To what other relief?

14.I have considered the matter in the light of the submissions made by either side and perused the materials available on record.

15.On perusal of the records, it is noticed that the plaintiff has filed the above suit through his power of attorney agent. Though the defendants objected before the trial Court that the suit is not maintainable filed by the



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plaintiff through the power of Attorney agent, before this Court, the learned
WEB COUNSEL appearing for the appellants/defendants not pressed that defence.

16. Admittedly, the defendants are the owners of the plaint schedule properties. The plaintiff and the defendants entered into an agreement on 02.07.2008 and the defendants agreed to sell the plaint schedule properties for a total sale consideration of Rs.15,62,000/-, on the same date, the 1st defendant received a sum of Rs.2,00,000/- as part of sale consideration. Both the parties agreed to complete the agreement and execute the sale deed on or before 01.09.2008 and possession was also given to the plaintiff. The contract was not completed within the time fixed in the agreement. The defendants accepted part of balance sale consideration, after the time fixed by them and on 20.08.2008 received Rs.4,50,000/-, on 26.03.2009 received Rs.2,00,000/- and on 08.07.2010 received Rs.50,000/-. Thus, the defendants have received a total sum of Rs.9,00,000/- as part of sale consideration. Balance sale consideration is Rs.6,62,000/-. This fact is not denied by the defendants. Since the defendants had not ready to execute the sale deed after the receipt of the balance sale consideration, the suit was filed.



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WEB COPY 17. On perusal of evidence on record, it is further noticed that the execution of sale agreement and on receiving the sale consideration were admitted by the defendants and evidenced by Ex.A2 and Ex.A12 to Ex.A14. The main defence projected by the defendants is that the plaintiff is not ready and willing to perform his part of the contract and the plaintiff has no sufficient funds to pay the balance sale consideration.

18. In determining the question whether time is the essence of the contract, with reference to the performance of a contract, what generally may arise for consideration either with reference to the contract as a whole or with reference to a particular term or condition of the contract which is breached. In a contract relating to sale of immovable property if time is specified for payment of the sale price but not in regard to the execution of the sale deed, time will become the essence only with reference to payment of sale price but not in regard to execution of the sale deed. Normally, in regard to contracts relating to sale of immovable properties, time is not considered to be the essence of the contract unless such an intention can be gathered either from the express terms of the contract or impliedly from the intention of the parties as expressed by the terms of the contract.



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19.The intention to make time stipulated for payment of balance consideration will be considered to be essence of the contract where such intention is evident from the express terms or the circumstances necessitating the sale, set out in the agreement. If, for example, the vendor discloses in the agreement of sale, the reason for the sale and the reason for stipulating that time prescribed for payment to be the essence of the contract, that is, say, need to repay a particular loan before a particular date, or to meet an urgent time-bound need (say medical or educational expenses of a family member) time stipulated for payment will be considered to be the essence. Even if the urgent need for the money within the specified time is not set out, if the words used clearly show an intention of the parties to make time the essence of the contract, with reference to payment, time will be held to be the essence of the contract.

20.In our case, though in the sale agreement Ex.A2, the parties fixed two months time to conclude the contract with understanding, the defendants subsequently received Rs.4,50,000/-, Rs.2,00,000/- and Rs.50,000/- respectively after the period of two months, which evidenced as Ex.A12, Ex.A13 and A14, thus in the total sale consideration of Rs.15,62,000/-. The



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WEB COURT plaintiff paid more than half of the sale consideration i.e. Rs.9,00,000/- and the balance sale consideration of Rs.6,62,000/- which is also deposited before the trial Court after the decree as directed by the Court, which reflects the plaintiff is having sufficient money to conclude the contract. The intention of the parties is reflected by subsequent receiving of sale consideration by the defendants as evidenced Ex.A12, Ex.A13 & Ex.A14 which impliedly reflects that time is not considered to be the essence of the contract and the plaintiff also paid more than 50% of the sale consideration is admitted and after the judgment, the plaintiff deposited the entire sale consideration before the trial Court on 11.10.2017 within two months from the date of the judgment. Therefore, it reflects that the plaintiff is always ready and willing to conclude the contract and the trial Court rightly comes to the conclusion that the plaintiff is entitled for the relief of specific performance of the agreement dated 02.07.2008. Hence, I find no illegality in the findings of the trial Court and there is no ground for interference and there is no merit in the argument of the learned counsel for the appellants/defendants and the decisions relied on by him are also not supported by his defence, hence, rejected. The points are answered accordingly in favour of the respondent/plaintiff.



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In view of the above, the appeal suit is dismissed. No costs.

Consequently, connected miscellaneous petition, if any, is closed.

Index/Internet: Yes / No

Speaking order: Yes/No

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02.04.2025

To

- 1.The Principal District Judge, Vellore.
- 2.The Section Officer, VR Section High Court, Madras.



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V.SIVAGNANAM, J.

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Pre-delivery judgment made in
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