

A.S.No.162 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.08.2025

CORAM

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

A.S.No.162 of 2019

1. Veerasamy
2. Kalimurthy
3. Veerappan

... Defendants/Appellants

Vs.

Jayalakshmi

... Plaintiff/Respondent

Appeal Suit has been filed under Section 96 read with Order XLI Rule 1 of Code of Civil Procedure, against the judgment & decree dated 04.12.2017 made in O.S.No.9 of 2016 on the file of the III Additional District Judge, Kallakurichi.

For Appellants : Mr. S.N.Subramani

For Respondent : Mr.V.Manoharan



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JUDGMENT

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2. The brief case of the plaintiff is as follows:

The suit schedule property had belonged to the first defendant by sale deed dated 25.02.1999. The first defendant and his sons, who are the defendants 2 & 3, have entered into an agreement of sale in favour of the plaintiff on 18.09.2015. The sale price was fixed at Rs.16,00,000/- and on the date of sale agreement, a sum of Rs.15,00,000/- was paid towards advance and the balance amount of consideration of Rs.1,00,000/- has to be paid within 1 ½ year. The said sale agreement was registered. The



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plaintiff has been all along ready and willing to perform her part of contract. The plaintiff had contacted the defendants to receive the balance sale consideration and registered the sale deed. The defendants did not respond properly. Hence, a legal notice dated 22.06.2016 was issued to the defendants for demanding to execute the sale deed after receiving the balance sale consideration amount. The defendants sent reply notice dated 05.07.2016 with false averments. As such, the sale agreement was created as surety only and the loan of defendants were agreed to be settled by the plaintiff so on and so forth. Hence, the suit.

3. The brief case of the defendant is as follows:

The written statement filed by the first defendant is adopted by the defendants 2 & 3. The suit is legally not maintainable. Except the fact that the suit property belongs to the first defendant. The first defendant has specifically denied all other facts narrated in the plaint. A detailed



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reply notice has been given by the first defendant on 05.07.2016. The defendants family has a loan of about Rs.40,00,000/- and hence, they were trying to sell the suit property to the plaintiff's husband Senthilkumar orally undertook to repay the debtors of the defendants. Hence, the sale agreement has entered into loan that day no money transactions took place between them. Even though, the said sale agreement was registered, it is to be only a security for repaying the loan amount and the same cannot be legally accepted. When the defendants along with attestors and the panchayatars to the document, have approached the plaintiff and her husband to settle the loan amount, they have refused. The plaintiff and her husband were running a monthly chit and they do not have capacity to pay Rs.15,00,000/-. Only on the belief that as they are running a monthly chit, the plaintiff would settle the loan amount, for which, the said sale agreement was entered into. If the plaintiff settles the loan amount towards one Mariappan and 21 others, the defendants are ready to execute the sale deed in favour of the



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plaintiff. The suit property is worth about Rs.50,00,000/- Since the alternative relief is claimed, it is well known to the plaintiff that the sale agreement is not legally enforceable. The suit has to be dismissed with costs.

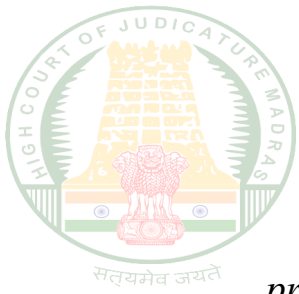
4. Based the above pleadings, the trial Court has framed the following issues:

1. Whether it is true that the plaintiff has paid a sum of Rs.15,00,000/- as an advance and the date of agreement of sale dated 18.09.2015 to the defendants.

2. Whether it is true that plaintiff's husband stood as guarantor to the debtors of the defendants to the tune of Rs.40,00,000/- and only in view of the same, the sale agreement has been executed between the plaintiff and the defendants.

3. Whether the plaintiff is ready and willing to perform her part of contract.

4. Whether the plaintiff is entitled for the relief of specific performance of agreement of sale dated 18.09.2015 as



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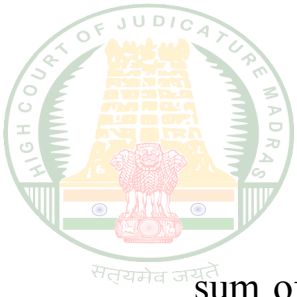
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prayed for.

5. To what other relief the plaintiff is entitled to?

5. During the trial, on the side of the plaintiff, the plaintiff examined herself as PW1 and Exs.A1 to A6 were marked. Further, one Mahalingam was examined as PW2, one Balu was examined as PW3 and one Ravichandran was examined as PW4. On the side of the defendants, the first defendant himself examined as DW1 and Exs.B1 & 2 were marked.

6. The findings of the trial Court: As stated in the written statement, neither the panchayatars nor the attestors have been examined on defendants side. The attestors to Ex.A1 have been examined as PW2 and PW3 on plaintiff side, not even a suggestion regarding approaching the plaintiff and her husband on 20.06.2016 has been posed to them in cross examination. On the date of sale agreement, the plaintiff had paid a



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sum of Rs.15,00,000/- and she was always ready and willing to perform her part of contract. The plaintiff has proved her case and she is entitled to the relief of specific performance.

7. The learned counsel appearing for the appellants/defendants would submit that the alleged sale agreement has obtained by misrepresentation as defined under Section 18 of the Indian Contract Act, 1972. The defendants never executed the sale agreement, but they executed a security agreement to get over their debts of Rs.40,00,000/- The plaintiff and her husband have no sufficient means to purchase the suit property and to pay the sum of Rs.15,00,000/- to the defendants. The defendants never received any money from the plaintiff and her husband. There was no "*consensus ad-idem*" between the parties and the alleged sale agreement was created only for the purpose of security. In the reply notice dated 05.07.2016, given by the defendants denying the execution of the sale agreement which was executed only for security purpose. The



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trial Court has erred in considering the evidence of PW3 that the reason for delay in execution of sale deed to vacate the house and also erred in considering the evidence of PW2 that he has clearly deposed that the value to property is more than Rs.27,00,000/- which revealed that the plaintiff do not know about the value of the property. PW2, in his evidence, deposed that he do not know about the discussion of sale transactions and also deposed that he often went to Sub Registrar's Office to sign as witness in the several documents. The trial Court has failed to consider the evidence of PW4, who is the brother of the plaintiff that he and his father paid a sum of Rs.6,00,000/- to the plaintiff to purchase the suit property and for that he has executed unregistered sale agreement with one Rani for a sum of Rs.7,00,000/-. Subsequently, he sold the said property to one Subramani on 17.08.2017, which is only a created story. The evidence of PW4 has clearly reveals that Ex.A4 / sale agreement dated 28.09.2015 and cancellation of agreement in Ex.A5, dated 12.08.2016 and sale deed dated 17.08.2016 under Ex.A6 came into

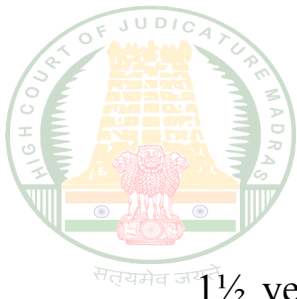


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existence only after receipt of reply notice from the defendants under Ex.B1 dated 05.07.2016. The trial Court ought to have consider the evidence of PW1, who, in her cross examination, deposed that she has no proper income from their business and hence, she did not deposit any amount in her bank account and hence, the plaintiff has no capacity to pay the alleged advance amount towards the sale consideration. The conduct of the plaintiff reveals that there was no readiness and willingness on her part to perform the contract. The trial Court erred in considering the fact that since the plaintiff do not have remaining amount of Rs.1,00,000/- to get the sale deed and hence, she was waiting for another one year from the date of sale agreement, which is not acceptable reason and it is only a created story and prayed to allow the appeal.

8. *Per contra*, the learned counsel appearing for the respondent/plaintiff would submit that Ex.A1 sale agreement is registered one. The time for completion of the sale transaction is fixed



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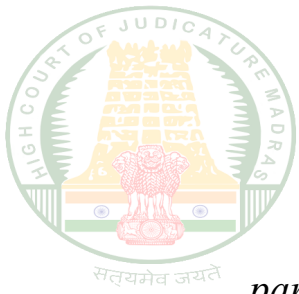
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1½ year. The plaintiff has chosen to issue notice to the defendants on 22.06.2016 for demanding execution of sale deed, which is well within the period stipulated under the sale agreement. Through the evidence of PW2 to PW4, the execution of sale agreement and the advance amount paid by the plaintiff has been clearly established. From the conduct of the defendants, the trial Court found that the defendants alone were not ready and willing to perform their part of contract, whereas the plaintiff was all along ready and willing to perform her part of contract. The trial Court, after considering the oral and documentary evidences adduced on either side, has rightly decreed the suit for the relief of specific performance.

9. This Court has considered the submissions made on either side and perused the materials on record.

10. The points for determination arise in this appeal is that

(i) Whether the plaintiff is ready and willing to perform her



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part of contract?;

(ii) whether the plaintiff is entitled for the relief of specific performance? And

(iii) Whether the Ex.A1 sale agreement executed only for security agreement and never received any money as claimed by the defendants are true?

Point No.(iii):

11. It is not in dispute that the suit schedule property is the house property and the same is belonged to the first defendant. Ex.A1 is the registered agreement for sale dated 18.09.2015, entered between the plaintiff and the defendants with regard to the suit schedule property. A perusal of Ex.A1 shows that the total sale consideration is fixed for a sum of Rs.16,00,000/- and for a sum of Rs.15,00,000/- has been paid as an advance on the same day. The balance sale consideration of Rs.1,00,000/- has to be paid within 1 ½ years *i.e.* before 17.03.2017. There is no



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recitals mentioned in Ex.A1, that the said agreement was executed for loan security agreement. One Mahalingam/PW2 and one Balu/PW3 have signed as witnesses in Ex.A1.

12. It is the contention of the defendants that Ex.A1 registered sale agreement dated 18.09.2015, was not intended to be acted upon as an agreement of sale and it was executed only for security. In view of the above contention, it is appropriate to consider as whether the oral evidence regarding the nature of transaction is permissible under Sections 91 and 92 of the Indian Evidence Act.

13. At this juncture, it is relevant to refer the Sections 91 and 92 of Indian Evidence Act, which is extracted hereunder:

91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. — When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all



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cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

92. Exclusion of evidence of oral agreement. — When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms.

14. It is relevant to cite the judgment of the Hon'ble Supreme Court of India in ***Pravinder Singh vs. Renu Gautam*** reported in (2004) 4 SCC 794, wherein, it has been held as follows:

*“An enquiry into reality of transaction is not excluded merely by availability of writing reciting the transaction. **Tyagaraja Mudaliyar v.***



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Vedathanni, AIR 1936 PC 70 : 63 IA 126 is an authority for the proposition that oral evidence in departure from the terms of written deed is admissible to show that what is mentioned in the deed was not the real transaction between the parties but it was something different.”

15. It is settled proposition of law regarding nature of transaction that the party can let in oral evidence to prove that the document was not intended to be acted upon and party intended to have the document for different purpose.

16. It is pertinent to mention that the initial burden of proof always lies on the plaintiff to discharge her burden. In this regard, it is relevant to cite the following legal maxims:

“*vigilantibus non dormientibus jura* – the law assists those who are vigilant, not those who sleep on their rights.”

“*actori incumbit onus probandi* – the burden of proof lies on the plaintiff.”



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17. Ex.A2 is the legal notice dated 22.06.2016 issued by the plaintiff to the defendants wherein it has been stated that the plaintiff is ready and willing to perform her part of contract and demanded for execution of sale deed after receiving the balance sale consideration of Rs.1,00,000/-. It is pertinent to mention that Ex.A1 sale agreement dated 18.09.2015, after lapse of more than nine months, the plaintiff has issued Ex.A2 legal notice dated 22.06.2016 to the defendants. In turn, the defendants have chosen to give their reply under Ex.A3 dated 05.07.2016, wherein it has been stated that denying the execution of sale agreement which is only for security agreement and also stated that they never received any money from the plaintiff.

18. PW2/Mahalingam, in his cross examination, deposed that the plaintiff had entered into the sale agreement and the advance amount has been paid under the denomination of Rs.100, Rs.500 and Rs.1000/-. He



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further deposed that the value of the suit property is more than Rs.27,00,000/- and he does not know about the discussion made between the parties with respect to sale transaction. PW3/Balu, in his cross examination, deposed that the reason for delay in execution of sale deed to vacate the house. The plaintiff has been paid the advance amount under the denomination of Rs.100, Rs.500 and Rs.1000/- and the same has been received by the defendants. PW4/Ravichandran, who is brother of the plaintiff, has deposed that he and his father paid Rs.6,00,000/- to the plaintiff to purchase the suit property for that he executed unregistered sale agreement with one Rani. Subsequently, they have sold the property for a sum of Rs.7,00,000/- to one Subramani on 17.08.2016.

19. Ex.B1 is the reply notice sent by the defendants dated 05.07.2016 wherein it has been stated that if the plaintiff settles the loan amount towards one Muniappan and 21 others, then the defendants are willing to execute the sale deed in favour of the plaintiff.



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20. DW1, in his cross examination, categorically deposed that in Ex.A1, there is no recital mentioned that the agreement was executed for security. He admits that the defendants have executed the document in Ex.A1. He has admits that though in his proof affidavit, it has been stated about from whom, DW1 has borrowed the amounts but not stated about their details and how much amounts received from them date wise. Further he deposed that the plaintiff and her husband were running a monthly chit. Except Ex.A1 transaction, no other transaction have been entered with the plaintiff. He did not file any document to show the value of the suit property. From the above evidence of DW1, and from the contents mentioned in Ex.B1 reply notice dated 05.07.2016 and from the evidence of PW1 to PW3, would reveal that Ex.A1 is the sale agreement and the same was executed in favour of the plaintiff, after receiving the advance amount of Rs.15,00,000/- by the defendants. The point No.iii is answered in favour of the plaintiff.



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Point Nos.(i) and (ii):

21. Even though Ex.A1 sale agreement executed by the defendants is proved, the plaintiff, as a matter of right, cannot seek enforcement for specific performance without establishing the readiness and willingness on her part.

22. In the present case on hand, the total sale consideration was fixed at Rs.16,00,000/- out of which, a sum of Rs.15,00,000/- has been paid on the same day on execution of Ex.A1 dated 18.09.2015. The balance amount of Rs.1,00,000/- has to be paid within time limit of 1 ½ year as per terms of the agreement. Admittedly, the plaintiff has issued notice to the defendants after lapse of nine months under Ex.A2 dated 22.06.2016 demanding the defendants to execute the sale deed in her favour.

23. At this juncture, it is relevant to refer section 16 of the



specific Relief Act 1963, which is extracted hereunder:

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16. Personal bars to relief-

Specific performance of a contract cannot be enforced in favour of a person-

(a) Who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

24. In a case of specific performance, the plaintiff has to plead and prove the readiness from the date of execution of sale agreement till the date of filing of the suit. The defendants have deposited the balance sale consideration of Rs.1,00,000/- only on 21.02.2017.

25. In the suit for specific performance, the law is well settled that the plaintiff is obliged not only to make specific averments in the plaint, but, also

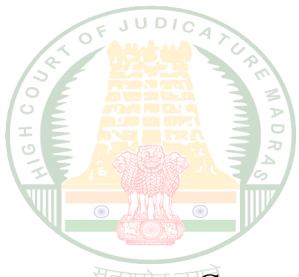


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obliged to produce oral and documentary evidences to show the availability of funds to make payment in terms of contract on time. It is relevant to refer the judgment of the Hon'ble Supreme Court in ***R.Shama Naik Vs. G.Srinivasiah reported in 2024 INSC 927***, wherein, it has been held that, "there is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff."

26. It may be apposite to cite the judgment of the Supreme Court in ***Urvashi Aggarwal (since deceased) through Legal Representatives and Another Vs.Kushagr Ansal & Others reported in (2020) 17 SCC 774***, wherein, it has been held that even in case where it is not only possible to order specific performance, the plaintiff is entitled for refund of an advance amount in a suit for specific performance. Further, a contract must be performed within a reasonable time as observed by the Hon'ble Supreme



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Court in the case of *K.S Vidyadnam and others Vs. Vairavan reported in (1997) 3 SCC 1.*

27. PW1 in her cross examination, has categorically deposed that the reason for fixing time limit for 1 ½ year for completion of sale that PW1 has no sufficient money to pay the sale registration fee. However, on perusal of Ex.A1, there is no recital found to that effect. The conduct of the plaintiff along with the evidence of PW2 to PW4 reveals that the plaintiff has failed to establish her readiness and willing from the date of agreement to till the date of filing of the suit. On perusal of Ex.A1 suit sale agreement that it is very clear that the parties have not stated any reason for not executing the sale deed immediately. When the plaintiff had paid more than 90% of the sale consideration, on the date of execution of the sale agreement itself. The reason for not getting the sale deed in her favour has not been stated either in the suit agreement or in the plaint specifically. The normal conduct of a party who had paid the more than 90% sale consideration, would be get the sale deed executed in her favour without any delay. This Court is of the view that the



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plaintiff has proved the execution of Ex.A1 sale agreement which was entered into between the parties and also she has paid the advance amount towards the sale consideration, but she has failed to prove her readiness and willingness all along from the date of execution of sale agreement to till the date of filing of the suit, with acceptable documentary evidences to show the availability of funds to make payment in terms of contract on time.

28. At this juncture, it is relevant to mention that the Hon'ble Supreme Court of India has considered the term "unjust enrichment" in the judgment reported in *(2005) 3 SCC 738, Sahakari Khand Udyog 'Vandal Ltd vs Commissioner of Central Excise & Customs*, wherein, it has been held that "unjust enrichment" means retention of a benefit by a person that is unjust or inequitable and "unjust enrichment" occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else."

29. In the light of the above discussions, the plaintiff is not entitled for



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the relief of specific performance of sale agreement dated 18.09.2015, but the plaintiff is entitled an alternative relief of refund of an advance amount with interest. The relief granted by the Court below in respect of specific performance is liable to be set-aside. The points No.(ii) and (iii) are answered accordingly.

30. In the result, the appeal suit is partly allowed. The decree passed by the Court below is modified as hereunder:

1. The decree of specific performance granted by the Court below dated 04.12.2017 is set-aside and the suit is dismissed as against the aforesaid relief of specific performance. The suit is decreed for the alternative relief refund of advance amount.

2. The defendants are directed to pay the advance amount to the plaintiff for a sum of Rs.15,00,000/- (Rupees Fifteen lakhs only) within interest at the rate of 9% from the date filing of the suit till the date of decree and thereafter, the defendants are directed to pay the interest at the rate of 6% till the date of



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realization of the amount; and

3. The plaintiff is at liberty to withdraw the amount of Rs.1,00,000/- which has been deposited in CCD No.235/16-17 dated 21.02.2017 on the file of the III Additional District Court, Kallakurichi, upon filing proper application. All other aspects, the decree and judgment of the trial Court is confirmed. No costs.

13.08.2025

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Internet;Yes/No

Index:yes/No

Speaking order/Non-speaking order



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To
The III Additional District Judge, Kallakurichi.



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M.JOTHIRAMAN,J.

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