

S.A.No.725 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 18 / 10 / 2024

JUDGMENT PRONOUNCED ON : 10 / 01 / 2025

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.725 OF 2018

AND

C.M.P.NO.21219 OF 2018

K.Prabakaran

...

Appellant /
Appellant /
1st Defendant

Vs.

1.S.Boopathi

...

1st Respondent /
1st Respondent /
Plaintiff

2.S.Menaga

...

2nd Respondent /
2nd Respondent /
2nd Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated July 16, 2018 in A.S.No.27 of 2016 on the file of Principal District Court, Vellore, confirming the Judgment and Decree dated February 16, 2016 in O.S.No.117 of 2006 on the file of the Subordinate Court, Vellore.



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For Appellant : Mr.R.Siddharth
For Respondent-1 : Mr.S.Ramesh
for M/s.K.Sivasubramanian
For Respondent-2 : Served – No appearance

J U D G M E N T

This Second Appeal is directed by the first defendant in the Original Suit, who was unsuccessful before the Trial Court as well as the First Appellate Court. Challenge is to the Judgment and Decree dated July 16, 2018, passed in A.S.No.27 of 2016 by the 'Principal District Court, Vellore' [henceforth 'First Appellate Court'], confirming the Judgment and Decree dated February 16, 2016 passed in O.S.No.117 of 2006 by the 'Subordinate Court, Vellore' [henceforth 'Trial Court'].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The Suit Property absolutely belongs to the first defendant, whose sister is the second defendant. The first defendant and the plaintiff



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entered into Sale Agreement dated May 26, 2006 whereby the plaintiff agreed to purchase the Suit Property for a sum of Rs.4,75,000/-, of which, Rs.75,000/- was paid upfront as advance. As per the Sale Agreement, the first defendant had to execute Sale Deed on or before August 25, 2006 upon receiving the balance sale consideration.

3.1. While the plaintiff was always ready and willing to perform his part of the Sale Agreement, the first defendant in collusion with his sister / second defendant is evading from performing his part. Notices were exchanged between the parties. The first defendant returned a sum of Rs.85,500/- by way of Demand Draft, which was sent along with his legal notice dated July 20, 2006, wherein he falsely alleged that the problem between the parties was sorted and plaintiff agreed to receive the refund of advance money along with damages. The first defendant has no right to unilaterally revoke the Sale Agreement. Hence the Suit for specific performance.

FIRST DEFENDANT'S CASE

4. In the written statement filed by the first defendant, he has admitted the factum of Sale Agreement and its terms as stated in the



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plaint. However, he denied that the plaintiff was ready and willing to perform his part of the Sale Agreement. The plaintiff who is a Government servant failed to obtain permission for purchasing the Suit Property. Accordingly to the first defendant, while he was ready and willing to perform his part of the Sale Agreement, his sister – Menaga / second defendant issued a legal notice to the plaintiff falsely claiming share over the Suit Property. She was in actual possession and enjoyment of the Suit Property, and refused to vacate it. On the other hand, the plaintiff insisted on delivery of possession immediately after execution of Sale Deed. Eventually, the matter was sorted out and the plaintiff agreed to rescind the contract upon receiving the advance of Rs.75,000/- along with Rs.10,500/- towards damages. However, when the first defendant approached the plaintiff with the said sum, the plaintiff refused to keep up his word. Hence, the first defendant issued the legal notice dated July 20, 2006 and sent a Demand Draft for Rs.85,500/- along with it, to the plaintiff. The same was received by the plaintiff on July 29, 2006, but the plaintiff failed to return the original Sale Agreement. As such, there is no Sale Agreement between the plaintiff and the first defendant. Accordingly, he sought to dismiss the Original Suit.



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SECOND DEFENDANT

5. The second defendant, who is the sister of the first defendant, was impleaded in the Suit as per the Order passed in I.A.No.118 of 2007 in the Original Suit. She remained *ex-parte* before the Trial Court.

TRIAL COURT

6. At trial, the plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.10 were marked on the side of the plaintiff. On the side of the defendants, the 1st defendant was examined as D.W.1 and Ex-B.1 was marked.

7. After completion of trial and hearing both sides, the Trial Court concluded that Ex-A.2 – Legal Notice shows the readiness and willingness of the plaintiff to perform his part of the Sale Agreement. Further, by relying on Ex-A.7 as well as the oral evidence of D.W.1 / first defendant, wherein he admitted that he was not able to perform his part, it concluded that he was not ready and willing to execute Sale Deed. Accordingly, the Trial Court decreed the Suit thereby granted the relief of Specific Performance of Ex-A.1 – Sale Agreement.



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FIRST APPELLATE COURT

8. Feeling aggrieved, the 1st defendant approached the First Appellate Court. The First Appellate Court after hearing both sides and perusing the documents available on record, concluded that the first defendant has no right to unilaterally revoke Ex-A.1 – Sale Agreement, that too after legal notice from the plaintiff calling upon him to execute the Sale Deed. Accordingly, it dismissed the appeal and confirmed the Judgment and Decree of the Trial Court.

SECOND APPEAL

9. Feeling aggrieved, the 1st defendant has preferred this Second Appeal, which was admitted on December 4, 2018 on the following substantial questions of law:

“1. Whether the Court below are correct in law in decreeing the Suit for Specific Performance especially when the entire advance amount has been returned to the petitioner and the same continues to be in his custody?

2. By retaining the demand draft, has not the plaintiff impliedly accepted the contract having been rescinded by defendant?”



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ARGUMENTS:

10. Mr.R.Siddharth, learned Counsel for the appellant/first defendant would argue that the plaintiff and first defendant entered into Ex-A.1 – Sale Agreement dated May 26, 2006. On the date of Sale Agreement, the first defendant received Rs.75,000/- as advance. Though the first defendant was ready and willing to execute the Sale Deed after receiving the balance sale consideration, her sister / second defendant, who is in actual possession and enjoyment of the Suit Property, objected to the same claiming share in the Suit Property and refusing to vacate it. After exchange of legal notices, the first defendant approached the plaintiff and informed him that it is practically not possible to make the second defendant vacate the Suit Property. Eventually, they both resolved the matter amicably, and the plaintiff agreed to accept refund of advance amount along with damages of Rs.10,500/-, totally Rs.85,500/-. However, when the first defendant approached the plaintiff with the aforesaid amount, the plaintiff refused to accept it and failed to honour his word. Hence, the first defendant sent the said amount by way of Demand Draft (Ex-A.7) along with Ex-B.1 - Legal Notice. The moment it was received by the plaintiff, Ex-A.1 - Sale Agreement got revoked. More so, the



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plaintiff did not return the Demand Draft. Thus, no Sale Agreement exist between the plaintiff and the first defendant. Without seeking to cancel the termination / revocation of Ex-A.1 – Sale Agreement, the Suit for specific performance is not maintainable. Without considering the fact that the relief of specific performance is one of equity, the evidence available on record in the right perspective, as well as the facts and circumstances of the case, the Trial Court and the First Appellate Court erred in decreeing the Suit as prayed for. Accordingly, he would pray to allow the Second Appeal, set aside the Judgment and Decree of the First Appellate Court and the Trial Court, and dismiss the Suit.

10.1. He would rely on the following decisions in support of his contentions:

- (i) ***Sikandar's Case*** - Judgment of Hon'ble Supreme Court in *I.S.Sikandar (dead) by LRs -vs- K.Subramani*, reported in (2013) 15 SCC 27;
- (ii) ***Surinder's Case*** - Judgment of Hon'ble Supreme Court in *Surinder Kaur (dead) by LRs -vs- Bahadur Singh (dead) by LRs*, reported in (2019) 8 SCC 575;



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(iii) **Mohinder's Case** - Judgment of Hon'ble Supreme Court in *Mohinder Kaur -vs- Sant Paul Singh*, reported in (2019) 9 SCC 358;

(iv) **Vijayakumari's Case** - Judgment of this Court in *M.Vijayakumari -vs- P.Sekar* dated February 17, 2020 made in A.S.No.613 of 2014.

11. Per contra, Mr.S.Ramesh for M/s.K.Sivasubramanian, learned Counsel for the first respondent / plaintiff would invite attention of this Court to a portion of Ex-B.1 – Legal Notice which reads thus:

“6. Therefore, I am herewith sending a Demand Draft dt. 15.7.06 drawn on Indian Bank, Vellore for a sum of Rs.85,500/- and you are hereby called upon to accept the same and return back the original agreement dt.26.5.06 within 3 days after the receipt hereof failing which my client will be constrained to move the court of law for cancellation of the agreement without any further reference.”

11.1. Referring to the above, he would argue that Ex-B.1 – Legal Notice did not terminate / revoke Ex-A.1 – Sale Agreement. Instead, it was just executory in nature. Hence, **Sikandar's Case**, wherein the contract was duly revoked unlike the case on hand, is not applicable to



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the instant case. Thus, the Suit for specific performance is maintainable.

11.2. He would further argue that it is false to allege that the first defendant's sister claimed share in the Suit Property. Ex-A.6 – Legal Notice dated July 4, 2006 was sent by his sister in collusion with him. This is evident from the fact that, though the first defendant's sister was arrayed as second defendant in the Original Suit she remained *ex-parte* and never contested it. More so, the second defendant has not filed any Suit against the first defendant claiming her alleged right in the Suit Property. False plea is being setup by the defendants collusively and hence equity is not in their favour.

11.3. He would further argue that the plaintiff was always ready and willing to perform his part of the contract. After the Trial Court's Decree, he deposited the remaining sale consideration into the Court on March 4, 2016. Further, there is no Substantial Questions of Law in this Second Appeal. The Trial Court as well as the First Appellate Court rightly decreed the Suit and there is no need to interfere with their Judgments and Decrees. Accordingly, he would pray to dismiss the



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Second Appeal, and confirm the Judgment and Decree of First Appellate Court as well as the Trial Court.

11.4. He would rely on the Judgment of Hon'ble Supreme Court in *A.Kanthamani -vs- Nasreen Ahmed*, reported in (2017) 4 SCC 654 in support of his contentions.

DISCUSSION:

12. This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

13. On perusal of records and evidence, it can be evinced that the first defendant is the absolute owner of the Suit Property. The plaintiff and the first defendant entered into Ex-A.1 – Sale Agreement on May 26, 2006. Sale price was fixed at Rs.4,75,000/-, of which Rs.75,000/- was rendered as advance. Time period for performance of contract was three months from the date of Ex-A.1 *i.e.*, on or before August 25, 2006. There is no dispute between the plaintiff and the first defendant with regard to the above facts.



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14. After Ex-A.1, the second defendant / first defendant's sister issued Ex-A.6 - Legal Notice on July 4, 2006 to the plaintiff and the first defendant, claiming some right over the Suit Property. According to the plaintiff, Ex-A.6 was issued collusively with a view to defeat and defraud the plaintiff. On July 12, 2006, through Ex-A.4 – Legal Notice, the plaintiff called upon the first defendant to execute Sale Deed in his favour as per Ex-A.1 – Sale Agreement. Thereafter, the first defendant sent Ex-B.1 – Legal Notice containing Ex-A.7 – Demand Draft for a sum of Rs.85,500/- [Refund of advance of Rs.75,000/- along with damages of Rs.10,500/-].

15. As rightly contended by the learned Counsel for the first respondent / plaintiff, bare reading of Ex-B.1 would show that Paragraph No.6 therein is executory in nature and the first defendant did not terminate or revoke Ex-A.1 thereby. No doubt that revocation can be express or implied. But, in both cases, it has to be clear and unambiguous in nature. In Ex-B.1, there is no clear cut revocation of Ex-A.1. Paragraph No.6 therein only states that upon receipt of Ex-A.7 – Demand Draft, if the plaintiff fails to return the original Sale Agreement (Ex-A.1), then the



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first defendant would be constrained to move Court to cancel the same. It is not stated anywhere therein that the first defendant terminates Ex-A.1 – Sale Agreement thereby. Hence, when Ex-A.1 was not duly terminated, there is no need for the plaintiff to seek for declaration that termination of Ex-A.1 is invalid. In both, ***Sikandar's Case*** and ***Mohinder's Case***, there was cancellation of contract, unlike the instant case. Hence, they both are deviant on facts from the case on hand and therefore, not applicable. There is no quarrel with ***Kanthamani's Case*** relied on by the learned Counsel for the first respondent / plaintiff in this regard.

16. The plaintiff received Ex-A.7–Demand Draft for Rs.85,500/-. He neither returned it to the first defendant nor realised it. Instead, he filed the present Original Suit and deposited the same before the Court. The plaintiff was always ready and willing to perform his part of the Sale Agreement. The second defendant did not contest the case. It appears that she did not file any Suit against the first defendant claiming her alleged right over the Suit Property. In these circumstances, this Court is of the view that first defendant is not ready and willing to execute Sale Deed in favour of plaintiff as per the terms of Ex-A.1-Sale Agreement.



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The learned Counsel for the appellant / first defendant would rely on *Surinder's Case* as well as *Vijayakumari's Case* to contend that specific performance is an equitable and discretionary relief, and even when a contract is not otherwise voidable, but the facts and circumstances render it inequitable to enforce specific performance, the Court may deny such relief. While there is no quarrel with legal position put forth in the said cases, the said contention deserves to be rejected as this Court does not find anything that would make the relief of specific performance sought for in this case an inequitable one.

17. Further, the first defendant in his statement has stated that the plaintiff as a Government servant did not obtain permission for purchasing the Suit Property, which shows that he was not ready and willing to perform his part of Sale Agreement. The plaintiff's side put a question to the first defendant / D.W.1 as to if the plaintiff obtains necessary permission, whether the first defendant would execute Sale Deed in favour of plaintiff, to which, the first defendant replied in negative. Hence, the said first defendant's plea does not hold water and deserves to be rejected.



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18. The evidence available on record would clearly show that the first defendant is the absolute owner of the Suit Property and the second defendant has no right in the Suit Property. To be noted, second defendant did not appear and contest the case. Hence, this Court is of the view that the defendants are colluding to evade first defendant's obligation under Ex-A.1.

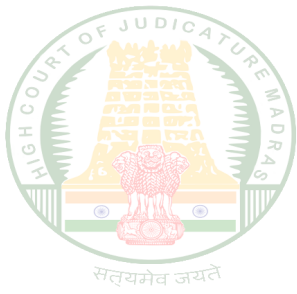
19. The Trial Court and the First Appellate Court concurrently held that it is the first defendant who was not ready and willing to perform his part of the Sale Agreement while the plaintiff was always ready and willing to perform his part. Accordingly, both the Courts directed the first defendant to receive the balance sale consideration and execute Sale Deed. The same is not wholly justifiable. The plaintiff received Ex-A.7 – Demand Draft and deposited it into the Court. Till date, its original is with the Court. As per the Trial Court's Decree, the plaintiff deposited the balance sale consideration of Rs.4,00,000/- on March 4, 2016 *i.e.*, within the stipulated period in the Decree. The Trial Court ought to have directed the plaintiff to deposit the entire sale consideration. This is for the following reasons. According to the first defendant, he



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terminated Ex-A.1. The first defendant had returned the advance amount of Rs.75,000/- via Ex-A.7 – Demand Draft which was sent along with Ex-B.1 – Legal Notice on July 20, 2006 *i.e.*, within the time period for performance. Ex-A.1 – Sale Agreement was entered into on May 26, 2006. The first defendant not just refunded the advance money but paid damages of Rs.10,500/- as well. The conduct of first defendant appears to be *bona fide* and genuine. In such circumstances, if the plaintiff is not willing to accept Ex-A.7 – Demand Draft, he could have very well sent it back to the first defendant, instead he deposited Ex-A.7 before the Court. Upon such deposit, he ought to have been genuine and filed a petition seeking permission to encash the Demand Draft and deposit the same before the Court. Had he done so, the Trial Court in turn would have deposited the same in an interest bearing Fixed Deposit as per the standing administrative order of the Hon'ble High Court of Madras in ROC No.2185-A/2010/F1, P.Dis.No.64/2010 dated May 19, 2010. This Court views this as a *lacuna* on the part of the plaintiff, due to which the first defendant has lost not just Rs.75,000/- but also the interest that would have accrued thereon if the same had been deposited as stated *supra*. Further, it is not an easy process to encash a Demand Draft drawn



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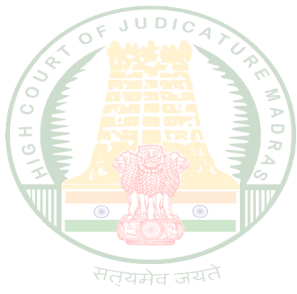
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in 2006, almost 10 years thereafter, in 2016. Hence, the Trial Court and the First Appellate Court's concurrent finding that the plaintiff shall deposit the balance sale consideration of Rs.4,00,000/- alone is liable to be set aside as erroneous. This Court is of the view that the plaintiff is liable to deposit the entire sale consideration. That apart, the plaintiff cannot be said to have retained the refund of advance money as he deposited Ex-A.7 – Demand Draft before the Trial Court. Substantial Questions of Law are answered accordingly.

CONCLUSION:

20. Resultantly, the Second Appeal is partly-allowed and the Judgment and Decree passed by the Trial Court as well as the First Appellate Court are modified to the following extent alone:

- (a) The plaintiff shall deposit within 30 days from the date of receipt of copy of this Judgment, Rs.75,000/- along with interest at the rate of 7.5% per annum from February 16, 2016 [*i.e.*, from one month from the date of Trial Court's



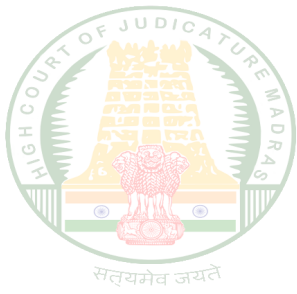
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Judgment and Decree], till the date of such deposit, in addition to Rs.4,00,000/- already deposited as per the Trial Court's Decree;

- (b) Upon such deposit, the first defendant is entitled to withdraw the same along with accrued interest;
- (c) Within 30 days from the date of such deposit, the first defendant is directed to execute Sale Deed in favour of the plaintiff in respect of Suit Property;
- (d) In view of the facts and circumstances, the Trial Court shall return Ex-A.7 – original Demand Draft to the first defendant and he is entitled to encash it, subject to banking laws, rules and practice.



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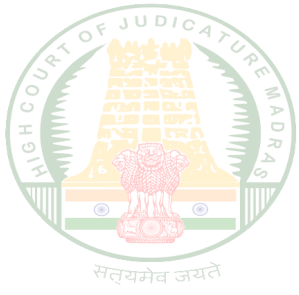
20.1. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous petition shall be closed.

10 / 01 / 2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK
To

1.The Principal District Judge
Vellore.

2.The Subordinate Court
Vellore.



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R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.725 OF 2018

10 / 01 / 2025