



AS.(MD)No.165 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 17.04.2025

Pronounced On : 29.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN**

A.S.(MD)No.165 of 2021
and
C.M.P.(MD)No.5540 of 2021

1.S.Mariaraj

2.A.Josephraj

3.A.Aloysius

... Appellants / Plaintiffs

Vs.

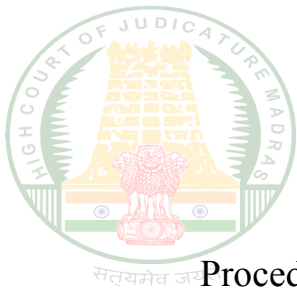
1.The East India Corporation Ltd.,
through its Managing Director,
T.Meenakshi having its office at
D.No.7B, K.M.A.Complex, Ramnagar,
Byepass Road, Madurai-10.

2.T.Meenatchi

3.Karumuthu T.Sundaram

... Respondents / Defendants

PRAYER : First Appeal filed under Section 96 of the Code of Civil



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Procedure r/w 41 Rule 1 of CPC against the Judgment and Decree dated 03.09.2020 passed in O.S.No.42 of 2014 on the file of the Principal District Judge, Dindigul.

For Appellants : Mr.G.Prabhu Rajadurai,
for M/s.J.R.Annie Abinaya

For R1 : Mr.Sricharan Rengarajan,
Senior Counsel,
for M/s.A.S.Vaigunth.

For R3 : Mr.P.Thiyagarajan

JUDGMENT

(Judgment of this Court was delivered by **M.JOTHIRAMAN J.**)

Unsuccessful plaintiffs have preferred the appeal. The suit is filed for specific performance. The trial Court negated the main relief of specific performance, however, granted the alternative relief of refund of the advance amount. For the shake of convenience, the parties are referred to as per their rank before the trial Court.

2.The brief Case of the plaintiffs is as follows:-

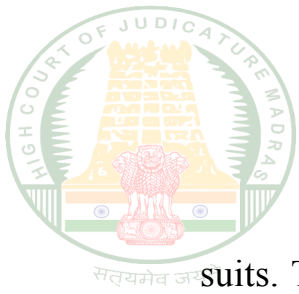
The suit schedule properties belong to first defendant Company.



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The second defendant is Managing Director. The third defendant is the director of the Firm. The first defendant agreed to sell the suit property at Rs.100/- per Sq.Ft., and entered registered sale agreement on 24.11.2003. The first defendant passed resolution on 21.03.2003 to sell the suit properties and other properties. The plaintiff paid advance amount of Rs. 10,00,000/- the defendant is entitled to get the compensation awarded due to the acquisition land in S.Nos.1644, 1645/1, 1645/ to the extend of two acres and 39 cents. The balance consideration has to be paid within 11 months from the date of approval of layout was laid for the suit property. The defendants delivered the possession of the suit property the plaintiffs constructed two thatched hut. While so, in connection with suit properties, Arockiyam and Abdul Salam filed the suit in O.S.No.724 of 2003 and the suit was dismissed on 02.04.2008. One Chennimalai filed the suit in O.S.No.181 of 2004 before the Additional Sub Court, Dindigul for possession. One Anandkumar filed suit in O.S.No.90 of 2005 before the Additional Sub Court, Dindigul for permanent injunction. Eshwaran and Chennimalai filed the suit in O.S.No.138 of 1997 against the second defendant. Due to the pendency of the civil suits the plaintiff not able to divide the land into house sites. The plaintiff has been conducting various



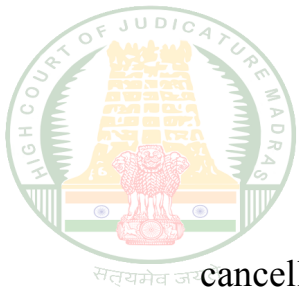
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suits. The defendants have not co-operate to obtain layout plan approval.

The plaintiff is always ready and willing to perform his part of contract.

The time is not essence of the contract. Hence, the suit.

3.The written statement of the first defendant adopted by the second defendant. The first defendant is public limited company and owned the suit schedule properties. The government had decided to acquire the following lands for Karur Dindigul broadgauge in T.S.No.1644 to an extent of 18942 sq.ft., T.S.No.1645/1 to an extent of 37665 sq.ft., and in T.S.No.1645/2 to an extent 1 acre. As per the agreement, the plaintiffs agreed to measure, divide the property into plots and to get approval for layout within 11 months and to get sale deed from the first defendant. The plaintiffs have not even measured the property hence, the first defendant sent a letter on 24.10.2011 and they sent reply on 02.11.2011 stating that he is ready to complete the sale within 10 days, subject to furnish the copy of all the documents to get legal opinion. Before entering into the sale agreement, the plaintiffs have obtained the copies of the title deeds. As the plaintiffs have not taken any steps to perform their part and committed breach of contract, the first defendant has sent a letter on 09.11.2011



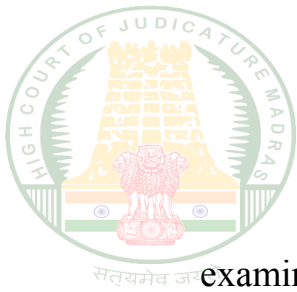
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cancelling the sale agreement dated 24.11.2003. The plaintiffs sent reply on 20.01.2012 with false allegations. First defendant sent rejoinder notice on 10.02.2012. The second plaintiff has sent reply notice for himself alone not for and on behalf of the plaintiffs 1 & 3. As the first defendant has already cancelled the agreements for sale, the suit is not maintainable. The first defendant has not delivered the possession of the properties to the plaintiffs. The suits in O.S.No.181 of 2004, O.S.No.90 of 2005 and O.S.No.2009 of 2005 are not relating to this suit properties. The suit filed after expiry of 11 years and the market rate of the suit properties excalarated and as on date of the suit market rate per sq.ft., is Rs.10,000/-. Hence, prayed for dismissal of suit.

4.The second defendant has filed additional written statement wherein it has been stated that the defendants Nos.2 & 3 are not necessary parties in the suit. The third defendant has file written statement similar to the pleadings stated by the first defendant.

5.Based on the above pleadings, the trial Court framed as many as necessary eight issues. On the side of the plaintiffs, first plaintiff himself



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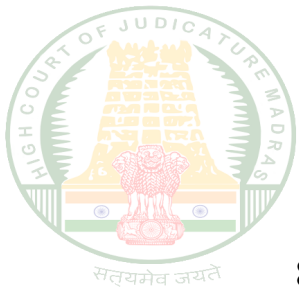
examined as P.W.1 and one Arumugam examined as P.W.2 and Ex.A1 to Ex.A21 were marked. On the side of the defendants, third defendant himself examined as D.W.1 and Ex.B1 to Ex.B8 were marked.

6.Findings of the trial Court:-

The suit is not barred by limitation. The plaintiffs are not ready and willing to perform their part of contract and thereby, committed breach of contract. The defendants are ready and willing to perform their part of contract. The plaintiff had not established the possession of the suit property and the plaintiffs are not entitled for the relief of permanent injunction. The trial Court dismissed the relief of specific performance. By relying the decision of the this Court in **2017 8 MLJ 671 N.Sekaran and Another Vs. C.Rajendran**, the trial Court held that the plaintiffs are entitled to get back the advance amount paid by them.

7.Point for determination arises in this appeal is as follows:-

i)Whether the plaintiffs are ready and willing to perform their part of contract and entitled for the relief of specific performance?



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8.The learned Senior Counsel appearing for the appellants / plaintiffs would submit that the alleged unilateral cancellation of the sale agreement dated 24.11.2003 by the defendants through notice will not hold good. Dismissing the suit based on the unilateral cancellation is not sustainable. The defendants failed to facilities the plaintiffs from recovering the properties acquired by the Railways Department, which will form part of the suit agreement for conveyance. The trial Court failed to note that the plaintiff was facing Section 145 Proceedings before the RDO on behalf of the defendant while attempting to divide the suit properties as house plots. The trial Court ought to have found that the pendency of the several suits on various Courts was required to be defend by the plaintiff on behalf of the defendants. The learned Senior Counsel further argued that the suit was specific performance has been filed within time ie., within three years from the date of denial of performance as per Article 54 of the Limitation Act. The learned Senior Counsel reiterate all the contentions raised in the grounds of appeal.

9.Per contra, the learned Senior Counsel appearing for the respondents / defendants would submit that no explanation was provided



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for why the suit pertaining to 2003 agreement, was filed after delay of over 9 years. In the plaint, the plaintiff disclosed filing another suit O.S.No.26 of 2011 for specific performance of a different agreement dated 09.06.2004 between the same parties for a different property. No explanation was provided as to why the suit in O.S.No.42 of 2014 pertaining to the 2003 agreement was filed, only in the year 2014. This delay clearly indicates that the plaintiffs lacked the financial backing and were not always ready and willing to perform their part of contract. The first defendant sent a letter in Ex.B1 dated 24.10.2011 to the plaintiffs giving opportunity for the plaintiffs to get the sale deed registered within 10 days or otherwise, the agreement will be cancelled. The second plaintiff sent a reply in Ex.B2 dated 04.11.2011 asking for the title documents for legal opinion. Per contra, P.W.1 in his cross examination admitted that prior to the sale agreement he verified encumbrance certificate and that property is free from encumbrance. The learned Senior Counsel further would argue that the plaintiffs were aware of the cancellation of the agreement dated 24.11.2003 vide notice dated 09.11.2011. Without a prayer to challenging the cancellation, a suit for specific performance of an already cancelled agreement is not



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maintainable. The plaintiffs admitted in the plaint that layout approval, their contractual obligation, remained, un-obtained even at the time of filing of the suit, highlighting their failure to perform. The trial Court though dismissed the suit for specific performance ought not to have granted the relief of refund of advance made by the plaintiffs, while there was no specific prayer.

10.It is pertinent to mention that the trial Court negatived the main relief for specific performance, however, granted the alternative relief of refund of an advance amount. Aggrieved over the granting refund of an advance amount with interest, the defendants have not filed any appeal before this Court.

11.It is seen from the records that the suit was filed on 20.05.2014 sought for the relief of specific performance of the agreement dated 24.11.2003 reflecting a delay of over 9 years and 6 months, even accounting for the 11 months period condition mentioned in the agreement in Ex.A1 dated 24.11.2003. In the plaint the plaintiffs disclosed filing of another suit in O.S.No.26 of 2011 for specific performance of a different



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agreement dated 09.06.2004 between the same parties for a different property. Ex.A15 is the legal notice dated 02.01.2012 sent by the second plaintiff responding to the defendants cancellation notice under Ex.A14 dated 09.11.2011. In Ex.A15, the plaintiffs demanded title documents from the defendants after over 8 years since the agreement in Ex.A1 dated 24.11.2003. Ex.A14 notice dated 09.11.2011 issued by the defendants wherein it has been stated that the plaintiffs agreed to get approval for layout for the lands in Adiyanuthu and Balakrishnapuram villages and to complete the sale within 11 months. Further it has been stated that the plaintiffs have not taken any steps to complete the sale within the stipulated time, even after letter dated 24.10.2011 in Ex.B1 sent by the first defendant, the plaintiffs have not paid the balance amount and to get the sale deed and thereby committed breach of contract wilfully. Further, wherein it has been stated that the plaintiffs have not completed the sale for the past 8 years and committed breach of contract and therefore, the defendants terminate and cancelled the sale agreements dated 24.11.2003. Further, it is also been stated that herein after, the plaintiffs have no right to obtain the sale deed from the defendants and defendants are at liberty to sell the lands to any other third party.

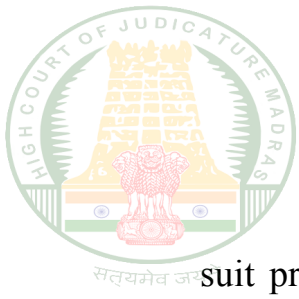


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12.In Ex.B1 letter dated 24.10.2011 addressed to the plaintiffs by the defendants wherein it has been stated that the plaintiffs have agreed to get approval for layout for the lands and to complete the sale within 11 months. But so far the plaintiffs have not taken any steps to complete the sale by paying the balance amount. Wherein it is also mentioned that 8 years has been lapsed since the date of agreement and price for the land has been raised for several times than the contract. At any rate to give an opportunity the plaintiffs are requested to get the sale deed within 10 days from the date of receipt of that letter by paying the sale price, otherwise the agreement will be cancelled by the defendants.

13.Reply to the Ex.B1 letter, the second plaintiff sent a reply letter dated 04.11.2011 in Ex.B2 asking for the title documents for legal opinion. In this regard, P.W.1 in his cross examination admitted that prior to Ex.A1 sale agreement he verified encumbrance certificate and that suit properties are free from encumbrance. P.W.1 admits that there is no mention about handing over the possession of the suit property in Ex.A1 sale agreement. P.W.1 admits that at the time of sale agreement, the market value of the

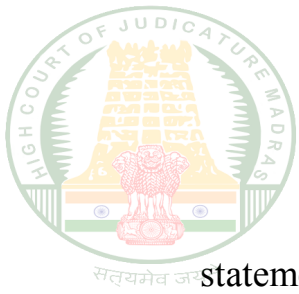


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suit property at Rs.300/- per sq.ft., whereas in the sale agreement it has been agreed for Rs.100/- per sq.ft. P.W.1 also admits that for getting approval of converting into layout from the authorities concerned lies on their part and the same has been incorporated in the sale agreement. From the above conduct of the plaintiffs shows that their actions were faint effort to shift burden on to the first defendant after over 8 years.

14.It is the case of the plaintiff that the litigations as the cause of delay. Per contra, it was argued that the plaintiffs were fully aware of the legal disputes related to the property which can be deduced from the significantly low price at which the agreement was made Rs.100/- per Sq.Ft., compared to the market value at the time of the agreement in Ex.A1, which was Rs.300/- per sq.ft., as admitted by the P.W.1 during cross examination. Therefore, it is clear that the first defendant offering the property at such a reduced price due to the existing litigations of which the plaintiffs were clearly aware of the same. P.W.1 in his cross examination categorically admitted that layout approval, their contractual obligation remained unobtained even at the time of filing of the suit, which shows their failure to perform their part of contract. In the written



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statement of the first defendant wherein it has been stated that the plaintiffs neither approached the authorities nor applied for a challan or deposited required amounts. The aforesaid facts were not disproved by the plaintiffs. But the plaintiffs only defence was a letter dated 12.12.2011 in Ex.A17, allegedly sent a month after the defendants cancellation notice dated 09.11.2011 (Ex.A14) by the local planning authority. In order to prove the above said facts the plaintiffs have not produced any challan or evidence to show that they fulfilled their part of obligations. The authenticity of Ex.A17 was challenged by D.W.2 during cross examination that the plaintiffs failed to rebut this without performing the plaintiff's part of the contract the plaintiffs were sought for specific performance. The defendants cancelled the agreement dated 24.11.2003 vide notice dated 09.11.2011 in Ex.A14 and the same was acknowledged by the plaintiffs and reply notice came to be issued by them under Ex.A15 dated 02.01.2012 reveals that the plaintiffs were well aware of the cancellation of agreement dated 24.11.2003.

15.At this juncture, it is relevant to refer the judgment of Hon'ble Supreme Court of India reported in **2025 SCC Online SC 723, Sangita Sinha Vs. Bhavana Bharatwaj and Ors**, wherein it has been held that,



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26.Since in the present case the seller had issued a letter dated 7th February, 2018 cancelling the agreement to sell prior to the institution of the suit, the same constitutes a jurisdictional fact, as till the said cancellation is set aside, the respondent is not entitled to the relief of specific performance.

27.Consequently, this Court is of the opinion that absent a prayer for declaratory relief that termination / cancellation of the agreement is bad in law, a suit for specific performance is not maintainable.

16.By applying the ratio laid down in the above case, in the instant case on hand, admittedly, the seller had issued a letter dated 09.11.2011 in Ex.A14 cancelling the agreement to sell prior to the institution of the suit and the same constitutes a jurisdictional facts as till the said cancellation is set aside. The plaintiffs are not entitled to the relief of specific performance. Therefore, without a prayer challenging this cancellation, a suit for specific performance of an already cancelled agreement is not maintainable.

17.It is pertinent to note that the first defendant signatory to the agreement in Ex.A1, was represented by the second defendant, the then

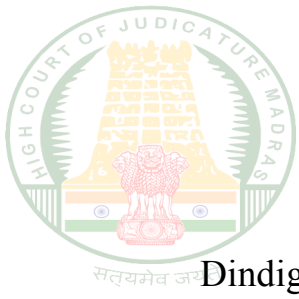


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Managing Director, while the third defendant, the second defendant's son was also a Director in the first defendant Company. Although the first defendant was a necessary party, the plaintiffs included the second and third defendants in their individual capacities. It is also pertinent to mention that the suit in O.S.No.26 of 2011 pertaining to an agreement dated 09.06.2004. The second and third defendants were not added as party while filing the suit. This conduct of the plaintiffs shows that to pressurize the defendants to execute the sale deed.

18.The defendants admitted the execution of Ex.A1 and receipt of advance amount of RS.10,00,000/- from the plaintiffs. As per one of the terms in the agreement that the plaintiffs have to get layout approval from the concerned authorities. According to the plaintiffs that the defendants not co-operated to get the plan approval. P.W.1 states that he sent application for approval of plan, but he had not filed any document(except Ex.A21). Ex.A21 is the letter addressed by the first plaintiff to the Member Secretary, Local Planning Commission, Dindigul only on 09.09.2011. The defendants by letter dated 17.11.2003 under Ex.A2 and Ex.A3 addressed to the District Collector, Dindigul District, Thasildar,



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Dindigul Taluk, Divisional Manager, Southern Railway and Municipal Commissioner, Dindigul Municipality authorised the first plaintiff to appear before the authorities concerned on behalf of the first defendant Company. Matters relating to property tax and to get suitable orders and also authorised to measure, demarcate and also to negotiate with revenue officials. Therefore, the contention of P.W.1, the defendants not co-operated with the plaintiffs is not acceptable. After issuance of notice by the defendants in Ex.B1 dated 24.10.2011 by granting 10 days time and after issuance of cancellation of sale agreement in Ex.A14 dated 09.11.2011 a legal notice dated 02.01.2012 in Ex.A15 from the second plaintiff the suit came to be filed only on 20.05.2014 ie., after a lapse of more than 2 years. From the above it is clear that the plaintiffs are not always ready and willing to perform their part of contract. We are of the view that the trial Court has thoroughly analysed the evidence and documents in a proper manner as rendered factual findings and negatived the relief of specific performance and ordered to refund the advance amount with reasonable interest. There is no merit in this appeal and the same is liable to be dismissed. The point is answered accordingly.



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19.In the result, this first appeal is dismissed and the judgement and decree dated 03.09.2020 passed in O.S.No.42 of 2014 on the file of the learned Principal District Judge, Dindigul is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (M.J.R., J.)
29.04.2025

NCC : Yes / No
Index : Yes / No
gns

To

The Principal District Judge, Dindigul



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G.R.SWAMINATHAN,J.
and
M.JOTHIRAMAN, J.

gns

Pre-Delivery Judgement made in
A.S.(MD)No.165 of 2021

29.04.2025