



S.A.(MD)No.96 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.07.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)No.96 of 2019

and

C.M.P.(MD)No.2560 of 2019

K.Kumar

... Appellant

vs

1.Chitra

2.K.Thilak

3.K.Sibi

4.K.Senthamizhselvi

...Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.9 of 2017 on the file of the Principal District Court, Tiruchirapalli, dated 24.10.2017 filed against the judgment and decree passed in O.S.No.6 of 2016 on the file of the Subordinate Court, Thuraiyur, dated 28.02.2017.

For Appellant : Mr.V.Chandrasekar
For R1 : Mr.H.Lakshmi Shankar
R2 to R4 : Given up



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JUDGMENT

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The first defendant is before this Court on appeal. The Second Appeal is filed challenging the judgment and decree, dated 24.10.2017 in A.S.No.9 of 2017 on the file of the Principal District Court, Trichy, confirming judgment and decree, dated 28.02.2017, in O.S.No.6 of 2016 on the file of the Subordinate Court, Thuraiyur.

2.For the sake of convenience, the parties are referred to, as per their ranking before the trial Court.

3.According to the plaintiff, the first defendant had entered into a registered sale agreement with the plaintiff on 25.10.1993. As per the sale agreement in Ex-A1, a sale consideration of Rs.1,50,000/- was fixed and an advance of Rs.1,00,000/- was paid on the date of the sale agreement. A time period of two years was fixed for the sale and on 25.10.1995, an endorsement was made on the sale agreement in Ex-A2 by extending the sale agreement for a further period of one year. A part amount of Rs.10,000/- was made on the date of endorsement. The plaintiff was ready and willing to perform her part of the contract and get the sale deed



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executed in her favour by paying the balance sale consideration. Since the first defendant did not come forward, she issued a legal notice on 13.09.1996 and a reply was issued on 28.09.1996 with false allegations. It is the case of the plaintiff that she sent a telegram calling upon the first defendant to be present in the Sub Registrar Office on 11.10.1996 to complete the sale and even though the plaintiff was present in the Sub Registrar Office with the balance sale consideration, the first defendant did not come forward to execute the sale deed and therefore, the plaintiff had come up with the suit for specific performance.

4.The first defendant had resisted the suit contending that the plaintiff was not ready and willing to perform her part of the contract. The first defendant had, thereby, admitted the sale agreement and only disputed the readiness of the plaintiff. According to the first defendant, since the plaintiff failed to complete the sale before the date fixed, she is not entitled to enforce the contract. Since the time fixed has expired, the contract had already been rescinded and the contract is not legally enforceable. The suit filed is barred by limitation. As such, he sought for dismissal of the suit.



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5. During trial, the plaintiff examined herself as PW-1 and the attesor as PW-2 and marked Ex-A1 to Ex-A15. On the side of the defendants, the first defendant was examined himself as DW-1 and further examined DW-2 and DW-3 and had marked Ex-B1.

6. The trial Court, after analysing the oral and documentary evidences, came to the conclusion that though a time period of two years was fixed in Ex-A1, by the subsequent endorsement made in Ex-A2, the time period was extended by one year and the plaintiff had proved the endorsement in Ex-A2 through witness in PW-2. The trial Court further on concluding that the first defendant had not denied the agreement in Ex-A1 and had only contended that the sale agreement has expired and that the suit is not filed within time, found that the objections are not sustainable and decreed the suit for specific performance. On appeal, the lower appellate Court also on coming to the conclusion that the sale agreement in Ex-A1 and the endorsement in Ex-A2, has been proved and when the plaintiff had discharge the burden of proof, the first defendant had not adduced any material to the effect that the part payment has not been made through Ex-A2. Further, on coming to the conclusion that the plaintiff was ready and



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willing to perform her part of the contract, the appellate Court dismissed the appeal. Assailing the concurrent findings of fact, the first defendant is before this Court.

7.The appeal has not been admitted and this Court, by order, dated 19.03.2019 only issued notice before admission.

8.The learned Counsel for the appellant argued that when admittedly, the sale has not been completed within the time fixed in Ex-A1, the claim made by the plaintiff and the suit filed is barred by limitation and the agreement entered into in Ex-A1 had expired. It is the further contention that the plaintiff had failed to prove that she was ready and willing to perform her part of the contract, thereby, decree of specific performance passed by the Courts below are erroneous. It is further submitted that unless the plaintiff satisfies the readiness and willingness, as contemplated under Section 16(c) of the Specific Relief Act, the plaintiff is not entitled for a discretionary relief of specific performance. Since the finding rendered are not in consonance with the legal provisions, the decisions of the Courts below are perverse and sought for interference of this Court.



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9.The learned Counsel for the first respondent argued that the sale agreement has been entered into in Ex-A1 and though a time period of two years was fixed, but however, the time was extended by making a part payment, which was duly received by the first defendant and an endorsement was made in Ex-A2. Further, contending that the plaintiff had proved the endorsement in Ex-A2 through attesor and that once the endorsement stands proved, the question of agreement getting lapsed or the suit filed beyond the period of limitation does not arise. The learned Counsel further submitted that the first defendant, in fact, had not disputed the sale agreement, but however, had only initially contended that the plaintiff was not ready to complete the sale, but subsequently, during trial, had shifted his stand and had denied the sale agreement. He further submitted that the Courts below have, by rightly appreciating the oral and documentary evidences, decreed the suit and pursuant to the decree, the sale had also been executed in favour of the plaintiff in the execution proceedings and therefore, no interference is required and sought for dismissal of this appeal.



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10.Heard the rival submissions and perused the materials available on record.

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11.The plaintiff had come forward with the suit for specific performance based on a sale agreement that was entered into with the first defendant in Ex-A1. As per the sale agreement, the first defendant had agreed to convey the suit property in favour of the plaintiff for a sale consideration of Rs.1,50,000/-. A sum of Rs.1,00,000/- had been paid, as advance, on the date of the agreement and a time period of two years was fixed for completion of the sale. The time fixed in the sale agreement was 25.10.1995. Within the time fixed for completion of the sale in Ex-A1, the plaintiff had paid a part consideration of Rs.10,000/-, which has been received by the first defendant and an endorsement has been made in Ex-A2. In view of the endorsement made in Ex-A2, the time fixed has been further extended for a period of one year, which is till 24.10.1996.

12.It is the case of the plaintiff that the plaintiff called the first defendant to come to the Registrar Office on 11.10.1996 to receive the balance sale consideration and to execute the sale deed and even though the



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plaintiff was present in the Sub Registrar Office, the first defendant had not chosen to come to the Sub Registrar Officer to complete the sale. The plaintiff had filed the encumbrance certificate to prove that she had been ready in the Sub Registrar at that time for completion of the sale.

13.The first defendant had not disputed the sale agreement in Ex-A1. The first defendant had disputed that though the sale agreement has been entered into, the plaintiff was not ready to perform her part of the contract and since the time period was over, the sale agreement in Ex-A1 got lapsed and therefore, the plaintiff cannot make a claim based on the agreement in Ex-A1. In this regard, it is the further case of the first defendant that he has not received any part sale consideration on 24.10.1995 and he has not made any endorsement in the agreement, as claimed in Ex-A2.

14.When the first defendant had disputed the endorsement made in Ex-A2, had denied that he had not received the part sale consideration and he has not affixed his signature, it is for the plaintiff to establish that part payment was made in Ex-A2 and the endorsement was made by the first defendant. To discharge the onus, the plaintiff had examined PW-2, the



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attestor, who has attested in the endorsement in Ex-A2. According to PW-2, the first defendant had received a consideration of Rs.10,000/- and had made an endorsement in Ex-A2. Since the endorsement made in Ex-A2 has been supported by the examination of the witness, PW-2, the burden shifts on to the first defendant to prove that he has not received the sale consideration and the endorsement in Ex-A2 has not been entered into. When the onus was on the first defendant, the first defendant failed to examine anyone or prove that he has not received the part sale consideration on 24.10.1995 and the endorsement was not executed by him.

15.The Courts below further had rendered a finding that the plaintiff had issued a legal notice in Ex-A3, whereby, the plaintiff had called upon the first defendant to come to the Sub Registrar Office on 11.10.1996 and to execute the sale deed by receiving the balance sale consideration. To establish and to prove the fact that the plaintiff had as per the legal notice in Ex-A3 was present in the Sub Registrar Office to complete the sale, the document marked by the plaintiff in Ex-A8 has been taken note of the Courts below and came to the categorical conclusion that the plaintiff was ready and willing to perform her part of the contract. As per the agreement



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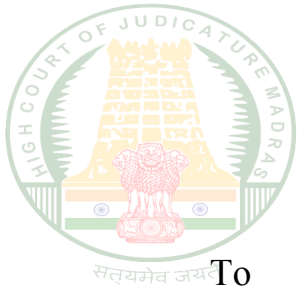
in Ex-A1, an endorsement was made in Ex-A2. The Courts below further by analysing the evidences let in by PW-2 and the documents filed by the plaintiff have come to the conclusion that the plaintiff had proved the sale agreement in Ex-A1 and the first defendant having admitted the sale agreement in the written statement had failed to prove that the sale agreement in Ex-A1 has not been executed for the purpose of conveying the suit property. In the absence of any other materials, the Courts below had rendered a concurrent finding of fact based on the materials available on record.

16.This Court does not find any illegality or perversity in the findings rendered by the Courts below. There is no substantial question law that arises for the consideration of this Court. Accordingly, the Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Internet :Yes/No
Index :Yes/No
NCC :Yes/No
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- 1.The Principal District Judge, Tiruchirapalli.
- 2.The Subordinate Court, Thuraiyur,
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

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Judgment made in
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