



S.A.(MD)No.76 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2025

CORAM

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

S.A.(MD)No.76 of 2018
and
C.M.P.(MD)No.1656 of 2018

R.Radhakrishnan

... Appellant/Appellant/
Plaintiff

Vs.

1.Veerammal (Died)

... Respondents/ Respondent /
Defendant

2. Moorthy

3. Sekar

4. Dhanalakshmi

... Respondents 2-4/ Respondents 2-4/
LRs of defendant

(R2 - 4 are brought on record as LR's of deceased
sole respondent vide Court order dated 05.01.2018
in CMP(MD)Nos.351-353/2016 in SA.(MD)SR49132/2012)

PRAYER : Second Appeal filed under Section 100 Cr.P.C., against the judgment and decree dated 28.03.2012 passed in A.S.No.14 of 2011 on the file of the Principal District Judge, Dindigul, confirming the judgment and decree dated 07.12.2010 passed in O.S.No.249 of 2006 on the file of the Principal Subordinate Judge, Dindigul.



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For Appellant : M/s.S.Vijayashanthi

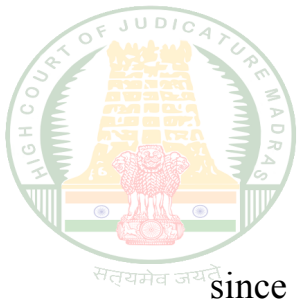
For Respondents : No appearance for R2 to 4
R1 - Died

JUDGMENT

This second appeal has been filed as against the judgment and decree dated 28.03.2012 passed in A.S.No.14 of 2011 on the file of the Principal District Judge, Dindigul, confirming the judgment and decree dated 07.12.2010 passed in O.S.No.249 of 2006 on the file of the Principal Subordinate Judge, Dindigul.

2. The unsuccessful plaintiff preferred the above Appeal. The parties are referred, as per the litigative status before the trial Court.

3. It is the case of the plaintiff that he entered into a sale agreement on 28.04.2004 in Ex.A1 for the purchase of the suit property. As per the sale agreement, the total sale consideration was fixed at Rs.1,50,000/- and on the date of agreement itself, an advance of a sum of Rs.75,000/- was paid and a time period of one year was fixed to complete the sale transaction. According to the plaintiff, he had requested the defendant to execute the sale deed by receiving the balance sale consideration and



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since the request did not fructify, the plaintiff issued a legal notice on 31.08.2006 in Ex.A2 calling upon the defendant to execute the sale deed. However, the defendant issued a reply notice dated 12.09.2006 in Ex.A3, denying the sale consideration. Hence, the plaintiff had come up with the suit for specific performance of the agreement in Ex.A1.

4. The defendant resisted the suit by filing a written statement disputing the sale agreement in Ex.A1. It is the case of the defendant that since there was a need for the education purposes of her son, she had availed a loan of Rs.35,000/-, for which empty stamp papers were signed and given towards security for the said amount and the defendant is only liable to return the loan along with interest, which comes to a sum of Rs.50,000/-, but, however, by misusing the stamp papers given towards security, the plaintiff had fabricated the sale agreement in Ex.A1 and hence, sought for dismissal of the suit.

5. During trial, the plaintiff examined himself as P.W.1 and the attester, viz., Dharmaraj as P.W.2 and marked Ex.A1 to Ex.A3. On the side of the defendant, the defendant examined herself as D.W.1 and the



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other attestor to the sale agreement viz., Sekar as D.W.2 and marked Ex.B1 and Ex.B2.

6. The trial Court, after analyzing the documents and evidences, dismissed the suit on the ground that the plaintiff has not proved his readiness and willingness to complete the sale as per Ex.A1.

7. Aggrieved by the decree of the trial Court, the plaintiff preferred an Appeal. On appeal, the First Appellate Court also on finding that the plaintiff has not come to the Court disclosing the true facts and the discrepancy in respect of the residence of the plaintiff and the opening of the Bank account, confirmed the judgment and decree of the trial Court and dismissed the appeal. Assailing the judgment and decree of the Courts below, the plaintiff has preferred the above Second Appeal.

8. The second appeal has not been admitted and this Court by order dated 21.02.2018 had only issued notice before admission. The respondents have been served and their names are printed in the cause list. However, there is no appearance on their behalf.

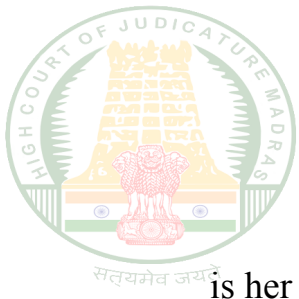


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9. The learned counsel appearing for the appellant argued that the defendant had taken inconsistent stands as initially she had denied the execution of sale agreement, but, however, later shifted the stand that a loan of Rs.35,000/- was availed and only for the purpose of security, the blank stamp papers came to be issued. It is the further contention of the learned counsel that even though time period of one year was fixed in the sale agreement, time is not the essence of the contract and therefore, the plaintiff was right in issuing a legal notice even before the lapse of sale agreement. Since the suit for specific performance can be filed within three years, the plaintiff had approached the Court well within the time and the plaintiff is entitled for the relief of specific performance.

10. It is the further contention of the learned counsel that even after filing the suit, an *ex-parte* decree came to be passed and as per the decree, the plaintiff had also deposited the balance sale consideration before the Court, which makes it evidently clear that the plaintiff was always ready and willing to perform his part of the contract, but, only as the defendant has not come forward, the sale could not be completed. It



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is her further contention that D.W.1 in her evidence had spoken about the loan transaction and all these matters have not been considered in a proper perspective by the Courts below and therefore, the judgment and decree of the Courts below are perverse, which is not based on materials and therefore, sought for interference of this Court.

11. Heard the learned counsel for the appellant and perused the materials available on record.

12. The plaintiff had filed the suit for specific performance, based on the sale agreement dated 28.01.2004 in Ex.A1. On perusal of the sale agreement, it reveals that a total sale consideration of Rs.1,50,000/- has been fixed and out of which, the plaintiff had paid an advance of Rs.75,000/-. Time period of one year has been fixed in the sale agreement to complete the sale transaction. The time fixed contemplating one year comes to end on 27.01.2005. Admittedly, the plaintiff has not issued any notice or any communication to the defendant, calling upon the defendant to come forward and execute the sale deed by receiving the balance sale consideration within the period of



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one year. The legal notice has been issued only on 31.08.2006 in Ex.A2, i.e., after a period of 2 ½ years from the date of execution of the agreement in Ex.A1. It is to be noted that even when the time period in the agreement expired on 28.01.2005, the plaintiff choose to issue a legal notice in Ex.A2 only after a period of 1 ½ years, after the expiry of the time. The defendant had issued a reply in Ex.A3 on 12.09.2006 disputing the sale transaction.

13. It is the specific claim of the defendant that no such agreement has been entered into in respect of sale of the suit property, but, however, the defendant had availed the loan for a sum of Rs.35,000/- towards education of her son and only for that purpose, the stamp papers came to be issued towards security for securing the loan amount. The defendant also admits that a sum of Rs.50,000/- towards principal and interest for the loan received is due and payable by the defendant.

14. The plaintiff has approached the Court seeking a decree for specific performance, based on the agreement in Ex.A1. When the plaintiff is before the Court seeking for a discretionary relief of specific



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performance, the plaintiff has to satisfy the ingredients as stipulated under Section 16(c) of the Specific Relief Act, 1963. Section 16(c) of the Specific Relief Act, 1963 reads as follows:

“16. Specific performance of a contract cannot be enforced in favour of a person,

(a) ...

(b) ...

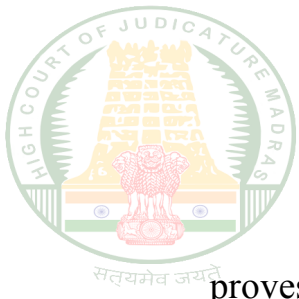
(c): who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction.”

15. The plaintiff is bound to prove the readiness and willingness to complete the sale transaction. Unless the plaintiff specifically pleads and



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proves the readiness and willingness to perform the contract to complete the sale, the plaintiff will not be entitled for the discretionary relief of specific performance. In the case on hand, admittedly, the sale deed has been executed on 28.04.2004 fixing a time period of one year. Even though the learned counsel for the appellant contends that time is not essence of the contract, when a specific period is fixed in the sale agreement, which expires on 28.01.2005, the conduct of the plaintiff in not issuing any communication or a notice, calling upon the defendant to come forward to complete the sale only makes it clear that the plaintiff has not taken any efforts to complete the sale. The further fact that even after the expiry of the time period of 28.01.2005, the plaintiff did not choose to issue any legal notice, but waited for more than one year and seven months, and for the first time had issued a legal notice in Ex.A2 only on 31.08.2006, which is more than two years from the date of sale agreement, shows that the plaintiff was not ready with the balance sale consideration towards performing his part of the contract. The readiness and willingness as held by the Hon'ble Supreme Court in the case of ***His Holiness Acharya Swamiganesh V. Shri Sita Ram Thapar*** reported in ***1996-SCC-4-526***, is that readiness means the financial capacity of the



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party to make the payment and the willingness means the conduct of the party to complete the sale transaction. Here, the plaintiff was not able to establish that he was ready with the balance sale consideration and also the conduct that the plaintiff did not choose to complete the sale within the fixed period and also waited for 1 ½ years for issuing a legal notice. The plaintiff has not satisfied the ingredients as contemplated under Section 16 (c) of the Specific Relief Act, 1963.

16. The learned counsel for the appellant mainly harped upon that the defendant had taken inconsistent stands and they had not been established that it was only a loan transaction. This Court is not able to appreciate the contention for a simple reason that in any suit for specific performance even in the absence for any denial on the part of the defendant, the onus is on the plaintiff to prove the readiness and willingness to satisfy the ingredient under Section 16(c) of the Specific Relief Act, 1963, for obtaining a discretionary relief of specific performance.



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17. The trial Court had dismissed the suit for specific performance and even in the absence of an alternative prayer for refund of the advance amount, the trial Court had granted a decree for an alternative relief of refund of the sale advance with interest. Unfortunately, no appeal has been preferred by the defendant and in the appeal, the first Appellate Court has specifically dealt with that aspect and in the absence of any appeal, the lower Appellate Court had confirmed the decree of the trial Court in dismissing the suit for specific performance, but, however, granting the alternative relief.

18. In view of the above fact that the plaintiff has not proved the Ex.A1 sale agreement, the Courts below have rightly analyzed the documents and rendered a finding and this Court is not able to find any illegality or perversity in the concurrent findings rendered by the Courts below, warranting any interference. Further, no substantial question of law arises for consideration of this Court in the appeal.



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19. In such circumstances, the Second Appeal is dismissed.

However, there shall be no order as to costs. At this stage, the learned counsel for the appellant submits that when the *ex-parte* decree was passed, the plaintiff had deposited the balance sale consideration before the trial Court. If any such deposit is made, it is open to the plaintiff to file necessary application towards refund of deposit. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
LS

12.06.2025

To

- 1.The Principal District Judge,
Dindigul.
- 2.The Principal Subordinate Judge,
Dindigul.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN,J.

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