



A.S.(MD)No.236 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 29.11.2024

PRONOUNCED ON : 18.03.2025

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHIL KUMAR**

A.S.(MD)No.236 of 2015

A.S.Ramasamy

.. Appellant/Plaintiff

-Vs-

1.Velammal

2.Muthulakshmi

3.Marriammal

4.Maheswari

5.Poongulazhi

6.Minor Nivetha @ Uma Maheswari

.. Respondents/
Defendants

***[Minor 6th respondent represented through her mother and guardian
5th respondent]***

Prayer: Appeal suit filed under Section 96 of the Civil Procedure Code, 1908, as against the judgment and decree dated 26.06.2015 made in O.S.No.134 of 2009, on the file of the learned I-Additional District Judge, Tirunelveli.



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For Appellant : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.R.T.Arivukumar
For Respondents : Mr.S.Palani Velayutham
for R1 to R4
: No appearance for R5

JUDGMENT

[Judgment of the Court was made by **RMT.TEEKAA RAMAN, J.**]

The plaintiff is the appellant herein. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

2(a). The plaintiff Ramasamy filed a suit seeking the specific performance of the Ex.A1-suit sale agreement executed by the 1st defendant in favour of the plaintiff. The defendants are the owner of the property.

(b) The plaintiff proceeds on the basis that the plaintiff and defendants entered into a sale agreement-Ex.A1 on 07.09.2006 and the plaintiff has paid a sum of Rs.5,00,000/- as advance of sale consideration and for the entire property, sale price is fixed at Rs.26,60,000/- and the time is fixed as five months. It is further agreed between the parties that the defendant has permitted the plaintiff to level the schedule property and it is alleged by the plaintiff that he has spent two lakhs rupees for



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making improvement of the property and he is ready and willing to perform his part of the contract but the defendants evaded. On 07.02.2007, the defendants issued notice-Ex.A2 to the plaintiff. The plaintiff sent reply notice-Ex.A3 on 12.02.2007.

(c) It is a specific case of the plaintiff that he has approached the defendants and the defendants have undertake to execute a sale deed after settling the dispute between the family members. Thereafter on 22.12.2009, the plaintiff came to know that the defendants are trying to sell the property to third parties and hence, he filed the suit.

3. The sum and substance of the written submissions filed by the first defendant adopted by the second defendant is as under:

(a) The existence of Ex.A1-sale agreement and the receipt of advance of Rs.5,00,000/- are not disputed. However, the period is specifically fixed on or before 31.01.2007. Since the price of the property is increasing day-by-day, the date has been specifically fixed.

(b) The plaintiff has not responded after the expiry of the fixed date and the plaintiff has no money to complete the sale transaction and after informing the plaintiff, the defendants have terminated Ex.A1-sale agreement under Ex.A2-notice dated 07.02.2007 and also denied that the defendants never permitted the plaintiff to develop the property



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as alleged in the plaint. Further, the suit was filed after two years and ten months, ie., after cancellation of the sale agreement and therefore, they terminated the sale agreement and willing to repay the advance amount received. However, the plaintiff refused the same.

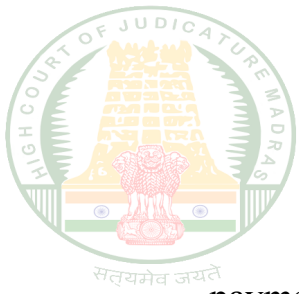
4. On the above pleadings, the trial Court has formulated the following issues:

1. Whether, the plaintiff is entitled to decree for specific performance in pursuant to the sale agreement dated 07.09.2006? and

2. To what other relief?

5. During the trial, additional two issues have been framed as to whether the time mentioned in the agreement is very essence of the contract? and whether the plaintiff is always ready and willing to perform his part of the contract?

6. During the trial, PW1 and PW2 were examined and Ex.A1 and Ex.A10 were marked on the side of the plaintiff. DW1 and DW2 were examined on the defendants' side and no documents marked.



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7. The terms of the agreement are not in dispute. The payment of advance is not in disputed. After hearing the rival submissions of the learned counsels of the parties, the trial Court has held that time is essence of the contract and the plaintiff has not taken any steps to express his willingness to purchase the property.

8. Also held that the plaintiff is not ready and willing to perform his part of the contract and accordingly rejected the main relief of specific performance and granted the alternate relief of refund of advanced amount of Rs.5,00,000/- along with 12% interest.

9. Aggrieved against the rejection of the main relief, (viz) relief of specific performance, the present appeal has been filed.

10. Heard the learned Senior counsel for the appellant/plaintiff and the learned counsel for the respondents. Evidence of PW1 and DW1 was perused and also taken note of the Ex.A1.

11. The point for determination of the appeal are as under:

1. Whether the plaintiff is ready and willing to perform his part of contract?



2. Whether the suit is bad for not seeking relief to set aside the termination notice-Ex.A2?

3. Whether the plaintiff is entitled for the main relief of specific performance of suit sale agreement-Ex.A1? And

4. Whether the order passed by the trial Court is sustainable in law?

12. After hearing the learned Senior counsel and after perusing the oral evidence of PW1 and PW2, DW1 and DW2 and documentary evidence of Ex.A1 to Ex.A10, we find that there is a specific clause in the Ex.A1-suit sale agreement that the sale transaction has to be performed and to be completed on or before 31.01.2007 which is not disputed by the plaintiff in the cross-examination. After DW1-1st defendant approached many times, the plaintiff has not come forward with money. It is settled law that mere mentioning of time within which the contract has to be performed, it is not framed the stipulation and the time is the essence of the contract. Therefore, the trial Court has rightly held that in the instant case, time is not essence of the contract and the same is hereby confirmed.



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13(a). On the point of ready and willingness on the part of the plaintiff, suit sale agreement was entered on 07.09.2006 for Rs.5,00,000/- and the said amount was paid. As per Ex.A2, the defendant having noticed that the plaintiff has not completed his transaction as agreed and not shown any interest, chosen to issue notice under Ex.A2 dated 07.02.2007 whereby the defendants have terminated the agreement for which the plaintiff gave a reply notice under Ex.A3 dated 12.02.2007. Even after termination notice under Ex.A2, dated 07.02.2007, the plaintiff has not taken any steps to get the sale deed in his favour through the Court of law.

(b) The present suit for specific performance is filed only on 23.12.2009 as could be seen from the lower Court records. Hence, we find that there is a delay of two years and ten months. In other words, it is almost at the fag end of the period of three years.

(c)The plaintiff neither in the pleadings nor as PW1 has not let in any evidence to offer any explanation as to why such a delay has been occurred for filing the suit. It remains to be stated that the defendants have taken a firm stand on Ex.A2 dated 07.02.2007 to terminate the suit sale agreement. Till 22.09.2009, no positive steps taken by the plaintiff, there is no plausible explanation by the plaintiff for the



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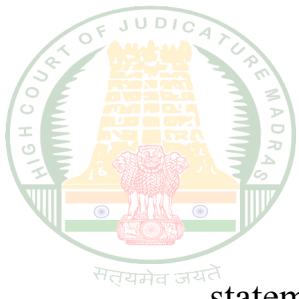
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said delay much less any explanation at all also assumes significance.

(d) Hence, we find that the plaintiff has not taken any steps for almost three years to get the sale deed in his favour and even after the defendants issued Ex.A2-notice to terminate the contract, even then no effective steps were taken by the plaintiff found to relevant.

14. Learned Senior Counsel for the appellant/plaintiff would contend that there was some civil suit pending between the family members of the defendant and the plaintiff and they are waiting for the results, however nothing is averred as pleading in the plaint assumes significance. Even after filing of the written statement, the plaintiff has not filed any reply statement with respect to the alleged pending suit. Hence, the trial Court has come to the conclusion that the plaintiff has not at all ready and willing to perform his part of the contract. Plaintiff came with lame excuse and he has not furnished any details of the alleged litigation among the family members of the defendants either in the plaint or in the oral evidence of PW1. Even after filing of the written statement by the defendants, the plaintiff has not chosen to file any reply statement in this regard, assumes significance.



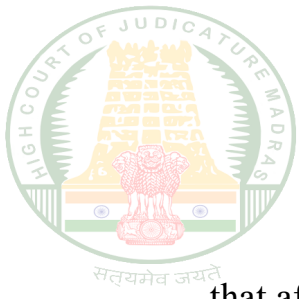
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15(a). Ex.A5 and Ex.A6 perused. They are plaint and written statements. On perusal, we find that the certified copies of the plaint and written statement are obtained only on 22.11.2010 but no averment has been made in the plaint. Hence, on perusal of Ex.A5, Ex.A6 and Ex.A9, learned trial Judge has rightly come to the conclusion that only after filing of the present suit, pendency of O.S.No.23 of 2004 was came to light to the plaintiff. Accordingly, reject the contention of the plaintiff in the absence of any explanation. This Court is of the considered view that the said finding of the learned trial Judge does not warrant any interference. In the absence of any pleadings, evidence cannot be looked into. Even if we look at the evidence Ex.A5, Ex.A6 and Ex.A9, we find that they are obtained on 27.05.2013 ie., after filing of the suit. Hence, the trial Court has rightly rejected as the plaintiff's inaction.

(b) As per the evidence, PW1 admitted in the cross examination that from the land broker, he came to know that the defendants are trying to sell the property on 22.02.2009. Only after coming to know that the defendants are attempted to sell the property to third parties after issuing Ex.A2-termination notice, the suit has been filed.



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(c) PW1 in the cross examination has categorically admitted

that after the expiry of the time limit fixed under the sale agreement as on or before 31.01.2005 (namely 5 months), the plaintiff has not issued any notice to show his readiness and willingness and it is the defendants who had issued Ex.A2 for terminating Ex.A1-suit sale agreement. Even after issuance of Ex.A2 termination of agreement after 34 months, the plaintiff has not filed any suit and not taken any steps to complete the sale transaction with the defendants and during the cross-examination, he has not offered any explanation for the long delay of 34 months for the filing of the suit and hence this Court finds that the plaintiff has not demonstrated his ready and willingness to perform his part of the contract.

16(a). As per the Court endorsement, we find that the balance of sale consideration was deposited in the Court on 01.12.2010 as stated supra, the suit was filed on 23.12.2009. Nearly one year after the filing of the suit, the balance of the amount appears to have been deposited before the trial Court. The written statement was filed on 19.04.2010. The defendant has made civil court lodgment schedule of Rs.5,00,000/- ie., amount received as advance whereby he has undertaking to repay the advance amount. Even thereafter for eight long



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months, plaintiff has not deposited the amount by the way civil court lodgment schedule, which is clearly mentioned in the written statement at para 11 assumes significance.

(b) Hence, the trial Court has rightly come to the conclusion that the plaintiff has not taken any steps to complete the sale transaction within the stipulated time ie., 5 months namely on or before 31.01.2007 and the defendants issued the termination notice on 07.02.2007 under Ex.A2. Even after the issuance of Ex.A2-termination notice, the plaintiff has not made any action to complete the transaction and the suit was filed after two years 10 months of the issuance of Ex.A2-termination notice and in the suit, the plaintiff has not sought for the relief of declaration to declare that the termination notice Ex.A2 is null and void. Having not challenged the termination notice, filing of suit is not maintainable and further more, even on filing the written statement on 19.04.2010 along with the lodgment schedule had returned the advance amount of Rs. 5,00,000/-, and the plaintiff has not filed any reply statement to show his ready and willingness to perform his part of contract and thereafter he had kept quite for 8 months and thereafter, he had deposited the amount.

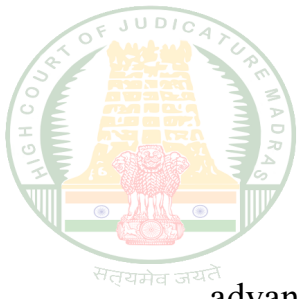
(c) Therefore, on cumulative analysis of the above terms, the trial Court has rightly come to the conclusion that the plaintiff is not ready and willing to perform his part of the contract and besides we also



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held that for want of necessary relief against Ex.A3 termination notice, the suit is not maintainable and therefore, the plaintiff is not entitled to the main relief of specific performance of the Ex.A1-suit sale agreement as he failed to comply with Section 16 (c) of the Specific Relief Act and the trial Court has rendered similar finding however for different reasoning as discussed supra, the same is hereby confirmed as the said finding of the trial Court does not suffer from any, irregularity or illegality, warranting interference.

17. At this juncture, though the plaintiff has come forward with the tall claim that possession was handed over to the plaintiff and he made developments by levelling the ground, there is no evidence for grant of possession. Further more, there is no evidence for developing the property as alleged in the plaint filed by the plaintiff and hence the trial Court has taken note all the points and rightly come to the conclusion that the plaintiff has not come to the Court with clean hands and the specific relief being the discretionary relief, the plaintiff having come with the grease in the palm is not entitled to the equitable relief. Hence, we confirmed the judgment of the trial Court.



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18. The trial Court has granted the relief of refund of advance amount that is deposited by the defendants in the Court and hence we find no point to interfere with the well reasoned order passed by the learned trial Judge and accordingly all the points are held against the appellant/plaintiff and the appeal is devoid of merits and the appeal suit stands dismissed. No Costs.

[T.K.R.,J.] [N.S., J.]
18.03.2025

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
PJL

To
1. I-Additional District Judge,
Tirunelveli.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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RMT.TEEKAA RAMAN, J.
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N.SENTHIL KUMAR, J.

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Judgment made in
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