



AS.(MD)No.371 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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.371 of 2024
and
C.M.P.(MD)Nos.18204 & 18205 of 2024

S.Mariaraj

... Appellant / Plaintiff

Vs.

1.The East India Corporation Limited, Madurai,
Having its office at C/o. Hari Automobiles,
Shop No.7-B, K.M.A.Complex,
Ram Nagar, Bypass Road, Madurai,
Through its Managing Director,
T.Meenakshi, W/o. S.Thiyagarajan.

2.S.Chennimalai

... Respondent / Defendant

(Respondent No.2 / Defendant No.2 is given up as suit is abated as against him)

PRAYER : First Appeal filed under Section 96 of the Code of Civil Procedure, against the Judgment and Decree dated 10.07.2024 passed in O.S.No.26 of 2011 on the file of learned Additional District Judge, Dindigul.



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For Appellant : Mr.H.Laxshmi Shankar,
for M/s.J.R.Annie Abinaya

For R1 : Mr.Sricharan Rengarajan,
Senior Counsel,
for Mr.A.S.Vigunth

JUDGMENT

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

Unsuccessful plaintiff has preferred the appeal. The suit is filed for specific performance. The trial Court negatived 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 plaintiff is as follows:-

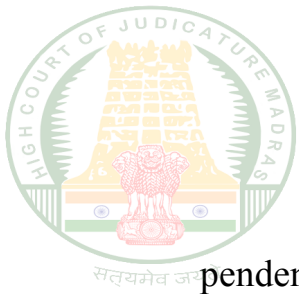
The suit schedule properties belong to first defendant Company and it has authorised its Managing Director Thirmathi.Meenakshi to sell the suit properties. The plaintiff and first defendant executed a registered sale agreement on 09.06.2004 at the rate of Rs.50/- per Sq.Ft., for a total sale consideration of Rs.57,65,900/- is fixed and an advance of Rs.5,00,000/-



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was paid. The plaintiff was given right to measure and demarcate the suit properties and convert them into house sites, apply for approval. An authorisation letter was executed by the first defendant on 17.11.2003. The vacant possession of the property was handed over by the first defendant. The plaintiff has put up two houses therein for his servants. Though the time of execution sale deed was fixed as two years, it was agreed between the parties that time is not essence of contract. When the plaintiff started measuring the properties, one Chennimalai (second defendant) had objected the same. With the consent of the first defendant the plaintiff has filed the suit in O.S.No.1140 of 2004 on the file of the District Munsif Court, Dindigul against the said Chenniamalai and obtained an ad-interim injunction. In the said proceedings, it was revealed about the pendency of another suit in O.S.No.138 of 1997 between Chennimalai and the first defendant. The plaintiff and Meenakshi jointly filed written statement in O.S.No.181 of 2004. The plaintiff has been always ready and willing to pay the balance sale amount. But, whenever, he requested the first defendant to take steps for speedy disposal of the suit, she stated that suits would be disposed of in two or three months. The sale could not be completed only because of the



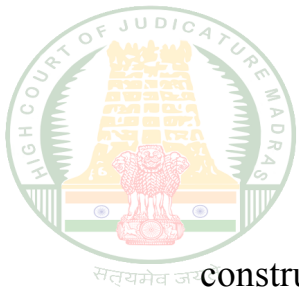
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pendency of the suits and because of the fault of the first defendant. The first defendant further demanded to pay the sale amount at the rate of Rs. 250/- per Sq.Ft., totally Rs.2,83,30,500/-. This high handed demand was not accepted by the plaintiff. Hence, she proclaimed that she is going to cancel the sale agreement and to sell the properties to some other third parties on 01.03.2011. Further, on 04.03.2011, seven persons had threatened the plaintiff to vacate the suit properties. The suit is not barred by limitation. After the completion of evidence in the suit, the said Chennimalai was added as second defendant in the suit. He has claimed independent title over the third item of the suit properties. The defendants have colluded together to cheat the right of the plaintiff.

3.The brief case of the first defendant is as follows:-

The first defendant has accepted and admitted the execution of sale agreement on 09.06.2004. As per the agreement, the plaintiff agreed to obtained sale deed within two years ie., before 09.06.2006 and the time of two years is the essence of the contract. The plaintiff was authorised to demarcate into house sites on behalf of the first defendant, but the possession of the land was not handed over to him. The plaintiff did not



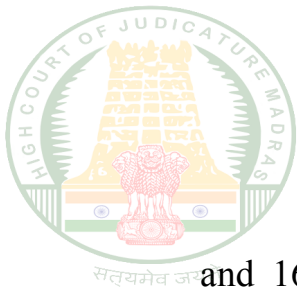
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construct any houses. The plaintiff was never ready and willing to perform his part of contract and has committed breach of contract. He has no sufficient funds to purchase and the suit filed after a lapse of seven years for the specific performance of contract is barred by limitation. The plaintiff aware about pendency of the suit in O.S.No.138 of 1997. The said suit filed against Meenakshi alone and first defendant Company was not a party. In another suit in O.S.No.181 of 2004 filed against the plaintiff and Meenakshi. The suit property originally belonged to one Arockiam and he took possession of the properties through an order of District Munsif Court, Dindigul in E.P.No.193 of 1929 in O.S.No.122 of 1928. The second defendant no way connected with the suit properties and the plaintiff is not entitled for the relief of specific performance as claimed by him.

4.The brief case of the second defendant is as follows:-

The sale agreement dated 09.06.2004 and the suit is filed in collusion between the plaintiff and the first defendant to usurp the properties of this defendant. The third item of the suit properties originally belonged to Venakta Suba Iyer by sale deed dated 13.10.1877



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and 16.01.1878. Subsequent his death in the year 1971, his only son V.Venkata Raman and his children divided the properties under a partition deed dated 27.10.1975. The third item of the suit properties was purchased by Chennimalai under three different sale deeds from one Eashwaran. The first defendant Company, had become defunct since 1978 and it does not exists. The alleged resolution and the sale agreement made in the year 2004 are not valid.

5.Based on the above pleadings, the trial Court framed the issues and thereafter recasted the issues as follows:-

i)Whether time is essence of the contract between the plaintiff and the first defendant?

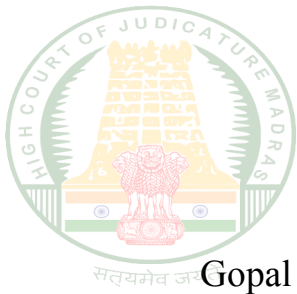
ii)Whether the suit is barred by limitation?

iii)Whether the plaintiff was ready and willing to perform his part of contract?

iv)Whether the plaintiff is entitled for the relief of specific performance as prayed for?

v)To what other relief for the parties entitled?

On the side of the plaintiff, the plaintiff himself examined as P.W.1, One



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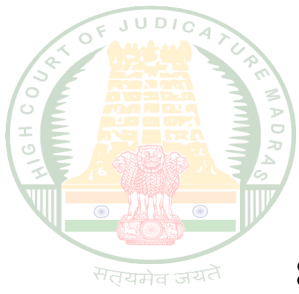
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Gopal examined as P.W.2, one Simiyonraj examined as P.W.3 and Ex.A1 to Ex.A15 were marked. On the side of the defendants, no witness was examined and on the side of the first defendant, Ex.B1 marked.

6.Findings of the trial Court:-

The time was not essence of the contract in this case. The suit was filed within three years from the date of denial of execution by the defendant and held that this suit is not barred by limitation. The plaintiff was not ready and willing to perform his part of the contract as required by Section 16 (c) of the Specific Relief Act. The plaintiff has not prayed for the alternative relief of refund of advance amount. However, there is no clause for forfeiture of the said advance amount in Ex.A1. By relying the decision of the Hon'ble Supreme Court in **2022 SCC Online SC 71 Shenbagam Vs. K.K.Rathinavel**, the trial Court held that the plaintiff is entitled to get back the said amount paid by him.

7.Point for determination arises in this appeal is that whether the plaintiff was ready and willing to perform his part of contract and entitled for relief of specific performance?



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8.The learned counsel appearing for the appellant / plaintiff would submit that the plaintiff was always ready and willing to perform his part of the agreement. But the first defendant suppressed the pendency of the litigations, which was suppressed in the suit sale agreement. In the light to the pending litigations, even if sale deed was executed between the parties, it would be affected by *lis pendens*. He would submit that the trial Court ought to have taken into consideration that the plaintiff came to know of the suit in O.S.No.138 of 1997 and rival claim by the second defendant only 12.06.2004, ie., after the date of agreement, at the time of measuring and demarcating the suit properties. The plaintiff actively contesting the pending suits individually and together with first defendant is sufficiently demonstrates his willingness in performing his part of the agreement. The learned counsel further would reiterate all the contentions raised in the grounds of appeal. He would submit that merely from delay in filing of suit, it cannot be come to a conclusion against the plaintiff he was not ready to perform his part of contract. To strengthen his contentions, he has relied upon the judgment of the Hon'ble Supreme Court reported in **2019 8 SCC 62, R.Lakshmikandhan Vs. Devaraji** to show that “merely from delay in filing of suit, after accrual of cause of action, held, it cannot be



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inferred against the plaintiff that he was not ready and willing to perform his part, if suit was filed within a period of limitation”.

9.Per contra, the learned Senior Counsel appearing for the first respondent / first defendant would submit that the suit was filed after a lapse of 7 years and hence, barred by limitation. The time limit stipulated in Ex.A1 agreement dated 09.06.2004 was two years and the plaintiff should have approached the first defendant within 09.06.2006. But, no steps were taken by the plaintiff within the time limit as prescribed under law to file a suit. In fact, the suit was filed in the year 2011 and hence, the suit is clearly barred by limitation. The learned Senior Counsel further would submit that the plaintiff has failed to plead and prove that he was always ready and willing to perform his part of contract. The trial Court, without prayer for refund of an advance amount, has granted the same, which is un-sustainable in law.

10.It is pertinent to mention that with regard to granting of alternative relief of refund of an advance amount with interest, the first defendant has not preferred any appeal before this Court.



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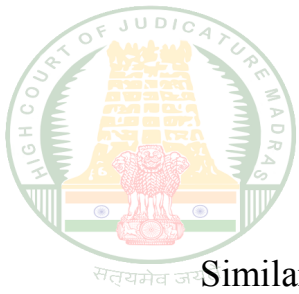
11.Ex.A1 is the sale agreement dated 09.06.2004 entered between the plaintiff and the first defendant. Ex.A2 is the letter of resolution passed at the Board meeting to sell the suit schedule properties of the first defendant Company to its Managing Director Meenakshi. In Ex.A1 the time is fixed for execution of sale was two years. According to the plaintiff, there were litigations pending between the first defendant and some other third parties. Ex.A4 is the copy of the plaint in O.S.No.209 of 2005 on the file of the Additional Sub Court, Dindigul. Ex.A5 is the copy of the plaint in O.S.No.1140 of 2004. Ex.A6 is the copy of the plaint in O.S.No.181 of 2004 on the file of the Sub Court, Dindigul. Ex.A6 shows that there was rival claim by one Chennimalai in respect of item No.3 of the suit property and the suit was filed by him in O.S.No.138 of 1997 against Meenakshi. It is clear that though the said suit was filed as early as in the year 1997 and the said fact was not disclosed in Ex.A1. According to the plaintiff, he went to the suit properties to measure the same and he was prevented by the said Chennimalai and later, he chosen to file the suit in O.S.No.1140 of 2004.



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12.It is well settled that whether time is of the essences of a contract is a question of fact and the real test is the intention of the parties and also it depends upon the facts and circumstances of the each case. In the instant case on hand, though the time is stipulated two years, but, there is no default clause in Ex.A1 pointing out the consequences, if the parties do not comply the condition. In the absence of any default clause regarding the forfeiture of advance amount or any condition regarding failure, it could be ascertained that the intention of parties was not to fix the time limit. It is an admitted fact that suits were pending in respect of the suit schedule properties. It is quite natural that the parties should have wait for disposal of the pending litigations and thereafter, get the sale deed executed as claimed by the plaintiff. It is not the case of the plaintiff that after knowing the pending litigations with regard to the suit schedule properties, he has been called for the first defendant to get back the advance amount or claiming damages rather than the plaintiff has chosen to file a suit as against the third party and also joining with the first defendant to defend the pending litigation. Such circumstances would show that the time was never intended to the essence of the contract.



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Similarly the first defendant has not initiated any legal steps to cancel the agreement or to enforce the same within the limit of time.

13.It is pertinent to mention that limitation for suit for specific performance is governed by Article 54 of Limitation Act, 1963 which runs as follows:-

Three years from the date fixed for performance or if no such date is fixed when the plaintiff has noticed that the performance is refused.

14.According to the plaintiff, due to the pendency of the suits the sale could not be executed even though the plaintiff was ready and willing to perform his part of contract. Further, the first defendant demanded higher sale consideration at the rate of Rs.250/- per Sq.Ft., since the plaintiff refused to accept the said demand, the first defendant had claimed to get the sale agreement cancelled. According to the plaintiff, on 04.03.2011, prospective purchasers threatened the plaintiff and the suit is filed within the period of limitation in the year 2011 itself and is not barred by limitation. The above said facts have been supported by the evidence of P.W.2 and P.W.3. When the plaintiff had waited for the



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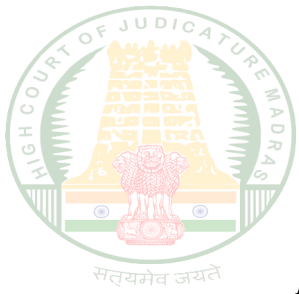
disposal of the suits and the cause of action for the suit arose only when the defendant attempted to cancel the sale agreement. In Ex.A6, the second defendant filed a suit in O.S.No.181 of 2004 on the file of the Sub Court, Dindigul, against the plaintiff and first defendant Company. In Ex.A7, the plaintiff and the first defendant Company jointly filed the written statement in O.S.No.181 of 2004. The plaintiff has filed the suit within three years from the date of cause of action is not barred by limitation.

15.At this juncture, it is relevant to cite the ruling of the Hon'ble Supreme Court of India in **2024 SCC Online SC 3586, R.Shamanaik Vs. G.Srinivasah**, wherein it has been held as follows:-

10.The law is settled. The plaintiff is obliged not only to make specific statement and averments in the plaint but is also obliged to adduce necessary oral and documentary evidence to show that availability of the funds to make payment in terms of the contract in time.

11.There is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance.

12.While readiness needs the capacity of the plaintiff to

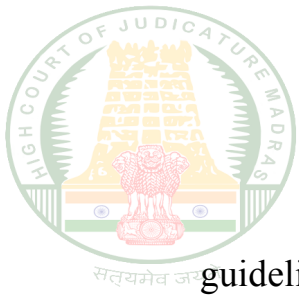


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perform the contract, which would include his financial position, willingness relates to the contact of the plaintiff.

16.It is pertinent to mention that in a suit for specific performance the plaintiff has to plead and prove that he was always ready and willing to perform his part of contract as required under Section 16(c) of the Specific Relief Act. P.W.1 deposed that the advance amount was paid through cheque and the said cheque was not immediately presented for collection at the request of the plaintiff. He does not remember whether he had sufficient amount in his bank account when he issued a cheque for Rs.5,00,000/-. He has admitted that he was having entire sale amount even on the date of sale agreement and he used to have such huge sum. But P.W.1 has not produced his Bank account before the trial Court to establish the fact that he was having sufficient funds. P.W.1 has admitted that he had requested Meenakshi to present the cheque for collection and that he received the cheque on 20.10.2004 and paid the sale advance in cash. Really if the plaintiff had sufficient funds in his bank account, there was no necessity for him to get back the cheque and pay the advance amount in cash. However, in Ex.A1 sale agreement it has been mentioned that the advance amount was paid through cheque. P.W.1 deposed that the



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guideline value of the property at the time of agreement was Rs.200/- per Sq.Ft., yet the agreement fixed the sale price lower rate of Rs.50/- per Sq.Ft. Therefore, it is clear that the plaintiff was aware of the litigations and other issues surrounding the suit property.

17.It is seen from the records the first defendant filed I.A.No.155 of 2017 seeking the production of the plaintiff's bank account statements from 01.06.2004 to 31.12.2004. In response, the plaintiff filed a counter affidavit in the said I.A., failed to deny any of the averments made by the first defendant including the critical assertion that the plaintiff had instructed Meenakshi not to present the cheque for collection until further notice. P.W.1 in his cross examination deposed that on 20.10.2004, he retrieved the bank cheque and instead made the advance payment in cash, whereas, the terms of the sale agreement Ex.A1 explicitly required the advance amount to be paid by cheque. The agreement contained specific clause stipulating that the agreement would be deemed automatically cancelled, if the cheque issued by the plaintiff towards the advance was dishonored. By opting to pay in cash more than four months after the agreement date the plaintiff breached the agreed mode of payment as per the agreement.



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18.It is settled principle by the Hon'ble Supreme Court of India in catena of judgments held that “readiness refers to the financial capacity and willingness refers to the conduct of the plaintiff wanting the performance. The plaintiff has not produced any evidence to show that he has financial capacity to raise more than a sum of Rs.50,00,000/- to pay the sale consideration. The plaintiff has also not proved his willingness through his conduct for wanting the performance. Though the plaintiff has claimed that he was given possession of the property after execution of Ex.A1 sale agreement, but, in Ex.A1 there is no mention that the possession was handed over to the plaintiff. Based on the evidence of P.W.1 to P.W.3 and documents, the trial Court rightly come to a conclusion that the plaintiff was not ready and willing to perform his part of contract. The plaintiff has not prayed for the alternative relief of refund of advance amount. The trial Court finds that in Ex.A1 there is no clause for forfeiture of the advance amount and in view of the decision of the Hon'ble Supreme Court of India in Shenbagam Vs. K.K.Rathinavel ordered to refund the advance amount of Rs.5,00,000/- at the rate of 7.5% from the date of filing of the suit till the date of payment of the said



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amount. We are of the view that the trial Court has thoroughly analysed the evidence and documents in a proper manner as rendered factual findings. There is no merit in this appeal and the same is liable to be dismissed. The point is answered, accordingly.

19.In the result, this first appeal is dismissed and the judgment and decree dated 10.07.2024 passed in O.S.No.26 of 2011 on the file of the learned Additional District Judge, Dindigul is hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

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

NCC : Yes / No
Index : Yes / No
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To

Additional 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.371 of 2024

29.04.2025