



S.A.No.288 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.288 of 2020
and C.M.P.No.5968 of 2020

Dhakshinamurthy (died)

1.Suthandira

2.Usha

3.Jayanthi

4.Rajani

5.Arunagiri

... Appellants

vs.

Haj Mohammed

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.4 of 2016 dated 12.11.2019 on the file of the Principal District Judge, Cuddalore District, Cuddalore, in confirming the judgment and decree in O.S.No.107 of 2010 dated 30.11.2015 on the file of the Sub Judge, Panruti.

For Appellants : M/s.V.Srimathi

For Respondent : No Appearance



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J U D G M E N T

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The Legal Representatives of the unsuccessful defendant are the appellants. The respondent herein filed a suit in O.S.No.108 of 2007 for specific performance of agreement dated 13.04.2007. The suit was decreed by the Trial Court granting decree for specific performance. The appeal filed by the defendants was dismissed by the First Appellate Court. Aggrieved by the concurrent findings, the legal heirs of unsuccessful defendant have come before this Court. It is also seen that pending first appeal, the defendant died and his legal representatives were brought on record as defendants 2 to 6.

2. According to the respondent/plaintiff, the deceased defendant was the absolute owner of the agreement mentioned property. He entered into Suit Sale Agreement dated 13.04.2007 with the deceased defendant for purchase of the agreement mentioned property for the sale consideration of Rs.9,00,000/-. As per the terms of agreement, an advance amount of Rs.4,00,000/- was paid on the date of agreement (i.e.,13.04.2007). The balance sum of sale consideration shall be paid within a period of three months. The said period was due to expire on 13.07.2007. Even prior to the same, the plaintiff issued a pre-suit notice on 11.07.2007 expressing his



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readiness and willingness to pay the balance sale consideration and get the Sale Deed executed. The deceased defendant after receipt of notice issued a reply on 19.07.2007 directing the plaintiff to wait at the Registrar's Office on 27.07.2007 at 2.30 P.M., with the balance sale consideration to enable him to execute the sale deed.

3. It was also stated by the plaintiff that the defendant failed to vacate the Mortgagee in the suit property. The plaintiff again issued a rejoinder that 24.07.2007 expressing his willingness to pay the balance sale consideration at Registrar's Office, Nellikuppam and get the sale deed executed. It was further stated that the plaintiff purchased stamp papers and prepared the sale deed and waited in Registrar's Office on 27.07.2007 from 1.30 pm onwards with the balance sale consideration. However, the defendant did not turnout and hence, the plaintiff filed the instant suit for specific performance.

4. The defendant filed written statement and resisted the suit by denying various averments found in the plaint. It was the case of the defendant that time was essence of the contract and defendant was always ready and willing to perform his part of the contract. On the other hand, the plaintiff only evaded performance of his part of the contract. It was also



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stated by the defendant that plaintiff expressed his inability on several occasions to purchase the agreement mentioned property due to non-availability of sufficient funds in his hands. It was also stated that within few days from the date of agreement, the simple mortgage over the agreement mentioned property was discharged by the defendant and demand was made to plaintiff to perform his part of the contract. It was further stated by the defendant that on 27.07.2007, he was waiting in the Sub-Registrar Office, Nellikuppam from 2.30 pm to 5.30 pm. However, the plaintiff failed to turnup. Thus, according to the defendant, he had taken every step to complete the sale transaction, however, the plaintiff evaded performance of his part of the obligation. On these pleadings, the defendant sought for dismissal of the suit.

5. Before the Trial Court, the plaintiff was examined as PW.1 and yet another witness was examined as PW.2. On behalf of the plaintiff, 5 documents were marked as Exs.A1 to A5. On behalf of the defendant, the Power Agent of defendant was examined as DW.1 and two other independent witnesses were examined as DW.2 and DW.3. 6 documents were marked on behalf of the defendant as Exs.B1 to B6.



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6. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff was entitled to specific performance of the suit sale agreement and decreed the suit. Aggrieved by the same, the defendant preferred first appeal in A.S.No.4 of 2016 on the file of the District Court, Cuddalore. Pending first appeal, the defendant died and his legal representatives were brought on record. The plaintiff/respondent in appeal filed an application in I.A.No.134 of 2019 seeking to produce Bank Passbooks as additional evidence. The said IA was taken up along with appeal and allowed. The Bank Passbooks produced by the plaintiff were marked as Exs.A6 to A10 before the First Appellate Court. On appreciation of entire evidence available on record, the First Appellate Court affirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the concurrent finding, the legal representatives of the deceased defendant have come before this Court.

7. At the time of admission, this Court formulated the following substantial question of law by order dated 12.03.2020:-

“i) Whether the lower Appellate Court was right in entertaining evidence and passing judgment relying upon the



said additional evidence without affording opportunity to the defendant to cross-examine the plaintiff on the additional documents produced before it as required under Order 41 Rule 28 of the code of civil procedure?”

8. Elaborating the substantial question of law, the learned counsel appearing for the appellants would submit that the First Appellate Court has not followed the procedure contemplated under Order 41 Rules 27 and 28 of Code of Civil Procedure while admitting the additional evidence. Therefore, according to her, the said judgment got vitiated. The learned counsel further submitted that in order to prove that the defendant was present at Sub-Registrar Office, two independent witnesses namely DW.2 and DW.3 have been examined by the defendant. On the other hand, the plaintiff has not examined any independent witness. In such circumstances, the finding rendered by the Courts below as if, the plaintiff proved his readiness and willingness is liable to be set aside. The learned counsel further submitted that the plaintiff failed to establish the availability of funds in his hands at the relevant point of time and therefore, he is not entitled to specific performance of sale agreement.



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9. It is seen from the observation made by the First Appellate Court, the xerox copies of the bank passbooks filed as additional evidence were filed before the Trial Court along with a memo. The said documents were relied on by the trial Court, even though the same had not properly marked. The plaintiff at the time of appeal, filed a petition to raise additional evidence to mark the original bank passbooks before the First Appellate Court. The Ex.A6 is the bank passbook issued by UCO Bank, Nellikuppam Branch. Exs.A7 to A9 are the bank passbooks issued by Indian Bank, Nellikuppam. Ex.A10 is the bank passbook issued by the Nellikuppam Primary Agricultural Co-operative Credit Society Limited. In the absence of anything to doubt the genuineness of the bank passbooks produced by the plaintiff, the First Appellate Court came to the conclusion that the reception of the additional evidence will certainly enable the Court to decide the controversy in a comprehensive way and allowed marking of the additional document.

10. It is also pertinent to mention that the xerox copies of bank passbooks were produced before the Trial Court. However, the same had not been marked. Therefore, nothing wrong in allowing the plaintiff to mark the documents, copies of which were already produced before the Trial Court.



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11. Under Order 41 Rule 27(1)(b) of the Code of Civil Procedure, the Appellate Court can allow the additional evidence, if it requires any document to be produced, to enable it to pronounce judgment or for any other substantial cause. In the case on hand, the copies of the additional documents were produced before the Trial Court. However, the same were not marked. Therefore, an application has been moved before the First Appellate Court for marking original bank passbooks. The genuineness of the said documents cannot be doubted. In such circumstances, in order to render substantial justice, the First Appellate Court rightly allowed the marking of the said documents.

12. It is also submitted by the learned counsel for the appellants that no opportunity was given to the appellants to cross examine the witness with regard to the additional documents. There is nothing on record to suggest that the appellants sought for right to cross examine the plaintiff with regard to the additional document. A perusal of the counter affidavit filed by the appellants herein to the petition filed by the respondent/plaintiff seeking production of additional evidence would establish that the appellants did not pray for right to cross examine the plaintiff with regard to the additional



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evidence produced by him. In the absence of any such request made by the defendant before the First Appellate Court, the appellants are not entitled to say that they were not given right to cross examine the witness with regard to the additional evidence. In view of the discussion made earlier, the question of law framed at the time of admission is answered against the appellants and in favour of the respondent.

13. A perusal of Exs.A6, A7 and A9 would indicate that the plaintiff had sufficient funds on 27.07.2007. On the said date, the plaintiff had a balance of Rs.1,74,947/- in the UCO Bank Passbook, marked as Ex.A6. Likewise, the plaintiff's wife had bank balance of Rs.67,000/- in Indian Bank Passbook, Nellikuppam marked as Ex.A7. He had a bank balance of Rs.2,07,776/- in the Indian Bank Passbook marked as Ex.A9. Therefore, it is clear that on the crucial date, the plaintiff had possessed sufficient funds to pay the balance sale consideration. Hence, the contention raised by the defendant that plaintiff did not possess sufficient funds at the time of disbursal and to complete the sale transaction is not at all acceptable to this Court.



14. As per Ex.A1, the time limit for completing the sale transaction would expire on 13.07.2007. Well prior to the expiry of the time limit, the plaintiff issued a pre-suit notice marked as Ex.A2 on 11.07.2007 expressing his willingness to complete the sale transaction by paying the balance sale consideration and asked the defendant to complete the sale transaction. The defendant issued a reply under Ex.A3 on 19.07.2007 calling upon the plaintiff to be present at Sub-Registrar Office on 27.07.2007 at 2.30 pm. The plaintiff issued a rejoinder on 24.07.2007 under Ex.A4 expressing his readiness to complete the sale transaction on 27.07.2007 in the Sub-Registrar Office. The plaintiff produced bank passbooks to establish that he possessed sufficient funds on the crucial date. It is also seen that plaintiff marked Ex.A5-draft sale deed prepared by him. Therefore, the plaintiff sufficiently proved his readiness and willingness to complete the sale transaction.

15. It is stated by the learned counsel appearing for the appellant that the draft sale deed was prepared in the name of plaintiff and his wife and the same is contrary to the terms of Ex.A1-Sale Agreement. When the plaintiff entered into the sale agreement with the defendant, he is entitled to assign his right under the agreement to the third party. In the case on hand, he



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prepared a draft sale deed in his name and also in the name of his wife.

Merely because, the plaintiff prepared a draft sale deed also in the name of his wife along with his name, we cannot say that the plaintiff failed to prove his readiness and willingness. Ex.A5 is a piece of document to establish the readiness and willingness on the part of the plaintiff.

16. The defendant examined two witnesses, DW.2 and DW.3 to prove that he was present in the Sub-Registrar Office on 27.07.2007 and the plaintiff failed to turnup. However, DW.2 and DW.3 are not witness from the local village and they are all natives of Pondicherry. The Courts below on consideration of evidence of DW.2 and DW.3, rejected their evidence. I do not find any perversity in the approach of the Courts below with regard to the said finding.

17. In view of the discussion made earlier, the contentions raised by the learned counsel appearing for the appellants are not appealable to this Court, the substantial question of law framed at the time of admission is already answered against the appellants.



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18. In Nutshell:-

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- (i) The Second Appeal is dismissed.
- (ii) In the facts and circumstances of the case, there will be no order as to costs.
- (iii) Consequently, the connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

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- 1.The Principal District Court,
Cuddalore District, Cuddalore.
- 2.The Sub Court, Panruti.



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S.SOUNTHAR, J.

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