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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.12.2024
Pronounced on	07.01.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.837 of 2016 and
C.M.P.No.16331 of 2016

Vimala

... Appellant / 2nd Defendant

Vs.

1.Kandasamy
 2.Veluchamy
 3.Mayilathal

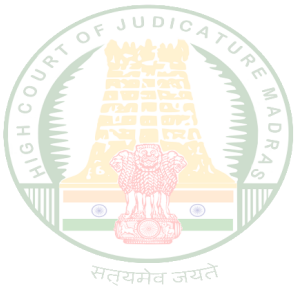
... 1st respondent / plaintiff

... Respondents 2 & 3 / defendants 4 & 5

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 22.11.2011 rendered in A.S.No.167 of 2004 on the file of the Principal District Judge, Coimbatore, confirming the decree and the judgment dated 30.01.2003 rendered in O.S.No.830 of 1990 on the file of the subordinate Judge, Coimbatore.

For Appellant : Mr.S.Subbiah, Senior Counsel for
 Mr.A.V.Arun for P.Raja

For Respondents : Mr.S.Mukunth, Senior Counsel for
 Mr.B.Thirumalai for R1
 No appearance for R2 and R3



JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 22.11.2011 rendered in A.S.No.167 of 2004 on the file of the Principal District Judge, Coimbatore, confirming the decree and the judgment dated 30.01.2003 rendered in O.S.No.830 of 1990 on the file of the subordinate Judge, Coimbatore.

2. Heard Mr.S.Subbiah, learned Senior Counsel for the appellant and Mr.S.Mukunth, learned Senior Counsel for R1 and perused the materials available on record.

3. The second defendant is the appellant. The first respondent / plaintiff has filed a suit seeking for a relief of specific performance against the defendants 1 and 2. During the pendency of the suit, the first defendant died and hence, her legal heirs have been impleaded as defendants 3 to 5. The second defendant is a subsequent purchaser from the first defendant. Therefore, she has also been impleaded as a party to the suit. The Trial Court has decreed the suit and in the First Appeal preferred by the second defendant, the First Appellate Court has dismissed the First Appeal and

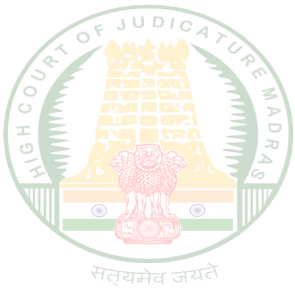


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confirmed the judgment and decree of the Trial Court. Aggrieved over the same, the second defendant has preferred this Second Appeal.

4. The brief facts stated in the plaint are as follows:

On 15.7.1987 the 1st defendant had entered into a sale agreement with the plaintiff for a total sale consideration of Rs. 2,16,000/- and a sum of Rs. 50,000/- has been paid as an advance amount to the 1st defendant by the plaintiff and that has been stated in the agreement itself. The time to complete the sale transaction has been agreed at 12 months. On the same day when the sale agreement was entered, the plaintiff was put into possession and the said fact has also been stated in the agreement. After taking possession of the suit property, the plaintiff has converted the land into house sites. The 2nd defendant is an adjacent owner of the suit property. There is a public cart track having a width of 20 to 22 feet proceeding from Maruthamalai Road through the 2nd defendant's land in Survey Nos. 157 and 158 and then through the suit property. The said cart track has been used for the past 70 years.



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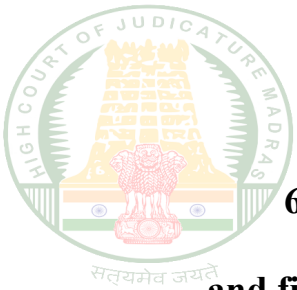
4.1. By coming to know about the sale agreement in favour of the plaintiff, the 2nd defendant created troubles because she had already tried to purchase the suit property from the 1st defendant. The 2nd defendant has filed a suit against the 1st defendant in OS.No.1529 of 1987 before the Sub Court in Coimbatore seeking the relief of permanent injunction against the 1st defendant, the plaintiff and others. Since the 2nd defendant has tried to obstruct the cart track, the 1st defendant has also filed a suit in O.S.No.2703 of 1987 seeking the relief of permanent injunction. The plaintiff was informed that the 1st defendant has settled the dispute with the 2nd defendant. Therefore, the plaintiff was all along ready and willing to purchase the suit property as per the sale agreement. But the 1st defendant did not settle the dispute in respect of the suit property with the 2nd defendant and had not come forward to execute the sale deed. Therefore, the plaintiff had sent a legal notice on 08.08.1989 calling upon the 1st defendant to execute the sale deed. In the meanwhile, the 1st defendant had executed a sale deed in favour of the second defendant unmindful of the sale agreement



in favour of the plaintiff. Hence, the plaintiff has filed the suit for specific performance.

5.The averments made in the written statement filed by the 2nd defendant are as follows:

The suit sale agreement is a concocted one. The 1st defendant has sold the suit property in favour of the 2nd defendant and hence, he did not have any right to execute any sale agreement in favour of the plaintiff. The first defendant executed a sale agreement of the suit property to the second defendant on 05.04.1987 itself. The 2nd defendant is in possession and enjoyment of the suit property in pursuant to the sale deed executed by the 1st defendant on 29.07.1989. The 1st defendant had executed a sale agreement in favour of the second defendant even prior to the sale agreement alleged to have been executed by her in favour of the plaintiff and hence, this is a frivolous suit filed by the plaintiff.



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6. The averments made in the written statements filed by the third and fifth defendants are as follows:

The suit sale agreement is not a genuine one. The 2nd defendant has filed a suit against the 1st defendant in O.S.No.1529 of 1987 and the 1st defendant has also filed a suit in O.S.No.2703 of 1987 against the second defendant and both the suits are pending. The plaintiff did not have any wherewithal to purchase the suit property. The 2nd defendant has purchased the suit property on 29.07.1989 from the 1st defendant for a sale consideration of Rs.1,00,000/-. However, she had paid only a sum of Rs.50,000/-. For the balance sale consideration, the 2nd defendant's husband had executed a promissory note in favour of the 1st defendant. But he did not pay any amount in pursuant to the same.

7. During the course of the trial, on the side of the plaintiff, one witness has been examined as PW.1 and Ex.A1 to Ex.A32 were marked. On the side of the defendants, two witnesses have been examined as D.W.1 and D.W.2 and Ex.B1 to Ex.B11 were marked.



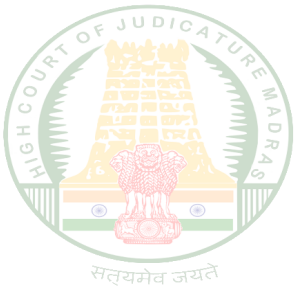
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8. After the conclusion of the trial and on considering the materials available on record, the Trial Court has decreed the suit as prayed and the First Appeal preferred by the 2nd defendant before the First Appellate Court was also dismissed by confirming the judgment and decree of the Trial Court. Hence, the 2nd defendant has preferred this Second Appeal. While admitting this Second Appeal, the following substantial questions of law were framed for consideration:

"1. Whether the suit filed by the purchaser for specific performance in respect to an agreement of sale having been terminated by a written notice by the vendor, is maintainable without a declaration that the termination of the contract of sale is null and void?"

2. When the suit was filed nearly after three years from the date of the agreement of sale and when there was no explanation whatsoever by the plaintiff for not filing the suit for specific performance at the earlier point of time, simply because the suit was filed within the period of limitation, still, whether the plaintiff would be entitled to the equitable relief of specific performance under Section 16(c) of the Specific Relief Act?"

3. Whether the Courts below are justified in granting the discretionary relief for specific performance based on agreement dated 15.07.1987 marked as Ex.A1 when



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admittedly the said agreement was cancelled by the owners of the land by sending notice dated 19.02.1989 marked as Ex.A24, especially, in the absence of any challenge to such cancellation made by the agreement holder?"

9. The learned Senior Counsel for the appellant / second defendant submitted that the 1st defendant has already issued a legal notice to the plaintiff after the expiry of the 12 month time limit agreed upon in the sale agreement, stating that the plaintiff's advance money would be forfeited in view of his failure to pay the balance sale consideration and get the sale deed executed. Since the sale agreement itself got cancelled, the decree cannot be granted in favour of the plaintiff. Even the decree has been granted only against the defendants 3 to 5 and not against the 2nd defendant in whose favour the 1st defendant had executed the sale deed even prior to the filing of the suit. The decree will not bind the interest of the 2nd defendant, who was the rightful owner at the time when the suit was filed. Even though the defendants 3 to 5 executed a sale deed in favour of the plaintiff subsequent to the decree passed in the suit, that will not take away



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the right of the 2nd defendant over the suit property as the Court has not passed any decree against her though she was a party to the proceedings.

10. The learned Senior Counsel for the first respondent / plaintiff submitted that the sale agreement in favour of the plaintiff was executed by the first defendant on 15.07.1987. Thereafter, the second defendant has created a sale agreement by using the old stamp papers in the name of the second defendant by putting the date of execution of the sale agreement as 05.04.1987 in order to create a make belief that the sale agreement in favour of the second defendant was executed prior to the sale agreement in favour of the plaintiff. The second defendant is not a *bonafide* purchaser. In the earlier suit filed by the second defendant for seeking the relief of injunction against the first defendant, she has admitted her knowledge about the sale agreement in favour of the plaintiff. Further, the second defendant did not come to the witness box and subjected herself for examination. The first defendant did not file any written statement when she was alive and the first defendant's legal heirs who are D3 to D5 have filed their written statements, wherein, they also did not raise any point as to cancellation of the sale



agreement or that the suit is not maintainable in view of the cancellation of the sale agreement.

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11. The learned Senior Counsel further submitted that just because the decree has not been passed by binding the second defendant, the plaintiff is not deprived to get the benefit of the decree because the second defendant can at the best claim right only through the 1st defendant. Since the decree has been passed binding the legal heirs of the 1st defendant [defendants 3 to 5] the sale deed in favour of the 2nd defendant can be ignored.

12. The learned Senior Counsel for the appellant further submitted that no issue has been framed by the Trial Court whether the plaintiff is ready and willing to perform his part of contract. Without rendering any finding on this aspect the decree for specific performance cannot be granted. The time for performance is agreed at 12 months. The plaintiff did not perform his part of contract and thereafter, the 1st defendant has given a legal notice terminating the contract. The plaintiff himself has admitted that



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he has got the knowledge about the sale deed executed in favour of the 2nd defendant within a week of its execution.

13. The suit has been based upon the sale agreement executed by the first defendant in favour of the plaintiff on 15.07.1987. Even though the second defendant who is the appellant herein has denied the execution of the sale agreement, the party to the sale agreement *viz.*, the first defendant did not deny the same. The second defendant also taken a stand that Ex.A1 sale agreement has been cancelled by the first defendant through a legal notice dated 19.02.1989. When the party to the sale agreement herself has admitted the sale agreement and subsequently sent a notice (Ex.A24) for cancelling the sale, it cannot lie in the mouth of the second defendant to state that the sale agreement is not true.

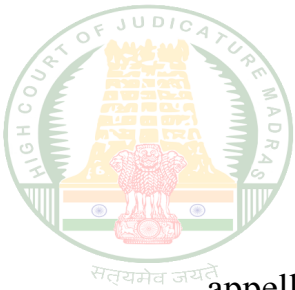
14. Though the first defendant is a party to the sale agreement between herself and the plaintiff, she is not a contesting party. The second defendant alone is contesting this Second Appeal against the plaintiff. Since the second defendant has purchased the suit property subsequent to the sale agreement Ex.A1, has impleaded the first defendant also as a party to the



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proceedings. However, the second defendant has raised a point that the plaintiff has filed the suit without seeking the relief to set aside the sale deed dated 29.07.1989 executed by the first defendant in favour of the second defendant.

15. In the judgment of this Court reported in **2020 (1) MWN 540**, in *the case of A.Maheswari and Others Vs. R.Balasubramaniam and Others*, this Court has referred to the judgment of the Full Bench of the Hon'ble Supreme Court in the case of **Lala Durga Prasad and another Vs. Lala Deep Chand and Others**, reported in **AIR 1954 SC 75**. In Lala Durga Prasad case, the Hon'ble Supreme Court has held that *in the suit filed for specific performance by the plaintiff, if there is an alienation of the property after the agreement but prior to the suit, the plaintiff need not seek the relief to set aside the subsequent alienation in the suit filed for specific performance against the vendor*. As the law is well settled on this point, it is wrong on the part of the appellant to claim that the plaintiff ought to have filed a suit for specific performance along with the relief of declaration as to the sale deed dated 29.07.1989 (Ex.A25).



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16. The next argument advanced by the learned counsel for the appellant is that even prior to the filing of the suit, the party to the sale agreement *viz.*, the first defendant has issued a legal notice to the plaintiff by stating that the plaintiff did not come forward to finish the sale as agreed in the sale agreement and hence, he is terminating the contract. It is submitted by the learned Senior Counsel for the plaintiff that the first defendant cannot terminate the contract as the plaintiff was all along ready and willing to perform his part of contract. Unfortunately in the suit filed for specific performance, the Trial Court has not framed a specific issue as to the readiness and willingness on the part of the plaintiff in performing his part of contract. Even the First Appellate Court had omitted to take note of the above fact. The Courts below had focused on the sale agreement alleged to have been executed in favour of the second defendant by the first defendant even prior to Ex.A1 sale agreement in favour of the plaintiff.

17. The learned Senior Counsel for the plaintiff submitted that the old stamp paper which was purchased in the name of the second defendant has been made use to create the sale agreement dated 05.04.1987 (Ex.B2) just in order to pretend that the first defendant had already executed the sale



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agreement in favour of the second defendant even before her agreement with the plaintiff. It is for the first defendant to state whether she had executed the sale agreement in favour of the plaintiff earlier in point of time. The Trial Court has made an observation that in the additional written statement filed by the legal heirs of the deceased first defendant, they have admitted about the execution of the sale agreement in favour of the plaintiff even before the sale agreement executed in favour of the second defendant.

18. It might be true that the old stamp papers have been used for the purpose of creating the sale agreement in favour of the second defendant to create a picture that the first defendant had executed the sale agreement with the second defendant prior to her sale agreement with the plaintiff. But the plaintiff has to prove his case on his own materials and merit that he is entitled to the relief of specific performance. The relief of specific performance being an equitable relief, it cannot be granted just because the plaintiff had proved that the sale agreement Ex.A1 is true and valid.

19. The appellant / second defendant has claimed that time was the essence of the sale agreement and that the plaintiff did not come forward to



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execute his part of contract by paying the balance sale consideration and allowed the first defendant to issue notice Ex.A24 to terminate the contract.

As the plaintiff did not come forward to execute the sale deed, the first defendant has issued a legal notice (Ex.A24) stating that the sale agreement in favour of the plaintiff gets cancelled in view of his indifference in complying the terms of contract. The plaintiff received the notice, but he did not send any reply. So it is claimed by the second defendant that even if the sale agreement in favour of the plaintiff is true, it got cancelled before the sale deed Ex.A25 dated 29.07.1989 was executed in favour of the second defendant.

20. In fact, the second defendant had claimed that the plaintiff ought to have filed a suit by including the prayer for declaration that the cancellation of the sale agreement Ex.A1 by the first defendant is null and void before claiming the relief for specific performance. Since the plaintiff believed that he had the right to seek the relief of specific performance, he had filed a suit for seeking the same relief. It is for the second defendant to disprove the claim of the plaintiff in case the plaintiff proves his entitlement. So the second defendant cannot plead that the sale agreement



Ex.A1 in favour of the plaintiff got cancelled in pursuant to Ex.A24 legal notice.

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21. Even the plaintiff also denied the fact of receiving the legal notice Ex.A24. Until 08.08.1989, the plaintiff did not choose to send any reply notice to the legal notice of the first defendant. The legal notice sent by the plaintiff to the first defendant was on 08.08.1989 and it has been marked as Ex.A26. The legal notice was sent by the plaintiff after he came to know that a sale deed has been executed by the first defendant in favour of the second defendant. However, it cannot be strictly stated that the plaintiff's right to maintain the suit for specific performance is available to him only if he seeks a relief for declaring the cancellation of the sale agreement by the first defendant as null and void. The plaintiff has got a paramount duty to prove that he has been all along willing to perform his part of contract and that he is entitled to the relief of specific performance within the context of Section 16(c) of the Specific Relief Act.

22. The legal notice has been sent by the first defendant to the plaintiff on 19.02.1989 stating that the plaintiff did not come forward to



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perform his part of contract. But the plaintiff did not send any reply. So the first defendant was at liberty to presume that the plaintiff has lost his interest in getting the sale deed executed and proceed to find out some other purchaser. It appears that the first defendant had found the second defendant as a potential buyer and sold the suit property in her favour on 29.07.1989.

23. Immaterial of the fact whether the second defendant had her sale agreement even prior to the sale agreement in favour of the plaintiff, the fact remains that the sale agreement in favour of the second defendant came to be executed only after the first defendant has sent a legal notice to the plaintiff to cancel the sale agreement executed in his favour. Between the period from 19.02.1989 on which date the first defendant sent a legal notice Ex.A24 to the plaintiff till the legal notice sent by the plaintiff on 08.08.1989, the plaintiff was indifferent about the completion of the sale transaction. In other words, the conduct of the plaintiff is such a way that he had lost his interest in getting the sale deed executed. As the relief for specific performance revolves around the proof of an important fact that the plaintiff was all along ready and willing to perform his part of contract, the



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argument advanced on the side of the appellant that the plaintiff ought to have claimed a relief for declaration that the termination of the sale agreement is null and void cannot be of any significance. In view of the above cited reasons, the judgments cited by the learned Senior Counsel for the plaintiff to fortify the point that the plaintiff need not seek the relief of declaration that the termination of the agreement is void, are not necessary.

24. Admittedly, the Trial Court did not frame an issue as to the readiness and willingness on the part of the plaintiff to perform his part of contract. Apart from the conduct of the plaintiff that he remains silent after receiving the legal notice dated 19.02.1989 till 08.08.1989 when he sent Ex.A26 legal notice, the evidence of the plaintiff also would reveal that even after giving Ex.A24 notice he did not proceed to file a suit for specific performance and delayed it for 10 months. P.W.1 has given a categorical evidence that he did not have any reason for causing delay. Even though the suit for specific performance filed by the plaintiff was within a period of limitation that alone will not entitle the plaintiff to get the relief of specific performance. Because his evidence would reveal that he could get the copy of the sale deed dated 29.07.1989 in favour of the second defendant within

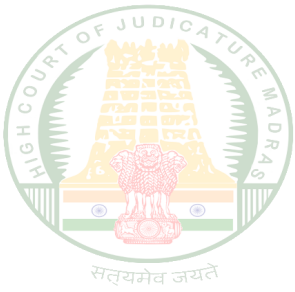


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10 days from the date of execution. Hence, there is no reason to wait and watch for nearly one year without filing any suit for specific performance.

25. The only reason which was stated by the plaintiff in his evidence was that after receiving notice from the first defendant, he waited and met the first defendant in person and she had agreed to execute the sale deed. But these facts were not pleaded by the plaintiff in his suit. The plaintiff has stated that there was a dispute as to the contract in view of the objections raised by the second defendant. Hence, he was requesting the first defendant to settle the dispute before entering into a sale transaction.

26. Despite the plaintiff insisted to settle the dispute about cart track with the second defendant, no interest was shown by the first defendant. The suit filed by the first defendant in this regard against the second defendant was in the year 1987 before the District Munsif, Coimbatore in O.S.No.2703 of 1987. The suit filed by the second defendant against the first defendant in this regard was also of the year 1987 in O.S.No.1529 of 1987. So the legal notice sent by the first defendant *vide* Ex.A24 dated 19.02.1989 was much later than the above said pending suits.



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27. When the first defendant has categorically stated in the legal notice that the time is the essence of contract and advance amount paid by the plaintiff will be forfeited, the first defendant did not come forward to get the sale deed executed, any reasonable person in the place of the plaintiff would have immediately sent a reply notice by stating that pending litigation was the reason for the delay. But the plaintiff did not care to send any legal notice and his conduct would only show that he had lost interest in getting the sale done in his favour by the first defendant.

28. After the plaintiff sent the legal notice, he did not file a suit immediately. But he was waiting for nearly 10 months knowing pretty well that the second defendant had already acquired title through the sale deed executed by the first defendant in favour of the second defendant. Even though the plaintiff has raised a plea that the second defendant is not a *bonafide* purchaser, that argument would arise only if there is a legally enforceable sale agreement in subsistence between the plaintiff and the first defendant and during that course, without knowing the existence of the sale agreement, the second defendant purchased the suit property. But the



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facts and materials available in this case would only show that the plaintiff has lost his interest and the first defendant also conveyed her intention that she is not going to sell the suit property to the plaintiff as he did not come forward within the specific time limit by sending Ex.A24 legal notice.

29. Since the first defendant herself has ignored the sale agreement in favour of the plaintiff because the same was terminated by her, the second defendant need not prove that she was a *bonafide* purchaser and it is enough for her to prove that she is a purchaser of the suit property. Even though the second defendant might know the sale agreement executed in favour of the plaintiff, she has every reason to proceed and get the sale deed executed in her favour because the first defendant had cancelled the sale agreement by sending a legal notice to the plaintiff. On the other hand, the plaintiff has got the bounden duty to prove that he was all along ready and willing to perform his part of contract, but it was the first defendant who did not come forward to execute the sale deed.

30. Firstly, the plaintiff ignored the legal notice sent by the first defendant *vide* Ex.A24 and secondly, he was waiting for more than one year



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to file a suit even after he sent Ex.A26 notice to the first defendant after he came to know about the sale deed executed in favour of the second defendant. Except the pending litigation, the plaintiff had not stated any other reason and even the reason of pending litigation was also not quoted as a reason for finishing the sale transaction by sending any reply notice by the plaintiff to the first defendant.

31. In the above circumstances, the second defendant did not have the burden to prove that she is a *bonafide* purchaser. The Courts below ought to have adverted the readiness and willingness on the part of the plaintiff to perform his part of contract and that he proved his continuous readiness. Without any reasons, the plaintiff had waited for nearly one year for filing the suit after he sent the legal notice Ex.A26. The conduct exhibited by the plaintiff after receiving the legal notice from the first defendant and the reasonable delay he made after he sent a legal notice to the first defendant *vide* Ex.A26 would only show that the plaintiff has lost his interest in getting the sale deed executed in his favour. As the plaintiff had failed to prove his readiness and willingness in term of Section 16(c) of the Specific



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Relief Act, the Courts below ought not to have granted the equitable relief of specific performance.

32. In this regard, it is appropriate to cite the judgment of the Hon'ble Supreme Court held in the case of ***His Holiness Acharya Swami Ganesh Dassji Vs. Sita Ram Thapar, reported in (1996) 4 SCC 526***. In the said case, the Hon'ble Supreme Court has held that *the factum of readiness and willingness on behalf of the plaintiff to perform his part of contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The Court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of contract.*

33. In the instant case, from the conduct of the plaintiff as well as the circumstances and the fact proved before the Trial Court, the Court ought to have arrived at a conclusion that the plaintiff was not ready and willing to perform his part of contract. The readiness and willingness on the part of the plaintiff has to be proved as per Section 16(c) of the Specific Relief Act. The position of law in this regard remains constant prior and subsequent to

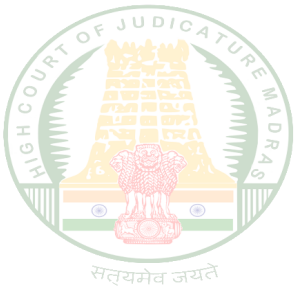


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the amendment of Specific Relief Act. The above position has been confirmed by the judgment of the Division Bench of this Court held in the case of ***Elango Vs. K.Kamalaveni (died) and 16 others, reported in 2023 (2) CTC 535***. In the said judgment, the Division Bench of this Court has held that *the plaintiff has to lead a credible evidence that he is entitled to the relief of specific performance and that he was always ready and willing to perform his part of contract. In fact, it is held that even if the defendants remained absent, the plaintiff has got the duty to establish the readiness and willingness*. In this regard, paragraph Nos.20, 21 and 22 of the above judgment are extracted hereunder:

"20. It is strenuously argued by the learned Senior counsel for the plaintiffs that the defendants have taken contradictory pleas and having denied the suit sale agreement itself in entirety it was not really incumbent on the plaintiffs to prove 'readiness and willingness' and she further contended that in any event the plaintiffs have pleaded that they are always ready and willing to perform their part of contract not only in the plaint but also in the pre-suit notices exchanged between the parties.

21. This Court is unable to find any force in the submissions made by the learned counsel for the plaintiffs/respondents. Even in a case where the defendants



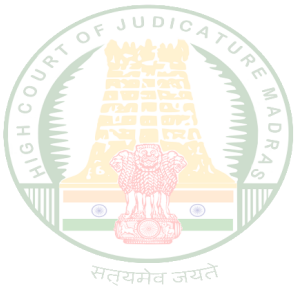
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remain ex-parte, the Court would not automatically grant a decree for specific performance in favour of the plaintiffs.

The plaintiffs are bound to establish that they were always ready and willing to perform their part of the essential terms of the contract/agreement of sale. It is not sufficient compliance of the law to merely state and plead that the plaintiffs were always ready and willing.

22. A reading of Sec. 16 (c) extracted herein above, clearly shows that it is not only a question of pleading but also proof of such readiness and willingness, which is material and mandatory for a plaintiff seeking the discretionary relief of specific performance before the Court of Law. Infact, Sec.16 (c) of the Act has been amended by Act 18 of 2018 w.e.f 01.10.2018 and after the amendment, in Sec.16 (c), the legislature has omitted the requirement of pleading by removing the words 'to aver'. Even though the amendment Act would not apply to the facts of the present case, yet it is referred to for the reason that the legislature has continued to insist on proof of 'readiness and willingness'. Therefore, prior to the amendment as well as post the amendment of Sec.16(c) the requirement to establish and prove 'readiness and willingness' is not done away with. On the other hand, such proof is sine qua non for a plaintiff to become entitled to



the relief of specific performance which is an equitable and discretionary one."

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34. As the relief of specific performance is an equitable relief, the Courts below ought to have weighed the equitable circumstances in a fair and proper manner. As the Courts below had omitted to do the above exercise by not properly evaluating the readiness and willingness on the part of the plaintiff and proceeded to grant the relief of specific performance to the plaintiff, **the second substantial question of law is answered in favour of the appellant / second defendant.**

35. As the above substantial question of law has been answered in favour of the appellant and which has a bearing on the result of the suit, the substantial questions of law Nos.1 and 3 would lose significance even if those legal positions might not be in favour of the second defendant. Since the plaintiff has not proved his readiness and willingness and the second substantial question of law in this regard has been answered in favour of the appellant / second defendant, the judgment and decree of the First Appellate Court and the Trial Court are liable to be set aside.



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36. In the result, this Second Appeal is allowed and the judgment and decree dated 22.11.2011 made in A.S.No.167 of 2004 by the Principal District Judge, Coimbatore is modified to the extent of decreeing the suit by granting the alternate relief of refund of the advance amount of Rs.50,000/- to the plaintiff along with interest at the rate of 9% from the date of filing of the suit till the date of realization by the defendants 4 & 5 from the estates of the first defendant inherited by them. Time for payment is one month from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

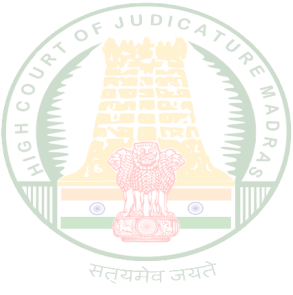
07.01.2025

Speaking order

Index : Yes

Neutral Citation : Yes

gsk



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R.N.MANJULA, J.

gsk

To

1.The Principal District Judge,
Coimbatore.

2.The subordinate Judge,
Coimbatore.

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C.M.P.No.16331 of 2016

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