

Arjunan Vs. D. Pandi.

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SooperKanoon Citation : sooperkanoon.com/925882

Court : Chennai

Decided On : Mar-26-2012

Judge : P.Devadass, J.

Acts : [Specific Relief Act, 1963](#) - Section 16(c), 21, 29 and 30

Appeal No. : Second Appeal (MD) No.701 of 2007 and M.P.(MD) No.1 of 2007

Appellant : Arjunan

Respondent : D. Pandi.

Advocate for Pet/Ap. : Mr.K.Sekar, Adv.

Judgement :

JUDGMENT

1. The defendant in O.S.No.863 of 2002, in the II Additional Sub-Court, Madurai is the appellant.

2. Admittedly, the suit property measuring about 97 cents situate in South Thenpazhanji Village in Madurai District belongs to the appellant. On 8.3.1999, under Ex.A.2 sale agreement, he had agreed to sell the suit property to the respondent/ plaintiff for Rs.2,50,000/-. In Ex.A.2, it is mentioned that on that date, respondent had paid him Rs.1 lakh as advance and one year time has been fixed for execution of the sale deed.

3. According to the respondent, on the date of Ex.A.2, the original title deed of the property (Ex.A.1) was also given to him by the defendant. Subsequently, on six occasions, totally respondent had paid him Rs.1,45,000/-. Appellant also issued him Ex.A.3 receipt dated 21.4.2001. So far Rs.2,45,000/- has been paid. Balance is only Rs.5,000/-. Respondent has been always ready and willing to perform his part of the contract. Time is not made the essence of the contract. Appellant was not ready to honour his part of the contract. Several times, respondent offered Rs.5,000/- and demanded execution of the sale deed. But, he avoided execution of the sale deed.

4. On 23.9.2002, respondent demanded execution of the sale deed. But, the defendant refused. In the circumstances, on 24/9/2002, respondent issued him Ex.A.4 lawyer notice. However, appellant had managed to return it. Appellant had also made arrangements to sell the property to third parties. In the circumstances, respondent filed the suit for specific performance.

5. Appellant filed written statement resisting the suit. According to him, on 8.3.1999, he had borrowed Rs.1,50,000/- from the respondent. As a security for the loan, on his compulsion, a sale agreement was executed, original sale deed was given, respondent had also obtained the signatures of appellant in several blank papers, stamp papers and revenue stamps. He had promised the appellant that he will not use them against him. Only on such signing, respondent gave him Rs.1,50,000/-. Rs.6,000/- p.m., has been paid towards interest. Finally, towards the principal and interest, appellant paid him Rs.1,80,000/- and demanded all the signed papers. But, he did not give them. On 8/10/2002, appellant asked him to return the papers. But respondent demanded Rs.5 lakhs at knife point. A complaint has been made against him to the S.S.colony Police Station. A case in Crime No.982 of 2002 was registered. Respondent was also remanded. The case was conducted before a Judicial Magistrate in Madurai. On 8.3.1999, appellant did not receive Rs.1 lakh. Subsequently, he did not receive Rs.1,45,000/-. He did not issue him any receipt. Respondent had filled up the blank papers and made it a receipt. The suit has been filed to grab defendant's property. The suit is also barred by time.

6. Upon these divergent pleadings, the Trial Court (II Additional Sub- Court, Madurai) framed necessary issues. During the trial, plaintiff Pandi examined himself as P.W.1, the scribe of Ex.A.2 sale agreement Pitchaimani as P.W.2 and marked Ex.A.1 to A.8. Defendant Arjunan examined himself as D.W.1. He did not produce any document.

7. Appreciating the above evidence and the submissions of both sides, the Trial Court came to the conclusion that the plaintiff had proved execution of Ex.A.2 sale agreement, it was not executed as a security for any loan transaction, it is out and out a sale agreement. Payment of advance money and further amount and plaintiff having been ready and willing to perform his part of the contract have been established and the suit is also not barred by time. However, the defendant who had pleaded fraud, coercion and undue influence has not established it. Ultimately, the trial Court held that the plaintiff is entitled to specific performance and thus, decreed the suit.

8. Aggrieved, the defendant took the matter in appeal in A.S.No.863 of 2002. Learned Principal District Judge, Madurai, on complete reappraisal of the evidence, concurred with the findings of the Trial Court and upheld its judgment and decree and thus dismissed the appeal.

9. Aggrieved, the defendant filed this Second Appeal. At the time of its admission, this Court formulated the following substantial question of law for consideration:-

Whether the Courts below are correct in granting the relief sought for in the suit even without considering that there is no readiness and willingness on the part of the plaintiff?

10. According to the learned counsel for the appellant/defendant actually Rs.1,50,000/- has been borrowed from the plaintiff, as a security for the loan plaintiff had obtained Ex.A.2 Sale Agreement. It is not in duplicate. But, only one original was prepared. It was with the plaintiff. It shows that there was no consensus ad idem between the parties. The property is worth more than Rs.10,00,000/-. But the price mentioned in Ex.A.2 is only Rs.2,50,000/-. This shows that Ex.A.2 is a name sake document. Specific relief is an equitable

remedy. It is a discretionary remedy. Those who seek it must come to the Court with clean hands. Plaintiff has spoken falsehood. By his conduct, he is disentitled to get the specific relief. He was not ready and willing to perform his part of the contract. There is no document to show his readiness and willingness. Plaintiff had not deposited the balance sale consideration in Court. Ex.A.3 Receipt has not been given by the defendant. It is stated to be executed at Madurai. But, the stamp paper was purchased in Bhavani. Ex.A.4 notice has been sent to wrong address. It was not served on the appellant. The suit is also barred by time. In the facts and circumstances, it is not a fit case for grant of the equitable remedy of specific relief.

11. The learned counsel for the appellant cited the following rulings: (i) VAIYAPURU GOUNDER Vs. MINOR VIJAYAN

[1978 TNLJ 62].

(ii) N.P.THIRUGNANAM Vs. DR.R.JAGAM MOHAN ROA & OTHERS [1995 (5) SCC 115].

(iii) LAKSHMIAMMAL AND ANOTHER Vs. S. SENGAMALAI

[1996-1-L.W 785].

(iv) K.S. VIDYANADAM & OTHERS Vs. VAIRAVAN

[1997 (3) SCC 1].

(v) VALLITHAI Vs. ARULRAJ

[2007 (5) MLJ 222].

12. The learned counsel for the respondent/ plaintiff contended that under Ex.A.2 Sale Agreement defendant had agreed to sell his property for Rs.2,50,000/-. Ex.A.1 Original Sale Deed was also handed over to him. Subsequently, Rs.1,45,000/- was paid and the balance is only Rs.5,000/-. Several times plaintiff demanded execution of the sale deed receiving the balance. But, the defendant refused. He had also filed false criminal complaint against him. In the criminal Court, he had admitted his execution of Ex.A.2 as a sale agreement. Plaintiff has

been always ready and willing to perform his part of the contract and necessary averments to that effect also has been made in the plaint. Notice has been sent to his proper address. But, he had returned it. He had not proved the undue influence, fraud and coercion pleaded by him. Ex.A.3 has been executed by the defendant. Subsequently, time has not been made essence of the contract. Ex.A.3 evidences this. Lastly, execution of the sale deed was demanded on 23.09.2002 and on 26.09.2002 lawyer notice was also issued and thereafter the suit was filed. Therefore, the suit is not barred by time. It is not necessary that the balance consideration has to be deposited in Court. It is enough if the plaintiff expressed his readiness and willingness by his conduct, pleadings and evidence. Major sale consideration is paid. It is an indication that the plaintiff is ready and willing to perform his part of the contract. There is no proof that the property is worth Rs.10,00,000/-. In the facts and circumstances, it is a fit case for grant of specific relief. That is how, both the Courts below have concurrently held that the plaintiff is entitled to the relief of specific performance of Ex.A.2 Sale Agreement.

13. The learned counsel for the respondent cited the following rulings: (i) RAMALINGAM Vs. SUBRAMANYAM

[2003 (1) M.L.J. 694].

(ii) A.N. ARUNACHALAM Vs. T.SIVAPRAKASAM

[2011 (7) M.L.J. 532].

(iii) SILVEY Vs. ARUN VARGHESE

[2008 (3) M.L.J. 951 (SC)].

(iv) MOTILAL JAIN Vs. RAMDASI DEVI

[2000 (6) SCC 420].

(v) SHYAM NARAIN Vs. RAM SINGH

[AIR 2007 ALLAHABAD 185].

14. This second appeal is directed under Section 100 C.P.C. Second appeal lies only on substantial question of law.

15. At the risk of repetition, we repeat the substantial question of law formulated in this case at the time of admission of the second appeal. It is as under:

Whether the Courts below are correct in granting the relief sought for in the suit even without considering that there is no readiness and willingness on the part of the plaintiff?

16. The said question is concerned with the point whether the plaintiff has been ready and willing to perform his part of the contract embodied in Ex.A.2 Sale Agreement. However, it was argued before this Court by both sides as though it is a first appeal, forgetting the said substantial question of law. We will deal with their respective contentions also.

17. Admittedly, defendant is the owner of 97 cents of suit property situate in Thenpazhanji Village. Ex.A.1 title deed of the suit property stands in his name. Now, it is in the possession of the plaintiff.

18. Ex.A.2 is the sale agreement. Execution of it on 08.03.1999 has been admitted by the defendant. It's contents also has been admitted by the defendant.

19. In Ex.A.2, it is stated that defendant had agreed to sell the suit property for Rs.2,50,000/- to the plaintiff and on the date of agreement, he had received an advance of Rs.1,00,000/- from him. This aspect has been spoken to by P.W.1 plaintiff Pandi and P.W.2 Pitchaimani, the scribe of Ex.A.2.

20. With regard to an incident also in connection with the said sale agreement, on 08.10.2002 defendant had lodged Ex.A.7 F.I.R. against the plaintiff with the S.S. Colony Police Station. On 14.02.2005, under his Ex.A.6 Judgment, the Judicial Magistrate No.V, Madurai had acquitted him. During the trial before the said Criminal Court in his deposition in Ex.A.8, the defendant as P.W.1 had stated that ehd; vGjpa fpua xg;ge;jgo gj;jpugo ehd; elf;f flikg;gl;lttd; vd;why; rhp jhd;. (As per the sale agreement executed by me, I am bound to perform my part of the contract).

21. Defendant pleads that on 08.03.1999, he had borrowed Rs.1,50,000/- from the plaintiff and on the insistence of plaintiff he had executed Ex.A.2 sale agreement. So, the onus of establishing it is upon him. (See RAMALINGAM Vs. SUBRAMANYAM [2003 (1) M.L.J. 694] and A.N. ARUNACHALAM Vs. T.SIVAPRAKASAM [2011 (7) M.L.J. 532].

22. In Ex.A.2 sale agreement dated 08.03.1999, one year period has been prescribed to execute the sale deed. As per Ex.A.2, the total sale consideration is Rs.2,50,000/-. Under Ex.A.2, Rs.1,00,000/- was paid as advance. P.W.1 has stated that subsequently on 6 occasions, he had paid him totally Rs.1,45,000/- and Ex.A.3 receipt dated 21.04.2001 also has been issued.

23. Ex.A.3 has been executed in Rs.10/- stamp paper signed by the defendant. Defendant admits his execution of Ex.A.3. But, in the evidence, he gives a different version about it. In his evidence, defendant/D.W.1 had given inconsistent version about this. It is stated that it was executed on 21.04.2001. But, now he comes with a different version that he had executed it on December. There is clear cut admission about his execution of Ex.A.3 in his evidence. To wriggle out of this, now he made a false claim. Such a claim has been rightly rejected by both the Court below by their concurrent judgments.

24. Except the ipse dixit of D.W.1, there is no evidence to show that the property is worth more than Rs.10,00,000/-.

25. Plaintiff's lawyer notice Ex.A.4 has been issued to the defendant's present address. This address has been mentioned in Ex.A.2 sale agreement. In his cross-examination D.W.1 also admits this address. But, the notice has been returned under Ex.A.5. It is clear that he had managed to return it.

26. Ex.A.2 sale agreement is original. It is the case of the plaintiff that one more copy has not been prepared and given to him. According to P.W.2 Pitchaimani, the scribe defendant did not ask for one copy to him. Because Ex.A.2 alone was prepared, it cannot be said that no sale agreement came into being. By this alone it cannot be said that there was no consensus ad-idem. It is pertinent to note that the the original title deed Ex.A.1 is with the plaintiff.

27. In Ex.A.2 sale agreement dated 08.03.1999, one year has been prescribed for the execution of sale deed. However, on 21.04.2001, the defendant has issued a receipt acknowledging the receipt of Rs.1,45,000/-. In Ex.A.3, it has been mentioned that on receipt of Rs.5,000/-, defendant will execute the sale deed. Thus, time is not made the essence of the contract. Now, it has been subsequently regulated by Ex.A.3.

28. Now in this case, execution of the sale deed was demanded on several dates. Lastly on 23.09.2002, plaintiff demanded the defendant to execute the sale deed. Then, Ex.A.4 Lawyer notice also has been issued. The suit was filed on 08.10.2002. In the circumstances, the suit is not barred by time.

29. Defendant had not proved that Ex.A.2 sale agreement has been executed only as a security document for a loan transaction. Thus, from the above, it is seen that both the Courts below have correctly held that Ex.A.2 has been executed as a sale agreement and not as a security document for a loan transaction.

30. The major attack of the appellant in the second appeal is that the plaintiff was not ready and willing to perform his part of the contract. He has not deposited the balance sale consideration into Court. In the facts and circumstances, his conduct is such that he is not entitled to the discretionary relief of specific performance.

31. Ex.A.2 sale agreement is dated 08.03.1999. Total sale consideration is Rs.2,50,000/-. On 08.03.1999 Rs.1,00,000/- was paid as advance. Thereafter, on several occasions, totally Rs.1,45,000/- was paid and Ex.A.3 receipt for Rs.1,45,000/- also has been issued. So, totally Rs.2,45,000/- was paid and the balance is only Rs.5,000/-. In his evidence and in his plaint, plaintiff had stated that on several occasions, he offered him Rs.5,000/- and demanded execution of the sale deed, but the defendant had failed to execute the sale deed. This is what also stated in Ex.A.4 notice.

32. In the plaint, plaintiff had set out all the necessary facts as to the execution of sale agreement, his offering of the balance sale consideration Rs.5,000/- and defendant's refusal to execute the sale deed.

33. In paragraphs 6 and 7 of the plaint plaintiff averred as under: 6. The plaintiff has been always ready and willing to perform his part of contract, while after 21.04.2001, the defendant is not ready to honour the sale agreement, and committed breach of contract. On many occasions after 21.4.2001, the plaintiff has offered the balance of the sale consideration of Rs.5,000/- the defendant did not receive the same telling that he will receive the amount at the time of execution of the sale deed. However, even the defendant does not come forward to execute the sale deed, whenever the plaintiff was ready and calling the defendant for the same. The defendant was dodging and evading to execute the sale deed on receipt of the balance of sale consideration of Rs.5,000/- and to honour the agreement of sale. The last day when the defendant had refused to perform his part of contract of sale agreement is 23.09.2002. On that date also, the defendant refused to receive the balance of sale consideration from the plaintiff and to execute the sale deed. The defendant told the plaintiff that he will receive the amount after a month and will execute the sale deed. The defendant did not explain, any reason for the postponement of the execution of sale deed. The defendant does not perform his part of contract with malafide intentions.

7. Hence, on 26.09.2002, the plaintiff through his Advocate sent a notice to the defendant requiring him to receive the balance of sale consideration and to execute the sale deed. The defendant managed to return the notice and it was returned as not claimed. Nor the defendant has come forward to execute the sale deed. After sending the notice, the plaintiff comes to know that the defendant is trying to sell the suit properties to 3rd parties suppressing the abovesaid sale agreement in favour of the plaintiff. As, all the efforts of the plaintiff to complete the sale transaction under the above said sale agreement and to get the sale deed executed by the defendant ended in vail and the defendant is trying to cheat the plaintiff by selling the suit property to 3rd parties, the plaintiff has no other go except to file this suit for specific performance of the contract.

34. In paragraph 9 (a), in the prayer column in the plaint, plaintiff has prayed as under:

a) directing the defendant to receive the balance of sale consideration of Rs.5,000/- (Rupees five thousand only) from the plaintiff and to execute the sale deed in favour of the plaintiff, thereby selling the suit property to him within a time to be stipulated by this Hon'ble Court and in default giving liberty to the plaintiff, to take appropriate proceedings to get the sale deed executed in his favour by this Hon'ble Court on deposit of the balance of the sale consideration of Rs.5,000/- in this Hon'ble Court;

35. Plaintiff had stated his readiness and willingness in his evidence. Plaintiff has been continuously demonstrating his readiness and willingness to perform his part of the contract. He had also offered the balance sale consideration of Rs.5,000/-.

36. In VYAPURI GOUNDER Vs. MINOR VIJAYAN [1978 TNLJ 62] a Division Bench of this Court held as under:

Though Explanation (i) to clause (c) of Section 16 of the [Specific Relief Act, 1963](#), states that 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, still the very same clause, namely, clause (c) of section 16 states that specific performance of a contract cannot be enforced in favour of a person who fails to aver and 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.

37. In THIRUGNANAM Vs. DR.JAGAN MOHAN [1995 (5) SCC 115], the Hon'ble Apex Court held as under:

The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract,

the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. 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 the contract.

38. In MOTILAL JAIN Vs. RAMDASI DEVI & OTHERS [2000(6) SCC 420], the Hon'ble Apex Court held as under:

9. That decision was relied upon by a three-Judge Bench of this Court in SYED DASTAGIR CASE [1999 (6) SCC 337] wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed: (SCC Headnote) 'Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the [Specific Relief Act, 1963](#) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of 'readiness and willingness' has to be in spirit and substance and not in letter and form.'

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is the subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale.

39. In MOTILAL JAIN (supra) the Hon'ble Apex Court referred to Sections 16(c), 21, 29 and 30 of the [Specific Relief Act, 1963](#) and held that when major portion of the sale consideration was paid, it will be considered as willingness of the plaintiff to pay the balance amount. It will also show his readiness and willingness to pay the balance.

40. Now, in the case before us, under Ex.A.2 sale agreement Rs.1,00,000/- was paid. It is a substantial amount. Further, Rs.1,45,000/- has been paid (See Ex.A.3). As against the fixed sale consideration of Rs.2,50,000/-, totally Rs.2,45,000/- has been paid. The balance payable is only Rs.5,000/-. It amounts to readiness and willingness to pay the balance sale consideration to the defendant.

41. The plaint averments in paragraphs 6 and 7 would clearly show that plaintiff has been always ready and willing to perform his part of the contract. He had performed his part of the contract by paying Rs.2,45,000/- and he has also offered the balance Rs.5,000/-.

42. Under Section 16(c) of [Specific Relief Act, 1963](#), it is not necessary that he must jingle the coin before the Court. It is enough if he demonstrate his readiness and willingness to perform his part of the contract and also made necessary averments in the plaint expressing his readiness and willingness to perform his part of the contract.

43. The fact that more than 95% amount is paid and only a small amount of Rs.5,000/- was balance and that was also repeatedly offered make it clear that plaintiff has been continuously ready and willing to perform his part of the contract.

44. In the facts and circumstances, considering the above aspects the Courts below have rightly granted the relief of specific performance to the plaintiff. Thus, the substantial question of law is answered as against the appellant.

45. In the result, the Second Appeal is dismissed with costs. The decrees and judgments of the trial Court and the first appellate Court are confirmed. Consequently, connected M.P.(MD) No.1 of 2007 is dismissed.

