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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2025

CORAM:

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

S.A.No.70 of 2025
and
C.M.P.No.2013 of 2025

M.Nedunchezhiyan

... Appellant/Respondent/Plaintiff

Vs.

Anthony (deceased)

1.Anbu Mary

2.Aristoper (minor)

rep. by its mother Anbu Mary

...Respondents/Appellants/Defendants

Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 18.04.2023 passed in A.S.No.28 of 2019 by the learned District Judge, Ariyalur, reversing the Judgment and Decree dated 30.07.2019 in O.S.No.128 of 2017 on the file of the Sub Court, Jayankondam.

For Appellant

: Mr.D.Hemapraiya

For Respondents

: Mr.B Ravi



JUDGMENT

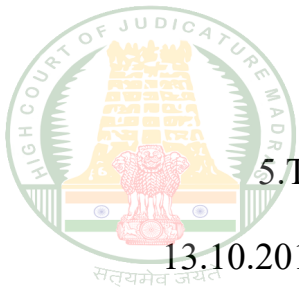
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This Second Appeal has been filed by the appellant/plaintiff challenging the Judgment and Decree dated 18.04.2023 passed in A.S.No.28 of 2019 by the learned District Judge, Ariyalur, whereby the Judgment and Decree dated 30.07.2019 in O.S.No.128 of 2017 on the file of the learned Sub Court, Jayankondam, granting decree for specific performance, came to be reversed.

2.The parties will be referred to as per their rank in the Original Suit.

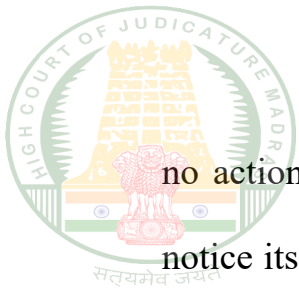
3.The plaintiff is the appellant. The suit is filed for Specific performance directing to execute the Sale Deed as per the Sale Agreement dated 13.10.2020 and for consequential reliefs.

4.It is the case of the plaintiff that an agreement of sale was entered into on 13.10.2010 for a total consideration of Rs.6,90,000/-, followed by further payments including Rs.1,00,000/- and Rs.60,000/- on 10.12.2010, on which date the defendant allegedly extended time by four months. According to the plaintiff, despite repeated demands, the defendants failed to execute the sale deed, compelling issuance of Legal Notice only on 22.03.2012 and the filing of the suit.



5. The defendants denied that the alleged sale agreement dated 13.10.2011, the payment of Rs.1,00,000/- as advance, and the further payment of Rs.60,000/- are all false and fabricated. According to the defendants, the plaintiff did not have the financial capacity to pay the sale price and repeatedly failed to pay the balance amount within the alleged agreement period. The plaintiff himself later informed the defendants that he no longer wanted the property and asked to cancel the agreement and return the advance. The defendants then decided to sell the property to another buyer. After learning that the property was worth much more, the plaintiff issued a false legal notice. Although the defendants sent a proper reply, the plaintiff has suppressed that reply in this suit. The plaintiff has not deposited any balance sale consideration before the Court, which shows he was never ready and willing to perform the contract. He also did not send any notice or make any demand within the agreement period. Therefore, the defendants contend that the plaintiff's suit is false, unsustainable, and liable to be dismissed without any relief.

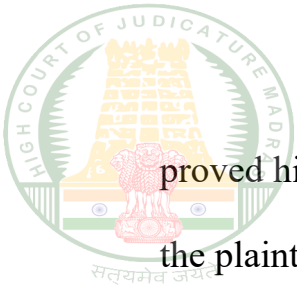
6. After considering the oral and documentary evidence on record, the Trial Judge decreed the suit in favour of the plaintiff. The First Appellate Court, upon re-appreciation of entire oral and documentary evidence, held that the plaintiff failed to establish continuous readiness and willingness as mandated under Section 16(c) of the Specific Relief Act. The Court found that



no action was taken within the extended four-month period and that the legal notice itself was issued long after the lapse of such period. Further, the balance sale consideration was not deposited at the time of filing of the suit in 2013 and that the amount was deposited only in March 2018. These findings are recorded in the findings of the appeal suit. Challenging the same, the present Second Appeal has been filed by the plaintiff/appellant.

7.The learned counsel for the appellant would submit that the First Appellate Court failed to properly appreciate pleadings, that the plaintiff was always ready and willing, and that delay occurred solely due to the defendants. However, it is evident that all the points raised are purely factual and challenge only the appreciation of evidence by the First Appellate Court.

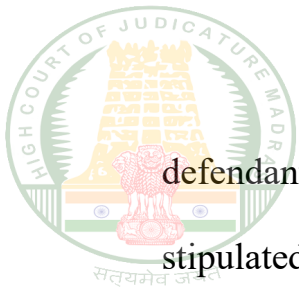
8.By way of reply, the learned counsel for the respondent contended that the Agreement is true and the plaintiff is bound to pay the balance consideration within a stipulated time of two months, after the two months, another four months was extended and thereafter. The plaintiff is also not inclined to pay the balance consideration nearby about 11 months later from the expiry of the stipulated period. Thereafter, the plaintiff immediately did not file the suit and the suit was only instituted in October 2013 and he did not deposit the balance sale consideration before the Courts below, after March 2018 only he deposited the balance Sale Consideration before the Courts below. The plaintiff has not



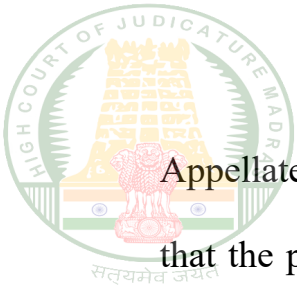
proved his readiness and willingness to execute the Sale Agreement. Therefore, the plaintiff is not entitled for any relief.

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9. Upon considering the pleadings, oral and documentary evidence, and the submissions of both sides, the plaintiff's claim is founded on an alleged agreement of sale dated 13.10.2010, under which the total sale consideration is stated to be Rs.6,90,000/-. The plaintiff asserted that he made further payments of Rs.1,00,000/- and Rs.60,000/- on 10.12.2010 and that, on the same day, the defendants agreed to extend the time for execution of the sale deed by four months. However, except for the plaintiff's own assertion, there is no independent evidence to substantiate the alleged extensions or the payments said to have been made subsequently. The plaintiff has also not explained satisfactorily why there was a long delay in issuing the legal notice, which was sent only on 22.03.2012, well beyond the alleged extended period of four months. Secondly, the defendants have categorically denied the execution of the alleged agreement and the receipt of any advance or further amounts. Their defence is that the plaintiff was never in a financial position to complete the transaction and had, in fact, expressed his unwillingness to proceed with the sale, asking for cancellation of the arrangement. The defendants have also asserted that they replied to the plaintiff's legal notice, and the plaintiff's suppression of that reply casts doubt on the bona fides of his case. The



defendants' stand that the plaintiff did not issue any demand within the stipulated period also raises serious questions regarding the plaintiff's readiness and willingness to perform his part of the contract. A crucial aspect to be considered in a suit for specific performance is whether the plaintiff has continuously been ready and willing to perform his contractual obligations as mandated under Section 16(c) of the Specific Relief Act. In the present case, the plaintiff has not deposited the balance sale consideration in Court nor produced convincing evidence to demonstrate his financial capacity during the relevant period. The long delay in issuing notice and the absence of any contemporaneous demand within the agreement period further weaken the plaintiff's claim of readiness and willingness. On the other hand, the defendants' version that the plaintiff backed out of the transaction and later revived the dispute only upon noticing the escalation in market value appears plausible in light of the surrounding circumstances. The plaintiff has not produced cogent material to counter the defendants' plea of fabrication nor has he explained the alleged suppression of the reply notice. In the absence of reliable evidence to establish the genuineness of the Agreement, the alleged payments, and the continuous readiness and willingness of the plaintiff, the burden placed upon him under law remains undischarged. Consequently, the plaintiff cannot seek the equitable relief of Specific Performance. The First

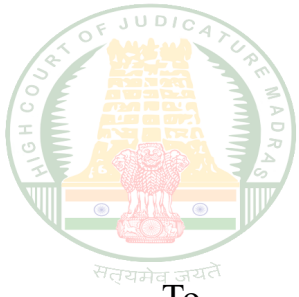


Appellate Judge has rightly appreciated the evidence and came to a conclusion that the plaintiff is not ready and willing to perform their contract. Therefore, the plaintiff is not entitled for the relief of Specific Performance.

10.Considering the facts and circumstances of the case, this Court finds no ground to interfere with the well-reasoned findings of the First Appellate Court. The appellant has utterly failed to show any substantial question of law. Accordingly, this Second Appeal stands dismissed. The Judgment and Decree dated 18.04.2023 in A.S.No.28/2019 passed by the learned District Judge, Ariyalur, reversing the Judgment and Decree dated 30.07.2019 in O.S.No.128/2017, are hereby confirmed. The refund of advance amount of Rs.1,60,000/- with 6% of interest to be paid to the plaintiff/appellant from the date of the agreement by the defendant/respondent, within a period of three months from the date of receipt of a copy of this Judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

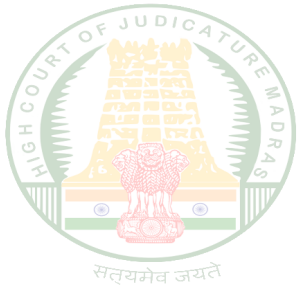
31.01.2025

Speaking / Non Speaking order
Neutral Citation : Yes/No
Index :Yes/No
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To
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- 1.The District Judge, Ariyalur,
- 2.The Sub Court, Jayankondam.
- 3.The Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI, J.

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