



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.434 OF 2013

PYDI RAMANA @ RAMULU ...APPELLANT(S)

VERSUS

DAVARASETY MANMADHA RAO ...RESPONDENT(S)

J U D G E M E N T

Aravind Kumar, J.

1. The appellant who is the original defendant before the trial Court has preferred this appeal questioning the correctness and legality of the judgment dated 07.06.2011 whereunder the second appeal filed by him in S.A No.1282 of 2008 came to be partly allowed, confirming the order of the appellate court passed in A.S. No.39 of 2004 which granted the relief of specific performance in favour of the plaintiff and directed the

respondent-plaintiff to pay additional sale consideration namely twice the sale consideration.

2. We have heard the arguments of Shri B. Adinarayana Rao, learned Senior Counsel appearing for appellant and Shri D. Bharat Kumar, learned Counsel appearing for the respondent perused the records.

Brief Background

3. The respondent herein who was the plaintiff filed a suit for specific performance of the agreement dated 07.06.1993 by contending inter alia that appellant-defendant had agreed to sell the property measuring Ac.1.38 cents for a total consideration of Rs.705/- per cent as per the terms reduced by way of an agreement executed on the same day whereunder plaintiff claimed to have paid an advance amount of Rs.2,005/- and defendant agreed to execute sale deed in favour of the plaintiff within one year after getting the suit property surveyed. Further sum of Rs.17,000/- was paid by the plaintiff to the defendant on 23.06.1993. It is the case of the plaintiff that despite demand, the defendant postponed the execution of the sale deed and as such plaintiff got issued a legal notice on 30.05.1996 to the defendant for which no reply was received and as such suit for specific performance of the agreement of sale dated 07.06.1993 or in the alternate for the refund of the advance money paid with interest came to be filed.

4. Upon service of suit summons defendant appeared and filed his written statement and denied the averments made in the plaint in toto and further contended that the legal notice was duly replied. There was a total denial of sale transaction and it was also contended that one Varahanarsimhan @ Varam had taken signature of the defendants on blank stamp papers and plaintiff being closely related to the said person, had created an agreement of sale of suit schedule property in order to get illegal benefits. Hence, he prayed for dismissal of the suit.

5. The trial court on the basis of the pleadings of the parties framed four issues and after examining the pleadings and evaluating the oral and documentary evidence tendered by the parties, rejected the claim for specific performance and granted the alternate relief namely ordered for refund of the amount of Rs.37,436.80 with 24% interest per annum on the said amount from the date of suit filed to till date of realisation. Being aggrieved by the judgment and decree of the trial court namely refusal to decree for specific performance, the unsuccessful plaintiff filed an appeal against A.S. No.39 of 2004. The appellate court on reappraisal of pleadings and evidence reversed the findings of the trial court and decreed the suit in toto namely the relief of specific performance was granted in favour of plaintiff.

6. The defendant being aggrieved by the same filed second appeal S.A No.1282 of 2008 which came to be allowed by judgment dated 07.06.2021 in part namely the plaintiff was directed to pay additional sale consideration namely twice the sale consideration stipulated under the agreement of sale.

7. It is the contention of the learned Senior Counsel appearing for the appellant that trial court had rightly rejected the prayer for specific performance on appreciation of evidence which finding did not suffer from any infirmity whatsoever and as such the appellate court ought not to have interfered with the findings of the trial court. It is further contended that plaintiff had failed to lead any evidence or produce or tender proof that he was ready and willing to perform his part of the contract continuously.

7.1 It is also submitted that the plaintiff having kept quiet for a period of 2 years had got issued notice on 30.05.1996 i.e. after a period of 2 years from the date of expiry period i.e. 06.06.1994 and no explanation has been offered by the plaintiff.

7.2 It is the further submission of the learned Senior Counsel for the appellant that plaintiff had not called upon the defendant to conduct survey

or measurement of the land and no fault could have been laid at the doors of the defendant for not conducting survey of the suit land. It is further submitted that agreement had stood cancelled for non-payment of balance sale consideration within the stipulated time specified in the agreement and time was the essence of the contract as could be clearly inferred from the terms of the agreement dated 07.06.1993. Hence, the learned Senior Counsel for the appellant sought for appeal being allowed and suit being dismissed.

8. Per contra, learned Counsel appearing for the respondent would support the impugned judgment by contending that time was not the essence of the contract in the instant case and the very fact that the defendant had received further advance amount on 23.06.1993 would belie the claim of the defendant in this regard. He further contends that defendant was under obligation to get the suit land surveyed and measured which was never done and as such the obligation of the plaintiff to pay balance sale consideration to the defendant did not arise till such survey was conducted by the defendant. He would further submit that defendant had never raised a plea with regard to the financial capacity of the plaintiff and the denial of execution of the agreement has not been accepted by the courts below and it is for this precise reason the rejection of the prayer for specific performance by the trial court came to be reversed by the first

appellate court as the trial court having held that defendant had executed the agreement in favour of the plaintiff it ought to have decreed the suit. He would also submit that plaintiff has sufficiently proved his readiness and willingness and at no point of time this was questioned by the defendant. It is further submitted that reply to the legal notice was furnished after 5 months after issuing of the legal notice by the plaintiff and defendant had never cancelled the agreement and as such counsel for the respondent-plaintiff sought for dismissal of this appeal.

POINTS FOR CONSIDERATION

9. Having heard the learned advocates appearing for the parties, we are of the considered view that the following points would arise for our consideration:

1. Whether the impugned order of the High Court requires to be affirmed or reversed?

2. What order?

RE: POINT NO.1

10. In order to answer the point No.1 formulated herein above, it would be apt and appropriate to tabulate the list of dates and events which are not in dispute and they are tabulated herein below:

S. NO.	EVENT	DATE
1	Execution of Agreement to Sell	07/06/1993
2	Additional Rs. 17,000/- consideration was paid	23/06/1993
3	Last date to get the sale deed registered according to Agreement to Sell	06/06/1994
4	Issuance of Legal Notice	30/05/1996
5	Filing of Suit	09/06/1997

11. At the outset, it requires to be clarified and made clear that in the instant case the amendment brought to the Specific Relief Act by Act 18 of 2018 would be inapplicable. The amendment is prospective in nature and cannot be applied to those transactions which took place prior to amendment.¹ In order to prove² that the plaintiff is entitled to the specific performance as per the law existing prior to amendment, the plaintiff has to establish:

¹ Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd & Ors (2023) 1 SCC 355]

² Man Kaur v. Hartar Singh Sangha (2010) 10 SCC 512

a. *that a valid agreement of sale was entered into by the Defendant in his favour;*

b. *that the defendant committed breach of the agreement; and*

c. *that he was always ready and willing to perform his part of the obligations in terms of the agreement.*

12. Section 16 of the Specific Relief Act provides certain bars to the relief of specific performance.

“16. Personal bars to relief.- *Specific performance of a contract cannot be enforced in favour of a person-*

(a) *who would not be entitled to recover compensation for its breach; or*

(b) *who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or*

(c) *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 of the performance of which has been prevented or waived by the defendant.*

Explanation- For the purpose of clause (c),-

(i) *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;*

(ii) *the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.”*

READINESS AND WILLINGNESS NOT PROVED

13. In order to obtain a decree for specific performance, the plaintiff must aver and prove that he has performed his part of the contract and has always been ready and willing to perform the terms of the contract which are to be performed by him. Section 16(c) of the Specific Relief Act mandates 'readiness and willingness' of the plaintiff to be averred and proved and it is a condition precedent to obtain the relief of specific performance.

14. There is a distinction between the terms 'readiness' and 'willingness'.³ 'Readiness' is the capacity of the plaintiff to perform the contract which includes his financial position to pay the sale consideration. 'Willingness' is the conduct of the party. In the instant case, even according to the concurrent findings recorded by the courts below, it would emerge that the plaintiff had been able to successfully prove the sale agreement dated 07.06.1993 Ex.A1 on which date Rs.2,005/- was paid by the plaintiff to the defendant. The evidence on record tendered by plaintiff came to be accepted by all the courts and judgments of courts below would also indicate that further amount towards sales consideration in a sum of Rs.17,000/- was paid by plaintiff to defendant on 23.06.1993 and same was endorsed by him. As per the recital in the agreements, the defendant was

³ His Holiness Acharya Swami Ganesh Dassji v Sit ram Thapar (1996) 4 SCC 526

required to get the suit land surveyed and as such the total consideration was agreed to be settled after such survey. On the one hand, the plaintiff contends that defendant never got surveyed the suit land. On the other hand pleadings and evidence of plaintiff is silent on steps taken by the plaintiff as expected of a reasonable person which has not been taken in the instant case namely the plaintiff has not produced any evidence either oral or documentary to establish that there was any demand made by him for the land being surveyed by defendant. No witnesses have been examined on behalf of the plaintiff to establish that at any point of time there has been demand made by the plaintiff with the defendant by calling upon him to get the suit land surveyed as agreed under the agreement of sale Ex.A1. It is for the first time after a period of 3 years from the date of agreement Ex.A.1 namely on 30.05.1996 legal notice (Ex.A3) was got issued or in other words plaintiff was silent for a period of 3 years in enforcing of the agreement of sale. It is for this specific reason the trial court while rejecting the prayer for decree of specific performance has recorded a categorical finding to the following effect:

21. The terms of the agreement xxx the period of one year. The plaintiff got issued a legal notice on 30.05.1996 Ex.A.3 expressing his readiness to go ahead with the transaction and calling upon the vendors to execute the sale deed. That means nearly for two years after the expiry of one year period. The plaintiff vendee did nothing to act in furtherance of the agreement. Excepting a bald and vague assertion that he was contacting the vendors but they were dodging nothing more is brought on record to satisfy the court that the plaintiff was at all material times interested

in finalizing the deal and showing his readiness and willingness to perform the essential terms of the agreement. Though the suit was filed within the period of limitation, it is not sufficient. In assessing the question of readiness and willingness of the party to perform his part of the contract. It is highly essential to take into account the long unexplained silence and inaction on the part of the plaintiff.

22. Plaintiff must perform his part of the contract within reasonable time. There was total inaction on the part of the plaintiff for 2 ½ years which was not consistent with the terms of agreement. From 6.6.94 to 30.5.96 i.e., for a period of 23 months, plaintiff sat quiet without taking any steps to perform his part of the contract under the agreement though the agreement specified a period of one year, within which he was expected to urge the defendant-vendor to get measurements of land and fix the sale price and to tender the balance amount and call upon the defendants to execute sale deed and deliver possession of the property.

As rightly pointed out by the trial court, the respondent-plaintiff has not produced any satisfactory evidence to prove his readiness and willingness.

As regards 'willingness' of the plaintiff to perform his part of the contract, the conduct of the plaintiff warranting the performance has to be looked into. The following conduct of the plaintiff warrants consideration:

a. Plaintiff got issued legal notice nearly after two years after the expiry of one year period as prescribed in the agreement.

b. Plaintiff has not brought anything on record to prove that he contacted the Defendant after the expiry of one year period and was interested in finalising the deed.

c. There was total inaction of the Plaintiff from 06/06/1994 (expiry of one year period) to 30/05/1996 (Date of issuance of legal notice)

d. Suit was filed on 09/06/1997 i.e. after a period of more than one year from the date of issuing of legal notice. Said delay has not been sufficiently explained by the Plaintiff.

The continuous readiness and willingness is a condition precedent to grant the relief of specific performance.⁴ The trial Court has rightly held that plaintiff has not sufficiently explained and proved that he was always ready and willing to perform his part of the contract. As such the High Court and the First Appellate Court had erred in holding that plaintiff had proved his readiness and willingness.

15. The ratio of the above judgment in all force would be applicable to the facts on hand in the instant case. The agreement of sale (Ex.A1) was executed on 07.06.1993 and the date fixed for execution of the sale deed was one year from the date of measurement of the suit schedule property. Undisputedly no such measurement was carried out and plaintiff has not raised his little finger in this regard from the date of execution of agreement till he got issued legal notice dated 30.05.1996 that is almost for a period of 3 years and suit came to be filed only on 09.06.1997 at the fag end of the expiration of the limitation. The long unexplained delay in not taking any reasonable steps as is expected from a reasonable person is

⁴ Vijay Kumar and Ors V. Om Parkash-Supreme Court Judgment (Civil Appeal No.10191 of 2018)

itself sufficient to disentitle the plaintiff to an equitable relief.⁵ It is no doubt true that suit for specific performance can be filed even on the last date of the limitation as prescribed under Article 54 of the Limitation Act. However, the steps taken by the plaintiff during this period namely from the date of agreement till date of filing of suit will have to be explained in the plaint and proved in the evidence which is lacking in the instant case. The long unexplained delay and silence on the part of the plaintiff in this regard while in the witness box would not entitle the plaintiff to a decree of specific performance and it is for this precise reason, the trial court as noticed supra has refused to grant the equitable relief which has been reversed by the appellate court without assigning proper and cogent reason and the one assigned are at tangent or in other words contrary to the facts. The resultant effect of filing the suit for specific performance on the verge of limitation coming to an end came to be examined by this Court in the matter of Rajesh Kumar Vs. Anand Kumar and Ors⁶ and held that plaintiff would not be entitled to the equitable relief (vide paragraph Nos.14, 15, 16, 17 and 18). Hence, the appellant would succeed in this appeal. Point No.1 is answered in favoured of appellant-defendant.

⁵ U.N. KRISHNAMURTHY (SINCE DECEASED) THR. LRS. versus A.M. KRISHNAMURTHY

⁶ 2024 SCC Online SC 981

RE: Point No.2

16. For the reasons afore-stated, we are of the considered view that the impugned judgment of the High Court and the First Appellate Court is liable to be set aside and accordingly, it is set aside. Consequently, the judgment of the trial Court dated 19.01.2002 passed in O.S. No.226 of 1998 is restored. The appeal stands allowed with no order as to costs.

.....J.
(Pamidighantam Sri Narasimha)

.....J.
(Aravind Kumar)

New Delhi,
July 10, 2024