

**THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

**A.S.No.8 OF 2024**

**JUDGMENT:**

Aggrieved by the judgment and decree dated 06.02.2023 in O.S.No.522 of 2022 (hereinafter will be referred as 'impugned judgment') passed by the learned II Additional District Judge, Medchal – Malkajgiri at Medchal (hereinafter will be referred as 'trial Court'), the plaintiff No.2 preferred the present appeal to set aside the impugned judgment.

2. For the sake of convenience, the parties hereinafter are referred to as they are arrayed before the trial Court.

3. The brief facts of the case, which necessitated the appellant to file the present appeal is that, the plaintiff Nos.1 and 2 filed suit for specific performance in respect of suit schedule property against the defendant Nos.1 and 2. The averments of the plaint in brief are as under:

a) The Defendant Nos.1 and 2 are the absolute owners and peaceful possessors of Land Total admeasuring Acres 20.1/2 Guntas in Survey Nos. 149/A1, 149/A2, 149/8, 151/A1, 151/A2, 152/A3 and 152/A4, situated at Athvelli Village, Medchal Mandal, Ranga Reddy District by virtue of registered

sale deed Document No's. 3883/86, 3733/86, 3884/86, 3670/86, 3676/86, 3732/86, 5373/90, registered in the office of Sub-Registrar, Medchal, R. R. Dist and Revenue Patta Pass Book No's 258 and 310.

b) The Defendants due to personal necessities of money offered to sell the land admeasuring Acres 17.18 Guntas i.e., suit schedule property out of land admeasuring Acres 20.1/2 Guntas in Survey Nos. 149/A1, 149/A2, 149/B, 151/A1, 151/A2, 152/A3 and 152/A4, situated at Athvelli Village, Medchal Mandal, Ranga Reddy District to the plaintiffs for total sale consideration of an amount of Rs.35,00,000/- and the plaintiffs agreed to purchase the same.

c) In pursuance of the above said offer, the plaintiffs paid an amount of Rs.2,00,000/- towards advance sale consideration to the defendants on 01.12.1998 and entered into an Agreement of Sale, and it was mutually agreed to pay the balance sale consideration of Rs.33,00,000/- and shall get execute registered sale deed. As per the demand and request of the defendants, the plaintiffs paid Rs.26,00,000/- including the amount of Rs.2,00,000/- paid at the time of entering into agreement of sale on 01.12.1998 i.e., Rs.2,00,000/- on 29.10.2001, Rs.2,00,000/-

on 24.10.2004, Rs.3,00,000/- on 22.10.2007, Rs.2,00,000/- on 15.10.2010, Rs.7,00,000/- on 04.10.2013, Rs.4,00,000/-on 27.09.2016 and Rs.4,00,000/-on 25.01.2017 and the defendants received and passed separate receipts.

d) On 10.04.2019 the plaintiffs went to the defendants' residence at Secunderabad and requested them to register the sale deed by receiving the remaining amount of Rs.9,00,000/- and deliver the possession of the suit schedule property in pursuance of Agreement of Sale dated 01.12.1998 to the plaintiffs, but the Defendants completely changed their attitude and said that they will not register for which the plaintiffs explained that they paid huge amount for purchasing the suit schedule property. On that the defendants threatened the plaintiffs with dire consequences and that the defendants and their family are the highly influential persons and alienate the suit schedule property to other intending purchasers at higher prices. Hence this suit.

4. Despite service of summons, defendant Nos.1 and 2 did not choose to contest the case, as such, they were set *exparte* on 04.07.2019.

5. On behalf of plaintiffs, the first plaintiff was examined as PW1 and got marked Exs.A1 to A21, which are agreement of sale, receipts, encumbrance certificates and sale deeds. The trial Court, on appreciating the evidence on record, has dismissed the suit by holding that the plaintiffs failed to show their readiness and willingness to perform their part of contract and that the plaintiffs failed to prove their case.

6. Aggrieved by the above said judgment and decree, the plaintiff No.1 preferred the present appeal.

7. Heard both sides and perused the record including the grounds of appeal.

8. The learned counsel for the plaintiffs has submitted that the evidence of PW1 was unchallenged and that the trial Court failed to appreciate that by virtue of contents of Exs.A1 to A8, the appellants herein paid entire sale consideration except Rs.9 lakhs. It is further contended that though the plaintiffs were ready and willing to perform their part of contract, the trial Court wrongly interpreted the principles of specific performance relating to readiness and willingness and also the period of limitation in respect of specific performance of contract. Thus,

the learned counsel for the plaintiff prayed the Court to remand back the matter to the trial Court for proper adjudication.

9. Though the defendants were set *ex parte* before the trial Court, the impugned judgment was passed on merits. As per the contention of the plaintiffs, time is not the essence of the contract as there is no specific date prescribed in the agreement under Ex.A1 for payment of balance sale consideration. As can be seen from most of the documents i.e., receipts under Exs.A1 to A8, the span between each document is almost more than three years. The agreement of sale under Ex.A1 was executed on 01.12.1998 and the last receipt alleged to have been executed by the defendants was in the year 2017. Though the agreement was executed in the year 1998 the transaction could not be completed till 2019 i.e., even after 21 years, which is appearing to be very strange. Under the circumstances, where there is no time period specified for the performance of the contract and the promisor has to perform the contract without any request by the promisee, in such a case the promisor must perform the contract within a 'reasonable time' as per Section 46 of the Indian Contract Act. Now the question is what reasonable time is? A 'reasonable time' is decided after taking

into account all the circumstances of the case at hand. But whether that reasonable time should be shorter or longer also depends on the facts and circumstances of the case. The learned trial Court relied upon a decision of the Honourable Supreme Court in **Om Prakash Aggarwal v. Raj Kumar Mittal**<sup>1</sup> wherein it was observed that the dishonest intention of the purchaser can be inferred where the purchaser does not contact the seller for approval of the sale deed and fixing date, time and place for payment of balance sale consideration and execution of the registration of the sale deed. Even in the case on hand, the plaintiffs did not even venture to issue any notice to the defendants asking them to come forward and register the sale deed in favour of the plaintiffs or at least to approve the draft sale deed prepared by them. Thus, by any stretch of imagination, the time taken by the plaintiffs to pay the substantial sale consideration amount (i.e., more than 20 years) cannot be considered as reasonable time.

10. The learned trial Court observed in the impugned judgment that the plaintiffs have failed to prove their readiness and willingness to perform their part of contract i.e., payment of

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<sup>1</sup> 2019 Law Suit (Del) 938

balance sale consideration. It is specifically averred in the impugned judgment that the period taken by the plaintiffs in approaching defendant after about 20 years is not a small period to ignore. It was further observed in the impugned judgment that no prudent person would receive small instalments over a period of 15 years rather would sell and make money because the things in 2019 are different from 1998. The sale consideration in respect of suit schedule property (Ac.17.18 guntas) that was alleged to have been agreed upon between the parties was Rs.35 lakhs as per Ex.A1, which is pertaining to the year 1998. The suit was filed in the year 2019 i.e., after 20 years. It is highly improbable to assess the value of the said property @ Rs.35 lakhs even after 20 years. Certainly the price of the said immovable property might have been escalated in the span of more than 20 years. It is to be seen that mere extension of time for deposit of balance sale consideration will not absolve the plaintiffs of obligation to prove readiness and willingness to perform their part in an agreement for sale as held by the Honourable Supreme Court in **Ravi Setia v. Madan Lal and others**<sup>2</sup>. The grant of extension of time cannot *ipso facto* be construed as otherwise

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<sup>2</sup> (2019) 9 SCC 381

demonstrating readiness and willingness on part of the plaintiff. The Honourable Supreme Court in **P.Shyamala v. Gundlur Masthan**<sup>3</sup> observed that the time for paying sale consideration cannot be extended as a matter of course. Further, the trial Court observed in the impugned judgment that the no evidence is produced by the plaintiffs to show that they have Rs.9,00,000/- with them. Thus, the contention of the appellant/plaintiff No.2 that the trial Court wrongly interpreted the principles of specific performance relating to readiness and willingness is unsustainable.

11. Except examining the plaintiff No.1 as PW1, the plaintiffs did not venture to examine any other independent witnesses. It is pertinent to note that the plaintiffs have not even examined either the attestors of agreement of sale under Ex.A1 or the attestors of receipts under Exs.A2 to A8. It is observed that Ex.A1 was executed on a non judicial stamp paper. As rightly observed by the trial Court and on perusal of Exs.A2 to A8, the contents in the said documents were inscribed on white paper and they were not executed on any stamp paper or any stamp was fixed at the place of alleged signatures. The cash receipts

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<sup>3</sup> 2023 Live Law (SC) 151



and agreements were not even sent for impounding for collection of proper stamp fee.

12. It is to be seen that the plaintiff No.1 was examined as PW1 but she did not prefer any appeal and it is the plaintiff No.2, who has not come forward to examine herself before the trial Court, has preferred the present appeal. The plaintiffs were shown as “household” in the cause title. There is no explanation on behalf of the plaintiffs as to what is the source of income for them to pay the sale consideration. The Honourable Supreme Court in **Shenbagam and others v. KK Rathinavel**<sup>4</sup> observed that in evaluating whether the plaintiff was ready and willing to perform his/her obligations under the contract, it is not only necessary to view whether he/she had the financial capacity to pay the balance consideration, but also assess his/her conduct throughout the transaction. Thus, there is an ambiguity in the version of the plaintiffs with regard to their financial capacity to pay the sale consideration. Section 20 of the Specific Relief Act specifically provides that the court's jurisdiction to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in

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<sup>4</sup> 2022 SCC Online SC 71

accordance with the sound and reasonable judicial principles. It cannot be said that in every case wherever there is a valid contract or subsisting agreement a decree for specific performance ought to be passed. In **Major General Darshan Singh (died) by LRs and another v. Brij Bhushan Chaudhary (died) by LRs**<sup>5</sup> the Honourable Supreme Court observed as under:

*“Under Section 20 of the 1963 Act, the grant of a decree for specific performance is always discretionary. The exercise of discretion depends on several factors. One of the factors is the conduct of the plaintiff. The reason is that relief of a decree of specific performance is an equitable relief.”*

13. In view of the principle laid down in the above said decision, it is clear that the granting relief of specific performance of contract is an equitable and discretionary relief and accordingly the learned trial Court has exercised its discretion and passed the judgment by considering the facts and circumstances.

14. Thus, viewed from any angle, this Court is of the considered opinion that the trial Court has rightly dismissed the suit of the plaintiffs and thereby there is no infirmity or irregularity in the impugned judgment. There are no merits in

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<sup>5</sup> Civil Appeal No.9360 of 2013 decided on 01.03.2024

this appeal as the appellant/plaintiff No.2 failed to establish any of the grounds to succeed in the appeal, as such, the appeal is liable to be dismissed.

15. In the result, this appeal is dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

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**JUSTICE M.G. PRIYADARSINI**

Date: 05.07.2024

Note: LR copy to be marked.  
B/o. AS