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AS.No.42 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

CORAM

THE HONOURABLE Mr.JUSTICE S.S.SUNDAR
and
THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

AS. No.42 of 2013

and

MP.No.1 of 2013

A.Muthu Kumar

... Appellant/plaintiff

Versus

1.Mrs.Thayarammal
2.Mrs.K.Premavathi
3.Ms.Prathiba
4.Mr.P.Mohan

... Respondents/Defendants

PRAYER: First Appeal filed under Order 41 Rule 1 with Section 96 of C.P.C.,
praying to set aside the judgment and decree dated 28.06.2012 passed in
OS.No.627 of 2008 on the file of the Hon'ble Principal District Judge,
Coimbatore.

For appellant	:	Mr.M.V.Venkateshan Senior counsel for Mr.M.Purushothaman
For respondents	:	R1 & R2 died Mr.K.Myilsamy for R3 Mr.V.Anandha Moorthy for R4



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J U D G M E N T

(Judgment of the Court was delivered by **S.S.SUNDAR, J**)

The plaintiff in the suit in OS.No.627 of 2008 on the file of the Principal District Court, Coimbatore, is the appellant in the above appeal. The appellant filed the suit for specific performance of an agreement of sale dated 23.09.2005 in respect of the suit property. The suit property is described as an extent of 50 cents out of an extent of 4.72.0 hectares in S.No.56/1 in Tiruppur Taluk, Tiruppur District with reference to four boundaries. A reading of description of property in the agreement would show that the suit sale agreement is in respect of 50 cents out of a larger extent of property owned by the defendants.

2. The case of the appellant in the plaint is that the defendants, who are the owners of the suit property entered into an agreement of sale in respect of the suit property on 23.09.2005 at the rate of Rs.65,000/- per cent. Out of the total sale consideration of Rs.32,50,000/- (Rupees Thirty two lakhs and fifty thousand only), it is stated in the plaint that the plaintiff has paid an advance amount of Rs.10,00,000/- (Rupees ten lakhs only) on the date of agreement and that a further sum of Rs.3,00,000/- was paid on 27.12.2005 by way of Bankers



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Cheque drawn in favour of second defendant. It is admitted that the 1st defendant is the mother-in-law of 2nd defendant, who is the mother of defendants 3 and 4, who are minors on the date of alleged agreement. It is stated in the plaint that the defendants have agreed to execute a sale deed in favour of the plaintiff on or before 15.02.2006 after receiving the balance sale consideration. Stating that the defendants had agreed to measure the land before executing the sale deed and that the defendants however did not come forward to measure the land, the plaintiff filed a suit immediately after issuing a pre-suit notice on 08.05.2008. It is admitted that the reply notice has also been sent on behalf of defendants on 14.05.2008 specifically denying the contents in the suit notice.

3. From the plaint, the plaintiff has repeatedly mentioned that the plaintiff could not pay the balance because the suit property was never measured as agreed by defendants in the suit agreement. It is the case of the plaintiff that the defendants had never approached the plaintiff to perform their obligations subsequent to the agreement. Even though the suit was filed long after the time specified in the Sale agreement, the plaintiff explained the delay by stating that the plaintiff wanted to settle the matter amicably as defendants 1



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and 2 are women. In the reply notice as well as in the written statement filed by the 1st defendant, which was adopted by the 2nd defendant, the specific stand taken by the defendants was that time was the essence of the contract and that the plaintiff, who had agreed to perform his part of the contract by paying the balance of sale consideration on or before 15.02.2006, did not come forward to pay the balance. Therefore, the specific defence taken in the written statement is the absence of readiness and willingness of the plaintiff.

4. It is the specific case of the defendants that from 23.09.2005 till 15.02.2006, the plaintiff did not come forward and meet the defendants with the balance amount to complete the sale. Since the plaintiff has issued a legal notice only on 08.05.2008 after a lapse of 2 years 3 ½ months calling upon the defendants to measure the property, it is contended by the defendants that the plaintiff was not ready and willing to pay the balance as agreed under the sale agreement. They also pleaded that the suit is not maintainable in view of the doctrine of laches because of the long delay in approaching the Court for specific performance. The defendants 3 & 4 also filed independent written statement raising the defence that the suit agreement as against them is not maintainable and the sale agreement is not binding on the defendants 3 & 4. It



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is specifically stated that the 2nd defendant is not competent to represent the minor as Kartha or the Manager and that the suit agreement is not for legal necessity. The defendants 3 & 4 also contended that they were not the beneficiaries of the sum of Rs.13,00,000/- (Rupees Thirteen lakhs only) stated to have been received by defendants 1 & 2 and therefore, there cannot be a decree directing defendants 3 & 4 to refund the sum allegedly received by defendants 1 & 2.

5. The Trial Court framed the following issues:-

- (i) Whether the plaintiff is entitled to the relief of specific performance as prayed for?
- (ii) Whether the suit filed by the plaintiff is maintainable under law?
- (iii) Whether there was any cause of action to the suit?
- (iv) Whether the suit is barred by limitation?
- (v) Whether the 3rd defendant is entitled to get compensation?
- (vi) To what relief?

6. The plaintiff examined himself as PW-1. One P.Rajendran was examined as PW-2. On behalf of the plaintiff, Exs.A1 to A10 were marked. The 2nd defendant was examined herself as DW-1 and 4th defendant was examined as DW-2. Defendants marked exhibits B1 and B2.



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08.05.2008 by issuing the pre-suit notice. Even though the Trial Court held that the suit is not barred by limitation, the Trial Court has recorded a finding that the plaintiff has not proved that the agreement is for legal necessity or for the benefit of the estate of minors. Therefore, the Trial Court dismissed the suit for specific performance. However, the Trial Court granted alternative prayer for refund of a sum of Rs.13,00,000/- with interest @ 12% p.a from the date of suit till date of decree and thereafter at 6% p.a till realisation. Aggrieved by the judgement and decree of the Trial Court, the above appeal is filed by the plaintiff.

9. The learned senior counsel appearing for the appellant strenuously argued the appeal on the following points:-

1. The Trial Court failed to see that the plaintiff and defendants have specifically agreed for measurement of property and that the defendants have not come forward to measure the property even after the issuance of notice (Ex.A3). The learned counsel submitted that the plaintiff cannot be blamed for not coming forward to pay the balance within the stipulated time. He also relied upon the judgement of Hon'ble Supreme Court in the case of ***Gaddipati Divija and another Vs. Pathuri Samrajyam and others*** reported in ***2023 SCC OnLine SC 442***.



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2. The learned Senior counsel appearing for the appellant submitted that the Trial Court erroneously held that the suit agreement is not enforceable on the ground that the agreement is not for legal necessity. Since the suit is filed after the minors attained majority, learned senior counsel submitted that the suit agreement which is not challenged by minors on attaining majority is binding on minors as the mother had signed the agreement on behalf of the minors. Having entered into an agreement of sale for themselves and by representing the minors, it is not open to the defendants 1 & 2 to plea that agreement is not enforceable.
3. The learned senior counsel then submitted that the suit has been filed against the defendants 3 & 4 after they became majors and therefore, the suit cannot be dismissed on the ground that the agreement is not enforceable against the minors.
4. The learned senior counsel referring to the sale agreement submitted that the suit agreement is with reference to four boundaries and that the property can be identified only after a survey and measurement. Since the plaintiffs have been repeatedly asking the defendants to survey, identify and demarcate the suit schedule property, the Trial Court ought to have held that the plaintiff was always ready and willing to perform his part of the contract and hence, they are entitled to get a decree for specific performance of the suit agreement.

10. On the other hand, learned counsel appearing for the respondents



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referring to the suit agreement and the admission of the plaintiff in the course of evidence, submitted that time is indeed the essence of the contract. The learned counsel contended that the suit is filed nearly two and half years after the expiry of the period specified in the agreement and that the suit has rightly been dismissed on the ground of laches. The learned counsel also submitted that the plaintiff has not given any valid explanation for the delay in filing the suit. After referring to the pleadings, the counsel submitted that the plaintiff has neither pleaded nor proved his readiness and willingness in the manner as contemplated under Section 16 (c) of the Specific Relief Act, 1963. Referring to the facts that the suit property has been described with reference to four boundaries and that parties had no issues regarding identity of the property to be conveyed, it is submitted by the learned counsel for the respondents that the submission of appellant's counsel regarding measurement of the property is not a valid excuse for not paying the balance within the time specified in the agreement. He also brought to the notice of this Court a few judgements of Hon'ble Supreme Court on the issue regarding readiness and willingness and the doctrine of laches particularly the judgement of Hon'ble Supreme Court in the case of *Saradamani Kandappan Vs. S.Rajalakshmi and others* reported in **(2011) 12 SCC 18**.



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11. Having regard to the pleadings and submissions of both sides, this Court is of the view that the following points arise for consideration:-

- a) Whether the plaintiff was ready and willing to perform his contract in terms of the sale agreement dated 23.09.2005?
- b) Whether the suit for specific performance is liable to be dismissed on the ground of laches?
- c) Whether the plaintiff is entitled to the equitable relief of specific performance having regard to the facts and circumstances of this case?
- d) Whether the suit agreement is enforceable against defendants 3 & 4, who are minors at the time of sale agreement dated 23.09.2005?

Point (a)

12. The following facts are not in dispute. The agreement of sale was executed between plaintiff and defendants 1 & 2 on 23.09.2005. On the date of agreement a sum of Rs.10,00,000/- was received as advance. This payment is acknowledged in the agreement. Subsequent to the agreement, a sum of Rs.3,00,000/- was paid on 27.12.2005 by way of cheque and the receipt of said cheque was also acknowledged by the 2nd defendant by way of an endorsement. Second defendant has signed the agreement on behalf of defendants 3 & 4.



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13. As per the agreement marked as Ex.A2, the plaintiff has agreed to pay the balance amount of Rs.22,50,000/- on or before 15.02.2006 by cash. There is a specific clause in the agreement to the effect that if the plaintiff fails to pay the balance amount, the amount, which has been paid as advance will be forfeited by the defendants. It is only when the plaintiff comes forward to pay the balance amount within the stipulated time i.e., on 15.02.2006, he may seek specific performance by depositing the balance amount if the defendants refuse to execute sale deed.

14. The relevant terms of the agreement is extracted before for proper understanding:-

“**ஷே(1)** முதல் **(4)** வரை இலக்கமிட்டவர்களின் சுவாதீன அனுபவத்தில் இருந்து வருகிறதுமான சொத்துக்களில் ஓர் பகுதி ரூ.0,50 செண்ட் விஸ்தீரணமுள்ள பூமியை நாளது தேதியில் நம்மில் **(5)** இலக்கமிட்டவருக்கு செண்ட் 1க்கு ரூ.65,000/- (ரூபாய் அறுபத்தைந்தாயிரம் மட்டும்) வீதம் மொத்தமாக ரூ.32,50,000/- (ரூபாய் முப்பத்து இரண்டு லட்சத்து ஐம்பதாயிரம் மட்டும்) அறுதியாக சுத்தக் கிரையமும் சுவாதீனமும் செய்து கொடுப்பதாக மொத்த விலைக்குப் பேசி ஒப்புக் கொண்டு **ஷே** கிரையத் தொகையில் **(5)** இலக்கமிட்டவரிடமிருந்து **(1)** **(2)** இலக்கமிட்டவர்கள் அட்வான்சாக ரூ.10,00,000/- (ரூபாய் பத்து லட்சம் மட்டும்) பெற்றுக் கொண்டுள்ளார்கள். நாளது



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தேதியிலிருந்து 15.02.2006 ஆம் தேதி வரையிலான காலக் கெடுவிற்குள் (5) இலக்கமிட்டவர் பாக்கிக் கிரையத் தொகை ரூ.22,50,000./ (ரூபாய் இருபத்து இரண்டு லட்சத்து ஐம்பது ஆயிரம் மட்டும்) யும் (1) (2) இலக்கமிட்டவர்களிடம் ரொக்கமாகச் செலுத்தி தன் செலவிலும் பொருப்பிலும் தன் பெயருக்காவது தான் கோரும் நபர்/நபர்களின் பெயர்களுக்காவது பிரித்தோ அல்லது மொத்தமாகவோ கிரையமும் சுவாதீனமும் பெற்றுக் கொள்ள வேண்டியது. தவறும் பட்சத்தில் நாளது தேதியில் (1) (2) இலக்கமிட்டவர்களிடம் கொடுத்துள்ள அட்வான்ஸ் தொகையை இழந்து விடவேண்டியது.

மேலே 15.02.2006 ஆம் தேதி வரையிலான காலக்கெடுவிற்குள் (5) இலக்கமிட்டவர் பாக்கிக் கிரையத் தொகையைச் செலுத்தி கிரையமும் சுவாதீனமும் பெற்றுக் கொள்ளத் தயாராக இருந்து (1)(2) இலக்கமிட்டவர்கள் (5) இலக்கமிட்டவருக்கு கிரையமும் சுவாதீனமும் செய்து கொடுக்கத் தவறும் அல்லது மறுக்கும் பட்சத்தில் பாக்கிக் கிரையத் தொகையை சிவில் கோர்ட்டில் டெபாசிட் செய்து கோர்ட் மூலம் கிரையமும் சுவாதீனமும் பெற்றுக் கொள்ள (5) இலக்கமிட்டவருக்கு பூரண உரிமையுண்டு என்றும் அதனால் (5) இலக்கமிட்டவருக்கு ஏற்படும் அனைத்து செலவுத் தொகைகளையும் செலுத்த (1)(2) இலக்கமிட்டவர்கள் இதன் மூலம் உறுதி கூறுகின்றார்கள்.

.....

கீழ்காணும் சொத்துக்களை (5) இலக்கமிட்டவர் கிரையம் பெறுவதற்கு முன்னர் கீழ்காணும் சொத்துக்களை உரிய சர்வேயர் அல்லது இன்ஜினியர் வைத்து அளந்து அத்துகண்டு மொத்த விஸ்தீரணத்திற்கேற்ப கிரையத் தொகைரை பெற்றுக் கொள்ள (1) (2) இலக்கமிட்டவர்கள் இதன் மூலம் உறுதி கூறுகின்றார்கள்.”



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15. From the plain reading of terms of agreement, parties have consciously agreed to specify time as the essence of agreement. There is no intervening factor to suggest that parties have given up the stipulation as to the relevance of time. Hence, time is the essence of agreement. From the agreement, it is seen that the obligation to pay the balance sale consideration on or before 15.02.2006 does not depend upon the survey or measurement of the property as stipulated in the agreement. It is also to be seen that the agreement is in respect of an extent of 50 cents out of a larger extent of 4.72.0 hectares (17.81 acres) in survey No.56/1. The suit property has been described with reference to four boundaries. Eastern and southern boundaries for the property agreed to be sold are the remaining lands in the same survey numbers. Suit property is described as the North western portion of S.No.56/1. It is admitted that the remaining lands in the suit survey number belongs to defendants. There is no issue regarding identity of the property specified in the agreement. When 50 cents out of a larger extent of property owned by defendants is agreed to be sold, the plaintiff cannot have any confusion regarding the portion or extent to be sold or to arrive at the balance of sale consideration, which he has to pay for the suit property. Therefore, the contention that the plaintiff was requesting the defendants to survey and measure the property appears to be a



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false case. The clause relating to survey and measurement is a formal clause.

The plaintiff did not call upon the defendants to measure the property before the time. It is only to justify plaintiff's failure to offer balance sale consideration, he has come forward with this lame excuse. Learned counsel for appellant relied upon the judgment of Hon'ble Supreme Court in ***Gaddipati Divija and another Vs. Pathuri Samrajyam and others*** reported in **2023 SCC OnLine SC 442** where demarcation of property was part of agreement. It cannot be applied to the present case when the consideration is fixed and no demarcation is required as per agreement and plaintiff never insisted before pre-suit notice. The plaintiff has to prove his readiness and willingness in terms of the agreement. This has been repeatedly held by this Court and Hon'ble Supreme Court that the readiness and willingness have to be established and it is a personal bar to seek relief of specific performance without pleading and proving of readiness and willingness. Hon'ble Supreme Court in the case of ***Man Kaur(Dead) by Lrs. Vs. Hartar Singh Sangha*** reported in **(2010) 10 SCC 512** has held as follows:-

“23. The learned counsel for the respondent contended that in terms of the agreement, the defendant had to furnish an NOC from Chandigarh Administration, as also ULC clearance and income tax clearance required for the sale and there was nothing to show that she had obtained them, and



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therefore the question of the plaintiff proving his readiness and willingness to perform his obligations did not arise. This contention has no merit. There are two distinct issues. The first issue is the breach by the defendant vendor which gives a cause of action to the plaintiff to file a suit for specific performance. The second issue relates to the personal bar to enforcement of a specific performance by persons enumerated in Section 16 of the Act. 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 the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs. 10 lakhs and earnest money of Rs. 1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs. 15 lakhs. In such a case there is a clear breach by the defendant. But in that case, if the plaintiff did not have the balance Rs. 9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by the defendant, as he was not “ready and willing” to perform his obligations.”



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16. In the case on hand, the plaintiff has not even proved by acceptable evidence that he had funds to pay the balance in terms of the agreement of sale. The plaintiff has admitted that he did not issue any notice before 15.02.2006 to defendants informing them about his readiness. He also admit that he has not produced any document to show that he had money to pay balance. From the evidence this Court finds no iota of evidence to show that the plaintiff had the money to pay balance before the stipulated date or his capacity to mobilise funds within the time. If the judgment of Hon'ble Supreme Court above referred to is applied, this Court has no other option but to hold that the plaintiff was not ready and willing to perform his part of the agreement in terms of the time stiupulation.

17. The learned senior counsel appearing for the appellant submitted that the suit was decreed exparte and the plaintiff deposited the entire balance as per the agreement in 2019 pursuant to the exparte decree. That will not absolve the plaintiff from proving the readiness and willingness in terms of the agreement. As pointed out earlier, the plaintiff has agreed under Ex.A2 to pay the balance on or before 15.02.2006 unconditionally. As per the terms of the agreement, the amount which has been paid as advance can be forfeited by the defendants, if the plaintiff does not pay balance before 15.02.2006. In the case on hand, the



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plaintiff does not come forward to pay the balance on or before 15.02.2006.

This Court has already indicated that the plaintiff has entered into an agreement with a full understanding of the property and its identity with reference to four boundaries. In such circumstances, the absence of the plaintiff's readiness and willingness to pay the balance is fatal.

Point (b) to (d)

The plaintiff has come forward with the suit notice only on 08.05.2008 nearly 2 years 3 months after the date specified in the agreement for sale. The suit was filed on 17.07.2008. Though the suit is filed within three years from the date specified in the agreement for sale, the plaintiff has not come forward with a proper explanation for the long delay in approaching the Court for specific performance. The lone excuse given by the plaintiff that the defendants 1 & 2 are women and therefore, the plaintiff did not file the suit but wanted to settle the issue with the defendants. This Court is unable to accept the case of the plaintiff. We have already seen that the plaintiff was not ready and willing. Hon'ble Supreme Court in the case of ***K.S Vidyadnam Vs. Vairavan*** reported in ***1997 3 SCC 1*** has referred to the change of circumstances to insist time as the essence of the agreement when parties have stipulated time and the consequences of delay in approaching the Court.



Hon'ble Supreme Court in the case of ***Saradamani Kandappan Vs. S.Rajalakshmi and others*** reported in ***(2011) 12 SCC 18*** following the judgment in ***K.S.Vidyanadam's*** case has held as follows:-

“43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam [(1997) 3 SCC 1] :

(i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was “ready and willing” to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The courts will also “frown” upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser.”



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18. As pointed out by the Hon'ble Supreme Court keeping in mind the change of circumstances particularly having regard to the inflation and steep rise in price for immovable property through out the country, we prefer to follow the judgment of Hon'ble Supreme Court in ***Saradamani Kandappan's*** case. We have already seen that the suit has been filed nearly 2 years 3 months after the time specified in the agreement for performance to pay the balance. We have already seen that the obligation of plaintiff to pay the balance is unconditional and he was required to forego the amount, which he had paid as advance, if he fails to pay as stipulated. He is unable to pay the balance within the time stipulated. In such event, the delay in filing the suit with an unreasonable explanation is fatal and therefore, the suit is liable to be dismissed. The Trial Court has rightly held that the suit is also liable to be dismissed on the ground of laches.

19. Considering the scope of Section 20 of Specific Relief Act, 1963, this Court in the catena of judgments has held that the plaintiff should approach the Court with clean hands when he seeks specific performance. In the present case, as held earlier, the plaintiff has filed the suit with an inordinate delay of 2 years 3 months without valid explanation for such an unreasonable delay. The



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defendants have specifically pleaded about the rise in price and the prejudice that would be caused to the defendants in case the suit for specific performance is decreed. The plaintiff, who has committed breach is not entitled for the equitable relief of specific performance. Therefore, we decide this point against the plaintiff/appellant. The learned senior counsel for the appellant submitted that the plaintiff has paid a substantial amount of Rs.10,00,000/- nearly 1/ 4th sale consideration in 2005 and that a refund of a sum with interest at 12% may not be a proper compensation. The learned counsel wanted this Court to enhance the amount of refund taking into account the value of money as on date. This Court is unable to countenance the argument in view of the finding we have rendered that the plaintiff has committed breach. The defendants cannot be blamed for the failure on the part of the plaintiff to honour his promise he has made in the suit agreement. Hence, this Court is helpless to grant any further relief to the plaintiff. In view of the findings we have rendered above, this Court is not inclined to go into the issue whether the suit agreement is enforceable against defendants 3 & 4 who were minors at the time of agreement. We find no merits in the Appeal Suit.



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20. Accordingly, the Appeal Suit is dismissed. There shall be no order as to costs. Consequently, connected MP is closed.

(S.S.S.R.J.) (C.K.J.)
05.06.2023

Speaking Order : Yes / No

Index : Yes / No

Neutral Citation case: Yes/No

kmi

To

1. The Principal District Judge,
Coimbatore.
2. The Section Officer,
V.R.Section, High Court, Madras.



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S.S.SUNDAR, J.
and
C.KUMARAPPAN, J.

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