

A.S.NO.3 OF 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2025

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CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.3 OF 2014

AND

MP NO.1 OF 2014

1.Rukmani

2.Selvish

3.Ghajinesh

... Appellants / Defendants

Vs.

Mahalakshmi

... Respondent / Plaintiff

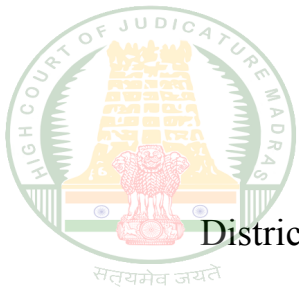
PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated November 15, 2012 passed in O.S.No.600 of 2010 by the learned First Additional District Judge, Coimbatore.

For Appellants : Mr.A.E.Ravichandran

For Respondent : Mr.S.Karthikai Balan

J U D G M E N T

This Appeal Suit is filed under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short] by the defendants in O.S.No.600 of 2010 on the file of 'the First Additional



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District Court, Coimbatore' ['Trial Court' for brevity]. Challenge is to the

Judgment and Decree dated November 15, 2012 passed by the Trial Court in the said Original Suit.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The Suit Property originally belonged to one Gnanasambandhan. The first defendant is the wife and the defendants 2 and 3 are the children of Gnanasambandhan. The said Gnanasambandhan entered into a Sale Agreement with the plaintiff on December 23, 2007, agreeing to sell the Suit Property at the rate of Rs.3,40,000/- per cent. Time fixed for performance of contract was six months from the date of Sale Agreement and a sum of Rs.3,00,000/- was paid as advance on the date of Sale Agreement itself. As per the Sale Agreement, Gnanasambandhan had to produce the encumbrance certificate and original title deeds before the sale, and he also had to measure the Suit Property to ascertain its extent for calculating the total sale consideration at the fixed rate. Further, Gnanasambandhan had to vacate the third party in possession of the Suit Property within one month.

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3.1. On April 10, 2008, the plaintiff paid a sum of Rs.2,00,000/- to Gnanasambandhan. Similarly, a sum of Rs.3,00,000/- on June 16, 2008 and a sum of Rs.2,40,000/- on July 26, 2008, were paid by the plaintiff. Totally, the plaintiff paid a sum of Rs.10,40,000/- as on July 26, 2008 and the said transactions have been duly endorsed in the Sale Agreement itself.

3.2. In addition to the aforesaid Rs.10,40,000/-, on April 18, 2008, the plaintiff also paid Rs.75,000/- for vacating one A.P. Mohammed, who was in possession of the Suit Property. Thus, the plaintiff has totally paid a sum of Rs.11,15,000/-. Upon payment, the said A.P. Mohammed delivered vacant possession of the Suit Property to Gnanasambandhan, who in turn, gave possession to the plaintiff in part performance of the Sale Agreement.

3.3. The plaintiff was always ready and willing to perform her part of the Sale Agreement. However, the vendor – Gnanasambandhan was not willing to perform any of his obligations under the Sale Agreement. While measuring the Suit Property is essential as a portion of the Suit Property has been acquired by the Highways Department,



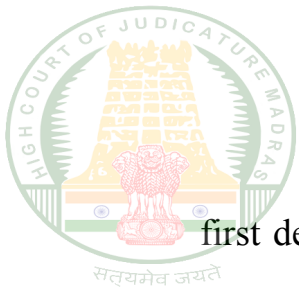
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Gnanasambandhan failed to do so. In the said circumstance, the plaintiff issued a legal notice on February 23, 2009 on Gnanasambandhan to perform his part of the contractual obligations, but the same was returned unserved. Thereafter, Gnanasambandhan personally informed the plaintiff of his poor health condition and promised to complete the sale shortly. As nothing happened, the plaintiff issued another legal notice, dated May 21, 2009 on his vendor to which the latter replied vide his reply notice dated May 28, 2009 raising false and untenable contentions.

3.4. While so, on September 19, 2009 Gnanasambandhan passed away consequent to which the present defendants succeeded his estate. The plaintiff contacted the defendants repeatedly to execute the Sale Deed. However, the defendants afoot to alienate the Suit Property to a stranger. Hence, the plaintiff has come up with the present Suit for specific performance of the Sale Agreement dated December 23, 2007.

DEFENDANTS' CASE

4. The third defendant filed written statement, which was adopted by the defendants 1 and 2. The defendants denied the allegations made by the plaintiff in the plaint. The defendants took a stand that the



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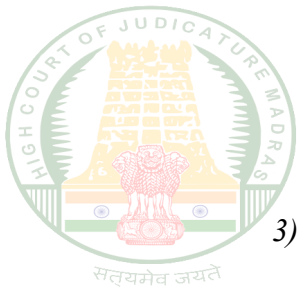
first defendant's husband entered into a Sale Agreement with the plaintiff in respect of Suit Property to meet out his emergent medical expenses.

The plaintiff deliberately failed to fulfil her obligations. It is denied that the plaintiff paid a sum of Rs.75,000/- to the said A.P. Mohammed. The balance sale consideration is Rs.7,93,975/- and the same should have been paid on or before June 22, 2009 as per the terms of Sale Agreement. Time is the essence of the contract as Gnanasambandhan entered into the Sale Agreement to meet out emergent medical expenses, and the plaintiff was never ready and willing to perform her part of the contract. The plaintiff is not entitled to the discretionary relief of specific performance of contract. If specific performance is granted, the defendants will face much hardship. The defendants are ready to return the sum of Rs.10,40,000/- paid by the plaintiff, along with nominal interest thereon. Stating so, the defendants sought to dismiss the Suit.

TRIAL COURT

5. Based on the above pleadings, the Trial Court framed the following issues:

- “1) *Whether the time is of the essence of the suit agreement to sell?*
- 2) *What is the advance amount paid by the plaintiff?*



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- 3) *Whether the plaintiff is ready and willing to perform her part of the contract?*
- 4) *Was not the plaintiff given possession to the Suit Property?*
- 5) *Whether the plaintiff is entitled to specific performance of suit agreement?*
- 6) *To what relief is the plaintiff is entitled?*

6. At trial, on the side of the plaintiff, the plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.11 were marked. On the side of the defendants, neither any witness was examined nor any document was marked. Documents submitted by the Advocate Commissioner were marked as Ex-C.1 to Ex-C.3.

7. After full-fledged trial, the Trial Court held that time is not the essence of the contract. Further, as per Ex-C.1 to Ex-C.3, an extent of 2130 sq. ft. alone is available in the ground. Working out accordingly, the total sale consideration comes to Rs.16,61,009/-. The plaintiff had totally paid a sum of Rs.11,15,000/-. The plaintiff was ready and willing to perform his part of the contract but Gnanasambandhan failed to fulfil his obligations under the Suit Sale Agreement. The plaintiff has obtained possession directly from third party / tenant. Upon these findings, the Trial Court decreed the Suit for specific performance, directing the plaintiff to



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deposit the balance sale consideration of Rs.5,49,009/- within one month and the defendants to execute the Sale Deed as per the Suit Sale Agreement within one month from the date of such deposit. In default thereof, the Trial Court held that Court shall execute Sale Deed on behalf of the defendants.

8. Feeling aggrieved, the defendants have preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.

ARGUMENTS:

9. Mr.A.E.Ravichandran, learned Counsel for the appellant / defendants would argue that vendor – Gnanasambandhan was suffering from renal failure and was in dire need of funds for treatment. Hence, he entered into Ex-A.1 – Suit Sale Agreement with the plaintiff. Since, the purpose is to meet out urgent medical expenses, time is the essence of Ex-A.1 - Suit Sale Agreement. The plaintiff did not have sufficient funds to tender the balance sale consideration and she was not ready and willing to perform her part of the contract within the agreed time period. The Suit was filed on August 24, 2010, and as on the date of Suit, only a sum of Rs.10,40,000/- was paid to the defendants' side. Further,



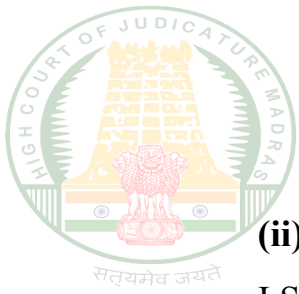
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Gnanasambandhan expired on September 19, 2009 and after about one

year, the Suit has been filed, which also points to the fact that the plaintiff was not ready and willing. Further, the Trial Court failed to deal with the issues framed in a proper manner and its Judgment is not in accordance with CPC. There is no finding *qua* readiness and willingness as per Section 16 (c) of the Specific Relief Act, 1963. Further, the defendants vide Ex-A.11 – Reply Notice dated May 28, 2009 cancelled Ex-A.1 – Suit Sale Agreement. Hence, the Suit as framed, without declaratory relief, is not maintainable in law and for the said proposition of law, he relied on the Judgment of Hon'ble Supreme Court in ***I.S.Sikandar -vs- K.Subramani***, reported in (2013) 15 SCC 27. The Judgment and Decree of the Trial Court is erroneous and deserves to be interfered with. Accordingly, he would pray to set aside the Judgment and Decree of the Trial Court.

9.1. He would also rely on the following decisions in support of his contentions:

- (i) ***S.Arul Dhas's Case*** - Judgment of this Court in S.Arul Dhas - vs – F.Hubert & Another, reported in 2015 – 3 – LW 241;



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(ii) ***Sikandar's Case*** - Judgment of Hon'ble Supreme Court in I.S.Sikandar (Dead) by LR's. -vs- K.Subramani and Others, reported in (2013) 15 SCC 27;

(iii) ***Thangavel's Case*** - Judgment of this Court in T.R.Thangavel – vs – Thangammal, reported in CDJ 2022 MHC 1715;

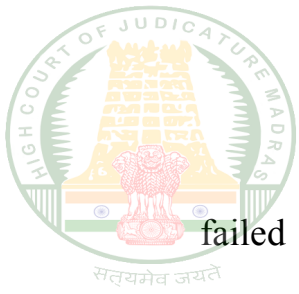
(iv) ***Saroja's Case*** - Judgment of this Court in E.Saroja and Others -vs- R.Nagarajan and Others, reported in CDJ 2023 MHC 2967;

(v) ***Krishnamurthy's Case*** - Judgment of the Hon'ble Supreme Court in U.N.Krishnamurthy – vs – A.M.Krishnamurthy, reported in (2023) 11 SCC 775;

(vi) ***Kandasamy's Case*** - Judgment of the Hon'ble Supreme Court in R.Kandasamy – vs – T.R.K.Saraswathy and Another, reported in (2025) 3 SCC 513; and

(vii) ***Vincent's Case*** - Judgment of this Court in J.Vincent – vs – S.Srinivasan, reported in CDJ 2018 MHC 4082

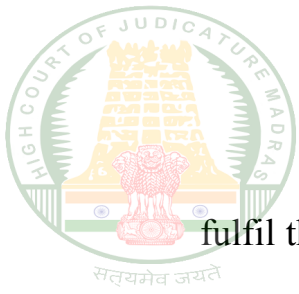
10. On the other hand, Mr.S.Karthikai Balan, learned Counsel for the respondent / plaintiff would argue that time is not the essence of the contract. The plaintiff was always ready and willing to perform her part of the contract and it is Gnanasambandhan and the defendants who



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failed on their obligations. As per Ex-A.1–Suit Sale Agreement,

Gnanasambandhan had to measure the Suit Property and ascertain its extent, but he failed to do so. Further, Gnanasambandhan had to furnish original title deeds and encumbrance certificates which also he failed to do. But on the other hand, the plaintiff tendered Rs.2,00,000/- on April 10, 2008, Rs.3,00,000/- on June 16, 2008, and Rs.2,40,000/- on July 26, 2008 as per the demand of Gnanasambandhan, besides the payment of Rs.3,00,000/- on the date of Ex-A.1. The transactions have been duly endorsed in Ex-A.1 – Suit Sale Agreement and in fact, the first defendant / Gnanasambandhan's wife – Rukmani has signed as one of the witness to the aforesaid transaction of Rs.2,40,000/- on July 26, 2008. Further, as per Ex-A.1, Gnanasambandhan had to vacate the third party / tenant in possession of the Suit Property. However, it is the plaintiff who paid Rs.75,000/- on April 18, 2008 in order to obtain vacant possession under Ex-A.5 – Possession Receipt. Further, the plaintiff has deposited the balance consideration as per the Trial Court's Decree on December 15, 2012. The above facts clearly show that, while the plaintiff was ready and willing and even made part payments as per the demand of Gnanasambandhan, the defendants' side was never ready and willing to



fulfil their part of the contract. As regards the contention of the defendants

that Ex-A.1 was terminated vide their reply notice dated May 28, 2009

(Ex-A.11), there is no plea in this regard and no issue was framed by the

Trial Court. Moreover, termination without any refund of the part

payments made, is not justifiable and permissible. The Trial Court

considered the above facts in the right perspective and rightly decreed the

Suit for specific performance. There is no need to interfere with the

Judgment and Decree of the Trial Court. Accordingly, he would pray to

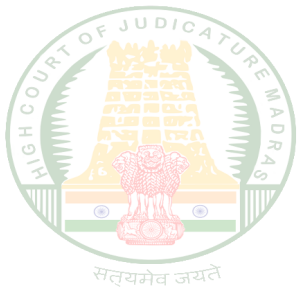
dismiss the Appeal Suit and confirm the Judgment and Decree of the Trial

Court.

10.1. He would rely on the following decision in support of his contentions:

- (i) **Balasaheb's Case** - Judgment of Hon'ble Supreme Court in Balasaheb Dayandeo Naik – vs – Appasaheb Dattatraya Pawar, reported in (2008) 4 SCC 464

DISCUSSION:



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11. Heard on either side. Perused the evidence available on

record. The following points arise for consideration in this Appeal Suit:

- (i) Whether time is the essence of Ex-A.1 – Suit Sale Agreement ?
- (ii) Whether the Suit as framed by the plaintiff without seeking the relief of declaration that the termination of Ex-A.1 – Suit Sale Agreement by the Gnanasambandhan vide Ex-A.11 – Reply Notice dated May 28, 2009 is invalid, is maintainable ?
- (iii) Whether the plaintiff was ready and willing to perform her part of the contract ?
- (iv) Whether the plaintiff paid Rs.75,000/- for vacating the third party / tenant ?
- (v) Whether the plaintiff is entitled to the relief of specific performance?
- (vi) Whether the Judgment and Decree of the Trial Court is to be interfered with ?

12. The execution of Ex-A.1 – Sale Agreement and payment of a total sum of Rs.10,40,000/- as part payment towards sale



consideration on various occasions as tabulated hereunder is not disputed

by either side:

S.No.	Date	Amount
1.	December 23, 2007 (date of Sale Agreement)	Rs.3,00,000/-
2.	April 10, 2008	Rs.2,00,000/-
3.	June 16, 2008	Rs.3,00,000/-
4.	July 26, 2008	Rs.2,40,000/-

13. It is also admitted by both sides that Gnanasambandhan was unwell and under treatment during the relevant point of time. His date of demise *viz.*, September 19, 2009 is also admitted.

Point No.(i)

14. Ex-A.1 – Suit Sale Agreement is dated December 23, 2007. The subject matter of Ex-A.1, which is the Suit Property herein, is a plot of an extent of 2350 sq. ft. [5 Cents 172 sq. ft.] as per Ex-A.1. Though extent of the Suit Property is described in Ex-A.1, the sale price was fixed per Cent and not in total. Further, Ex-A.1 recites that within the stipulated time period for performance *viz.*, 6 months, the vendor – Gnanasambandhan has to measure the Suit Property with the help of a surveyor and ascertain its extent. Ex-A.1 further recites that within a period of one month from the date of Ex-A.1, Gnanasambandhan is to



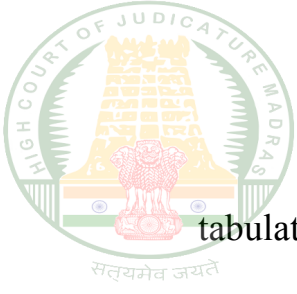
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vacate the third party / tenant in possession of the Suit Property and deliver vacant possession. It also recites that, if the plaintiff fails to fulfil her part of the contract when the vendor – Gnanasambandhan has complied with the all terms of Ex-A.1, the part payments shall be forfeited; similarly, if the plaintiff is ready and willing and the default is by Gnanasambandhan, then the plaintiff shall deposit balance sale consideration into Court and can get Sale Deed executed through process of Court. These are the major recitals found in Ex-A.1.

15. The time period fixed for performance which is 6 months from the date of Ex-A.1 – Suit Sale Agreement, expired on June 23, 2008. But admittedly, the defendants' side has received part payments towards the sale consideration on three dates apart from Rs.3,00,000/- made on the date of Sale Agreement itself, as tabulated below:

S.No.	Date	Amount
1.	April 10, 2008	Rs.2,00,000/-
2.	June 16, 2008	Rs.3,00,000/-
3.	July 26, 2008	Rs.2,40,000/-

16. As it can be seen from the last transaction of Rs.2,40,000/, even after the expiry of the stipulated time period for performance, the defendants' side has received part payment towards sale price. The



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tabulated transactions have been duly endorsed in Ex-A.1 – Suit Sale

Agreement along with witness signatures. From the endorsements, no demur could be seen / inferred on either side. But the defendants' side put a suggestion to P.W.1 during cross examination that while the defendants' side planned to measure the Suit Property with the aid of a private surveyor, the plaintiff insisted on measuring the Suit Property with the aid of taluk surveyor leading to the delay in measuring the Suit Property. It was further suggested that Gnanasambandhan was not able to vacate the third party / tenant from the Suit Property and hence, Gnanasambandhan could not fulfil his part of the obligations. The plaintiff / P.W.1 denied both the suggestions. Besides the above two suggestions, one more suggestion was put to the plaintiff / P.W.1 that the plaintiff himself vacated the third party / tenant. The plaintiff replied that it was Gnanasambandhan who received Rs.75,000/- from the plaintiff, vacated the third party / tenant from the Suit Property using the said amount and then, handed over vacant possession to the plaintiff. Relevant extract of P.W.1's cross-examination is hereunder:

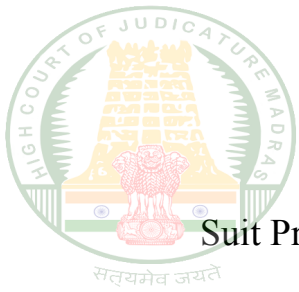
'ஒப்பந்தத்திற்கு பிறகு ஞானசம்மந்தம் தாவா
சொத்தை அளக்க ஏற்பாடு செய்தார் என்று
சொன்னால் சரியல்ல. சாட்சி தொடர்ந்து

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சொல்லுகிறார் அவர் எந்த ஏற்பாடும் செய்யவில்லை என்று சொல்லுகிறார். நான் சொல்லுவது தவறு என்றும் அவர் தனியார் சர்வேயரை வைத்து அளக்க தயாராக இருந்தார் என்றும், நான்தான் தாலுக் சர்வேயரை வைத்து அளக்க வேண்டும் என்று நிர்ப்பந்தித்ததால் உரிய காலத்திற்குள் சொத்து அளக்க இயலாமல் போய்விட்டது என்று சொன்னால் சரியல்ல. ஒப்பந்த கால கெடுவுக்குள் ஞானசம்மந்தத்தால் தாவா சொத்தில் இருந்த வாடகைதாரரை காலி செய்ய இயலாத காரணத்தால் அவரால் ஒப்பந்தத்தை நிறைவேற்ற இயலவில்லை என்று சொன்னால் சரியல்ல. வாடகைதாரரை காலி செய்ய நான் கொடுத்ததாக சொல்லும் ரூ.75 ஆயிரம் பிரதிவாதிகளை கட்டுப்படுத்தாது என்று சொன்னால் சரியல்ல. வாடகைதாரரை நானாகவே காலி செய்து சுவாதீனம் எடுத்துக்கொண்டேன் என்று சொன்னால் ஞானசம்மந்தம் தான் ரூ.75 ஆயிரத்தை என்னிடமிருந்து பெற்று வாடகைதாரரை காலி செய்து அதற்கு ஆவணத்தை என்னிடம் ஒப்படைத்தார். '

17. The plaintiff in Paragraph No.6 of the plaint has *inter alia* averred that a portion of the Suit Property has already been acquired by the Highways Department and consequently, the available extent of



Suit Property has been reduced considerably.

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18. During pendency of the Suit, at the instance of the plaintiff, an Advocate Commissioner was appointed to measure out the Suit Property with the help of surveyor. The Advocate Commissioner submitted his Plan, Town Survey Register and Report dated April 7, 2012, which are marked as Ex-C.1 to Ex-C.3 respectively. Substantiating the averment of the plaintiff in Paragraph No.6 of the plaintiff, Ex-C.3 – Report states that the Suit Property measures only 2130 sq. ft., which is equal to 4 Cents 388 sq. ft, as against 2350 sq. ft. [5 Cents 172 sq. ft.] as mentioned in Ex-A.1.

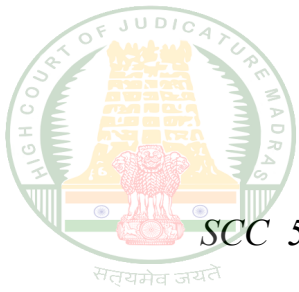
19. When all the aforesaid facts, events, conduct of the parties and the uncontroverted evidence of P.W.1 are considered as a whole, it points to one thing, time is not of the essence of the contract. Further, if really time is of the essence of Ex-A.1 – Suit Sale Agreement, the defendants' side would have at least raised objection while accepting the last part payment of Rs.2,40,000/-, which was made after the expiry of the fixed period for performance. Clearly they have not done so. As stated *supra*, the endorsements lack any demur. Further, the defendants' side



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have not measured the Suit Property, ascertained its extent and handed over the title deeds, which also suggests that time is not the essence of the contract. Had the plaintiff really insisted on measuring the Suit Property with the aid of taluk surveyor, then the defendants' side would have taken proactive steps for timely completion of the process. They would have either attempted to measure with taluk surveyor or attempted to convince the plaintiff for private surveyor for timely completion of the sale. There is no evidence available on record to show that the defendants' side made attempts to measure the Suit Property, or to show that the defendants' side produced over original title deeds. The defendants did not enter into the witness box and attempt to prove that time is of the essence of the contract.

20. Moreover, in general, time is not of the essence of contract when it comes to immovable properties, unless there are recitals expressing clear intention of the parties to make time the essence of contract. There are no such recitals found in Ex-A.1 and no such intention could be gathered from a holistic reading of Ex-A.1 including the endorsements made therein. In this regard, it is worthwhile to refer to ***Chand Rani's Case*** [*Chand Rani -vs- Kamal Rani*, reported in (1993) 1



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SCC 519], wherein a Constitutional Bench of Hon'ble Supreme Court referring to ***Hind Construction Contractors -vs- State of Maharashtra*** reported in (1979) 2 SCC 70 and ***Indira Kaur -vs- Sheo Lal Kapoor***, reported in (1988) 2 SCC 488, held as follows:

“25. From an analysis of the above case-law it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are evident.

- 1. From the express terms of the contract;*
- 2. from the nature of the property; and*
- 3. from the surrounding circumstances, for example:
the object of making the contract.”*

21. In view of the above narrative, this Court has no hesitation to hold that time is not of the essence of Ex-A.1 – Suit Sale Agreement. **Point No.(i) is answered accordingly in favour of plaintiff and against the defendants.**

Point No.(ii)

22. The defendants’ side admitted that they received a sum of Rs.10,40,000/- from the plaintiff on various dates as tabulated *supra*, as



part payments towards sale consideration. As per the terms of Ex-A.1 –

Suit Sale Agreement, Gnanasambandhan *inter alia* had to measure the Suit

Property and ascertain its extent, present original title deeds for perusal and also vacate the third party / tenant in possession of the Suit Property.

Upon defendants' side fulfilling the above requirements, the plaintiff is to pay the balance sale consideration within the stipulated period of 6 months

from the date of Ex-A.1. The defendants' side have failed to prove that they have fulfilled their obligations under Ex-A.1 – Suit Sale Agreement.

Ex-A.1 can be terminated only when the defendants' establish that they have fulfilled their part of contract and that the plaintiff is not ready and

willing to perform her part of contract. It has to be noted that, the defendants terminated Ex-A.1 only on May 28, 2009 in their reply notice

[Ex-A.11] to legal notice sent by the plaintiff. If really the plaintiff defaulted, the defendants need not have waited until the receipt of legal

notice from plaintiff. They could have proceeded with forfeiture of advance amount, which is the remedy available to them under Ex-A.1,

much earlier. Moreover, other than the general and stray averment in Ex-A.11 – Reply Notice, the defendants' have nowhere in their pleadings

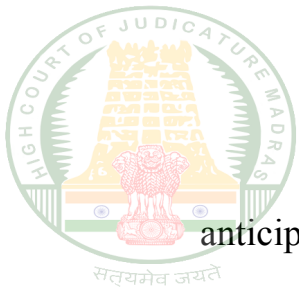
raised such a plea, and hence, no issue was framed by the Trial Court in



WEB COPY this regard. As rightly pointed out by the learned Counsel for the respondent / plaintiff, unless a specific issue as to maintainability has been framed by the Trial Court, the plea of maintainability cannot be raised before the Appellate Court [vide *Kandamsamy's Case* (cited *supra*)]. Hence, the plaintiff need not seek declaration that the termination of Ex-A.1 – Suit Sale Agreement vide Ex-A.11 – Reply Notice is invalid. **Point No.(ii) is answered accordingly in favour of plaintiff and against the defendants.**

Point No.(iii)

23. Next point to be considered is whether the plaintiff was ready and willing to perform her part of the contract. The plaintiff has pleaded that she is ready and willing to perform her part of the contract. Even according to the defendants, out of the total sale consideration of Rs.16,61,009/-, the plaintiff has paid Rs.10,40,000/- as part payment. In other words, the plaintiff has paid nearly 62% of the total sale consideration. The plaintiff has averred in the plaint that after the first legal notice sent on February 23, 2009 went unserved, he was informed by Gnanasambandhan the delay was due to his poor health conditions and that he would execute Sale Deed soon. Hence, the plaintiff waited in



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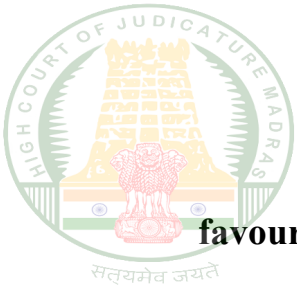
anticipation of positive steps towards execution of Sale Deed on the side of Gnanasambandhan. The reason cited appears to be plausible and reasonable, when considered along with the fact that the plaintiff had by then paid 62% of the total sale price, as admitted by the defendants. Further, the plaintiff in the plaint as well as in his evidence, has categorically stated that a portion of the Suit Property was acquired by the Highways Department making measurement of the Suit Property essential. The plaintiff has also taken steps to measure the Suit Property by seeking to appoint Advocate Commissioner. Accordingly, Advocate Commissioner was appointed, who in his Ex-C.3 – Report stated that the Suit Property measures only 2130 sq. ft., as against 2350 sq. ft. mentioned in Ex-A.1. Ex-C.3 – Report supports the claim of the plaintiff that a portion of the Suit Property was acquired and hence, measurement with the help of surveyor to ascertain its extent is essential.

24. Readiness and willingness is a condition precedent to the relief of specific performance. In this case, the plaintiff has pleaded, entered the witness box, provided evidence in support of his readiness and willingness, and made part payments periodically. Undisputedly, totally 62% of the total sale consideration has been paid by the plaintiff to the



defendants' side, which *prima facie* shows that the plaintiff was ready and willing to perform her part of the contract. The conduct of the plaintiff throughout would show that she was ready and willing. Readiness and willingness cannot be determined in an arithmetic manner. It has to be determined considering the facts and circumstances of the case, conduct of the parties as well as the evidence available on record cumulatively. Upon such consideration, this Court is of the view that the plaintiff was ready and willing to fulfil her obligations under Ex-A.1 – Suit Sale Agreement.

25. The defendants would contend that the plaintiff did not deposit the balance sale consideration into the Court. It is settled law that the plaintiff need not mandatorily deposit the balance sale consideration into the Court in the absence of Order of Court. The explanation to Section 16 of the Specific Relief Act, 1963, clearly reads that where contract involves payment of money, the plaintiff need not deposit into Court such money unless directed by the Court to do so. To be noted, in this case, the plaintiff had already paid 62 % of the total sale consideration and later, deposited the balance sale consideration as per Trial Court's Judgment and Decree within the time specified by the Trial Court. This also points to her readiness and willingness. **Point No.(iii) is answered accordingly in**



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favour of plaintiff and against the defendants.

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Point No.(iv)

26. Coming to the next point, the defendants contend that the plaintiff did not pay Rs.75,000/- to the third party / tenant namely A.P. Mohammed. The plaintiff relies on Ex-A.5 to contend that he paid Rs.75,000/- to Gnanasambandhan who used the same to recover vacant possession from tenant and handover the same to plaintiff. Ex-A.5 is the possession receipt issued by A.P. Mohammed in favour of Gnanasambandhan, wherein it is stated that A.P. Mohammed received Rs.75,000/- from Gnanasambandhan and as per the directions of Gnanasambandhan, A.P. Mohammed is handing over vacant possession of the Suit Property to the plaintiff. Ex-A.5 recites that “. . . இடத்தை காலிசெய்து கொடுத்ததற்காக நஷ்டஈடாக நான் தங்களிடமிருந்து நாளது தேதியில் இதனடியில் கண்ட சாட்சிகள் முன்பட ரொக்கமாக தொகை ரூபாய் 75,000/- பெற்றுக்கொண்டேன்”. If really it is the plaintiff who paid Rs.75,000/- to Gnanasambandhan in order to obtain vacant possession of the Suit Property from A.P. Mohammed, the plaintiff who has got endorsements in respect of all the payments made, would have also obtained an endorsement or separate receipt or some proof for

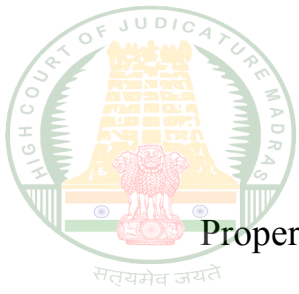


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the alleged payment of Rs.75,000/-. No such evidence is available on the record. Gnanasambandhan is no more. The burden is heavily upon the plaintiff to prove that he paid Rs.75,000/- to Gnanasambandhan as pleaded by her. The plaintiff contending contrary to the recitals of Ex-A.5, ought to have examined at least one of the two witnesses to Ex-A.5, namely Tamilarasu and Selvaraj. But she has failed to do so. There is no evidence available on record to show that the plaintiff paid Rs.75,000/- to Gnanasambandhan and hence, this Court is of the view that the plaintiff did not pay Rs.75,000/- as pleaded by her. The Trial Court failed to consider the aforesaid aspects and erred in holding that the plaintiff obtained possession directly from A.P. Mohammed by paying Rs.75,000/-. The Judgment and Decree of the Trial Court needs to be interfered with *qua* the said aspect. **Point No.(iv) is answered accordingly in favour of defendants and against the plaintiff.**

Point No.(v)

27. Ex-A.1 – Suit Sale Agreement is an unregistered document. Ex-A.5 – Possession Receipt is also unregistered. When possession is obtained under an unregistered agreement, the plaintiff is not entitled to protect her possession in view of Section 53A of the Transfer of



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Property Act, 1882 as amended by the Central Act No.48 of 2001 [with effect from September 24, 2001]. Though the plaintiff is in possession of the Suit Property, the same cannot be protected under law. Anyways, the plaintiff did not seek injunction to protect her possession obtained under Ex-A.5. But this does not act as a bar to the relief of specific performance. As stated *supra*, the plaintiff was ready and willing to perform her part of the contract. Hence, there is no reason to deny the plaintiff of the relief of specific performance. The Trial Court was right in decreeing the Suit for specific performance except that it was wrong in holding that the plaintiff paid Rs.75,000/-. **Point No.(v) is answered accordingly in favour of plaintiff and against the defendants.**

Point No.(vi)

28. The learned Counsel for the appellants / defendants would contend that the Judgment of the Trial Court is not in accordance with CPC. He would contend that the Trial Court has not specifically dealt with the issues framed. This Court has perused the Judgment of the Trial Court in its entirety. The Trial Court has dealt with all the issues framed, but in short. Concise writing is an art. What has to be seen is whether the Court has applied its mind, considered all the evidence available on record and



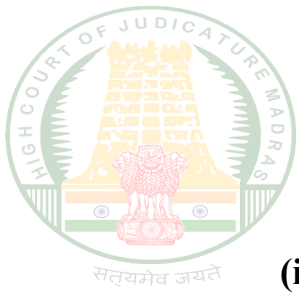
the arguments on either side duly, and covered all the issues framed and the other vital aspects of the case. When the Trial Court has covered all the issues and the substantial aspects of the case, just because the Judgment is concise, it cannot be held to be not in accordance with CPC.

29. The Trial Court was right in decreeing the Suit for specific performance except for the finding that the plaintiff had paid Rs.75,000/- to obtain vacant possession, as stated *supra*. There is no need to interfere with the Judgment and Decree of the Trial Court, except for its finding regarding the payment of Rs.75,000/- by the plaintiff. **Point No.(v) is answered accordingly partly in favour of plaintiff and partly against the defendants.**

30. There is no quarrel with the proposition of law advanced by the other Judgments relied on either side.

CONCLUSION:

31. Resultantly, the Appeal Suit is partly allowed. The plaintiff is entitled to the relief of specific performance subject to the following conditions:



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- (i) The plaintiff shall within 60 days from today, deposit Rs.75,000/- along with simple interest thereon at the rate of 12% per annum from the date of Suit till such deposit, in addition to her previous deposit of balance sale consideration of Rs.5,49,000/- as per the directions of the Trial Court
- (ii) To that extent, Judgment and Decree of the Trial Court is modified;
- (iii) The cost awarded by the Trial Court remains unaltered.

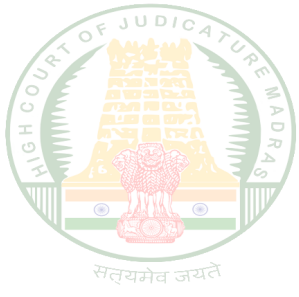
31.1. In view of the facts and circumstances of this case, the parties shall bear their own costs in this Appeal Suit. Connected Civil Miscellaneous petition shall be closed.

06.08.2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To
The First Additional District Judge
Coimbatore.

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R. SAKTHIVEL, J.

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