

S.A.No.905 of 2017

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28 / 10 / 2024

JUDGMENT PRONOUNCED ON : 25 / 06 / 2025

**CORAM:**  
**THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**S.A.NO.905 OF 2017**

A.Shahul Hameed

... Appellant /  
 Respondent /  
 Plaintiff

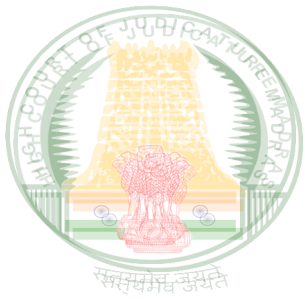
*Vs.*

1.N.Malligarjuna  
 2.M.Sushma  
 3.M.Shruthi  
 4.M.Karthik

... Respondents /  
 Appellants /  
 Defendants

**PRAAYER:** Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated August 28, 2014 made in A.S.No.09 of 2013 on the file of the learned Additional District and Sessions Judge, Hosur, reversing the Judgment and Decree dated December 21, 2012 made in O.S.No.35 of 2011 on the file of the learned Subordinate Judge, Hosur.

For Appellant : Mr.S.Sadasharam  
 For Respondents : Mr.S.Sheik Thanveer Ahamed  
 for M/s.Mukund R. Pandiyan



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## **J U D G M E N T**

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This Second Appeal is directed against the Judgment and Decree dated August 28, 2014, passed in A.S.No.09 of 2013 by the 'Additional District and Sessions Court, Hosur' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated December 21, 2012 passed in O.S.No.35 of 2011 by the 'Subordinate Court, Hosur' ['Trial Court' for brevity] was reversed.

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

### **PLAINTIFF'S CASE**

3. Originally the Suit Property belonged to the first defendant vide registered Sale Deed (Document No.137/1995). Defendants 2 to 4 are the children of the first defendant. Due to financial needs, the defendants decided to sell the Suit Property. Through mediators, they agreed to sell it to the plaintiff for a sum of Rs.9,30,000/- and executed a registered Sale Agreement dated March 19, 2010 in Document No.1070/2010 on the file of SRO, Kelamangalam and received an advance amount of Rs.9,00,000/- while agreeing to execute Sale Deed within four months upon payment of



the balance Rs.30,000/-.

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**3.1.** The plaintiff was ready and willing to complete the transaction and in July 2010, requested the defendants to produce the original documents for verification, but they sought more time. In December 2010, when the plaintiff insisted on execution of Sale Deed, the defendants demanded more money against the terms of the Sale Agreement and when the plaintiff refused, the defendants threatened to sell the Suit Property to third parties. Even after the plaintiff issued a legal notice dated February 1, 2011 (which the defendants 1 and 4 received and defendants 2 and 3 refused to accept), the defendants did not perform their part of the contract. Since the defendants breached the Sale Agreement, the plaintiff has filed this Suit for specific performance.

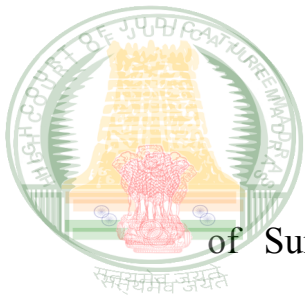
### **DEFENDANTS' CASE**

**4.** The defendants filed written statement stating that the Suit Sale Agreement dated March 19, 2010 was created as a security for another sale transaction; it is not intended to be a real Sale Agreement. Before the Suit Sale Agreement, one Ramakka, one Narasimhaiah and 42 others agreed to sell certain properties in 4 different Survey Numbers to



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the sons of V.Mohamed Abdullah of Bangalore for Rs.20,00,000/- and entered into a Sale Agreement dated July 17, 2009. A sum of Rs.10,70,000/- was given as advance and the remaining Rs.9,30,000/- was to be paid within 5 months. Pursuantly, Sale Deed was executed in respect of the properties except one Survey Number viz., Survey No.761/1B, an extent of 1 Acre 1 Cent. The defendants, plaintiff and one Udhaya Shankar acted as brokers for the sale transaction. The Bangalore buyers (sons of V.Mohamed Abdullah) demanded security for the sale of the remaining property viz., Survey No.761/1B, insisting to execute a Sale Agreement in respect of some other property in favour of the plaintiff, who is related to the Bangalore buyers. Hence, the defendants executed the Suit Sale Agreement in favour of plaintiff as a Security. The defendants never intended to sell the Suit Property to the plaintiff. On the same day of Suit Sale Agreement i.e., March 19, 2010, the plaintiff executed another Agreement in the name and style of “**Edhiradi Muchalika (எதிரடி முச்சலிக்கா)**” in favour of the defendants for Rs.9,30,000/-. The Suit Property is also covered under Sale Agreement dated July 17, 2009, whereby the defendants agreed to sell it to the Bangalore Buyers. Hence, the Sale Agreement is nominal and executed for security purposes for sale



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of Survey No.761/1B only. No amount was paid under the Sale Agreement as alleged. Therefore, the defendants sought to dismiss the Suit.

### **TRIAL COURT**

5. At trial, plaintiff was examined as P.W.1, and two other witnesses were examined as P.W.2 and P.W.3, and Ex-A.1 to Ex-A.6 were marked on the side of the plaintiff. The first defendant was examined as D.W.1 and one Venkatasamy was examined as D.W.2, and Ex-B.1 to Ex-B.3 were marked on the side of the defendants.

6. After full-fledged trial, the Trial Court held that the Suit Sale Agreement is true and valid, and the defendants executed it with an intention to sell the Suit Property in favour of the plaintiff. Further held that, the Suit Sale Agreement is enforceable. Accordingly, it decreed the Suit as prayed for.

### **FIRST APPELLATE COURT**

7. Feeling aggrieved, the defendants preferred an appeal before the First Appellate Court, which, after hearing both sides,

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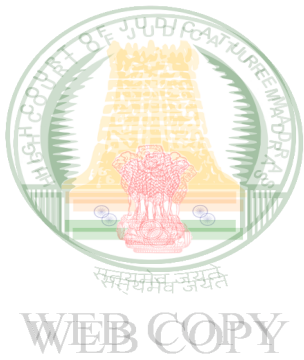
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concurrent with the Trial Court's findings that the Sale Agreement is true and valid. It held that the defendants failed to prove that Ex-A.1 – Suit Sale Agreement was executed for security purposes. However, it held that the plaintiff caused legal notice only on February 1, 2011 and the plaintiff failed to prove his readiness and willingness to perform the contract within the stipulated period *i.e.*, on or before July 19, 2010. Accordingly, it modified the Judgment and Decree granting return of advance amount of Rs.9,00,000/- along with 6% interest from the date of Decree till realisation and dismissed the Suit for Specific Performance.

### **SECOND APPEAL**

8. Feeling aggrieved, the plaintiff has preferred the present Second Appeal under Section 100 of the Code of Civil Procedure, 1908. The Second Appeal was admitted on December 15, 2023 on the following Substantial Questions of Law:

*“ (i) After having concurred with the findings of the trial Court on the point of genuineness of the agreement and enforceability of the same, can the Lower Appellate Court reverse the judgment and decree of*



*the trial Court for specific performance of the contract finding that the appellant/plaintiff has not come to the court within the time stipulated in the agreement dated 19.10.2010 [sic, should be 19.03.2010] ?*

- (ii) *Whether the readiness and willingness shown by the appellant in the notice issued under Ex.A-2 dated 01.02.2011 and his averment in the plaint that he is ready and willing to perform his part of the contract having parted with a sum of Rs.9.00 lakhs are not sufficient compliance of the requirement as contemplated under Section 16 of the Specific Relief Act to decree the suit for specific performance of the contract?"*

### **ARGUMENTS:**

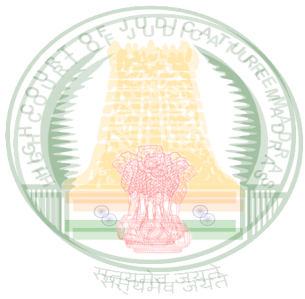
9. Mr.S.Sadasharam, learned Counsel for the appellant / plaintiff would argue that the Trial Court as well as the First Appellate Court concurrently held that Ex-A.1 – Suit Sale Agreement is true, valid and enforceable. The First Appellate Court, however, failed to appreciate the pleadings as well as evidence in the right perspective and negated the plaintiff's claim for specific performance. He would refer to the Plaint Paragraph Nos.IV to VII and argue that the plaintiff was always ready and



willing to perform his part of the contract. Further, he would argue that the defendants' case is not that the plaintiff was never ready and willing. Their defence was that Ex-A.1 – Suit Sale Agreement was executed for security purposes of another sale transaction and the same has not been proved. Ex-B.3 – Agreement / “**Edhiradi Muchalika (எதிரடி முச்சலிக்கா)**” was also not proved. Considering the above aspects, the Trial Court rightly decreed the Suit for Specific performance but the First Appellate Court erred in holding that the plaintiff was not ready and willing and pursuantly, granting return of advance amount dismissing the Suit *qua* Specific performance. He would also submit that after passing of the Trial Court Decree, the plaintiff has submitted the balance sale consideration before the Court on January 22, 2013. Accordingly, he prayed to allow the Second Appeal, dismiss the Judgment and Decree of the First Appellate Court and confirm that of the Trial Court.

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

- (i) ***Motilal Jain's Case*** - Judgment of Hon'ble Supreme Court in *Motilal Jain -vs- Ramdasi Devi*, reported in (2000) 6 SCC 420;
- (ii) ***Sugani' s Case*** - Judgment of Hon'ble Supreme Court in



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*Sugani -vs- Rameshwar Das*, reported in (2006) 11 SCC 587;

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(iii) **Ramakrishna Pillai's Case** - Judgment of Hon'ble Supreme Court in *Ramakrishna Pillai -vs- Muhammed Kunju*, reported in (2008) 4 SCC 212;

(iv) **Lakshmikantham's Case** - Judgment of Hon'ble Supreme Court in *R.Lakshmikantham -vs- Devaraji*, reported in 2019 (6) CTC 859;

(v) **Sughar Singh's Case** - Judgment of Hon'ble Supreme Court in *Sughar Singh -vs- Hari Singh*, reported in AIR 2021 SC 5581;

(vi) **K.C.Rajabathar's Case** - Judgment of this Court in *K.C.Rajabathar -vs- B.Purushothaman*, reported in 2019 (6) CTC 26.

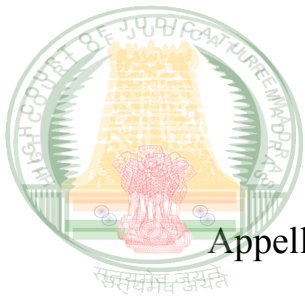
10. Mr.S.Sheik Thanveer Ahamed for M/s.Mukund R. Pandiyan, learned Counsel for the respondents / defendants would argue that the Suit Sale Agreement was executed for security purposes alone. The plaintiff did not specifically deny the execution of Ex-B.3 – Agreement / “**Edhiradi Muchalika (எதிரடி முச்சலிக்கா)**”; he has been evasive when it comes to Ex-B.3 by deposing that he does not



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remember executing the same. The defendants proved Ex-B.3 by examining one of the attester. Further, he would argue that the plaintiff should plead and prove his readiness and willingness in order to obtain a Decree of specific performance, dehors the plea of defence. If really Ex-A.1 – Suit Sale Agreement was intended to be a true Sale Agreement, then the plaintiff would have urged the defendants to execute the Sale Deed within the stipulated time period, whereas in this case, the plaintiff has issued legal notice on February 1, 2011 while the period of performance is on or before July 19, 2010. The conduct of the plaintiff would establish that Ex-A.1 – Suit Sale Agreement was executed only for security purposes and never intended as a Sale Agreement. This is also supported by the fact that there is no need for 4 months' time, if the plaintiff has already paid Rs.9,00,000/- and the remaining is only Rs.30,000/-. The First Appellate Court failed to note that there was no passing of consideration under Ex-A.1 – Suit Sale Agreement, as it was meant only for security purposes and erred in ordering return of advance money. The Trial Court failed to note that Ex-A.1 was never intended to be a true Sale Agreement and erred in granting the relief of specific performance. Accordingly, he prayed to set aside the Judgment and Decree of the First

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Appellate Court as well as those of the Trial Court and dismiss the Suit in its entirety.

**DISCUSSION:**

**11.** This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

**12.** The Suit Property belongs to first defendant as ancestral entitlement and the defendants 2 to 4 are his daughters and son. The defendants admitted the execution of Ex-A.1 – registered Sale Agreement. The case of the defendants is that Ex-A.1 was never intended or meant to be a true Sale Agreement; it was not executed for sale of the Suit Property, instead it was executed as a security for another sale transaction between one Ramakka, one Narasimhaiah and 42 others on one side and the Bangalore buyers (sons of V.Mohamed Abdullah) on the other side. If it is so, the burden of proof lies upon the defendants to establish that Ex-A.1 was a security and not intended for sale of Suit Property.

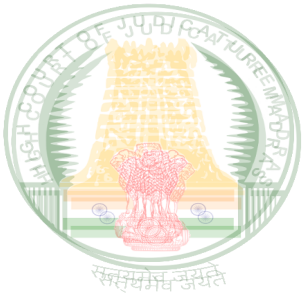
**13.** This Court has perused the evidence of P.W.1 / plaintiff and it is not consistent when it comes to Survey Number. He seems to



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interchange the subdivisions of Survey Number in his evidence. However, comprehensive perusal of his cross-examination would reveal that the said Bangalore buyers are his relatives; that he, along with the first defendant and one Udhaya Shankar, acted as intermediaries between the landowners and the Bangalore buyers for the sale of lands in sub-divisions 1A, 1B, 1C and 1D of Survey No.761 and negotiated at a rate of Rs.26,70,000/- per Acre with the Bangalore buyers; that the plaintiff obtained legal opinion from an Advocate for the sale transaction and there was some cloud around the title over one sub-division of Survey No.761; and that, hence, on June 9, 2008 and on January 5, 2009, two Sale Deeds were registered in respect of the other lands except the land in that one sub-division of Survey No.761 in favour of the Bangalore buyers. Relevant extract of P.W.1's evidence in cross-examination is hereunder:

' . . . பிரதிவாதியை 2009ம் வருடம் முதல் தெரியும். அவர் பூனப்பள்ளி சேர்ந்தவர் என்றால் சரிதான். அவர் ரியல்எஸ்டேட் தொழில் செய்வது எனக்குத் தெரியும். எனக்கு உதயசங்கரைத் தெரியும். அவர் மூலமாகத்தான் பிரதிவாதியை எனக்குத்தெரியும். அவர்மகன் பெயர் சீனிவாசன் என்றால் சரிதான். பெங்களூரில் இருப்பது எம்.ஏ.முகமது மொகைதீன் புகாரி, எம்.ஏ.முகமது சாகுல்ஹமீது, எம்.ஏ.உமர்கானி பரூக் ஆகியோர்கள்தான். அவர்கள் மூன்றுபேரும் அண்ணன் தம்பிகள் என்றால்



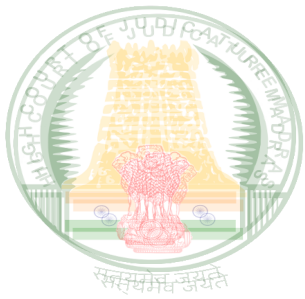
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சரிதான். அவர்கள் நிரந்தர வசிப்பிடம் பெங்களுர்தான். அவர்கள் எனக்கு சொந்தக்காரர்கள்தான். மேற்சொன்ன 3 பேரும் சர்வே எண். 761.1ஏ, பி, சி, டி ஆகியவற்றில் 3 ஏக்கர் 33 செண்ட் வாங்குவது குறித்து பேசியது எனக்குத்தெரியும். மேற்சொன்ன 17.7.2009ந் தேதி பெங்களுரைச்சேர்ந்த 3 பேர் அண்ணன் தம்பிகள் ராமக்கா, க.பெ. சித்தபைரப்பா, மற்றும் நரசிம்மையா, த.பெ.சித்தபைரப்பா அவர்கள் மூலமாக 3 ஏக்கர் 36 செண்ட் நிலம் கிரயம் பேசி பதிவுசெய்யப்பட்டது என்றால் சரிதான். அந்த கிரயப் பத்திரம் 42 பேருக்கு எழுதப்பட்டது. நான் சிவசங்கர் வக்கீல்மூலமாக கருத்து வாங்கிக்கொடுத்தேன். பின்னர் அந்தக் கிரயம் நடைபெற்றது. மேற்சொன்னதுக்கு 1 ஏக்கருக்கு ரூ.26 லட்சத்து 90 ஆயிரம் பேசப்பட்டது என்றால் 26 லட்சத்து 70 ஆயிரத்துக்கு பேசப்பட்டது. 3 ஏக்கர் 17 செண்ட்டுக்கு ரூ.85 லட்சத்து 27 ஆயிரத்து 300 இருக்கும் என்றால் இருக்கலாம். விற்பவர்களிடம் நான் ரூ.25 லட்சத்து 50 ஆயிரத்துக்கு பேசினேன் என்றால் சரியல்ல. நாங்கள் 3 பேரும் தரகு வேலை செய்தோம். நானும் உதயசங்கரும், பிரதிவாதியும் சேர்ந்துதான் செய்தோம் என்றால் நான் செய்யவில்லை. சர்வே எண்.761.1ஏ-ல் 1 ஏக்கர் 17 செண்ட் நிலத்தைப் பொறுத்து 24வது கிரயதாரருக்கு உரிமை இல்லை என்று வழக்கறிஞர் சட்டக்கருத்து குறிப்பிட்டார் என்றால் மற்றவர்கள் சேர்ந்து விற்றால் அது செல்லும் என்று வக்கீல் சொன்னார். அதனால்தான் சர்வே எண்.1 ஏக்கர் 17 செண்ட் நிலத்தைப் பொறுத்து கிரயம் நின்று போனது என்றால் சரிதான். . . . '

**13.1. He further deposed as hereunder:**



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என்னிடம் காட்டப்படும் 19.3.2010 தேதியிட்டதில் உள்ள ஒப்பந்தத்தில் உள்ளது என் கையெழுத்துதான். அந்த ஆவணம் 3708 முதல் 3713 வரை உள்ளது என்றால் சரிதான், (ஒப்பந்தத்தில்), வரிசை எண்களில் முத்திரைத்தாள்கள் உள்ளன என்றால் சரிதான். அதே தேதியில் பிரதிவாதிகளுக்கு எதிரிடைப் பத்திரம் எழுதிக்கொடுத்தேன் என்றால் எனக்கு நினைவு இல்லை. . . . '

14. The defendants' side have let in Ex-B.1 and Ex-B.2. Ex-B.1 is a Sale Deed dated January 5, 2009 executed in respect of 1 Acre 11 Cents in Survey No.761/1C by Balasubramaniam and 7 others in favour of the Bangalore buyers. Ex-B.2 is another Sale Deed dated June 9, 2008 executed by Ramakka and 23 others in respect of 1 Acre 11 Cents in Survey No.761/1A and another 1 Acre 11 Cents in Survey No.761/1D in favour of the Bangalore buyers. The defendants' case is that while the negotiation for sale was also in respect of Survey No.761/1B, the same was kept pending and Sale Deed was executed in respect of the other properties alone, as there was some cloud around the title to the land in Survey No.761/1B. Defendants' further case is that for execution of Sale Deed in respect of the property in Survey No.761/1B after removal of the clouds surrounding the title thereto, as insisted by the Bangalore buyers,



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defendants executed a Sale Agreement in respect of the Suit Property only for security purposes with no intention to sell the same to the plaintiff.

**15.** The defendants have marked Ex-B.3 – Agreement / “Edhiradi Muchalika (எதிரடி முச்சலிக்கா)” whereby the plaintiff has agreed to cancel Ex-A.1 – Sale Agreement upon payment of Rs.9,30,000/- within a period of four months. The plaintiff when posed with questions about Ex-B.3 – Agreement in his cross-examination, has answered in a evasive manner that he does not remember executing such an agreement. The defendants examined D.W.2, who is a witness to Ex-B.3 - Agreement. D.W.2 has deposed that Sale Deeds were not executed in respect of all the properties as negotiated with the Bangalore buyers as Sale Deed in respect of a portion the properties negotiated was kept pending as it lacked a clear title; that in this regard, Ex-A.1 – Sale Agreement and Ex-B.3 – Agreement was entered into between the plaintiff and the defendants and that no consideration passed under Ex-A.1. Though D.W.2 did not employ the term “security” anywhere, his deposition that Ex-A.1 and Ex-B.3 were executed on the same day, that the plaintiff did not pay any consideration as recited in Ex-A.1, coupled with the factum of previous sale transaction mediated by the plaintiff and first

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defendant and the pending of sale in respect of one sub-division of Survey

No.761, would render the defendants' case that Ex-A.1 was intended to be a security document highly probable. More so, perusal of Ex-A.1 and Ex-B.3 would show that the Stamp papers for both were purchased from the same stamp vendor on the same date and their serial numbers are consecutive. The defendants have clearly and specifically pleaded that the plaintiff executed Ex-B.3 – Agreement in return for the execution of Ex-A.1 – Sale Agreement as security by the defendants. This Court is of the view that the evidence of D.W.2 is sufficient to prove the execution of Ex-B.3 – Agreement by the plaintiff. If really Ex-A.1 was intended for sale of Suit Property, there is no need for the plaintiff to enter into Ex-B.3 – Agreement with the defendants agreeing to cancel the Sale Agreement upon payment of Rs.9,30,000/-. This creates a strong inference in favour of the defendants' case that Ex-A.1 was never intended for the sale of Suit Property but executed as a security for another sale transaction.

**16.** Though the pleadings and evidence in this case are not specific and suffers from lack of clarity, considering the fact that the



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pleadings are mofussil ones and the parties also hail from village, this

Court has appreciated them with utmost care and caution, trying to make sense by comprehensive perusal wherever there are ambiguity and minor inconsistencies. Upon such cumulative reading of the above oral and documentary evidence, it could be reasonably inferred that the first defendant as broker received money in respect of all the four subdivisions of Survey No.761 viz., 1A, 1B, 1C and 1D; that Sale Deed in respect of sub-division 1B could not be executed for lack of clear title; that Sale Deeds were successfully executed in respect of other sub-divisions; that in view of not being able to execute Sale Deed in respect of sub-division 1B, the first defendant owed Rs.9,30,000/- to the Bangalore buyers; that, thus, the first defendant either had to clear the title around the land in sub-division 1B of Survey No.761 or repay Rs.9,30,000/- to the Bangalore buyers and as a security for the same, the Bangalore buyers insisted on the first defendant executing a Sale Agreement in respect of some other property in favour of the plaintiff who is their relative; that accordingly, the defendants and the plaintiff entered into even dated Ex-A.1 – Sale Agreement and Ex-B.3 – Agreement, both in respect of the Suit Property. Thus, Ex-A.1 – Sale Agreement was executed only to stand as a security



as discussed above and never intended to for sale of Suit Property.

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17. This view is further supported by the fact that Ex-A.1 – Sale Agreement is dated March 19, 2010 and the period of performance was set to be 4 months *i.e.*, on or before July 19, 2010. If really Ex-A.1 - Sale Agreement was intended for sale of Suit Property, the plaintiff need not have waited till February 1, 2011 for issuing Legal Notice calling upon the defendants to perform their part of the contract. To be noted, there is no evidence available on record to show the plaintiff's readiness and willingness to perform his part of the contract during the stipulated period. One another fact supporting the aforesaid view is that there is no reason for the plaintiff to wait for 4 months to get Sale Deed executed, when he has allegedly almost paid the entire sale consideration *i.e.*, Rs.9,00,000/- out of the sale consideration of Rs.9,30,000/-.

18. It is settled law that even in the absence of specific plea by the defendant, it is the duty of the plaintiff to prove his readiness and willingness to perform his part of the contract [See **J.P. Builders -vs- A.Ramadas Rao**, reported in (2011) 1 SCC 429]. It is apposite to mention here that the Suit Sale Agreement transaction took place on March 19,



2010 i.e., prior to the commencement of the Specific Relief (Amendment)

Act, 2018. Leaving aside the question whether the said amendment is retrospective or prospective in operation, the said amendment dispenses only with the pleadings of readiness and willingness and not proof thereof. Hence, the plaintiff is to prove that he is always ready and willing to perform the essential terms of the contract not only during the period performance but till the conclusion of trial. In this case, readiness may be inferred from the fact that 93% of the alleged sale consideration has been paid upfront as advance but there is no evidence available on record to show the plaintiff's willingness, a mental attitude, to perform his part of the contract. The lack of willingness on the side of the plaintiff coupled with Ex-B.3 and other aspects discussed above, probablizes the case of the defendants.

**19.** To sum up, this Court concludes that Ex-A.1 – Sale Agreement was never intended for sale of Suit Property and it was executed only as a security, as insisted by the Bangalore buyers in favour of plaintiff, for either getting Sale Deed executed in respect of Survey No.761/1B or returning Rs.9,30,000/-, which the first defendant owed the Bangalore buyers in lieu of non-execution of Sale Deed in respect of



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Survey No.761/1B. There is no evidence available on record to show that first defendant got Sale Deed executed in respect of Survey No.761/1B in favour of the Bangalore buyers. The defendants cannot absolve their liability. Hence, the First Appellate Court was right in ordering return of money but it failed to consider that the first defendant's liability is to the tune of Rs.9,30,000/-, though it seems to be only Rs.9,00,000/- as per Ex-A.1. Further, considering the fact that the transaction in this case, being one of real estate, is commercial in nature and hence, the First Appellate Court ought to have awarded 12% interest considering the facts and circumstances of the case. Hence, this Court directs the defendants to pay the plaintiff a sum of Rs.9,30,000/- with interest at the rate of 12% from the date of plaint till the date of realisation. Further, to enable the plaintiff to realise the said amount, a charge shall be created on the Suit Property.

**20.** The First Appellate Court's concurred with the Trial Court's finding that Ex-A.1 – Sale Agreement is true and valid but the First Appellate Court went on to hold that the plaintiff failed to prove his readiness and willingness to perform his part of the contract within 4 months and hence, the plaintiff is not entitled to the relief of specific performance. The First Appellate Court has not denied the relief of

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specific performance on the ground that the plaintiff failed to approach the

Court on time. Hence the first Substantial Questions of Law does not arise

at all in this case. As regards the second one, mere pleadings do not

amount to proof. As stated *supra*, the payment of a major chunk of the

alleged sale consideration as advance by the plaintiff may show his

readiness, but there is no evidence available on record to prove his willing

to perform his part of the contract within the stipulated time period *i.e.*, on

or before July 19, 2010. It is settled law that even in the absence of

specific plea by the opposite party, in view of Section 16 (c) of the

Specific Relief Act, 1963, the plaintiff has to prove his readiness and

willingness to perform his part of the contract. The plaintiff is bound to

prove his readiness and willingness during the stipulated period of

performance till the conclusion of trial but in this case Ex-A.2 – Notice

issued quite long after the lapse of period of performance cannot be

termed to show his readiness and willingness during the period of

performance. Hence, the plaint pleadings, Ex-A.2, as well as payment of

Rs.9,00,000/- as advance does not prove the readiness and willingness of

the plaintiff. Thus Section 16 (c) of the Specific Relief Act, 1963 is not

complied with by the plaintiff. Substantial Questions of Law No.2 is



answered accordingly.

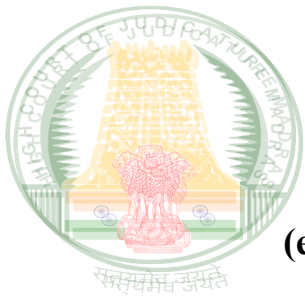
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**21.** The rulings relied on by the plaintiff are distinguishable from the case on hand on facts and hence not applicable.

**CONCLUSION:**

**22.** Resultantly, the Second Appeal stands partly-allowed and the Judgment and Decree of the First Appellate Court is modified as hereunder:

- (a) The Suit is dismissed *qua* the relief of specific performance and decreed for return of money;
- (b) The defendants are directed to pay a sum of Rs.9,30,000/- along with 12% interest per annum from the date of Suit *i.e.*, March 10, 2011, till the date of realisation to the plaintiff;
- (c) A charge is created on the Suit Property for due payment of the aforesaid amount and interest;
- (d) The defendants shall pay the costs incurred by the plaintiff for the Original Suit before the Trial Court;



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- (e) The plaintiff is entitled to get refund of money deposited by him pursuant to the Trial Court's Judgment and Decree along with interest accrued thereon, if any.

**22.1.** Keeping in mind the facts and circumstances of the case, there shall be no order as to costs for this Second Appeal.

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Index : Yes

Speaking Order : Yes

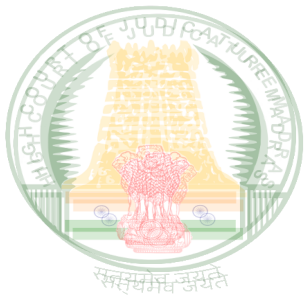
Neutral Citation : Yes

TK

To

1.The Additional District and Sessions Judge  
Hosur.

2.The Subordinate Judge  
Hosur.



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**R. SAKTHIVEL, J.**

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**PRE-DELIVERY JUDGMENT MADE IN**  
**S.A.NO.905 OF 2017**

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