



WEB COPY

AS No. 1073 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-07-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

A.S.No.1073 of 2012

N.Suresh
S/o.A.Natesan
Door No.30 Madhavi Street,
Teachers Colon, Erode

..Appellant(s)

Vs

1. Meenakumari (died)
W/o Late Narendra Kumar Door No.12
Ganapathi Extension Karungalpalayam Erode
and Shanthi Gems, 310, Pancharatna Building,
Opera House, Mumbai – 400 004.
2. C.Sharavankumar
S/o Late Champalai Rathod
New No.15 Balu 1st Street Chennai 600 021
3. L.Arumugam (died)
S/o.Lakshmana Mudaliar
Door No.278 Palaniandavar Koil Street
Bhavani
4. N.Gnanasekar
S/o L.Natarajan
29 Periyamariamman Koil Street
B.Komarapalayam Namakkal District
5. Kamalam
W/o Arumugam,
No.278, Palaniandavar Kovil Street,
Bhavani Taluk, Erode 638301



6. Sangeetha
D/o Arumugam,
No.19, Slalighter House Street,
Gobichettipalayam, Erode 638452

7. Sankar
S/o Arumugam,
No.229A, Upstair, Annana Nagar 5th street,
Varnapuram, Bhavani, Erode 638301

..Respondent(s)

Appellant is exempted from bringing on record the legal representatives of the first respondent, since she remained ex parte before the trial court vide order dated 19.07.2023 passed in CMP.No.15994 of 2023 in AS.No.1075 of 2012.

R3 died, R5 to R7 brought on record as legal heirs of R3 vide order 03.12.2024 passed in CMP.Nos.20388, 20397 and 20398 of 2023 in AS.No.1073 of 2012.

First Appeal filed under Section 96 CPC against the judgment and decree dated 29.02.2012 passed in O.S.No.194 of 2011 on the file of the Principal District Court, Erode.

For Appellant(s): Mr.Ganesh Ranganathan
for Mr.R.Karthikeyan

For R4: Mrs.Zeenath begum

JUDGMENT
(delivered by M.Jothiraman J.)

Unsuccessful plaintiff has preferred the present appeal against the judgment and decree dated 29.02.2012 passed in O.S.No.194 of 2011 on the file of the Principal District Court, Erode.



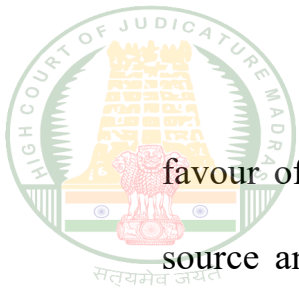
2. The suit is filed for specific performance and also seeking alternative relief of refund of advance amount.

WEB COPY

3. The parties are hereinafter referred to as per their rankings in the trial Court.

4. The brief case of the plaintiff is as follows:

4.1 The plaintiff entered into a sale agreement with the first defendant on 31.05.2011 for a total sale consideration of Rs.55,00,000/- and paid a sum of Rs.5,00,000/- as an advance. The time for completion of sale was fixed till 01.09.2011. The second defendant, who is the brother-in-law of the first defendant, signed as a witness in the sale agreement along with another witness Karthikeyan. Since the first defendant appointed the second defendant as her power agent *vide* registered Doc.No.829/2011 dated 21.06.2011, in pursuance thereof, the second defendant, received a sum of Rs.10,00,000/- from the plaintiff on 25.06.2011 and made an endorsement in the sale agreement. In all, the plaintiff paid a sum of Rs.15,00,000/- and the balance sum of Rs.40,00,000/- has to be paid. The plaintiff was ready and willing to perform his part of the contract. While so, the second defendant acting as the agent of the first defendant demanded payments from the plaintiff over and above the sale agreement. Therefore, the plaintiff was constrained to give a public notice in “Dina Malar” daily on 17.07.2011 setting forth the existence of the sale agreement. However, the defendants 1 and 2 created vexatious documents in

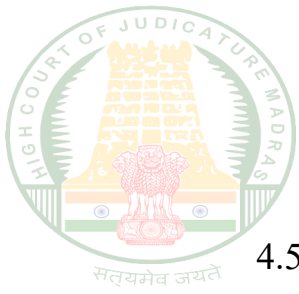


favour of their trusted men viz. defendants 3 and 4. The plaintiff has enough source and wherewithal for fiscal commitment under the sale agreement suit property under the sale agreement. Hence, the suit.

4.2 The defendants 1, 3 and 4 appeared through their Advocates, but, subsequently, they remained absent and therefore, they were set *ex parte* before the trial Court.

4.3 The plaintiff examined himself as PW1 and Exs.A1 to A3 were marked. There was no oral and documentary evidence on the side of the defendants.

4.4 Upon appreciation of the oral and documentary evidence adduced on the side of the plaintiff, the Court below negated the relief of specific performance and allowed the suit to the extent of directing the defendants to pay the sum of Rs.15,25,479/- together with interest at the rate of 12% per annum on Rs.15,00,000/- from the date of suit till the date of decree and thereafter, 6% per annum till the date of realisation. The Court below also found that the plaintiff has not deposited the balance sale consideration of Rs.40,00,000/- in the Court to show his readiness and willingness and therefore, it cannot be stated that the plaintiff was always ready and willing to perform his part of the contract.



4.5 Aggrieved over the dismissal of the suit in respect of the relief of specific performance, the plaintiff has preferred the present appeal.

5. The learned counsel appearing for the appellant/plaintiff made the following submissions:

- (a) The suit was filed within the time and also, the plaintiff has paid the substantial part of the sale consideration.
- (b) It is not a condition precedent under the Specific Relief Act, 1963, to deposit the sale consideration to file a suit for the relief of specific performance and unless the Court directs the deposit of sale consideration.
- (c) The second defendant, as a power agent, sold the property even before the date prescribed in the sale agreement and the suit itself was filed on 08.08.2011, when the plaintiff had time to make the entire sale consideration on or before 01.09.2011.
- (d) The Court below, after having found that the plaintiff had paid the advance amount to the tune of Rs.15,00,000/-, had erroneously held that the plaintiff did not deposit the balance sale consideration and therefore, the plaintiff was not ready and willing to perform his part of the contract is unsustainable in law and prays to allow this appeal.

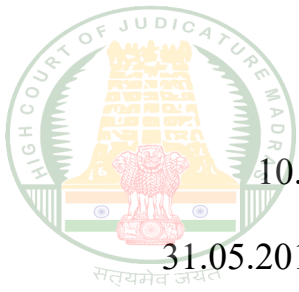


6. The learned counsel appearing for the fourth respondent would submit that the fourth respondent is a *bona fide* purchaser and purchased the property with valid sale consideration.

7. We have considered the submissions made on either side and perused the records.

8. According to the plaintiff, the suit properties are the exclusive property of the first defendant, who intended to sell the same. Accordingly, the plaintiff entered into the sale agreement with the first defendant on 31.05.2011 under Ex.A1 for a sum of Rs.55,00,000/- and paid a sum of Rs.5,00,000/- towards advance and the sale to be executed on or before 01.09.2011.

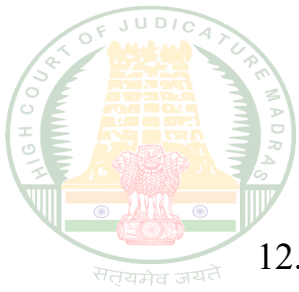
9. Further, according to the plaintiff, the first defendant appointed the second defendant as her power agent, who received a sum of Rs.10,00,000/- on 25.06.2011 towards another part of the sale consideration, for which, she has made an endorsement in the said agreement. When the second defendant insisted for more money, the plaintiff caused paper publication under Ex.A3 dated 17.07.2011. Further, according to the plaintiff, the defendants have colluded together in order to defeat the rights of the plaintiff, executed three sale deeds in favour of the defendants 3 and 4.



10. On perusal of the recitals of the sale agreement (Ex.A1) dated 31.05.2011 with regard to the suit schedule property, shows that the total sale consideration is fixed at Rs.55,00,000/- and advance amount of Rs.5,00,000/-.

The suit property was mortgaged with Rajasthan Bank to the tune of Rs.43,00,000/- is also mentioned in the sale agreement (Ex.A1). It is also stated in the sale agreement (Ex.A1) that the plaintiff has to pay the aforesaid Rs.43,00,000/- to the aforesaid bank before 01.09.2011. The power of attorney deed (Ex.A2) is executed by the first defendant in favour of the second defendant, pursuant to which, the second defendant received another part of the sale consideration of Rs.10,00,000/-, for which, she made an endorsement in the first page of the sale agreement (Ex.A1).

11. It is pertinent to mention that in the sale agreement (Ex.A1), there is a specific recital that the plaintiff has to pay the amount of Rs.43,00,000/- to Rajasthan Bank, Erode, on or before 01.09.2011. However, the plaintiff has not produced any document to show that he has taken the steps to pay the balance sale consideration of Rs.43,00,000/- with regard to the mortgage with Rajasthan Bank, Erode. Similarly, he has not placed any document to show that he was having sufficient means to pay the balance sale consideration at the relevant period. This conduct of the plaintiff clearly shows that he was never ready and willing to perform his part of the contract at any point of time.



WEB COPY

12. At this juncture, it is relevant to refer the judgment of the Hon'ble Supreme Court in ***R.Shama Naik Vs. G.Srinivasiah*** reported in **2024 INSC 927**, wherein, it has been held as follows:

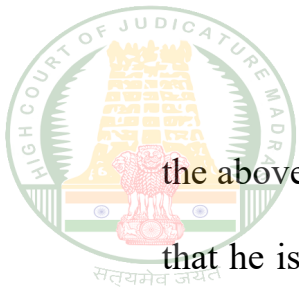
“9. There is a legion of precedents on the subject of readiness and willingness.

10. The law is well settled. The plaintiff is obliged not only to make specific statement and averments in the plaint but is also obliged to adduce necessary oral and documentary evidence to show the availability of funds to make payment in terms of the contract in time.

11. There is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance.

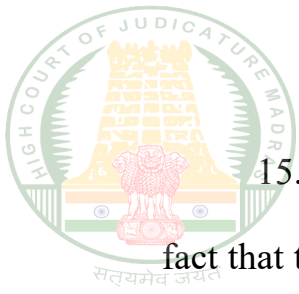
12. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff.”

13. By applying the ratio laid down in the above judgment, in the case on hand, there is a condition fixed in the sale agreement (Ex.A1) that the plaintiff has to pay the amount of Rs.43,00,000/- towards the mortgage of the property with Rajasthan Bank, Erode, on or before 01.09.2011. However, the plaintiff has not chosen to mark any document or examined any witness to show that he had taken steps to pay the said balance amount to the bank. In light of



the above discussions, we are of the view of that the plaintiff has failed to prove that he is always ready and willing to perform his part of the contract from the date of the sale agreement (Ex.A1) entered into with the first defendant. On appreciation of the evidence of PW1 along with Exs.A1 to A3, the Court below has rightly held that the plaintiff is not entitled to the relief of specific performance and the plaintiff is entitled to the alternative relief of refund of the advance amount along with costs. We find no infirmity in the judgment and decree passed by the Court below.

14. It is to be noted that the sale agreement (Ex.A1) was entered into between the parties on 31.05.2011 and on the same day, the advance amount of Rs.5,00,000/- was paid by the plaintiff and further, a sum of Rs.10,00,000/- was received by the second defendant towards advance on 25.06.2011 from the plaintiff, pursuant to the power of attorney executed by the first defendant in Ex.A2. In all, the plaintiff parted with the sum of Rs.15,00,000/- as advance amount towards sale agreement and the suit came to be filed on 08.08.2011. The learned counsel appearing for the appellant would submit that the interest rate awarded by the Court below may be enhanced, since the suit came to be filed within three months from the date of sale agreement in Ex.A1 and substantial amount of Rs.15,00,000/- already been paid. The suit property is also sold by the first defendant.



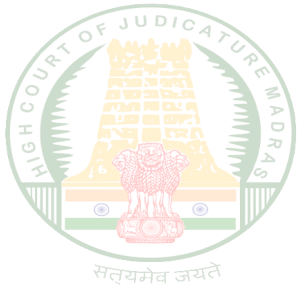
15. Considering the facts of the present case and also considering the fact that the contesting first defendant did not choose to defend his case, despite engaging the counsel before the trial Court, this Court is inclined to modify the rate of interest alone.

16. In the result:

- i. This first appeal is dismissed by confirming the judgment and decree dated 29.02.2012 passed in O.S.No.194 of 2011 on the file of the Principal District Court, Erode.
- ii. The defendants are directed to pay a sum of Rs.15,25,479/- together with interest at the rate of 9.5% per annum on Rs.15,00,000/- from the date of the suit till the date of decree and thereafter, 6% per annum till the date of realisation.
- iii. All other aspects of the judgment and decree of the Court below stands confirmed.

(N.S.K.,J.) (M.J.R.,J.)
06-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
nsd



WEB COPY

To

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



WEB COPY

AS No. 1073 of 2



**N.SATHISH KUMAR J.
AND
M.JOTHIRAMAN J.**

nsd

AS No. 1073 of 2012

06-07-2026