



SA No. 618 of 2008

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-07-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 618 of 2008

1. Jeeva Rekha (died)
W/o. Dr M Balaramalingam,
Proprietrix, Rama Rekha Finance,
903, Big Bazaar Street,
Coimbatore 641 001.
2. M.Balaramalingam
S/o.Late.R.K.Mannar
residing at D.No.25(Old No.42), Cowley Brown
Road, R.S.Puram, Coimbatore - 641 0002
3. B.Arul Karthik
S/o.M.Balaramalingam , residing at
D.No.25(Old No.42), Cowley Brown Road,
R.S.Puram, Coimbatore - 641 0002
4. B.Koushik
S/o.M.Balaramalingam, residing at
D.No.25(Old No.42), Cowley Brown Road,
R.S.Puram, Coimbatore - 641 0002 ..

[Sole appellant died, A2 to A4 brought on
record as legal heirs of the deceased sole
appellant vide court order dated 26/07/2022
made in C.M.P.Nos. 12013 of 2022 in
S.A.No. 618 of 2008 by CVKJ]

..Appellant(s)

Vs

1. Savithri Ammal (died)
W/o. Late Narayanasamy,
170 LMS Street, Pappanaickenpalayam
Coimbatore.



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2. Vijayalakshmi
D/o.Late. Narayanasamy,
No.4/170, LMS Street, Pappanaickenpalayam,
Coimbatore.
3. N.Renukadevi
D/o.Late. Narayanasamy,
No.4/170, LMS Street, Pappanaickenpalayam,
Coimbatore.
4. V.Sagunthalai
W/o.Late. SampathKumar,
No.4/170, LMS Street, Pappanaickenpalayam,
Coimbatore.
5. S.Rashmitha
D/o.Late. SampathKumar, Res at No.4/170,
LMS Street, Pappanaickenpalayam,
Coimbatore.
[Sole respondent died, Respondents 2 to 5 are
brought on record as legal heirs of the
deceased sole respondent vide court order
dated 02/12/2025 made in
CMP.Nos.26174,26175 and 26176 of 2025 in
S.A.No.618 of 2008(VLNJ)]

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code as against the Judgment and Decree dated 29.11.2005 made in A.S.No.60 of 2005 on the file of the Court of the First Additional District Judge, Coimbatore setting aside the Judgment and Decree dated 28.06.2004 made in O.S.No.278 of 2002 on the file of the Court of the III Additional Subordinate Judge, Coimbatore.



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For Appellant(s):

Mr.T.M.Naveen for
Ms.D.Kamatchi

For Respondent(s):

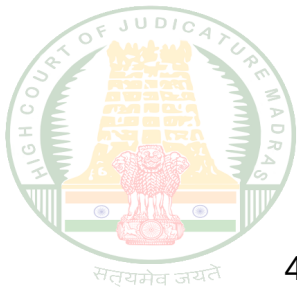
R1 – died
Ms.R.Pushpalatha for R2 to R5

JUDGMENT

This Second Appeal has been preferred as against the Decree and Judgment passed by the First Appellate Court in A.S.No.60 of 2005 dated 29.11.2005.

2. The appellants 2 to 4 are the legal heirs of the first appellant / plaintiff and the respondents 2 to 5 are the legal heirs of the first respondent/defendant. For the sake of convenience and brevity, the parties herein are referred as plaintiff and defendant as referred before the trial court.

3. The plaintiff filed a suit for Specific Performance of Contract as against the defendant and the said suit was decreed. Aggrieved by the said Decree and Judgment, the unsuccessful defendant has preferred First Appeal before the First Additional District Judge, Coimbatore and the same was allowed and the Decree and Judgment passed by the trial court was set aside and the suit filed by the plaintiff was dismissed. As against the same, the present Second Appeal has been preferred.



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4. The case of the plaintiff is that originally, the suit property belonged to the defendant and the plaintiff and defendant had entered into registered agreement on 15.06.1998 for sale of the suit property and the sale price was fixed at Rs.4,00,000 (Rupees four lakhs only) and a sum of Rs.2,50,000/- [Rupees two lakhs and fifty thousand only] was paid on the same day and the remaining amount of Rs.1,50,000/- has to be paid within one year from the date of agreement, thereafter when the plaintiff approached the defendant for obtaining sale deed in her favour, the defendant evaded from executing the sale deed and thereby the plaintiff waited at the Registrar Office on 10.05.1999 with the balance sale price, but the defendant had not turned up. However, on 11.05.1999, the defendant, approached the plaintiff and stated that due to her illness, she was unable to be present on that date and she would execute sale deed in the second week of May, 1999, but she failed to execute sale deed. On 17.12.1999, the plaintiff issued legal notice calling upon the defendant to execute the sale deed on receipt of balance of sale consideration, after receipt of notice, the defendant met the plaintiff in-person on 24.02.1999 and gave a letter requesting time till 31.03.2000. Accordingly, the plaintiff also agreed for that, thereafter, on 31.03.2000, when the plaintiff approached the defendant, she failed to execute the sale deed, thereby she once again issued notice dated 27.09.2001 and the same was returned 'unclaimed'. The plaintiff was always ready and willing to perform her part of



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contract, but the defendant evaded from executing sale deed, thereby filed the suit.

5. The case of the defendant is that the plaintiff is a Financier by profession and the defendant borrowed a sum of Rs.2,50,000/- [Rupees Two Lakhs Fifty Thousand only] from the plaintiff on 15.06.1998 and agreed to pay the interest at the rate of 18% per annum and executed promissory note in favour of the plaintiff. At the time of lending loan, the plaintiff received signed blank promissory notes and also demanded mortgage deed. Since the defendant is a very age old woman, more than 70 years, she believed that the plaintiff obtained mortgage deed and thereafter she came to know that instead of getting mortgage deed, she obtained this agreement. The plaintiff never approached the defendant for sale of the property and only for the loan purpose, the defendant executed the mortgage deed, therefore, the plaintiff misused the signature of the defendant obtained in the blank papers, therefore, prayed for dismissal of the suit.

6. Based on the above said pleadings and after hearing both sides, the trial court has framed the following issues for trial:-

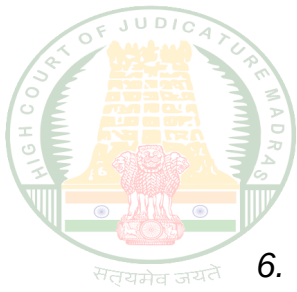
- “1. Whether the suit agreement is a valid document?*
- 2. Whether the plaintiff is entitled for decree for specific performance of contract from the defendant.*
- 3. To what relief, the plaintiff is entitled to?”*



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In order to prove the case before the trial court, on the side of the plaintiff, she was examined as P.W.1 and marked Exhibits A.1 to A.12. On the side of the defendant, she was examined as D.W.1 and no documents have been marked. The trial court, after considering the evidences adduced on both sides, decreed the suit by granting Specific Performance to the plaintiff. Aggrieved by the said decree and judgment, the defendant has preferred the First Appeal on various grounds. The First Appellate Court has framed the following points for determination in the First appeal:-

- "1. Whether the trial court is right in deciding that the execution of the sale deed is proved mainly on the basis of the evidence of P.W.1?*
- 2. Whether the trial court is right in casting the burden on the defendant to prove the execution of the sale deed?*
- 3. Whether the trial court has failed to see that having regard to the old age and illiteracy of the defendant, the burden is on the plaintiff to prove that the document is signed by the defendant after learning the nature and contents of the same?*
- 4. Whether the trial court has failed to see that the plaintiff has to, before obtaining the relief of specific performance, prove the genuineness of the agreement through the examination of at least one of the witnesses to the execution thereof?*
- 5. Whether the trial court has failed to see that the plaintiff has failed to prove his readiness and willingness to perform his part of the contract by paying the balance sale consideration in time?*



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6. *Whether the trial court has failed to consider the delay on the part of the plaintiff in issuing the so called legal notice and in approaching the court while deciding the plea of his readiness and willingness?*

7. *Whether the judgment and decree of the trial court is legally and factually sustainable?*

8. *To what any other relief?*

After hearing both sides and perusing the records, the First Appellate Court allowed the appeal by setting aside the decree and Judgment passed by the trial court and dismissed the suit filed by the plaintiff. Aggrieved by the said decree and judgment of the First Appellate Court, the present Second Appeal has been preferred.

7. This Court, at the time of admitting the present Second Appeal, has formulated the following Substantial Questions of Law:-

“1. When the respondent herself had admitted in her evidence as D.W.1 that she had received Ex.A.2 notice and the appellant has also produced Ex.A.11, postal, A.D.Card and proved that Ex.A.2 was duly received by her, given finding and set aside the decree made in the suit and such mistake had not vitiated its findings and judgment them perverse?



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2. *Whether in view of Article 54 of the Limitation Act, the appellant is not entitled to file the suit for specific performance of Ex.A.1 within 3 years from the date fixed for its performance and consequently, was the court below right in ignoring Article 54 and holding that she has not filed the suit within a reasonable time after the date fixed for performance of Ex.A.1 and hence, it is unsustainable?*

3. *When the respondent herself has admitted as D.W.1 that her son sampath kumar had given instructions to the advocate, prepared the written statement and her chief examination proof affidavit and filed in the suit and she has not read the same and not aware of its contents, can the defences raised in therein to the suit be taken as raised by her, relied upon the decree made in the suit set aside?*

4. *Whether the engrossing sale deed in stamp papers and marking the same as an exhibit in a suit for specific performance is a essential to prove the readiness and willingness of the plaintiff to perform her part of the sale agreement and the mere failure to do so alone would lead to a contrary inference and denial of the relief?*

5. *Whether the respondent can adduce oral evidence, that too only her interested oral evidence as D.W.1 to contradict and deny the written recitals contained in Ex.A.1 viz., A registered document?*

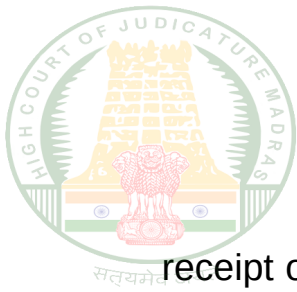


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6. *Whether the respondent's son, who has given instructions, prepared written statement and proof affidavit, filed in the suit and conducting the proceedings, is not a material witness and his non-examination on her side without any explanation, would not lead to an adverse inference against her and rejection of the defence raised by him on her behalf?*

8. The learned counsel appearing for the appellants would submit that the 1st respondent being the owner of the suit property entered into agreement for sale of the suit property with the 1st appellant and sale price fixed at Rs.4,00,000/- On the date of agreement, viz., 15.06.1998 itself paid Rs.2,50,000/- as advance of sale price and remaining Rs.1,50,000/- to be paid within one year. Thereafter, when the 1st appellant approached the 1st respondent, she evaded from executing sale deed. The 1st appellant was always ready and willing to perform his part of contract, however, the 1st respondent was not ready to execute sale deed. Hence she filed the suit before the trial court and they examined P.W.1 and marked Exhibits A.1 to A.12. The P.W.1 has deposed about the execution of agreement and receipt of advance money and readiness and willingness. The defendant also admitted the



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receipt of money and execution of document, but only denied the nature of document and according to the defendant, the document is only mortgage deed. Once the defendant admitted the document, she has to prove that the said document was not executed for sale of property and only as mortgage deed, but she failed to prove the same, thereby the trial court after considering the evidences on both sides decreed the suit, however, the First Appellate Court erroneously dismissed the suit on the ground that the plaintiff failed to prove readiness and willingness. In fact, the plaintiff clearly proved his readiness and willingness. Therefore, the Judgment and decree of the First Appellate Court are liable to be set aside and the Judgment and Decree of the trial court are to be restored.

9. The learned counsel appearing for the respondent would submit that the 1st respondent / defendant had borrowed money from the 1st appellant / plaintiff to the tune of Rs.2,50,000/- [Rupees Two Lakhs Fifty thousand only] for that she had executed promissory note signed in blank papers and also executed mortgage deed. At the time of obtaining mortgage deed, the plaintiff got sale agreement instead of mortgage deed. The 1st respondent / defendant was illiterate lady and aged about



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70 years, taking advantage of the same, the plaintiff misused the documents. Even before the trial court the plaintiff failed to prove their readiness and willingness, but the trial court decreed the suit. However, the First Appellate Court correctly applied the Law and came to a fair conclusion that the plaintiff failed to prove her readiness and willingness to perform her part of contract. Though one year time was fixed to complete the sale, no steps were taken to get sale deed within time and belatedly issued notice and also filed the suit at the fag end of limitation period, therefore, the First Appellate Court correctly set aside the Decree and Judgment of the trial Court and no substantial questions of law is involved in this case, therefore, the Second Appeal is liable to be dismissed.

10. Heard the learned counsel appearing for the appellants 2 to 4 and the learned counsel appearing for the respondents 2 to 5 and perused the entire documents placed on record.

11. In this case, it is an admitted fact that the plaintiff has paid the money to the tune of Rs.2,50,000/- [Rupees Two Lakhs and Fifty Thousand only] to the defendant and the defendant also received the said money.



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According to the plaintiff, the said money was paid towards the sale of the property, which belongs to the defendant. The plaintiff and the defendant entered into an agreement for sale of the property and the sale price was fixed at Rs.4,00,000/- and Rs.2,50,000/- was paid as advance and time fixed for completion of sale deed is, one year from the date of agreement. The defendant denied the execution of sale agreement and according to the defendant, she borrowed the money to the tune of Rs.2,50,000/- [Rupees Two Lakhs and Fifty thousand only] and agreed to repay the said money with interest at the rate of 18% per annum, for that, she also executed promissory note in favour of the plaintiff. The plaintiff also insisted to execute mortgage deed for the said money, she also executed mortgage deed, instead of mortgage deed, plaintiff obtained sale agreement, therefore, the execution of agreement itself is denied by the defendant, however, admitted the signatures and only denied the nature of document, thereby the defendant has to prove that the sale agreement was executed only for loan purpose and not for the sale of the property.

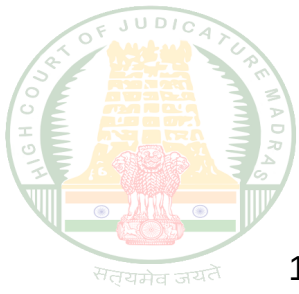
12. It is also an admitted fact that the plaintiff is an illiterate, aged about 75 years, while so, it is the duty of the plaintiff to establish that the defendant was aware about the execution of sale agreement and the content of the agreement have been read over to the defendant, but there is no pleadings and evidence to that regard. On the side of the plaintiff, P.W.1 was examined



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and no any other witnesses have been examined. The plaintiff failed to examine the witnesses in the agreement to establish that the contents of the documents have been explained to the defendant, who is an illiterate. Though the plaintiff stated that the defendant's son was also present, at the time of execution of deed, that itself is not sufficient to prove the execution of sale agreement. Even assuming that the agreement was executed, the plaintiff failed to prove the readiness and willingness, which is material point for grant of decree for Specific Performance of Contract.

13. Though the alleged agreement has been executed on 15.06.1998 and substantial portion of amount was paid on the same day, for the remaining amount of Rs.1,50,000/-, time was fixed for a period of one year, however, within one year, no steps have been taken by the plaintiff to get sale deed in her favour. Further, no notice have been issued immediately after expiry of the one year time, which was fixed through the agreement. The notice was issued after six months from the date of expiry of the agreement on 07.12.1999 and thereafter, immediately, the plaintiff has not taken any steps to file the suit for Specific Performance of Contract, but the suit has been filed only on 17.01.2002. There is an inordinate delay, in sending notice and filing case and it shows that the plaintiff was not always ready and willing to perform her part of contract.



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14. As far as specific performance is concerned, the plaintiff has to plead and prove the readiness and willingness, but in this case, the readiness and willingness has not been proved by the plaintiff. This aspect was well considered by the First Appellate Court. The trial court, granted decree by overlooking the fact that the plaintiff has failed to prove the readiness and willingness. However, the First Appellate Court, after elaborate discussions, came to a fair conclusion that the plaintiff failed to prove the readiness and willingness and filed the suit at the verge of the expiry of the period of limitation. Therefore, allowed the Appeal by reversing the findings of the trial Court. Further, the First Appellate Court came to a conclusion that the plaintiff was not ready and willing to perform his part of contract and also observed that the plaintiff failed to prove that he purchased stamp papers and was ready for getting sale deed in her favour, however, not dismissed the suit on the sole ground, but there are other grounds for coming to a conclusion that the plaintiff was not always ready and willing to perform his part of contract.

15. As far as Substantial Questions of Law that admission made by D.W.1 in respect of Ex.A.2, notice is concerned, the same was issued only after a period of time fixed in the agreement, the date of agreement is 15.06.1998 and one year time was granted and the time will lapse on

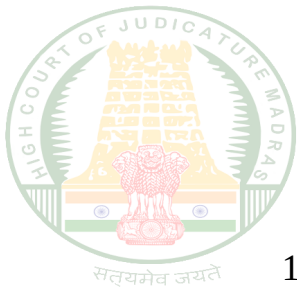


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14.06.1999. Further, notice was issued on 17.12.1999, this was not considered by the trial Court, therefore, the First Appellate Court, after considering the evidences adduced on both sides, correctly rendered findings and the same is not perverse.

16. As far as limitation is concerned, as per Article 54 of the Limitation Act, the appellant is entitled to file a suit for specific performance within three years from the date fixed on its performance, but the First Appellate Court has not dismissed the suit on the ground of limitation and the First Appellate Court rendered findings that though the agreement was executed on 15.06.1998, notice has been issued belatedly and again, second notice was issued in the year 2001 and the suit has been filed at the verge of limitation period. Therefore, the findings of the First Appellate Court are sustainable.

17. As far as admission made by the defendant that her son had given instructions to the advocate to prepare written statement and proof affidavit and she has not read the same and not aware of its contents is concerned, the First Appellate Court has not set aside the decree and Judgment of the trial court based on the evidence of D.W.1 and per contra, the decree and judgment of the trial court was set aside on the ground that the plaintiff has failed to prove readiness and willingness.

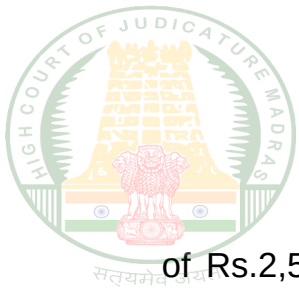


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18. As far as the oral evidence adduced by D.W.1 as against the written statement recitals of Ex.A.1 is concerned, according to the defendant, she is an illiterate, aged about 75 years and the very execution of sale agreement is denied by the plaintiff, while so, the contents of the agreement have to be explained to the defendant and it is the duty of the plaintiff to explain about the contents of the document, but there is no evidence that the defendant was explained about the recital of the document and further, the First Appellate Court has not decided the case based on the oral evidence of D.W.1. Per contra, the First Appellate Court came to the conclusion that the plaintiff has failed to prove the readiness and willingness.

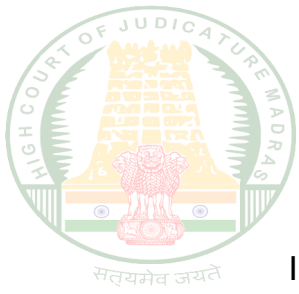
19. As far as non-examination of son of the defendant in respect of preparation of written statement and proof affidavit are concerned, the appellate court has not reversed the findings of the trial court on the strength of the evidence of D.W.1, per contra, the appellate court came to a conclusion based on the fact that readiness and willingness have not been proved by the plaintiff, therefore, the non-examination of defendant's son, is not fatal to the case, therefore, the First Appellate Court has come to a fair conclusion based on the oral and documentary evidences in respect of specific performance of contract. However, the defendant herself admitted that the receipt of amount



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of Rs.2,50,000/- (Rupees two lakhs fifty thousand only), though the plaintiff stated that the said amount was paid for advance of sale consideration, the defendant, denied and according to the defendant, she borrowed the said money as loan for interest and the agreed interest was 18%, therefore, under the Law of Equity, the plaintiff is entitled to decree for the above said money paid by the plaintiff, as the defendant herself has admitted that she borrowed money as loan for interest.

20. It is true that as far as return of advance amount is concerned, the plaintiff has to specifically seek prayer and if prayer is not pleaded, then, she has to amend the prayer, but in this case, the defendant herself admitted that it is a money transaction. As per law laid down by the **Hon'ble Supreme Court in AIR 1951 SC 177 [Firm Srinivas Ram Kumar Vs. Mahabir Prasad and Others]**, the Court can grant money decree under equity based on the admission made by the other side, therefore, under the equity, instead of filing fresh suit for recovery of money, as per the admission made by the defendant, this Court can pass money decree as against the defendant, therefore, this Court is inclined to pass money decree by directing the defendant to pay a sum of Rs.2,50,000/- [Rupees two lakhs and fifty thousand only] with interest at the rate of 18% per annum from the date of agreement till the realisation of the amount. Accordingly the money decree is passed.



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In the result, the Second Appeal is partly allowed. The Decree and Judgment passed by the First Appellate Court in respect of specific performance is confirmed, however, the defendant is directed to pay a sum of Rs.2,50,000/- (Rupees Two lakhs and Fifty thousand only] to the plaintiff with interest at the rate of 18% per annum from the date of agreement till the date of realisation of amount. No costs.

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Index: Yes/No

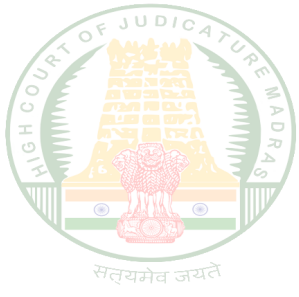
Speaking/Non-speaking order

Neutral Citation: Yes/No

ssd

To

1. The First Additional District Judge,
Coimbatore
2. The III Additional Subordinate Judge,
Coimbatore.



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P.DHANABAL, J.

ssd

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