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A.S. No. 639 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2026
PRONOUNCED ON : 28.07.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S. No. 639 of 2018
and
C.M.P. No. 17125 of 2018

1. Devaraj (died), S/o. Natesa Pillai, No.7, Kumarappa Lane,
Nungambakkam, Chennai - 600 034.

2. D. Mala, W/o. Late Devaraj

3. D. Manikandan, S/o. Late Devaraj

4. D. Hariharan, S/o. Late Devaraj

5. H. Saraswathi, D/o. Late Devaraj

2 to 5 are residing at

No.7, Kumarappa lane,

Nungambakkam,

Chennai – 600 034.

(Appellants 2 to 5 brought on record as the legal representatives of the deceased sole appellant by order dated 22.01.2020 in C.M.P. No. 34 of 2020 in A.S. No. 639 of 2018)

... Appellants / Plaintiffs

Versus

V. Suguna, W/o. Venugopal,
No.56/80, 1st Pillaiyar Koil Street,
Chrompet, Chennai - 600 044.

... Respondent / Defendant

Prayer in A.S.: Appeal Suit filed under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure, 1908, to set aside the judgment and decree



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passed in O.S. No. 508 of 2014 dated 08.11.2017 on the file of the IV Additional Judge, City Civil Court at Chennai.

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Prayer in C.M.P.: Civil Miscellaneous Petition filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, to grant an order of injunction restrainning the respondents or her men or the person from alienating or encumbering the suit property, which is the subject matter in O.S. No. 508 of 2014 on the file of the IV Additional Judge, City Civil Court, Chennai morefully described below in the schedule pending disposal of the appeal.

For Appellants : Mr V. Manohar

For Respondent : Mr S. Udaya Kumar

J U D G M E N T

This first appeal is directed against the judgment and decree of the IV Additional Judge, City Civil Court at Chennai, dated 08.11.2017, in O.S. No. 508 of 2014, whereby the trial court declined the relief of specific performance but granted the alternative relief of refund of Rs.14,50,000/- paid by the plaintiff under the agreement. Dissatisfied with the refusal of specific performance, the plaintiff has preferred this appeal. During the pendency of the appeal, the sole appellant died, and his legal representatives, appellants 2 to 5, were brought on record.

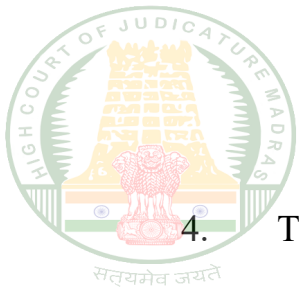


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2. For convenience, the parties are referred to by their rank before the trial court, that is, the appellants as the plaintiff and the respondent as the defendant.

3. The plaintiff's case is that the suit property is a 1/5th share in a property measuring about 3006 square feet, in R.S. No. 244/3, Nungambakkam Village, bearing door No. 6, Kumarappa Lane, Nungambakkam, Chennai. According to the plaintiff, this property formed part of a larger extent of 6006 square feet that originally belonged to the Sri Adapallee Kandasamy Chetty & Cinna Venkata Subbu Guruvajamma Charities and was conveyed to the late L. Srinivasan through proceedings in Ejectment Suit No. 169 of 1968 under Section 9 of the City Tenants Protection Act. After the said purchase, Srinivasan sold a portion of about 3000 square feet to the plaintiff for valuable consideration. The legal heirs of the late Srinivasan, namely S. Selva Arasu, S. Udayakumar, S. Sampathkumar, S. Mahalingam and Smt. Suguna, are stated to have expressed their intention to sell the remaining extent of about 3,006 sq. ft. to the plaintiff or his spouse for a fixed consideration.



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4. The defendant is one of the legal heirs of Srinivasan, who offered to sell her 1/5th share by an agreement of sale dated 05.04.2009 for a total consideration of Rs.20,00,000/-. The plaintiff's case is that he paid Rs.13,00,000/- on the date of the agreement and a further sum of Rs.1,50,000/- on 09.07.2009, thus paying Rs.14,50,000/- in all, and that the balance of the agreed consideration was to be paid at the time of registration, the sale being agreed to be completed within three months. It was further alleged that, even thereafter, the defendant and the other family members periodically received additional amounts from the plaintiff on the assurance that the sale transaction would be completed after securing the participation and consent of all the co-owners. According to the plaintiff, the entire agreed consideration, and even amounts in excess thereof, had ultimately been received by the defendant, though only a part of such payments was formally accounted for.

5. According to the plaintiff, the defendant thereafter avoided execution of the sale deed, protracted the matter, and was negotiating to sell the property to a third party. The plaintiff lodged a complaint with the Commissioner of Police, Vepery, dated 13.11.2013. As the defendant did not co-operate and refused to execute the sale deed, the suit was filed. The



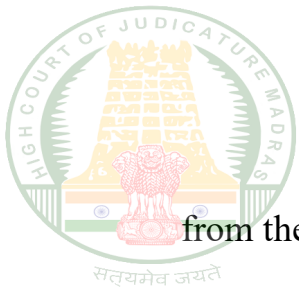
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plaintiff further pleaded that the late L. Srinivasan had executed a registered

Will bequeathing the property to his children, subject to the life interest of his wife, Padmavathi. Upon her death, the defendant and the other beneficiaries became entitled to their respective shares. Although the Will and the need for probate were not initially disclosed, the plaintiff contended that the Will did not impede the sale, as the life estate had already come to an end.

6. The plaintiff pleaded that he was always ready and willing to perform his part of the agreement, and that the delay was solely due to the defendant's conduct. He accordingly prayed for specific performance, directing the execution of the sale deed in his favour or in favour of his nominee.

7. Before the trial court, the defendant did not file a written statement and was set ex parte on 14.07.2014. She thereafter filed I.A. No. 19188 of 2014 to set aside the ex parte order, but that application was dismissed for default on 10.03.2015. She then filed I.A. Nos. 17711 and 17712 of 2015, along with a written statement, to condone the delay and to restore I.A. No. 19188 of 2014; these too were dismissed on 24.10.2017 for non-compliance of the conditional order. The suit therefore proceeded without a written statement



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from the defendant.

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8. On the plaintiff's side, the plaintiff examined himself as P.W.1 and marked Ex.A.1 to Ex.A.5. Ex.A.1 is a certified copy of the document dated 06.02.1980, by which the property came to Srinivasan; Ex.A.2 is the sale deed dated 17.04.1980, by which Srinivasan conveyed a portion to the plaintiff; Ex.A.3 is the patta dated 18.08.1998; Ex.A.4 is the original unregistered agreement of sale dated 05.04.2009 between the plaintiff and the defendant; and Ex.A.5 is a copy of the police complaint dated 13.11.2013.

9. The trial court framed two points for determination:

(i) Whether the plaintiff is entitled to the relief of specific performance to execute the sale deed for the suit property in favour of the plaintiff as prayed for?

(ii) What other relief or reliefs the plaintiff is entitled to?

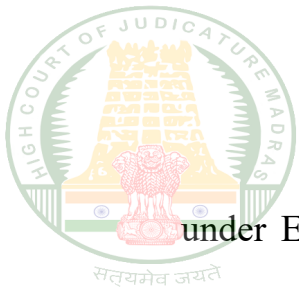
10. The trial court first considered the question of limitation. Relying on the Supreme Court decisions in re **Ahmadsahab Abdul Mulla (2) (Dead) v. Bibijan** reported in 2009 (5) SCC 462 and in re **Madina Begum v. Shiv Murti Prasad Pandey** reported in 2016 15 SCC 322, it held that, under 6/18



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Article 54 of the Limitation Act, 1963, where a specific calendar date is fixed for performance, limitation runs from that date. However, where no such date is fixed, limitation runs from the date on which the plaintiff has notice that performance is refused. Finding that Ex.A.4 did not stipulate a specific calendar date, but only that the sale was to be completed within three months, the trial court held that the second part of Article 54 applied, that the refusal was evidenced by the 2013 police complaint, and that the 2014 suit was therefore within limitation.

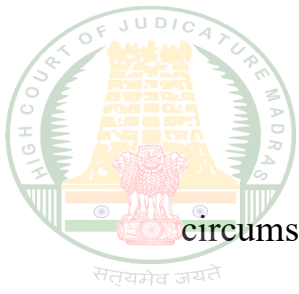
11. On the merits, the trial court held, with reference to Section 16(c) of the Specific Relief Act, 1963, and to the decisions in **Man Kaur (Dead) by LRs v. Hartar Singh Sangha and Jugraj v. P. Sankaran reported in 2010 10 SCC 512** that while the agreement was dated 2009 and the suit was filed in 2014, the plaintiff had produced no document showing that he had, at any time during that period, called upon the defendant to execute the sale deed; that no legal notice had been issued; and that, while the plaint asserted that more than the agreed amount had been paid, there was no evidence that the entire sale consideration of Rs.20,00,000/- had been paid. The trial court accordingly held that the plaintiff had failed to prove his readiness and willingness and declined specific performance. At the same time, noting that,



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under Ex.A.4, the plaintiff had paid Rs.14,50,000/-, that the defendant had received that amount, and that the defendant had not appeared to dispute her signature in Ex.A.4, the trial court held that, although the plaintiff had not specifically prayed for it, the plaintiff was entitled to the alternative relief of refund. It accordingly decreed the suit, directing the defendant to refund a sum of Rs.14,50,000/- to the plaintiff with costs within four months from the date of judgment, while declining the relief of specific performance.

12. Aggrieved by the judgment and the decree, the plaintiff preferred this appeal. In the grounds of appeal, the plaintiff contends that this was not an ordinary agreement of sale, but one rooted in an earlier transaction to which the defendant's father was a party; that there was an understanding that the defendant's aged mother, the widow of Srinivasan, would be permitted to live in the property during her lifetime, after which possession would be handed over to the plaintiff, explaining the absence of any immediate insistence on execution; that, having paid the consideration, the defendant had no course but to convey the property and that the trial court erred in holding that there was no pleading of readiness and willingness, since it was specifically pleaded in the plaint. It is urged that the trial court applied the rules of specific performance in the abstract, without regard to the facts and



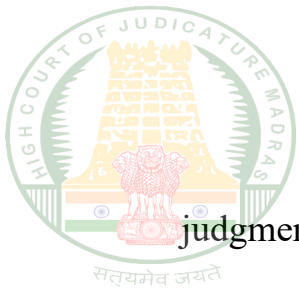
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circumstances of the case.

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13. Learned counsel for the appellants/plaintiff submitted that the defendant's father, with the plaintiff's assistance, had succeeded in the earlier ejectment proceedings and, in return, had parted with half of the property and had promised that the remaining portion would be sold to the plaintiff in future; that the other members of the family had endorsed this arrangement; that only the defendant had resiled to secure an individual gain; that the suit was wholly uncontested, no written statement having been filed and the plaintiff's pleadings remaining uncontroverted; and that, in those circumstances, the refusal of specific performance and the grant of a mere refund were erroneous.

14. Learned counsel for the respondent/defendant, on the other hand, submitted that the agreement of sale dated 05.04.2009 was followed by a suit filed only in 2014, beyond three years, and was therefore barred by limitation; that the plaintiff had not paid the entire consideration and had adduced no proof of payment of the balance of Rs.5,50,000/-; that no notice had been issued and no co-owner had been examined to support the plaintiff's case that the defendant would procure the consent of the other sharers; and that the plaintiff had not come to court with clean hands. He supported the



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judgment of the trial court.

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15. On consideration of the pleadings, the evidence and the submissions, the following points arise for determination in this appeal:

- (i) Whether the suit for specific performance is barred by limitation?
- (ii) Whether the plaintiff has proved that he was ready and willing to perform his part of the agreement of sale dated 05.04.2009, as required under Section 16(c) of the Specific Relief Act, 1963?
- (iii) Whether the plaintiff is entitled to a decree for specific performance?
- (iv) To what relief are the parties entitled?

Point (i)

16. Article 54 of the Limitation Act, 1963, prescribes a period of three years for a suit for specific performance, running from the date fixed for performance, or, if no such date is fixed, from the date when the plaintiff has notice that performance has been refused. As the Supreme Court has explained in **Ahmadsahab Abdul Mulla (2) v. Bibijan, reported in (2009) 5 SCC 462**, the expression 'date fixed for performance' denotes a definite, ascertainable calendar date; where no such date is fixed, the second limb of the Article applies. The agreement, Ex.A.4, did not fix a specific calendar date for performance; it provided only that the sale was to be completed

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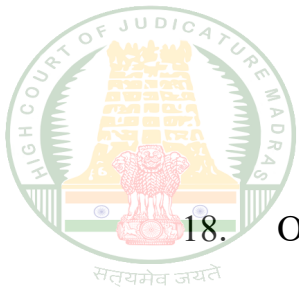


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within three months. On the facts found, the defendant's refusal to perform crystallised around the time of the police complaint dated 13.11.2013, and the suit was instituted on 27.01.2014, within three years of that date. On re-appreciation of the material, this court agrees with the trial court that the suit is not shown to be barred by limitation. The respondent, who filed no written statement and led no evidence, has placed nothing on record to displace this conclusion. Point (i) is accordingly answered in favour of the plaintiff: the suit is within limitation.

Point (ii)

17. The decisive question is whether the plaintiff has proved his readiness and willingness within the meaning of Section 16(c) of the unamended Act. The requirement has two limbs. 'Readiness' refers to the plaintiff's capacity to perform his part of the contract, particularly his financial capacity to pay the consideration; 'willingness' refers to his conduct and settled disposition to perform. The plaintiff must plead and prove continuous readiness and willingness from the date of the contract until the hearing of the suit. The mere recital of readiness and willingness in the plaint, while necessary, is not by itself sufficient; the averment must be substantiated by evidence.

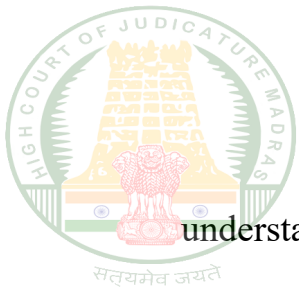


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18. On readiness, the agreed consideration was Rs.20,00,000/-, of which the plaintiff paid Rs.14,50,000/-, leaving a balance of Rs.5,50,000/- unpaid.

The plaintiff led no evidence that he had the means to pay the balance, and, significantly, he neither tendered it, nor offered to pay it, nor deposited it into court, even after the suit was filed. Secondly, on willingness, although the agreement contemplated completion within three months of 05.04.2009, there is no material to show that, for nearly four years thereafter, the plaintiff called upon the defendant to execute the sale deed or otherwise manifested his willingness to complete the transaction. No legal notice or other contemporaneous demand for performance was issued. The police complaint of 2013 may constitute material showing that the plaintiff had, by then, notice of the defendant's refusal for the purpose of the second limb of Article 54. It does not, however, establish that the plaintiff had continuously remained ready and willing from the date of the agreement until such refusal. A plaintiff who has paid a substantial advance but thereafter neither pays nor tenders the balance, nor takes any step to call for execution for nearly four years, cannot be said to have maintained the continuous readiness and willingness that the section requires.

19. The explanation offered for this long silence, namely that there was an



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understanding that the defendant's mother would reside in the property during her lifetime, does not assist the plaintiff. That understanding finds no place in the written and concluded agreement, Ex.A.4; it is an oral and indefinite arrangement, incapable of precise enforcement, and cannot supply the proof of readiness and willingness that the evidence otherwise lacks. If anything, the plea of an open-ended, lifetime arrangement underscores that the parties had not arrived at a concluded and presently enforceable obligation to convey. The plaintiff's further case, that the defendant had undertaken to procure the consent of the other co-sharers, was not supported by the examination of any of those co-sharers or by any other evidence. Point (ii) is therefore answered against the plaintiff: he has not proved his readiness and willingness.

Point (iii)

20. In view of the finding on Point (ii) that the plaintiff is not entitled to a decree for specific performance, because proof of continuous readiness and willingness is a statutory condition of that relief under Section 16(c), there are, in addition, independent reasons why the discretionary relief of specific performance ought not to be granted on the facts of this case. Under Section 20 of the unamended Act, the jurisdiction to decree specific performance is



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discretionary, to be exercised on sound and reasonable grounds, and the court may decline the relief where its grant would be inequitable. Here, the subject matter is only an undivided 1/5th share in a co-owned property; a substantial part of the consideration remains unpaid; the time fixed for completion was allowed to pass by nearly four years without any step; and the plaintiff's own narrative ties the transaction to indefinite understandings about the residence of the vendor's mother and the consent of other sharers. To compel conveyance of a bare undivided share in these circumstances, on an unregistered agreement with the balance unpaid and after so long and unexplained a delay, would not be a sound exercise of discretion.

21. The fact that the suit was not contested, the defendant having filed no written statement, does not alter this conclusion. It is well settled, as the Supreme Court held in **Balraj Taneja v. Sunil Madan (1999) 8 SCC 396**, that a court is not bound to grant a decree merely because the defendant has not filed a written statement or has remained ex parte; particularly in a suit for specific performance, which seeks discretionary and equitable relief, the plaintiff must still prove his case and satisfy the statutory requirements to the satisfaction of the court. The trial court was therefore right to scrutinise the evidence and to require proof of readiness and willingness, notwithstanding



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the absence of a contest. Point (iii) is answered against the plaintiff: he is not entitled to specific performance, and the trial court rightly declined that relief.

Point (iv)

22. Although the plaintiff is not entitled to specific performance, it does not follow that the defendant should retain the money she received. It is not in dispute that the trial court found the defendant received Rs.14,50,000/- under Ex.A.4 and did not dispute her signature in that document. Having received and retained that sum since 2009 while declining to perform, the defendant cannot, in equity, be permitted to keep it; allowing her to do so would sanction unjust enrichment. The trial court was, therefore, right to direct the refund of Rs.14,50,000/-, and that direction, which the defendant has not challenged by any appeal or cross-objection, must stand.

23. The trial court, however, directed a refund of the principal sum alone, without interest. The plaintiff has been kept out of his money since 2009, while the defendant has had the use and benefit of it. To do complete justice between the parties, and in exercise of the power of this Court under Order 41 Rule 33 of the Code of Civil Procedure read with Section 34 thereof, the decree of the trial court is modified to the limited extent of awarding interest



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on the sum of Rs.14,50,000/- at the rate of 6% per annum from the date of the
plaint, that is, 27.01.2014, until the date of realisation. The award of such
interest does justice without conferring upon the plaintiff the very relief of
specific performance to which, for the reasons stated, he is not entitled.

24. In the result:

(i) The appeal in A.S. No. 639 of 2018 is dismissed to the extent that it seeks a decree for specific performance, and the trial court's refusal of specific performance in its judgment and decree dated 08.11.2017 in O.S. No. 508 of 2014 is confirmed.

(ii) The decree of the trial court directing the defendant to refund Rs.14,50,000/- to the plaintiff is confirmed. It is modified only to the extent that the said sum shall carry interest at 6% per annum from the date of the plaint, 27.01.2014, until realisation. A charge is hereby created over the suit schedule property in favour of the plaintiff.

(iii) There shall be no order as to costs in this appeal.

(iv) Consequently, the connected miscellaneous petition, C.M.P. No. 17125 of 2018, is closed.

28.07.2026

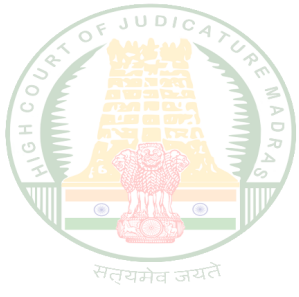
Index: Yes / No

Speaking order/Non-Speaking order

Neutral Citation: Yes / No

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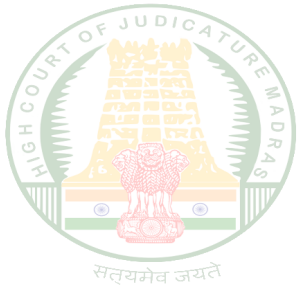


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To

1. The IV Additional Judge, City Civil Court, Chennai.
2. The Section Officer, V.R. Section, High Court, Madras.



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DR. A.D. MARIA CLETE, J

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PRE-DELIVERY JUDGMENT MADE IN
A.S. No. 639 of 2018

28.07.2026